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**Jean Monnet Network EUNAP**

**European Union-Asia Pacific Dialogue:**

**promoting European integration and mutual knowledge across continents**

610740-EPP-1-2019-1-ES-EPPJMO-NETWORK610740-EPP-1-2019-1-ES-EPPJMO-NETWORK

**Workshop**

**REGULATORY MODELS AND PRINCIPLES THROUGH THE PRISM OF  
EUROPEAN AND ASIA-PACIFIC LEGAL TRADITIONS AND THEIR JURIDICAL  
CULTURE**

**MODELLI E PRINCIPI NORMATIVI ATTRAVERSO IL PRISMA DELLE  
TRADIZIONI GIURIDICHE EUROPEE E DELL'ASIA-PACIFICO E DELLA LORO  
CULTURA GIURIDICA**

**December 1 and 2, 2022**

**LUM University**

**Torre A. Rossi - 5th floor, Room 2**

**Casamassima (BA)**

**Scientific Coordination of the Workshop**

Francesco Ricci (Scientific Coordinator of the EUNAP Project in the LUM University), Francesco Alicino, Mirko Abbamonte, Inmaculada Herbosa Martínez

**Info**

Donato Maria Matera (matera.phdstudent@lum.it)

Flavia Accoto (accoto.phdstudent@lum.it)

**The workshop will be also live-streamed via Google Meet.**

**Should you wish to attend, please register at <https://forms.gle/B9F4utbXnKfwSDEFA>**



## The Project

The **Jean Monnet Network «European Union-Asia Pacific Dialogue: promoting European Integration and Mutual Knowledge across Continents" (EUNAP)»** provides a multidisciplinary academic platform on European Union (EU)-Asia Pacific relations.

Partners in the Network are the School of Law of the Universidad Deusto Bilbao - Spain (Network Lead Partner), the University of Canterbury - New Zealand (National Centre for Research on Europe), the Department of Legal and Business Studies of the LUM G. Degennaro University, the University of Wuhan - China (School of Political Sciences and Public Administration) and Toyo University - Japan (Faculty of Global and Regional Studies).

Asia Pacific is of strategic importance to the EU. The region hosts the fastest-growing economies and the world's largest populations while aspiring to manage security challenges. On its side, the EU remains the largest trading partner for most of Asia Pacific countries. Increasing interdependence between the two regions provides crucial opportunities and critical challenges that demand an in-depth understanding and specialised knowledge of current interregional affairs.

EUNAP project aims to reinforce mutual knowledge by stimulating multidisciplinary analysis and joint research involving, not only academics, but also civil society and policy makers in both regions. As an academic platform, the network will disseminate major scientific outputs on EU-Asia Pacific dialogue in participating institutions and across the world.

<https://eunap-deusto.es>

## Il Progetto

La **Rete Jean Monnet «Dialogo Unione Europea-Asia-Pacifico: promuovere l'integrazione europea e la conoscenza reciproca attraverso i continenti" (EUNAP)»** fornisce una piattaforma accademica multidisciplinare sulle relazioni tra Unione Europea (UE) e Asia-Pacifico.

Partecipano al Network la School of Law dell'Universidad Deusto Bilbao - Spagna (Capofila della Rete), l'Università di Canterbury - Nuova Zelanda (National Centre for Research on Europe), il Dipartimenti di Scienze giuridiche e dell'Impresa dell'Università LUM G. Degennaro, l'Università di Wuhan - Cina (School of Political Sciences and Public Administration) e l'Università di Toyo - Giappone (Faculty of Global and Regional Studies).

L'Asia-Pacifico riveste un'importanza strategica per l'UE. La regione ospita le economie in più rapida crescita e le popolazioni più numerose del mondo e aspira a gestire le sfide della sicurezza. Da parte sua, l'UE rimane il principale partner commerciale per la maggior parte dei Paesi dell'Asia-Pacifico. La crescente interdipendenza tra le due regioni offre opportunità cruciali e sfide critiche che richiedono una comprensione approfondita e una conoscenza specialistica degli attuali affari interregionali.

Il progetto EUNAP mira a rafforzare la conoscenza reciproca stimolando l'analisi multidisciplinare e la ricerca congiunta che coinvolge non solo gli accademici, ma anche la società civile e i responsabili politici di entrambe le regioni. Come piattaforma accademica, la rete diffonderà i principali risultati scientifici sul dialogo UE-Asia-Pacifico nelle istituzioni partecipanti e in tutto il mondo.

<https://eunap-deusto.es>



**Sessione 1 - 1 Dicembre 2022, h. 16:00**

# **Valori, principi e regole per un diritto privato dell'area UE e dell'Asia-Pacifico**

**Indirizzi di saluto**

**Antonello Garzoni**

Magnifico Rettore dell'Università LUM (Casamassima)

**Presiede**

**Roberto Martino**

Università G. d'Annunzio di Chieti-Pescara

**Intervengono**

**Francesco Ricci**

Università LUM (Casamassima)

**Valori, principi e regole per un diritto comune dei contratti nell'area UE e dell'Asia-Pacifico**

**Inmaculada Herbosa Martínez**

Università Deusto di Bilbao

**Valori, principi e regole della protezione dei consumatori**

**Donato Maria Matera**

Università LUM (Casamassima)

**Valori, principi e regole della protezione dei dati personali**

## **Abstract**

I principi giuridici caratterizzano sempre più il diritto privato moderno. A causa della complessità della nostra società, così come degli sviluppi tecnologici ed economici, non è possibile per i sistemi giuridici risolvere tutti i conflitti privati con disposizioni normative specifiche. Pertanto, il ruolo delle norme aperte - come i principi e le clausole generali - sta diventando sempre più significativo.

L'importanza di queste norme non emerge solo nelle transazioni nazionali, ma riguarda soprattutto le pratiche commerciali transfrontaliere. Per questo motivo, negli ultimi anni si sta assistendo a un processo di armonizzazione dei principi, al fine di rispondere alle esigenze di un diritto globalizzato. Da una prospettiva europea, l'elaborazione di «Principi, definizioni e regole modello di diritto privato europeo - Progetto di quadro comune di riferimento (DCFR)» testimonia questa tendenza. Da un punto di vista globale, vanno presi in considerazione i «Principi UNIDROIT». Inoltre, questi due insiemi di principi mostrano un secondo profilo di rilevanza dei principi giuridici: la genesi di disposizioni specifiche deriva da principi che possono essere più facilmente condivisi e uniformi (come le norme modello del DCFR). Infatti, è più facile costruire una convergenza sui principi.

Partendo da questi punti, come contributo alla cooperazione all'interno dell'area europea e dell'Asia-Pacifico, la prima sessione del workshop indagherà, da un lato, come nasce una disposizione dell'ordinamento giuridico: non da un punto di vista formale, volto a individuare se essa viene introdotta da un'assemblea rappresentativa come il Parlamento, o creata nelle aule di giustizia come precedente da rispettare ogni volta che si verifica lo stesso tipo di conflitto di interessi; ma piuttosto da un punto di vista sostanziale che parte dall'individuazione degli interessi privati e/o pubblici in conflitto, passa attraverso il bilanciamento delle opposte esigenze di tutela, ricava i principi che devono ispirare le soluzioni alle controversie e li concretizza in disposizioni precettive idonee a realizzarli.

D'altra parte, la prima sessione si concentrerà anche su come soluzioni normative condivise si siano sviluppate a partire da tradizioni e valori in alcuni casi molto diversi. È il caso dell'esperienza europea della CECA, poi della CEE, poi della CE e infine dell'UE, che è partita da una dimensione economica e, tra successi e battute d'arresto, è passata a una dimensione politica più pervasiva. Da notare anche l'attenzione ai modelli europei da parte dei Paesi dell'Asia-Pacifico (come, ad esempio, Cina e Giappone) nella codificazione dei rapporti di diritto privato in generale e in alcune materie particolari come i contratti.

**Section 1 - December 1st 2022, h. 16:00**

# **Values, Principles and Rules for an EU and Asia Pacific Private Law**

**Welcome addresses**

**Antonello Garzoni**

Rector of the LUM University (Casamassima)

**Chair**

**Roberto Martino**

G. d'Annunzio University of Chieti-Pescara

**Speakers**

**Francesco Ricci**

LUM University (Casamassima)

**Values, principles and rules for a common contract law in EU and Asia Pacific**

**Inmaculada Herbosa Martínez**

Deusto University of Bilbao

**Values, principles and rules of consumer law**

**Donato Maria Matera**

LUM University (Casamassima)

**Values, principles and rules of data protection**

## **Abstract**

Legal Principles increasingly characterize modern private law. Due to the complexity of our society, as much as to the technological and economic developments, it is not possible for legal systems to solve all private conflicts with specific regulatory provisions. Therefore, the role of open rules - such as principles and general clauses - is becoming more and more significant.

The importance of these rules not only emerges in domestic transactions, but especially affects cross-border trade practices. For this reason, in recent years, a process of principle-harmonization is taking place, in order to respond to the needs of a globalised law. From a European perspective, the elaboration of «Principles, Definitions and Model Rules of European Private Law - Draft Common Frame of Reference (DCFR)» testify this trend. From a global perspective, the «UNIDROIT Principles» should be taken into account. Moreover, these two sets of principles show a second profile of relevance of legal principles: the genesis of specific provisions derived from principles which can be more easily shared and made uniform, (such as model rules in the DCFR). In fact, it is easier to build a convergence on principles.

Starting from these points, as a contribution to cooperation within the European and Asia Pacific area, the first session of the workshop will investigate, on the one hand, how a provision of the legal system comes into being: not from a formal point of view aimed at identifying whether it is introduced by a representative assembly such as a Parliament, or created in the courtrooms as a precedent to be respected every time the same type of conflict of interest occurs; but rather from a substantive point of view that starts from the identification of conflicting private and/or public interests, passes through the balancing of opposing needs for protection, derives the principles that must inspire the solutions to disputes and concretises them into precise provisions suitable for realising them.

On the other hand, the first session will also be focused on how shared regulatory solutions have developed from traditions and values that are in some cases very different. Such is the case of the European experience of the ECSC, then EEC, then EC and finally EU, which started from an economic dimension and, between successes and setbacks, moved towards a more pervasive political dimension. Also noteworthy was the attention paid to European models by Asia Pacific countries (such as, for example, China and Japan) when codifying private law relations in general, as well as in some particular subjects such as contracts.



Section 2 - December 2nd 2022, h. 9:30

# The Rule of Law and the Constitutional Principles through the Prism of European and Asia-Pacific Legal Tradition

Chair

**Antonello Tarzia**

LUM University (Casamassima)

Speakers

**Andrea Pin**

University of Padua

**The Rule of Law in 21st century Europe: Cultural and Institutional Challenges?**

**Lauren Bland**

University of Canterbury

**Partnerships for Resilience: An Interregional Approach to Climate Crisis Resilience Building in the Pacific**

**Francesco Alicino**

LUM University (Casamassima)

**Religious Matrices of Constitutional Democracies**

## Abstract

Constitutional democracy is a result of a long historical process, whose matrices can be traced back to Europe in at least the late middle ages. The evolution of its political rationality (the ways in which lawmakers have from time to time rationalized their ideas and actions), though not always consistent with numerous ruptures and deep-seated contradictions, presents some constants. Some of these constants refer to the rule of law, secularism, and fundamental rights, including the right to be equal and equally free before the law. While taking modular forms, which depends on the space-time specific cultural background, these principles have gradually expanded across Western legal systems and beyond, with varying degrees of success and specialization. Gathered from the history and aspirations of constitutionalism, the section of this conference might be helpful to clarify the issue. In particular, this section aims at understanding the different regulatory models adopted in the European and Asia-Pacific areas when referring to rule of law, the secularity of the state, and the principle of equality, not only from a comparative perspective, but also from a cultural and functional point of view. That becomes even more interesting in the light of recent alarming problems, including the COVID-19 pandemic outbreak, immigration, religion-inspired terrorism, the Russia-Ukraine conflict, the dramatic rise of energy prices, which are stirring a sense of fear and insecurity at the glocal (i.e. local and global) level.



Section 3 - December 2nd 2022, h. 11:30

## **International Arbitration in the European and Asia-Pacific Context. Models, Regulations and Institutions**

**Chair**

**Antonello Tarzia**

LUM University (Casamassima)

**Speakers**

**Aniello Merone**

UER - European University of Rome

**International Sports Arbitration and Due Process: Impartiality and Independence of the Court of Arbitration for Sport from the Olympics Games of Beijing 2008 to Tokyo 2020**

**Mirko Abbamonte**

LUM University (Casamassima)

**Provisional Measures of Arbitrators in the European and Asia-Pacific Context: A Comparative Analysis**

### **Abstract**

There are two great social and cultural models developed by human civilization for the resolution of disputes. According to the Eastern tradition, emblematically reflected for example in Chinese ideology, the resolution of disputes is not the exclusive task of the judge. In Confucian culture, disputes between private individuals are resolved on the basis of patriarchal authority and, therefore, within the family, village, etc. The criterion of judgment is not represented by the law, but by moral precepts and customs. Therefore, in the Chinese cultural tradition, conciliation, mediation and arbitration were and still are privileged. Otherwise, the Western tradition has its roots on state jurisdiction. In this different context, arbitration and other dispute resolution tools have consequently come to play a secondary role. In recent times, however, a significant rapprochement has begun between the two opposing models, so the differences between these opposite models, if appreciable from a historical and conceptual point of view, has been reduced in a relevant way, also by the effect of globalization and the increase of international trade.

Starting from these premises, the objectives of the third section of the workshop are the following: a) to analyze the most recent trends of arbitration in the European and Asian Pacific legal context; b) to compare, always taking into account the different social and cultural traditions, the main national and international regulatory models, in order to discover which are the common profiles and the differences, as well as strengths and weaknesses; c) to explore possible future developments also in a *de iure condendo* perspective.