Italian Order and EU Order

- The transfer of sovereign powers from the Italian order to the EU order occurred in the absence of a relevant provision in the Italian Constitution and without the Parliament had previously passed a constitutional law.
- Indeed, the Italian Parliament only adopted an ordinary law containing both the authorisation to the President of the Republic to ratify the EU Treaties (since 1951) and the *ordine di esecuzione* of the EU Treaties (again, since 1951) in the Italian legal order, as usually happens with treaties.
- The last ordinary law of the Parliament concerning the EU Treaties is law no. 130 of 2 August 2008 referring to the Lisbon Treaty.

Italian Order and EU Order

- Since EU Treaties have always been executed in the Italian legal order by means of an ordinary law, EU norms in principle should have the same legal rank and force as Italian ordinary laws.
- But → in case of a conflict between Italian law and EU law, does Italian law has a primacy over EU law or does EU law has a primacy over Italian law?
- The answer to this question was for many years at the basis of a strong debate opposing the Italian Constitutional Court and the CJEU.

Italian Order and EU Order

- According to the Italian Constitutional Court, any conflict between Italian law and EU law had to be solved pursuant to the general principle of law expressed with the Latin maxim ***lex posterior derogat priori*** .
- The Italian Constitutional Court reached this outcome in the famous judgment no. 14 of 24 February 1964, *Costa v. ENEL*.
- The CJEU reacted in its judgment of 15 July 1964, case 6/64, *Costa v. ENEL*, that was generated by means of a request for a preliminary ruling deferred to the CJEU by the Italian judge of merits.
- According to the CJEU, any conflict between Italian law and EU law had to be solved pursuant to the primacy of EU law over Italian law because Italy had **voluntarily transferred some competences** to the EU.
- In a nutshell, concerning the relationship between the EU legal order and the national legal orders, the Italian Constitutional Court applied a dualistic conception while the CJEU preferred a monistic one.

Italian Order and EU Order

- The Italian Constitutional Court agreed to a compromise with judgment no. 232 of 30 October 1975, *Industrie chimiche dell'Italia centrale*.
- Here the Constitutional Court identified the legal basis allowing Italy to participate in the EU in Art. 11 of the Italian Constitution, where one can read that "l'Italia […] consente, in condizioni di parità con gli altri Stati, alle limitazioni di sovranità necessarie a un ordinamento che assicuri la pace e la giustizia fra le Nazioni; promuove e favorisce le organizzazioni internazionali rivolte a tale scopo".
- As a consequence, the Italian judge on the merits has the legal obligation to raise before the Italian Constitutional Court a ***questione di legittimità costituzionale*** concerning Italian laws suspected to be in conflict with EU law.
- Only the Italian Constitutional Court can verify the compatibility of Italian laws with EU law, since EU law and the participation of Italy in the EU have been found to be covered by Art. 11 of the Italian Constitution.

Italian Order and EU Order

- The CJEU reacted in judgment of 9 March 1978, case 106/77, *Simmenthal*.
- Any intervention of national constitutional courts of EU Member States in legal affairs concerning EU law cannot be accepted, otherwise the direct, simultaneous, and parallel applicability of provisions contained in the EU Treaties as well as of EU regulations would be threatened and thus the EU building would risk to collapse.
- As a result, **any national judge on the merits in any EU Member State has the legal obligation to directly and immediately set aside any national law being in conflict with EU law**, without any need to raise a *questione di legittimità costituzionale* before national constitutional courts.

Italian Order and EU Order

- An answer arrived from the Italian Constitutional Court with judgment no. 170 of 8 June 1984, *Granital*.
- The Italian Constitutional Court again agreed to a compromise but it officially recognised a dualistic approach in the definition of the relationship between EU law and Italian law.
- According to the Italian Constitutional Court, it is possible to accept that any Italian judge on the merits directly and immediately sets aside any Italian law conflicting with EU law **but that cannot mean that that Italian law is invalid**.
- In other words, it is true that any Italian law conflicting with EU law moves back and is not operative anymore but, at the same time, nobody can deny that that Italian law continues to be effective in all cases where the EU has no competence and thus EU law does not intervene.
- Pursuant to the Italian Constitutional Court such an outcome finds its roots in the need to find harmonisation between two legal orders (EU and Italy) that are different while intersecting with each other, and not in the alleged hierarchical primacy of EU law over national law the CJEU sponsors.

Italian Order and EU Order

- The outcome reached by the Italian Constitutional Court in the *Granital* judgment does not mean that the transfer of sovereignty from Italy to the EU has operated without any condition and that EU law always prevails over any Italian norm with the further result that the Italian judge on the merits shall be forced to set aside Italian norms: there is a limit that will never be overstepped.
- Indeed, after the *Granital* judgment, the Italian Constitutional Court resumed and deepened the so-called *teoria dei controlimiti*, that it had already elaborated in judgment no. 183 of 27 December 1973, *Frontini*.
- **Teoria dei controlimiti → the fundamental principles of the Italian Constitutional order must be always protected → as a result, they always and in any case prevail over EU law.**
- Therefore, if an Italian judge on the merits suspects that a EU provision violates the fundamental principles of the Italian Constitution, he is obliged to refer to the Italian Constitutional Court and raise a *questione di legittimità costituzionale* concerning the Italian law that had been passed in order to executed the EU provision at stake.

Incorporation of EU law in the Italian Legal Order

- According to the Italian **dualistic approach**, the Italian legal order must first incorporate EU law to then let EU law be implemented in Italy.
- The incorporation process is requested not only to implement EU acts that intrinsically are not directly applicable (such as directives or some provisions contained in the EU Treaties), but also to abrogate or modify Italian law conflicting with EU law as well as to acknowledge any CJEU judgment.
- **Before 1989** → The Parliament usually adopted laws delegating the Government to pass a "packet" of legislative decrees implementing EU law in the Italian legal order → This practice was dictated above all by the urgency to implement directives before their "deadlines" and by the need to quickly observe judgments delivered by the CJEU → The legislative power was thus empted in favour of the Government.
- Italian Law no. 86 of 9 March 1989 ***(legge La Pergola)*** was passed in order to renew the general assessment of the incorporation method of EU law in Italy:
  - a leading role was officially attributed to the Parliament;
  - the possibility for Regions to take a part in the process was introduced;
  - an obligation was established to pass every year a law (*legge comunitaria*) to implement any new norm stemming from EU law.

- In Italy law no. 11 of 4 February 2005 (***legge Buttiglione***) – as integrated by law no. 234 of 24 December 2012 – is currently into force.
- The obligation to adopt every year the *legge comunitaria* has been abrogated and replaced by the obligation to pass every year two laws: the *legge di delegazione europea* and the *legge europea*.
- The *legge di delegazione europea* and the *legge europea* are a sort of compromise between the pre-1989 method and the *legge La Pergola* method.

- The ***legge di delegazione europea*** consists in the Parliament passing an ordinary law requesting the Government to adopt all legislative decrees need to rapidly implement:
  - directives whose "deadlines" are approaching;
  - specific acts issued by the European Commission;
  - judgments issued by the CJEU according to the infringement procedure.
- The ***legge europea*** is an ordinary law of the Parliament where any national norm ascertained in the last year as conflicting with EU law is abrogated or modified.
- Sometimes, the contents of the *legge di delegazione europea* and of the *legge europea* can difficultly be distinguished or clearly overlap; in such cases, the *legge europea* should prevail, since it directly involves the Parliament.
- In any case, a*d hoc* acts can be always adopted in Italy in order to incorporate EU law in the national legal order.

Incorporation of EU law in the Italian Legal Order

- The incorporation of EU law in the Italian legal order entails a problem concerning the **balance of allocation of competences between the State and the Regions**, since very often the fields where the EU decides to legislate according to the Italian legal order are connected to competences belonging to the Regions pursuant to the new Title V of the Italian Constitution.
- Thus, the point is to understand if and to what extent the Regions have the obligations to incorporate and implement EU acts and provisions concerning fields that, according to the Italian Constitution, belong to the Regions.
- It is true that, according to the Italian Constitution, the Regions have competences in many fields progressively regulated by EU law but it is also true that, in case of non-execution of EU law, the **responsibility** is to be attributed not to the Regions but to the State as a whole in the sense of international law.

Incorporation of EU law in the Italian Legal Order

- Today, **Art. 117, 5 comma, of the Italian Constitution** states that "[l]e Regioni e le Province autonome di Trento e di Bolzano, nelle materie di loro competenza, partecipano alle decisioni dirette alla formazione degli atti normativi comunitari e provvedono all'attuazione e all'esecuzione degli accordi internazionali e degli atti dell'Unione europea […]"
- Nonetheless, it also adds that Regions operate "[…] nel rispetto delle norme di procedura stabilite da legge dello Stato, che disciplina le modalità di esercizio del potere sostitutivo in caso di inadempienza […]".
- The State (means the Government) may exercise its **power to replace** the Regions anytime the Regions do not operate within the "deadline" provided and only with reference to the territories of the Regions that have not operated.
- Some Regions usually pass every year a ***legge regionale europea*** in order to incorporate in the Regional order any EU act concerning the fields in which the Regions are competent according to the Italian Constitution (Emilia Romagna, Friuli Venetia Giulia, Apulia).

European Citizenship

- European citizenship → **personal legal status** introduced for the first time in the 1992 Maastricht Treaty.
- European citizenship does not consist in a legal and political link between a person and a State (as usually happens with regard to national citizenship) but in a catalogue of specific rights opposable to both the EU and Member States only when EU law is applied
- European citizenship represents a very important legal innovation since it permits to identify the individual in the EU as a legal subject per se and not only as an exclusive economic factor: indeed, before 1992, the European Community used to qualify the individual just as a worker and thus at the same level as other economic factors whose freedom of movement the European Community aimed at granting.

European Citizenship

- Art. 20, Para. 1, TFEU → "[…] **Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship**".
- Therefore, European Citizenship is dual or derivative or ancillary, since EU law does not provide for autonomous criteria in order to acquire or lose European citizenship.
- In other words, the criteria to obtain European citizenship in principle coincide with the criteria set up in any EU Member State to grant national citizenship: such criteria are fixed exclusively according to national orders and cannot be modified pursuant to EU law, as clarified in Declaration no. 2 attached to the Maastricht Treaty.

European Citizenship

- CJEU, judgment of 20 February 2001, case C-192/99, *Manjit Kaur* (EU cannot object to the UK decision that the claimant in a national case was not a British citizen; therefore, that person could not be considered as a European citizen).
- CJEU, judgment of 7 July 1992, case C-369/90, *Micheletti* (Spain cannot object to the right of establishment in the Spanish territory of a person who had both Italian and Argentinean citizenship on the basis of the Spanish law that does not allow double citizenship and thus considers as the only citizenship that of the place of residence, in this case Argentina; indeed, Spain has the obligation to abide by Italian legislation concerning citizenship, since Italy is the EU Member State that has granted national citizenship, thus permitting to obtain as a consequence also the European citizenship).
- CJEU, judgment of 2 March 2010, case C-135/08, *Rottmann* (Germany can revoke the German citizenship obtained through naturalization if the person concerned commits heinous crimes; that person automatically loses also European citizenship).

European Citizenship

- **Right to move and reside freely within the territory of EU Member States (Art. 21 TFEU).**
- Art. 21 TFEU is interpreted according to the theory of e*ffet utile* → it means that, for instance, in order to grant the right to reside in a EU Member State to a kid who is European citizen, the same right shall be attributed even to the mother, who is a Chinese citizen (judgment of 19 October 2004, case C-200/02, *Chen*).
- Therefore, the right to move and reside freely within the territory of EU Member States shall be extended even to relatives of European citizens.
- The point is clarified and detailed in Directive no. 2004/38/CE of 29 April 2004 on the right of EU citizens and their families to move and reside freely within the EU.
- In any case, the exercise of such right is conditioned: pursuant to reasons of public policy, public security, or public health, a EU Member State can issue an order to expel a European citizen or a person who is relative to a European citizen from its territory.

European Citizenship

- **Every European citizen residing in a Member State of which he/she is not a national shall have the right to vote and to stand as a candidate at municipal elections and at elections for the European Parliament in the Member State in which he/she resides under the same conditions as nationals of that State (Art. 22 TFUE).**
- The principle of non discrimination among European citizens because of nationality applies in the case of political rights.
- However, directive no. 94/80/CE of 19 December 1994 lays down detailed arrangements as well as the possibility to introduce exceptions for the exercise of the right to vote and to stand as a candidate in municipal elections by European citizens residing in a Member State of which they are not nationals → for instance, in Italy only Italian citizens can stand as a candidate for the role of major at municipal elections.
- No exception is permitted with regard to the elections for the European Parliament, since EU law must grant the participation of European citizens to EU political life and the role of the European Parliament as a supranational organ representing the interests of all European citizens must be emphasised.

- **Every European citizen shall have the right to petition the European Parliament (Art. 24, Para. 2, TFUE – procedural details are contained in Art. 227 TFUE).**
- The content of the petition may vary from a request for information on the position of the European Parliament concerning a given problem to suggestions about EU policies in a specific field, from a proposed solution for a dispute to the initiative for a parliamentary debate on current sensitive topic.
- The right to petition can be extended, pursuant to Art. 227 TFUE, to legal persons and to all human persons residing in the territory of a EU Member State even if they are not European citizen.
- The only condition to be observed is that the topic of the petition must directly and individually concern its author.

- The European Parliament has created a Commission whose task is to receive and examine petitions.
- The Commission has three option after scrutinizing the petition:
  - write a not-binding public report and definitely close the procedure;
  - submit the petition to the parliamentary commission that is competent *ratione materiae*;
  - submit the petition to a plenary session of the European Parliament.
- The competent parliamentary commission or the plenary session of the European Parliament can pass resolutions, ask interrogations to the other European Institution or even propose to the European Commission to start an infringement procedure against the State concerned.

- **Every citizen of the Union may apply to the Ombudsman (Art. 24, Para. 3, TFUE – the Ombudsman is established according to Art. 228 TFUE).**
- The Ombudsman is an individual organ entrusted with the task to promote good administration in the EU.
- He/she is elected by the European Parliament at the beginning of each legislature and stays in office for 5 renewable years.
- He/she is an independent organ and does not have to respond of any action before the European Parliament, only a judgment delivered by the EUCJ can force him/her to resign.
- His/her action can be activated according to:
  - a denunciation filed by a European citizen;
  - a denunciation filed by a legal person residing in the EU;
  - a request deposited by a Member of the European Parliament;
  - *proprio motu*.

European Citizenship

- He/she cannot object to situations concerning national public administration but only to situations concerning European public administration, the only exception being European judiciary administration.
- Cases of "bad administration" are not compulsorily defined in EU law but, in any case, it is possible to make reference to the European Code of Good Administrative Behaviour that the European Parliament adopted in 2001.
- The Ombudsman leads investigations and tries to find an accommodation between the complainant and the European Institution or organ concerned.
- He/she can adopt a report containing recommendations for the European Institution or organ concerned, that in a given period should find a remedy to the ascertained case of "bad administration" and forward a report to the Ombudsman.
- If the European Institution or organ concerned does not forward any report or forwards an inconclusive report to the Ombudsman, the latter can decide to refer the case to the European Parliament.

European Citizenship

- **Every European citizen shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State (Art. 23 TFUE).**
- European citizens do not benefit from the direct protection of the EU or the assistance of the delegations of the European External Action Service (EEAS), they only benefit from the subsidiary protection of EU Member States when their national State is not diplomatically represented abroad.
- Art. 23 TFUE codifies the traditional institute of international representation, meaning that a State can assist nationals of another abroad if a relevant agreement has been stipulated between the two States.
- Cases of protection concern daily life, therefore accidents, illness, death, arrest, imprisonment, repatriation, process, and so on.
- If a EU Member States assists the citizen of another EU Member State abroad, the former has the obligation to monetarily refund the latter.
- This last point makes it crystal-clear that Art. 23 TFEU proclaims just a symbolic and not real element of European integration and, at the same time, emphasises the economic spirit of the EU.

European Citizenship

- One million of European citizens together can exercise their right of popular initiative (Art. 24, Para. 1, TFUE).
- Every European citizen has the right to use his/her national language when communicating with the European public administration.
- Every European citizen has the right to read all documents issued by European Institutions and organs according to the procedure dictated by the relevant internal regulation, the only exception being documents marked as confidential.

- EU Charter of Fundamental Rights.

- And what about the European Convention on Human Rights???