

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	2015-16
Nature	Spring
ECTS Credits	3 ETCS Credits
Department	Economic and Social Law
Area	Commercial Law
Teaching staff	Guillermo González de Olano

Data on the teaching staff	
Teaching staff	Guillermo González de Olano
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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
<ul style="list-style-type: none"> • 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.

COMPETENCES TO BE IMPROVED

What skills you'll gain from this class:

Students will:

- Understand the current role of the European public authorities regarding industrial activity and public procurement.
- Get to know the general framework of EU industry regulation, specifically in the fields of Energy, Telecoms, Media, and Transport.
- Comprehend the basic goals and policies regarding public procurement.
- Learn to interpret EU information notices on public procurement procedures.
- Prepare themselves offers, acting as bidders in competitive selection procedures.
- Get acquainted with the concept of PPPs, infrastructures and project finance models.

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

Theme 4: Media

- 4.1 Audio-visual Media Policy
- 4.2 Protection of minors
- 4.3 Cinema, film heritage and film industry

Theme 5: Transport

- 5.1 Introduction: General European transport policy
- 5.2. Air
- 5.3 Road
- 5.4. Rail
- 5.5 Maritime

5.6 Inland waterways

AREA 2: EU public procurement Directives and their enforcement

Theme 1: General Overview

- 1.11.1 Basic Concepts and Goals of Public Procurement
- 1.2 Framework International Regulations on Public Procurement
 - 1.2.1 WTO Agreement on Government Procurement
 - 1.2.2 Institutional Rules on Procurement
 - 1.2.3 UNCITRAL Model Law on Procurement of Goods, Construction and Services
- 1.3 Public Procurement in the EU
 - 1.3.1 EU Directives on Public Procurement (new directives vs. old ones)
 - 1.3.2 Reference to National Rules for Below-Thresholds Procurement and Contracts Outside the Blueprint of the Directives

Theme 2: Specifics of EU Public Procurement Rules (I)

- 2.1 Design / Initial stages in the Procurement Process
 - 2.1.1 Selection of Procedures
 - 2.1.2 Setting of Participation Criteria and Exclusion Clauses
 - 2.1.3 Drafting of Bid Documents
 - 2.1.4 Drafting of Technical Specifications
 - 2.1.5 Inclusion of Social and Environmental Criteria, and Other Secondary Policies
- Analysis of Relevant Case Law of the European Court of Justice

Theme 3: Specifics of EU Public Procurement Rules (II)

- 3.1 Award of Contracts and Challenge/Revision Mechanisms
 - 3.1.1 Bid Evaluation (with specific reference to treatment of abnormally low tenders)
 - 3.1.2 Award of the Contract
 - 3.1.3 Challenges, Protests and Revision of Award Decisions (including stand-still)
- Analysis of Relevant Case Law of the European Court of Justice

Theme 4: Strategic Analysis of Procurement Uses

- 4.1 Strategic Analysis of the Use of Procurement
 - 4.1.1 The Use of Procurement as a Tool for Economic Development
 - 4.1.2 The Use of Procurement as a Tools for Social and Environmental Development
 - 4.1.3 Preventing Corruption in Procurement

AREA 3: Infrastructure Concessions

Theme 1: General Overview

- 1.1 Concession Projects and PPS

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

BIBLIOGRAPHY AND RESOURCES

AREA 1: EU Industry Regulation (Energy, Telecoms, media, Transport)
Historical Overview
Ibáñez Colomo, Pablo (2011) European communications law and technological convergence: deregulation, re-regulation and regulatory convergence in television and telecommunications Wolters Kluwer. ISBN 9789041138293
Energy
1. Communication from the Commission to the European Council and the European Parliament of 10 January 2007, "An energy policy for Europe" http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0001:EN:NOT
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. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0055:EN:NOT
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) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0072:EN:NOT
4. Communication from the Commission of 13 November 2008 - Energy efficiency: delivering the 20% target [COM(2008) 772] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0772:EN:NOT
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 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0077:EN:NOT

6. Treaty establishing the European Atomic Energy Community (Euratom)
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
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0143:EN:NOT>
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
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0539:EN:NOT>

Telecoms

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)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R1211:EN:NOT>
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
<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
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
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
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
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
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
3. Common rules for the operation of air services
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
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

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).

DIMITRI, N et al (eds), Handbook of Procurement (Cambridge University Press, 2006). Hernández García, R (ed), International Public Procurement: A Guide to Best Practice (Globe

Law and Business, 2009).

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

Sánchez Graells, A, Public Procurement and the EU Competition Rules (Oxford, hart, 2011).

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-Partnerhip/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>

TEACHING METHODOLOGY

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			
Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	13,5	30	45
Practical class	5	10	15
Debate	5	0	5
In class presentation	5	10	15
Individual work	-	6	6
Work in collaboration	-	3	3
Evaluation: one minute paper	-	-	-
Evaluation: class test	-	-	-
Evaluation: exam	1,5	-	1,5
Evaluation: exam review	Upon request	-	-
Others	-	-	-
ECTS Credits:	3		

GRADE EVALUATION AND CRITERIA

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
Individual work	Analysis of a proposed issue related with the cases studied during class.	Soundness of the paper Clear ideas	10%
Work in collaboration	Writing of a collective paper on a issue within the subject	Intelligent, straight forward approach	5%
Debate	Debate of questions posted during class	Ability to apply general explanations in practical scenarios	5%
Class presentation	Presentation over a proposed matter	Clarity of ideas	10%
Evaluation: one minute paper	Answering of a quick unexpected question related over something recently explained	Clear concepts	5%
Evaluation: class test	Answering a list of short questions	Level of correct answers	5%
Evaluation: exam (final)	Answering a more in-depth exam	Level of correct answers	50%
Attendance	Presence at class	Level of presence	10%