

**LAW FACULTY**  
**FACOLTÀ DI GIURISPRUDENZA**

COURSE INFORMATION A.Y. 2023/2024  
SCHEMA OFFERTA FORMATIVA A.A. 2023/2024

**PROF. ALESSANDRA PAOLINI**

Course/Materia: **EUROPEAN COMPANY LAW**

<b>1. Facoltà (Faculty)</b>	Giurisprudenza (Law)
<b>2. Course of Studies/Corso di studio</b>	Masters Degree <i>European Studies</i> LM 90 held in English language – curriculum <i>Comparative and European Law</i> Laurea specialistica <i>Studi Europei</i> LM 90 erogato in lingua inglese ( <i>European Studies</i> ) – curriculum <i>Comparative and European Law</i>
<b>3. Year of course/Anno di corso</b>	II
<b>4. Course/Insegnamento</b>	European Company Law
<b>5. N. of teaching hours/N. tot. ore insegnamento</b>	48
<b>6. Settore scientifico-disciplinare (SSD)</b>	IUS 04
<b>7. N. tot. Crediti formativi universitari CFU / ECTS</b>	6
<b>8. Name and Surname of the Professor/Nome e cognome docente responsabile</b>	Alessandra Paolini
<b>9. Email</b>	<a href="mailto:alessandra.paolini@uniroma1.it">alessandra.paolini@uniroma1.it</a>
<b>10. Content of the Course/Contenuti del corso</b>	<b>English</b> The course will cover the following subjects:

## 1) Introduction to the course European Company Law

Methodology of the Course

Sources of the European Company Law

Types and Functions of Companies T

the distinction between closely held and publicly traded corporations/companies.

Law versus Contract incorporate affairs. Mandatory Law versus Default Provisions.

Regulatory Competition.

Common structures of Corporations/Companies: legal personality; limited liability; transferability of shares; investor ownership.

## 2) Cross-Border Establishment and Corporate Mobility

- Real seat theory and incorporation theory

- Right of primary Establishment (Daily Mail, Überseering, Sevic, Cartesio, Vale, Polbud Cases)

## 3) Right of secondary Establishment (Segers, Centros, Inspire Art Cases)

- Cross-border conversion (Vale, Polbud cases). The recent EU directive on cross-border conversion, merger and division.

- The current Debate: twenty years after Centros decision.

Cross-border conversion in Dir. 2019/2121

## 4) Formation of a new company

- Setting up a new company: instrument of incorporation- articles of association – preventive control – registration

Validity of obligations entered into by the company

Nullity of the Company

Private companies/public companies/State owned companies

Cases: Job Centre I and II; Ubbink Isolatie BV

5) The essential elements of the company's financial structure. The concept of company capital; the differences in this regard between continental European and Anglo-American company law; the debate on the advantages and inconveniences of capital-based company law systems compared to those that ignore this concept; the imposition by law of a minimum capital; capital formation and capital contributions; capital maintenance: recapitalise or liquidate rule and its role

## 6) Capital maintenance

- Dividend distribution
- Non mandatory capital reduction
- Transaction on the company's own shares
- Financial assistance

Companies with symbolic capital in European law.

7) Annual and consolidated accounts

- annual accounts;
- accounting principles;
- IAS/IFRS principles;
- Consolidated accounts
- Audit

8) Corporate Governance

- What is Corporate Governance?
- ECL corporate governance goals (transparency and engagement of shareholders);
- one tier vs. two tier systems.
- Board of directors
- boards in listed companies;
- Directors' liability
- Conflict of interests
- Powers of representation
- executive remuneration;
- statutory audit;

9) Shareholders' meeting

- Shareholders powers;
- Shareholders/Directors relation;
- procedure;
- listed companies and empty voting;
- one share-one vote rule and its abandonment;
- capital increase and pre-emptive rights of shareholders;
- equal treatment of shareholders;

10) Shareholders' Right Directives

- Shareholder Primacy

11) Mergers and Divisions

- EU Directives
- Types of mergers and divisions
- Cross-border operations
- Equal treatment of shareholders and squeeze-out

12) The Cross-border Merger Directive

13) Takeover regulation;

- Mandatory bid rule and equity treatment of shareholders
- Breakthrough rule and poison pills
- Passivity rule
- Squeeze-out and sell-out rights

14) Uniform Company Law

- EEIG
- Societas Europaea

## **Italiano**

Il corso avrà ad oggetto i seguenti temi:

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Methodology of the Course

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#### 14) Uniform Company Law

- EEIG

	- Societas Europaea
<p><b>11. Textbook/Testi di riferimento</b></p>	<p>Textbook: N. DE LUCA, European Company Law – Text, Cases and Materials, Cambridge University Press, 2021 [Chapters 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 (except 16.6 and following), 18, 19] OR A. VICARI, European Company Law, De Gruyter, 2021 [Chapters: 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 14]</p> <p>The students are also required to take into account the most recent legislative sources, in particular Directive (UE) 2017/1132. Some European Court of Justice’s cases will also made available to the students.</p> <p>Suggested readings (optional):</p> <ul style="list-style-type: none"> <li>• L. Enriques, EC company law directives and regulations: how trivial are they?, in University of Pennsylvania journal of economic law, 2006, 1.;</li> <li>• J. Armour – H. Hansmann – R. Kraakman, The Essential Elements of Corporate Law, available at SSRN: <a href="https://ssrn.com/abstract=1436551">https://ssrn.com/abstract=1436551</a></li> <li>• M. Gelter, Centros, the Freedom of Establishment for Companies, and the Court’s Accidental Vision for Corporate Law, available at SSRN: <a href="https://ssrn.com/abstract=2564765">https://ssrn.com/abstract=2564765</a> or <a href="http://dx.doi.org/10.2139/ssrn.2564765">http://dx.doi.org/10.2139/ssrn.2564765</a></li> <li>• Enriques-Macey, Creditors versus Capital Formation: the case against the European Legal Capital Rules, 2001, available at <a href="http://digitalcommons.law.yale.edu">http://digitalcommons.law.yale.edu</a></li> <li>• Miola, Legal Capital and Limited Liability Companies: The European Perspective, in ECFR, 2005.</li> <li>• G.E. Colombo, International Accounting Principles (IAS/IFRS), Share Capital and Net Worth, ECFR, 2007, 553 ff.;</li> <li>• Hopt, 2015, Corporate Governance in Europe: A Critical Review of the European Commission’s Initiatives on Corporate Law and Corporate Governance, available at <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2644156">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2644156</a>;</li> <li>• Belcredi, Ferrarini, The European corporate governance framework: issues and perspectives, ECGI Working paper, 2013, at: <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2264990">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2264990</a></li> <li>• L. Bebchuck, The Case for increasing Shareholder Power, Discussion Paper No. 500, 12/2004, in Harvard Law Review, Vol. 118, 2005, p. 833-917, at <a href="http://www.law.harvard.edu/programs/olin_center/">http://www.law.harvard.edu/programs/olin_center/</a></li> <li>• J. Schmidt, Cross border mergers, divisions and conversions: accomplishments and deficits of the company law package, in ECFR, 2019,</li> <li>• Lombardo-Pasotti, The Societas Europaea: a Network Economics Approach, ECFR, 2004</li> </ul>
<p><b>12. Learning Objectives/Obiettivi formativi</b></p>	<p><b>Inglese</b> The course has as a target the understanding of the actual structure of European Company Law, particularly with regards to recent harmonisation and simplification</p>

processes. It aims also at stimulating the student to reflect, through a critical analysis of legislative material and court cases, on the impact of Company Law harmonisation and choice of law on developments in national Company Law, as well as on the relevance of regulatory competition and regulatory arbitrage for the internal market.

Knowledge and understanding

Critical knowledge of the core subjects related to the course, in both international and national law perspective, in a systematic perspective. Knowledge and understanding of the economic ratio behind the issues of Company Law, taking into account the international debate and the political-economic implications.

Applying knowledge and understanding

Ability to apply knowledge acquired during the course in order to analyse and discuss controversial cases in a consistent way.

Making judgements

Improvement of the ability to understand and critically assess the core subjects related to the course, considering also the political-economic implications; ability to connect, in a consistent way, the different issues examined in the course.

Communication skills

Improvement of the ability to describe and discuss, in a clear and appropriate legal language, the core subjects and the controversial issues of European Company Law.

Learning skills

Improvement of the ability to study in an independent and critical way.

**Italiano**

Obiettivo del corso è consentire agli studenti una comprensione degli attuali assetti del diritto societario europeo, con particolare riguardo ai più recenti processi di armonizzazione e semplificazione. Si propone inoltre di stimolare lo studente alla riflessione, attraverso l'esame critico di materiali normativi e giurisprudenziali, sull'impatto che l'armonizzazione e la scelta della legge applicabile hanno nello sviluppo dei diritti nazionali in materia di diritto societario, nonché sulla rilevanza della competizione tra ordinamenti e degli arbitraggi normativi nel mercato interno.

Conoscenza e capacità di comprensione

Conoscenza approfondita della materia, in una prospettiva europea e internazionale e in chiave sistematica. Capacità di analisi e comprensione dei profili economici degli istituti giuridici esaminati, tenendo conto del dibattito internazionale sui principali temi e dei risvolti politico-economici.

Capacità di applicazione delle conoscenze

Capacità di applicare le conoscenze acquisite durante il corso alla comprensione e analisi di casi giurisprudenziali.

Autonomia di giudizio

Miglioramento delle capacità di comprensione e giudizio critico sulle tematiche affrontate, considerandone anche le implicazioni politico-economiche; capacità di identificare, in modo autonomo, collegamenti tra i diversi argomenti.

Abilità comunicative

Miglioramento della capacità di descrivere e discutere, in modo chiaro e con linguaggio tecnico-giuridico appropriato, i temi centrali e le questioni discusse nell'ambito del diritto societario europeo.

Capacità di apprendimento

Miglioramento della capacità di studiare in modo autonomo e critico.

**13. Prerequisites/ Prerequisiti Propedeuticità o altri tipi di conoscenze ad Es. conoscenza di lingue straniere o altro tipo di conoscenze**

**Inglese**

Students should have a basic knowledge of Civil Law (particularly with regards to property, contracts, power of attorney) and possibly, some basics in Company Law, as well as a good knowledge of English language (minimum level: B2).

**Italiano**

È necessaria la conoscenza di base del diritto privato (in particolare, della proprietà, dei contratti, della rappresentanza) e di alcune nozioni di diritto societario, almeno di base, come pure una buona conoscenza della lingua inglese (livello minimo: B2).

<b>14. Teaching method/ Metodi didattici</b>	<p><b>Inglese</b> Teaching will be carried out as frontal lectures, aimed at framing the issues in a systematic context, taking into account the connection with European law and the evolution of internal law. During the course legislative, doctrinal and courts material will be provided to the students.</p> <p>Attendance on a regular basis, although not mandatory, is <u>highly recommended</u> in order to achieve the expected learning outcomes.</p> <p><b>Italiano</b> Il metodo utilizzato è quello della didattica frontale, attraverso lezioni volte ad inquadrare gli istituti in un contesto sistematico, tenendo conto sempre dei rapporti con il diritto europeo e con l'evoluzione degli ordinamenti interni. Durante il corso sarà inoltre distribuito del materiale normativo, dottrinale e giurisprudenziale.</p> <p>La frequenza delle lezioni, pur se facoltativa, è fortemente incoraggiata al fine di consentire il pieno conseguimento degli obiettivi formativi.</p>
<b>15. Final Exam/ Modalità di verifica dell'apprendimento</b>	<p><b>Inglese</b> The final exam consists of a written test. Midterm exams might take place. The written exam may consist in the resolution of some multiple-choice questions, as well as the writing of a short essay on the topics covered in previous lessons, as well as a case study on a ECJ decision.</p> <p>To pass the exam, it is necessary to achieve a good knowledge of the core subjects of European Company Law. To achieve a higher grading, students are required to show a deep knowledge of the legislative, doctrinal and court subjects and to be able to connect, in a consistent and convincing way, the different issues, offering their own point of view.</p> <p><b>Italiano</b> La prova finale consiste in una prova scritta. Può essere prevista una valutazione in itinere. La prova scritta può consistere in domande a risposta multipla, o in domande a risposta aperta su temi oggetto del programma, o nell'analisi di una pronuncia della Corte di Giustizia. Per superare l'esame è necessario dimostrare di aver acquisito una conoscenza sufficiente dei principali temi relativi al diritto societario europeo. Per conseguire un punteggio elevato è richiesta una conoscenza della disciplina positiva, dei temi all'attenzione del dibattito e della relativa giurisprudenza di livello elevato o eccellente, la capacità di collegamento sistematico tra i vari temi, e la capacità di fornire un punto di vista autonomo.</p>
<b>16. Criteria in order to get a thesis/ Criteri per l'assegnazione dell'elaborato finale</b>	<p>The final thesis will be assigned after a conversation/interview with the student.</p> <p>La tesi sarà assegnata a seguito di un colloquio con il candidato.</p>
<b>17. Risultati di apprendimento attesi dall'insegnamento – (espressi tramite i Descrittori di Dublino)</b>	<p><b>Conoscenza e capacità di comprensione</b> Conoscenza delle linee principali della materia; Comprensione degli aspetti metodologico-operativi delle tendenze normative dell'UE Conoscenza di discipline specifiche nell'ambito delle principali questioni del diritto delle società di capitali (corporate governance – capitale – assemblea – acquisizioni - gruppi)</p> <p><b>Conoscenze applicate e capacità di comprensione</b> Capacità di interpretazione delle fonti giuridiche (legislative, giurisprudenziali, dottrinali);</p>



	<p>Capacità di esaminare diversi approcci metodologici e teorici alla medesima questione;  Saper applicare le proprie competenze per individuare i principali risvolti problematici e operativi delle questioni esaminate e valutare criticamente le argomentazioni sostenute;  Utilizzo di un linguaggio giuridico appropriato</p> <p><b>Autonomia di giudizio</b>  Capacità di affrontare criticamente le questioni principali della materia  Essere in grado di individuare gli elementi chiave del dibattito sulle principali questioni poste dal diritto societario europeo  Sviluppo di capacità di analisi critica delle norme vigenti, nel confronto tra le nazionali e quelle dell'UE</p>
<p><b>18. Breve curriculum del docente- Max</b>  <i>1000 caratteri, spazi compresi</i></p>	<p>CV PROF. ALESSANDRA PAOLINI:  Alessandra Paolini is tenured Associate Professor of Commercial Law (Business Law) at the Law School of the University of Rome – La Sapienza (Department of Legal Disciplines). She holds a course of Business Law (since academic year 2012/2013) and a course of European Company Law (since academic year 2017/2018) at the Law School of the University of Rome – La Sapienza. Member of University Research Projects. She obtained a Ph. D in Commercial Law from the University of Bari, Italy. She is admitted to the Italian bar. She is a member of the Business Studies Commission of the Italian National Council of Notaries. Author of legal publications on corporate and commercial law and of a book (“De facto Modifications of the Object of the Company”, Milano, Giuffrè, 2014); she is frequently invited to give lectures at conferences (also in English) in legal congresses, masters and special courses.</p>