# 6. From social regulation of competition to competition as social regulation: transformations in the sociο-economic governance of the European Union

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## Introduction

In this chapter we interrogate the character of contemporary socio-economic governance in the European Union (EU). We explore the extent to which it has transformed into a neo-liberal rule of law (May, 2014) that has placed competition at the heart of European integration process and its related institutions. In this context, we contribute to the growing literature on the Euro-crisis and the decline of Social Europe (Crespy and Menz, 2015; Romano and Punziano, 2015; Papadopoulos and Roumpakis, 2015; Busch et al, 2013; Hacker, 2013; Degryse et al, 2013; Hillebrand, 2013) and, more broadly, to the study of the constitutionalisation of neo-liberalism (Gill and Cutler, 2014; May, 2014; Brenner et al, 2014; Gill, 1998).

The chapter draws on empirical evidence capturing the type and extent of regulatory changes in the fields of industrial relations, corporate governance and the coordination of macro-economic policy in the EU. These changes were neither mere responses to the Eurozone crisis nor they apply only to the crisis-hit Member States. Many of them began years ago but it was their pace and breadth that have accelerated since the eruption of the sovereign debt crisis. We argue that the effects of these changes are long-term, cumulative and mutually reinforcing and should be seen as integral elements of a relatively coherent project to establish a form of trans-national polity in Europe that privileges competition as its regulatory rationale.

The chapter analyses two distinct but related (and mutually reinforcing) transformations in EU socio-economic governance. The first part reviews key *judicial rulings* in the fields of industrial relations and corporate governance. It shows how the European Court of Justice (ECJ) has been institutionally prioritising market freedoms and competition over labour rights and especially the right to collective action in an emerging trans-national regulatory field in EU. This has led to a fundamental transformation of the regulatory landscape of industrial relations across Europe in terms very unfavourable to organized labour and the many nationally embedded arrangements that promote public rather than market-related objectives. The second part explores how recent institutional innovations have transformed the field of *European macro-economic governance* along a similar rationale. The new procedures of European macro-economic coordination construe national wage-setting, collective bargaining institutions and, more generally, social policy as adjustment variables, serving primarily the purpose of promoting or restoring Member States’ economic competitiveness. This is to be achieved by means of a very strict, legally-binding, trans-national regulatory framework, full of depoliticized disciplinary mechanisms that aim to enforce the logic of competition and the primacy of the market. The chapter concludes by reflecting on the implications of institutionalizing the predominance of ‘competitiveness’ over hard-won labour rights and democratic accountability for the political legitimacy of the European integration process.

## Social regulation of competition in the process of European integration

The Treaty of Rome (formally the Treaty establishing the European Economic Community) was signed on 25 March 1957. Its preamble[[1]](#footnote-1) confirmed the determination of the signatory states “to lay the foundations of an ever closer union among the peoples of Europe". Welfare and employment-related policies were dealt in articles 117-128 of the Treaty and especially Article 117 that highlighted the clear commitment of the signatory states’ towards ‘promote improved working conditions and an improved standard of living for workers*’.* These articles articulated a recognition of the social dimension of Europe’s politico-economic integration that was meant to have both procedural and normative aspects. Procedurally, provisions such as the monitoring of - and reporting on - social and employment conditions (Article 118) and the creation of the European Social Fund (Articles 123-128) were meant to facilitate the process of integrating towards an ‘ever closer union’ while recognizing that any possible negative effects on employment or welfare required co-ordinated positive action. The latter included measures such as “a) ensuring productive re-employment of workers by means of vocational retraining and resettlement allowances” and “b) granting aid for the benefit of workers whose employment is reduced or temporarily suspended” (Article 125). Normatively, these articles constituted an endorsement of the principles of social justice and the rule of law while recognizing the importance of respecting and enhancing socio-economic rights during the integration process. The values they endorsed echoed those that inspired the International Labour Organisation’s ‘Philadelphia Declaration’ in 1944 (see Supiot, 2012a) and those behind the establishment of the inter-governmental Council of Europe in 1949 that was driven by the firm commitment of signatory states to upheld fundamental human rights. By 1965, a few years after the signing of the Treaty of Rome, the Council of Europe’s European Social Charter came into force. Ratified by core Member States of the European Economic Community, like Italy and Germany, it became the first international treaty to recognise the ‘right to strike’ and incorporated fundamental rights in the fields of employment and industrial relations, which included the rights to organise and bargain collectively.

Still, aside the firm endorsement of gender equality in terms of pay (Article 119) and a commitment to assign the European Commission tasks related to “the implementation of common measures, particularly as regards social security for the migrant workers” (Article 121), the recognition of the social dimension of European integration envisaged in the Treaty of Rome was not accompanied by a commitment to specific or even uniform set of policies. Jurisdiction over social policy, public provisions, taxation and especially collective bargaining remained the prerogative of Member States: subject to the principle of subsidiarity and, to a large extent, subject to domestic politics between social actors in each state. The principle of subsidiarity continued to underpin the development of more explicit commitments to social provision in the decades to come, as was evident in the 1974 Council Resolution concerning a Social Action Program (OJ C 13/1 12.2.1974).

However, in the same Resolution, the Council of Ministers also agreed that economic prosperity must be mediated through full employment, the improvement of living and working conditions and democracy in the workplace (Hantrais, 2007[1995]). Indeed, until the early 1980s there was evidently an expectation that convergence towards these common objectives would result in the harmonisation of what were very diverse national welfare systems. ‘Social dumping’ was meant to be prevented while the socially and economically disruptive effects of economic competition were to be avoided by means of co-ordinated actions.

The first fears of an ‘unbalanced competition playing field’ surfaced with the accession of southern European states that began with Greece in 1981 and was followed by Spain and Portugal in 1986. Their residual welfare states and low wages were seen as potential threats to the social models and economies of the original Member States. Consequently, the use of Structural Funds became central in the double effort to support the expansion of social provisions in South Europe while facilitating the lifting of economic protection measures from the southern states’ domestic industries and markets. It also contributed to the increase of labour costs in southern European states, thus, reducing the potential threat that the ‘comparative advantage’ of their low wages would have posed for the other members states.

The first phase of the EU enlargement took place parallel to the deepening of European integration. As Hay and Wincott argue (2012) the 1980s were pivotal for what Scharpf (1999) called ‘positive integration’, as a new European legal set of institutions and norms prescribed the power of the European Court of Justice (ECJ) to challenge and override Member States’ laws if they obstructed market integration (see also Conant, 2002). In 1989, the European Community introduced the Community Charter of the Fundamental Social Rights comprising a series of directives for the social protection of workers, which followed the principle of ‘soft-law’ measures (therefore not legally binding for Member States). A decade later, the ‘Social Europe’ agenda - as it came to be known – began to be pursued primarily through the European Employment Strategy (EES), established through the Amsterdam Treaty (1997). The later stated the aim of increasing employment and productivity at work through ‘more and better’ quality jobs. As one of the key architects of the EES highlighted ‘this goal underline[d] that neither monetary dumping (currency devaluation) and fiscal dumping (state subsidies) nor social dumping (degradation of social security) can be accepted in the Union and its single market’ (Allan Larsson in Barbier,2012, p.398).

By the 1990s the impetus for the harmonization of social protection systems had weakened. On the one hand, the political economies of south European Member States could not afford the rapid catch-up with the older Member States while newcomers Sweden and Finland (along with Austria) expressed their concerns for the implications of an effective downgrading of their social protection systems. The British government expressed its opposition to any additional increase in spending on social objectives, while the German government regarded such a harmonization as a threat to German exports. Essentially, during the 1990s, it became apparent that Member States were not on a convergence course in social policy: not only socio-economic asymmetries remained but there was little consensus upon the desirability of harmonization in terms of welfare systems and employment policies. Nevertheless, some consensus was achieved with respect to macro-economic policy exemplified by the signing in 1992 of the Maastricht Treaty and a few years later the Stability and Growth Pact (1996). The Treaty launched a process of economic convergence setting a number of precise fiscal rules and targets (e.g. limiting budget deficits to less than 3% of GDP) that Member States had to achieve in order to join the monetary union. At the same time, the Treaty also reaffirmed Member States’ responsibility over social policy with harmonization applying only to the freedom of movement of workers, residence within the EU, as well as health and safety conditions.

In 2000, the launching of the Lisbon Strategy had the aim of ‘mak[ing] Europe the most competitive and dynamic knowledge-driven economy by 2010’. It conveyed for the first time the effective subordination of social policy to economic goals (Wincott, 2003) and also positioned the European economy in clear competition with other national and regional economies and markets. Substantial changes were initiated in terms of both the content and role of social policy and in terms of procedures of its transnational governance and co-ordination. With respect to the former, the normative content and role of social policy was discursively re-articulated to serve as a means to manage labour and the economy via both the removal of policies that impeded market competition, and the adoption of policies that enhanced it (Carmel, 2005). Among the key priorities of the EU were to encourage Member States to revisit social and labour costs and the sustainability of public pension and health systems. In many Member States the reforms that followed went apace with parallel attempts to weaken trade unions (Busch et. al., 2013) while wealth and income inequality were increasing (Hall and Lamónt, 2013). At the same time, the EU promoted what it perceived to be competition-enhancing policies aiming to advance its knowledge-driven economy via investment in human capital (e.g. skills, training etc.), encouraging women’s entry in the labour market and shifting public spending away from unemployment compensation into ‘active’ labour market policies. The EC (2008, p.3) called for ‘a balance between the rights and responsibilities of employers, workers and jobseekers and the authorities’ and effectively endorsed ‘flexicurity’ as an attempt to legitimise cutbacks in unemployment compensation in exchange for activation policies. As Barbier (2012, p.387) argued flexicurity ‘was more often than not, a euphemism for promoting stricter eligibility criteria for benefit recipients’.

The accession of the Central and Eastern European (CEE) states vividly illustrated how far away the political consensus from the goal of “promo[ting] improved working conditions and an improved standard of living for workers” (Article 117, Treaty of Rome). Such a goal was evidently irrelevant in the case of their membership marked by the lack of any serious reference to the social dimension of European integration during their accession. Instead, as Busch et. al. (2013) argue, in an attempt to enhance their competitive advantages, countries like Estonia, Latvia, Lithuania and Slovakia opted to reduce their welfare spending, despite their significant rates of economic growth (see also Supiot, 2012b). In a sense the accession process of CEE states facilitated the creation of an ‘unbalanced playing field’ across the EU when it came to welfare and employment policies. Not only it would allow CCE states to attract investment but also, in some cases, it would allow the undercutting of wage and working conditions in the original European Member States (Lindblom, 2010). In this context, the strategy of seeking competitive advantages as pursed by the CEE states (see Woolfson and Sommers, 2006) should not be seen as merely opportunistic. It was fully compatible with the new institutional framework and the new approach to the social dimension that no longer perceived ‘social dumping’ as a challenge but instead, by design, as facilitator in setting competition at the heart of socio-economic governance of European integration.

## Competition as social regulation in the process of European integration

Like others (Crespy and Menz, 2015; Romano and Punziano, 2015; Anderson, 2011; Supiot, 2012a; 2012b) we argue that the foundational premises of ‘Social Europe’ are being transformed into a market-centred institutional order where democratic institutions are subjugated to market imperatives. In turn, these transformations undermine the very political and democratic institutions that originally underpinned and legitimised the process of European integration (Busch et. al. 2013; Papadopoulos and Roumpakis, 2015). There are, at least, three important dimensions in this process that impact directly of the social dimension of the European integration. First, convergence is no longer achieved by means of continuous improvement of working conditions, social protection and workers’ living standards but rather through reductions in social welfare and by rendering wages as an adjustment variable for restoring competitiveness (Armingeon and Baccaro, 2012; Busch et al, 2013; Degryse et al, 2013). Second, the heterogeneity of welfare and production systems in the EU does not represent any more an ‘unlevelled playing field’ that is undesirable and is note perceived as a potential threat to the integration process; instead it is now viewed as integral to the process of European integration as it fosters competition between asymmetrical national political economies (Höpner and Schäfer, 2010; Papadopoulos and Roumpakis, 2013a; Bonefeld, 2015). Third, the legal apparatus of the European Union now serves this transformation by *judicialising* what are, effectively, political decisions. Thus, the European Court of Justice (ECJ) in now called upon to adjudicate on the hierarchy of norms and institutions that will govern the emergent trans-national regulatory field.

In the subsequent subsections we critically reflect on how a diverse set of mechanisms are now in place to drive these changes.

### *Competition and the European Court of Justice*

Conant (2002) convincingly argued that ECJ decisions reflect sectors of the emerging common market where powerful domestic actors aim to challenge or demarcate the boundaries between national and European law. Echoing this views we argue that a number of important ECJ rulings during the last decade have clearly manifested how firms, employers’ associations and the European Commission sought from the ECJ to resolve the clash of two fundamental set of freedoms and corollary rights within the EU: those of labour and those of employers. We, further, argue that the way in which the ECJ resolved this clash was by, legally sanctioning competition as the driving principle of regulating the diversity of national regulations pertaining to labour law and social protection within the European Union (EU).

Four cases are of key importance in our argument: The ECJ rulings on the cases of *Laval* (C-341/05), *Viking* (C-438/05) *Dirk Rüffert* (C-346/06), *Commission v Germany* (C-271/08) and *Commission v Luxemburg* (C-319/06). The so-called ‘Laval quartet’ rulings prioritised the freedom of enterprises to post workers with lower wages than those agreed via collective bargaining agreements at the host Member State when the latter have not defined minimum wages and public provisions. Thus, any collective action on behalf of trade unions both in private (*Laval*) and public undertakings (*Rüffert*), or in solidarity (*Viking),* were deemed to hamper the freedoms to provide services and of establishment (Directive 2006/123/EC). More than this, the ECJ[[2]](#footnote-2) challenged Member State’s right to define public policy provision (*Luxemburg*) and procurement law (*Rüffert*). As a result Germany removed the obligation for tenders to commit to the wages specified by local collective agreements that do not apply universally while Luxemburg exempted foreign undertakings from a number of requirements that could not be justified anymore by public policy provisions (for details see Papadopoulos and Roumpakis, 2013a).

In making such decisions the ECJ set the hierarchy of norms (by proxy) that were to govern the trans-national European socio-economic ‘space’. The ECJ rulings’ prioritisation of pan-European market freedoms over nationally-defined labour rights had, at least, three inter-related implications. First, it sanctioned the re-articulation and re-territorialisation of power asymmetries (Brenner et al. 2003) between labour and capital, in favour of the latter, especially as the latter is increasingly becoming more mobile and able to take advantage such a strategic advantage. Second, the ECJ resolved the clash between market freedoms and labour rights not through the harmonisation of domestic labour markets but through what we have in previous work defined as ‘meta-regulation’:[[3]](#footnote-3) by rendering competition - not only between (posted) workers – but, essentially, between the Member States’ labour laws as the regulatory norm that is to guide their integration. Third, by creating what effectively will become a market of state regulations where capital is empowered to exercise “consumer sovereignty”, the ECJ re-defined the role of politics in the process of European integration while fundamentally transforming key aspects of the institutional terrain within which varieties of national welfare capitalism operate.

Still, ECJ’s approach was hardly new but, rather, complemented similar decisions pertaining to the regulation of corporate governance and company law within the EU that preceded the ‘Laval quartet’ rulings. For example, as Höpner and Schäfer (2007) demonstrated, the ECJ challenged the decision of the German Federal Court that all firms operating within Germany should apply German company law. Instead the ECJ deemed that this legal expectation was disproportional[[4]](#footnote-4) as it impeded the right of establishment of private actors within the EU. The implication was that if a company was established under a different legal system (i.e. outside of Germany) then it could not be obliged to follow the co-determination laws that apply in Germany, a key power-resource for German labour unions revered internationally as good practice in workplace democracy. Interestingly in the majority of the cases seeking to exploit the establishment of foreign letterbox firms, owners established their companies[[5]](#footnote-5) in Britain in order to exploit laxer requirements and essentially, weakening codetermination institutions and democracy at the workplace. In a similar vein, the ECJ had ruled in favour of companies’ and taxpayers’ right to ‘shop’ among competing national tax regulations within the EU, establishing the priority of their right to seek their preferable tax environment over revenue requirements of national public interest (see Genschel et al, 2011).

In the aftermath of the ‘Laval quartet’ rulings, various firms began exploiting the loopholes on foreign so-called letterbox companies and posted-workers by establishing subsidiaries in neighbouring, predominantly CEE, countries and then ‘posting’ the very workers the parent company originally employed back to the place of work, under weaker labour law and wage agreements (Cremers, 2014). Similarly, other firms established subsidiaries in remote tax havens (e.g. Cyprus) that would then offer ‘hiring services’ to the parent company but also benefit through lower social contributions and low corporate tax. The rulings have also been used strategically to oppose collective actions by labour unions. In a now infamous example, the British Airways management successfully exploited the ‘Viking’ and ‘Laval’ rulings to stop the BA’s pilots association calling for a strike when the company announced its plans to set up subsidiaries in other EU states (Szyszczak 2009). Following this case, the ILO Committee of Experts announced their ‘**serious** concern over the practical limitations on the effective exercise of the right to strike in the UK’ (ILO, 2010:209, bold in the original). Regardless if these practices were ‘genuine undertakings’ aiming to promote competition or adopted with the purpose to ‘circumvent national regulations, labour standards and social security obligations’ (Cremers, 2014, p.4) the fact remains that these practices became possible – and are now legally sanctioned – under these judicial rulings. They constitute part of a body of case-law in Europe that operates as the legal framework of the new pan-European institutional order, offering unprecedented power resources to firms and capital vis-à-vis labour unions and workers.

In stark contrast to the ECJ rulings, the landmark ruling of the European Court of Human Rights (ECHR) in the case of Demir and Baykara v Turkey (ECHR 1345) interpreted the ‘right to strike’ beyond the domain of national collective bargaining arrangements - and, therefore, subjected only to national labour laws – but, rather, as a ‘human right‘, following the International Labour Organisation’s conception of this right (Ewing and Hendy, 2010). Thus, the ECHR ruled that the right of workers to engage in collective bargaining and pursue collective action (such as strike) was a fundamental human right under Article 11 of the European Convention on Human Rights (on freedom of assembly and association). Therefore, despite the many similarities between the Viking and Laval cases, the ECHR challenged the ECJ rulings and did not recognise any limitation on the right to strike.

The ECHR ruling is of key importance as it reinstates the hierarchy of the right to strike over market freedoms. However, EU (and consequently the ECJ) is not answerable to the Council of Europe and the ECHR as such. Nevertheless, the ECHR contested the ECJ rulings on the grounds that they breached the ILO conventions that are included in the European Social Charter. Drawing on the stipulations of the European Social Charter the European Trade Union Confederation (ETUC) attempted to review the provisions of the new European economic governance (that was agreed amidst the sovereign debt crisis) and requested the wider review of labour market reforms enacted in recent years, including those under the pretext of dealing with the sovereign debt crisis. The European Committee of Social Rights (an ECHR committee of experts) declared that the ‘Laval’ and ‘Viking’ rulings are in violation of the right to collective action, including the right to strike, though these represented only 2 of a total of 180 violations of the Charter within EU (ECSR, 2013).

Aside the clash of the ECHR and the ECJ, it is now a wider held perception that the rulings of the latter represent a significant attempt to drive European market ‘integration through law’ (Höpner and Schäfer, 2010: 20) The ECJ rulings prioritised European market freedoms over national labour law, public and welfare provisions, corporate tax and company laws. We add that in doing so, they also institutionalised a regulatory field where national labour laws, collective bargaining agreements, public provisions, corporate governance and tax laws of the heterogeneous Member States’ are effectively in direct competition with each other. However, while competition in the domain of social and employment policy is sanctioned, competition in the domain of macro-economic policy between alternative economic strategies is severely limited. As we will show next, the new European economic governance precludes such competition on economic policy and instead opts to use labour market as an adjustment variable in restoring economic competitiveness.

### *Competition and EU macro-economic governance*

The emergence of the sovereign debt crisis signalled a major overhaul of how the EU re-framed economic, employment and social policy. Originally, the lack of a clear and coherent response on behalf of the European Commission (EC) not only led to individual Member States adopting their own set of policies and responses but also paved the way for individual Member States within the European Council to assume leadership positions. In this way, the responses to the sovereign debt crisis deepened the asymmetric relationships of power and dependence that have been developing between national political economies, and particularly between core and peripheral political economies within the process of the Economic and Monetary Union (see Scharpf, 2013; on Southern Europe see Papadopoulos and Roumpakis, 2015).

The ‘bailout’ agreements for Greece, Portugal and Ireland as well as the ‘stand-by’ agreements for Italy and Spain, were accompanied with the demand on behalf of the surplus countries (predominantly Germany, Finland and the Netherlands) to implement far-reaching austerity reforms and drastically reduce social protection (Papadopoulos and Roumpakis, 2013b). New agencies like the so called ‘troika’ (EC, ECB, IMF) were formed to enforce the implementation of these market-enhancing measures as imperatives for boosting the competitiveness of troubled economies but also downplay the fears and pressures stemming from the international financial markets while allowing the Eurozone countries to recover their economic stability.

However, the most striking institutional change took place over the governance of social security, as for the first time the EU would be involved in policy areas previously under the jurisdiction of national governments (Barbier, 2012). In order to effectively monitor, if not enforce, the austerity measures, the European Council introduced a series of institutional innovations that ascribe to the European Council and EC powers to further limit the ability of Member States to decide on their own wage-setting and budget-making policy. In particular, under the rhetorical guise of improving the quality of economic coordination in the EU, and using the ‘Competitiveness Pact’ (March 2011) as a legal framework, wage policy is now explicitly considered as part of European economic governance and in fact ‘the most important adjustment variable for promoting competitiveness’ (Busch et. al., 2013:8). Not only does this go against the fundamental principle of the ‘voluntary’ nature of the contract between labour and capital in a labour market but violates the EU Treaty itself which explicitly rules out any EU competence in respect to wage policies (Article 153, paragraph 5). The so-called ‘Six-Pack’ (December 2011) places wage and collective bargaining agreements under an explicit system of monitoring of wage cost developments in both public and private sectors. Wages in the public sector have to be revised in order not to hamper competition with the private sector while wage increases in the private sector cannot exceed rates of productivity increases. Failure to comply with the rules imposes financial sanctions penalty equal to 0.1% of their GDP. Interestingly similar mechanisms of surveillance for poverty reduction are not present in the strategy of ‘Europe 2020’ (June 2010) that replaced the Lisbon Strategy (de la Porte and Heins, 2015).

More importantly, the signing of the Fiscal Compact Treaty (March 2012) prescribes that states’ budgets shall be balanced or in surplus, with the rules having a binding force and permanent character (EC, 2012). The rules have to be enshrined in national law, preferably through constitutional amendments, thus, asserting competences to EC and the ECJ (see Bird and Mandilaras, 2013) while constitutionalizing the particular type of (neoliberal) fiscal policy. As Streeck (2013) has argued, nation-state governments, especially in the Eurozone, have now effectively surrendered a substantial part of their budget-making power over to European institutional organisations.

The new European Economic governance renders that all EU Member States should aim to regain their competitiveness primarily via restoring exports in order to achieve surplus in trade accounts. Given that a substantial part of economic transactions of the Eurozone takes place within the Eurozone itself it is inevitable that such an approach will apply downward pressures to existing models of social and employment protection. The EC (2014) admits that it is likely that some Member States within the Eurozone are more likely to experience a trade deficit when other Member States experience trade surpluses. However, as we discuss below, it is excessive deficits (and not surpluses) that trigger the corrective and punitive arm of the Macroeconomic Imbalance Procedure (MIP) that entered into force on 13 December 2011, as part of the so-called ‘Six-Pack’ agreement.

The institutionalisation of this surveillance mechanism sets ‘competitiveness alert thresholds’ on selected macro-economic indicators. It is therefore of particular interest to consider the key indicators adopted; internal balances and then external imbalances and competitiveness (see EC, 2014). As seen in Table 6.1, the key indicators for measuring Member States’ competitiveness are Nominal Unit Labour Cost (NULC) and Real Effective Exchange Rates (REER) measured as a percentage of change over 3 years. The former calculates the remuneration (compensation per employee) and productivity (gross domestic product (GDP) per employment) to show how the remuneration of employees is related to the productivity of labour while REER computes the deviation of one country’s export prices relative to the prices of its competitors or trading partners (EU including China, Brazil, Russia, South Korea and Hong-Kong). While significant current account surpluses are recognised to trigger imbalances within the Eurozone, the ‘competitiveness alert thresholds’ are more sensitive to Member States with current account and trade deficits which, following a process of qualitative assessments and interviews with national experts, are then subsequently requested to ‘correct’ their performance. Interestingly, social policy measurements (unemployment, poverty risk), along with other financial indicators, are included in the auxiliary set of indicators, not enough on their own to trigger the alert mechanism.

**Table 6.1**

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| Indicators for external imbalances and competitiveness | Thresholds |
| Net International Investment Position (NIIP as %GDP) | -35% |
| Current Account Surplus and Deficit (3 year average) | -4% & +6% |
| Real Effective Exchange Rate (REER %change of 3 years) | ±5% & ±11% |
| Export Market Shares (EMS %change 5 years) and  | -6% |
| Nominal Unit Labour Cost (ULC %change, 3 years) | ±9% & ±11% |

|  |  |
| --- | --- |
| Indicators for internal imbalances  | Thresholds |
| % y-o-y change in Deflated House Prices | +6% |
| Private Sector Credit Flow as % of GDP, consolidated | 14& |
| Private Sector Debt as % of GDP, consolidated | 133% |
| General Government Sector Debt as % of GDP | 60% |
| % y-o-y change in Total Financial Sector Liabilities | 16.5% |
| Unemployment rates (3 year average) | 10% |

Source: EC (2014)

The mechanism itself has triggered an interesting debate as far as how mechanical these readings are and how member state involvement will be applied (Bobeva, 2013). With evidence already suggesting that the there is room for negotiation, the MIP brings forward many tensions (for an extensive review see Moschella, 2014). In our opinion the most significant is that the mechanism regards Member States solely responsible for their macroeconomic imbalances, especially for those in current account and trade deficits rather than attributing these to the dynamics of the EU itself. EU governance neglects to realise that Member States do not operate ‘in vacuum’ but are in continuous politico-economic interaction which each other while, often, asymmetric relationships of dependence develop between them which affect directly their economic trajectories. This approach ignores the origins of the imbalances and suggests crisis-hit countries adopt austerity rather than expansionary policies which, so far, have exacerbated the downward spiral in economic performance (on Greece see Papadopoulos and Roumpakis, 2012; 2013c) and increased government debt ratios (De Grauwe and Ji, 2013). The MIP thus continues to ignore the structural asymmetries of peripheral welfare capitalisms, placing the latter within a process of internal devaluation.

The response of the new European Economic governance continues to exacerbate these institutional dynamics as it continues to apply a narrow focus on supply-side measures rather than taking into consideration the institutional features of peripheral political economies (De Grauwe and Ji, 2014). In particular, South European as well as Central and East European (CEE) Member States lack the necessary capital investment to boost their productivity and so are essentially bound to be in competition over corporate taxation, wage and labour costs. This comes at the cost not only of downward pressures for wages, working and living conditions but also intensified labour mobility within the EU, with peripheral political economies struggling to retain their human resources and effectively the ability to rebuild their futures (on South Europe see Papadopoulos and Roumpakis, 2015; on the Baltics see Woolfson and Sommers, 2016).

## Conclusion

In this chapter we demonstrated how competition has become a key instituting principle of socio-economic governance within the EU and we highlighted the diverse set of mechanisms in place that drive this process. We particularly interrogated the political role of the ECJ rulings and their importance for enhancing ‘market integration through law’. Intentionally or not, ECJ’s generation of case-law in fields of labour law, collective bargaining, public provision, corporate governance and tax law creates trans-national markets of national regulations in Europe where capital can (and does) act as the ‘sovereign consumer’. Additionally, trade agreements like the Comprehensive Economic and Trade Agreement (CETA) between EU and Canada are more likely to accelerate the drive towards competition-centred regional integration and enhance even further the power of corporate actors.

The second transformation that we focused on relates to institutional innovations in European macro-economic governance. We reviewed how for the first time, the European Council has introduced a specific rule-based fiscal pact which prescribes that states’ budgets shall be balanced or in surplus, with the rules having a binding force and permanent character. In the absence of any control over monetary policy and therefore the lack of exchange-rate devaluation, competitiveness is to be achieved through the ‘adjustment’ of wage-setting and collective bargaining institutions; in other words via ‘internal devaluation’.

So far, the attempts to constitutionalize competition and the market rationale as the key organizing principles of European socio-economic governance have not met a great resistance at the level of European political elites. Still, at the level of European publics, the political legitimacy of the European integration process has been placed under serious question. Can this new institutional order be compatible with national democratic politic? Indeed, the future of a united Europe has never been more uncertain.

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1. The Treaty of Rome. Accessible from: http://ec.europa.eu/archives/emu\_history/documents/treaties/rometreaty2.pdf [↑](#footnote-ref-1)
2. The ECJ does not have any political authority over the enforcement of the rulings. It is for Member States and national courts to respond and respect its rulings. Failure to respond can lead to financial sanctions (Conant, 2002). [↑](#footnote-ref-2)
3. Meta-regulation concerns the governing of transnational interactions between a) the collective rights inscribed in Member States’ labour laws, and between b) the principles and norms embodied in these laws vs. the principles and norms regarding the regulation of the free movement of services in all EU Member States (see Papadopoulos and Roumpakis, 2013a). [↑](#footnote-ref-3)
4. On the ‘principle of proportionality’ see Martinsen (2011: 947). Essentially it reaffirms the role of ECJ as the judge of what is reasonable and where the balance strikes. [↑](#footnote-ref-4)
5. The cases refer to the rulings on *Centros Ltd* and *Inspire Art Ltd*. (see Höpner and Schäfer, 2007). [↑](#footnote-ref-5)