

**Data on the subject**

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|----------------|---|
| Full Name      | EU Corporate Law and Corporate Engineering                        |
| Code           | E000001221  |
| Degree         | Postgraduate in Master in International and European Business Law |
| Year           | 2024-2025   |
| Nature         | Fall  |
| ECTS Credits   | 4   |
| Department     | Law   |
| Area           | Law   |
| Teaching staff | Sarah Schwartz  |

**Data on the teaching staff**

**Teacher**

|                   |  |
|-------------------|--|
| Name              | Sarah Schwartz   |
| Department / Area | Graduate   |
| e-mail            | <a href="mailto:sschwartz@icade.comillas.edu">sschwartz@icade.comillas.edu</a> |
| Tutoring Schedule | Upon request from students   |

**SPECIFIC DATA ON THE SUBJECT**

**Framework of the subject**

**Pre-requisites**

None

**Contribution of the degree to the professional profile**

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.

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.

## **Competences - Goals**

### **Competences to be developed**

#### **Generic Compétences**

- 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 Compétences**

- 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

|                         |   |
|-------------------------|---|
| <p><b>Session 1</b></p> | <p><b>Class Topic:</b> Understanding basic concepts of freedom of establishment as interpreted by the European Union Court of Justice ("EUCJ") case law.</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Presentation of Syllabus</li> <li>ii. Case studies</li> <li>iii. Presentation by professor and class discussions</li> </ul> <p><b>Required Reading:</b> Legislation and case law. Materials will be received at least one week before this session.</p>   |
| <p><b>Session 2</b></p> | <p><b>Class Topic::</b> Understanding EU Company Law and Secondary Legislation: scope, current status and main challenges.</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Case studies</li> <li>ii. Presentation by professor and class discussions</li> <li>iii. Debate by students about Ferrovial case</li> </ul> <p><b>Required reading:</b> Case law and certain legal articles. Materials will be received at least one week before this session.</p>   |
| <p><b>Session 3</b></p> | <p><b>Class Topic:</b> Harmonization of formation of companies, capital requirements and branches: analysis of First, Second, Eleventh and Twelfth Directives.</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Incorporating a sociedad limitada; written exercise</li> </ul> <p><b>Required reading:</b> Directives and related documentation. Materials will be received at least one week before this session.</p> <p><b>Preparation for Session 3:</b> refresh your knowledge on how to incorporate a company in your home jurisdiction</p> |
| <p><b>Session 4</b></p> | <p><b>Class Topic:</b> Lesson 4: Harmonization of financial information and disclosure obligations: analysis of Fourth, Seventh and Eighth Directives.</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Analyzing financial statements and debate by students</li> </ul> <p><b>Required reading:</b> Directives and related documentation. Materials will be received at least one week before this session.</p>   |
| <p><b>Session 5</b></p> | <p><b>Class Topic:</b> Understanding entities governed by EU law: the European Company (SE), European Economic Interest Grouping (EEIG), the European Cooperative Society (SCE).</p>  |

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|                   | <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Group work – case study of EU entities</li> </ul> <p><b>Required reading:</b> Case study and related documentation. Materials will be received at least one week before this session.</p> <p><b>Preparation for Session 5:</b> research examples of a successfully implemented EEIG, SE and SCE</p>  |
| <b>Session 6</b>  | <p><b>Evaluation: in class exam session to be made within the whole timing devoted for this session.</b></p>   |
| <b>Session 7</b>  | <p><b>Class Topic:</b> Harmonization of Corporate Governance: Governing Body</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Case studies</li> <li>ii. Presentation by professor and class discussions</li> <li>iii. Hypotheticals- related to Director and Officers roles, responsibilities and obligations</li> </ul> <p><b>Required reading:</b> Case study and related documentation. Materials will be received at least one week before this session.</p>   |
| <b>Session 8</b>  | <p><b>Class Topic:</b> Understanding main issues related to a shareholders' agreement. Shareholders' Rights Directive</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Negotiate a Shareholders Agreement</li> </ul> <p><b>Required Reading:</b> Directives and related documentation. Materials will be received at least one week before this session.</p> <p><b>Preparation for Session 8:</b> review sample Shareholders' Agreement</p> |
| <b>Session 9</b>  | <p><b>Class Topic:</b> Cross Border Mergers, Divisions and Conversions in the EU (I)</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Group activity</li> </ul> <p><b>Required Reading:</b> Directives and related documentation. Materials will be received at least one week before this session.</p>   |
| <b>Session 10</b> | <p><b>Class Topic:</b> Cross Border Mergers, Divisions and conversions in the EU (II)</p> <p><b>Activities in class:</b></p> <ul style="list-style-type: none"> <li>i. Case studies</li> <li>ii. Presentation by professor and class discussions</li> <li>iii. Group activity</li> </ul>   |

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|                   | <p><b>Required Reading:</b> Case study and related documentation. Materials will be received at least one week before this session.</p>  |
| <b>Session 11</b> | <p><b>Class Topic:</b> Introduction to the process of acquisition of companies/businesses.</p> <p><b>Activities in class:</b></p> <ol style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Group activity and hypotheticals</li> </ol> <p><b>Required Reading:</b> legal readings related to an acquisition process. Materials will be received at least one week before this session.</p>   |
| <b>Session 12</b> | <p><b>Class Topic:</b> Introduction to due diligence.</p> <p><b>Activities in class:</b></p> <ol style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Case studies</li> <li>iii. Group activity</li> </ol> <p><b>Required Reading:</b> Case study and related documentation which includes legal documents related to due diligence activities. Materials will be received at least one week before this session.</p>  |
| <b>Session 13</b> | <p><b>Class Topic:</b> EU regulatory hurdles for cross border M&amp;A and Investments: antitrust and foreign direct investment</p> <p><b>Activities in class:</b></p> <ol style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Case studies</li> <li>iii. Hypotheticals</li> </ol> <p><b>Required Reading:</b> Directives, legislation, case study and related documentation. Materials will be received at least one week before this session.</p>  |
| <b>Session 14</b> | <p><b>Class Topic:</b> Understanding main issues related to a sale and purchase agreement.</p> <p><b>Activities in class:</b></p> <ol style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> <li>ii. Negotiation of certain clauses of a purchase agreement</li> </ol> <p><b>Required Reading:</b> Related documentation and part of a sale and purchase agreement. Materials will be received at least one week before this session.</p> <p><b>Preparation for Session 14:</b> review Microsoft / Activision Agreement and Plan of Merger</p> |
| <b>Session 15</b> | <p><b>Class Topic:</b> Harmonization of employee involvement</p> <p><b>Activities in class:</b></p> <ol style="list-style-type: none"> <li>i. Presentation by professor and class discussions</li> </ol>   |

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|                   | ii. Group activity- Hypotheticals<br><br><b>Required Reading:</b> Directives, legislation, and related documentation. Materials will be received at least one week before this session. |
| <b>Session 16</b> | <b>Evaluation: in class exam session to be made within the whole timing devoted for this session.</b>   |

## TEACHING METHODOLOGY

### General methodology of the subject

#### Contact hours methodology: Activities

We will mainly follow a problem-based learning method. Students will prepare case studies in groups or individually (as requested). 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 |
| 30                                    | 8                           | 2          |
| NUMBER OF INDEPENDENT WORK HOURS      |                             |            |
| Lecture                               | Workshop or Practical class | Evaluation |
| 35                                    | 20                          | 5          |
| <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             | 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. | 35%                  |
| 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.
- DORRESTEIJN, A.; OLAERTS, MIEKE; KEMP, B.; BIERMEYER, T.; MEYER-ERDMANN, M.; ARONS, T.: "European Corporate Law (Fourth Edition)", Wolters Kluwer, 2022.
- KRAAKMAN, R.; ARMOUR, J.; DAVIES, P.; ENRIQUES, L.; HANSMANN, H.; HERTIG, G.; HOPT, K.; KANDA, H.; PARGENDLER, M.; RINGE, W.; ROCK, E., "The Anatomy of Corporate Law: A Comparative and Functional Approach (Third Edition)", Oxford, 2017.
- EDWARDS, V., *EC Company Law*, Oxford University Press, First Edition Reprinted.
- ANDENAS & WOOLDRIDGE, "European Comparative Company Law". Cambridge University Press, 2009.
- 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.

#### 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 Unión 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