

## SUBJECT DETAILS

Data on the subject	
Name	EU Industry Regulation (Energy, Telecoms, Media, Transport) & EU Public Procurement Law
Degree	Postgraduate in Master in International and European Business Law
Year	2018-19
Nature	Spring
ECTS Credits	3 ETCS Credits
Department	LAW
Area	Commercial Law
Teaching staff	Guillermo González de Olano/Federico de Montalvo Jääskeläinen

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Tutoring Schedule	Upon request from students

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Tutoring Schedule	Upon request from students

## SPECIFIC DATA ON THE SUBJECT

Pre-requisites
None

### Contribution of the degree to the professional profile

- Provide a general understanding of industry regulation in the EU, its tools, objectives and interaction with other areas of EU Law (such as Competition Law).
- Provide a general vision and understanding of the EU Public Procurement regime and, more specifically, of the main aspects of PPPs infrastructure in Europe.
- Analyse the regulation, procedures, strategic and corporate aspects and principal contracts applicable to motorway and water concession projects.
- Provide a general understanding of health regulation and health industry in the EU, its tools, objectives and interaction, comparing them to the US health regulation

### COMPETENCES TO BE IMPROVED

#### What skills you'll gain from this class:

##### Generic:

- GC 1: Analysis and synthesis abilities
- GC 3: Ability to manage information
- GC 7: Ability to work in an international context
- GC 8: Critical appraisal skills
- GC 10: Ability to develop autonomous learning skills
- GC 11: Concern for quality
- GC 12: Ability to apply theoretical knowledge into practice

##### Specific:

SC 8 - Knowing in depth the main rules regulating markets in special sectors (like financial markets, utilities and markets for consumer goods)

### THEMATIC AREA AND CONTENT

#### AREA 1: EU Industry Regulation (Energy, Telecoms, Media, Transport)

##### Theme 1: Historical overview

- 1.1 Economic features of network industries
- 1.2 The deregulation of network industries
  - 1.2.1 The role of technological evolution
  - 1.2.2 The role of industrial policy
  - 1.2.3 Deregulation and re-regulation
- 1.3 Legal basis for the deregulation of network industries
  - 1.3.1 Article 106 TFEU
  - 1.3.2 Article 114 TFEU

## Milestones in the deregulation process

### Theme 2: Energy

- 2.1 European energy policy
  - 2.1.1 Energy policy for Europe
  - 2.1.2 Market-based instruments
  - 2.1.3 Energy technologies
  - 2.1.4 Financial instruments
- 2.2 Internal energy market
  - 2.2.1 The market in gas and in electricity
  - 2.2.2 Trans-European energy networks
  - 2.2.3 Infrastructure
  - 2.2.4 Security of supply
  - 2.2.5 Public procurement
  - 2.2.6 Taxation
- 2.3 Energy efficiency
  - 2.3.1 Energy efficiency of products
  - 2.3.2 Building and services
- 2.4 Renewable energy
  - 2.4.1 Electricity
  - 2.4.2 Heating and cooling
  - 2.4.3 Biofuels
- 2.5 Nuclear energy
  - 2.5.1 Euratom
  - 2.5.2 Research and technology
  - 2.5.3 Safety
  - 2.5.4 Waste
- 2.6 Security of supply, external dimension and enlargement
  - 2.6.1 Security of supply
  - 2.6.2 External relations
  - 2.6.3 European energy Charter
  - 2.6.4 Treaty establishing the Energy Community,
  - 2.6.5 Enlargement

### Theme 3: Telecoms

- 3.1 Telecoms general framework: Connected continent
- 3.2 Access
- 3.3 Authorisation
- 3.4 Universal Service
- 3.5 Privacy and Electronic Communications
- 3.6 Telecoms & the Internet

<b>Theme 4: Media</b>
<ul style="list-style-type: none"> <li>4.1 Audio-visual Media Policy</li> <li>4.2 Protection of minors</li> <li>4.3 Cinema, film heritage and film industry</li> </ul>
<b>Theme 5: Transport</b>
<ul style="list-style-type: none"> <li>5.1 Introduction: General European transport policy</li> <li>5.2. Air</li> <li>5.3 Road</li> <li>5.4. Rail</li> <li>5.5 Maritime</li> <li>5.6 Inland waterways</li> </ul>
<b>AREA 2: EU public procurement Directives and their enforcement</b>
<b>Theme 1: General Overview</b>
<ul style="list-style-type: none"> <li>1.11.1 Basic Concepts and Goals of Public Procurement</li> <li>1.2 Framework International Regulations on Public Procurement <ul style="list-style-type: none"> <li>1.2.1 WTO Agreement on Government Procurement</li> <li>1.2.2 Institutional Rules on Procurement</li> <li>1.2.3 UNCITRAL Model Law on Procurement of Goods, Construction and Services</li> </ul> </li> <li>1.3 Public Procurement in the EU <ul style="list-style-type: none"> <li>1.3.1 EU Directives on Public Procurement (new directives vs. old ones)</li> <li>1.3.2 Reference to National Rules for Below-Thresholds Procurement and Contracts Outside the Blueprint of the Directives</li> </ul> </li> </ul>
<b>Theme 2: Specifics of EU Public Procurement Rules (I)</b>
<ul style="list-style-type: none"> <li>2.1 Design / Initial stages in the Procurement Process <ul style="list-style-type: none"> <li>2.1.1 Selection of Procedures</li> <li>2.1.2 Setting of Participation Criteria and Exclusion Clauses</li> <li>2.1.3 Drafting of Bid Documents</li> <li>2.1.4 Drafting of Technical Specifications</li> <li>2.1.5 Inclusion of Social and Environmental Criteria, and Other Secondary Policies</li> </ul> </li> </ul> <p>Analysis of Relevant Case Law of the European Court of Justice</p>
<b>Theme 3: Specifics of EU Public Procurement Rules (II)</b>
<ul style="list-style-type: none"> <li>3.1 Award of Contracts and Challenge/Revision Mechanisms <ul style="list-style-type: none"> <li>3.1.1 Bid Evaluation (with specific reference to treatment of abnormally low tenders)</li> <li>3.1.2 Award of the Contract</li> <li>3.1.3 Challenges, Protests and Revision of Award Decisions (including stand-still)</li> </ul> </li> </ul>

Analysis of Relevant Case Law of the European Court of Justice
<b>Theme 4: Strategic Analysis of Procurement Uses</b>
<p>4.1 Strategic Analysis of the Use of Procurement</p> <p>4.1.1 The Use of Procurement as a Tool for Economic Development</p> <p>4.1.2 The Use of Procurement as a Tools for Social and Environmental Development</p> <p>4.1.3 Preventing Corruption in Procurement</p>

<b>AREA 3: Infrastructure Concessions</b>
<b>Theme 1: General Overview</b>
<p>1.1 Concession Projects and PPS</p> <p>1.2 Motorway Projects</p>
<b>Theme 2: The Bidding Process</b>
<p>2.1 Type of Procurement Processes</p> <p>2.2 The Bidding Package</p> <p>2.3 The Contract</p> <p>2.4 Case: Presentation of an Offer in a bidding process: concession contract negotiation</p>
<b>Theme 3: The Consortium: finding the right partners</b>
<p>3.1 Case: Analysis of different shareholders' agreement provisions depending on the composition of the Consortium</p>
<b>Theme 2: The Bidding Process</b>
<p>4.1 Transfer of risks in the construction contract</p> <p>4.2 Case: Construction Advance Payment and treatment in a termination scenario</p>

<b>AREA 4: EU Health Law</b>
<b>Theme 1: General Overview: relevance of health from legal, social and economic perspective</b>
<p>1.1 Importance of Healthcare in EU: economic and political perspective.</p> <p>1.2 A comparison between health in US and EU</p>
<b>Theme 2: Health in the EU legal system: from the Treaty on the European Union to the cross-border healthcare Directive</b>
<p>2.1 Health at the beginning of EC and EU: the absence</p> <p>2.2 First regulations in the area of health: public health crisis</p> <p>2.3 A European common framework in the area of health system based on case law: the position of ECJ about cross-border healthcare and parallel imports in pharmaceutical</p>

## BIBLIOGRAPHY AND RESOURCES

<b>AREA 1: EU Industry Regulation (Energy, Telecoms, media, Transport)</b>
<b>Historical Overview</b>
Ibáñez Colomo, Pablo (2011) European communications law and technological convergence: deregulation, re-regulation and regulatory convergence in television and telecommunications Wolters Kluwer. ISBN 9789041138293
<b>Energy</b>
<ol style="list-style-type: none"><li>1. Communication from the Commission to the European Council and the European Parliament of 10 January 2007, "An energy policy for Europe" <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0001:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0001:EN:NOT</a></li><li>2. Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0055:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0055:EN:NOT</a></li><li>3. Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Text with EEA relevance) <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0072:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0072:EN:NOT</a></li><li>4. Communication from the Commission of 13 November 2008 - Energy efficiency: delivering the 20% target [COM(2008) 772 <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0772:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0772:EN:NOT</a></li><li>5. Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity from renewable energy sources in the internal electricity market <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0077:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0077:EN:NOT</a></li><li>6. Treaty establishing the European Atomic Energy Community (Euratom)</li><li>7. Communication from the Commission to the Council and the European Parliament of 26 March 2009 - Communication on nuclear non-proliferation [COM(2009) 143 final <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0143:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0143:EN:NOT</a></li><li>8. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 7 September 2011 On security of energy supply and international cooperation - "The EU Energy Policy: Engaging with Partners beyond Our Borders" [COM(2011) 539 final <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0539:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0539:EN:NOT</a></li></ol>
<b>Telecoms</b>
<ol style="list-style-type: none"><li>1. Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (Text with EEA relevance) <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R1211:EN:NOT">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R1211:EN:NOT</a></li><li>2. Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union Text with EEA relevance</li></ol>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0531:EN:NOT>

3. Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)

[https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/140framework\\_5.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/140framework_5.pdf)

4. Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)

[http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/140access\\_1.pdf](http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/140access_1.pdf)

5. Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)

[http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/140authorisation\\_2.pdf](http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/140authorisation_2.pdf)

6. Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

[https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Directive%202002%2022%20EC\\_0.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Directive%202002%2022%20EC_0.pdf)

7. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

[https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/24eprivacy\\_2.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/24eprivacy_2.pdf)

8. Andrej Fatur (2012) EU Competition Law and the Information and Communication Technology Network Industries: Economic versus Legal Concepts in Pursuit of (Consumer) Welfare (Hart Studies in Competition Law)

## Media

1. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0013:EN:NOT>

## Transport

1. Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R1008:EN:NOT>

2. Guide to European Community legislation in the field of civil aviation (June 2007)

[http://ec.europa.eu/transport/modes/air/internal\\_market/doc/acquis\\_handbook.pdf](http://ec.europa.eu/transport/modes/air/internal_market/doc/acquis_handbook.pdf)

3. Common rules for the operation of air services

[http://europa.eu/legislation\\_summaries/transport/air\\_transport/tr0008\\_en.htm](http://europa.eu/legislation_summaries/transport/air_transport/tr0008_en.htm)

4. Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R1072:EN:NOT>

5. Commission Communication of 17 September 2010 concerning the development of a Single

European Railway Area [COM (2010) 474 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0474:EN:NOT>

6. Communication from the Commission of 3 March 2004 entitled "Further integration of the European rail system: the third railway package [COM(2004) 140 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0140:EN:NOT>

7. Freedom to supply services, unfair pricing practices and free access to ocean trade

[http://europa.eu/legislation\\_summaries/competition/specific\\_sectors/transport/l24064\\_en.htm](http://europa.eu/legislation_summaries/competition/specific_sectors/transport/l24064_en.htm)

8. Commission Directive 2013/49/EU of 11 October 2013 amending Annex II to Directive 2006/87/EC of the European Parliament and of the Council laying down technical requirements for inland waterway vessels

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013L0049:EN:NOT>

## AREAS 2 and 3: EU public procurement Directives and their enforcement / Infrastructure concessions

### Text books

Arrowsmith, S (ed), Public Procurement Regulation: An Introduction (2011) available at [www.nottingham.ac.uk/law/pprg](http://www.nottingham.ac.uk/law/pprg)

Avery, N., Public-Private Partnerships (Globe Business Publishing Ltd, 2010)

Bult-Spiering, M & Dewulf, G, Strategic Issues in Public Private Partnership, an International Perspective (Oxford, Blackwell Publishing, 2007).

Delmon, J, Private Sector Investment in Infrastructure: Project Finance, PPP Projects and Risk, 2nd edn (The Hague, World Bank and Kluwer Law International, 2008).

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Nihoul, P & Rodford, P, EU Electronic Communications Law (OUP, 2011)

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Trepte, P, Regulating Procurement Understanding the Ends and Means of Public Procurement Regulation (Oxford, OUP, 2005).

Trepte, P, Public Procurement in the EU: A Practitioner's Guide, 2nd edn (Oxford, OUP, 2007).

### Chapters of books

[www.adb.org/documents/handbooks/Public-Private-Partnership/chapter7.pdf](http://www.adb.org/documents/handbooks/Public-Private-Partnership/chapter7.pdf)

### Articles

Chirico, F, Van der Haar and Larouche, P, Network Neutrality in the EU, Working Paper, available at <http://www.ssrn.com>

EIB's Role in PPPs:

<http://www.eib.org/projects/publications/the-eibs-role-in-public-private-partnerships-ppps.htm?lang=en&>

Evaluating the risks of public private partnerships for infrastructure projects. International Journal of Project Management. Volume 20 (Feb 2002) Pages 107-118- Darrin Grimsey, Mervyn K. Lewis. ).



Monti, G, Managing the Intersection of Utilities Regulation and EC Competition Law, 4 Competition Law Review (2008), pp. 123-145

“A guide to guidance” Sourcebook for PPPs, by the European PPP Expertise Centre.

[Public information on EU Public Procurement](#)

#### Legislation

1. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>
2. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023&from=EN>
3. Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0025&from=EN>

#### AREA 4: EU health law

##### Text books

1. HERVEY, T.K. y McHALE, J.V., *European Union Health Law. Themes and Implications*, Cambridge University Press, Cambridge, 2015.
2. DE VRIES, S., BERNITZ, U. y WEATHERILL, S. (Eds.), *The EU Charter of Fundamental Rights as a binding instrument*, Hart, Oxford, 2015.
3. ZUNIGA, J.M., MARKS, S.P. y GOSTIN, L.O. (Ed.), *Advancing the human right to health*, Oxford University Press, Oxford, 2013.
4. TOEBES, B., HARTLEV, M., HENDRIKS, A. y HERRMANN, J.R. (Eds.), *Health and Human Rights*, Intersentia, Cambridge, 2012.

##### Chapters of books

##### Articles

1. Report of the National Research Council and Institute of Medicine “US Health in International Perspective: Shorter Lives, Poorer Health”
2. WINTERFELD, A. and CAUCHI, R., “Obesity: Progress and Challenges, Briefing Papers on the Important Issues of the Day, Vol. 22, No. 18
3. DE MONTALVO JÄÄSKELÄINEN, FEDERICO, “A european common framework for health: a real possibility or an improbable myth? Lessons for the future healthcare system in the United States”, *Depaul Journal of Health Care Law*, Vol. 14, No. 2, pp. 189-233.

4. BAETEN, R., VANHERCKE, B. y COUCHEIR, M., "The Europeanisation of National Health Care Systems: Creative Adaptation in the Shadow of Patient Mobility Case Law", *OSE Paper Series*, Research paper n. 3 (July 2010), Observatoire social européen.
5. KINNEY, E.D. y CLARK, B.A., "Provisions for Health and Health Care in the Constitutions of the Countries of the World", *Cornell International Law Journal*, núm. 37, año 2004.

#### Legislation

1. Art. 168 Treaty on the functioning of EU
2. Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011

### TEACHING METHODOLOGY PART 1 AND 2

General methodological aspects of the subject
Contact hours methodology: Activities
Participative classes, case study, presentations
Independent study methodology: Activities
Analysis of the information provided/suggested.

### SUMMARY OF STUDENT WORK HOURS – PART 1 AND 2

Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	13,5	25	443,5
Practical class	5	5	10
Debate	5	0	5
In class presentation	5	5	10
Individual work	-	15	0
Work in collaboration	-	0	0
Evaluation: one minute paper	-	-	-
Evaluation: class test	-	-	-
Evaluation: exam	1,5	-	1,5
Evaluation: exam review	Upon request	-	-
Others	-	-	-
<b>ECTS Credits:</b>	<b>30</b>	<b>45</b>	<b>75</b>

**GRADE EVALUATION AND CRITERIA – PROFESSOR GONZALO DE OLAN**

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
Participation	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 11: Concern for quality GC 12: Ability to apply theoretical knowledge into practice	Active and substantive participation in class. Student demonstrates he or she read the material.	5%
Exam 1 (Continuous Eval)	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 10: Ability to develop autonomous learning skills GC 11: Concern for quality GC 12: Ability to apply theoretical knowledge into practice SC 8 - Knowing in depth the main rules regulating markets in special sectors (like financial markets, utilities and markets for consumer goods)	Indicators to be discussed in class	35%
Exam 2	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 10: Ability to develop autonomous learning skills	Indicators to be discussed in class	50%

	GC 11: Concern for quality GC 12: Ability to apply theoretical knowledge into practice SC 8 - Knowing in depth the main rules regulating markets in special sectors (like financial markets, utilities and markets for consumer goods)		
Attendance			10%

#### GRADE EVALUATION AND CRITERIA – PROFESSOR FEDERICO MONTALVO

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
Continuous Evaluation	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 10: Ability to develop autonomous learning skills GC 11: Concern for quality SC 8 - Knowing in depth the main rules regulating markets in special sectors (like financial markets, utilities and markets for consumer goods)	1 Reflection paper max 2 pages.	40%
Final Examination	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 10: Ability to develop autonomous learning skills	3 short essay questions	50%

	GC 11: Concern for quality GC 12: Ability to apply theoretical knowledge into practice SC 8 - Knowing in depth the main rules regulating markets in special sectors (like financial markets, utilities and markets for consumer goods)		
Attendance			10%