

## SUBJECT DETAILS

Data on the subject	
Full Name	EU Corporate Law and Corporate Engineering
Code	E000001221
Degree	Postgraduate in Master in International and European Business Law
Year	2021-22
Nature	Fall
ECTS Credits	4
Department	Law
Area	Law
Teaching staff	Jaime Sánchez Santiago, Segismundo Álvarez and Rubén Ferrer

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## **SPECIFIC DATA ON THE SUBJECT**

<b>Framework of the subject</b>
<b>Pre-requisites</b>
None
<b>Contribution of the degree to the professional profile</b>
<p>This subject will provide students with a general knowledge of the normative framework and main conceptual and practical challenges of EU Corporate Law and Corporate Engineering. Thus, it will contribute to preparing the professional development of skills useful to work in business enterprises, and law firms doing business in the EU and across its Member States. It will grant students tools to evaluate critically the current state of EU company law, corporate governance, regulatory competition among EU Member States, the pressure on them to reduce capital requirements and the EU and national efforts to reduce the legislative burdens on small and medium size enterprises in an increasingly harmonized field, as well as the challenges that remain unresolved.</p> <p>During the course students will have the opportunity to deal with issues arising in some of the latest and most interesting cross-border transactions in the EU and also become familiar with some key substantive corporate and commercial laws of Spanish, English, German and French laws, as well as with the way in which certain European cross-border transactions are structured, documented and negotiated.</p>

<b>Competences - Goals</b>
<b>Competences to be developed</b>
<b>Generic Competences</b>

- GC 1: Analysis and synthesis abilities
- GC 3: Ability to manage information
- GC 6: Team work skills
- 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 Competences

- SC 2 Mastering the main relevant international treaties in the field of international trade, distinguishing between binding instrument and mere recommendations or instruments merely of an interpretive or guiding nature (soft law)
- SC 4 Mastering the main rules of EU law and international law that are relevant to international business development
- SC 5 Being able to design strategies for the restructuring of corporate groups and / or intra-group and market activities to maximize the benefits of the legal framework

## COURSE SYLLABUS AND CONTENT

### Content

#### Part I Area 1.

Theme 1. The right of establishment of companies (i): EUCJ case law

- 1.1 Basic concepts of freedom of establishment.
- 1.2 The conflicts of law rules as applied to companies.
- 1.3 Corporate mobility through the EU: The controversial Court of Justice of the European Union ("**EUCJ**") case law
- 1.4 Case study.

Theme 2. The right of establishment of companies (ii): transfer of seat and EU cross-border mergers transactions

- 2.1 The transfer of seat: Case study.

Theme 3. The right of establishment of companies (iii): EU cross-border mergers

- 3.1 Council Directive 2017/1132 of 14 June 2017 relating to certain aspects of company law (articles 118 to 133).
- 3.2 Council Regulation (EC) N° 2157/2001 of 8 October 2001 on the Statute for a European Company (SE).
- 3.3 Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European Company with regard to the involvement of employees.
- 3.4 Case study.

**Theme 4. Acquisition process (i): Introduction**

- 4.1 Case study.

**Theme 5. Acquisition process (ii): shareholders' agreements**

- 5.1 Case study.

**Theme 6. Acquisition process (iii): sale and purchase agreement (i)**

- 6.1 Case study.

**Theme 7. Acquisition process (iv): acquisition finance**

- 7.1 Case study.

**Theme 8. Acquisition process (v): sale and purchase agreement (ii)**

- 8.1 Case study.

**Part II**

**AREA 1. EU Company Law and secondary legislation**

**Theme 1. Legal framework.**

- 1.1 Introduction
- 1.2 Legal basis for secondary legislation on Corporate Law
- 1.3 EU Directives on Corporate Law
- 1.4 Draft legislation
- 1.5 The harmonisation of EU Corporate Law and its shortcomings

**Theme 2. Main elements of EU Directives**

- 2.1 Formation of companies, capital requirements and branches

- 2.2 Company restructurings
- 2.3 Financial information and disclosure obligations
- 2.4 Shareholders' rights, corporate governance and takeover bids

## **AREA 2. Business entities governed by EU law**

### Theme 1. The European Company (SE)

- 1.1 Introduction
- 1.2 Principles of current regulation
- 1.3 Implementation and conclusions

### Theme 2. European Economic Interest Grouping (EEIG)

- 2.1 Introduction
- 2.2 Principles of current regulation
- 2.3 Implementation and conclusions

### Theme 3. Other types of entities

- 3.1 The European Cooperative Society (SCE)
- 3.2 The single-member private limited liability company (SUP)
- 3.3 The European Private Company (SPE)
- 3.4 The European Foundation (FE)

## **TEACHING METHODOLOGY**

### **General methodology of the subject**

#### **Contact hours methodology: Activities**

We will mainly follow a problem-based learning method. Students should prepare case studies (one for each class) in groups or individually (as requested) and hand the requested assignments in at the beginning of the corresponding session. A list of the groups and the students which belong to each group will be provided at least one week before the course starts.

Case studies will consist of real cases or hypothetical scenarios, whereby students may be asked, for example, to draft/review/negotiate legal documentation or to draft a memorandum providing a practical solution to clients' requests.

The course will follow an interactive format, combining presentations, analysis of legal documents, with participation of the students (exchange of views and discussions, and Q&A periods). A significant importance will be accorded to the analysis of the EU Directives and the ECJ case-law

In addition, the themes composing the course will feature interactive workshops or practical classes. At these interactive elements of experiential learning, participation of the students is required. Students will intervene under the guidance of the professor, who will provide comments and feedback.

### Outside class methodology: Activities

In relation to case studies additional background documentation will be provided which will include, sometimes, questions to help students to focus on key issues. When preparing the class students should read the materials thoroughly and try to answer the questions raised. The Socratic Method, as commonly practiced in Anglo-Saxon law schools will be also used, so students should be prepared to answer both the questions raised in the materials and during the lectures.

Each student is supposed to structure his / her individual study autonomously, using the course syllabus as a guideline, and taking into consideration the advice of the professor along the course. In preparation to each lesson, students are requested to read and examine the background materials to be specified in advance, in addition to the bibliography and resources listed in the course syllabus. Students are requested to prepare in advance for the workshops and debate activities that will be held during the course, by working on the materials and following the specific indications provided by the professor. After each lesson and at the conclusion of the course, students are expected to revise course contents, notes taken during lesson, as well as the materials referred to under basic bibliography. The professor could provide additional references for supplementary research if required.

## SUMMARY OF STUDENT WORK HOURS

NUMBER OF CONTACT HOURS		
Lecture	Workshop or Practical class	Evaluation
20	14.5	5.5
NUMBER OF INDEPENDENT WORK HOURS		
Lecture	Workshop or Practical class	Evaluation
35	25	
<b>ECTS CREDITS: 4 (100,00 hours)</b>		

## GRADE EVALUATION AND CRITERIA

Evaluation Activities	Indicators	Evaluation weighting
Individual participation in class	Students will have to answer questions during class related both to the reading materials provided and the topics discussed in class.	5%
Continuous evaluation	Team or individual case studies (including presentations and negotiations)	17.5%
Written cases	Presentations (written and oral) and participation in the workshops and debates that will take place during the course on the legal implications of an EU-topical issue proposed by the professor.	12.5%
Written proposal and class presentation		5%
Evaluation: exam (final)	Consist of an in-class written exam where the students will reflect general and specific knowledge of the subjects dealt with in class. Students are required to pass the exam in order to be entitled to take the grades obtained in the other evaluation activities into consideration.	50%
Attendance	Regular attendance to classes – control by signature of a daily sheet	10%

## BIBLIOGRAPHY AND RESOURCES

### Basic Bibliography and Resources

### **TEXT BOOKS**

- BRUNER, R., *Applied Mergers & Acquisitions*, John Wiley & Sons, 2004.
- CARNEY, W., *Mergers and Acquisitions: The Essentials*, Aspen Publishers, 2003.
- BARNARD, C., *The Substantive Law of the EU. The four freedoms*, Oxford University Press.
- DEMARIA, C., *Introduction to Private Equity*, John Wiley & Sons, 2010.
- EDWARDS, V., *EC Company Law*, Oxford University Press, First Edition Reprinted. FERRARINI, G.; HOPT, K. J.; WINTER, J.; WYMEERSCH, E. (eds.): *Reforming Company and Takeover Law in Europe*; Oxford, 2004.
- ANDENAS, M. AND WOOLDRIDGE, F., *European Comparative Company Law*, Cambridge University Press, 2009.
- USHER, J.A., *The Law of Money and Financial Services in the European Community*, Oxford University Press, Second Edition Reprinted.
- ANDENAS & WOOLDRIDGE, "European Comparative Company Law". Cambridge University Press, 2009.
- PAPADOPOULOS, "EU law and the harmonization of takeovers in the internal market", Kluwer Law International, 2010.
- VAN GERVEN (Ed.), "Cross-Border Mergers in Europe", Vol. I, Cambridge University Press, 2010
- CERIONI, "EU Corporate Law and EU Company Tax Law", Edward Elgar, 2007.
- FERRARINI, Guido; HOPT, Klaus J.; WINTER, Jaap; WYMEERSCH, Eddy (eds.): "Reforming Company and Takeover Law in Europe", Oxford, 2004.
- RICKFORD J. (Ed.), *The European Company* (Intersentia, 2003). USHER J.A., *The Law of Money and Financial Services in the European Community*, Oxford University Press, Second Edition Reprinted.

### **CHAPTER OF BOOKS**

- CHARNY, "Competition among jurisdictions in formulating corporate law rules: an American perspective on the 'race to the bottom' in the European Communities", in S. Wheeler (ed.), *A Reader on the Law of the Business Enterprise*, Oxford Readings on Socio-Legal Studies, 1994 Oxford: Oxford University Press, pp. 365–391.
- VILLIERS, C. "Harmonisation of company laws in Europe, with an introduction to some comparative issues", in Geraint G. Howells (ed.), 1996, *European Business Law*, Aldershot: Ashgate/Dartmouth, pp. 169–195.

### **SUGGESTED ARTICLES**

- CERIONI, "The "Abuse of Rights" in EU company law and EU tax law: a re-reading of the ECJ case law and the quest for a unitary notion", *European Business Law Review* 2010, v. 21, n. 6, December, pp. 783-813
- WOUTERS, "European Company Law: Quo Vadis?" (2000) 31 CML Rev 257

### **OTHER MATERIAL**



- EU Commission's Action Plan: Action Plan: European company law and corporate governance a modern legal framework for more engaged shareholders and sustainable companies.  
<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0740>
- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on single-member private limited liability companies <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:212:FIN>
- WEBSITES
- <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML> An English version of the Treaty on the Functioning of the European Union
- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:ES:PDF> TFUE  
<http://www.europa.eu.int> European Commission website.
- <http://curia.europa.eu/> Court of Justice of the European Union and General Court website
- <http://europa.eu.int/eur-lex/> Eur-Lex is the official source of European legislation. Eur-Lex also provides links to other major sites providing information on European law, such as Curia and Celex.
- <http://www.iue.it/RSCAS/Publications/BrowseType.shtml> Publications from the European Institute of Florence.
- [http://europa.eu.int/comm/internal\\_market/company/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/index_en.htm) Commission web page which deals with company law & corporate governance.
- [http://ec.europa.eu/internal\\_market/company/index\\_en.htm](http://ec.europa.eu/internal_market/company/index_en.htm) European Commission (DG MARKT) site on the harmonisation of the rules relating to company law and corporate governance.
- <http://www.ecgi.org/> The European corporate Governance Institute is an international association which promotes the debate and dialogue between academics, legislators and practitioners, focusing on major corporate governance issues. You may find relevant documentation and reference to studies on corporate governance issues.
- <http://system04.rug.ac.be/fli/> The Financial Law Institute aims at promoting the dissemination of the research results of different researchers within the field of financial and company law. You may find relevant studies in the aforementioned fields.
- <http://www.bis.gov.uk/policies/business-law/company-and-partnershiplaw/europe> Site dedicated to EU Company Law by the UK Department for Business, Innovation and Skills (BIS).
- [www.cnmv.es](http://www.cnmv.es) The Site of the Spanish Stock Market Regulator ("Comisión Nacional del Mercado de Valores").
- <http://www.evca.eu/default.aspx> European Private Equity and Venture Capital Association.
- [http://ec.europa.eu/internal\\_market/company/index\\_en.htm](http://ec.europa.eu/internal_market/company/index_en.htm) Europa: Company law and Corporate Governance
- [http://ec.europa.eu/internal\\_market/company/news/index\\_en.htm](http://ec.europa.eu/internal_market/company/news/index_en.htm) Europa: News (Company Law)
- [http://ec.europa.eu/internal\\_market/company/official/index\\_en.htm](http://ec.europa.eu/internal_market/company/official/index_en.htm) Company law Directives and other official acts