



# European Company Law

*Alessio Bartolacelli*



# The course

**Monday 9 - 11 AM (9:15 – 10:45 AM) + 2 - 5 PM (2:15 – 4:30 PM)**

**BUT, N.B.:**

- On October 9, no classes.
- Final classes on November 13
- intermediate exam (attending students) on November 20 morning

**In general: always on-site; if I can, online too**



# The course and the exam (1)

## Goal of the course

The module aims at providing students with a general knowledge of **main principles and features of company law** and a series of **key elements in European Company Law**. Furthermore, the module will analyse the current policy and foreseeable trends of the European Union in the field of sustainability applied to Company and Financial Markets Law. At the end of the module, students are expected to understand the basic elements of companies, the current trends in ECL, how basic ECL rules are implemented in different MSs, and to handle the legal instruments currently available to assure a company's sustainability, with a specific focus on the EU Law.

- **Part 1: (all the students) General and European Company Law**

- Companies: key features
- Legal Basis for European Company Law;
- Harmonization in European Company Law, in particular, codified Directive (EU) 2017/1132;
- EUCJ Decisions Regarding Freedom of Establishment;
- Supranational Business Organization Forms (EEIG, SE, SCE; SPE and SUP Drafts).



# The course and the exam (2)

- **Part 2: (only for 8 CFU ECTS students – ICoLS + Giurisprudenza) Sustainability in European Company and Financial Markets Law**
  - Sustainability in general, theories on the purpose of a company;
  - European policies on sustainability: EU Commission Action Plans on Company Law and Corporate Governance for sustainability (2012), on Green Action Plan for SMEs (2014), and on Sustainable Finance (2018);
  - Corporate Sustainability Reporting Directive (2022);
  - Multinational groups and CSR



# The course and the exam (3)

## Textbook and readings

### *For Part 1*

- Attending students:
  - Students' personal notes from lectures and additional material provided by the module convenor,
- Non-attending students:
  - Readings made available by the module convenor in the course's website
  - Andrea Vicari, European Company Law, De Gruyter, Berlin, 2021, the whole book, **and**
  - Nicola de Luca, European Company Law, Cambridge University Press, Cambridge, 2nd edition, 2021 (Pages 22-136)



# The course and the exam (4)

*For Part 2*

For BOTH attending AND non-attending students

- - Beate Sjøfjell, Christopher M. Bruner (eds), The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability, Cambridge University Press, 2019, Chapters 1, 6, 14, 46, 47
- - Janet Dine, The abuse of Company Groups, in Hanne S. Birkmose, Mette Neville & Karsten Engsig Sørensen (eds.), Abuse of Companies, Kluwer Law International, 2019, 35-58

Regarding some specific subjects, attending students shall be required to read a few short readings suggested by the teacher, and to refer about them, aiming at provoking an exchange of views on the most relevant topics

Some court decisions of the EUCJ will be examined during the classes



# The course and the exam (5)

## The examination

- **Attending student: 80% of the presence rate – 32 hours + NO cell phone, messaging, other distractions**
- **Actively attending students** will be assessed:
  1. based on their involvement in the course's activities (quality and quantity; 50%), and a multiple-choice test + 1 open question (50%) on the topics covered during the classes on Part I (both 6 and 8 CFU/ECTS students; for 6 CFU/ECTS students the examination ends with the intermediate exam), on **November 20 morning**; and
  2. on a short paper to be written on a subject assigned on topics included in Part II (8 CFU/ECTS students only) Submit by last February examination session.
- **Non-actively attending students**  
Students shall sit a 60 mins final written examination, closed-book style. The answers are to be provided in English language. The examination consists in **two open-ended question on Part I, plus one open-ended question on part two, for the 8 CFU-ECTS students only.**



# European Company Law

- Words are meaningful
  - European...
  - Company...
  - Law!

Each word is a key issue. Let's start with a basic lexicon.





# Basic Lexicon (1)

- Company... and Corporation, Partnership and Firm
- Shareholders... and members
- Shares and Stocks
- Directors and Officers
- Branches and Subsidiaries
- Mergers and Divisions
- Capital (Share Capital, Legal Capital, Authorised Capital, Paid-up Capital...)
- Articles of Association, Articles of Incorporation, Articles (or Deed) of Partnership, Instrument of constitution, Charters, Bylaws and Company Statutes
- Nullity



## Basic Lexicon (2)

- Agency
- Disclosure
- Bond and Debenture
- ...
  
- Not a single English, but many English(es)
  - UK English
  - American (US) English
  - «Commonwealth» English (Canada, India, Australia, South Africa...)
  - [- European/“Brussels” English]



# European **Company** Law

Thus, **Company**

- What's a company?
- Key elements (Hansmann *et al.*):
  - a) Legal personality
  - b) Limited liability
  - c) Transferable shares
  - d) Delegated management
  - e) Investor ownership



# Companies & co.

First of all: company or corporation?

Second: companies and partnerships  
But also sole entrepreneur

Third: companies and cooperatives

Fourth: companies and no-profit sector



# The idea of a company...

- More parties (not valid any longer)
- Starting from the limited liability as a mean to make investments easier
  - Commenda in the Middle Ages
  - East India Companies (Dutch, French and British) – 17<sup>th</sup> Century
- Exception to a general rule: no limited liability (seizure and sale of debtor's personal assets)
  - Who is entitled to limit a debtor's liability?
  - Are there conditions to do so (public protection purpose)?
    - Capital
    - Form
    - ...



# Legal personality (1)

- *Entity shielding* for a **separate patrimony**

It operates two ways

1. Protect company's asset from shareholders' personal creditors; &
2. Protect company's asset from unjustified shareholder's withdrawal (much stronger in Companies than in Partnerships)



## Legal personality (2)

- As it is a separate entity, company needs individuals who have authority to buy & sell assets in the name of the company (*agency and direction*)
  - Pay attention: each party is likely to have its own interest to pursue...
- Third parties are to have the possibility to know who these individuals are (disclosure)
  - Why? They need to know who has the power to make business lawfully *on behalf of the company*