ADMINISTRATIVE LAW AND ECONOMIC REGULATION

GRADO EN DERECHO / BACHELOR OF LAWS
Professor: JOSE MARIA BAÑO FOS
E-mail: jmbf@faculty.ie.edu

Degree course: THIRD
Semester: 1º
Category: COMPULSORY
Number of credits: 6.0
Language: English

PREREQUISITES
SUBJECT DESCRIPTION
The course examines the competing explanations for the need and the development of regulatory intervention in markets and activities that affect citizens in several ways, whether with direct economic implications—as is normally the case—or otherwise.

The instrument governments apply in such situations is Administrative Law. However, this is a field where law merges with policy-making and economics, so a multi-discipline approach is needed in order to properly perform the legal tasks at stake.

The intervention of the State by means of specialised bodies—subject to varying degrees of independence from the executive—into the private market is a phenomenon whose rationales and instruments have been refined in recent years. In regulated sectors, regulators face the same issues within and outside national borders—whether or not the solutions are shared. From the classic control over basic resources such as oil and gas towards the evasive world of personal data and the internet, the present course studies the different styles and processes of regulation from a comparative and cross-border perspective, focusing on analytical methodology, remedial action, legal implications, enforcement and accountability.
OBJECTIVES AND SKILLS

It is the objective of the course that students:

- Understand the economic and, if applicable, general interest rationales in favour and against administrative regulation.
- Become familiar with the risks of regulation and the different families of administrative regulation.
- Learn the main types of regulatory enforcement.
- Gain an understanding of the main fields of regulatory action, whether or not adopted on economic grounds, for instance: (i) The direct intervention of the public sector, in all its administrative levels; (ii) Network industries; (iii) Financial and securities markets; (iv) The online world and its challenges and opportunities.

By the end of the module, students will be expected to:

- Describe the main characteristics of the different regulatory systems.
- Identify the reasons that justify –a condition necessary but not sufficient– administrative intervention in the economy and markets.
- Discuss whether remedies are appropriate and proportionate and the legal and economic implications of such intervention.
- Discuss the most appropriate ways to enforce correction of regulatory misbehaviour.
- Integrate the relevant knowledge and skills gained with the other main substantive areas of the legal profession.
METHODOLOGY

The course is comprised of 26 sessions (lectures), two tests and a final exam. The lecturer will walk the students through the relevant questions by briefly summarising the main relevant issues and enquiring the students to put forward their views with regard to the relevant lectures assigned for that session which will include both academic writings and cases from the European courts.

The course will devote significant attention to understanding administrative action and the principles that guide it, the role of the administration in setting public policy and the interaction between administrative law and regulated industries.

The course will be approached from the perspective of the legal and policy-making practice, and students are expected to develop by the end of the course a set of analytical tools that allows them to be able to point out the main traits of a regulated sector, the underlying rationale, the general principles that are applicable, the legal implications of the policy involved and the drafting and critical skills to put those elements into context to plead a case before a policy maker/client/court.

Students are expected to attend all sessions and to read all the relevant materials before each session. Students will be asked in class as part of the lecturing process.

ECTS WEIGHTING

Teaching Methodology - Weighting - Estimated time a student should dedicate to prepare
Lectures - 20% - 30 hours
Midterm 1 - 15% - 22.5 hours
Midterm 2 - 15% - 22.5 hours
Final exam - 50% - 75 hours
TOTAL - 100% - 150 hours
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<tr>
<th>Teaching methodology</th>
<th>Weighting</th>
<th>Estimated time a student should dedicate to prepare for and participate in</th>
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<tr>
<td>Lectures</td>
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<td>Discussions</td>
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<td>Exercises</td>
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<td>Group work</td>
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<tr>
<td>Other individual studying</td>
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<tr>
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PROGRAM

SESSION 1
The foundations of public regulation in sectors and markets. A brief introduction into the history of market regulation in Europe and the economic foundations of sectoral regulation.
In this session we explore a historical analysis that explains how the European countries moved from a state owned system towards a liberalized but highly regulated environment. Moreover, we analyze the main economic market failures used as an economic explanation for regulating rather than laissez faire.

SESSION 2
Market outcomes: efficiency and inefficiency. Reasons of general interest v economic outcomes
In this session we explore other possible explanations (non-economic) for regulating such as the promotion of culture, diversity or a healthier environment. We take into account as well other more critical positions towards regulation such as the interest group theories.

SESSION 3
The concept of agency and classic types of agencies: independent vs. executive agencies
We will study the main features of an I.R.A Independent Regulatory Agency as the paramount manager of a regulated environment. We will seek to understand the main differences between independent and executive agencies and the relevance of such distinction in the U.S. under the current Trump reform.

SESSION 4
New trends, non-traditional forms of economic regulation.
We explore whether Amtrack and ICANN can be classified as regulatory agencies or bodies.

SESSION 5
Regulatory strategies: an overview. The distinction between police, promotion and public service.
We will see the traditional tools of an agency from a theoretical perspective.

SESSION 6
How to regulate markets “correctly”: approaches and methodologies. The concern of overregulation. The services directive and the taxi industry.
Regulating as passing norms is one of the traditional functions of agencies but it also creates excessive red tape according to others. How should these regulations be enacted? What happened in Spain when the private vehicles for hire were liberalized and not subject to an authorization?

SESSION 7
Promotion strategies and tools: subsidies, tax advantages and State aids.
The State or its bodies can influence a regulated market through the use of public funds, what are the risks?

SESSION 8
Public Services, the concept of services of general economic interest.

SESSION 9
The adjudicative and arbitrating powers of regulatory agencies. Procedure over substance, margin of discretion under Chevron. New roles: some examples in Spain (market unity).

The power to make decisions is different from the power to regulate. How far will a Court go to review an agency decision? and How far will an independent agency go to challenge the decisions or norms of another administration?

SESSION 10
MIDTERM TEST (multiple choice).

SESSION 11

What is natural monopoly and how can we make it competitive?

SESSION 12
In this class we will approach a very complex field by looking at an actual bill and comparing to the EU Directive to find the extent up to which the market is highly regulated.

SESSION 13
The role of NRA in the EU framework regarding electricity
Only pages 8 to 40. This reports contains the main functions of NRA (national regulatory agencies) in the electricity market most of which are directly assigned by the EU normative framework.

SESSION 14
Utilities. Electricity. The example of the reform of the renewable energy system in Spain.

Regulatory-risk.
What happens when the regulator suddenly changes the norms?

SESSION 15
Financial industry. The new supervisory role of the ECB and national agencies. The SRB Board and Banco Popular.
Why keeps the ECB gaining power? How powerful is the ECB after the financial crisis?
SESSION 16
The reform of the credit rating industry. The creation of a regulated environment.

SESSION 17
The UK and German challenges to the financial regulation reform in the EU

SESSION 18
The regulation of the gambling industry in Spain. The perspective of the agency

SESSION 19
The frontier between competition and regulation. Telecoms and the Google Case.

SESSION 20
MIDTERM TEST (multiple choice).

SESSION 21
The regulation of environment. The basic EU principles on Environmental protection.

SESSION 22

SESSION 23
The regulation of personal data: the EU Data Protection Regulation.

SESSION 24
Data Protection in practice: the right to be forgotten.

SESSION 25
The prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

SESSION 26
The enforcement of sectoral regulation. The case of competition law: national v supranational enforcement and public v private enforcement.

SESSIONS 27 - 28
RECAP OF THE COURSE
SESSIONS 29 - 30

FINAL EXAM (it will cover the entire course)

BIBLIOGRAPHY
No single book can provide for the whole array of subjects the course purports to cover. However, the two first books referred below are useful in providing an analytical framework for most of the issues covered throughout the course and so they will be referred to extensively.
Likewise, the rest of books cited below provide a good degree of coverage of many of the topics touched upon.
The main readings to be made when preparing for each session are cited above each of the corresponding lectures. Some of them will be incorporated to IE University's online platform.
Prior to each session, the lecturer may recommend additional/preferential materials or/along with other sources (legal articles, chapters of other books, webpage references). It is strongly suggested that these are complemented by the students’ own research from the recommended or other sources.

MANDATORY READINGS
Title: Understanding Regulation: Theory, Strategy, and Practice
Author: R. Baldwin, M. Cave and M. Lodge
Publisher / Edition / Year: Oxford University Press, 2013
ISBN / ISSN: 9780199576098
Medium: Print/E-book
BUY YOUR BOOKS HERE
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RECOMMENDED READINGS
Title: The Oxford Handbook on Regulation
Author: R. Baldwin, M. Cave and M. Lodge
Publisher / Edition / Year: Oxford University Press, 2012
ISBN / ISSN: 9780199655885
Medium: Print
Title: International Handbook on Economic Regulation
Author: M. Crew and D. Parker (eds.)
Publisher / Edition / Year: Edward Elgar Publishing, 2007
ISBN / ISSN: 184376671X
Medium: E-book
Title: An Introduction to Law and Regulation: Text and Materials
Author: B. Morgan and K. Yeung
Publisher / Edition / Year: Cambridge University Press, 2007
ISBN / ISSN: 0521685656
Medium: Print
(SPANISH) Title: Derecho de La Regulación Económica
Author: Muñoz Machado (ed.)
Publisher / Edition / Year: Iustel 2013
ISBN / ISSN: 9788498900460
Medium: Print
EVALUATION CRITERIA

GENERAL OBSERVATIONS Each student has four attempts over two consecutive academic years to pass this course. Dates and location of the final exam will be posted in advance and will not be changed. Students must attend at least 70% of the sessions. Students who do not comply with the 70% attendance rule will receive a 0.0 on their first and second attempts and go directly to the third one (they will need to enroll in this course again the following academic year). Students who are in the third or fourth attempt should contact the professor during the first two weeks of the course.

EVALUATION AND WEIGHTING CRITERIA A. Class participation 20% B. Mid-term exams 30% D. Final Exam 50% TOTAL 100%

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<tr>
<td>Class Participation</td>
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<tr>
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6.2. RETAKE POLICY Any student whose weighted final grade is below 5 will be required to sit for the retake exam to pass the course (except those not complying with the attendance rules, whom are banned from this possibility). Grading for retakes will be subject to the following rules: - The retakes will consist of a comprehensive exam. The grade will depend only on the performance on this exam; continuous evaluation over the semester will not be taken into account. - The exam will be designed bearing in mind that the passing grade is 5 and the maximum grade that can be attained on the second and fourth attempts is 8 out of 10. - The third attempt will require the student to complete: o a written assignment o a midterm o a final exam This is also applicable to students who do not have required attendance, e.g. sickness. Dates and location of the retakes will be posted in advance and will not be changed.

PROFESSOR BIO

Professor: JOSE MARIA BAÑO FOS
E-mail: jmbf@faculty.ie.edu

José María Baño Fos joined José María Baño León Abogados in 2012 where he is specialized in Regulatory, Administrative and European law. Previously, José M. Baño worked at Cleary Gottlieb in Brussels as an associate specialized in competition law. During this time, José María advised clients in matters relating to abuses of dominance, state aids, cartels and internal market. Prior to that, José María was an associate at Perez-Llorca in Madrid in the corporate and competition law departments. José María Baño Fos holds an LL.B. with the highest honors from the University of Valencia, an LL.M. from Fordham University (Caja Madrid scholarship) and a Ph.D. from Universidad Autónoma de Madrid. José María Baño Fos is a member of the Madrid and New York bars since 2008 and 2009 and combines private practice with his academic position at the IE Law School. Office hours will take place after class. Contact: jmbf@faculty.ie.edu

OTHER INFORMATION
CODE OF CONDUCT IN CLASS

1. **Be on time:** Students arriving more than 5 minutes late will be marked as “Absent”.
   Only students that notify in advance in writing that they will be late for a specific session may be granted an exception (at the discretion of the professor).

2. **If applicable, bring your name card and strictly follow the seating chart.** It helps faculty members and fellow students learn your names.

3. **Do not leave the room during the lecture:** Students are not allowed to leave the room during lectures. If a student leaves the room during lectures, he/she will not be allowed to re-enter and, therefore, will be marked as “Absent”.
   Only students that notify that they have a special reason to leave the session early will be granted an exception (at the discretion of the professor).

4. **Do not engage in side conversation.** As a sign of respect toward the person presenting the lecture (the teacher as well as fellow students), side conversations are not allowed. If you have a question, raise your hand and ask it. If you do not want to ask it during the lecture, feel free to approach your teacher after class.
   If a student is disrupting the flow of the lecture, he/she will be asked to leave the classroom and, consequently, will be marked as “Absent”.

5. **Use your laptop for course-related purposes only.** The use of laptops during lectures must be authorized by the professor. The use of Social Media or accessing any type of content not related to the lecture is penalized. The student will be asked to leave the room and, consequently, will be marked as “Absent”.

6. **No cellular phones:** IE University implements a “Phone-free Classroom” policy and, therefore, the use of phones, tablets, etc. is forbidden inside the classroom. Failing to abide by this rule entails expulsion from the room and will be counted as one absence.

7. **Escalation policy: 1/3/5.** Items 4, 5, and 6 above entail expulsion from the classroom and the consequent marking of the student as “Absent.” IE University implements an “escalation policy”: The first time a student is asked to leave the room for disciplinary reasons (as per items 4, 5, and 6 above), the student will incur one absence, the second time it will count as three absences, and from the third time onward, any expulsion from the classroom due to disciplinary issues will entail 5 absences.