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## Building a Socioeconomic Constitution: A Fantastic Object?

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# BUILDING A SOCIOECONOMIC CONSTITUTION: A FANTASTIC OBJECT?

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*In the boom phase the European Union was what the British psychologist David Tuckett calls a “fantastic object”—an unreal but attractive object of desire. To my mind, it represented the embodiment of an open society—another fantastic object. It was an association of nations founded on the principles of democracy, human rights, and the rule of law that is not dominated by any nation or nationality. Its creation was a feat of piecemeal social engineering led by a group of far-sighted statesmen who understood that the fantastic object itself was not within their reach. They set limited objectives and firm timelines and then mobilized the political will for a small step forward, knowing full well that when they accomplished it, its inadequacy would become apparent and require a further step.<sup>1</sup>*

#### INTRODUCTION

The ratification of the Treaty of Lisbon (“Treaty”) in 2009 was heralded as a new era. It was anticipated that the Treaty would usher in a qualitative change to policymaking in Europe. This would be achieved by rebalancing, or even recalibrating, the previous economic priorities found in earlier treaties with a set of social aims and values set out in Articles 2 and 3 of the Treaty on European Union (“TEU”), tilting the European Union towards a social, as well as a liberal economic, constitution. The change of focus was not only attributable to a showdown between an Anglo-Saxon (liberal economic) versus French (prointerventionist) model for integration but also acknowledged the changes that have taken place in the European Union since the 1993 Treaty of Maastricht.<sup>2</sup>

This Essay examines how the Treaty contributes to the evolution of a socioeconomic constitution for the European

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1. George Soros, *How to Save the Euro*, N.Y. REV. BOOKS, Jan. 20, 2012, available at <http://www.nybooks.com/articles/archives/2012/feb/23/how-save-euro/?pagination=false>.

2. See Malcolm Ross, *A Healthy Approach to Services of General Economic Interest? The BUPA Judgment of the Court of First Instance*, 34 EUR. L. REV. 127, 140 (2009); see also DAGMAR SCHIEK, *ECONOMIC AND SOCIAL INTEGRATION IN EUROPE: THE CHALLENGE FOR EU CONSTITUTIONAL LAW* (2012).

Union, resulting in a polity that contrasts dramatically with the original aims of the founding fathers of the European Economic Community (“EEC”). It also is shown that the economic backdrop to these changes has allowed economic and competitiveness issues to continue to dominate the policy agenda, and values of efficiency, modernization, and a “more economic approach” have permeated areas of social policy normally within the competence of the Member States. Cutbacks in public expenditure and other austerity measures create a test for the measure and effectiveness of the new era of socioeconomic values.

### I. NEW VALUES

The most fundamental change in direction for the European Union is found in the principles underpinning the internal market concept. In the Treaty Establishing the European Community (“EC Treaty”), the internal market was to be achieved through the guiding principle in Article 4 of an “open market economy with free competition.”<sup>3</sup> In contrast, the 2009 Treaty of Lisbon alters this focus to a “social market economy” with a set of new values of the European Union.<sup>4</sup> These values are established in Articles 2 and 3 of the TEU with clear indications of the role and value of solidarity in Europe, adding to the traditional values of liberal constitutionalism introduced by the 1993 Treaty of Maastricht. Articles 2 and 3 TEU are enhanced by a number of horizontal clauses in the Treaty on the Functioning of the European Union (“TFEU”), which serve to entrench specific social values into all areas of policy of the European Union, binding the socioeconomic dimension *and* acting as a public emblem of the European Union.<sup>5</sup>

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3. Consolidated Version of the Treaty Establishing the European Community art. 4, 2006 O.J. C 321 E/37, at 45.

4. Consolidated Version of the Treaty on European Union art. 3(3), 2010 O.J. C. 83/13, at 17 [hereinafter TEU post-Lisbon].

5. *Id.* arts. 2–3, at 17; *see, e.g.*, PAUL CRAIG, *THE LISBON TREATY: LAW, POLITICS, AND TREATY REFORM* 311–13 (2010) (arguing that the new values of human dignity and minority rights, alongside pluralism, nondiscrimination, tolerance, justice, solidarity, and equality between women and men contained in Article 2 of the Treaty on European Union (“TEU”), are values related to social, rather than liberal, constitutionalism).

The new values are reinforced by Article 6(1) of the TEU, which declares that the Charter of Fundamental Rights for the European Union (“Charter”) “shall have the same legal value as the Treaties.”<sup>6</sup> The Charter is not incorporated into the main body of the treaties or the protocols. Additionally, several clauses of the treaties pave the way for EU accession to the European Convention on Human Rights and Fundamental Freedoms.<sup>7</sup>

For the first time in EU primary law, the TEU recognizes the principle of regional and local self-government.<sup>8</sup> Together with the strengthening of the principle of subsidiarity, which was first introduced by the 1993 Treaty of Maastricht, the Treaty creates the idea of a pluralistic and diverse European Union that may contribute to the strengthening of economic and social integration.<sup>9</sup> Thus *EU* policies can be developed, implemented at the local level without centralization, *and* be solidaristic in effect.

The two core economic engines of integration, the free movement provisions and competition policy, merit a similar qualitative need for appraisal. The single market and economic and monetary union are now raised to EU *objectives* by Article 3 of the TEU. This elevation was at the expense of competition policy; indeed, competition received less than dignified

6. TEU post-Lisbon, *supra* note 4, art. 6(1), 2010 O.J. C 83, at 19; see Charter of Fundamental Rights of the European Union, 2010 O.J. C 83/389 [hereinafter Charter of Rights].

7. TEU post-Lisbon, *supra* note 4, art. 6(2), 2010 O.J. C 83, at 19; Consolidated Version of the Treaty on the Functioning of the European Union art. 218(8), 2010 O.J. C 83/47, at 146 [hereinafter TFEU].

8. Article 4(2) of the TEU states that the European Union will “respect . . . regional and local self-government” when legislation is contemplated. TEU post-Lisbon, *supra* note 4, art. 4(2), 2010 O.J. C 83, at 18. Article 2 of Protocol No. 2 states that the European Commission (“Commission”) is obliged in its consultations, before proposing a legislative act, to take into consideration “the regional and local dimensions” of the envisaged act where appropriate. Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality art. 2, 2010 O.J. C 83/206, at 206. Article 5 of Protocol 2 states that every draft EU legislative act must include an assessment of its impact upon, inter alia, local and regional levels and, in the case of draft Directives, the Commission should explain the implications for the Member States, including any regional legislation that may be required. *Id.* art. 5, at 207.

9. The principle of subsidiarity is now contained in Article 5 of the TEU. The principle includes references to local and regional competence. TEU post-Lisbon, *supra* note 4, art. 5(3), 2010 O.J. 83, at 18.

treatment. It was “removed from its lofty status of ‘EU objective’”<sup>10</sup> originally envisaged in the Draft Constitutional Treaty.<sup>11</sup> Instead, competition policy was to receive even greater ignominy. The new legal order references to “a system ensuring that competition is not distorted” found in Article 3(1)(g) of the EC Treaty have been deleted from the main body of the primary Treaty and moved to Protocol No. 27, where competition is absorbed into the principle of the internal market: “The High Contracting Parties, considering that the internal market as set out in Article 3 TEU includes a system ensuring that competition is not distorted . . . .”<sup>12</sup>

As if to reinforce the lesser impact of competition in the European Union, *and* the recognition of the role of local and regional government, public services receive additional attention in Protocol No. 26, which recognizes the competence of the Member States to “organise *non-economic* services of general interest.”<sup>13</sup> Article 14 of the TFEU replaces Article 16 of the EC Treaty by creating a clear legal base for EU legislation<sup>14</sup>

10. José Luis Buendia Sierra, *Writing Straight with Crooked Lines: Competition Policy and Services of General Economic Interest in the Treaty of Lisbon*, in *EU LAW AFTER LISBON* 347, 365 (Andrea Biondi et al. eds., 2012). Note that Buendia Sierra qualifies this language by analyzing that, in reality, the role of competition may be reinforced by the changes made in the 2009 Treaty of Lisbon. This analysis is tested here in this Essay.

11. See Draft Treaty Establishing a Constitution for Europe, 2004 O.J. C 310/1 (never ratified).

12. Protocol No. 27 on the Internal Market and Competition pmb., 2010 O.J. C 83/309, at 309.

13. Protocol No. 26 on Services of General Interest art. 2, 2010 O.J. C 83/308, at 308 (emphasis added).

14. The sensitivity of the issue is revealed in the provision that the European Parliament and the Council may adopt regulations to establish the principles applicable to Services of General Economic Interest (“SGEI”) and the conditions to provide, commission, and fund SGEI. However, any measures taken by the European Union may not prejudice the competences of the Member States. TFEU, *supra* note 7, art. 14, 2010 O.J. C 83, at 54. This has created confusion in legal taxonomy because it was always presumed that directives would be the most appropriate legal instrument if EU legislation in the area was ever used. Even more ironic is the fact that after many years of discussing whether it should have legal powers in this field, the Commission announced that it would not use the new legal powers and instead has focused upon soft law/new governance mechanisms and processes. See Stéphanie Rodrigues, *Towards a General EC Framework Instrument Related to SGEI? Political Considerations and Legal Constraints*, in MARKUS KRAJEWSKI ET AL., *THE CHANGING LEGAL FRAMEWORK FOR SERVICES OF GENERAL INTEREST IN EUROPE: BETWEEN COMPETITION AND SOLIDARITY* 255 (2009); see also Erika Szyszczak, *Soft Law and Safe Havens*, in *SOCIAL SERVICES OF GENERAL INTEREST IN THE EU* 317 (Ulla Neergaard et al. eds., 2012). One explanation

and continues to emphasise that public services are the *shared responsibility* of the European Union and the Member States.<sup>15</sup>

The new emphasis upon social values and the role of solidarity is significant in a global economy increasingly leaning towards neoliberal values *and* in a European economy heavily shaken by economic recession. This Essay examines how the primary legal documents suggest that the European Union is developing a legal base for a potential socioeconomic constitution through the evolution of a set of values that underpin the integration project. The new legal base for this constitution is analyzed within the framework of other developments, drawing examples from the case law of the European Courts, the new political agenda in the “Europe 2020” program, and the greater reliance in the European Union on new (“soft”) governance processes. In particular, this Essay uses the example of how public services<sup>16</sup> and the role of citizenship have developed from the 1993 Treaty of Maastricht to the 2009 Treaty of Lisbon as indicators of the distinctive European approach to the evolution and protection of socioeconomic values.

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for the reluctance to use the new legal base may be that current legislation and soft law addresses state aid issues, which have a specific legal regime in the Treaty on the Functioning of the European Union (“TFEU”). See Erika Szyszczak, *Modernising State Aid and the Financing of SGEL*, J. EUR. COMPETITION L. & PRAC., June 2012, at 1, <http://jeclap.oxfordjournals.org/content/early/2012/06/07/jeclap.lps035.full.pdf+html>

15. TFEU, *supra* note 7, art. 14, 2010 O.J. C 83, at 54.

16. The 1958 Treaty Establishing the European Economic Community (“EEC”) deliberately avoided the term “public services.” Instead, a new “European” concept of SGEL was deployed in what was then Article 90(2) of the EEC (now Article 106(2) of the TFEU). TFEU, *supra* note 7, art. 106(2), 2010 O.J. C 83, at 91; Treaty Establishing the European Economic Community, Mar. 25, 1957, art. 90(2), 298 U.N.T.S. 11, 50 [hereinafter EEC Treaty]. The term “public service” was used in the “Transport” chapter and is still found in TFEU Article 93. TFEU, *supra* note 7, art. 93, 2010 O.J. C 83, at 86; see Pierre Bauby, *From Rome to Lisbon: SGIs in Primary Law*, in DEVELOPMENTS IN SERVICES OF GENERAL INTEREST 19 (Erika Szyszczak et al. eds., 2011). The Commission has adopted a new generic term in soft law communications: “Services of General Interest.” Under this umbrella, a number of different concepts are emerging in Commission policy documents and soft law, which can be described as a “family” comprising inter alia: healthcare services of general interest (“HSGI”), non-economic services of general interest (“NESGI”), social services of general interest (“SSGI”), and SGEL. See Ulla Neergaard, *The Concept of SSGI and the Asymmetries Between Free Movement and Competition Law*, in SOCIAL SERVICES OF GENERAL INTEREST IN THE EU (Ulla Neergaard et al. eds., 2012).

## II. *THE LEGAL BASIS FOR A SOCIOECONOMIC CONSTITUTION*

The starting point for discussion is to analyze *how* the texts of the Treaty provisions provide evidence of the aspirations of the European Union. Article 2 of the TEU proclaims:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.<sup>17</sup>

This can be contrasted with the original aims of integration. The 1958 Treaty Establishing the European Economic Community (“EEC Treaty”) held a clear vision of its purpose. Article 2 of the EEC set out a number of aims:

It shall be the aim of the [European Community (the “Community”)], by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States.<sup>18</sup>

It was agreed by the founders of the EEC that these aims could, and should, be achieved by establishing a common market and gradually approximating the Member States’ economic policies. The common market, renamed the internal market by the 1986 Single European Act,<sup>19</sup> was always viewed as an *instrument* to enhance social welfare through a variety of objectives (that have expanded over time) and *not* as an end in itself.<sup>20</sup> There was no requirement for either a social or fiscal infrastructure for this project. Thus, there was no reference to the development of a

17. TEU post-Lisbon, *supra* note 4, art. 2, 2010 O.J. C 83, at 17.

18. EEC Treaty, *supra* note 16, art. 2, at 15.

19. Single European Act, 1987 O.J. L 169/1 [hereinafter SEA] (amending the EEC Treaty); see Lawrence W. Gormley, *The Internal Market: History and Evolution, in REGULATING THE INTERNAL MARKET* 14, 14 (Niamh Nic Shuibhne ed., 2006).

20. See RUTH NIELSEN & ERIKA SZYSZCZAK, *THE SOCIAL DIMENSION OF THE EUROPEAN UNION* 29–36 (3d ed. 1997).



coherent social dimension to economic integration. It was presumed that an improvement in the standard of living within the EEC would be an automatic by-product of increased trade and economic integration and that the European Union lacked the facilities to engage in full-scale redistributive policies.<sup>21</sup> It should be noted that the lack of discussion of the social dimension to the EEC project also was in deference to the Member States' desire to retain competence over their culturally and historically specific national welfare and social systems.<sup>22</sup> This fact underpins the recurrent tensions found in Europe in allocating competence in the socioeconomic field.

Even this straightforward path towards integration was beset with difficulties. Since the 1970s, the process of integration lacked a clear master plan. Experimentation using widening and deepening strategies was at the expense of unanimity in agreeing with the objectives of the integration project. This, in turn, allowed for the creation of new modes of governance to complement the traditional Community method of governance. To borrow from Professor Deirdre Curtin's famous phrase analyzing the 1993 Treaty of Maastricht, the integration project appears as a fragmented series of "bits and pieces."<sup>23</sup> This description is particularly apt for the evolution of a socioeconomic constitution for the European Union.

What is distinctive about the EU project, and what distinguishes it from other forms of economic trade agreements, is that, over time, EU law and policy has taken a more nuanced approach towards socioeconomic values and rights protected in law and policy at the national level. This contrasts with other regional approaches, and contrasts sharply when compared with developments in the United States. For example, Greg Albo, Sam Gindin, and Leo Panitch describe the global neoliberal globalization leanings from a United States' perspective as the following:

Since at least the election of Ronald Reagan in 1980, the U.S. and other states have embraced an ideology of scaling

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21. *See id.*

22. *See generally* Doreen Collins, *Social Policy*, in *INSTITUTIONS AND POLICIES OF THE EUROPEAN COMMUNITY* 97 (Juliet Lodge ed., 1983).

23. Deirdre Curtin, *The Constitutional Structure of the Union: A Europe of Bits and Pieces*, 30 *COMMON MKT. L. REV.* 17, 22 (1993).

back the role of government in economic life and letting the invisible hand of the unfettered market work its magic. Rhetoric notwithstanding, this has *not* meant a withdrawal of the state from regulating economic activity nor from an active role in managing class relations. Instead, it has signaled the institutionalization of public policies and state regulation directed at increasing the power of the dominant capitalist firms in industry as well as financial markets and an enhanced role for markets in determining income distribution and public priorities. This political project has become associated in all parts of the world with the term neoliberalism . . . .<sup>24</sup>

In contrast, from the 1970s, the Member States,<sup>25</sup> the European Court of Justice (“ECJ” or “Court”), and the EEC Institutions were aware of the need for a social dimension to economic integration, even when resistance to expanding legislative competence in the political forum was evident from the Member States.<sup>26</sup> The ECJ acknowledged in *Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena* (“*Defrenne II*”)<sup>27</sup> that the isolated equal pay for equal work provision of Article 119 of the EEC Treaty (now Article 157 of the TFEU) formed part of the *social objectives* of the EEC, which was not merely an economic union but also sought, by common action, to ensure social progress and to seek the constant improvement of the living and working conditions of the people of Europe.<sup>28</sup> The Court states that “this double aim, which is at once economic and social, shows that the principle of equal pay forms part of the foundations of the community.”<sup>29</sup>

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24. GREG ALBO, SAM GINDIN & LEO PANTICH, IN AND OUT OF CRISIS: THE GLOBAL FINANCIAL MELTDOWN AND LEFT ALTERNATIVES 27 (2010).

25. See, for example, the Statement from the Paris Summit in 1972 declaring that the “Heads of State or Heads of Government attach as much importance to vigorous action in the social fields as to the achievement of the Economic and Monetary Union.” Meetings of the Heads of State or Government, 10 E.C. BULL., at 19, ¶ 6 (1972), available at [http://aci.pitt.edu/1919/2/paris\\_1972\\_communique.pdf](http://aci.pitt.edu/1919/2/paris_1972_communique.pdf).

26. NIELSEN & SZYSZCZAK, *supra* note 20, at 17–21.

27. *Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena* (*Defrenne II*), Case 43/75, [1976] E.C.R. 455.

28. See *id.* ¶¶ 10–12. Article 119 of the EEC was introduced for competition reasons. In initial drafts of the EEC Treaty, it was included in the “Competition” chapter, not in the ad hoc set of “social” clauses. See NIELSEN & SZYSZCZAK, *supra* note 20, at 23–24.

29. *Defrenne II*, [1976] E.C.R. 455, ¶ 12.

The ECJ has continued to reiterate the same aspirations for European integration. In both *International Transportation Workers' Federation v. Viking Line ABP* and *Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet*, for example, the Court stated that the EU has not only an economic but also a social purpose.<sup>30</sup> In the same political era as the *Defrenne II* judgment, the Court also recognized that the Member States retained a broad discretion to defend national public, social, and welfare interests against encroachment from the effects of the expanding fundamental economic free movement rules. In *Cassis de Dijon*,<sup>31</sup> a case on the free movement of goods, the Court expanded the grounds of overriding public interests upon which the Member States can rely, subject to the principles of proportionality and nondiscrimination, when justifying restrictions to the fundamental freedoms.<sup>32</sup> These overriding public interests have allowed Member States to uphold a number of potentially restrictive rules and practices in their welfare states, even when they restrict the free movement in the European Union, and even where they purport to protect the financial (economic) viability of the welfare state in Europe.<sup>33</sup> This process has allowed EU law to absorb a set of noneconomic

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30. See *Int'l Transp. Workers' Fed'n v. Viking Line ABP*, Case C-438/05, [2007] E.C.R. I-10779, ¶ 79; *Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet*, Case C-341/05, [2007] E.C.R. I-11767, ¶ 105. Note, however, that the outcome of these judgments resulted in a preference for economic aims of integration over social concerns. See Danny Nicol, *Europe's Lochner Moment*, 2011 PUB. L. 308, 328.

31. *Rewe-Zentral A.G. v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)*, Case 120/78, [1979] E.C.R. 649.

32. See *Cassis de Dijon*, [1979] E.C.R. 649, ¶ 8. Examples include: consumer protection, the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions, the protection of fundamental rights, and the protection of the environment. See, e.g., *id.*; *Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria*, Case C-112/00, [2003] E.C.R. I-5659, ¶ 66; *Commission v. Denmark*, Case 302/86, [1988] E.C.R. 4607, ¶¶ 8–9; *Cinéthèque SA v. Fédération Nationale des Cinémas Français*, Joined Cases 60–61/84, [1985] E.C.R. 2605, ¶ 26.

33. This is seen, for example, in cases involving healthcare issues where a Member State may raise questions of economic viability under the guise of maintaining a high level of national health protection. See, e.g., *V.G. Müller-Fauré v. Onderlinge Waarborgmaatschappij OZ Zorgverzekeringen UA*, Case C-385/99, [2003] E.C.R. I-4509; *Vanbraekel v. Alliance Nationale des Mutualités Chrésiennes*, Case C-368/98, [2001] E.C.R. I-5363; *B.S.M. Geraets-Smits v. Stichting Ziekenfonds VGZ*, Case C-157/99, [2001] E.C.R. I-5473, ¶ 79; *Kohll v. Union des Caisses de Maladie*, Case C-158/96, [1998] E.C.R. I-1931.

values that must be balanced against the free market rules, but at the same time has signalled to the Member States that where economic activity engages EU law, the Member States cannot draw a tight, or impenetrable, veil over national policy.

## II. *IN RETROSPECT: THE EVOLUTION OF SOCIOECONOMIC RIGHTS IN THE EUROPEAN UNION*

From the Single European Act 1986, the competence for centralized regulation of the integration aims increased the competence of the European Community/European Union (“EC/EU”) in embracing legislative measures not wholly related to the market freedoms, or the internal market.<sup>34</sup> Within the legal base of the internal market (now Article 114(3) of the TFEU), there is recognition that when the Commission initiates proposals concerning health, safety, environmental protection, and consumer protection, it will take as a base a high level of protection, and within their respective powers, the European Parliament and the Council also will seek to achieve these objectives.<sup>35</sup> At the same time, EC/EU competence has been tempered by respect for the subsidiarity principle introduced by the 1993 Treaty of Maastricht and the proportionality principle.

The 1993 Treaty of Maastricht signalled a political direction towards widening the ambit of European integration to encompass a wider set of political and socioeconomic aims. The Treaty introduced a set of traditional European values into primary law: democracy, liberty, respect for fundamental freedom, and respect for human rights.<sup>36</sup> But, the transition from the domination of an economic market ideology to include a social dimension was stifled by the failure to agree in a number of policy areas or to vest significant legislative competences in the social area. This left the establishment of a socioeconomic governance to rely upon development as a by-product of case law or to depend upon softer new governance processes. Significantly, in 1994 the European Commission created a concept of the “European Social Model” in policy

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34. See SEA, *supra* note 19; see also Manfred E. Strecit & Werner Mussler, *The Economic Constitution of the European Community: From “Rome” to “Maastricht,”* 1 EUR. L.J. 5 (1995).

35. TFEU, *supra* note 7, art. 114(3), 2010 O.J. C 83, at 94.

36. TEU post-Lisbon, *supra* note 4, pmbL., 2010 O.J. C 83, at 15.

documents.<sup>37</sup> This soft law signals recognition of the need for greater centralizing concepts of socioeconomic factors that are emerging through negative and positive forms of integration. Such use of soft law was instrumental in preparing the ground for the modernization of the internal market project post-2009.

One of the most important new concepts to be enshrined in the primary law of the European Union at Maastricht was the concept of EU citizenship.<sup>38</sup> Initially viewed as merely symbolic, inconsequential, uninspiring, toothless, embarrassing, and meaningless,<sup>39</sup> the idea of “citizenship” provided the seed for the germination of new forms and roles of citizenship and has appeared in the post-Treaty of Lisbon era.<sup>40</sup>

Working with the basic concept of EU citizenship, now found in Article 20 of the TFEU, the ECJ declared that: “Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.”<sup>41</sup>

The traditional focus of EU citizenship has been the expansion of migrant’s rights with respect to social and economic benefits in the host state.<sup>42</sup> This has challenged the nature of social welfare benefits normally associated with

37. Statement to Parliament by Mr. Delors, President of the Commission, and His Reply to the Ensuing Debate, E.C. BULL. SUPP., no. 1/86, at 9 (1986), available at <http://aei.pitt.edu/8524/1/8524.pdf> (describing Jacques Delors’ related concept of a “European Social Area,” introduced in the 1980s).

38. TFEU, *supra* note 7, art. 20, 2010 O.J. C 83, at 56–57; see ERIKA SZYSZCZAK, EC LABOUR LAW 176 (2000) (explaining the concept of the citizen-worker); see also JIM DAVIES, THE EUROPEAN CONSUMER CITIZEN IN LAW AND POLICY (2011) (discussing the concept of the consumer-citizen); Francis Jacobs, *Citizenship of the European Union—A Legal Analysis*, 13 EUR. L.J. 591, 591 (2007).

39. See generally Joseph Weiler, *European Citizenship and Human Rights, in REFORMING THE TREATY ON EUROPEAN UNION: THE LEGAL DEBATE* 57 (Jan A. Winter et al. eds., 1996).

40. See *infra* Part III (discussing the new Citizen’s Initiative linked to consumer policy in the internal market).

41. *Grzelczyk v. Centre Public d’aide Sociale d’Ottignies-Louvain-la-Neuve*, Case C-184/99, [2001] E.C.R. I-6193, ¶ 31.

42. See *Bidar v. London Borough of Ealing*, Case C-209/03, [2005] E.C.R. I-2119, ¶ 19 (discussing financial assistance given to foreign students); see also *Van Delft v. College voor Zorgverzekeringen*, Case C-345/09, [2010] E.C.R. I\_\_\_\_, ¶ 39 (delivered Oct. 14, 2010) (not yet reported) (noting the pension benefits of non-Member State residents).

citizenship rights within bounded areas of the nation state and raised issues of financing social welfare.<sup>43</sup> A recent ECJ ruling suggests that this may be a far-reaching incursion into the national autonomy of the Member States to regulate social rights, normally perceived as outside of the legislative competence of EU law.<sup>44</sup> In *Zambrano*, the Court stated that Article 20 of the TFEU precludes every national measure that has the effect of depriving Union citizens of the rights conferred by the Treaty.<sup>45</sup> The effects of liberalization have shattered the bounded spaces of European welfare schemes with suggestions that new forms of universal service obligations may provide a nucleus for new forms of consumer social rights, not necessarily provided by the state or national providers.<sup>46</sup>

The political compromises of the 1986 Single European Act, and the 2000 Treaty of Nice, did not see a significant shift towards transferring further powers in the social field to the EC/EU. Concurrent attempts to create a human rights charter in primary law, for example through the Community Charter of the Fundamental Social Rights of Workers<sup>47</sup> and a Charter of Fundamental Rights for the EU<sup>48</sup> remained outside of the primary legal documents, and did not receive unanimous support from the Member States.<sup>49</sup>

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43. See generally MAURIZIO FERRERA, *THE BOUNDARIES OF WELFARE: EUROPEAN INTEGRATION AND THE NEW SPATIAL POLITICS OF SOCIAL PROTECTION* (2005) (discussing cooperation and solidarity among EU citizens).

44. See *Zambrano v. Office National de l'Emploi (ONEm)*, Case C-34/09, [2011] E.C.R. I\_\_\_\_ (delivered Mar. 8, 2011) (not yet reported).

45. See *id.* ¶¶ 40–42.

46. See Hans-W. Micklitz, *Universal Services: Nucleus for a Social European Private Law* 10 (Eur. Univ. Inst., Working Paper No. 12, 2009), available at [http://cadmus.eui.eu/bitstream/handle/1814/12238/LAW\\_2009\\_12.pdf;jsessionid=52B4B2CBB4A5AF395A61A0338FF4FC87?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/12238/LAW_2009_12.pdf;jsessionid=52B4B2CBB4A5AF395A61A0338FF4FC87?sequence=1) (discussing the effect of universal service relations on citizen's rights); see also Jim Davies & Erika Szyszczak, *Universal Service Obligations: Fulfilling New Generations of Services of General Economic Interest*, in *DEVELOPMENTS IN SERVICES OF GENERAL INTEREST*, *supra* note 16, at 155 (expanding on civil rights now potentially available for EU citizens).

47. *Community Charter of the Fundamental Social Rights of Workers*, EUROFOUND (Jan. 13, 2011), available at [http://www.aedh.eu/plugins/fckeditor/userfiles/file/Conventions%20internationales/Community\\_Charter\\_of\\_the\\_Fundamental\\_Social\\_Rights\\_of\\_Workers.pdf](http://www.aedh.eu/plugins/fckeditor/userfiles/file/Conventions%20internationales/Community_Charter_of_the_Fundamental_Social_Rights_of_Workers.pdf).

48. Charter of Rights, *supra* note 6, 2010 O.J. C 83/389.

49. The UK government, under Prime Minister Margaret Thatcher, did not sign the Charter of Fundamental Rights ("Charter"). It was not until the Labour government of Prime Minister Tony Blair in 1997 that the Charter was signed by the

The Treaty of Amsterdam 1997 introduced a number of new social norms with greater emphasis upon human rights and welfare-related policies, inter alia, a broad competence for the EU to create nondiscrimination law (Article 13 of the EC Treaty, now Article 19 of the TFEU). This significant milestone in the political development of the EU was partly in response to political pressures and in reaction to the increase in litigation using existing Treaty (and secondary law) provisions to develop concepts of economic and political citizenship.

Article 13 of the EC Treaty went further than existing provisions on equality between men and women and nationality discrimination. Specifically, it provided the European Union with a legal base to develop legislation on equal treatment grounds, including: age, disability, ethnicity, religion, and sexual orientation. This legal base has been used sparingly with only three major pieces of legislation emerging: a directive on equal treatment on the grounds of racial and ethnic origin,<sup>50</sup> a

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United Kingdom. The preamble to the 1993 Treaty on European Union confirmed the Member States' "attachment to fundamental social rights as defined in the European Social Charter . . . and in the 1989 Community Charter," and Article 151 of the Social Chapter of the TFEU states: "The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter . . . and in the 1989 Community Charter of the Fundamental Social Rights of Workers." TEU post-Lisbon, *supra* note 4, pmb., 2010 O.J. C 83, at 15; TFEU, *supra* note 7, art. 151, 2010 O.J. C 83, at 114. Thus, the Charter could be used by the European Court of Justice as an interpretative tool in cases concerned with social and labor rights. The Charter was not incorporated into the EC Treaties by the Treaty of Nice 2000 but was "solemnly proclaimed" by the European Parliament, Council of Ministers, and European Commission, but not by the Member States, at Nice on December 7, 2000, and was published in the "C" series of the Official Journal of the EU at 2000 O.J. C 364/1. The Treaty of Lisbon 2009 did not incorporate the Charter into the TEU or TFEU, or even include it as a Protocol. Instead, an amended Charter was solemnly proclaimed and signed in Strasbourg by the Presidents of the European Parliament, the Council, and the European Commission on December 12, 2007, which was the day before the Treaty of Lisbon was signed by the Representatives of the Member States. Article 6(1) of the TEU states that the Charter "shall have the same legal value as the Treaties." TEU post-Lisbon, *supra* note 4, art. 6(1), 2010 O.J. C 83, at 19. However, there are additional protocols relating to the application of the Charter to the Czech Republic, Poland, and the United Kingdom. For background on the Charter, see generally David Anderson & Cian C. Murphy, *The Charter of Fundamental Rights, in EU LAW AFTER LISBON* 155 (Andrea Biondi et al. eds., 2012)

50. Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin, 2000 O.J. L 180/22.

directive on equal treatment in employment and occupation,<sup>51</sup> and a directive outside the employment sphere implementing the principle of equal treatment between women and men in the access to and supply of goods and services.<sup>52</sup> A proposal for a directive on equal treatment between persons, irrespective of religion, belief, disability, age, or sexual orientation has lingered on the negotiating table since 2008.<sup>53</sup> Instead, the European Union has resorted to softer processes to implement a wider range of nondiscrimination programs.

Article 2 of the TEU is not an entirely new provision, but combines the range and changes in perception of the purpose of integration, through various Treaty amendments and case law of the ECJ.

### III. *ARTICLE 3 OF THE TEU: SOCIAL VALUES AS OBJECTIVES OF THE EUROPEAN UNION*

Article 3 of the TEU is more expansive than Article 2 in stating a set of social values as objectives of the European Union, with an underpinning theme of solidarity.<sup>54</sup> Central to these

51. Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000 O.J. L 303/16.

52. Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services, 2004 O.J. L 373/37.

53. Commission of the European Communities, Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation, COM (2008) 426 Final (July 2008).

54. TEU post-Lisbon, *supra* note 4, art. 3, 2010 O.J. 83, at 17 (“1. The Union’s aim is to promote peace, its values and the well-being of its peoples. 2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced. 4. The Union shall establish an economic and monetary union whose



provisions is the controversial new concept of “a highly competitive social market economy,” which has received differing analysis and interpretation. At its most simple level, it could be interpreted as a continuum, and a legal definition of the concept of the “European Social Model” developed by the Commission in soft law policy documents.

Loïc Azoulay comments that the concept of “a highly competitive social market economy,” inspired by German ordoliberal thinking, corresponds to the desire to create a social counterbalance to market considerations.<sup>55</sup> According to Azoulay, the concept contains the idea that European integration should not be pursued to the detriment of the integrity of the social systems of the Member States but the means for developing a social Europe are in fact limited.<sup>56</sup> This is because the concept of a “social market economy” is circumscribed by the words: *highly competitive*. Constanze Semmelmann also argues that the words restrict and define the concept, limiting EU social policy to market-based measures. Thus, according to Semmelmann, “the concept of the ‘social market economy’ amounts to a rather cosmetic and rhetorical step.”<sup>57</sup> Similarly, Christian Joerges argues that: “The social market economy remains embedded in the substantive and

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currency is the euro. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. 6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.”).

55. Loïc Azoulay, *The Court of Justice and the Social Market Economy: The Emergence of an Ideal and the Conditions for Its Realization*, 45 COMMON MKT. L. REV. 1335, 1337 (2008); see Christian Joerges, *A Renaissance of the European Economic Constitution?, in* INTEGRATING WELFARE FUNCTIONS INTO EU LAW: FROM ROME TO LISBON 29 (Ulla Neergaard et al. eds., 2009) (providing background information on the EU provisions).

56. Azoulay, *supra* note 55, at 1337.

57. Constanze Semmelmann, *The European Union’s Economic Constitution Under the Lisbon Treaty: Soul-Searching Among Lawyers Shifts the Focus to Procedure*, 35 EUR. L. REV. 516, 521 (2010); see Commission of the European Communities, *Towards a Single Market Act for a Highly Competitive Social Market Economy: Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions*, COM (2010) 608 Final (Oct. 2010).

institutional provisions on economic and monetary policy; the economic liberties remain in place.”<sup>58</sup>

It has been suggested that the role and significance of the new concept will be played out by its use in Commission strategy and judgments of the European Courts, where it may play a teleological role in the interpretation of Union law.<sup>59</sup> For example, the use of the concept, and an explanation of what it entails, has found its way into the Commission’s vision of competition policy:

Our competition policy is the expression of the model born in Europe after World War II and known as “social market economy”. Competition policy, contrary to what some think, is not about neo-liberalism or the jungle. Its purpose is completely different and positive. Competition policy in Europe is about encouraging entrepreneurship and innovation, the creation of jobs and the placing in the market of innovative products and services that bring choice and competitive prices for the consumer. The role of competition enforcers is to make sure companies play fair, do not gain excessive power and when they acquire power through organic growth, not to abuse it. Competition policy, therefore, has a regulatory role and this role is essential to preserve a social economy and social fairness . . . . To apply a phrase coined by Karl Schiller, a German minister during the late 60s, early 70s, competition policy is about “*the market when possible, the state where necessary*”.<sup>60</sup>

#### IV. HORIZONTAL CLAUSES

The TFEU enhances the evolution of the socioeconomic constitution by increasing the horizontal clauses of the Union. Article 7 of the TFEU states that “[t]he Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of

58. Joerges, *supra* note 55, at 30.

59. Erika Szyszczak, *Legal Tools in the Liberalisation of Welfare Markets, in* INTEGRATING WELFARE FUNCTIONS INTO EU LAW: FROM ROME TO LISBON, *supra* note 55, at 279, 280.

60. Joaquín Almunia, Vice President, Eur. Comm’n Responsible for Competition Policy, Speech on Regulação e Competitividade in Lisbon: How Competition Policy Contributes to Competitiveness and Social Cohesion “Europa 2011” (Jan. 14, 2011).

conferral of powers.”<sup>61</sup> Article 8 of the TFEU is a version of the equality/nondiscrimination clause found in the old Article 3(2) of the EC Treaty: “In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.”<sup>62</sup> This concept is expanded and complemented in Article 10 of the TFEU: “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”<sup>63</sup> Of most significance, and expectation, is a new horizontal social clause in Article 9 of the TFEU: “In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”<sup>64</sup>

#### V. THE ROLE OF COMPETITION IN THE INTERNAL MARKET

According to TEU Article 51, protocols have the same legal status as the Treaties.<sup>65</sup> Saskia Lavrijssen has argued that Article 3(1)(b) of the TFEU may be seen as assuming the function of the former Article 3(1)(g) of the EEC Treaty.<sup>66</sup> But the move to a Protocol has led to speculation that the significance of competition for the Union may have been “downgraded” by the 2009 Treaty of Lisbon. For example, Andreas Weitbrecht argues that “ensuring that competition in the internal market is not

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61. TFEU, *supra* note 7, art. 7, 2010 O.J. C. 83, at 53.

62. *Id.* art. 8, at 53.

63. *Id.* art. 10, at 53.

64. *Id.* art. 9, at 53; see JEAN-CLAUDE PIRIS, *THE LISBON TREATY: A LEGAL AND POLITICAL ANALYSIS* (2010); Dragana Damjanovic & Bruno De Witte, *Welfare Integration Through EU Law: The Overall Picture in the Light of the Lisbon Treaty*, in *INTEGRATING WELFARE FUNCTIONS INTO EU LAW: FROM ROME TO LISBON*, *supra* note 55, at 53; Maurizio Ferrera, *Mapping the Components of Social EU: A Critical Analysis of the Current Institutional Patchwork*, in *EUROPE 2020: TOWARDS A MORE SOCIAL EU?* 45 (Eric Marlier & David Natali eds., 2010); Maurizio Ferrera, *The JCMS Annual Lecture: National Welfare States and European Integration: In Search of a 'Virtuous Nesting,'* 47 J. COMMON MKT. STUD. 219 (2009).

65. See TEU post-Lisbon, *supra* note 4, art. 51, 2010 O.J. C 83, at 44 (stating that “[t]he Protocols and Annexes to the Treaties shall form an integral part thereof”).

66. See Saskia Lavrijssen, *What Role for National Competition Authorities in Protecting Non-Competition Interests After Lisbon?*, 35 EUR. L. REV. 636, 637 (2010).

distorted has been one of the fundamental activities of the European Union” from Art. 3(g) of the EEC Treaty onwards. However, after the 2009 Treaty of Lisbon, Article 2(3) of the TFEU “no longer refers to such a system” and “[u]ndistorted competition is now only mentioned in a tersely-worded Protocol on the Internal Market and Competition.” While the Competition Commissioner attempted “to downplay the significance of this change as one of mere semantics,” Weitbrecht argues that this revision may be a “starting point for a different role of competition in the European Union over the next 50 years.”<sup>67</sup>

Constanze Semmelmann points out that the chapter on competition remains virtually unaltered in the new Treaty and the new Article 3(3) of the TEU is yet to be read in conjunction with Protocol 27 on the Internal Market and Competition attached to the 2009 Treaty of Lisbon. In legal terms, “the Protocol enjoys the rank of primary law so that there is no impact on the legal status of competition as a goal of the European Union.” The fact that competition will be made a part of the internal market “reflects the approach that considered competition rules and the free-movement rules as two sets of rules with the same overarching goal, namely to abolish obstacles to cross-border trade.” However, Semmelmann is willing to concede that there could be a political weakening of competition as a value in itself, arguing that: “This would amount to a weakening of the economic element in the economic constitution as opposed to the interventionist pattern.”<sup>68</sup>

The removal of competition to one of the “barns” of the Treaties had led René Barents to question whether this removed the constitutional value of competition as one of the “cornerstones of the economic constitution of the EU.”<sup>69</sup> In

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67. Andreas Weitbrecht, *From Freiburg to Chicago and Beyond: The First 50 Years of European Competition Law*, 29 EUR. COMPETITION L. REV. 81, 88 (2008).

68. Semmelmann, *supra* note 57, at 521.

69. René Barents, *Constitutional Horse Trading: Some Comments on the Protocol on the Internal Market and Competition*, in VIEWS OF EUROPEAN LAW FROM THE MOUNTAIN: LIBER AMICORUM PIET JAN SLOT 123, 126 (Mielle Bulterman et al. eds., 2009) (citation omitted). For a more detailed discussion, see Erika Szyszczak, *Controlling Dominance in European Markets*, 33 FORDHAM INT'L L.J. 1738, 1748–50 (2010). Cf. Weitbrecht, *supra* note 67, at 88 (arguing that while Neelie Kroes, the Commissioner for Competition at

contrast, Ulla Neergaard has argued that the insertion of the objective of creating a social market economy, combined with the horizontal clause of Article 7 of the TFEU could lead to a horizontal application of social market objectives across areas of EU law hitherto immune from social concerns.<sup>70</sup> José Buendia Sierra, in a balanced and reasoned interpretation of the amendments, has suggested that competition could be strengthened after the 2009 Treaty of Lisbon. This Essay will pursue this interpretation when analyzing the use of a “more economic approach” towards public services and the modernization of the procurement rules.<sup>71</sup>

There is evidence that the Commission is using the change of focus of the internal market and competition policy, by reorienting the role of competition in relation to accommodating the special need of public services, exemplified in soft law communications and speeches by the Vice President of the Commission, Joaquín Almunia, who is responsible for competition policy.<sup>72</sup> This confirms the prediction made by Buendia Sierra that the competition provisions may be strengthened by the constitutional changes in the Treaties.<sup>73</sup> Even in relation to gray areas of competition policy where the social-welfare provisions of the Member States are under scrutiny, the Commission has used the concept of a highly competitive social market economy to justify modernization

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the time of the signing of the Treaty of Lisbon in 2007, sought to downplay the changes as mere semantics and argued that the Commission would not change its “more economic” approach to enforcement and policy, this revision may well turn out to be the starting point for a different role of competition in the European Union over the next fifty years). On the constitutional value of competition in the earlier Treaties, see Karel Van Miert, European Comm’r for Competition, Speech at the Comm. on Econ. & Monetary Affairs of the Eur. Parliament in Brussels, Belgium, Speech/93/13 (Feb. 19, 1993), during which competition was described as “one of the instruments towards the fundamental goals laid out in the Treaty—namely the establishment of a common market, [and] the approximation of economic policy.” See also *Courage Ltd. v. Crehan*, Case C-453/99, [2001] E.C.R. I-6297, ¶¶ 19–20; *Eco Swiss China Time Ltd. v. Benetton Int’l NV*, Case C-126/97, [1999] E.C.R. I-3055, ¶ 36; *Wilhelm v. Bundeskartellamt*, Case 14/68, [1969] E.C.R. I, ¶¶ 4–5.

70. See *supra* note 16.

71. See Buendia Sierra, *supra* note 10.

72. The speeches of the European Commissioner for Competition can be found at [http://ec.europa.eu/commission\\_2010-2014/almunia/headlines/speeches/index\\_en.htm](http://ec.europa.eu/commission_2010-2014/almunia/headlines/speeches/index_en.htm).

73. See Buendia Sierra, *supra* note 10.

reforms to make these services efficient and more responsive to consumer needs. From a competition perspective, the treatment of public services post-Treaty of Lisbon reveals a differentiated approach: excluding *social* public services from the application of the state aid rules and adopting a more robust approach towards larger commercially orientated public services.<sup>74</sup>

The European Courts have been skillful in avoiding the application of the competition rules to “social” activities of the state by finding that there is no “economic” activity involved, or finding that there is no “undertaking” involved.<sup>75</sup> This, however, may take too wide an area of economic activities pursued by the state (or contracted out by the state) outside of the ambit of EU law. The different ways in which the Member States are choosing to implement reform and modernization of the traditional welfare state in Europe may lead to restrictions in choice of models in order to avoid the full force of the internal market and competition rules, or result in an uneven playing field in

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74. The Commission embarked upon a review of the financing of public services and the state aid rules and in December 2011 adopted a revised set of measures. For communications that clarify key concepts related to state aid, see generally Communication from the Commission on the Application of the European Union State Aid Rules to Compensation Granted for the Provision of Services of General Economic Interest, 2012 O.J. C 8/4; Commission Decision on the Application of Article 106(2) of the Treaty on the Functioning of the European Union to State Aid in the Form of Public Service Compensation Granted to Certain Undertakings Entrusted with the Operation of Services of General Economic Interest, 2012 O.J. L 7/3; Communication from the Commission, European Union Framework for State Aid in the Form of Public Service Compensation (2011), 2012 O.J. C 8/15. Additionally, the Commission made a proposal for a *de minimis* regulation in the field of SGEI. See Commission Communication on Approval of the Content of a Draft for a Commission Regulation on *de Minimis* Aid for the Provision of Services of General Economic Interest, 2012 O.J. C 8/23. The regulation was adopted on April 25, 2012. See Commission Regulation No. 360/2012 on the Application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de Minimis* Aid Granted to Undertakings Providing Services of General Economic Interest, 2012 O.J. L 114/8. The Commission also adopted a Quality Framework for Services of General Interest in Europe. See Commission of the European Communities, A Quality Framework for Services of General Interest in Europe: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2011) 900 Final (Dec. 2011). For analysis of this legislation, see Szyszczak, *supra* note 14.

75. Klaus Höfner & Fritz Elser v. Macrotron GmbH, Case C-41/90, [1991] E.C.R. I-1979, ¶¶ 19–21 (noting that the concept of an “undertaking” is used in the treaties and by the Commission and the European Courts in competition law to denote a business/firm engaged in an economic activity).

the internal market. Other examples show that European Courts are accepting wide latitude for the Member States in organizing social services as a service of general economic interest deserving special treatment under competition rules.<sup>76</sup> There are some examples where the ECJ has referred to the importance of social objectives when applying competition law. For example, in *Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie* the Court states:

[I]t is important to bear in mind that, under Article 3(g) and (i) of the EC Treaty (now, after amendment, Article 3(1)(g) and (j) EC), the activities of the Community are to include not only a ‘system ensuring that competition in the internal market is not distorted’ but also ‘a policy in the social sphere’. Article 2 of the EC Treaty (now, after amendment, Article 2 EC) provides that a particular task of the Community is ‘to promote throughout the Community a harmonious and balanced development of economic activities’ and ‘a high level of employment and of social protection’.<sup>77</sup>

This raises the question as to whether there is a two-tier (or multiple) application of competition law emerging in the European Union. In relation to cases *not* involving public services, the tendency appears to be an endorsement of Neelie Kroes’ robust “business as usual” approach towards the role of competition in the single market.<sup>78</sup> Since the 1990s, the role of economic analysis has grown in importance with the Commission pursuing “a more economic approach” towards policy formulation and case law enforcement.<sup>79</sup> The perception

76. See, e.g., *BUPA & Others v. Commission*, Case T-289/03, [2008] E.C.R. II-81, ¶¶ 99, 100–01.

77. *Albany Int’l BV v. Stichting Bedrijfspensioenfonds Textielindustrie*, Case C-67/96, [1999] E.C.R. I-5751, ¶ 54.

78. Commission Press Release, MEMO/07/250 (June 23, 2007) (statement of Neelie Kroes, European Commission for Competition, on results of June 21–22 European Council–Protocol on Internal Market and Competition). Case law post-Treaty of Lisbon 2009 also suggests that the European Courts have not altered their approach. See, e.g., *AG2R Prévoyance v. Beaudout Père et Fils SARL*, Case C-437/09, [2011] E.C.R. I\_\_\_\_, ¶¶ 28–39 (delivered Mar. 3, 2011) (not yet reported); *Konkurrensverket v. TeliaSonera Sverige AB*, Case C-52/09, [2011] E.C.R. I\_\_\_\_, ¶¶ 20–23 (delivered Feb. 17, 2011) (not yet reported).

79. See Alberto Pera, *Changing Views of Competition, Economic Analysis and EC Antitrust Law*, 4 EUR. COMPETITION J. 127, 141–45 (2008); see also Lavrijssen, *supra* note 66, at 636.

was that the aims of the competition provisions emanated from economic theory, such as “consumer welfare” or “efficiency,”<sup>80</sup> with competition law finding it difficult to embrace wider social or public interests.<sup>81</sup>

## VI. *THE MODERNIZATION OF THE INTERNAL MARKET*

The change in the position of competition policy in the Treaty is counterbalanced by the elevation of the establishment of the internal market and of monetary and economic union to Union objectives in Article 2 of the TEU; previously, these aims were viewed as merely instrumental. The single (or internal) market objective has been modernized, within the overall new policy program, “Europe 2020,” allowing for a wider range of consumer-citizen ideas to emerge and with a greater emphasis upon a social dimension to the provision of goods and services in competitive markets.<sup>82</sup> The emerging concept of the social market economy is seen as a market with greater responsiveness to people as consumers. For example, in the Report on Delivering a Single Market to Consumers and Citizens, it is suggested by the European Parliament Committee on the Internal Market and Consumer Protection:

[T]hat the old perception of the single market should be supplemented in order to make it more inclusive; stresses that all those involved in shaping and implementing the single market need to adopt a more holistic approach, fully integrating citizens’ concerns . . . that a stronger, deeper and expanded single market of vital importance for growth and job creation . . . [and] that the single market should be

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80. See, e.g., *GlaxoSmithKline Servs. Unlimited & Others v. Commission*, Joined Cases C-501/06 P, C-513/06 P, C-515/06 P & C-519/06 P, [2009] E.C.R. I-9291, ¶¶ 62–63.

81. See ALBERT SANCHEZ GRAELLS, PUBLIC PROCUREMENT AND THE EU COMPETITION RULES 97–98, 100 (2011). For a discussion of the role of noneconomic interests in EU competition law, see generally OKEOGHENE ODUDU, *THE BOUNDARIES OF EC COMPETITION LAW: THE SCOPE OF ARTICLE 81* (2006); CHRISTOPHER TOWNLEY, *ARTICLE 81 EC AND PUBLIC POLICY* (2009); Pieter Kalbfleisch, *The Assessment of Interests in Competition Law: A Balancing Act*, in *ECONOMIC LAW AND JUSTICE IN TIME OF GLOBALISATION: WIRTSCHAFTSRECHT UND JUSTIZ IN ZEITEN DER GLOBALISIERUNG* 455 (Mario Monti et al. eds., 2007); Giorgio Monti, *Article 81 EC and Public Policy*, 39 *COMMON MKT. L. REV.* 1057 (2002).

82. See *Europe 2020*, EUR. COMMISSION, [http://ec.europa.eu/europec2020/index\\_en.htm#](http://ec.europa.eu/europec2020/index_en.htm#) (last updated June 14, 2012).



central in achieving the goal of a sustainable and highly competitive social market economy in the context of the EU 2020 Strategy's longterm vision.<sup>83</sup>

In a Communication from the Commission concerning the Single Market, an understanding of the significance of social market economy is put forward:

In a social market economy, a more unified European market in services means being able to ensure, with no race to the bottom, that businesses are able to provide their services more easily throughout the European Union . . . whilst at the same time providing more high quality jobs and a high level of protection for workers and their social rights. . . . More broadly, social and territorial cohesion is a prime importance for European integration, which acknowledges that market forces alone cannot provide an adequate response to all collective needs. Services of general economic interest (SGEIs) are essential building blocks of the European social model that is both highly competitive and socially inclusive.<sup>84</sup>

## VII. *CREATING A SOCIOECONOMIC AGENDA FOR THE INTERNAL MARKET*

### A. *The Lisbon Strategy 2000–2010*

Alongside the constitutional changes found in the 1993 Treaty of Maastricht 1993 and the 1997 Treaty of Amsterdam, the European Union experimented with a new form of policymaking and governance through the use of two overarching policy programs addressing socioeconomic coordination: the “Lisbon Strategy 2000–2010” and “Europe

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83. See Comm. on the Internal Market & Consumer Protection, European Parliament, *Report on Delivering a Single Market to Consumers and Citizens (2010/2011(INI))*, A7-0132/2010, ¶¶ 13–15 (Mar. 5, 2010) (by Louis Grech); see also Comm. on Employment & Social Affairs, European Parliament, *Amendments 1-285, Draft Report: The Future for Social Services of General Interest*, 2009/2222(INI) (Mar. 28, 2011).

84. Commission of the European Communities, *Single Market Act: Twelve Levers to Boost Growth and Strengthen Confidence*; “Working Together to Create New Growth:” Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM (2011) 206 Final, at 16 (Apr. 2011).

2020.” The latter directs and underpins current policy coordination in the European Union.

The economic Euro-sclerosis of Europe in the 1980s and early 1990s was initially addressed by tackling the particular features of European unemployment (that is, high levels of youth unemployment and long-term unemployment) through a different set of governance mechanisms. The most notable development during this era was the creation of the Essen Guidelines in 1994.<sup>85</sup> At the same time, the Commission began to use the concept of a “European Social Model.”<sup>86</sup> The influence of a European Social Model that underpinned growth and integration in the European Union is demonstrated in the formulation of the Lisbon Strategy in 2000, which has been analyzed as “a compromise between the neoliberal and the more socially-oriented governments of Member States.”<sup>87</sup> The Essen experiment was expanded into the Lisbon Strategy, set out by the European Council in March 2000.<sup>88</sup> At the heart of this strategy was a socioeconomic policy triangle that balanced economic objectives of integration through economic growth and competitiveness, with “more and better” jobs, social cohesion, and environmental sustainability.<sup>89</sup> This strategy was echoed in successive policy documents attempting to transform the European Union into “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.”<sup>90</sup>

In hindsight, the Lisbon Strategy contained numerous flaws. There was the temptation to benchmark economic growth against the United States and Japan and the rise of the

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85. See Essen European Council, Conclusions of the Presidency, E.U. BULL., no. 12 (1994).

86. See Commission of the European Communities, European Social Policy—A Way Forward for the Union: White Paper from the Commission, COM (94) 333 Final, at 1 (Jul. 1994) (noting the need to “preserve and develop the European social model”).

87. Vassilis Hatzopoulos, *A (More) Social Europe: A Political Crossroad or a Legal One-Way? Dialogues Between Luxembourg and Lisbon*, 42 COMMON MKT. L. REV. 1599, 1634 (2005).

88. Lisbon European Council, Conclusions of the Presidency, E.U. BULL., no. 3 (2000).

89. *Id.* ¶¶ 5–7.

90. *Id.* ¶ 5.

“BRICS”<sup>91</sup> economies was underestimated.<sup>92</sup> Critical attention has focused both upon the policy failings of the strategy and the new governance techniques that were introduced. Dealing briefly with the *substance* of the Lisbon Strategy, many criticisms of the strategies pursued center around the inherent tensions between economic policy and social policy in the European Union.<sup>93</sup> The perceived lack of competence to use the Community method of legislation stalled any further measures and explains the lack of attention to the social dimension of the Lisbon Strategy.

Critiques of the new governance techniques have focused on the systems’ lack of transparency, accountability, and participation.<sup>94</sup> Criticism also has stemmed from the difficulties of assessing self-reporting, the limitations on monitoring Member States’ responses to annual reviews, and the inherent lack of sanctions (beyond peer pressure and the identification of “good practice”).<sup>95</sup> Nonetheless, the Lisbon Strategy has been identified as a key turning point in EU policy because it allowed the open method of coordination (“OMC”) to be labelled as an EU governance technique, and provided the framework for different kinds of OMC processes to emerge as forms of experimental governance.<sup>96</sup> However, the OMC did not meet the expectations of creating an environment encouraging policy exchange, where prelegal issues could be identified to move the European Union forward into binding forms of EU law and

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91. “BRICS” is an acronym for the states of Brazil, Russia, India, China, and South Africa.

92. Erika Szyszczak, *The Evolving European Employment Strategy*, in SOCIAL LAW AND POLICY IN AN EVOLVING EUROPEAN UNION 197, 198–99 (Jo Shaw ed., 2000) [hereinafter Szyszczak, *Evolving European Employment Strategy*]; Erika Szyszczak, *The New Paradigm for Social Policy: A Virtuous Circle?*, 38 COMMON MKT. L. REV. 1125 (2001) [hereinafter Szyszczak, *The New Paradigm*].

93. David Natali, *The Lisbon Strategy a Decade on: A Critical Review of a Multi-disciplinary Literature*, 15 TRANSFER: EUR. REV. LAB. RES. 111, 111 (2009).

94. See, e.g., Erika Szyszczak, *Experimental Governance: The Open Method of Coordination*, 12 EUR. L.J. 486, 495 (2006).

95. See *id.* at 499. See generally ARNO TAUSCH, TITANIC 2010? THE EUROPEAN UNION AND ITS FAILED LISBON STRATEGY (2009).

96. See Szyszczak, *The New Paradigm*, *supra* note 92, at 1125; see also Janine Goetschy, *The Lisbon Strategy and Social Europe: Two Closely Linked Destinies*, in EUROPE, GLOBALIZATION AND THE LISBON AGENDA 74, 77 (Maria João Rodrigues ed., 2009).

policy using the traditional Community method.<sup>97</sup> Despite these limitations, Articles 5 and 6 of the TFEU explicitly find a role for experimental governance by stating that the European Union will support, coordinate, and supplement legislative actions.<sup>98</sup>

The struggling Lisbon Strategy was analyzed in the Kok Report of 2004,<sup>99</sup> and the Commission's mid-term review re-launched the strategy towards more neoliberal goals.<sup>100</sup> The next phase of socio-economic development began in a much harsher economic climate, with an enlarged and diversified European Union. In 2009, the European Council reinforced the new values of the 2009 Treaty of Lisbon, stressing that in the next phase of policy orientation there should be greater *national* ownership of policies through active involvement of the social partners and regional and local authorities. The Commission addressed this shift in focus through a wide consultation process of its new objectives for an "Europe 2020" project.

The social stakeholders consulted submitted comments responding critically to the Commission's new agenda, and particularly its failure to grasp the importance of social inequalities. For example, they criticized the fight against poverty in the European Union, in addition to established policies such as equal treatment programs and the social objectives of the European Union adopted during the 2000s within the framework of the Social OMC.<sup>101</sup> Thus, the revised political and economic agendas were boosted by a social agenda with enhanced socio-economic policy coordination. This social agenda recognized the diversity of the Member States in order to meet the new EU objectives of "smart, sustainable and inclusive" growth.<sup>102</sup>

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97. See Lisbon European Council, *supra* note 88. For an earlier analysis, see Szyszczak, *Evolving European Employment Strategy*, *supra* note 92.

98. TFEU, *supra* note 7, arts. 5–6, 2010 O.J. C 83, at 52–53.

99. HIGH LEVEL GRP., EUROPEAN COMM'N, FACING THE CHALLENGE: THE LISBON STRATEGY FOR GROWTH AND EMPLOYMENT (2004).

100. Mary Daly, *Assessing the EU Approach to Combating Poverty and Social Exclusion in the Last Decade*, in EUROPE 2020: TOWARDS A MORE SOCIAL EU?, *supra* note 64, at 143, 143.

101. See KENNETH A. ARMSTRONG, GOVERNING SOCIAL INCLUSION: EUROPEANIZATION THROUGH POLICY COORDINATION (Paul Craig & Gráinne de Búrca eds., 2010).

102. *Europe 2020*, *supra* note 82. The new policy program is at an early stage, but the strategy pursued has been criticized for focusing too much on market-based growth

In 2007, the Commission launched a reform package for the single market that revealed a significant shift in the role of the market.<sup>103</sup> The focus upon removing barriers to trade shifted towards consumer and citizen needs in Europe, not only in terms of the benefits derived from competitive markets (a choice of products, lower prices), but also in a language of citizenship and new values including solidarity, inclusion, and sustainability. This included an “empowerment discourse”: the consumer-citizen should take an active role in the design and enforcement of economic regulation.<sup>104</sup> In adopting a “Citizen’s Agenda,” the Commission attempted to model the citizen as a stakeholder in a participative process of deliberation on policymaking.<sup>105</sup>

### B. *New Governance Europe 2020*

The new governance architecture that emerged in Europe 2020 is organized around three integrated pillars: macroeconomic surveillance, thematic coordination, and fiscal

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and ignoring qualitative indicators. See, e.g., BJÖRN HACKER & TILL VAN TREECK, WHAT INFLUENCE FOR EUROPEAN GOVERNANCE? THE REFORMED STABILITY AND GROWTH PACT, THE EUROPE 2020 STRATEGY AND THE “EUROPEAN SEMESTER” (2010), available at <http://library.fcs.de/pdf-files/id/ipa/07724.pdf>; Philippe Pochet, *EU 2020: Social Impact of the New Form of European Governance*, ETUI POL’Y BRIEF: EUR. SOC. POL’Y, no. 5, 2010, at 3–5; Philippe Pochet, *What’s Wrong with EU2020?*, ETUI POL’Y BRIEFS: EUR. SOC. POL’Y, no. 2, 2010, at 3–4; Jonathan Zeitlin, *Towards a Stronger OMC in a More Social Europe 2020: A New Governance Architecture for EU Policy Coordination*, in EUROPE 2020: TOWARDS A MORE SOCIAL EU?, *supra* note 64, at 253, 254–55.

103. Commission of the European Communities, *Opportunities, Access and Solidarity: Towards a New Social Vision for 21st Century Europe: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, COM (2007) 726 Final (Nov. 2007); Commission of the European Communities, *Services of General Interest, Including Social Services of General Interest: A New European Commitment: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, COM (2007) 725 Final (Nov. 2007).

104. See, e.g., Council Regulation No. 211/2011 on the Citizen’s Initiative, 2011 O.J. L 65/1; DAVIES, *supra* note 38, at 4–5; Bryony Hoskins, *Monitoring Active Citizenship in the European Union: The Process, the Results and Initial Explanations*, 17 CADMO 1 (2009).

105. Commission of the European Communities, *A Single Market for 21st Century Europe: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, COM (2007) 724 Final (Nov. 2007).

surveillance under the Stability and Growth Pact.<sup>106</sup> The Lisbon Strategy has been streamlined down to five “EU headline targets which will constitute shared objectives guiding the action of the member States and the Union” (European Council 2010b), and the number of Integrated Guidelines for employment and economic policies has been streamlined down to ten. Significantly, the social objectives of Europe 2020 found in Guideline 10 include “promoting social inclusion and combating poverty.”<sup>107</sup>

One innovation of the Europe 2020 program introduces a “European Semester” beginning in March of each year, which would consider the advice and responses from Member States on prospective budgetary strategies. The innovation goes no further, but relies on soft instruments of governance to monitor the performance targets. There is greater emphasis on supervision of Member States, the ability to make Member State specific recommendations, and the ability to issue policy warnings to Member States.<sup>108</sup>

#### VIII. *THE MONTI REPORT AND THE SINGLE MARKET ACT 2011*

The adoption of the Europe 2020 program was complemented by a parallel governance process: a report on the future of the internal market commissioned by the President of the Commission and presented by the former Competition Commissioner, Mario Monti.<sup>109</sup> Following this report, the Commission published *Towards a Single Market Act for a Highly Competitive Social Market Economy*, outlining fifty measures to relaunch the internal market in 2012. This was adopted as *The Single Market Act* in April 2011 and included twelve broad areas

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106. See *Economic Governance*, EUR. COMMISSION, [http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/economic-governance/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/economic-governance/index_en.htm) (last updated June 14, 2012).

107. Bea Cantillon, *Disambiguating Lisbon, Growth, Employment and Social Inclusion in the Investment State* 23–25 (Ctr. for Soc. Pol’y, Working Paper No. 10/07, 2010).

107. See *EU Member States*, EUR. COMMISSION, [http://ec.europa.eu/europe2020/who-does-what/member-states/index\\_en.htm](http://ec.europa.eu/europe2020/who-does-what/member-states/index_en.htm) (last updated May 16, 2012).

109. MARIO MONTI, *A NEW STRATEGY FOR THE SINGLE MARKET: AT THE SERVICE OF EUROPE’S ECONOMY AND SOCIETY* (2010).

of action.<sup>110</sup> Within each area, a further modernization and distinction process has taken place.

The aims of this process are unashamedly economic: to kick-start the sluggish European economy in order to counteract the crisis in the Eurozone. In terms of socioeconomic values, procurement policy can function as a case study that recognizes the legitimate combination of environmentally sustainable, socially responsible factors alongside local social services responsive to local needs.<sup>111</sup> This mirrors a similar approach taken towards the modernization of public service financing, where a mix of Commission policy documents and revised hard law attempt to implement the aims of Article 14 and Protocol No. 26 of the TFEU.<sup>112</sup> The positive role of public services was acknowledged in the Monti Report and is seen in a speech by the Vice President of the Commission, Joaquim Almunia.<sup>113</sup> This is a distinct departure from the past role of litigation concerning public services, where challenges to a Member State's welfare services were viewed as negative integration and the justification for the service was seen as derogation from the fundamental free market rules. In the Single Market Act of 2011, public services are discussed in the context of social cohesion. They are seen as essential building blocks of the European Social Model, which is highly competitive and socially inclusive.

The collection of documents and communications surrounding the 2011 Single Market Act alludes to another new governance process that has emerged as a means of developing a highly competitive social market economy through targeted areas. The communications suggest a policy of avoiding conflicts between Member States by modernizing and recasting existing legislation and formalizing soft law into definitive documents explaining law and policy.<sup>114</sup> The use of these processes avoids

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110. The use of "Act" in the title is confusing for common lawyers. The document's legal status is that of a piece of soft law. See *The Single Market Act*, EUR. COMMISSION, [http://ec.europa.eu/internal\\_market/smact/index\\_en.htm](http://ec.europa.eu/internal_market/smact/index_en.htm) (last updated May 4, 2012).

111. Commission Press Release, IP/11/1580 (Nov. 20, 2011).

112. See Semmelmann, *supra* note 57 (discussing the financing of public services).

113. Joaquín Almunia, Vice President, Eur. Comm'n Responsible for Competition Policy, Address at the College of Europe in Bruges, SGEI Reform: Presenting the Draft Legislation (Sept. 30, 2011) (alluding to the language of Article 14 of the TFEU).

114. For further discussion, see Szyszczak, *supra* note 14.

direct confrontations between the Member States in the Council of the European Union and successfully allows linguistic tools to combine socioeconomic principles into economic policy.

In the wake of the 2009 Treaty of Lisbon, there has been a greater use of *tougher* forms of new governance processes and soft law. The new communications are peppered with the “new” EU language, with references to solidarity, subsidiarity, and citizenship in the new, highly competitive social market economy. These documents are weightier than previous forms of soft law. Many are normative in character, and are authoritative “handbooks” on how to apply EU law. The use of such processes avoids the need to find consensus amongst twenty-seven Member States, and avoids EU appropriation of localized goods and services that could have a less significant impression on the integration process. The impact of the 2009 Treaty of Lisbon is seen in the recognition that small and local goods and services (especially social services) may be offered more efficiently (and with greater diversity and sensitivity towards consumer needs) without the centralized intervention of EU law. But for larger projects, the “more economic approach” towards design and delivery of goods and services is paramount. Competition issues drive the modernization agendas of social protection, financing public services, and procurement. This reinforces the prediction by Buendia Sierra that the integration of competition into the internal market objective has indeed strengthened the role of competition policy, with a subtle penetration into areas where the Commission and the European Courts previously took a more cautious and sensitive approach.<sup>115</sup>

### CONCLUSION

This Essay has charted how the changes from the 1993 Treaty of Maastricht to the 2009 Treaty of Lisbon have linguistically altered the predominantly economic integration focus of the European Union, creating the legal basis for greater recognition of socioeconomic values in the construction of a constitutional document for the European Union. This Essay has shown that these are not entirely new; different conceptual

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115. See Buendia Sierra, *supra* note 10, at 347–66.



forms are found in earlier EU policy documents and case law. In terms of a fundamental change from the original EEC Treaty, to the 1993 Treaty of Maastricht, to the changes ushered in with the 2009 Treaty of Lisbon, the process of European integration has shifted from purely economic considerations towards a socioeconomic model, underpinned by fundamental rights concepts.

An initial assessment of the legal base for socioeconomic rights in Europe suggested that the 2009 Treaty of Lisbon was too much of a compromise:

[T]he European Social model which is emerging from the Treaty of Lisbon 2007 seems to contain a little of everything, acknowledging the wide political differences on the future direction of European integration combining a mix of competition, free market and solidarity based principles.<sup>116</sup>

In particular, there was little guidance on how Article 7 of the TFEU would influence policymaking or the legal reasoning of the European Courts. One practical role for the new mix of values was identified in that “this new mix of aims, combined with human, or fundamental rights, ambitions will probably be recorded in the ever lengthening Preambles to new pieces of union legislation and soft law communications.”<sup>117</sup>

Three years later, the impact of the new balance between economic and social values has not been seen in cases before the European Courts. Greater visibility is seen in policymaking. The role of new governance processes and soft law was seized upon by the Commission as a means of using the language of the new blend of socioeconomic values to forge a modernization process. Counterbalancing this, the economic downturn propelled competitiveness issues to the front of the European political agenda.<sup>118</sup> Returning to the quotation that introduced this discussion, we are led to conclude that the future of the European Union remains in the balance: a fantastic object.

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116. Szyszczak, *supra* note 59, at 280.

117. *Id.*

118. See, e.g., Joaquín Almunia, Vice President, Eur. Comm’n Responsible for Competition Policy, The Future of Europe Address in Brussels: Improving Europe’s Competitiveness in the Global Economy (Jan. 17, 2012), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/11&format=HTML&aged=0&language=EN&guiLanguage=en>.