

## SUBJECT DETAILS

Data on the subject	
Name	<b>Procedures before the European Commission and the European Court of Justice (ECJ)</b>
Degree	Master in International and European Business Law
Year	2018-19
Nature	Spring Semester
ECTS Credits	2 ECTS
Department	Law
Area	Law
Teaching staff	Juan Ignacio Signes de Mesa

Data on the teaching staff	
Teaching staff	Juan Ignacio Signes de Mesa
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Tutoring Schedule	On request

## SPECIFIC DATA ON THE SUBJECT

<b>Pre-requisites</b>
None
<b>Contribution of the degree to the professional profile</b>
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

<b>General competences of the subject</b>
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
<b>Specific</b>
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

<b>AREA 1: Overview of the EU system of judicial protection</b>
<i>Theme 1: Introduction to the European legal order</i>
1.1- Sources of EU Law. <ul style="list-style-type: none"><li>▪ Primary sources (founding treaties, agreements with third States, agreements between member States, general principles of law).</li><li>▪ Secondary sources (regulations, directives and others)</li></ul>
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)
<i>Theme 2: EU Courts - structure and operation</i>

- 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-privilege 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

- 2.3- Capacity to bring an action
- 2.4- Cases where there is an obligation to act
- 2.5- Relationship between the action for annulment and the action against failure to act

### **AREA 3: Jurisdiction and procedure (II)**

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

- 1.1 Conditions of admissibility and liability
- 1.2. Types of wrongful acts
  - Administrative acts
  - Normative acts
  - Valid acts
- 1.3. Damages
- 1.4. Casual link
- 1.5. Limitation period

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

- 2.1. Difference between contractual and non-contractual liability
- 2.2 Arbitration clauses

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

- 3.1. Purpose and objectives (indirect challenge)
- 3.2. Acts against which can the plea be used
- 3.3. Types of proceedings in which article 241 can be raised
- 3.4. 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

#### Text books

Arnull, Anthony, "The European Union and its Court of Justice" (Oxford University Press, 2nd ed. 2006).

Lasok, K. P. E.: "The European Court of Justice (practice and procedure)". London-Dublin-Edinburgh, Butterworks, 1994.

Lenaers, Koenraad y Dirk Arts: "Procedural Law of the European Union". London, Sweet & Maxwell, 1999.

Lenaerts, K., Arts, D. & Maselis, I., Procedural Law of the European Union, Sweet & Maxwell, 2nd ed., 2006.

Ward Angela, "Judicial Review and the Rights of Private Parties in EC Law". (Oxford University Press, 2<sup>nd</sup> ed. 2007).

Schermers Henry G. and Waelbroeck Denis F., "Judicial Protection in the European Union" Kluwer Law International, 6th ed., 2001.

#### 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

- [http://curia.europa.eu/jcms/jcms/Jo2\\_16727/extraits-des-traites](http://curia.europa.eu/jcms/jcms/Jo2_16727/extraits-des-traites) (Extract of Treaties)
- [http://curia.europa.eu/jcms/upload/docs/application/pdf/2008-09/statut\\_2008-09-25\\_17-29-58\\_783.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2008-09/statut_2008-09-25_17-29-58_783.pdf) (Statute of the European Court of Justice)
- <http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-04/rp.en.pdf> (Rules of the Procedure of the European Court of Justice)
- [http://curia.europa.eu/jcms/upload/docs/application/pdf/2008-09/txt7\\_2008-09-25\\_14-08-6\\_431.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2008-09/txt7_2008-09-25_14-08-6_431.pdf) (Rules of the Procedure of the General Court)
- [http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-02/ins\\_prat2\\_2009-02-09\\_16-15-31\\_502.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-02/ins_prat2_2009-02-09_16-15-31_502.pdf) (Practice Directions relating to direct actions and appeals)
- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:297:0001:0006:EN:PDF> (Information note on references by national courts for preliminary rulings)
- [http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-07/en\\_instructions\\_pratiques\\_aux\\_parties.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-07/en_instructions_pratiques_aux_parties.pdf) (Practices Directions to parties relating to the General Court)

## TEACHING METHODOLOGY

<b>General methodological aspects of the subject</b>
<b>Contact hours methodology: Activities</b>
<p>Socratic pragmatically-oriented method: The course is based on active methodologies and strongly relies on case-law.</p> <p>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.</p>
<b>Independent study methodology: Activities</b>
<p>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.</p> <p>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>



SUMMARY OF STUDENT WORK HOURS			
Activity	Number of contact hours	Number of independent study hours	Total number of hours
Lecture	6	5	11
Practical class		5	5
Debate	6	12	18
In class presentation	8	3	11
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam		5	5
Evaluation: exam review			
Others			
<b>ECTS Credits:</b>	<b>20</b>	<b>30</b>	<b>50</b>

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
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%

	GC 6: Team work skills GC 12: Ability to apply theoretical knowledge into practice		
Evaluation: exam (final)	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) <i>locus standi</i> 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%