

ESTUDIOS

THE TRANSFORMATIVE POWER OF EU LAW

EU LAW AND WELL-BEING

JUAN JORGE PIERNAS LÓPEZ
DIRECTOR

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Index

	<u>Page</u>
PREFACE	17
1	
EU LAW AND WELL-BEING	
JUAN JORGE PIERNAS LÓPEZ	25
I. Well-being as a foundational value and objective in EU integration	25
II. EU law and well-being in secondary legislation and policy practice	34
III. Well-being and State aid: the case of services of general economic interest	38
1. <i>Well-being considerations in the definition of State aid</i>	39
2. <i>Compatibility of State aid and well-being</i>	41
3. <i>The SGEI framework as a well-being instrument: the reform of the SGEI Decision and affordable housing</i>	42
IV. Conclusions	47
Bibliography	49
<i>Books and Journal Articles</i>	49



DRONES AND THE EUROPEAN UNION: PROTECTING THE WELLBEING OF CITIZENS FROM ABOVE

MARÍA JOSÉ CERVELL HORTAL	51
I. Introduction	51
II. Drones as a matter of the internal market and aviation safety	53
1. <i>Regulation (EU) 2018/1139</i>	53
2. <i>Complementary legislation</i>	57
III. Drones: also a matter of security and defence	59
1. <i>The shift towards security: hybrid threats and strategic autonomy</i>	59
2. <i>From the Drone Strategy 2.0 to the European Drone Defence Initiative</i>	61
2.1. <i>The Drone Strategy 2.0 (2022)</i>	62
2.2. <i>The Communication on countering drone threats (2023)</i>	63
2.3. <i>The European Drone Defence Initiative, 2025 (the Drone Wall)</i>	64
3. <i>The drone and counter-drone action plan of February 2026</i>	66
IV. The limits of the EU	70
1. <i>Competences in the field of security and defence</i>	70
2. <i>Compliance with the international legal framework</i>	72
IV. Conclusions	76
Bibliography	77



3

WELL-BEING THROUGH RIGHTS: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING UNDER INTERNATIONAL HUMAN RIGHTS LAW AND ITS SIGNIFICANCE FOR EU LAW

DOROTHY ESTRADA TANCK	81
I. Introduction	81
II. The right to an adequate standard of living as key to human well-being	85
III. Content of the right to an adequate standard of living and applicable IHRL	90
IV. Interrelation of EU law and COE standards with International human rights law	92
1. <i>Practical applicability: relevant UN normative and interpretative standards</i>	<i>97</i>
2. <i>Effects of interpretative interactions on social rights and well-being in Europe</i>	<i>100</i>
V. Concluding remarks	103
Bibliography	104

4

EUROPEAN UNION'S APPROACH TO DUE DILIGENCE: AN OLD TOOL TO FACE NEW CHALLENGES TOWARDS GLOBAL WELL-BEING

MELANIE SOTO CREMADES	107
I. Introduction	107
II. Navigating due diligence in International Law: systemic flexibility through conceptual ambiguity	109
1. <i>Ambiguous evolution and uneven application</i>	<i>110</i>



	<i>Page</i>
2. <i>Unsettled Debates: dissecting its legal nature and sources</i>	113
3. <i>Defining the baseline: minimum common elements of a cross-cutting standard</i>	119
III. European Union's approach to due diligence: new challenges, domains and actors in the global arena	123
1. <i>Environmental protection</i>	124
2. <i>Human rights</i>	128
3. <i>Cyberspace</i>	132
IV. Concluding remarks	136
Bibliography	138

5

CARE IN THE EUROPEAN UNION: FROM WELFARE TO PLATFORMISATION

LIDIA GIL OTERO	143
I. Care, demographic change and digitalisation	143
1. <i>The role of care in the European social model</i>	143
2. <i>European Care Strategy</i>	147
II. The commodification of care and the new actors	150
III. The rise of digital care platforms in the EU	153
IV. The treatment of digital care platforms under the Directive (EU) 2024/2831	156
1. <i>Marketplace-type digital care platforms</i>	157
2. <i>Digital care platforms based on intermediation</i>	159
3. <i>Beyond intermediation: hybrid digital care platforms</i>	161
V. Legal classification of triangular relationships on digital care platforms	165



	<i>Page</i>
1. <i>The role of the intermediary in the Directive (EU) 2024/2831 ...</i>	165
2. <i>A gender perspective on the classification of digital care platform work</i>	167
VI. Future challenges for the protection of persons performing digital care platform work	174
Bibliography	176

6

THE PROTECTION OF THE WELL-BEING OF MINORS IN THE EU DIGITAL PUBLIC SPHERE: EVOLUTION OF ITS LEGAL ARCHITECTURE, STRENGTHS, AND STRUCTURAL FLAWS

LORENA TRISTANTE PELLICER	181
I. Introduction	182
II. The legal architecture for the protection of the well-being of minors in the EU digital sphere: the AVMSD, the DSA, the AI Act, and the DFA	184
1. <i>The origin: the AVMSD and the protection of the well-being of minors</i>	185
2. <i>The cornerstone: the DSA and the protection of the well-being of minors</i>	189
2.1. The DSA on paper	189
2.2. The DSA in practice	196
3. <i>The promising rising star: the AI Act and the protection of the well-being of minors</i>	201
4. <i>The future: the DFA and the protection of the well-being of minors</i>	205
III. The concept of well-being of minors within the EU digital package	208



	<i>Page</i>
IV. Strengths and limitations of the current architecture for the protection of minors in the digital sphere	210
V. Concluding remarks	214
Bibliography	214

7

STATE AID AND SOCIETAL WELL-BEING: WHAT IF THERE WAS SOMETHING ELSE TO COMPATIBILITY ASSESSMENT?

ANDRÉS BORJA ALCARAZ RIAÑO	217
I. Introduction	218
II. State aid and well-being: a conceptual link	220
1. <i>Well-Being as a Normative Category</i>	220
2. <i>From Market Failure to Well-Being Deficit</i>	221
3. <i>The Pathways from State Aid to Well-Being</i>	222
3.1. <i>Employment and Income Security</i>	222
3.2. <i>Regional and Territorial Cohesion</i>	222
3.3. <i>Access to Essential Services</i>	223
3.4. <i>Housing as a Well-Being Prerequisite</i>	223
3.5. <i>Environmental Quality and Ecological Well-Being</i> ...	224
3.6. <i>Innovation and Long-Term Prosperity</i>	225
4. <i>The conceptual framework</i>	225
III. Well-being as a policy objective in EU law	225
1. <i>The Treaty Framework</i>	225
2. <i>The Evolution Toward Well-Being Goals in EU Policy</i>	226
3. <i>Well-Being Logic in Existing and Emerging Aid Categories</i> ...	227
3.1. <i>Environmental and Climate Aid</i>	227



	<i>Page</i>
3.2. Regional Aid	227
3.3. The SGEI Framework: From Social Housing to Affordable Housing	228
3.4. Social Aid, Poverty Reduction, and the Social Economy	230
3.5. Research, Development, and Innovation Aid	231
3.6. The Economic Welfare Case for Selective Subsidies: Oligopoly Inefficiency and the Social Benefit of Production Aid	231
IV. Reformulating the compatibility assessment: a well-being paradigm	233
1. <i>The Current Balancing Test</i>	233
2. <i>The Well-Being Enriched Compatibility Test</i>	234
3. <i>The Analytical Framework</i>	235
4. <i>The Thesis: Compatibility as Social Balancing</i>	235
V. Tensions, objections, and limitations	236
1. <i>Legal Certainty and Predictability</i>	236
2. <i>The Risk of Protectionism</i>	237
3. <i>Measurement and Operationalisation</i>	237
4. <i>Distributional Complexity</i>	237
5. <i>The Tension Between Well-Being Goals and the Treaty Architecture: Lessons from the Case Law</i>	238
6. <i>The Implementation Gap: Discourse, Uncertainty, and Compliance at the Sub-National Level</i>	239
VI. Application to contemporary eu policy challenges	241
1. <i>The European Affordable Housing Plan and the Revised SGEI Decision</i>	241
2. <i>The EU Anti-Poverty Strategy and Social Cohesion</i>	242
3. <i>The European Green Deal and Climate Aid</i>	243
4. <i>Digital Transition and Broadband Aid</i>	244



	<i>Page</i>
5. <i>Post-Pandemic Recovery and Crisis Aid</i>	244
6. <i>Regional Aid and Left-Behind Places</i>	245
VII. Governance, measurement, and accountability	245
1. <i>Governing the Well-Being Compatibility Framework</i>	245
2. <i>Measuring Well-Being for State Aid Purposes</i>	246
3. <i>Accountability and Democratic Legitimacy</i>	246
VIII. Conclusions	247
Bibliography	248

8

LAS AYUDAS DE ESTADO ANTE EL TRIBUNAL CONSTITUCIONAL ESPAÑOL. COMENTARIO DE LA SENTENCIA DE 6 DE OCTUBRE DE 2025.

MERCEDES PEDRAZ CALVO	255
I. Introducción	255
II. Antecedentes de hecho de la sentencia del Tribunal Constitucional de 6 de octubre de 2025. Recurso de amparo 7042/2021 ..	257
III. Cronología resumida	262
IV. Las cuestiones jurídicas debatidas en el recurso y las respuestas dadas por el Tribunal Superior de Justicia del País Vasco ..	263
1. <i>Los motivos de recurso</i>	263
2. <i>Las respuestas del Tribunal Superior de Justicia del País Vasco</i> ..	266
V. La sentencia del Tribunal Constitucional de 6 de octubre de 2025	270
VI. La sentencia del Tribunal Superior de Justicia del País Vasco de 3 de noviembre de 2025	274
VII. Conclusión	278
Bibliografía	279



9

PEOPLE-CENTRED JUSTICE AND WELL-BEING

GEMMA GARCÍA-ROSTÁN CALVÍN	281
I. Introduction	281
II. Adjustments to civil proceedings for people with disabilities or the elderly	283
III. Proceedings in the MASC/ADR involving persons with a disability affecting the exercise of their legal capacity	287
Bibliography	289

10

LAS EXIGENCIAS CONSTITUCIONALES Y LOS ESTÁNDARES EUROPEOS EN LA ELECCIÓN EN ESPAÑA DE LOS MIEMBROS JUDICIALES DEL CONSEJO DEL PODER JUDICIAL

DAVID ORDÓÑEZ SOLÍS	291
I. Introducción	292
II. Los modelos conformes con la Constitución y que cumplan los estándares europeos	293
III. La elección directa y la elección parlamentaria de los miembros judiciales del consejo	300
IV. El sistema electoral de los vocales de origen judicial: las categorías, las candidaturas y la fórmula electoral	303
1. <i>La elección por categorías judiciales: magistrados del Tribunal Supremo, magistrados y jueces</i>	<i>303</i>
2. <i>Las candidaturas y el procedimiento electoral</i>	<i>306</i>
3. <i>La fórmula electoral: la debida proporcionalidad</i>	<i>308</i>
V. Conclusión	310
Bibliografía	311



EU LAW AND WELL-BEING

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SUMMARY: I. WELL-BEING AS A FOUNDATIONAL VALUE AND OBJECTIVE IN EU INTEGRATION. II. EU LAW AND WELL-BEING IN SECONDARY LEGISLATION AND POLICY PRACTICE. III. WELL-BEING AND STATE AID: THE CASE OF SERVICES OF GENERAL ECONOMIC INTEREST. 1. *Well-being considerations in the definition of State aid.* 2. *Compatibility of State aid and well-being.* 3. *The SGEI framework as a well-being instrument: the reform of the SGEI Decision and affordable housing.* IV. CONCLUSIONS. BIBLIOGRAPHY. *Books and Journal Articles.*

I. WELL-BEING AS A FOUNDATIONAL VALUE AND OBJECTIVE IN EU INTEGRATION

The idea of well-being is not foreign to the European project. Far from occupying a peripheral position in the architecture of EU primary law, well-being appears as a guiding objective of the Union, placed at the same normative level as peace and the promotion of Union values. The Preamble to the Treaty on European Union (TEU) affirms the Union's determination to promote "the well-being of its peoples"¹. This programmatic statement

1. Treaty on European Union (TEU) [2012] OJ C 326/13, Preamble.



is not merely declaratory. Article 3(1) TEU repeats that central mission, providing that “The Union’s aim is to promote peace, its values and the well-being of its peoples”². These provisions, taken together, establish well-being as an overarching aim that must orient the exercise of EU competences and the conduct of EU institutions.

As it has been noted, the Treaty of Lisbon introduced the reference to well-being: “This is the first time that the term “well-being” was included in the primary law of the EU. Well-being should be understood broader than the previously used term “standard of living”. The term “standard of living” (Article 2 European Coal and Steel Community [ECSC] Treaty, later Article 2 European Economic Community [EEC] Treaty) is solely a measure of monetary well-being or “the degree of wealth and material comfort available to a person or a community”. Recital 9 of the Preamble of the TEU clearly states that the EU is determined to promote economic and social progress for their peoples. Furthermore, Article 3 TEU is based on the former Article 2 EC Treaty which states that the aim is not only to raise the “standard of living” but also to raise the “quality of life”³.

Article 1 of the Treaty on European Union provides that the Member States, the HIGH CONTRACTING PARTIES, establish among themselves a European Union “on which the Member States confer competences to attain objectives they have in common”. The Treaty of Lisbon (2007) extended and developed the objectives of the Union set out in Article 3 TEU.

As Lenaerts and other authors point out, the Treaties include other objectives in provisions ‘of general application of a horizontal nature’, as the Grand Chamber of the CJEU has recently referred to them⁴, set out in Articles 8 to 17 TFEU, which complement those set out in Article 3 TEU, without it being appropriate to assume that the former objectives are less important for the Union than the latter⁵.

According to the case law of the Court of Justice, the values and objectives set out in Articles 2 and 3 TEU, although an important

2. TEU, Article 3(1).
3. van der Zee, E., European competition law: measuring sustainability benefits under Article 101(3) TFEU in *Research Handbook in Competition Law and Sustainability*, Edward Elgar, 2024 (Julian Nowag ed.), at p. 414.
4. Judgment of 21 December 2023, C-333/21, *European Superleague Company*, EU:C:2023:1011, paragraph 100.
5. Lenaerts, K., Van Nuffel, P., y Corthaut, T. (eds.) (2021), *EU Constitutional Law*, Oxford University Press, at p. 82.



element for interpreting EU law, 'are programmatic in character', so that achievement of a given objective, such as economic and social cohesion, 'must be the result of the policies and actions of the Community and of the Member States'⁶. More recently, the Court has stated emphatically that "Article 3 TEU is confined to setting out the Union's objectives, which are given concrete expression by other provisions of the Treaties"⁷.

The case law cited clearly applies to objectives such as the achievement of an internal market, or of an area of freedom, security and justice without internal frontiers. However, it appears less apposite for an objective such as Article 3(1) TEU, and in particular for the promotion of the well-being of the Union's peoples, which is not given concrete expression in the provisions of the Treaties, but rather seems to apply across them, as a mandate to be borne in mind when applying policies and adopting measures relating to the Union's external action. Advocate General Biondi recently expressed a similar view when noting, with reference to Article 3(5) TEU, in particular in relation to the contribution to the observance of Public international law, the importance of "preserving the constitutional structure of the Union, which has, moreover, clearly committed itself to respecting international law and contributing to free and fair trade"⁸.

In this connection, and of particular relevance for Article 3(1) TEU, the case law also indicates that, although the objectives do not create obligations for Member States, individual rights, or have direct effect, they are nonetheless relevant for the interpretation of all Treaty provisions, which must be assessed 'in the light of the objectives and activities of the [Union]'. In the words used by President Lenaerts, "The Court interprets the Treaty provisions in the light of the Union's objectives"⁹.

In this regard, it is interesting to refer to the SuperLeague case, in which the Grand Chamber of the Court rejected the argument that Article 165

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6. Judgment of 23 November 1999, C-149/96, Portugal v Council, EU:C:1999:574, paragraph 86. See also Kellerbauer, M., Klamert, M., y Tomkin, J. (2024), *The EU Treaties and Charter of Fundamental Rights: A Commentary*, Second Edition, Oxford University Press, at p. 43.
 7. Judgment of 17 November 2022, C-304/21, VT v Ministero dell'Interno and Ministero dell'Interno, EU:C:2022:897, paragraph 34.
 8. Opinion of Advocate General Biondi in C-413/24, Vlaams Gewest v P&O North Sea Ferries Limited and Others, EU:C:2025:490, paragraph 57 and footnote 72.
 9. Lenaerts, K., Van Nuffel, P., y Corthaut, T. (eds.) (2021), *EU Constitutional Law*, Oxford University Press, at p. 83.



TFEU had the same standing as the general objectives of the Treaty, and in particular those set out in the “provisions of principle” which, under Title II TEU, include the “provisions having general application”.

In particular, the CJEU concluded that “while the competent EU institutions are required to take into account the different elements and objectives listed in Article 165 TFEU when adopting, on the basis of that article and under the conditions which it lays down, incentive measures or recommendations in the field of sport, those various elements and objectives, like the incentive measures or recommendations, need not be integrated or taken into account in a binding manner when applying the rules whose interpretation is sought by the referring court [...]” (emphasis added). It would appear, a contrario, that the provisions of principle set out in Titles I and II, among them Article 3(1) TEU, must be integrated or taken into account in a binding manner when applying the rules of the Treaty¹⁰.

Interestingly, as noted by Kellerbauer and others¹¹, Declaration 41 of the Treaty of Lisbon on Article 352 TFEU makes a difference between the overall aims of the Union, included in Article 3(1) TEU, and the remaining objectives included in that Article. Indeed, according to such Declaration:

“The Conference declares that the reference in Article 352(1) of the Treaty on the Functioning of the European Union to objectives of the Union refers to the objectives as set out in Article 3(2) and (3) of the Treaty on European Union and to the objectives of Article 3(5) of the said Treaty with respect to external action under Part Five of the Treaty on the Functioning of the European Union. It is therefore excluded that an action based on Article 352 of the Treaty on the Functioning of the European Union would only pursue objectives set out in Article 3(1) of the Treaty on European Union. In this connection, the Conference notes that in accordance with Article 31(1) of the Treaty on European Union, legislative acts may not be adopted in the area of the Common Foreign and Security Policy”¹².

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10. Judgment of 21 December 2023, C-333/21, European Superleague Company, EU:C:2023:1011, paragraphs 100-101.
 11. See also Kellerbauer, M., Klamert, M., y Tomkin, J. (2024), *The EU Treaties and Charter of Fundamental Rights: A Commentary*, Second Edition, Oxford University Press, at p. 44 and fn. 23.
 12. See 41. Declaration on Article 352 of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, p. 350-350



Therefore, Article 3(1) TEU falls among the overall objectives pursued by the Union, that is, the aims that justify its existence, which must also be consistent with the competences the Union exercises. This constitutional anchorage of well-being in EU primary law has not always been appreciated with the attention it deserves. For instance, there is hardly any reference to Article 3(1) TEU in the case-law of the Union Courts¹³. Interestingly, in a pending case brought by Poland, this Member State has invoked the violation of Article 3(1) by the EU legislature. In particular, Poland has contented “that, by establishing the emissions targets for new passenger cars and new light commercial vehicles laid down in Article 1(1) (b) of the contested regulation [Regulation (EU) 2023/851], which will give rise to serious consequences for the European automotive industry and the economic sectors relating thereto, as well as for society, the EU legislature has failed to fulfil the obligation to promote the well-being of the peoples of the Union (Article 3[1] TEU) [...]”¹⁴.

In this context, EU integration has traditionally been analysed predominantly through the prism of market-building: the four freedoms, competition policy, and macroeconomic coordination were the dominant lenses. Yet the Treaty framework post-Lisbon, read as a whole, points in a more holistic direction. Article 3(3) TEU, for instance, commits the Union to work for “a highly competitive social market economy, aiming at full employment and social progress”, and Article 9 TFEU asks the Union to take into account, in defining and implementing its policies and activities, “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

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13. A search conducted by the author on the Curia website reported only six references in the case-law of the Union Courts, in particular 3 Opinions of AGs (discussed *infra*), one application, one reference for a preliminary ruling and one judgment, in case C-561/19, *Josemans*, but merely reproducing one of the preliminary ruling questions posed by the national court: “Is Directive 2004/17 (if it should be considered that price review may be excluded, in all contracts concluded and implemented within special sectors, as a direct result of that directive) compatible with the principles of the European Union (in particular Article 3[1] TEU, Articles 26, 56 to 58 and 101 TFEU, and Article 16 of the Charter), ‘in the light of the unfairness, disproportionality, and distortion of contractual balance and, therefore, of the rules governing an efficient market?’”. Last visit to Curia Search Form 30 June 2026, search used under text “Article 3(1) TEU”.
 14. Application in case C-444/23, *Republic of Poland v European Parliament and Council of the European Union*.



protection of human health”¹⁵. Well-being, it turns out, is woven into the very fabric of the Treaties.

Indeed, the requirements of Article 9 of the Treaty on the Functioning of the European Union (TFEU) —the horizontal social clause—¹⁶ are, precisely, essential components of well-being in any modern, multidimensional sense. This provision therefore imposes a positive obligation on EU institutions to integrate well-being considerations across all policy areas, including those as traditionally market-oriented as competition and State aid.

The Charter of Fundamental Rights of the European Union adds further normative texture. Article 24 of the Charter refers specifically to the need to protect children’s well-being, providing that in all actions relating to children, their best interests must be a primary consideration. This provision forms part of the legally binding catalogue of rights that EU institutions and Member States must observe when implementing EU law, since the Charter acquired the same legal value as the Treaties upon the entry into force of the Treaty of Lisbon in December 2009.

The EU’s commitment to well-being must also be read in its broader international law context. Article 25 of the Universal Declaration of Human Rights states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”¹⁷. The EU, as an actor committed to multilateralism and the international rules-based order, has always drawn inspiration from this foundational text, notably in its relations with third countries. For example, Article 524 of the Trade and Cooperation Agreement with the United Kingdom, provides that “The cooperation provided for in this Part is based on the Parties’ and Member States’ long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights [adopted by the General Assembly of the United Nations on 10 December 1948] and

15. Treaty on the Functioning of the European Union (TFEU) [2012] OJ C 326/47, Article 9.

16. TFEU, Article 9. See also D. Ferri and J.J. Piernas López, ‘State aid law in a social market economy’, in D. Ferri and F. Cortese (eds), *The EU Social Market Economy and the Law: Theoretical Perspectives and Practical Challenges for the EU* (Routledge 2019) 166-180, 172.

17. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), Article 25.



in the [ECHR], and on the importance of giving effect to the rights and freedoms in that Convention domestically”¹⁸. Insofar as EU citizenship and fundamental rights protections are concerned, the UDHR provides a normative floor below which EU law should never descend. The inclusion of well-being in Article 25 UDHR underscores that this concept is not merely a European institutional preference but a universal aspiration rooted in international human rights law.

The constitutional significance of well-being becomes clearer still when Article 3(1) TEU is read in conjunction with Article 2 TEU, which enumerates the foundational values on which the Union is built: human dignity, freedom, democracy, equality, the rule of law, and respect for human rights¹⁹. These values are described as common to the Member States “in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. Well-being, understood in a multidimensional sense, ought not be considered separable from these commitments.

From an analytical perspective, well-being has evolved considerably as a concept in political theory, economics, and public policy. The classical GDP-centric measure of societal progress has been subjected to sustained and influential critique. The European Commission acknowledged these concerns in its 2009 Communication ‘Beyond GDP,’ which expressly called for the development of complementary indicators to measure environmental and social dimensions of progress alongside economic output²⁰. The OECD subsequently developed its ‘How’s Life?’ framework and the Better Life Index as practical tools for assessing well-being across multiple dimensions²¹.

In the EU context, the Commission placed well-being at the heart of the European Open Strategic Autonomy, launching the sustainable and inclusive wellbeing (SIWB) initiative²². More recently, the Joint Research

18. Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ 2021 L 149, p. 10; ‘the TCA’).

19. TEU, Article 2.

20. Commission Communication, *Beyond GDP: Measuring progress, true wealth, and the well-being of nations*, COM(2009) 433 final.

21. See e.g. OECD, *How’s Life? 2024 Well-being and Resilience in Times of Crisis*.

22. European Commission (2023b). Strategic Foresight Report 2023. Sustainability and people’s.



Centre (JRC) has published a report on *Measuring sustainable and inclusive wellbeing: a multidimensional dashboard approach*, the SIWB multidimensional dashboard identifies 140 indicators of well-being across six components: wellbeing today, social and economic resources for future wellbeing, resilience: societal challenges and sustainability transitions, nature and planetary boundaries, inclusiveness, and institutional capacity and quality²³.

As summarized at the beginning of the JRC's report, and further developed in the next section, "Well-being as an objective is enshrined in the Treaty on European Union, and there is a wide range of related activities across the Commission, reflecting the political attention given to the quality of life, social equity, intergenerational fairness and sustainability. For example, the UN Sustainable Development Goals and the European Pillar of Social Rights are now reflected in the European Semester's competitive sustainability framework (European Commission 2023a, addressing fairness and environmental sustainability aspects in social and economic policy coordination). In addition, there are a number of national and international initiatives focusing on well-being beyond traditional economic metrics, pioneered by the OECD's Well-being Framework and reinforced at a multinational level with the UN's "Our Common Agenda" (United Nations, 2021) and the "2024 Summit of the Future"²⁴.

In addition, the EU legal framework, as mentioned before, is not merely compatible with this evolution in public policy thinking: in several respects it actually anticipates it, particularly through Article 9 TFEU's horizontal social clause and Article 3(3) TEU's commitment to a social market economy.

Alongside the abovementioned Article 24 of the Charter on children's well-being, other Charter provisions reinforce the commitment of the EU legal order to the material conditions for human flourishing. Article 34 recognises and respects the right to social security benefits and social services providing protection in cases such as maternity, illness, industrial

Well-being at the heart of Europe's Open Strategic Autonomy. doi:10.2792/32296

23. European Commission: Joint Research Centre, Benczur, P., Boskovic, A., Giovannini, E., Pagano, A. and Sandor, A.-M., *Measuring sustainable and inclusive well-being: a multidimensional dashboard approach*, Publications Office of the European Union, Luxembourg, 2025, <https://data.europa.eu/doi/10.2760/4186342>, JRC140456.
24. Id., at p. 7.



accidents, dependency or old age, as well as the right to social assistance and housing assistance so as to “ensure a decent existence for all those who lack sufficient resources”. Article 35 recognises the “right of access to preventive health care and the right to benefit from medical treatment”. These provisions do not merely protect individuals from discrete risks: they articulate a positive vision in which health, housing, and income security are objects of enforceable rights, precisely the dimensions identified in the academic well-being literature as most decisive for a good life²⁵.

The Treaty of Lisbon introduced a further significant dimension. As mentioned before, Article 3(3) TEU commits the Union to work for “a highly competitive social market economy, aiming at full employment and social progress”, as well as “social justice and protection” and “economic, social and territorial cohesion”²⁶.

The concept of the ‘social market economy’ —originally developed in post-war West Germany as an alternative to both pure laissez-faire capitalism and central planning— implies a model of society in which markets are embedded in, and regulated by, social institutions oriented toward human well-being. Its constitutionalisation in the Lisbon Treaty signals that the EU’s market-building project is not an end in itself but an instrument for the realisation of, among others, social goals. Well-being, in this reading, is not merely an incidental consequence of a well-functioning internal market but a normative purpose for which that market exists.

The systemic dimension of the well-being commitment is equally important. Article 7 TFEU provides that the Union “shall ensure consistency between its policies and activities, taking all of its objectives into account”²⁷. This consistency obligation means that well-being cannot be treated as the exclusive concern of social policy: it must permeate the exercise of all Union competences, including competition, internal market, and trade policy.

Article 9 TFEU, the horizontal social clause, complements this by mandating, as noted supra, that, in defining and implementing all its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of

25. Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, Articles 34 and 35.

26. TEU, Article 3(3).

27. TFEU, Article 7.



adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. The Grand Chamber of the Court of Justice endorsed this characterisation in *European Superleague*, holding that Article 9 TFEU is “cross-cutting” and of general application, binding on EU institutions across all competences²⁸. AG Cruz Villalón had earlier coined precisely that expression—a ‘cross-cutting social protection clause’—in his *Santos Palhota* opinion²⁹. The consequence is structural: the Union’s obligation to promote well-being is not policy-specific but universal, and no domain of EU action—including the most market-oriented—is exempt.

In sum, well-being is best understood not as an external aspiration grafted onto the EU legal order from outside, but as an internal constitutional commitment that permeates the Treaties, the Charter, and the secondary legislation implementing them. The following sections examine how this commitment has been articulated in secondary legislation and policy practice, and how it has—perhaps unexpectedly—penetrated even some of the most market-oriented of EU policies such as State aid control.

II. EU LAW AND WELL-BEING IN SECONDARY LEGISLATION AND POLICY PRACTICE

The more recent evolution of EU secondary law to some extent reflects an explicit shift from mere economic outputs toward holistic well-being indicators. This transformation has been gradual and multi-sectoral, touching environmental, social, digital and economic governance. Taken together, these developments suggest that well-being is no longer a background aspiration but an operative policy driver embedded in legally binding instruments.

In the environmental and climate domain, the European Green Deal launched in 2019 set out a roadmap for making the EU’s economy sustainable, explicitly framing the transition not only in terms of emissions reduction but in terms of improving citizens’ health and quality of life³⁰. The European Climate Law of 2021 gave these objectives binding legal

28. CJEU 21 December 2023, C-333/21, *European Superleague Company*, EU:C:2023:1011, para 100.

29. Opinion of AG Cruz Villalón in Case C-515/08, *Santos Palhota*, EU:C:2010:245, para 51.

30. European Commission, *The European Green Deal*, Communication COM(2019) 640 final.



expression, establishing the Union's commitment to climate neutrality by 2050 and the domestic target of net greenhouse gas emissions reduction of at least 55% by 2030 compared to 1990 levels³¹. The preambles and recitals of these instruments repeatedly invoke the concept of well-being, including in relation to biodiversity, air quality and resilient communities, thereby expanding the traditional environmental *acquis* toward an integrated understanding of what it means to live well in a sustainable society³².

The social dimension of well-being has found expression above all in the European Pillar of Social Rights (EPSR) and its accompanying Action Plan of 2021³³. The EPSR, proclaimed by the European Parliament, the Council and the Commission at the Gothenburg Summit in 2017, articulates twenty principles spanning equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion. Its three pillars correspond directly to the multidimensional concept of well-being encountered in political philosophy and economic research: they address not merely income and employment but dignity, security, and social participation. Indeed, as stated in this Plan "A strong Social Europe is about people and their well-being"³⁴.

The digital dimension, analyse in this book in more detail by Lorena Tristante in chapter 6, is equally significant. The Digital Services Act of 2022 framed technological governance not merely in terms of market efficiency or consumer protection but in terms of societal well-being, fundamental rights, and human-centric innovation³⁵. The Artificial Intelligence Act of 2024, the world's first comprehensive binding legal framework for AI, explicitly invokes "human well-being" as one of the values that AI systems must respect, alongside safety, health, and fundamental rights³⁶.

31. Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality (European Climate Law) [2021] OJ L 243/1.

32. *Id.*, e.g. at paragraphs 2 and 34.

33. European Commission, *The European Pillar of Social Rights Action Plan*, COM(2021) 102 final.

34. *Id.* at p. 3.

35. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) [2022] OJ L 277/1. See, e.g., in preamble, recital 83.

36. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 1689. See, e.g., in preamble, recital 6.



These digital governance instruments represent a conceptual leap: they acknowledge that the development and deployment of powerful technologies may affect not only economic interests but the conditions for human flourishing, and they subject these technologies to legal constraints designed to protect well-being broadly conceived.

Alongside these legislative developments, there are specific soft law instruments and policy documents that refer explicitly to well-being. The 2008 Resolution of the Council and the Representatives of the Governments of the Member States on the health and well-being of young people is a notable early example, addressing both physical and mental health, social integration, and the role of sport and culture in promoting the well-being of young Europeans³⁷.

More specifically, the Council conclusions of October 2019 on the Economy of Well-being mark a significant political commitment: the Council explicitly called for policy frameworks that go beyond GDP, integrating well-being indicators into economic governance and budgetary surveillance³⁸. Although this instrument lacks the binding force of regulations or directives, Council conclusions orient political will and help consolidate a conceptual consensus that is, in turn, often translated into binding legislative form.

The cumulative picture that emerges from this legislative landscape is one of a legal order in transition. The EU began as an economic community centred on market integration, and competition and State aid rules were designed as instruments of that market-building project. However, as the following section illustrates, even these traditionally market-centric areas have not remained immune to well-being considerations: the integration of social objectives into State aid policy provides one of the most instructive examples of how the EU legal order has evolved toward a more holistic conception of its purpose.

Indeed, several Advocate Generals have also observed this trend in recent opinions, with specific reference to the promotion of well-being as an EU objective, in order to foster the reinterpretation of traditional EU Law tests such as the Plaumann Formula. As worded by AG Emiliou:

37. Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the health and well-being of young people [2008] OJ C 319/1.

38. Council conclusions on the Economy of Well-being, 24 October 2019, Doc. 13706/19.



“Until the late 1980s or early 1990s, the then Communities mainly dealt with trade and economy. Most cases landing on the *Plaque de Kirchberg* concerned matters such as free movement, competition, commercial policy and trade defence, customs, agriculture and fisheries. It is thus unsurprising that the *Plaumann* case-law was more receptive to possible breaches of economic rights put forward by persons who were economically active: workers, self-employed or companies. After all, the main objective of the Communities at that time was to create a common market.

In the European Union of 2025, the situation has considerably evolved. In order to achieve its overarching objectives (promote peace, its values and the well-being of its peoples), the European Union is required not only to establish and strengthen an internal market, but also to, *inter alia*, ‘offer its citizens an area of freedom, security and justice’, ‘work for sustainable development’, ‘aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment’, and ‘promote scientific and technological advance’. Increasing European people’s economic welfare is no longer the (one and only) lodestar guiding the European Union.

Thus, EU citizens’ economic rights cannot have a *primi inter pares* standing in the EU legal system, being of equal importance to rights and freedoms of another nature (civil, political, social, etc.). It follows from well-established case-law that, within the EU legal order, no category of rights has priority over another. Where different rights are at stake, their requirements must be, as much as possible, reconciled by striking a fair balance between them. In the case of direct conflict, which rights prevail depends on the specific circumstances at issue”³⁹.

AG Emiliou has also interestingly linked the promotion of the well-being of the Union’s peoples with the need to preserve the equality of citizens and solidarity, two of the founding values of the European Union under Article 2 TEU. In his words, “Respect for those values is clearly undermined by fiscal and business practices that enable some taxpayers (most often, particularly wealthy ones) to avoid paying their fair share of

39. Opinion of AG Emiliou in case C-731/23 P, *Nicoventures Trading and Others v Commission*, EU:C:2025:435, at paras. 102-104.



taxes to the public treasury. Those practices fuel inequalities within society, and are thus fundamentally incompatible with the European Union's socio-economic model of 'social market economy', and with the pursuit of some of its main objectives such as, in particular, promoting social justice and the well-being of its peoples, and contributing to social progress"⁴⁰.

Finally, AG Bot invoked the promotion of the well-being of the citizens of the Union as an objective that the freedom to provide services must pursue in the well-known Josemans case on drug tourism within the EU⁴¹. The AG also noted that "Well-being, social cohesion, and the health and safety of people are all objectives which guide the action taken by the European Union in combating drugs and in building the area of freedom, security and justice referred to in Article 67 TFEU"⁴².

III. WELL-BEING AND STATE AID: THE CASE OF SERVICES OF GENERAL ECONOMIC INTEREST

State aid control is perhaps the last area in which one might expect to encounter well-being considerations. Articles 107 to 109 TFEU were designed as instruments to prevent Member States from distorting competition in the internal market by granting selective advantages to particular undertakings or sectors⁴³. The system rests on a general prohibition of aid, subject to a series of carefully circumscribed exceptions. The logic of the system is, at first glance, largely economic: the compatibility of State aid is assessed by reference to its effects on competition and trade, not by the social merits of the underlying objective.

Yet, State aid law has not remained entirely foreign to social and well-being considerations. The following subsections analyse briefly two distinct dimensions of this phenomenon: the definition of State aid itself and the compatibility of notified aid measures, the latter being the subject of the Chapter authored by Borja Alcaráz in this book (Chapter 7), and in more detail the specific framework for services of general economic interest (SGEI) under Article 106(2) TFEU.

40. Opinion of AG Emiliou in case C-623/22, *Belgian Association of Tax Lawyers and Others*, EU:C:2024:189, at para. 143.

41. Opinion of AG Emiliou in case C-137/09, *Josemans*, EU:C:2010:433, at paras. 18, 21, 92, 94, 97 and 103.

42. *Id.* at para. 21.

43. TFEU, Article 107(1).



1. WELL-BEING CONSIDERATIONS IN THE DEFINITION OF STATE AID

Article 107(1) TFEU defines State aid by reference to its effects rather than its purposes. As the Court of Justice has consistently held, the concept of State aid is an objective legal concept defined by four cumulative criteria: the involvement of State resources, the conferral of an economic advantage on the beneficiary, the selectivity of that advantage, and its potential to distort competition and affect trade between Member States⁴⁴. According to the case law, this provision does not distinguish between the causes or objectives of the interventions to which it refers, but defines them in terms of their effects.

Furthermore, the rules on State aid shall only apply if the potential beneficiaries of the financial advantages in question are undertakings, i.e., if the beneficiaries are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed⁴⁵. Consequently, social economy entities such as cooperatives, associations and foundations, often linked to the promotion of well-being, can be defined as “undertakings”, even if they offer goods or services on a non-profit basis⁴⁶. In this regard, as clarified in the Action Plan for the Social Economy, terms such as “social economy enterprises”, “social and solidarity enterprises” and “third sector” are also used to refer to social economy entities⁴⁷. For a definition of a social economy entity, and in particular a social enterprise, several EU regulations can be consulted⁴⁸.

However, a closer reading of the case law reveals that the EU Courts have not been completely oblivious to social and well-being considerations

44. CJEU 24 July 2003, C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, EU:C:2003:415.

45. See, inter alia, CJEU judgment of 10 January 2006, C-222/04, *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze*, EU:C:2006:8, paragraphs 107-109.

46. *Id.*, paragraphs 122 and 123.

47. Action Plan for the Social Economy, *cit.*, page 5.

48. See, for example, Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation (“EaSI”) and amending Decision No 283/2010/EU establishing a European Microfinance Facility for Employment and Social Inclusion, OJ L 347, 20.12.2013, pp. 238-252, in Article 2(1). For the current definition, see Article 2(15) of Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013, OJ L 231, 30.6.2021, pp. 21-59.



when applying these criteria. Thus, in the *Corsica Ferries* case, the General Court held that:

“both the content of national social legislation and the practice of social relations within large groups of undertakings develop over time and differ within the European Union. Therefore, it is necessary that the monitoring of State aid should reflect the development of such use, as regards both the investments made by private companies and those made by the State, in accordance with the principle of equal treatment and without altering its effectiveness. [and that] It should also be noted that, in a social market economy, a reasonable private investor would not disregard, first, its responsibility towards all the stakeholders in the company and, second, the development of the social, economic and environmental context in which it continues to develop. The challenges relating to social responsibility and the entrepreneurial context are, in actual fact, capable of having a major impact on the specific decisions and strategic planning of a reasonable private investor. The long-term economic rationale of a reasonable private entrepreneur’s conduct cannot therefore be assessed without taking account of such concerns”⁴⁹.

The foregoing is a remarkable statement: it suggests that the private market economy operator test-the cornerstone of the economic advantage criterion-is not purely profit-maximising but must account for the social context in which economic activity takes place.

Similarly, with regard to the selectivity criterion, the Court’s case law in *Paint Graphos* illustrates how social economy specificities can be accommodated within the existing framework⁵⁰. The Court recognised that a tax benefit granted to cooperatives may not be selective-and therefore does not constitute State aid-where the characteristics of the cooperative form, including the primacy of the individual over capital, the indivisibility of reserves, and the collective purpose of the enterprise, justify different treatment. These characteristics are not merely technical: they reflect the social and solidarity logic that distinguishes cooperatives from ordinary commercial companies, and that logic was deemed legally relevant by the Court.

49. GCEU T-565/08, *Corsica Ferries France v Commission*, EU:T:2012:415, at paras. 81-82.

50. CJEU 8 September 2011, C-78/08, *Paint Graphos and others*, EU:C:2011:550.



Furthermore, the Grand Chamber of the Court of Justice in *DOBELES HES* introduced an important nuance into the traditionally exhaustive exclusion of non-effect-based considerations from the definition of State aid. The Court clarified that, while State aid is characterised by its effects, this does not mean, however, that State aid is defined exhaustively by its effects, to the exclusion of any other criterion⁵¹. This case law limits the reach of the orthodox position, opening space for a more nuanced approach in which the nature of the measure-including, potentially, its social character-may be taken into account.

2. COMPATIBILITY OF STATE AID AND WELL-BEING

The compatibility framework provides considerably more room for well-being considerations. Articles 107(2) and 107(3) TFEU and the secondary legislation enacted under them enable the Commission to authorise State aid that, while caught by the general prohibition, serves objectives of common interest that outweigh the distortions of competition involved.

The General Block Exemption Regulation (GBER) is the primary instrument through which most compatible State aid is granted without prior Commission notification⁵². Several provisions of the GBER are directly relevant to well-being and social economy objectives. Articles 32 to 35 GBER cover aid for disadvantaged and disabled workers, enabling Member States to grant wage subsidies for the employment of workers who face barriers to labour market integration-a paradigmatic example of a measure that promotes both economic activity and well-being. Article 56 GBER covers investment aid for local infrastructure that contributes to improving the business and consumer environment at local level, encompassing facilities that may serve social and community purposes.

The Commission's Action Plan for the Social Economy, adopted in December 2021, explicitly acknowledged that State aid rules allow the granting of public financial support to social economy actors, while noting that public authorities do not always take full advantage of this

51. CJEU 12 January 2023, C-702/20, *DOBELES HES*, EU:C:2023:1, para 73.

52. Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty [2014] OJ L 187/1, as amended.



possibility⁵³. For entities such as cooperatives, associations and foundations engaged in the delivery of social services, the applicable GBER provisions and the de minimis regulation together provide a significant toolkit for public support.

For State aid that must be notified because it falls outside the GBER, the Treaty framework after Lisbon imposes positive obligations on the Commission that are directly relevant to well-being. In particular, as stated *supra*, Article 7 TFEU mandates the Union to ensure consistency between its different policies and activities, taking all of its objectives into account—including those related to social protection and well-being under Article 9 TFEU. Consequently, when the Commission assesses the compatibility of notified aid, it is not entitled to disregard the social and well-being dimensions of the measure: these considerations must inform its assessment, particularly with regard to the proportionality analysis.

3. THE SGEI FRAMEWORK AS A WELL-BEING INSTRUMENT: THE REFORM OF THE SGEI DECISION AND AFFORDABLE HOUSING

The most explicit intersection between State aid and well-being is found in the framework governing compensation for services of general economic interest (SGEI) under Article 106(2) TFEU. This provision allows Member States to exempt from the general prohibition of State aid those measures that constitute compensation for the costs of providing an SGEI—that is, a service of an economic nature that the market would not provide (or would provide on less favourable terms) without public intervention, and to which the State has assigned a specific public service mission.

Under the case-law of the Union Courts, Article 106(2) TFEU has traditionally aimed to reconcile, on the one hand, the Member States' interest in using certain undertakings as an instrument of economic or social policy with, on the other hand, the EU's interest in ensuring compliance with the rules on competition and preserving the unity of the internal market⁵⁴.

53. COM/2021/778 final, *Building an economy that works for people: an action plan for the social economy*, p. 8.

54. See to this extent, e.g., Case C-67/96, *Albany*, EU:C:1999:430, para. 103: "In allowing, in certain circumstances, derogations from the general rules of the Treaty, Article 90(2) of the Treaty seeks to reconcile the Member States' interest in using certain undertakings, in particular in the public sector, as an instrument of economic or fiscal policy with



The legal interpretation of Article 106(2) TFEU has also evolved in light of the post-Lisbon constitutional context. The Court of Justice in *ANODE* emphasised that Article 106(2) TFEU must be interpreted in light of the new constitutional context following the entry into force of the Treaty of Lisbon, which includes Article 14 TFEU, Protocol 26 on services of general interest, and the Charter of Fundamental Rights—in particular Article 36 on access to services of general economic interest⁵⁵. This interpretation was subsequently confirmed in *Overgas Mrezhi*⁵⁶. The practical consequence is that the Commission must apply the proportionality condition in Article 106(2) TFEU with sensitivity to the constitutional weight carried by SGEI, and in particular by social services entrusted with the promotion of human well-being.

In fact, even before the entry into force of the Treaty of Lisbon, it was already clear from the case law of the Union's courts that European institutions had to take into account the horizontal provisions of the Treaty when applying the competition and State aid rules. For example, in the *Ferriere Nord* case, the General Court concluded that the compatibility of an aid project for environmental protection with the common market must be analysed in accordance with the combined provisions of former Articles 6 EC and 87 EC⁵⁷.

It is in this context that Article 106(2) TFEU has to be interpreted, and we could also note that Commissioner's Ribera mission letter speaks not only of a clean and just transition but also of a "social one"⁵⁸. Therefore, this provision might be key to provide some exceptions or clarifications to issues such as social housing.

The Commission's own evaluation of the SGEI rules for health and social services, published in 2022, confirmed that while the rules broadly achieved their clarification and simplification objectives, there was room for improvement, particularly with regard to the definition of certain

the Community's interest in ensuring compliance with the rules on competition and preservation of the unity of the common market"[and case-law cited].

55. CJEU, Case C-121/15, *ANODE*, EU:C:2016:637, para 41.

56. CJEU, C-5/19, *Overgas Mrezhi and Balgarska gazova asotsiatsia*, EU:C:2020:343, para 58.

57. T— 176/ 01, *Ferriere Nord*, EU:T:2004:336, para 134.

58. Mission letter, Teresa Ribera Rodríguez, Executive Vice-President-designate for a Clean, Just and Competitive Transition, at pp. 5-6: "You will work with other Members of College to steer our investment and financing in a just and social transition, notably through the Social Climate Fund and Just Transition Fund". Available here.



concepts such as social housing. The evaluation highlighted persistent uncertainty about what could qualify as “social housing” within the meaning of the 2012 SGEI Decision, and observed that this uncertainty had constrained Member States’ ability to design effective housing policies⁵⁹. The Letta Report, published in April 2024, reinforced this diagnosis, noting explicitly that the definition of “social housing” in Decision 2012/21/EU was too narrow and that this limited the capacity of public authorities to expand their public housing policies⁶⁰.

The cited SGEI Decision of 2012 was a landmark instrument in this regard⁶¹. Unlike the general SGEI framework, which requires notification for compensation exceeding EUR 15 million per year, the 2012 Decision exempted from notification significant volumes of compensation for the provision of a defined list of social services. This list includes healthcare, long-term care, childcare, access to and reintegration into the labour market, social housing, and social protection and inclusion of vulnerable groups. The omission of a financial threshold for these social services was deliberate: it reflected the Commission’s recognition of their particular importance for social cohesion and human well-being, as well as the sensitivity of such interventions to market forces.

In response to these concerns, the Commission initiated a revision of the SGEI Decision with the explicit goal of expanding the definition of social housing and introducing a new category of exemption for “affordable housing”⁶². A call for evidence published in June 2025 proposed defining

59. Commission Staff Working Document, Executive Summary of the Evaluation, Evaluation of the State subsidy rules for health and social services of general economic interest (“SGEIs”) and of the SGEI de minimis Regulation, SWD(2022) 388 final, p. 2.

60. Enrico Letta, *Much More Than a Market: Speed, Security, Solidarity - Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens* (Letta Report) (Apr. 2024), available at <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>, at p. 100.

61. Commission Decision 2012/21/EU of 20 December 2011 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] OJ L 7/3.

62. Commission Decision (EU) 2025/2630 of 27 June 2025 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest. See also the public consultation on the revised SGEI Decision, available at https://competition-policy.ec.europa.eu/public-consultations/2025-sgei_en



ESTUDIOS

This volume, a result of the work of the Jean Monnet Chair on the Transformative Power of EU Law II at the University of Murcia, brings together scholars, practitioners and judges to examine how European Union law is reshaping national and international legal orders in the service of well-being. Drawing on Article 3(1) TEU –which places the well-being of peoples among the Union’s founding objectives– the contributions demonstrate that well-being has evolved from a constitutional aspiration into a structural principle that permeates EU primary and secondary law across an exceptionally wide range of fields: State aid and competition policy, digital regulation, labour and care law, environmental due diligence, drone regulation, and the institutional architecture of judicial governance. The book’s chapters shed light on the depth of this transformation. From the protection of minors under EU Digital regulation, to the analysis of the platformisation of care work, or the 2025 reform of the SGEI Decision, the book studies how the evolution of EU law is increasingly defined not merely by market construction, but by the active promotion of the well-being of the Union’s peoples.

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