

**Conflicts between EU law and National Constitutional Law
in the Field of Fundamental Rights**

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I. Introduction

Reasons for conflicts

II. Basic Types of Conflicts

A. EU level of protection higher than and incompatible with national constitutional law (see, e.g., C-285/98, *Kreil* – cf. C-441/14, *Dansk Industri*)

B. National level of protection afforded by constitutional law greater than and incompatible with EU law (see, e.g., C-399/11, *Melloni* – cf. C-617/10, *Åkerberg Fransson*)

III. Main Relevant Provisions of Primary EU Law

A. TEU, Article 6(3) (see, e.g., C-387/02, *Berlusconi* and C-144/04, *Mangold*)

B. TEU, Article 4(2) (see, in particular, C-208/09, *Sayn-Wittgenstein* – cf. C-58/13, *Torres*)

C. EU Charter, Article 53 (see C-399/11, *Melloni*)

IV. Avoiding, Minimising and Resolving (Potential) Conflicts : the National Courts' Perspective

A. Interpreting constitutional law in harmony with EU law, following a preliminary reference to the CJEU [see, in particular, Spanish Constitutional Court, judgment 26/2014 of 13.2.2014, following the *Melloni* judgment of the CJEU)

B. Interpreting EU law in conformity with national constitutional law, in the context of “constitutional identity” review, namely in light of inalienable constitutional rights and fundamental constitutional principles (see German Constitutional Court, order of 15 December 2015, 2 BvR 2735/14)

C. Convincing the CJEU, through a preliminary reference, to qualify/modify its existing case law in a way that affirms the compatibility of a national constitutional rule with EU law [see C-42/17, *M.A.S. & M.B. (Taricco II)*]

D. Deviating from EU law, as interpreted by the CJEU (see Danish Supreme Court, *Ajos* judgment of 6.12.2016, following the judgment of the CJEU in case C-441/14, *Dansk Industri* and Czech Constitutional Court, judgment of 31.1.2012, Pl. ÚS 5/12, following the judgment of the CJEU in case C-399/09, *Landtová*)

V. Conclusion

Principle of conflict avoidance, through converging interpretational approaches, and need for constructive dialogue between national courts and the CJEU