

# European Business Law

## *Part E.1 : Multiple Choice Questions* *Companies' mobility*

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## ***Part E-2 : Companies' mobility***

## 1. Which statement(s) concerning the notion of seats is/are correct?

- a) The transfer of the statutory seat always requires the simultaneous transfer of the real seat
- b) For the *Societas Europaea* (SE) the separation between statutory and real seat is free and unrestricted
- c) The *statutory seat* corresponds to the place of registration (registered office)
- d) The *real seat* corresponds to the central administration / effective management

## 2. Which statement(s) correctly define(s) the real seat?

- a) The place where the central administration (effective management) of the company is located
- b) The place of registration / address indicated in the articles of association
- c) The place of registered office of the majority shareholders
- d) The place where occasional meetings take place

3. Which of the following States are mentioned in the course as applying the former real seat doctrine?

- a) Netherlands, Ireland, United Kingdom, Sweden
- b) Denmark, Hungary, Slovakia, Sweden
- c) France, Germany, Spain, Luxembourg
- d) None of the above

#### 4. Which statement(s) correctly define(s) the statutory seat ?

- a) The place where most business operations take place
- b) The nationality of the founders
- c) The CEO's place of residence
- d) The place of registration / the jurisdiction where the articles of association have been filed (registered office)

5. Which of the following States are mentioned as applying the incorporation doctrine ?

- a) France, Germany, Italy, Spain
- b) Poland, Portugal, Austria, Luxembourg
- c) Denmark, Ireland, United Kingdom, Sweden
- d) None of the above

6. Which statement(s) about the notion of Home State (departure State) is/are correct?

- a) The Home State is the Member State whose laws in accordance with which the company has been formed (departure State)
- b) The Home State can also be called the arrival State
- c) This Home-State perspective is adopted in the *Cartesio* case
- d) This Home-State perspective is adopted in the *Centros* case



7. Which statement(s) about the notion of *Host State* (arrival State) is/are correct?

- a) The Host State is the Member State where the company seeks to transfer its real seat
- b) The Host State is the Member State where the company seeks to transfer its statutory seat
- c) This Host State perspective is adopted in *Cartesio*
- d) This Host State perspective is adopted in *Centros*

## 8. Which instruments / sources validate cross-border mergers and conversions ?

- a) CJEU case-law
- b) Merger Directive 2005/56/EC and Mobility Directive 2019/2121/EU
- c) The SE Regulation (for European Companies)
- d) None of these answers

## 9. Which operations fall within company mobility?

- a) Acquisition of a company
- b) Transfer of the statutory seat (registered office)
- c) Transfer of the real seat (central administration)
- d) Cross-border merger

## 10. What is the lex societatis?

- a) A synonym for the nationality of the company
- b) The law applicable to a distribution contract concluded by a company
- c) The law applicable to the formation, functioning and the end of a company
- d) The law recommended to be chosen for a share purchase agreement

## 11. What is a pseudo-foreign company (“letter-box company”)?

- a) A company having only a registered office in a Member State without any real central administration or real economic activity there
- b) A company resulting from a cross-border conversion
- c) A company automatically approved by the European Commission for the *SUP*
- d) A company whose creation always requires prior approval under the SE Regulation

## 12. What does Article 49 TFEU provide?

- a) Article 49 TFEU provides for the prohibition of any restriction on the freedom of establishment of nationals of a Member State in the territory of another Member State
- b) Article 49 TFEU provides that only subsidiaries are protected by the freedom of establishment
- c) Article 49 TFEU provides for the exclusive application of the national law of the host State, without exception
- d) Article 49 TFEU provides for a prohibition to set up agencies, branches, or subsidiaries

### 13. What does Article 54 TFEU state?

- a) Article 54 TFEU states that companies formed in accordance with the law of a Member State and having their registered office, central administration, or principal place of business within the Union shall be treated as natural persons who are nationals of Member States
- b) Article 54 TFEU states that non-profit making companies are covered
- c) Article 54 TFEU states that cooperative societies are excluded
- d) Article 54 TFEU states that exclusively commercial companies are covered

14. Which of the following explains the transfer of the company's seat (real + statutory)?

- a) Strategic / commercial reasons (brand image, market, suppliers...)
- b) Fiscal reasons (tax optimisation, exit tax, tax neutrality)
- c) Legal reasons (choice of the lex societatis, law-shopping)
- d) Reasons related to the nationality of the directors



15. Which of the following transactions can be motivated for legal reasons (law shopping)?

- a) Transfer of the sole real seat immediately after the registration of the company's office
- b) Transfer of the sole real seat while the company is functioning
- c) Transfer of the statutory seat in order to change a posteriori the *lex societatis*
- d) None of them

16. Which of the following statement(s) about cross-border mergers is/are true?

- a) The CJEU case-law (*Sevic*) confirmed that cross-border mergers are protected by freedom of establishment
- b) The Merger Directive 2005/56 (and the 2019 mobility updates) provides a statutory framework for cross-border mergers
- c) The SE Regulation contains provisions relevant to cross-border mergers (for SE)
- d) Cross-border mergers always require prior transfer of the real seat to the acquiring State

17. Which statement(s) are true concerning a company validly formed according to the law of a Member State, according to relevant CJEU case law?

- a) A company validly formed according to the law of a Member State may be prohibited from establishing a branch in another Member State
- b) A company validly formed according to the law of a Member State shall be recognized by the other Member States
- c) A company validly formed according to the law of a Member State should be governed by the law of that Member State, even though it exercises most or all of its activities in another Member State
- d) A company validly formed according to the law of a Member State may be registered in a foreign commercial register without change of the *lex societatis*

## 18. Which statement(s) concerning the Centros case is/are true?

- a) The refusal by the authority of a Member State to register a branch of a company formed in accordance with the law of another Member State is an obstacle to the exercise of the freedom of establishment
- b) The refusal by the authority of a Member State to register a branch of a company formed in accordance with the law of another Member State is not an obstacle to the exercise of the freedom of establishment
- c) A company may freely transfer its registered office without restriction
- d) A company is only allowed to establish branches in its home Member State

19. In which case does the CJEU state that cross-border conversions (transfer of the statutory seat) are guaranteed by the freedom of establishment from the point of view of the Home State?

- a) Centros case
- b) Sevic case
- c) Cartesio case
- d) Daily Mail case

20. Which group of cases concerns the transfer of the real seat from the perspective of the Host State?

- a) Centros case
- b) Überseering case
- c) Inspire Art case
- d) Daily Mail case

## 21. Which statement(s) is/are true in the *Polbud* case?

- a) A Member State may require the prior liquidation of a company wishing to transfer its statutory seat abroad
- b) The validity of the transfer of the statutory seat from the perspective of the Home State is not covered by the EU freedom of establishment
- c) A company validly formed in accordance with the law of the Home State is allowed to change its *lex societatis* while transferring its statutory seat to another Member State
- d) The validity of the transfer of the statutory seat from the perspective of the Home State is covered by the EU freedom of establishment

## 22. Which statement(s) is/are true in the *Edil Works II* case?

- a) After the transfer of the statutory seat, management acts remain governed by the former *lex societatis*
- b) After the transfer of the statutory seat, management acts are governed by the *lex societatis* of the new host State
- c) *Edil Works II* has no impact on the question of *lex societatis*
- d) *Edil Works II* confirmed that a statutory seat transfer requires the simultaneous transfer of the real seat



## 23. What did the CJEU decide in the *Überseering* case (2002)?

- a) A Member State may deny legal capacity to a company formed in another Member State if it moves its real seat
- b) The host State must recognise the legal capacity of a company validly incorporated in another Member State
- c) *Überseering* confirmed *Daily Mail* regarding home-State control
- d) *Überseering* authorised Member States to restrict access to their courts for companies incorporated in another Member State

## 24. Which statement reflects the CJEU's ruling in *Inspire Art* (2003)?

- a) A Member State may impose additional capital rules on a company formed in another Member State even if this creates discrimination
- b) The host State may impose more burdensome registration requirements on a foreign-incorporated company solely because it carries out activities in its territory
- c) *Inspire Art* confirmed that companies must move their real seat to rely on Article 49 TFEU
- d) The host State is not allowed in general to discriminate a “pseudo-foreign company” compared to domestic companies

## 25. Which statement correctly reflects *Daily Mail* (1988)?

- a) The Home State is allowed to restrict a company incorporated under its law from transferring its real seat while retaining its status
- b) The Home State is not allowed to restrict a company incorporated under its law from transferring its real seat while retaining its status
- c) The *Daily Mail* case concerns the perspective of the Home State
- d) The *Daily Mail* case has been confirmed by the first statement of the *Cartesio* case

## 26. What did the CJEU state in the case *Vale Építési* (2012)?

- a) The host State is never allowed to prohibit cross-border conversions entirely
- b) The host State must allow cross-border conversions under conditions equivalent to those of domestic conversions
- c) The host State may require compulsory liquidation before a cross-border conversion
- d) The host State can require that a company must always transfer its real seat together with its registered office

27. In a share deal, which law governs the legal effects of the transfer of shares (assignment) with regard to the company and third parties?

- a) The *lex contractus* chosen by the parties under Rome I
- b) The *lex societatis* (national law of the target company)
- c) The law of the buyer's habitual residence
- d) The law of the seller's habitual residence

28. In an Asset Deal operated by a foreign purchaser, why does the transaction generally have a domestic nature?

- a) Because the target is first transferred to the foreign purchaser's country
- b) Because the target will be merged with the foreign purchaser
- c) Because private international law rules do not apply to an Asset Deal
- d) Because the foreign purchaser, in general, contributes the asset deal to a local entity in the target's country that shall acquire the assets

29. In a share deal, which statement(s) is/are correct about applicable law?

- a) Only the *lex contractus* chosen by the parties governs all legal effects of the sale towards the company and third parties
- b) Only the *lex societatis* (national law of the target) governs the transaction
- c) The *lex contractus* (Rome I) governs contractual aspects between buyer and seller, while the *lex societatis* governs legal effects of the share transfer vis-à-vis the company and third parties
- d) In order to avoid the co-application of different laws, it is recommended to choose the *lex societatis*

30. Which statement(s) correctly describe(s) the legal implications of the transfer of the statutory seat?

- a) The transfer of the statutory seat implies the change of the lex societatis
- b) The transfer of the statutory seat implies the change of the lex societatis only if the real seat is also transferred
- c) The transfer of the statutory seat corresponds to a cross-border conversion
- d) The transfer of the statutory seat corresponds to a cross-border merger



**Merci pour votre attention!**



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