Preface: introducing the ‘European Economic Constitution’ and its transformations

The EU’s constitutional framework has continued to transform itself over the past decades especially since the entry into force of the Treaty of Lisbon and the subsequent economic and financial as well as regulatory challenges that followed it. In the context of the ongoing transformations of the constitutional framework governing economic matters, this book explores how the original conception of what we refer to as a ‘European Economic Constitution’ has developed and should further develop.

THE BOOK’S CONCEPT

The concept of this book on the European Economic Constitution arises from a seeming gap in academic writing in this area. Although writing on the European Economic Constitution, both old and new, has a certain tradition, there remains in our view a strong need to analyse the notions of the Economic Constitution from a more *holistic* constitutional perspective. This more encompassing approach, we argue, is one informed strongly by the lesions of the various *crises* of the last decade. Economic and social objectives, fundamental rights, banking union and fiscal policies are only few of the examples that, in our opinion, should form part of a book dedicated to the European Economic Constitution.

The book develops around the idea of the transformation of the European Economic Constitution since the beginning of the economic crisis. The concept of a transformation itself is widely, but not unanimously, accepted.¹ Therefore, this book traces and evaluates conceptual, regulatory, institutional and legitimacy-related changes and challenges to the EU’s model of the ‘Economic Constitution’.

¹ See, however, the ‘gentle critique’ to this theory by Bruno De Witte in Chapter 5 in this book.

Accordingly, the objective of this book is threefold: first, to analyse the transformations that have taken place in different policy areas touched by EU integration; second, to review the structural and procedural changes in light of intellectual traditions and policy trends; third, to review some of the effects of these changes in the context of other Union policies and the realisation of the Union's values.

This book addresses the different layers and complexities of an evolving European Economic Constitution and explores how its transformation over the past years has changed and continues to shape EU public law.

The 'transformation' of the European Economic Constitution, as different chapters illustrate, is taking place in several consecutive steps and is premised on different legal grounds not always unanimously accepted. It also affects various policy areas while it results in new legal tools and structures. In exploring the open and hidden transformations the chapters apply methods, ranging from an economic analysis of law to a more socio-legal perspective, in addition to offering a normative stance. They discuss various possibilities of future developments and challenges to the current construct, especially how to integrate these newly developed structures within the Union's foundational principles.

THE ORGANIZATION OF THE BOOK

This book is divided into three parts. Part I presents an overview and a critique of the traditional approaches towards the idea of the transformation of the European Economic Constitution. The contributions to Part I discuss the various mutations that have taken place as well as the concept of the European Economic Constitution and the concept of metamorphosis. The opening chapter on the transformation of the European Economic Constitution by Hofmann and Pantazatou presents the underlying idea of the book and argues that the European Economic Constitution is still in the process of being transformed in multiple ways. Adamski's chapter examines how the definition of the European Economic Constitution has been shaped by the evolving economic and political beliefs. He applies a law and economics analysis to show that the Economic Constitution construct in its current form appears untenable to sustain future crises, but in a more optimistic tone he suggests that the necessary adaptations to improve it might not be as unfeasible as one might think in the first place. The following chapter by Tuori looks into the way constitutional principles have developed and functioned in the European Economic Constitution in a pre- and post-crisis context. In exploring how the crisis has impacted the institutional set up of the Union, Tuori places particular focus on the ECB, the legitimacy of its actions and its accountability. Allemand traces how 'soft' coordination of policies has transformed to 'hard'

coordination and illustrates this transformation using three examples from fiscal policies: he identifies three different types of coordination that have ‘penetrated’ Member States’ budgetary policies and examines the limits of this integrational approach. Part I concludes with De Witte’s chapter, which critically reviews conceptual understandings of ‘metamorphoses’ and suggests that any ‘transformation’ should be conceived as part of a continuous stream of development of EU constitutional law and policy.

Part II of the book focuses on the ‘social’, in its broad sense, part of the crisis. This part explores the place of the social and welfare legacy within the European Economic Constitution pre- and post-crisis, how social and procedural rights of EU citizens have been affected by the recent transformations of the European Economic Constitution and the role of conditionality in disciplining Member States. Part II starts off with the chapter by Joerges, Bogoeski and Nüse which lays out the groundwork on the relationship between the ‘economic’ and the ‘social’ in Europe before and after the Maastricht Treaty. The authors examine this relationship in a new fashion and attribute its problematic development to an imperfect compromise between two competing constitutional conceptions, which is well reflected in the inadequacy of the measures enacted to counter the economic crisis. Part II continues with Ratti’s question on whether the judicial framework on collective redundancies has changed owing to the crisis. Ratti answers this question by exploring the balance between fundamental freedoms and employment protection. Zaccaroni, then, reviews how individuals’ procedural rights are safeguarded, looking also into the shortcomings that the lack of legal remedies might have on social rights (i.e. pensions). The chapter authored by Viță concludes this part by discussing the EU budget conditionality in the EU funds context and investigates its potential use as a regulatory tool in order to reinforce the Member States’ commitments under the European Economic Constitution.

Part III of the book discusses and assesses specific responses to the crisis. Pantazatou and Asimakopoulou review the recent changes in the new economic governance framework and Banking Union from an enforcement perspective. The following chapter by Gren uses a political scientist’s perspective to provide an account of the decentralisation principle as a possible tool towards the improvement of the Single Supervisory Mechanism and against the backdrop of the transfer of supervisory tasks to the ECB. Asimakopoulou investigates the role of the Single Resolution Board (SRB) as a new form of economic governance in Europe. Through a thorough examination of the SRB’s powers and procedural safeguards, he expresses his concern as to the SRB’s compatibility with the current constitutional framework, and the evolving role of agencies therein. Finally, Part III concludes with Hofmann and Zaccaroni’s chapter that addresses the position of the European Economic Constitution within the European Constitutional Model.

We would like to thank the contributors for their cooperation and dedication that allowed us to cover a broad range of issues and show how they are inter-linked in an inclusive conception of a European Economic Constitution for the European Union. We also thank them for their thought-provoking discussion of short-comings and possible future developments. At the same time, we would like to thank the editorial team at Edward Elgar Publishing for their dedication to bringing this project to the market.