Art. 6 of the 2008 Regulation on the law applicable to contractual obligations (Rome I) is directed to protect the consumer, as a weaker party, by establishing a special conflict-of-law rule, which, moreover, aims at taking account of the new distance-selling techniques. First of all that provision gives a definition of the consumer contract, which is concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another acting in the exercise of his trade or profession (the professional). Furthermore it provides for the conditions relating to the negotiation of the consumer contract, which are necessary in order to submit such a contract to the special rule contained in the same Art. 6.

The parties’ freedom to choose the applicable law, which as a general rule represents the cornerstone of the Regulation, is strictly limited in order to protect the consumer: it is only allowed if the choice does not deprive the consumer of the protection afforded to him by the provisions (that cannot be derogated from by agreement) of the law which would be applicable in the absence of that choice. In the absence of choice of the law (or in the place of the chosen law, if the latter is less favorable to the consumer) the law applicable to consumer contracts is the law of the country where the consumer has his habitual residence. It may be questioned, however, whether such a solution is always suitable to guarantee the protection of the consumer.
The Field of Application of the Charter of Fundamental Rights for the Member States of the European Union: Again on the Interpretation of Article 51(1)

The growing implementation of the EU Charter of Fundamental Rights in the European national systems makes it useful to define the limits for the Member States’ respect of the rights, observation of the principles and promotion of the application of the Charter, pursuant to Article 51(1).

The immediateness of the conventional phrase, almost peremptory, which limits, for Member States, the application of the Charter only to those situations “when they are implementing Union law” does indeed provoke some interpretative questions, somewhat complex.

Aware of the caducity of an action aimed at defining “borders” among systems, in the context of an “essentially fluid horizon”, the present work intends to proceed to a logical and systematic interpretation of Article 51(1) of the Charter, on the basis of the interpretative principles developed by the Court of Justice both before and after the entry into force of the Treaty of Lisbon.
Concetta Brescia Morra

From the Single Supervisory Mechanism to the Banking Union. The Role of the ECB and the EBA

The agreement on the Single Supervisory Mechanism (SSM) is an important step to create an integrated banking system in Europe. In this article we look at the powers attributed to the ECB, from a legal perspective, in order to evaluate the SSM in the broader European architecture of banking supervision. We focus on three issues: the coexistence of more authorities with the same functions on a different perimeter of intermediaries in Europe, due to the UK decision to remain outside the SSM; the creation of a supervisory authority with weak regulatory powers (since these remain in the hands of European institutions and national legislators); and ambiguity over the competence to carry out early intervention powers. These issues should be addressed to increase the effectiveness of supervision. To this end, first, we need an “umbrella authority” to coordinate supervision among all European countries (those that do and do not adhere to the SSM); this role could be played by the EBA. Second, it is crucial to strengthen the powers of the ECB, in the regulatory field as well as for dealing with an impending crisis.
Aurora Vimercati

Theories and Practices of the European Social Dialogue

This paper focuses on social dialogue at the level of the European Union and compares its theories and practices, from the very origin to the latest developments, with concepts and experiments of industrial democracy as developed in the seventies. This analysis aims at stressing some ambiguities still undermining the making of social regulation in the European Union and their implications on national legal and industrial relations systems.
The article aims to illustrate the EU policy on consumers specifically facing with the injunctions for the protection of consumers’ interests. According to EU legislation (as well as to national legislation), the current mechanism available for ensuring the effective judicial protection is twofold: consumers can bring an action before the judges either personally (individual redress) or through consumer associations (collective redress). Due to the ontological weakness of the individual consumer against the infringement, the EU strengthened the protection of collective interests. The legal ground is Directive 2009/22/EC on injunctions for the protection of consumers’ interests, which, for the sake of clarity and rationality, codifies Directive 98/27/EC which has been amended several times. An in-depth analysis of the “injunctions” shows that this procedural instrument aims at terminating or prohibiting infringements which are contrary to the collective interests of consumers. The approximation of legislation performed by this Directive allows an increase of the effectiveness of these injunctions and a smoother functioning of the internal market. In addition, the research illustrates the two new legislative acts which, since 2013, implemented and partially amended the Directive in force, i.e. Directive 2013/11/EU (Directive on consumer ADR), and Regulation (EU) 524/2013 (Regulation on consumer ODR), as well as the critical remarks about the application of Directive 2009/22 resulting from the Report of the Commission to the European Parliament and the Council COM(2012) 635. The analysis focuses on the obstacles that prevent the injunctive actions to be effective, and on the future trends drafted by the Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under EU Law (2013/396/EU).
After exploring the new procedure for the selection of the President of the Commission provided by the Treaty of Lisbon, which requires him/her to be ‘elected’ by the European Parliament upon a proposal by the European Council, this article criticizes the way in which the legal novelty has been for the first time implemented in practice. It is submitted that the European Parliament major political parties’ choice to disclose in advance their respective candidates to the presidency of the Commission presents two problematic aspects. On the one hand, it might alter the institutional balance between the European Council and the European Parliament envisaged by Article 17 TEU. On the other hand, it might evoke the misleading idea that the parliamentary form of government which characterizes many domestic legal orders is emerging at the EU level.
After years of negotiations, the accession of the European Union to the European Convention of Human Rights seems to be an achievable goal, as the draft of the Accession Agreement was finalized on 5 April 2013. The European Commission has asked the Court of Justice an opinion according to Article 218 TFUE on the compatibility of such agreement with the Treaties. While this procedure is still pending, several issues need investigating. The article focuses on the prior involvement of the Court of Justice in the context of the co-respondent mechanism described in the Accession Agreement, envisaged in order to let the Court assess the compatibility of EU Law with the Convention before the intervention of the Strasbourg Court. Indeed, according to Article 3, para. 6, of the Accession Agreement, in proceedings to which the European Union is a co-respondent, if the Court of Justice has not yet assessed the compatibility with the rights at issue defined in the Convention or in the Protocols, sufficient time shall be afforded for the latter to make such an assessment. The bare wording of the norm raises several questions. In particular, the article considers the issues concerning the procedure to be used to enact such intervention and the need to reform EU treaties accordingly, as well as the impact of Luxembourg judgement on the Strasbourg’s process.
This paper deals with the issue of animal experimentation and animal welfare in the context of international and European legislation. In particular, it focuses on the principle of animal welfare provided by Article 13 of the TFEU and on the major legal issues surrounding animal testing contained in the provisions of Directive 2010/63/EU on the protection of animals used for scientific purposes as, inter alia, the use of alternative methods. Indeed, these represent a key element of the new European legal regime. The EU Member States were required to adopt, by 10th November 2012, the laws, regulations and administrative provisions necessary to comply with the Directive. In this regard, special attention is devoted to the implementation of Directive 2010/63/EU in the Italian legal system. After the implementation of the Directive in Italy through the adoption of the Legislative Decree No. 26 of 4th March 2014, the debate on animal testing has become more acute, also considering the infringement procedure by the European Commission in conformity with Article 258 of TFEU. This is why the author thinks that the legal framework is still evolving within a dynamic framework. The main point seems to be that the choice of the Italian legislator to adopt more stringent national rules to protect the welfare of the animals is evidently inconsistent with the compromise solution which has inspired European legislation.
Adriano Maffeo

Consequences and Remedies for the Breach of the Reasonable Time (*Délai Raisonnnable*) Requirement in Proceedings before EU Courts: Has the Court of Justice Spoken its Last Word?

The right to a trial within a reasonable time is a fundamental pillar of Western legal culture and it has been recognized as part of the EU legal order even before the attribution to the Charter of Fundamental Rights of the same legal value as the Treaties. Moving from this premise, this article examines the consequences of a violation of that right by the European Court of Justice (ECJ) and focuses on the remedies available to the parties affected by the delay.

The opportunity for this inquiry was provided by the ECJ’s recent ruling(s) in the plastic industrial bags cartel case, where departing from earlier judgments such as *Baustahlgewebe* the ECJ ruled that the action for damages against the EU is the only remedy available for a breach of Article 47 of the Charter of Fundamental Rights.

While this solution is acceptable for several reasons, a number of problematic issues still stand especially in view of the EU’s possible accession to the ECHR.