## SUBJECT DETAILS

<table>
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<tr>
<th>Data on the subject</th>
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<tbody>
<tr>
<td><strong>Name</strong></td>
<td>Procedures before the European Commission and the European Court of Justice (ECJ)</td>
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<tr>
<td><strong>Degree</strong></td>
<td>Master in International and European Business Law</td>
</tr>
<tr>
<td><strong>Year</strong></td>
<td>2018-19</td>
</tr>
<tr>
<td><strong>Nature</strong></td>
<td>Spring Semester</td>
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<tr>
<td><strong>Department</strong></td>
<td>Law</td>
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<tr>
<td><strong>Area</strong></td>
<td>Law</td>
</tr>
<tr>
<td><strong>Teaching staff</strong></td>
<td>Juan Ignacio Signes de Mesa</td>
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<table>
<thead>
<tr>
<th>Data on the teaching staff</th>
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<tbody>
<tr>
<td><strong>Teaching staff</strong></td>
<td>Juan Ignacio Signes de Mesa</td>
</tr>
<tr>
<td><strong>Group</strong></td>
<td>Master in International and European Business Law</td>
</tr>
<tr>
<td><strong>e-mail</strong></td>
<td><a href="mailto:jisignes@icade.comillas.edu">jisignes@icade.comillas.edu</a></td>
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<tr>
<td><strong>Telephone</strong></td>
<td>+352.43.03.47.45</td>
</tr>
<tr>
<td><strong>Office</strong></td>
<td>European Court of Justice</td>
</tr>
<tr>
<td><strong>Tutoring Schedule</strong></td>
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SPECIFIC DATA ON THE SUBJECT

Pre-requisites

None

Contribution of the degree to the professional profile

This course aims to provide an overview of the EU legal order and, particularly, a complete understanding of the procedures before the EU courts. Special emphasis is given to the procedures concerning competition law, state aids, antidumping and other fields relating to business law. Case law of the European Court of Justice and the General Court is analyzed in deep detail. The subject is also meant to provide the student with a thorough knowledge of private application of EU law and its interaction with national law and legal procedures.

COMPETENCES TO BE IMPROVED

General competences of the subject

GC 2: Ability to communicate orally and in writing
GC 4: Problem-solving skills
GC 5: Decision-making skills
GC 6: Team work skills
GC 7: Ability to work in an international context
GC 12: Ability to apply theoretical knowledge into practice

Specific

SC 4 Mastering the main rules of EU law and international law that are relevant to international business development
SC 9 - Being able to design pre-contentious (or preventive) strategies that are appropriate for the protection of proper international business development at EU level.

THEMATIC AREA AND CONTENT

AREA 1: Overview of the EU system of judicial protection

Theme 1: Introduction to the European legal order

1.1- Sources of EU Law.
   - Primary sources (founding treaties, agreements with third States, agreements between member States, general principles of law).
   - Secondary sources (regulations, directives and others)
1.2- Direct effect and Primacy.
1.3- Judicial review vs. Full jurisdiction
1.4- Union courts and the Treaty of Lisbon (Treaty of Functioning of the European Union)

Theme 2: EU Courts - structure and operation
2.1- European Court of Justice
2.2- General Court
2.3- Brief reference to the Civil Service Tribunal
2.4- Rules of Procedure of the ECJ and the General Court

AREA 2: Jurisdiction and procedure (I)

**Theme 1: Action for annulment (Article 263 TFEU – Review of legality)**

1.1- Scope of judicial review under Article 263 TFEU
1.2- Standing
   - Privilege and semi-privileged applicants
   - Non-privileged applicants: direct and individual concern
1.3- Grounds of illegality
   - Lack of competence
   - Infringement of an essential procedural requirement
   - Manifest error in law or in fact
   - Misuse of power
1.4- Effects of the annulment
1.5- Deadline
1.6- Case study: Competition, State aids and Antidumping proceedings

**Theme 2: Enforcement proceedings against Member States (Articles 258-260 TFEU)**

2.1- Ordinary and extraordinary infringements
2.2- Preconditions of the enforcement action
2.3- Concept of «State»
2.4- Procedure
   - Letter of formal notice (informal phase)
   - Reasoned opinion (administrative phase)
   - Control exercised by the Court (judicial phase)
2.5- Discretion of the Commission
2.6- Effects and application of the decision of the Court
2.7- Actions initiated by other Member States
2.8- Sanctions
2.9- Case study: Free movement of capital and golden shares.

**Theme 3: Full jurisdiction (Article 261 TFEU)**

3.1- Actions against fines imposed by the European Commission
3.2- Procedure before the Commission and the Court
3.3- Nature of fines
3.4- Case study: Fines in cartel cases (Article 101 TFEU)

**Theme 4: Actions for failure to act (Article 265 TFEU)**

2.1- Purpose and objectives
2.2- Preconditions
### AREA 3: Jurisdiction and procedure (II)

#### Theme 1: Actions based on the non-contractual liability of the EU (Article 268 TFEU)

1. **Conditions of admissibility and liability**
2. **Types of wrongful acts**
   - Administrative acts
   - Normative acts
   - Valid acts
3. **Damages**
4. **Casual link**
5. **Limitation period**

#### Theme 2: Actions based on the contractual liability of the EU (Article 272 TFEU)

1. **Difference between contractual and non-contractual liability**
2. **Arbitration clauses**

#### Theme 3: Plea of illegality (Article 241 TFEU – Review of legality)

1. **Purpose and objectives (indirect challenge)**
2. **Acts against which can the plea be used**
3. **Types of proceedings in which article 241 can be raised**
4. **Relationship between the plea of illegality, the action for annulment and the preliminary ruling**
## AREA 4: The role of national courts in the protection of EU rights

### Theme 1: Application of EU Law by national courts

1.1- Enforcement through national courts
   - Direct effect
   - Vertical and horizontal effect
   - The extension of the State

1.2- Duty of consistent interpretation (indirect effect)

1.3- Case study: direct effect of competition law provisions

### Theme 2: Preliminary ruling (Article 267 TFEU)

2.1- Scope of preliminary references

2.2- Power and obligation to make a reference

2.3- The preliminary reference procedure
   - Sequence of the procedure
   - Making a reference
   - Interim measures

2.4- Binding effects of the judgment

2.5- The role of Article 267 TFEU in the creation of the EU legal order

### Theme 3: National procedural autonomy and its limits

3.1- Equivalence and effectiveness

3.2- Conditions

3.3- State liability: establishment and conditions
### BIBLIOGRAPHY AND RESOURCES

#### Basic Bibliography

<table>
<thead>
<tr>
<th>Text books</th>
<th></th>
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<tbody>
<tr>
<td>Arnull, Anthony, &quot;The European Union and its Court of Justice&quot; (Oxford University Press, 2nd ed. 2006).</td>
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#### Articles

- Commentaire des décisions du tribunal dans les affaires T-18/10-inuit et T-262/10-microban - Antonio Creus
- Book Review: Judicial Review and the Rights of Private Parties; Angela Ward
- Facilitating Private Applicant's Access; Dominik Hanf
- Adhésion à la CEDH; Groupe de travail de la Convention Européenne
- Judicial Review of Management Assistance; Dimitros V. Skiadas
- No One Slip Through the Net; Stephan Enchelmaier
- Talking with the “pouvoir constituant” in times of constitutional reform: The European Court of Justice on Private Applicants' Access to Justice; Dominik Hanf
- Right to an Effective Remedy; Erin F. Delaney
- Round Table Position Paper 070303 (English); Council of the Bars and Law Societies of the European Union
- Standing of Private Parties; Albertina Alborts-Llorens
- The Community Judiciary at the Dawn of the Third Millennium; Dr. Marie-Pierre F. Granger
Websites


**TEACHING METHODOLOGY**

<table>
<thead>
<tr>
<th>General methodological aspects of the subject</th>
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<tr>
<td><strong>Contact hours methodology: Activities</strong></td>
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<tr>
<td>Socratic pragmatically-oriented method: The course is based on active methodologies and strongly relies on case-law.</td>
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<tr>
<td>The format followed for this part of the programme shall not be a lecture, but a discussion and general participation by the students commenting on the judgements and articles that are suggested and some included in the materials. Students will have to intervene in the discussion and their participation will be taken into account in the final evaluation.</td>
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<p>| <strong>Independent study methodology: Activities</strong> |
| Every student is required to attend the lecturing sessions and to do the preparatory work. The instructor will provide the students with a syllabus comprising the most relevant materials (case-law and statutes) and a concrete schedule of review for these materials. |
| In order to follow the presentation it is necessary to have examined beforehand the relevant Articles of the Treaty and case law, as well as relevant articles of doctrine to which the student is directed to for each session according to the bibliography provided. |</p>
<table>
<thead>
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<th>Activity</th>
<th>Number of contact hours</th>
<th>Number of independent study hours</th>
<th>Total number of hours</th>
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<tr>
<td>Lecture</td>
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<td>5</td>
<td>11</td>
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<td>Practical class</td>
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<td>5</td>
<td>5</td>
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<tr>
<td>Debate</td>
<td>6</td>
<td>12</td>
<td>18</td>
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<tr>
<td>In class presentation</td>
<td>8</td>
<td>3</td>
<td>11</td>
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<tr>
<td>Individual work</td>
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<tr>
<td>Work in collaboration</td>
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<tr>
<td>Evaluation: one minute paper</td>
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<td>Evaluation: class test</td>
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<td>Evaluation: exam review</td>
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<td>Generic Competences</td>
<td>Indicators</td>
<td>Evaluation Weighting</td>
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| Individual work       | GC 2: Ability to communicate orally and in writing  
GC 4: Problem-solving skills  
GC 5: Decision-making skills  
GC 12: Ability to apply theoretical knowledge into practice                                                                                                                                                                                                                       | Students will have to answer questions during class related both to the reading materials provided and the topics discussed in class.                                                                                                                                                                                                                         | 5%                     |
| Work in collaboration | GC 2: Ability to communicate orally and in writing  
GC 4: Problem-solving skills  
GC 5: Decision-making skills  
GC 6: Team work skills  
GC 7: Ability to work in an international context  
GC 12: Ability to apply theoretical knowledge into practice                                                                                                                                                                                                                       | Students will be asked to group in two teams, which shall respectively draft (i) an application against a decision of the Commission in the domain of competition law and (ii) a defence in favour of this latter decision, elaborating on the most common grounds of annulment and defence formulated by the parties before EU courts as explained by the professor. | 20%                    |
| Debate                | GC 2: Ability to communicate orally and in writing  
GC 5: Decision-making skills                                                                                                                                                                                                                                                                                                                      | Several judgments on the interpretation and application of article 267 TFEU, concerning the preliminary ruling procedure, and article 263(4) TFEU, concerning standing of non-privileged parties before the General Court and the European Court of Justice, including AG opinions, shall be presented to the students for them to debate in class. | 15%                    |
| Evaluation: exam (final) | GC 6: Team work skills  
GC 12: Ability to apply theoretical knowledge into practice |  
|------------------------|---------------------------------------------------------------|---|
| GC 2: Ability to communicate orally and in writing  
GC 4: Problem-solving skills  
GC 5: Decision-making skills  
GC 7: Ability to work in an international context | Students will be required to answer a hypothetical case concerning different areas of EU procedural law, such as (i) *locus standi* before the ECJ, (ii) grounds of annulment against an act adopted by the EU, (iii) legal privilege and (iv) the incidental procedures of confidentiality and interim measures | 50% |
| Attendance | Compulsory | * | 10% |