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# **THE EU AND THE PROLIFERATION OF INTEGRATION PRINCIPLES UNDER THE LISBON TREATY**

Edited by

Francesca Ippolito, Maria Eugenia Bartoloni and  
Massimo Condinanzi



# The EU and the Proliferation of Integration Principles under the Lisbon Treaty

The entry into force of the Lisbon Treaty has brought about a proliferation of “integration principles”. In addition to the environmental integration principle, which has been part of the EU legal framework for some time, the Lisbon Treaty introduced the principles of gender equality integration, social policy integration, non-discrimination integration, consumer protection integration as well as animal welfare integration. Furthermore, a general principle of integration policy objectives is contained in Article 7 TFEU, requiring that the Union must ensure consistency between its policies and activities, taking all relevant policy requirements listed under the TFEU into account in the adoption of any legislative measure. These integration principles must be pursued, or at least taken into account, when decisions are being taken in almost any area of EU policy-making. However, there is considerable uncertainty regarding the normative implications of the various integration principles as well as their legal value and practical relevance for EU policymaking.

This book addresses the implications of the proliferation of sectorial integration principles and the introduction of a universal requirement of policy consistency in terms of the division of competences between the Union and the Member States as well as the scope for judicial review of the EU legislative process. In particular, it explores whether the introduction of various integration principles has led to an extension of Union competences and whether it has limited the scope for judicial review by extending the discretionary power of the Union institutions.

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*Francesca Ippolito, Maria Eugenia Bartoloni, Massimo Condinanzi*

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# 1 Introduction

## Integration clauses – a prologue

*Francesca Ippolito, Maria Eugenia Bartoloni and  
Massimo Condinanzi*

### Background of the book

The entry into force of the Lisbon Treaty has brought about a proliferation of ‘integration principles’,<sup>1</sup> realising the insertion of the ‘provisions having general application’ articulated in Articles 7–13 TFEU an expansion of the original policy integration instructions to be pursued, or at least taken into account, when decisions are being taken in almost any area of EU policy-making. In other words, should one assume that ‘integration principles’ are those principles that are ‘over-arching’ and their purpose is to ‘harmonize’ or ‘streamline’ the EU’s own actions in such a way that certain central values or objectives of the Union can be reached more effectively.

Balancing clauses were originally provided at the level of EU primary law regarding environmental protection,<sup>2</sup> consumer protection requirements<sup>3</sup> and gender equality.<sup>4</sup> Also a separate set of principles with distinct Treaty origins concerning: a ‘*universal* requirement of policy consistency’ emerged first in the Single European Act and then in the Maastricht Treaty; the consideration that the Union pursue a range of different objectives at once; and the limit to any of its actions represented by the powers States conferred upon it by this Treaty and its objectives.<sup>5</sup> These latter principles have been collected together in current Article 7 TFEU stating that ‘[t]he Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance

1 The expression was used as to environmental clause in Article 11 TFEU by Jan Jans, ‘Stop the integration principle?’ (2011) 33 *Fordham International Law Journal* 1533, 1543, referring to Case C-341/95 *Bettati* EU:C:1998:353.

2 Article 130r(2) EEC (Single European Act), rephrased as ‘must be integrated into the definition and implementation of other Community policies’ at Maastricht and relocated to Article 6 EC of the Treaty at Amsterdam, and later Article 3c.

3 Article 129a of the Amsterdam Treaty provided that ‘consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities’.

4 Article 3(2) EC provided that ‘the Community shall aim to eliminate inequalities, and to promote equality, between men and women’ in the carrying out of the activities listed in Article 3(1).

5 Article 3b EC Treaty (Maastricht).

with the principle of conferral of powers'. It is so required that the Union must ensure consistency between its policies and activities, taking all relevant policy requirements listed under the TFEU into account in the adoption of any legislative measure.

Article 8 TFEU providing that '[i]n all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women' reworks the gender equality integration principle which dates back to the 1990s. There the innovative dimension of gender mainstreaming appeared as an 'innovative feature' of the 1991 Third Action Program on Equal Opportunities<sup>6</sup> with a following established structure for its implementation in a global strategy through the Platform for Action at the United Nations Fourth World Conference on Women in Beijing in September 1995. Then the European Commission that had actively participated at the preparation of the Conference accepted and endorsed the concept<sup>7</sup>; as well, in 1996 it expressly provided for the mobilisation of all Community policies for the purpose of promoting gender equality<sup>8</sup> and in 1997 gender mainstreaming was finally embedded in the Treaty of Amsterdam.

Article 11 TFEU sets out that environmental protection requirements *must be integrated* into the definition and implementation of the Union policies and activities, in particular with a view to promoting *sustainable development*.<sup>9</sup> But it dates back to the Declaration of the Council of European Communities and of the Representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the program of action of the European Communities on the environment, which first, as highlighted by Jans, integrated environmental protection requirements into economic development.<sup>10</sup> On another note, since

6 Commission of the European Communities, *Equal Opportunities for Women and Men: the Third Medium-Term Community Action Programme 1991–1995*, COM(90) 449.

7 European Commission, Beijing + 5: An Overview of the European Union Follow-up and Preparations, Brussels: Directorate General for Employment and Social Affairs.

8 Communication from the Commission of 21 February 1996 'Incorporating equal opportunities for women and men into all Community policies and activities' COM(96) 67 final available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:c10921&from=EN>.

9 Emphasis added. The Treaty on the functioning of the European Union, last amended by the Treaty of Lisbon, [2008] OJ C115 (consolidated version), abbreviated TFEU. See J. Nowak, 'The Sky is the Limit: On the Drafting of Article 11 TFEU's integration obligations and its intended reach', in B. Sjäfjell, A. Wiesbrock (eds), *The Greening of European Business under EU Law: Taking Article 11 TFEU Seriously* (Routledge 2015), Ch. 2, gives an introduction to the enhancement of the environmental integration rule over time and also sets out the Member States' clear intention with the rule.

10 The Declaration stated '[w]hereas in particular, in accordance with Article 2 of the Treaty, the task of the European Economic Community is to promote throughout the Community a harmonious development of economic activities and a continuous and balanced expansion, which cannot be imagined in the absence of an effective campaign to combat pollution and nuisances or of an improvement in the quality of life and the protection of the environment.' See for further specification and analysis of the roots of environmental integration within the EU legal order Jan Jans, (n 1) 1534–1540.

Advocate General Slynn's famous opinion in the so-called 'Danish Bottles' case,<sup>11</sup> a judicial route for the integration of environmental considerations into the market freedoms of the European Community (later the European Union) had been enabled and facilitated.

Moving to Article 12 of the TFEU, it requires EU organs and institutions, since the date of the entry into force of the Lisbon Treaty (December 2009), to ensure that in all their activities and acts, namely the definition and implementation of any EU policies and other decision-making processes, certain consumer rights and general principles are embodied. Notwithstanding the fact that nine years ago some potential was recognised in this TFEU Article, looking retrospectively at the post-Lisbon EU Commission's official documents, EU developments and judgments of the EU Court of Justice (CJEU), it is evident that the horizontal consumer clause (HCC) in Article 12 has not transformed the European Union's approach to consumer protection and policy.

Complementary to these 'already consolidated' integration principles Article 9 TFEU and the principle of social policy integration, Article 10 TFEU on the non-discrimination integration, and Article 13 on the animal welfare integration represent an important addendum: the 'constitutionalisation' of mainstreaming duties as to these matters for the EU institutional framework. An expansion that has generated since the beginning at the level of academic writers is the quest for the need of stopping such integration principles in light of the consequent depotentiating 'minestrone effect', at least on the most advanced and imperative integration principle, that is the environmental one.<sup>12</sup>

Article 9 provides that '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'. According to Article 10 TFEU '[i]n 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'; while Article 13 TFEU recognizes that animals are sentient beings and affirms that the Union and the Member States *shall pay full regard* to the welfare requirements of animals '*in formulating and implementing* the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies'. However, this should be pursued while respecting the legislative or administrative provisions and customs of the Member States relating to, in particular, religious rites, cultural traditions and regional heritage.

11 Opinion of Advocate General Slynn, Case 302/86 *Commission v Denmark* [1988] ECR 4619. In that case the Court held that a system requiring manufacturers and importers to market beer and soft drinks only in reusable containers (which had to be approved by a National Agency for the Protection of the Environment) was subject to what is now article 34 of the Treaty on the Functioning of the European Union ('TFEU') since the Lisbon Treaty entered into force.

12 J. Jans (n 1).

A constitutionalisation of the ‘harmonisation’ of the EU’s own actions in such a way that certain central values or objectives of the Union can be reached more effectively as a cross-cutting objective to be woven into all areas of law and policy<sup>13</sup> does not mean that a de facto institutionalised practice of the same principles was in place before the Lisbon Treaty. Concerns about animals’ well-being were occasionally addressed under a number of explicit treaty objectives, such as the common agriculture policy (CAP), the internal market, and the common commercial policy. Article 9 TFEU catches up on Article 127(2) Treaty of Nice (‘high level of employment’), and goes back to the European Convention’s working group XI (‘Social Europe’) whose members discussed horizontal clauses on social values as well as on topics like social cohesion. Furthermore, Article 9 TFEU has to be considered in conjunction with the model of the ‘social market economy’ enshrined in Article 3(3) TEU. It is clear from the preparatory document for the European Constitutional Treaty that the aim of inserting the social market economy provision was to maintain the existing system of protection associated with the European social model throughout Member States. As such, it is suggested that the Court of Justice should continue in its tradition of giving a broad, Union-based interpretation of Treaty provisions. Such an approach would be consistent with the constitutional heritage of most of the Member States. It would also be consistent with the aim of promoting social justice which, as a result of the Lisbon Treaty, has now been added as a task of the Union under Article 2(3) TEU. Article 10 TFEU limits to extend mainstreaming principles across the equality spectrum that originally were confined to gender equality mainstreaming,<sup>14</sup> introducing it in EU primary law from a soft law engagement since 1996 when the Commission called for a disability non-discrimination mainstreaming,<sup>15</sup> subsequently reinforced in 2003 with the *European Year of People with Disabilities*<sup>16</sup>; and then with the Action Plan 2004–2010 that called for the ‘reinforcement of the mainstreaming of the disability perspective into all relevant policies at the stages of policy formulation,

13 C. McCrudden, ‘Equality’ in C.J. Harvey, *Human Rights, Equality and Democratic Renewal in Northern Ireland* (Hart Publishing 2001) 75 indicates how this requires ‘the principle that equality be seen as an integral part of all public policy-making and implementation, rather than something separated off in a policy or institutional ghetto’; and the Council of Europe ‘Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices, Final Report of Activities of the Group of Specialists on Mainstreaming’ EG-S-MS (98), (Strasbourg: Council of Europe 1998 May) indicates it in terms of ‘the incorporation of a concern with achieving equality in all public sector policies at all levels and at all stages in policy making’.

14 On the principle of gender mainstreaming see E. Caracciolo di Torella, ‘The Principle of Gender Mainstreaming: Possibilities and Challenges’, in this Volume.

15 European Commission, Equality of Opportunity for People with Disabilities, A New European Community Disability Strategy, COM(1996) 406 final (Dec. 20, 1996).

16 ‘Non-Discrimination mainstreaming: Instruments, Case studies and the way forward’ (2007) [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/std/mainstr07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/std/mainstr07_en.pdf).

implementation, monitoring and evaluation'<sup>17</sup>; and in 1997, with the *European Year Against Racism*<sup>18</sup> and the relative Action Plan.<sup>19</sup> Moreover, Article 10 TFEU has spread the model of positive duties to all the discrimination grounds.

Indeed, the 'constitutional', not uniform formulation, also for the use of abstract or vague legal terms (high level, adequate, sustainable development), for the ambiguous purpose (shall take into account, shall pay full regard, shall aim to), for the ambiguous degree of obligation (binding or non-binding character of the provision) and for the unclear normative quality (whether the mainstreaming clauses entail the power and the legitimacy for legislation) ends in producing a considerable uncertainty regarding the normative implications of the various integration principles (which, by the way, is not less valid for the oldest integration principles).

### Rationale and objectives of the book

In the light of the above considerations, a theory of integration principles at the legal level is very much needed. This could have the merit of clarifying still obscure elements of conceptualisation of the mainstreaming/balancing/integration clauses and will offer a first appraisal – ten years after their introduction – of their effective role and their evaluation in terms of improvements or not. The present collection aims precisely to achieve the answers to the following different issues so far neglected in the legal scholarship and at the core of a theorisation of the clauses of Articles 7–13 TFEU. The whole analysis presented in its compartmental chapter(s) and in the conclusive one will offer a comparative reading of the various contributions, and will therefore highlight the nature of such provisions, their legal effect and binding character; will clarify if they should be considered procedural rules or provisions of goals, as well as what is the material scope of each clause and what precisely has to be integrated and in what strength. On another note, the profile lying with the 'competences' will be the object of deep investigation both from the side of what is the allocation of competences between EU and its Member States in application of these integrated principles; as well as if the introduction of various integration principles led to an extension of Union competences. The latter question arises because according to *the principle of conferral*, 'the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein'. So, the competences not conferred upon the Union in the treaties remain with the Member States. But, the requirement to balance multiple blurry objectives, according to the multiplicity of integration principles, makes it more difficult to draw a clear line between Union and Member State competences.

17 Commission Communication 'Equal Opportunities for people with disabilities (A European Action Plan) 2004–10' (COM(2003) 650 final of 30 October 2003).

18 European Commission, Press Release Database, [http://europa.eu/rapid/press-release\\_IP-96-1133\\_en.htm](http://europa.eu/rapid/press-release_IP-96-1133_en.htm).

19 Communication from the Commission, 'An Action Plan Against Racism', COM (1998) 183, at 3.

Furthermore, the collection will highlight if the integration principles have broadened the objectives of the other competences laid down in the TFEU by extending the discretionary power of the Union institutions; have they consequently limited the scope for judicial review? Furthermore, from interpretative perspective each contribution will look at the issue of whether European law must be interpreted in the light of integration principles outside of the specific field concerned; and of what is the effectiveness, scope and binding effect of the clauses enshrined in articles 7–13 TFEU.

Last but not least, the issue of any hierarchy between these integration principles given that the TFEU does not prioritize a specific clause: could one policy or requirement override other policies? Or instead, the silence of the Treaty should be interpreted as the ‘integration clauses’ considerations might be equally balanced by the EU institutions without any sort of legal priority compared to other genuine policy objectives and considerations, making the task of the European legislator to balance sometimes conflicting interests even more complex. This is important also in order to acknowledge if eventually some standards become diluted against other interests and policy considerations.

The need of such a study derives from the absence at present of any systematic and comprehensive analysis of all these profiles. Legal scholarship which has focused on the integration aspects of the European Union has mainly combined perspectives from international relations, comparative politics and social and political theory, offering a complete overview of the many competing approaches that have sought to capture and explain the evolving European polity.<sup>20</sup> Moreover, in so doing this scholarship has dealt with single and specific principles<sup>21</sup> overlooking

20 D. N. Chryssochoou, *Theorizing European Integration* (SAGE Politics Texts series 2014).

21 See for the principle of gender equality integration, K. Sarikakis, E.T. Nguyen, *The Trouble with Gender: Media Policy and Gender Mainstreaming in the European Union* (2009) *Journal of European Integration* 201–216; E. Ellis and P. Watson, *EU Anti-Discrimination Law* (2nd ed OUP 2012), or Alexander Somek, *Engineering Equality. An Essay on European Anti-Discrimination Law* (OUP 2011); Lise Rolandsen Agustín, *Gender Equality, Intersectionality, and Diversity* (Palgrave Macmillan 2013); for the principle of social policy integration, see M.D. Ferrara, *The Horizontal Social Clause and Social and Economic Mainstreaming: A New Approach for Social Integration?* (2013) *European Journal of Social Law* 288–301; P. Vielle, ‘How the Horizontal Social Clause can be made to work: the lessons of gender mainstreaming’ in N. Bruun, K. Lörcher and I. Schömann (eds), *The Lisbon Treaty and Social Europe* (Hart Publishing 2012) 105. Note that legal literature mainly focuses in that case on the institutional efforts to coordinate economic policies with social policies based on the social and economic mainstreaming approach understood as a harmonious and coherent ensemble of competition policies. For the principle of animal health integration, see L. Rasso, R. O’Gorman, ‘A Cock and Bull Story?: Problems with the protection of animal welfare in EU Law and some proposed solutions’ (2008) *Journal of Environmental Law* 363–390, while as to Article 11 TFEU see, inter alia, N. de Sadeleer, *EU Environmental Law and the Internal Market* (OUP 2014) 21 ss. and B. Sjäfjell, A. Wiesbrock (eds), *Art 11 The Greening of European Business under EU Law Taking Article 11 TFEU Seriously* (Routledge 2015) proposing an overview of the role played

legal issues such as the question of the normative nature and the scope of the provisions contained in Title II.<sup>22</sup>

The added values of this book are to produce a unitary, systematic and all-encompassing approach to the legal issues arisen from the multifaceted integration principles: their normative and judicial implications as well as their legal value and practical relevance for EU policymaking. In so doing, the present collection has decided to include within the analysis also the ‘horizontal underlying integration clause’ that concerns ‘fundamental rights mainstreaming’, a term that does not appear as such in the Treaty but which is referred to in the EU Charter of Fundamental Rights (the ‘Charter’), and in policy documents of the European Commission,<sup>23</sup> Parliament<sup>24</sup> and the Fundamental Rights Agency.<sup>25</sup> Also declaratory strategy for the incorporation of human rights into all EU external action was forewarned by the 2001 Council conclusions. At the multilateral level, the European Union consistently addresses human rights in international fora and within multilateral organisations, besides in bilateral policies ensuring that human rights are embedded in bilateral dialogues. It also carries out country-level reporting and elaborates human rights country strategies. In so doing, the European Union follows the Council’s 2001 conclusions, which stressed how ‘human rights and democratisation should systematically and at different levels be included in all EU political dialogues and bilateral relations with third countries’,<sup>26</sup> and the 2001 Commission Communication on the European Union’s role in promoting human rights and democratisation in third countries as,

to be effective, respect for human rights and democracy should be an integral, or ‘mainstream’, consideration in all EU external policies. This means

by the environmental integration principle in EU law, both at the level of European legislation and at the level of Member State practice.

- 22 For example, most of the papers on integration principles focus on the so called ‘Commission’s Impact Assessment’ (IA), a method used by the Commission in reconciling social, economic and environmental concerns in the development of the EU policy, highlighting that it is the main tool of implementation of these integration principles.
- 23 European Commission Communication, ‘2016 Report on the Application of the Charter of Fundamental Rights’ {SWD(2017) 162 final}, COM(2017) 239 final, at p. 7, emphasis added.
- 24 E.g. in its Resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013–2014) (2014/2254(INI)), A8–0230/2015, the European Parliament, the European Parliament referred to mainstreaming in the context of children’s rights and the right of migrants and applicants for international protection.
- 25 FRA also includes in its glossary the term ‘human rights mainstreaming’ and defines it with reference to a UN source as ‘[a]ssessing how any planned policy action[s], including legislation and policy-shaping instruments, in all sectors and levels may have an impact on human rights or have a human rights dimension.’
- 26 Council of the European Union (2001), ‘Council conclusions on the European Union’s role in promoting human rights and democratisation in third countries’, para 13.



including these issues in the planning, design, implementation, and monitoring of policies and programs, as well as the dialogue pursued with partners both by the Commission and the Council.<sup>27</sup>

With the Lisbon Treaty this de facto HR mainstreaming in EU external action has been made explicit within the treaty. It derives from the amended provisions of Article 3(5) in conjunction with Article 2 of the Treaty of the European Union:

[i]n 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 [...] the protection of human rights.

in combination with Article 21(1) of the TEU, according to which:

[t]he Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

and together with Article 21(2)(b) TEU which reads:

[t]he Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: [...] consolidate and support [...] human rights.

By virtue of these provisions, the EU is under an obligation to ensure respect for human rights worldwide, in the sense that its action must tend to promote and protect human rights, without being restricted to a particular geographical or functional sphere. This will serve to complete horizontally the operationalising set of actions for mainstreaming clauses. In other words, should one assume that Articles 3(5) and 21 TEU establish the promotion, or even the protection, of human rights as a foreign policy directive? From this perspective, it is therefore clear that the principles and objectives set out in these Articles apply not just to EU policies, or even only to EU external policies, but they apply also to the external aspects of the EU's internal policies. These require the EU to 'uphold', 'contribute to', and be 'guided by' the principles and objectives described therein. As the EU Court of Justice has affirmed, these phrases are not devoid of normative force.<sup>28</sup>

27 European Commission (2001), 'Communication from the Commission to the Council and the European Parliament – The European Union's role in promoting human rights and democratisation in third countries', at 8.

28 Case C-366/10, *Air Transport Association of America* [2011] ECR I-13755, at para 101.

## Structure of the book

The book follows the structure of the Treaty: each contribution explores one of the sectorial integration principles contained in the TFEU with a view to analysing to what extent it has affected EU decision-making and jurisprudence. It is preceded by Kosta's introductory chapter focusing on the deliberate incorporation of human rights considerations into processes not explicitly mandated to deal with human rights, methodologically operating in a way which fosters those norms, standards and principles. The aim of the analysis is to provide for a definition of this concept and inquire into the extent to which there is a legal obligation, resting on the EU institutions and the Member States when implementing EU law to conduct fundamental rights mainstreaming. In a second step, her chapter discusses the tools and mechanisms that have been put in place to mainstream fundamental rights, or which pre-existed. It will consider not only the legislature (European Commission, European Parliament and Council of the European Union), but also the two advisory bodies with a legislative role (Committee of the Regions and European Economic and Social Committee), which tend to be overlooked. Finally, it considers advisory bodies with a legislative role which have a fundamental rights specific mandate (EU Agency for Fundamental Rights and European Data Protection Supervisor).

Within this framework Caracciolo di Torella moves to examine the principle of gender equality integration (Article 8 TFEU), introduced in EU law by the Treaty of Amsterdam, requiring that 'in all its activities, the Union shall aim to eliminate inequalities and to promote equality, between men and women' and which represents the first legally-binding commitment to mainstreaming with the EU legal order since the ancient Art. 3(2) EC Treaty the European Union which promoted: 'the systematic integration of the respective situations, priorities and needs of women and men in all policies'. Although potentially very important, it remains relatively underexplored by the legal academic debate. This is probably because, rather than being a tangible legal goal in itself, it indicates a strategy to integrate gender concerns into all policies and programs of the European Union, institutions and Member States. At that regard, the aim of the chapter is to contribute to the growing debate on the principle of gender integration. On the one hand, it seeks to fully unveil its (admittedly underused) potential to challenge norms and achieve gender equality. On the other hand, it acknowledges that the 2008 recession and the austerity measures that several Member States have implemented in the aftermath have had serious consequences on gender equality measures. In this light, the principle of gender equality might be seen as a luxury that Governments cannot afford. But, if the analysis joins those voices that maintain that the principle has not achieved the success that was hoped for,<sup>29</sup> because of the difficult definition and appreciation of the concept as well as of the failed (adequate) incorporate

29 See also U. Behning and P. Amparo Serrano, *Gender Mainstreaming in the European Employment Strategy* (Brussels ETUI 2001).

of a feminist reading,<sup>30</sup> Caracciolo di Torella introduces us to a positive perspective where gender mainstreaming has achieved some success, namely that of work-life balances; an area where the European Pillar of Social Rights has the potential to inject new emphasis into it.

This chapter is complemented by Ippolito's one which more broadly turns to the principle of non-discrimination integration (Article 10 TFEU). It starts elucidating the concept and its roots before the entry into force of the Lisbon Treaty when non-discrimination mainstreaming was first inserted in the Community agenda: in soft law policy documents in its internal dimension but was equally present in EU external action and some of the agreements the EU concluded with third countries; and was finally inserted in the Draft Constitutional Treaty. After such elaboration of the prelude and current constitutionalisation of a general comprehensive equality mainstreaming duty for the EU institutions, the analysis will further examine the question of 'the effectiveness of the mainstreaming duty' that will heavily depend on its practical implementation. In that regard the chapter critically assesses whether and to what extent different equality strands covered by Article 19 TFEU are being taken into consideration in policy-making: first by the European Commission through various tools (particularly the one represented by the Impact Assessment), but also by the other EU institutions, namely the legislative ones, such as the European Parliament and the Council, and the monitoring ones, that are the European Ombudsman and the European Court of Justice.

Bartoloni's chapter is the first of those chapters that deal with more 'economic balancing' integration clauses that are the ones concerning social integration, environmental concerns, consumer protection and animal welfare. Bartoloni especially looks at the principle of social policy integration (Article 9 TFEU), an element that could help dissolve the perceived increasing tensions between the economic and social dimensions of European integration and the potential for conflict between national and EU levels of policy-making. Article 9 TFEU offers an important stepping stone for mainstreaming social objectives in all relevant EU policies. This Article requires the EU institutions to assess all their policies in the light of their implications for the achievement of social goals. In particular, Article 9 TFEU asks the EU to 'take into account' requirements linked to a number of social objectives, such as the guarantee of adequate social protection or the fight against social exclusion, in defining and implementing its policies. This chapter analyses how the 'horizontal social clause' works in infusing social values into other policies. Even at first reading, it is apparent that it is not a new competence but rather an attempt at regrouping and coordinating the exercise of a number of other autonomous policies, which therefore maintain their own nature and scope. The fact remains that, while the EU must take into account social objectives in the conduct of the other policies, it is more doubtful that it could adopt normative acts inspired by purely social aims, not adequately supported by the specific aims assigned by the ad hoc legal basis. In particular, this chapter intends to assess the

30 E. Lombardo, P. Mayer, 'Gender Mainstreaming in the EU: Incorporating a Feminist Reading?' (2006) *European Journal of Women's Studies* 151–166.

interaction between economic objectives and social aims enshrined in the pertinent normative acts. This purpose is fulfilled by using twofold criteria: first of all, the test balance used by the EU legislator; second, the one used by the ECJ. The outcome of this dual examination should permit us to better define the nature and the scope of the social clause encapsulated in Article 9.

The object of Sjäfjell's investigation is Article 11 TFEU, which sets out an all-encompassing legal duty to integrate environmental protection requirements in the policies and activities of the Union, in order to see what this entails for the EU institutions and for the Member States. The analysis will demonstrate how Article 11 TFEU connects sustainable development as an EU law objective, principle and rule. The argument is presented that particularly the codification of the sustainable development principle in Article 11 TFEU has significant legal implications for the institutions of the European Union, entailing direct obligations on all levels: law-making, administration, supervision and judicial control. The implications for the Member States are rather more indirect, but nevertheless highly relevant, influencing the interpretation, implementation and application of EU law; the justification of Member State initiatives that restrict free movement; entailing a possible duty to act to promote overarching objectives under certain circumstances, and perhaps also indicating a coming general principle of sustainable development on Member State level. The chapter thereby shows how EU Treaty law, taken seriously, may be used as a tool to ensure that EU law itself and the national laws of its Member States truly work towards a global, sustainable development, so overcoming the current inefficiency of the Court of Justice that has not taken upon itself clearly enough the role Article 11 TFEU bestows upon it: to be a guardian of the planetary boundaries; as well as even making contradictory statements in its case-law. But also overcoming the influence on policy-making, by the compartmentalisation that perpetuates the illusion that environmental protection can be left to environmental law, while other areas of law do not have to concern themselves with environmental protection.

Seatzu's chapter investigates in her turn Article 12 TFEU which provides that 'consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities'. This article may be interpreted as requiring that the protection of the consumer's interest should be an integral part of any other Union policy. Even though consumer protection is not one of the objectives of the Union, it is an important principle to be taken into account when defining and implementing EU policies and activities. This applies in particular to the area of competition law, where consumer protection requirements must be taken into account and balanced with the need to protect effective competition. The chapter explores the Court's prevalent approach of integrating consumer protection requirements into a wider internal market framework and discusses the potential role to be played by Article 12 TFEU in this respect.

Beqiraj analyses the principle of animal welfare integration. After tracing the evolution of EC and EU animal welfare policy and against the background of a brief overview of the fragmentary and largely uncoordinated animal welfare legislation, the chapter will analyse the significance of the incorporation of animal

welfare as an EU value in the post-Lisbon legal framework where Article 13 TFEU recognizes that animals are sentient beings and affirms that the Union and the Member States *shall pay full regard* to the welfare requirements of animals ‘*in formulating and implementing* the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies’. This should be pursued while respecting the legislative or administrative provisions and customs of the Member States relating to, in particular, religious rites, cultural traditions and regional heritage. In particular, Beqiraj’s chapter addresses the question of the significance and impact of the mainstreaming provision in Article 13 TFEU. From a legislation-making perspective, the chapter will analyse and discuss the scope of the powers of the Commission to set out policy directions and develop secondary legislation on animal welfare, whether by mainstreaming animal welfare considerations in pre-legislation impact assessments or by carefully drafting the rationales for new proposed legislation to accommodate animal welfare concerns. From the Member States’ perspective, the chapter will also discuss their scope of action in promoting and protecting animal welfare through measures resulting in restrictions to trade, in light of the new Article 13 TFEU. From a judicial review perspective, the chapter will consider the role and powers of the Court of Justice of the EU in establishing the validity of EU secondary legislation related directly or indirectly to the promotion and protection of animal welfare, as well as in interpreting and applying EU law. Finally, the chapter will consider possible external implications relating to compliance with international trade obligations in the WTO framework. It will conclude with some general considerations on the significance of the protection of animal welfare within the overall architecture of the Treaty of Lisbon.

The analysis of the principle of policy integration and consistency follows, framing the series of sectoral integration principles above examined, and so being the ideal background and premise for the conclusive comparative analysis of the integration principles horizontally conceived. Nic Shuibhne will look at Article 7 TFEU, which first provides 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 conferral of powers’. The value of this statement as a general instruction for good decision-making practice is self-evident. But what does Article 7 add beyond this? Notwithstanding the prescriptive tone of its wording, for example it is one of the few Lisbon amendments that has not even been mentioned in the case law of the Court of Justice to date. Also, was Article 7 intended merely to reflect the imprints of consistency as a general principle already developed in certain areas of EU law – for example, in the field of external relations – or to innovate novel responsibilities and expectations? Nic Shuibhne’s chapter aims to interrogate the nature, scope, and implications of Article 7 TFEU as a substantive legal obligation on its own terms. It profiles the range of the principle in institutional terms and examines its usefulness as a tool with which to mediate the division of competences between the Union and the Member States, noting the explicit link in Article 7 between a consistency obligation and the principle of conferral of powers. Overall, the chapter therefore asks *what* this obligation actually is, *when* it applies, and *how* it might actually function.