

## The Private International Law of Companies in Europe

Bearbeitet von

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Edited by

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## Preface

Can firms freely choose their place of incorporation and thus the applicable company law? And is it possible that a firm can subsequently reincorporate in another country, with the effect of a change of the law applicable to this company?

In the European Union, the answer to these questions has to consider the impact of the freedom of establishment and the corresponding case law of the Court of Justice. Beyond some general principles, there is, however, considerable diversity between the laws of the Member States. Thus, this book aims to provide an up-to-date analysis of this important area of law for all Member States. It is based on a comprehensive study, produced for the European Commission and commissioned by LSE Enterprise, on the private international law of companies in the European Union. It is likely to be of interest to both practitioners working on cross-border transactions and legal scholars with an interest in company law, private international law and EU law.

We thank the country experts and our research assistants for their excellent work and LSE Enterprise and the European Commission for their support.

The book generally reflects the law as of 1 February 2018. Where necessary and possible, certain subsequent developments have also been included.

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Federico Mucciarelli  
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London, September 2018

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## Abbreviations of Frequently Cited EU Materials

### a) Secondary EU legislation

Directive 89/666/EC on foreign branches	Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State [1989] OJ L395/36
Directive 2004/25/EC on takeover bids	Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids [2004] OJ L142/12
Directive 2005/56/EC on cross-border mergers	Directive 2005/56/EC of the European Parliament and the Council 26 October 2005 on cross-border mergers of limited liability companies [2005] OJ L310/1
Directive 2009/133/EC on common system of taxation applicable to mergers	Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States [2009] OJL 310/34
Directive (EU) 2017/1132 relating to certain aspects of company law	Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law [2017] OJL 169/46
Regulation (EC) 1346/2000 on cross-border insolvencies	Council Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings [2000] OJL 160/1
Regulation (EC) 44/2001 ('Brussels I')	Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L012/1
Regulation (EC) 2157/2001 ('SE Statute')	Council Regulation (EC) 2157/2001 of 8 October 2001 on the Statute for a European company (SE) [2001] OJ L294/1
Regulation (EC) 864/2007 ('Rome II')	Regulation (EC) 864/2007 of the European Parliament and the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) [2007] OJ L199/40
Regulation (EC) 593/2008 ('Rome I')	Regulation (EC) 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6
Regulation (EU) 1215/2012 ('Brussels I Recast')	Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1
Regulation (EU) 2015/848 ('Insolvency Recast')	Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings [2015] OJ L141/19

### b) Decisions of the Court of Justice

C-106/16 <i>Polbud</i>	C-106/16, <i>Polbud – Wykonawstwo sp. z o.o.</i> [2017] ECLI:EU:C:2017:804
C-167/01 <i>Inspire Art</i>	C-167/01, <i>Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspire Art</i> [2003] ECR I-1095 (ECLI:EU:C:2003:512)



### Abbreviations of Frequently Cited EU Materials

C-196/04 <i>Cadbury Schweppes</i>	C-196/04, <i>Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v. Commissioners of Ireland Revenue</i> [2006] ECR I-8031 (EU: C:2006:544)
C-208/00 <i>Überseering</i>	C-208/00, <i>Überseering BV v Nordic Construction Company Bau-management GmbH</i> [2002] ECR I-9919 (ECLI:EU:C:2002:632)
C-210/06 <i>Cartesio</i>	C-210/06, <i>Cartesio Oktató és Szolgáltató bt</i> [2008] ECR I-9641 (ECLI:EU:C:2008:723)
C-212/97 <i>Centros</i>	C-212/97, <i>Centros Ltd v Erhvervsog Selskabsstyrelsen</i> [1999] ECR I-1459 (ECLI:EU:C:1999:126)
C-339/07 <i>Christopher Seagon</i>	C-339/07, <i>Christopher Seagon v Deko Marty Belgium NV</i> [2009] ECR I-767 (ECLI:EU:C:2009:83)
C-341/04 <i>Eurofood</i>	C-341/04, <i>Eurofood IFSC Ltd</i> [2006] ECR I-1078 (ECLI:EU: C:2006:281)
C-371/10 <i>National Grid Indus</i>	C-371/10, <i>National Grid Indus BV v. Inspecteur van de Belasting-dienst Rijnmond/kantoor Rotterdam</i> [2011] ECR I-12273 (ECLI: EU:C:2011:785)
C-378/10 <i>VALE</i>	C-378/10, <i>VALE Építési kft</i> , ECLI:EU:C:2012:440
C-411/03 <i>SEVIC</i>	C-411/03, <i>SEVIC System AG</i> [2005] ECR I-10805 (ECLI:EU: C:2005:762)
C-55/94 <i>Gebhard</i>	C-55/94, <i>Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano</i> [1995] ECR I-04165 (ECLI:EU:C:1995:411)
C-594/14 <i>Kornhaas</i>	C-594/14, <i>Simona Kornhaas v. Thomas Dithmar</i> (ECLI:EU: C:2015:806)
C-81/87 <i>Daily Mail</i>	C-81/87, <i>The Queen v H.M. Treasury and Commissioners of Inland Revenue ex parte Daily Mail and General Trust plc</i> [1998] ECR I-5483 (ECLI:EU:C:1988:456)

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DIE FACHBUCHHANDLUNG

## Private international law: statutory sources

Member State	Private international law: statutory sources	Substantive company law: statutory sources ( <i>English where available</i> )
Austria	Austrian Private International Law Act of 1978, as amended (Bundesgesetz vom 15. Juni 1978 über das internationale Privatrecht – IPR-Gesetz), Federal Gazette Nr. 304/1978, consolidated version available at <a href="https://www.ris.bka.gv.at/Geltende-Fassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10002426">https://www.ris.bka.gv.at/Geltende-Fassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10002426</a> .	Stock Corporation Act (AktG) for public companies, <a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10002070">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10002070</a> Limited Liability Companies Act (GmbHG) for private companies, <a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10001720">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10001720</a>
Belgium	Private International Law Code of 16 July 2004 (PIL Code), Wet van 16 juli 2004 houdende het Wetboek van internationaal privaatrecht/Loi de 16 juillet 2004 portant le Code de droit international privé, Belgian Official Gazette 27 July 2004, see <a href="http://www.ejustice.just.fgov.be/wet/wet.htm">http://www.ejustice.just.fgov.be/wet/wet.htm</a> ; English translation: <a href="http://www.jstor.org/stable/27878579">http://www.jstor.org/stable/27878579</a>	Belgian Corporate Code of 7 May 1999 (BCC), further executed in the Royal Decree of 30 January 2001 BCC: Wet van 7 mei 1999 houdende het Wetboek van vennootschappen/Code des sociétés de 7 May 1999, Belgian Official Gazette 6 August 1999, <a href="http://www.ejustice.just.fgov.be/wet/wet.htm">http://www.ejustice.just.fgov.be/wet/wet.htm</a> Royal Decree: Koninklijk Besluit van 20 januari 2001 tot uitvoering van het wetboek van vennootschappen/Arrêté royal de 20 janvier 2001 portant exécution du code sociétés, Belgian Official Gazette 6 February 2001, <a href="http://www.ejustice.just.fgov.be/wet/wet.htm">http://www.ejustice.just.fgov.be/wet/wet.htm</a>
Bulgaria	Private International Law Code (PILC), DV, No42 of 17 May 2005; English translation: <a href="http://www.ifrc.org/Docs/idrl/868EN.pdf">http://www.ifrc.org/Docs/idrl/868EN.pdf</a>	Bulgarian Commercial Act (CA), DV, No 48 of 18 June 1991 Law on Public Offering of Securities (LPOS), DV, No 114 of 30 December 1999
Croatia	Private International Law Act of 1991 (PILA). It was originally the private international law act of Yugoslavia, enacted in 1982. English translation by prof. Željko Matić, The Yugoslav Act Concerning Private International Law, 30 Netherlands International Law Review (1983), pp 220–239.	

*Private international law: statutory sources*

Member State	Private international law: statutory sources	Substantive company law: statutory sources ( <i>English where available</i> )
Cyprus	–	Law of Companies, Cap. 113 Consistently with Cyprus being a mixed legal system, Cap. 113 is complemented by Cypriot case law interpreting its provisions and also citing English common law.
Czech Republic	Private International Law Act of 2012: <a href="http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english">http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english</a>	Civil Code: <a href="http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english">http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english</a> Business Corporations Act: <a href="http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english">http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english</a>
Denmark	–	Danish Companies Act (selskabsloven) (CA): <a href="https://danishbusinessauthority.dk/sites/default/files/danish_companies_act.pdf">https://danishbusinessauthority.dk/sites/default/files/danish_companies_act.pdf</a>
Estonia	Private International Law Act, <a href="https://www.riigiteataja.ee/en/eli/513112013009/consolide">https://www.riigiteataja.ee/en/eli/513112013009/consolide</a> (English translation)	Commercial Code: <a href="https://www.riigiteataja.ee/en/eli/516062015010/consolide">https://www.riigiteataja.ee/en/eli/516062015010/consolide</a> (English translation)
Finland	–	Companies Act 2006 (Fi. osakeyhtiölaki) (CA): <a href="http://www.finlex.fi/fi/laki/ajantasa/2006/20060624">http://www.finlex.fi/fi/laki/ajantasa/2006/20060624</a> (in Finnish) and <a href="http://www.finlex.fi/fi/laki/kaannokset/2006/en20060624.pdf">http://www.finlex.fi/fi/laki/kaannokset/2006/en20060624.pdf</a> (unofficial English translation)
France	Civil Code Article 1837: <a href="http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006444080&amp;cidTexte=LEGI-TEXT000006070721">http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006444080&amp;cidTexte=LEGI-TEXT000006070721</a> Commercial Code Article L. 210-3: <a href="http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006222350&amp;cidTexte=LEGI-TEXT000005634379">http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006222350&amp;cidTexte=LEGI-TEXT000005634379</a>	Civil Code and Commercial Code (see links in previous column)
Germany	General conflict rules codified in the Introductory Law to the Civil Code (EGBGB), <a href="http://www.gesetze-im-internet.de/englisch_bgbeg/index.html">http://www.gesetze-im-internet.de/englisch_bgbeg/index.html</a> (English translation)	Stock Corporation Act (AktG) for public companies, <a href="http://www.gesetze-im-internet.de/aktg/">http://www.gesetze-im-internet.de/aktg/</a> (English translation not available; but for a translation from 2010 see <a href="http://www.nortonrosefulbright.com/files/german-stock-corporation-act-109100.pdf">http://www.nortonrosefulbright.com/files/german-stock-corporation-act-109100.pdf</a> ) Limited Liability Companies Act (GmbHG) for private companies, <a href="http://www.gesetze-im-internet.de/englisch_gmbhg/index.html">http://www.gesetze-im-internet.de/englisch_gmbhg/index.html</a> (English translation of the GmbHG)

Private international law: statutory sources

Member State	Private international law: statutory sources	Substantive company law: statutory sources ( <i>English where available</i> )
Greece	Arts 4–33 of the Civil Code (part of 'General Principles of Civil Law'). Numerous other conflict of law provisions spread on national laws.	Law No. 2190/1920 on Limited Companies Law No. 3190/1955 on Limited Liability Companies Law 4072/2012 on new private company
Hungary	Decree-law no. 13 of 1979 on private international law: <a href="http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=97900013">http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=97900013</a> . TVR From 1 January 2018 new Act on Private International Law: <a href="https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1700028.TV&amp;time-shift=ffffff4&amp;txtreferer=00000001">https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1700028.TV&amp;time-shift=ffffff4&amp;txtreferer=00000001</a> . TXT	Civil Code, Third Book Act on conversions, mergers and demergers, no. 176 of 2013: <a href="http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300176.TV">http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300176.TV</a>
Ireland	–	Companies Act 2014: <a href="http://www.irishstatutebook.ie/2014/en/act/pub/0038/">http://www.irishstatutebook.ie/2014/en/act/pub/0038/</a>
Italy	Private International law Act 1995; English translation: <a href="http://www.unife.it/giurisprudenza/giurisprudenza/studiare/private-international-law/materiale-didattico/archivio/italian-statute-on-private-international-law-of-31-may-1995-no-218-as-originally-adopted-unofficial-english-translation">http://www.unife.it/giurisprudenza/giurisprudenza/studiare/private-international-law/materiale-didattico/archivio/italian-statute-on-private-international-law-of-31-may-1995-no-218-as-originally-adopted-unofficial-english-translation</a>	Civil Code, 1942, as amended: <a href="http://www.altalex.com/documents/codici-altalex/2015/01/02/codice-civile">http://www.altalex.com/documents/codici-altalex/2015/01/02/codice-civile</a> Italian Consolidated Financial Act 1998: Legislative Decree No 58/1998, as amended: <a href="http://www.consob.it/web/area-pubblica/tuf-e-regolamenti-consob">http://www.consob.it/web/area-pubblica/tuf-e-regolamenti-consob</a>
Latvia	Civil Law, <a href="http://likumi.lv/doc.php?id=225418">http://likumi.lv/doc.php?id=225418</a>	Commercial Law, <a href="http://likumi.lv/doc.php?id=5490">http://likumi.lv/doc.php?id=5490</a>
Lithuania	Lithuanian Civil Code <a href="https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495">https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495</a> (English translation)	Law of Companies <a href="https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9670ea90e8b311e4eacae0-d86a561f87?jfwid=7c1hrh1a9">https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9670ea90e8b311e4eacae0-d86a561f87?jfwid=7c1hrh1a9</a> (English translation)
Luxembourg	Commercial Companies Act of 1915, Arts 2, 159	Commercial Companies Act of 1915 <a href="http://legilux.public.lu/eli/etat/leg/loi/1915/08/10/n1/jo">http://legilux.public.lu/eli/etat/leg/loi/1915/08/10/n1/jo</a>
Malta	–	Companies Act 1995
Netherlands	Book 10, Title 8, Articles 117–124 Civil Code (CC), <a href="https://zoek.officielebekendmakingen.nl/stb-2011-272.html">https://zoek.officielebekendmakingen.nl/stb-2011-272.html</a> ; English translation: <a href="http://www.dutchcivillaw.com/civilcodebook01010.htm">http://www.dutchcivillaw.com/civilcodebook01010.htm</a>	Book 2 Civil Code Law on Works Councils, Wet van 28 januari 1971, houdende nieuwe regelen omtrent de medezeggenschap van de werknemers in de onderneming door middel van ondernemingsraden (Wet op de Ondernemingsraden) / Law on Work Councils, available at <a href="http://wetten.overheid.nl/BWBR0002747/geldigheidsdatum_18-12-2014#">http://wetten.overheid.nl/BWBR0002747/geldigheidsdatum_18-12-2014#</a> (for a translation from 2013 see <a href="https://www.ser.nl/~media/files/internet/talen/engels/2013/works-councils-act.ashx">https://www.ser.nl/~media/files/internet/talen/engels/2013/works-councils-act.ashx</a> )

Private international law: statutory sources

Member State	Private international law: statutory sources	Substantive company law: statutory sources ( <i>English where available</i> )
Poland	Private International Law Act 2011: <a href="https://miedzynarodoweprawohandlowe.files.wordpress.com/2013/06/polish-prv-int-law-en-and-fr.pdf">https://miedzynarodoweprawohandlowe.files.wordpress.com/2013/06/polish-prv-int-law-en-and-fr.pdf</a>	Commercial Companies Code of 15 September 2000 Civil Code of 23 April 1964, Act on National Court Register of 20 August 1997, Bankruptcy Law of 28 February 2003 Act on Freedom of Economic Activity of 2 July 2004
Portugal	Portuguese Civil Code 1966: <a href="http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&amp;tabela=leis&amp;so_miolo">http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&amp;tabela=leis&amp;so_miolo</a> Article 3 Companies Act 1986 (see next column)	Companies Act 1986: <a href="http://www.cmvn.pt/pt/Legislacao/Legislacao-Complementar/EmitentesOfertasInformacaoValoresMobiliarios/Pages/CSC20060414.aspx?v=">http://www.cmvn.pt/pt/Legislacao/Legislacao-Complementar/EmitentesOfertasInformacaoValoresMobiliarios/Pages/CSC20060414.aspx?v=</a>
Romania	7 <sup>th</sup> Book of the New Civil Code (NCC 2011)	Law no. 31/1990 (LS)
Slovakia	Act 97/1963 on International Private and Procedural Law	Act 513/1991 'Commercial Code' Act 40/1964 'Civil Code'
Slovenia	'Private International Law and Procedure Act' Zakon o mednarodnem zasebnem pravu in postopku (Official Journal of the Republic of Slovenia, Nos. 56/99 and 45/08) (abbreviated as ZMZPP), available at <a href="http://www.pisrs.si/Pis.web/pregledPredpisa?id=-ZAKO1258#">http://www.pisrs.si/Pis.web/pregledPredpisa?id=-ZAKO1258#</a> (English translation available at <a href="https://arbitrationlaw.com/sites/default/files/free_pdfs/Slovenia%20PILPA.pdf">https://arbitrationlaw.com/sites/default/files/free_pdfs/Slovenia%20PILPA.pdf</a> )	'Companies Act' Zakon o gospodarskih družbah (Official Journal of the Republic of Slovenia, Nos. 56/09 et seq.) (abbreviated as ZGD-1), available at <a href="http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4291#">http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4291#</a> (with English translation available at <a href="http://www.mgrt.gov.si/fileadmin/mgrt.gov.si/pageuploads/zakonodaja/ZGD-1_PREVOD_13-12-12.pdf">http://www.mgrt.gov.si/fileadmin/mgrt.gov.si/pageuploads/zakonodaja/ZGD-1_PREVOD_13-12-12.pdf</a> ).
Spain	Civil Code; Commercial Code; Capital Companies Act 2010 (Ley de sociedades de capital); Structural modifications of companies Act 2009 (Ley 3/2009); Regulation of commercial registry (Reglamento del registro mercantil)	Text of laws (see previous column) available at <a href="http://www.boe.es">www.boe.es</a>
Sweden	–	Aktiebolagslagen, Swedish Companies Act 2005 The Swedish Foreign Branch Offices Act 1992 (Sw. lagen om utländska filialer m.m.)
United Kingdom	–	Companies Act 2006, <a href="http://www.legislation.gov.uk/ukpga/2006/46/contents">http://www.legislation.gov.uk/ukpga/2006/46/contents</a>