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Introduction-The European Union in 2011: Post-Lisbon Progress and the Eurozone Crisis

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INTRODUCTION

THE EUROPEAN UNION IN 2011: POST-LISBON PROGRESS AND THE EUROZONE CRISIS

During 2011 and early 2012, the European Union certainly made substantial progress toward achieving its goal of “an ever closer union among the peoples of Europe.”¹ The 2009 Treaty of Lisbon’s improvements in the operational structure of its institutions—the Commission, Parliament, Council, European Council, and Court of Justice—became fully effective without difficulty. The political institutions cooperated efficiently in the adoption of new important legislation to promote the internal market, while the Court of Justice issued striking and novel judgments promoting basic rights and citizenship of the Union. Looking only at this picture, the European Union’s progress is undeniable.

But there is unfortunately another picture when we turn to the economic sphere. After the severe recession that hit most of the European Union in 2008–2009, 2010 provided only a brief respite. In 2011 and early 2012, many nations in the Eurozone fell into a severe recession, often with severe risks of banking failures. One effort after another by the European Central Bank (“ECB”), the European Council, the Commission, and the International Monetary Fund to bail out Greece, Ireland, Portugal, and later Spain and Italy, have thus far not met with success. The ongoing crisis has occasioned many predictions of the Eurozone’s collapse in the media and even among serious and sober economists. Regrettably, there has been virtually no mention of the great value provided by the ECB’s control of Eurozone monetary policy for the last decade, nor of the many benefits the use of the euro as a sole currency has brought to commercial operators and private citizens since 2002.

1. Treaty Establishing the European Economic Community, Mar. 25, 1957, pmbl., 298 U.N.T.S. 11, 14.

This annual EU law symposium of the *Fordham International Law Journal* reflects these developments in a variety of excellent articles by leading academic contributors.

In view of the Treaty of Lisbon's significant grant of the "same legal value as the Treaties" to the Charter of Fundamental Rights of the European Union ("Charter"), the symposium includes two articles concerning basic human rights. Judge Thomas von Danwitz of the Court of Justice of the European Union ("Court of Justice" or "Court"), who is also a leading German academic expert on the European Union, has authored with Katherina Paraschas "A Fresh Start for the Charter: Fundamental Questions on the Application of the European Charter of Fundamental Rights." Their essay provides a sophisticated analysis of the impact of the Charter on EU and national law, of the distinction between rights and principles in the Charter text, of its relation to the European Convention of Human Rights, and other issues. Professor Elizabeth Defeis, a frequent writer on basic rights topics, has provided "Human Rights, the European Union, and the Treaty Route: From Maastricht to Lisbon." Her essay provides a fascinating historical survey of basic rights protection by early judgments of the Court of Justice, the impact of the Maastricht Treaty, the adoption of the EU Charter in 2000, and the ultimate grant of legal effect to the Charter by the Treaty of Lisbon.

Intrinsically related to basic rights protection is the prohibition of discrimination in employment based upon nationality or gender, pursuant to long-standing Treaty provisions and legislation, augmented by the prohibition of discrimination in employment based upon race or ethnic origin, religious beliefs, age, disability, and sexual orientation pursuant to legislation adopted in 2002. Philippa Watson, a UK solicitor expert in employment law, has authored "Equality Between Europe's Citizens: Where Does the Union Now Stand?," an authoritative analysis of the relevant Treaty provisions, legislation, and prominent Court judgments that have already made significant progress in the achievement of equality in employment.

Two articles concern the Monetary Union and the Euro-crisis. A leading UK international financial and monetary expert, Professor Rosa Lastra, has published "The Evolution of

the European Central Bank.” Her essay analyzes the monetary objectives and operational functions of the ECB since its creation in 1998, with a valuable review of a crucial weakness: the absence of any ECB competence to supervise the prudent management and financial stability of banks and other financial institutions. Complementing this is “Transparency and Financial Regulation in the European Union: Crisis and Complexity,” by Professor Caroline Bradley, another financial law expert. Professor Bradley carefully examines the level of transparency in EU regulation of banking and securities markets, pointing to serious operational issues, and links this to the current Eurozone crisis.

Professor Fernanda Nicola has authored “Invisible Cities in Europe,” a decidedly novel essay examining how a variety of EU legislative measures and court judgments that are principally intended to further integration within the internal market also have produced significant effects upon municipal and local government, even though in theory, pursuant to the “fiction of nonintervention,” EU courts are not supposed to intervene in state-local affairs. The essay persuasively contends that some judgments strengthen national governments at the expense of municipal and local authorities, while in contrast in other sectors the case law reshapes and augments the power of cities versus central and regional governments.

UK professor Erika Szyszczak has provided an innovative study, “Building a Socioeconomic Constitution: A Fantastic Object?,” which analyzes fundamental socioeconomic values set forth in the Treaty of Lisbon in the context of a historic evolution, from the late 1980s to the present, reviewing relevant policies, programs, legislative initiatives, and Court case law.

Finally, Professor Tracy Kaye, a rare international tax law expert, has provided “Direct Taxation in the European Union: From Maastricht to Lisbon.” A good argument can be made that harmonization of the Member State direct tax regimes, especially corporate income tax rules, would significantly promote an integrated marketplace. Unfortunately, the Treaty requirement that the Council act unanimously to achieve this has always blocked legislative action. Professor Kaye indicates the influence of Court of Justice case law directed against discriminatory national direct tax rules and reviews European

Commission efforts to reduce national barriers through “soft law” policies and cooperative relations between Member States.

Viewed as an ensemble, this series of diverse essays greatly enriches understanding of the evolution of EU law, both in its further progress and in its confrontation with the current economic crisis.

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