The present article examines the different procedures envisaged by the Italian Constitution for the incorporation of international and European Union law in the Italian law. Art. 10, para.1, of the Constitution, by declaring that the Italian legal order conforms to the rules of generally recognized international law, provides for a mechanism of automatic and complete incorporation of customary international law. Thus customary international law enters into the Italian legal system without any national act of implementation and it is situated at the same level of Italian constitutional norms; yet, in the case of a conflict between a constitutional norm and a customary international law norm, the latter, as a rule, is destined to prevail owing to its special character.

As far as the European Union law is concerned, the Italian Constitutional Court, in order to justify its entrance and primacy in the Italian system, has always resorted to Art. 11 of the Constitution, that declares that Italy consents to limit its sovereignty, in a position of equality with the other States, in favour of a system that guarantees peace and justice among nations. The European Union law is directly applicable by national judges (as well as by administrative authorities), whereas an Italian provision in conflict with that law is not to be applied, without necessity of any decision by the Constitutional Court.

On the contrary, in the Italian Constitution there is no provision that refers to the incorporation of treaties to which Italy is a party. However Art. 117, para.1, according to which legislative power is exercised by respecting international obligations, affords a particular force to treaties in the Italian legal system, in which their position is subordinate only to the Constitution.
The opening of the Italian Constitution towards external sources of law, that is testified by the above provisions, however, is not absolute and without exceptions. According to the jurisprudence of the Italian Constitutional Court, the inclusion of both international and European Union law in the Italian legal system is not allowed where an international or European provision (or an act or a judicial decision) is in conflict with the fundamental principles of the Italian Constitutional system or with the inalienable rights of the individual (the so called counter-limits).
Bruno Nascimbene

Thoughts and Remarks on the Area of Freedom, Security and Justice

It is over the years, since the end of the seventies, that a judicial area (or espace judiciaire) has been taking place to complete the economic and commercial area created by the Treaty establishing the European Economic Community. The method of integration and that of intergovernmental cooperation coexist in the realization of the area. An assessment of what has been achieved cannot, in the first instance, ignore the communitarisation gained only with the Treaty of Amsterdam; secondly, the numerous competences that the Member States have retained and the limits, therefore, that the Union encounters both in offering and in realizing the space. Today the integration is partial, not only in the realization of the area of freedom, security and justice, but in the same articles of the Treaties defining the shared competences between the Union and the Member States (Article 4 (2)). Despite a) the criticisms that the Union’s policy on immigration and asylum causes, and b) the negative opinion on asylum policy and international protection (shortcomings in Dublin Regulation III, failure to relocate asylum seekers), but also on the Schengen cooperation, which is subject to major exceptions from six Member States, it is necessary to wonder whether mutual trust and mutual recognition (which were well “constitutionalized” in the Treaty establishing a Constitution for Europe (Article I-42 (1) (b)) still exist or at least whether they should be reexamined and reconsidered. The articles of the Treaties in force do not provide for such constitutionalisation, but they recognize the essential character of the area of freedom, security and justice (Article 67 (3) and (4), Article 81 (1) and (2), Article 82 1 and 2 TFEU). Mutual trust, together with the protection of fundamental rights, is at the heart of the asylum policy that generates great doubts, also following the guidelines expressed by the Court of Justice whose approach appears more cautious than the ECtHR. The Member States, despite common values and mutual trust,
maintain competences that they do not intend to communitarise and submit to the Court of Justice. The area of freedom, security and justice certainly exists, but it is accomplished slowly and with uncertainty. Integration, on the other hand, has taken place over the time. As stated in the Rome Declaration of 25 March 2017, adopted by the leaders of the twenty-seven Member States and the European Council, the European Parliament, and the European Commission, “European unity started as the dream of a few, it became the hope of the many”. The Member States and the institutions underline the need for joint action: this may also be “at different paces and intensity where necessary, while moving in the same direction, as we have done in the past”.

Giovanni Cellamare

Observations on the Issue of Short Stay Visas (LTV) on Humanitarian Grounds

The EU Institutions have repeatedly stressed that the measures to be taken to combat illegal migration should not impede persons who are entitled to international protection to have access to that protection. The EU Visa Code applies to every third-country national, including refugees. A narrow interpretation of the Visa Code might impede asylum-seekers to gain access to international protection. However, Article 25 of the Visa Code establishes that a LTV ‘shall be issued exceptionally: a) whether the member State concerned considers it necessary on humanitarian grounds for reasons of national interest or because of international obligation’. The general rules concerning the refusal of a Schengen Visa are without detriment to the application of Article 25 (Article 32). The Visa Code does not provide a procedure for the issue of an LTV. Therefore, the Member States concerned apply Article 25 during the run of the ordinary procedure provided by the Code. Article 25 leaves a certain margin of discretion to Member States in assessing the humanitarian grounds, thus whether or not to issue a visa. The discretion left by Article 25 may be exercised by the concerned Member State, in the light of the rights and principles mentioned in Article 6 TEU.
The dissolution of the Civil Service Tribunal due to the 2016 reform of the Court of Justice of the European Union will lead to the disappearance of the General Court’s (GC) Appeal Chamber. This provides the opportunity to develop some general remarks on the GC’s activity acting as judge of appeal. In particular, this article focuses on the role of the GC’s Appeal Chamber in the definition of the conditions of admissibility of applications lodged by EU civil servants. The analysis carried out shows that, without departing from the aim of the pre-litigation procedure, that is to say the amicable settlement of disputes, and in accordance with EU case-law, the GC did extend the conditions of admissibility of EU civil servants’ applications.
Sovereignty Clause and Protection of Human Rights in the Dublin System

A few years after the entry into force of the Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (No. 604/2013) (Dublin III Regulation), the European Commission submitted the Dublin IV Regulation proposal. Moving from the current EU legal framework on asylum, this paper analyzes the role of the so-called sovereignty clause in Dublin III Regulation framework and the new limited role that this clause would take under the Dublin IV Regulation, and highlights how, on the one hand, the proposed provision governing that clause can have no field of application; on the other hand, the sovereignty clause is a key element of the Dublin system and does not undermine the effectiveness and sustainability of this system.
At the end of the 1990s, the European Commission launched the then-considered forward-looking idea of a pan-European private law code merging national legal traditions – both civil and common – and, eventually, replacing them (horizontal approach). The project never became law, and, still today, cross-border transactions are governed by Rome I (contracts) and Rome II (liability claims), namely a Europeanized Private International Law, with the EU law-maker paying most of its attention to harmonize sectors of national private laws (vertical approach). However, the world has changed in the last couple of decades and technological development applied to business – such as FinTech – poses real challenges on the current legal architecture. Very recently, the Commission seems to have partially retraced its steps by claiming to want to build an ever-integrated EU retail market through mandatory contract rules and alternative dispute resolution, key features of the so-called European Regulatory Private Law. Although it might be too early to anticipate how far the EU Commission will go, what it seems to have in mind is overcoming the current “patchwork” of Europeanized Private International Law and sectorially–EU harmonized national laws with a pan-EU network of mandatory contract rules for digital provision of financial services.
Susanna Villani

Reflections on the EU State Aid Regime in Case of Disaster

The increasing severity and frequency of natural and man-made disasters within the EU have prompted the need to establish both operative and financial instruments aimed at supporting the Member States in the phase of response and recovery according to the principle of solidarity. However, as for the restoration of the local entrepreneurship following a disaster, national authorities still rely on State aids which are strongly controlled by the Commission. The present contribution is, thus, aimed at evaluating whether the solidarity expressed by the Union towards the Member States in this field reflects or differs from that embedded by the other existing instruments that may be activated in case of emergency.
Francesco Buonomenna

The Limits of the Economic Governance in the International and European System

Following the 2007-2009 crisis, we have witnessed a series of emergency interventions of supranational origin, by international and supranational organizations as well as bodies of different nature, such as international groups of states. With this series of normative interventions, a “new” phase of reflection began. The present study purports to assess the impact of certain normative solutions on areas other than the ones targeted by the interventions, on both an EU and an international law level.
Oreste Pallotta


Directive 2014/104/EU introduces a harmonized framework on antitrust damages. On the one hand, it contains provisions aimed at ensuring full compensation for damages; on the other hand, it provides rules for the coordination of civil actions with public antitrust proceedings.

This paper analyzes how the Directive has changed the relationship between public and private antitrust enforcement, by requiring national courts to take the public interest into consideration also in disputes between private individuals.

In the author’s opinion, a proof of this changed relationship is to be found in the binding effects, recognized to domestic antitrust authorities’ decisions, in actions for damages brought before national courts under Articles 101 or 102 TFEU.
Claudia Morini

The EU Accession Process of Albania in the Context of the Enlargement Policy of the European Union: Recent Developments

This essay aims to contribute to the current debate on EU membership. Starting from the analysis of the EU Enlargement Policy, it gives account of the different enlargements of the EU. Then, it focuses on the strict conditions for membership established in Article 49 of the Treaty of the European Union, and on the role of each Institution in the accession process. Special attention is given to the accession process of the Republic of Albania, to which the status of ‘candidate country’ was officially recognized on June 27, 2014. The essay tries to shed light on the inherent value of the enlargement policy, despite the deep economic and social crisis that Europe, and the whole world, is experiencing in our time.
The Legal Basis for the Adoption of the EU Acts

Arising from the theoretical analysis of the defect’s classification which could possibly affect the validity of an EU act which may be the ground for legal review in front of the EU judge, the present article examines the essential element of the choice of the legal basis under which the act is adopted in accordance with the procedure prescribed by the Treaty. The paper analyses the ground of decision of the Court of Justice of the EU in case of wrong selection of legal basis or in the case of overlapping of several legal bases. The analysis therefore seeks to classify defects of EU acts, limited to the profiles regarding the legal basis, for systematizing, without being exhaustive, the case law from theoretical perspectives.
Fulvia Staiano

The Principle of Cost Recovery and Access to Water in European Union Law

In the context of the European Union, one of the main pieces of secondary legislation on water – the so-called Water Framework Directive (WFD) – pursues the environmental objective of protecting and restoring all bodies of surface water and groundwater by establishing the principle of recovery of costs of water services in conjunction with the polluter pays principle. National water-pricing policies should then ensure a complete recovery of the costs associated with the extraction and provision of water, to incentivise an efficient use of water and discourage waste. This article enquires on critical areas of implementation of these principles in Member States’ legal orders, with specific reference to issues of economic affordability and quality of water services for private households. To do so, this article will pay a special attention to judicial interpretations of EU law carried out by domestic courts in Italy and France (two Member States where the legal and political debate on the management of water services has been particularly lively in recent years).