

## 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	2015-16
Nature	Spring Semester
ECTS Credits	2 ECTS
Department	Law
Area	Law
Teaching staff	Prof. Antonio Creus Carreras

Data on the teaching staff	
Teaching staff	Antonio Creus Carreras
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Office	
Tutoring Schedule	On request

## 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

Specific competences of the subject
Conceptual (knowing)
Knowledge of interaction between EU and national law. Knowledge of Competition Law <ul style="list-style-type: none"><li>▪ Overview of the EU system of judicial protection: the ECJ and the General Court.</li><li>▪ Definition of the key concepts of EU procedural law :<ul style="list-style-type: none"><li>- <i>Direct Actions</i> (enforcement proceedings, actions for judicial review of EU acts, actions based on the non-contractual liability of the EU, actions based on the contractual liability of the EU –arbitration clause–, unlimited jurisdiction in relation to penalties);</li><li>- <i>References for preliminary rulings</i>.</li></ul></li><li>▪ The role of national courts in the protection of EU rights.</li><li>▪ Relevant features of judicial review in cases concerning the fields of competition law, internal market rules, state aids, mergers, trademarks and antidumping.</li></ul>
Procedural (doing)
Intervention in disputes before the European Court of Justice. <ul style="list-style-type: none"><li>▪ Knowledge of the main provisions of the procedure before the EU courts,</li><li>▪ Knowledge of the Rules of Procedure of the European Court of Justice and the General Court.</li></ul>
Professional (knowing how)
Use of relevant databases regarding EU law and case-law <ul style="list-style-type: none"><li>▪ Practices directions to parties, dealing with the manner in which pleadings and other procedural documents relating to the written procedure are to be submitted and how best to prepare for the hearing before the Court.</li></ul>

## 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-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		6
Practical class			
Debate	6	12	18
In class presentation	8	4	12
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam		5	5
Evaluation: exam review			
Others			
ECTS Credits:	2		

## GRADE EVALUATION AND CRITERIA

Evaluation Activities		Generic Competences	Indicators	Evaluation Weighting
Individual work	Attendance	Reading of materials / Participation		10%
Work in collaboration		Final exam		50%
Debate		Analysis of cases		40%
Evaluation: exam		<p>The evaluation for the final exam will consist of:</p> <ul style="list-style-type: none"> <li>- Presentation in groups of 2 or 3 on a particular point of the sessions, normally addressing at least two cases or articles. [20%]</li> <li>- Solving out a problem showing the skills acquired regarding EU litigation. [25%]</li> <li>- Final presentation on a particular subject that has been the object of the lectures for around 10 minutes. [55%]</li> </ul>		

## **BREAKDOWN OF SESSIONS**

### **Session 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)
- European Court of Justice
- General Court
- Brief reference to the Civil Service Tribunal
- Rules of Procedure of the ECJ and the General Court.

### **Session 2**

- Direct effect and Primacy.
- Judicial review vs. Full jurisdiction
- Union courts and the Treaty of Lisbon (Treaty of Functioning of the European Union) Scope of judicial review under Article 263 TFEU
- Standing
- Privilege and semi-privileged applicants

### Case Law:

- o Fotofrost 314/85
- o Van Gend en Loos C-26/62

- Costa v E.N.E.L. C-6/64
- Becker - Case 8/81:

### **Session 3**

- Non-privilege applicants: direct and individual concern

#### Case Law:

- UPA C-50/00 (judgment and opinion of the AG)
- Jégo-Quéré T-177/01 y C- 263/02 (judgment and opinion of the AG)
- Codorníu C-309/89
- Plaumann 25/62
- Microban Case T-262/10
- Inuit T-18/10

### **Session 4**

#### *Action for annulment (Article 263 TFEU – Review of legality)*

- Grounds of illegality
- Lack of competence
- Infringement of an essential procedural requirement
- Manifest error in law or in fact
- Misuse of power
- Effects of the annulment
- Deadline
- Case study: Competition, State aids and Antidumping proceedings

#### *Enforcement proceedings against Member States (Articles 258-260 TFEU)*

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

#### Case Law:

- o C-610/10 - Commission v Spain
- o Case C-413/08 P Lafarge SA v Commission (17 June 2010)
- o Case C-284/12 Deutsche Lufthansa
- o Case 226/87 Commission v Greece

#### Session 5

- Actions against fines imposed by the European Commission
- Procedure before the Commission and the Court
- Nature of fines
- Case study: Fines in cartel cases (Article 101 TFEU)
- Actions for failure to act (Article 265 TFEU)
  - o Purpose and objectives
  - o Preconditions

- Capacity to bring an action
  - Cases where there is an obligation to act
- Relationship between the action for annulment and the action against failure to act
- Jurisdiction and procedure (II)
- Actions based on the non-contractual liability of the EU (Article 268 TFEU)
  - Conditions of admissibility and liability
  - Types of wrongful acts
- Administrative acts
- Normative acts
- Valid acts
- Damages
- Casual link
- Limitation period
- Actions based on the contractual liability of the EU (Article 272 TFEU)
  - Difference between contractual and non-contractual liability
  - Arbitration clauses
- Plea of illegality (Article 241 TFEU – Review of legality)
  - Purpose and objectives (indirect challenge)
  - Acts against which can the plea be used
  - Types of proceedings in which article 241 can be raised
  - Relationship between the plea of illegality, the action for annulment and the preliminary ruling

**Case Law:**

- Dorsch Consult T-184/95
- Innova Privat Akademie GmbH T-273/01
- Atlanta AG C-104/97 P
- Oficemen T-212/95

## Session 6

- Theme 1: Application of EU Law by national courts
- Enforcement through national courts
  - o Direct effect
  - o Vertical and horizontal effect
  - o The extension of the State
- Duty of consistent interpretation (indirect effect)
- Case study: direct effect of competition law provisions
- Theme 2: Preliminary ruling (Article 267 TFEU)
  - o Scope of preliminary references
  - o Power and obligation to make a reference
  - o The preliminary reference procedure
- Sequence of the procedure
- Making a reference
  - o Interim measures
  - o Binding effects of the judgment
- The role of Article 267 TFEU in the creation of the EU legal order
- Theme 3: National procedural autonomy and its limits
  - o Equivalence and effectiveness
  - o Conditions
  - o State liability: establishment and conditions

Case Law:

- Case C-173/03 Traghetti del Mediterraneo SpA
- Case C-238/05 Asnef Equifax
- C-468/10 and C-469/10 Asnef Fecemd
- STS de 15/07/2010

**Session 7** Final review, presentations and wrap up