"The Burgeoning Principle of Consistency in EU law"

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Abstract

The aim of this paper is to analyse certain potential effects that the new legal context constituted by the Lisbon Treaty might be seen to have for the burgeoning principle of consistency in EU law.

The Lisbon Treaty introduces several novel provisions demanding "consistency" – both more generally (e.g. Articles 21(3) TEU and 7 TFEU) as well as specifically in relation to particular policy areas and institutional relations (such as e.g. Articles 13, 16(6), 17(6) and 18(4) TEU). The prominent positioning of several of these new consistency requirements serves to emphasise the drafters’ apparent intention to elevate the principle of consistency to the very heart of EU cooperation.

Unlike previous EC/EU Treaty-based consistency requirements, which were almost exclusively limited to the field of EC/EU external relations alone, these novel requirements appear to have assumed a more general scope of application. Furthermore – and significantly from a legal perspective – unlike several of the consistency requirements contained in past Treaties, they all fall within the Court’s direct jurisdiction.

These new consistency requirements may potentially be seen to impact in a number of different ways (e.g. at various levels of policymaking, implementation and enforcement), and at several different levels (e.g. horizontally between the EU institutions, and/or vertically between the EU institutions and the Member States), thus giving rise to a number of questions:

At a base level, what does consistency mean – is it to be defined narrowly (i.e. as requiring an absence of contradiction), or is it to be understood in a broader sense (i.e. as requiring coherence)? What will the enforcement of consistency requirements entail in practice - will the Court actively seek to enforce consistency, or will it be left to the political actors to regulate in practice (i.e. similarly to its hands-off approach to the legal principle of subsidiarity)? Put in other words: Will the institution of new consistency requirements really result in the setting of a new legal context for the EU, or will they simply be reduced to mere Treaty-based recognition of long-standing political practices (such as e.g. the Council and Commission’s drive towards securing Policy Coherence for Development)?

The paper – which consists of 5 sections following the introduction – thus aims to shed some light on the potential scope and application of the highly topical principle of consistency in EU law. It starts out with an historical account of how the principle of consistency has developed from a mere political to a legally binding principle of EU law in its own right (section 2). This is then followed by a closer look at what consistency actually means in an EU context (section 3). We then proceed to see how the identification of various categories of consistency from a methodological perspective might provide us with a particularly useful means for systematising and further analysing the actual and potential impact of consistency requirements in EU law (section 4). An examination of several express consistency requirements contained in the new EU Treaties as either amended or wholly introduced by the Treaty of Lisbon is then conducted, with particular attention paid to the two requirements
currently set out in Article 7 TFEU and Article 21(3) TEU (section 5). A set of conclusions is finally provided to round off the account (section 6).