

# EUROPEAN UNION LAW

## THE BATTLE FOR SUPREMACY: A CLASH OF COURTS

e-mail: [mlamanna@liuc.it](mailto:mlamanna@liuc.it)

# Scope and Extent of the Principle of Supremacy of EU Law

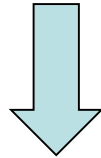
1) THE EU PERSPECTIVE

Vs.

2) THE NATIONAL PERSPECTIVE

# The EU Perspective on the Scope and Nature of EU Law Supremacy

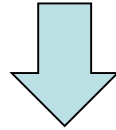
*Absolute* supremacy



*The **whole** of EU law  
prevails over the **whole** of  
national law*

# National Perspective of Member States

*Relative* supremacy

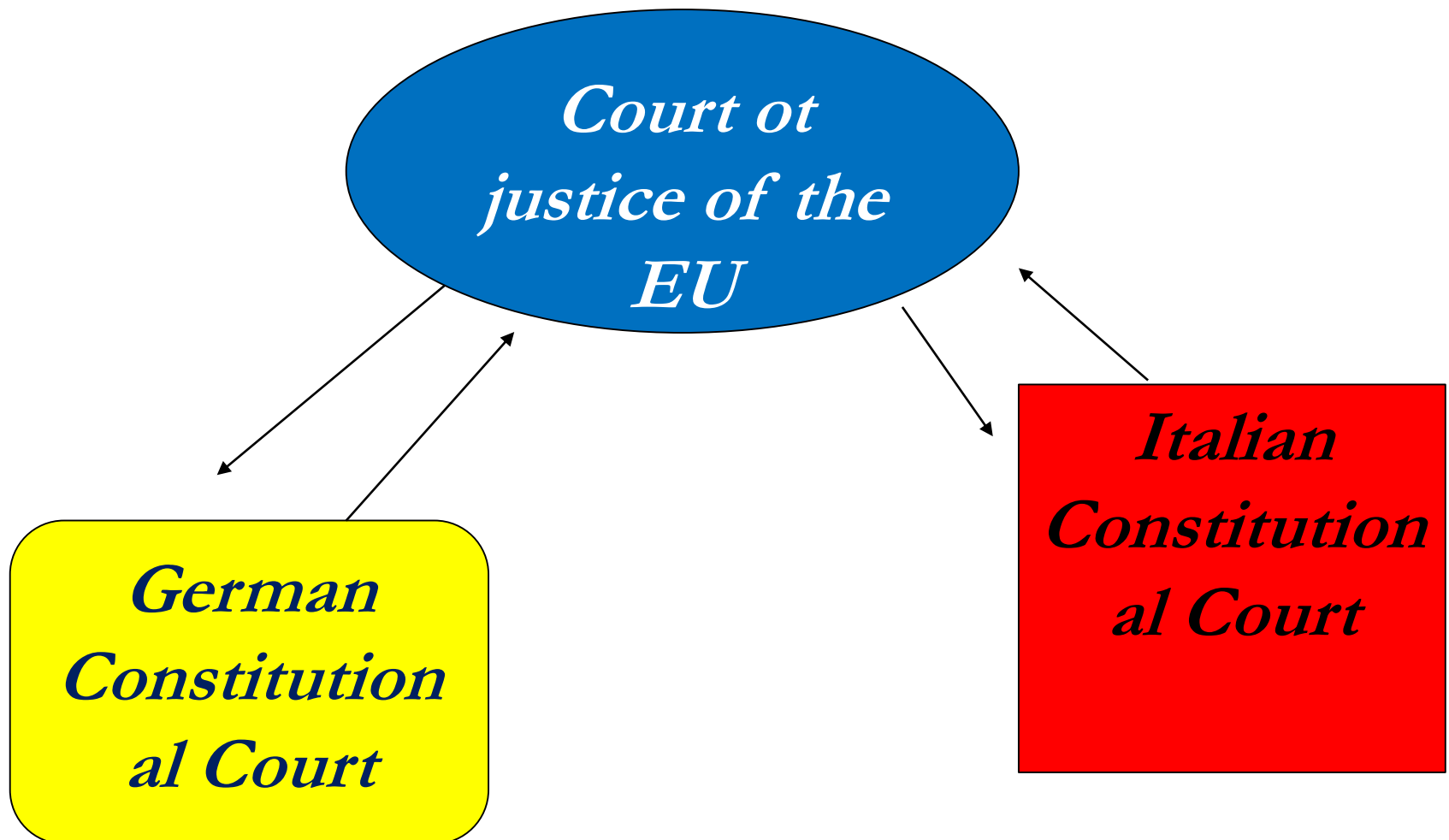


*The supremacy of EU Law is admissible only with  
reference to **national legislation***

+

*It is granted and **limited by constitutional law***

# The Main Actors in the Evolution of the Interpretation of the Supremacy Principle: the *Dialogue*



# The Main Issues Faced through the Dialogue Between the ECJ and Constitutional Courts of Member States over the Scope of the Supremacy Principle

- The protection of Fundamental Rights
- The Review of *ultra vires* Acts
  - The Defence of National Constitutional Identities

# The Long Path towards a Balanced Solution in the German Legal Order....

- Solange (I), 1974
- Solange (II), 1987
- Maastricht Decision, 1994
- Lissabon Urteil, 2009
- OMT, 2016

## ...and in the Italian Legal Order

Now art. 117 Cost has settled the matter once and for good....but how did we get here?

The Setting: EU treaties received via statutes  
(*legge ordinaria*)



**they could be amended by a subsequent act  
having the same legal footing!**

*lex posterior derogat priori*

*lex specialis derogat generali*



# The Constitutional Setting was Incompatible with the Principle of Supremacy as Envisaged by the ECJ in its *Costa* jurisprudence

Absolute Supremacy of EU Law vs.  
Treaties received as *legge ordinaria*

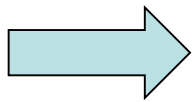
**A Way Out: art. 11 Cost.  
C. Cost., *Frontini*, 1973**

# The Constitutional Court's Case-Law on the Supremacy of EU Law: Meeting Halfway or Gradually Accepting the ECJ's Way?

- *Costa c. ENEL*, 1964
- *Frontini*, 1973
- *ICIC*, 1975



*Constitutionality review*

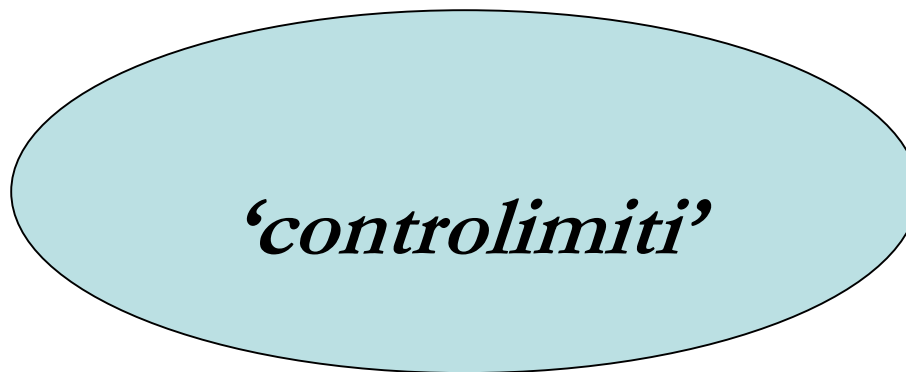


***ECJ, Simmenthal,  
1978***

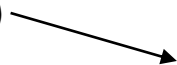
- *Granital*, 1984

# Another Chapter in the Neverending Story?

## The *Taricco* Case



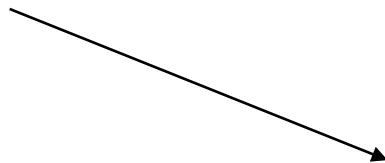
ECJ, *Taricco*, 2015 (art. 325 TFEU)



C. Cost., Request for a Preliminary Ruling on the Scope  
and Content of art. 325 TFEU, 2016



ECJ, *Taricco bis*, 2017



C. Cost., Inconstitutionality: *Taricco I*  
inapplicable in the case at hand, 2018