



The EU's Economic Constitution under the Lisbon Treaty: Soul-Searching Shifts the Focus to Procedure

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The debate on the economic orientation of the European Union (EU) can be traced back to the negotiations of the Treaty of Rome. Increasingly, scholars and recent case law start from the assumption that market goals and social policy goals are on a par. A slight tendency in favour of the market has recently emerged, apparently linked to the disparities in working conditions between the old and new Member States following enlargement. Working from the proposition that these two goals enjoy equal status as expressly stated by the European Court of Justice (ECJ) under the Nice Treaty, this contribution analyses the consequences resulting from the plurality of goals under the Lisbon Treaty. I will argue that the market goals and social policy goals continue to enjoy equal status with the entry into force of the Lisbon Treaty, though the social element will be made more visible and bring about new challenges connected to the public-private divide and the notion of rights and principles. Against this backdrop, I contend that the major future challenges will be situated at the institutional, methodological and procedural level. Two aspects will be singled out in this regard: on the one hand, the increase in legal sources for social policy and economic goals calls for rules strengthening the coherence and consistency of provisions that implement both goals. On the other, the theoretical foundations of balancing mechanisms and of judicial reasoning will have to be refined with a view to distinguishing technical choices from value judgments.

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