

ЕВРОПЕЙСКИЙ ГУМАНИТАРНЫЙ УНИВЕРСИТЕТ

Учебная программа рассмотрена и рекомендована к утверждению

«Утверждаю»

на заседании департамента _____
название департамента

Декан Магистерской школы
_____ А.А.Соколова

Директор департамента _____
подпись ФИО

«_____» _____ 20__ г.

Протокол № _____ от «_____» _____ 20__ г.

УЧЕБНАЯ ПРОГРАММА

по дисциплине:

_____European Company Law_____

для студентов магистерской программы International and European Law_____

Автор: _Olga Batura, LL.M.Eur., M.E.S._____

ФИО, ученая степень, ученое звание

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2012/2013 учебный год

Курс _____2_____

Семестр _____1_____

Всего часов (кредитов) _____107_____ (4)

Из них:

Аудиторные занятия _____32_____ Самостоятельная работа студента _____75_____

Лекции/семинары _____10_____ Усвоение учебного материала _____45_____

Участие в онлайн-учебных _____14_____ Выполнение проверочных _____30_____

занятиях _____

Консультации с преподавателем по _____2_____

вопросам курса в СДО Moodle

Аттестация по курсу: экзамен / _____6_____

итоговое занятие

Вильнюс 2012 г.

Explanatory note

The course "European Company Law" concerns itself with legal rules on formation, operation and insolvency of companies in the European Union. Being an emerging field of European law, European company law has a rather dynamic and heterogeneous character comprising conflicts-of-laws, substantive and procedural rules and mainly containing minimum standards provisions.

Aims:

The overall objective of the course is to provide a clear insight in the status of company law at the level of the European Union and the developments in this field with regard to further harmonisation of company law and some adjacent fields (tax law and law of financial markets).

Course objectives:

- To provide students with substantive knowledge of the European company law as well as prerequisites for its historical and ongoing development;
- To introduce students to the problems of effectiveness of implementation of the European company law;
- To assist students in development of critical thinking as regards the interaction between European and national law, conflicts of different fields of law and in identification of possible problems of these interplays.

Expected outcomes:

- Detailed knowledge of the EU rules on company law and several adjacent areas (taxation, capital markets);
- Improved critical thinking in analysis of European law and European integration;
- Improved skills of critical and comparative analysis of legislation and case law;
- Ability to apply the acquired theoretical knowledge to a range of contextual, real-life situations.

Prerequisites to participate in the course:

Participating students are expected to have good knowledge of institutional and substantive European law (EU law 1 and 2) as well as basic knowledge of (national) company law.

Language of instruction: English, but students are allowed to write assignments in Russian.

Timetable of the course:

Auditorial sessions in Vilnius: introductory classes (10 hours) – 01.10.2012-06.10.2012; concluding sessions (presentations, exams) (6 hours) – 03.12.2012-08.12.2012

Online sessions in Moodle: orientation week – 08.10.2012-14.10.2012; online classes, writing assignments – 15.10.2012-24.11.2012.

Clearing the backlogs in Moodle: 26.11.2012-01.12.2012.

Assessment of students' knowledge at the end of the course:

Knowledge and results of work of students shall be assessed cumulatively on a basis of the following containing parts:

- written assignments – 30%;
- active participation in forums, Wiki-articles creation and discussions – 20%;
- seminar participation – 20%;
- project defence and exam – 30%.

Delays in submission and failure to complete written assignments

Students, who failed to present all the written tasks of the course, are not allowed to pass final exam.

Assignments submitted after the deadline will not be accepted and evaluated. If a delay in submission of written tasks to be controlled by the lecturer is due to some excusable circumstances (sickness, business travel) and respective documents, proving such circumstances, are provided to the lecturer, the missing task can be handed in within the period of three weeks after the deadline, without any negative consequences.

Plagiarism and cheating

Plagiarism is an academic crime consisting in another person's work and presenting its as your own. Such practice will be punished by assessing the assignment with the lowest possible grade.

Plagiarism in written assignments and in other examination activities is not tolerated in any form. All assignments shall be done by the students autonomously. Identical responses will also be treated as cheating. Simple translation of (part of) an article and its submission as a paper or an answer to a task also constitutes plagiarism – as well as translation of works of other students and their submission as own answers. Other examples of prohibited practices are summarising another person's work without appropriate acknowledgement and using or developing an idea or thesis derived from another person's work without appropriate reference.

More information on what constitutes plagiarism and cheating will be provided during the orientation week.

Topical plan of the course

№ тем ы	Модули и/или темы курса и/или темы занятий	Количество аудиторных часов				Самостоятельная работа студента		
		Лекции	Уча сти е в онл айн овы х уче бны х зан яти ях	Ито гов ые зан яти я	Кон суль тац ии с пре под ават еле м	Усвое ние учебн ого матер иала (кол- во часов)	Виды провер очных задани й	Выпол нение прове рочны х задани й (кол- во часов)
1	Cross-border mobility of companies in the EU	4	1			6		
2	Company formation rules	2	1			6		

3	Relevant questions of financial markets		4		1	7	Case study	5
4	Structural changes		3		0,5	7	wiki+discuss ion	4
5	Taxation of companies	2	1			6		
6	Supranational European company types		3		0,5	8	discuss ion	4
7	Harmonisation of insolvency procedure	2	1			5		
	Research project (during the whole course)						Research project	17
	Exam& defence of the research project			6				
	Total	10	14	8	2	45		30

Reading materials

Compulsory:

The course is largely based on the only most comprehensive textbook on European company law: Grundmann, Stefan, *European Company Law*, Antwerpen: Intersentia, 2007. Abstracts and compilations from it will be uploaded as pdf-files in Moodle.

Craig, Paul & De Burca, Grainne, *EU Law: text, cases, materials*, 4th ed., Oxford: Oxford University Press, 2008, Chapters 20-22, 27. (parts of the book are available on GoogleBooks)

Chalmers, Damian, Gareth Davies & Giorgio Monti, *European Union Law: Text and Materials*, 2nd edition, Cambridge: Cambridge University Press, 2010, Chapters 19-20. (parts of the book are available on GoogleBooks)

Enriques, Luca, *EC Company Law Directives and Regulations: How Trivial Are They?* ECGI - Law Working Paper No. 39/2005, May 2005. Available @: SSRN: <http://ssrn.com/abstract=730388>

Additional:

Ashta, Arvind, *Double Taxation Avoidance: International and Dividends*, 2007. Available at SSRN: <http://ssrn.com/abstract=940927> ;

Cerioni, Luca, *EU Corporate Law and EU Company Tax Law*, Northampton, MA: Edward Elgar, 2007. (parts of the book are available on GoogleBooks);

van het Kaar, Robbert H., *Employee Board-Level Representation in the EU: A Contested Subject*, in: *European Company Law*, Vol. 6, 2009, pp. 55–61.

Menjucq, Michel, *EC-Regulation No 1346/2000 on Insolvency Proceedings and Groups of Companies*, in: *European Company and Financial Law Review (ECFR)*, 2008, pp. 136-147.

Siems, Mathias M., *The European Directive on Cross-Border Mergers: An International Model?* in: *Columbia Journal of European Law*, Vol. 11, 2005, pp. 167 – 186.

Siems, Mathias M., The Foundations of Securities Law, September 2008. Available @:
<http://ssrn.com/abstract=1089747>

Ventoruzzo, Marco, Takeover Regulation as a Wolf in Sheep's Clothing: Taking Armour and Skeel's Thesis to Continental Europe, in: *Penn State Legal Studies Research*; Bocconi Legal Studies Research Paper No. 2008-02, January 2008.

Weber-Ray, Daniela, Effects of the Better Regulation Approach on European Company Law and Corporate Governance, in: *European Company and Financial Law Review (ECFR)*, 2007, pp. 370 – 416.

Werlauff, Erik, Group and Community – the European Court's Development of an Independent Community Law Concept of the Group and its Significance for National Company Law, in: *European Company Law (ECL)*, Vol. 4, issue 5, 2007, p. 201-206.

Wymeersch, Eddy, The Transfer of the Company's Seat in European Company Law, ECGI - Law Working Paper No. 08/2003, March 2003.

Web resources:

www.europa.eu – official site of the European Union.

<http://curia.europa.eu/> – official site of the European Court of Justice.

http://ec.europa.eu/internal_market/company/official/index_en.htm - directives and other official acts regarding company law on the site of the European Commission

http://ec.europa.eu/taxation_customs/taxation/company_tax/gen_overview/index_en.htm – European Commission's site on companies' taxation

<http://eur-lex.europa.eu/en/index.htm> - data on EU primary and secondary law as well as case law

<http://ec.europa.eu/prelex/apcnet.cfm?CL=en> - procedural data on EU legislation, legislature proposals, decision-making process

<http://www.euractiv.com/en/> - online web journal dealing with EU policy, information on current EU issue, reports over past and present activities by topic

<http://aei.pitt.edu/perl/search/simple> - archive of Pittsburg University on European Integration

<http://www.ena.lu> - an interactive archive on European integration

Contents of the course

Topic 1: Cross-border mobility of companies in the EU

This topic introduces the subject of European company law and explains the motives for its emergence: limitations of national laws clashing with the aim to create a Common market with four economic freedoms. The implications of the EU Treaty (European primary law) for company law will be presented with a special focus on the relevance and importance of the fundamental economic freedoms of the Single European market for formation of companies and companies' mobility in the EU. This presupposes intensive study of a number of ground-breaking ECJ rulings. In this context, the role of the ECJ in the development of the European company law will be discussed.

Compulsory reading:

1. Art. 49 and 54 LTFEU;
2. ECJ case law: C-81/87 *Daily Mail*; C-212/97 *Centros*; C-208/00 *Überseering*; C-167/01 *Inspire Art*; C-98/01, C-282/04, C-283/04, C-503/99, C-367/98 *Golden shares* cases; *SEVIC Systems* C-411/03; *Cartesio* C-210/06;
3. Craig, Paul & De Burca, Grainne, *EU Law: text, cases, materials*, 4th ed., Oxford: Oxford University Press, 2008, Chapters 20-22. (parts of the book are available on GoogleBooks);
4. Chalmers, Damian, Gareth Davies & Giorgio Monti, *European Union Law: Text and Materials*, 2nd edition, Cambridge: Cambridge University Press, 2010, Chapters 19-20. (parts of the book are available on GoogleBooks).

Additional reading:

1. Korom, Veronika/ Peter Metzinger, *Freedom of Establishment for Companies: the European Court of Justice confirms and refines its Daily Mail Decision in the Cartesio Case C-210/06*, ECFR 2009, pp. 125-160;
2. Ringe, Wolf-Georg, *Domestic Company Law and Free Movement of Capital: Nothing Escapes the European Court?* in: *Cambridge Law Journal*, Vol. 69, 2010. Available at SSRN: <http://ssrn.com/abstract=1295905>.

Topic 2: Company formation rules

A significant part of the harmonised rules on formation of companies as regards public limited companies under European company law is concerned with securing interests of shareholders and business partners. Among the issues covered are: regulation on pre-registration phase and, related to it, questions of liability and representation; possible failures while forming a company and grounds for its nullity. The centrepiece of the European company law, however, is the information model. Being applicable to the phase of company formation, this model is represented by disclosure requirements. The meaning and contents of disclosure, its means and effects as well as responsibility for it will be discussed. Another important issue for the company at the formation stage is raising founding capital. Besides this, European company law regulates questions of capital maintenance, augmenting and dispersing of dividends and other payments from company funds.

Compulsory reading:

1. First Council Directive [68/151/EEC](#) of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, OJ L 65 of 14.3.1968;
2. Second Council Directive [77/91/EEC](#) of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, OJ L 26 of 31.01.1977;
3. Relevant chapter from Grundmann, Stefan, European Company Law, Antwerpen: Intersentia, 2007.

Additional reading:

1. Enriques, Luca/ Jonathan R. Macey, *Creditors versus capital formation: the case against the European legal capital rules*, in: Cornell Law Review, Vol. 86, 2001, pp. 1166-1204.
2. Miola, Massimo, *Legal Capital and Limited Liability Companies: the European Perspective*, in: European Company and Financial Law Review, Vol. 2-4, 2005, pp. 413-486.

Topic 3: Relevant questions of financial markets

Basic terms of financial markets shall be studied (primary capital market, secondary capital market, security, etc.) as well as their relevance for the European company law. The touches upon the diverging national regulation of these questions (comparative law) and refers to the solution of the differences through application of conflict-of-laws rules and through direct application of freedom of capital movement. In-depth study of the primary market questions will be undertaken: issue and listing on capital markets of shares and bonds, regulation on a prospectus and European passport. Regulation of secondary financial capital markets at the EU level deals mainly with problems of insider dealing and market manipulation.

Compulsory reading:

1. Directive [2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345 of 31.12.2003;
2. Directive [2003/6/EC](#) of the European Parliament and of the Council of 28 January 2003 on Insider Dealing and Market Manipulation (Market Abuse), OJ L 96 of 12.04.2003;
3. Directive [2004/109/EC](#) of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390 of 31.12.2004;
4. Directive [2004/39/EC](#) of the European parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EC, OJ L 145 of 30.03.2004;

5. ECJ case law: Spector Photo Group case C-45/08;
6. Relevant chapters from Grundmann, Stefan, *European Company Law*, Antwerpen: Intersentia, 2007;
7. Klöhn, Lars, *The European Insider Trading Regulation after the ECJ's Spector Photo Group Decision*, in: *European Law and Financial Markets Review*, Vol. 7, 2010, pp. 347–366.

Additional reading:

1. Siems, Mathias M., *The EU Market Abuse Directive: A Case-Based Analysis*, *European Law and Financial Markets Review*, Vol. 2, No. 1, January 2008;
2. Siems, Mathias M., *The Foundations of Securities Law*, September 2008. Available @: <http://ssrn.com/abstract=1089747>

Assignment to be controlled by the lecturer: case study. Drawing on their knowledge of legal regulation of prohibition of insider dealing and market manipulation, students are supposed to provide solution to a legal problem based on a real-life situation. Scope of the written paper: 5-6 pages.

Topic 4: Structural changes

This topic covers the harmonised regulation on national mergers and divisions, international mergers, takeovers and formation of groups of companies. It introduces the legal and economic notion of merger, division and takeover and explains their relevance for different fields of European law (competition law and company law). The topic further deals with the procedural rules, rules on disclosure and on protection of third parties (shareholders, creditors and employees).

Compulsory reading:

1. Art. 101-106 LTFEU;
2. [Third Council Directive 78/855/EEC](#) of 9 October 1978 based on Article 54(3) (g) of the Treaty concerning mergers of public limited liability companies, OJ 1978 L 295/36;
3. [Directive 2007/63/EC](#) of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies;
2. Sixth Council Directive [82/891/EEC](#) of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, OJ 1982 L 378/47;
3. Tenth Directive [2005/56/EC](#) of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, OJ L 310 of 25.11.2005;
4. Thirteenth Directive [2004/25/EC](#) of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ L 142 of 30.04.2004;
5. Council Regulation (EC) No [139/2004](#) of 20 January 2004 on the control of concentrations between undertakings, OJ L 24 of 29.1.2004;
6. ECJ case law: 142/84 & 156/84 Reynolds; T-83/92 Zunis; C-411/03 SEVIC.

7. Relevant chapter from Grundmann, Stefan, European Company Law, Antwerpen: Intersentia, 2007;

Additional reading:

1. Siems, Mathias M., The European Directive on Cross-Border Mergers: An International Model? in: *Columbia Journal of European Law*, Vol. 11, 2005, pp. 167 – 186;
2. Ventoruzzo, Marco, Takeover Regulation as a Wolf in Sheep's Clothing: Taking Armour and Skeel's Thesis to Continental Europe, in: *Penn State Legal Studies Research*; Bocconi Legal Studies Research Paper No. 2008-02, January 2008.

Assignment 1: Wiki and discussion: Joint development of a Wiki on regulation by European company law of structural changes in companies, discussion and analysis of this regulation and potentials of its development.

Topic 5: Taxation of companies

Due to significant divergence of national tax systems, tax law often represents a barrier for company mobility in the EU. This topic attempts to familiarise students with two important aspects of harmonised taxation rules: 1) related to business operation of a company (mergers) and 2) taxation of a group of companies. Furthermore, the current tendencies in harmonisation of tax rules shall be studied (Common Corporate Consolidated Tax Base, Home State Taxation, Single European Income Tax).

Compulsory reading:

1. Council Directive [2009/133/EC](#) of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States, OJ L 310 of 25.11.2009;
2. Council Directive [90/435/EEC](#) of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different MS, OJ 1990 L 225/6;
3. Convention [90/436/EEC](#) of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (and Final Act) of 23.07.1990, OJ 1990 L 225/10 and 17;
4. Council Directive [2003/49/EC](#) of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ 2003 L 157/49;
5. Relevant chapters from Grundmann, Stefan, European Company Law, Antwerpen: Intersentia, 2007;
6. Materials on the Commission's web-page on Common Tax Base: http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm.

Additional reading:

1. Cerioni, Luca, EU Corporate Law and EU Company Tax Law, Northampton, MA: Edward Elgar, 2007. (parts of the book are available on GoogleBooks);

2. Schreiber, Ulrich/ Fuehrich, Gregor, European Group Taxation – Formula Apportionment versus Current Inclusion, University of Mannheim, February 2007. Available @: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=964009;
3. Spengel, Christoph/ Carsten Wendt, A Common Consolidated Corporate Tax Base for Multinational Companies in the European Union: Some Issues and Options, oxford University Centre for Business Taxation Working paper 07/17, 2007. Available @: http://www.sbs.ox.ac.uk/centres/tax/Documents/working_papers/WP0717.pdf .

Topic 6: Supranational European company types

This topic focuses on the company types created by the European company law. It shall cover each company type (European Company, European Economic Interest Grouping, European Cooperative Society, European Private Company) as regards company formation, its seat, capital requirements and structure. Special attention will be paid to the rules on applicable law.

Compulsory reading:

1. Council Regulation (EC) No [2157/2001](#) of 8 October 2001 on the Statute for a European company (SE), OJ L 294 of 10.11.2001;
2. Council Regulation (EEC) No [2137/85](#) of 25 July 1985 on the European Economic Interest Grouping (EEIG), OJ L 199 of 31.7.1985;
3. Council Regulation (EC) No [1435/2003](#) on the Statute for a European Cooperative Society, OJ L 207 of 18.8.2003;
4. Commission's Proposal for a Council Regulation on the Statute for a European private company, [COM\(2008\) 396/3](#).
5. Relevant chapter from Grundmann, Stefan, European Company Law, Antwerpen: Intersentia, 2007.

Assignment 2: discussion on the basis of the conference materials (watched or read). Students are supposed to watch¹ a conference on further development of European company law, held by the European Commission, and then discuss the conference contributions as well as relevant proposals in a Moodle forum.

Topic 7: Harmonisation of insolvency procedure

Insolvency is the main reason for liquidation of a company and is therefore subject to harmonised regulation in European company law. This topic gives an insight in the national laws of the Member States and general conflict-of-laws rules on this subject. European regulation will be studied, which harmonises partly the substantive law and partly the conflict-of-laws rules.

Students are supposed to study the topic in advance via Moodle in order to be able to follow examples and solve a case study at an auditorial seminar during the final session of the course.

Compulsory reading:

1. Council regulation (EC) No [1346/2000](#) of 29 May 2000 on insolvency proceedings, OJ L 160 of 30.06.2000;
2. Relevant chapter from Grundmann, Stefan, European Company Law, Antwerpen: Intersentia, 2007.

¹ Instead of watching, students can read the transcripts of the conference contributions (links will be provided in the Moodle).

Assignment to be controlled by the lecturer: individual research project. This assignment should be prepared by the students during the course. The written project should not exceed 15 pages and shall comply with all the formal requirements expected from legal scientific papers (footnotes, list of literature etc). Topics for individual research projects shall be agreed with the lecturer beforehand and shall be based on the topics studied during the course.

Exam:

Defence of the individual project, including two questions on non-related topics of the course.