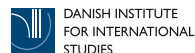


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Think Global – Act European

The Contribution of 14 European Think Tanks to the Spanish, Belgian and Hungarian Trio Presidency of the European Union

Directed by:

Elvire Fabry and **Gaëtane Ricard-Nihoul**, Notre Europe





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PREFACE

The Spanish, Belgian and Hungarian Trio Presidency of the EU Council comes at the time of a new start. Decisions taken as well as precedents set by this Trio will determine the course of European integration in the years to come. The first element of this start is our need to emerge from the economic crisis and to deal with its social consequences. Despite (or because of) this context, the new EU-2020 Strategy should also be the occasion to ensure a determined transition to a low-carbon economy.

Moreover, the coming into force of the long-awaited Lisbon Treaty should mark the move from a period of institutional reform to one more focused on the elaboration of common policies and projects. Finally, these three rotating presidencies must henceforth share the responsibility of agenda-setting with the newly-appointed permanent President of the European Council.

The numerous ideas and recommendations contained in this report should help the Trio Presidency to manage this new start in the most effective way. After the publication of the first Think Global – Act European report in May 2008, this second edition brings together fourteen of the most eminent think tanks dealing with European affairs.

“United in diversity” was the spirit that guided the contributors of this volume, as in 2008. However, this time the participating think tanks decided to increase their efforts to foster collective thinking. Firstly, as coordinator of the project, Notre Europe worked closely, within an Editorial Committee, with three think tanks based in the countries of the Trio Presidency, i.e. Real Instituto Elcano, Egmont and GKI. Secondly, some of the papers were written by several think tanks together. Finally, the think tanks’ representatives for the project agreed to select 15 recommendations they wished to bring to the specific attention of the Trio.

As President of Notre Europe, I am proud to introduce here the product of a long and enriching process of cooperation between the contributing think tanks. I congratulate and thank them for the constructive spirit with which they participated in the project. I hope that this report will be considered by the Trio and the European Council President as a proof that cooperative work can produce original, relevant and useful results.

Tommaso Padoa-Schioppa President of Notre Europe

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INTRODUCTION

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The EU Trio Presidency of Spain, Belgium and Hungary (SBH) – beginning in January 2010 and ending in June 2011 – is not just another round of rotating presidencies. It comes at a crucial moment of transition and profound change in European governance, involving new actors, new rules and new priorities.

The challenge is not only about finding the right compromises to put the new institutional apparatus into place but to take its full potential for increasing urgently the efficiency of policy-making at EU level and timely allowing the EU to take fundamental decisions in a worrying international context (I). The Trio is also confronted with an existential problem: with the creation of a stable President of the European Council and an enhanced function of High Representative for Foreign Affairs and Security Policy, does the rotating presidency still matter and what is the place of the Trio (II)?

Europe in transition?

Alongside renewed Parliament and Commission, the Lisbon Treaty brings a deep re-organisation of institutions. The implementation of the new institutional rules by the current Trio will set a precedent and doubtless determine the conduct of EU affairs for a period, in particular the efficiency of its coordination work with Herman van Rompuy and Catherine Ashton.

However this phase of institutional transition comes in a difficult international context marked by major economic and climate crises. The major challenges at stake for our societies call for urgent and decisive action, and cannot be content with a 'business as usual' scenario. Taken together, these facts should prevent Europeans to waste energy

on internal quarrels and rather encourage them to think about the role they play and the role they would like to keep on the international stage.

This call for a more global approach is nothing new. It was already at the core of the previous *Think Global – Act European* report, dedicated to the French-Czech-Swedish Trio Presidency, which emphasised the need to better integrate the international context into the conduct of EU policy.

But it is particularly relevant today at a moment of obvious global shift of balance driven by the arrival of the Obama Administration, closer to Europe than the previous administration and yet focused strategically on China; China itself recovering faster than the West from the economic

crisis and which the Copenhagen Summit has shown little cooperative; the withdrawal of Russia to an introverted concern for its own interests; and a rebalancing of North-South relations, evident during both the Doha Round and the preparations for a post-Kyoto agreement.

Paying heed to the risk of a deteriorated economic situation (and its social impact) in the months to come, the SBH Trio must bind the institutional transition to a deep transformation of the EU, one which allows it to guarantee sustainable growth in the medium and long-term.

The experts from the 14 European think tanks mobilised in this report have focused on this changing global context, and on analysing Europe's current challenges, in order to address concrete recommendations to the SBH Trio.

More coordination for better efficiency

Without going into the detail of the propositions made in every article and summarised at the start of each chapter, one fact in particular emerges from this collective reflection: today's situation of crisis demands more than ever that Europeans extricate themselves from the excessively segmented framework in which EU policy has developed until now. This leitmotiv appears in each analysis as a warning against the logic of progressive adjustments, which are too slow to respond to the current challenges, of a return to growth, of maintaining EU cohesion, and of the strengthening of emerging economies. It calls for more integrated European strategies.

The eruption of issues like the world economic crisis, climate change, energy supplies onto the European agenda as well as the perspective of the negotiations of new financial perspectives are a call for a transversal approach to EU policy-making, with more active synergies created between policies.

The urgency of European economic governance

The current context of rampant budget deficits and increased public debt will favour neither the completion of the single market nor the structural reforms in employment, productivity-related policy (R&D, higher education, etc.), industry, taxation, and the like. In addition, the divergence between national policies within the Economic and Monetary Union (EMU) is increasing.

These issues are at the heart of the current preoccupations of Europe's leaders, who are looking for ways out of the crisis. They demand the thorough revision of Europe's economic governance, with the aim of making the EU an economic actor in the crisis. The institutional agenda, with its planned EU-2020 Strategy for sustainable growth, might not alone be able to meet this challenge.

Whatever measures are adopted to combat the crisis, the options chosen by member states will have negative effects (low spending, with an impact on social protection; higher taxes, resented during a period of zero growth; a spacing out of the costs, which will fall on the next generation; even a return to inflation in order to liquidate some of the debt, etc.). These could be a source of major tension between member states.

Europeans cannot avoid closer coordination on these subjects without the risk of lasting damage to the EU's cohesion.

From this point of view, the SBH Trio should give immediate priority to a concerted effort by member states to decide when to end crisis-management policies (concerning central-bank liquidity, massive public debt and state interventionism).

A unique European representation (or at least for eurozone countries) within the G20, IMF and World Bank is also put forward as a means of increasing European influence. As has been seen in trade policy, a single voice is more audible than the cacophony of (sometimes contradictory) voices of the current range of European and national representatives. In place of this representation of disparate interests which harms the common European interest, such a measure would encourage member states to coordinate better between themselves.

Energy for all, but clean energy

The need to guarantee citizens access to energy can today no longer be separated from Europe's self-imposed CO₂ emissions targets, nor from the need to increase the competitiveness of European business. If there were one cross-cutting issue which demanded coordination of a wide range of EU policies, it would be this one.

In order to guarantee a constant supply to all Europe's regions, Europeans must create an internal energy market backed up by a major interconnected infrastructure network. By tackling this issue the SBH Trio would be boosting the common interest

in this field and facilitating the task of the High Representative (HR) and permanent President in the creation of a Common Foreign Policy for Energy, one which would aim to establish a coherent European position *vis-à-vis* Russia, the Caspian Sea region (decisive for the Nabucco project) and the Middle East, in order to secure oil and gas supplies to the Union's borders.

Mutualising the effort necessary to move energy consumption towards clean sources would be a way of avoiding a situation where measures (stimulating technological innovation, creating sectoral leaders, reducing the cost of clean energy, etc.) are postponed in the name of current budgetary constraints.

Sustainable growth

The adoption in 2008 of the "20-20-20 for 2020" climate package was an important step. But giving Europe a low-carbon economy will be much more difficult than setting objectives. It means a fundamental rethinking of our growth model, and therefore of all policy aiming at economic development. Hence the need to place climate change at the heart of the post-Lisbon Strategy for growth and development. This new Strategy must be able to create synergies between the social, economic and environmental dimensions of policy. A social policy must be considered less as a compensation tool than as a factor of productivity. Similarly, it is vital to build environmental policies which open the way to growth (job creation, competitiveness in low-carbon products, etc.). Instead of trying to reconcile the environment, social policy and economic growth, we must try to make them reinforce each other mutually.

In addition, it would be unhelpful to define this new Strategy without coordinating the discussion with that over the next multi-annual financial framework. By taking care to coordinate these two debates, the SBH Trio would help prevent the budget debate from becoming bogged down in the defence of net-contributor and national interests, and would instead be directing the debate towards the objectives of the Union.

It must also be pointed out that we cannot continue to separate the issues of climate change and international trade, even though the complexity of the Doha Round negotiation makes new blockages undesirable.

Strategic thinking in external relations

As the HR and the External Action Service comes into operation, there is particular interest in how these new ‘instruments’ might play a role in defining a clearer European strategy for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP). How to adopt a constructive policy *vis-à-vis* Russia which might allow a stabilisation of the Eastern neighbourhood? What are the EU’s crisis-management priorities, and how might the criteria used for trade-offs over tools (civil and military) be clarified? How to integrate the priorities of peace, security and environment into the EU’s development cooperation policies? None of those questions can be dealt seriously without an active exercise of clarification of the EU priorities for the CFSP and the CSDP.

Instead of waiting for the next European Security Strategy review in four or five year’s

time, the Trio should keep the strategic debate high on the agenda of CSDP in particular, possibly feeding the parallel work on the new NATO strategic concept and linking the EU’s overall objectives to particular tools.

In addition concerning enlargement and neighbourhood policy, the Trio should be aware of adopting a new vision for a widening process well before the new budgetary period in order to take it into account in its financial consequences.

On all those issues, the Trio will still have a role to play along with the HR, when it will chair the Committee of Permanent Representatives (COREPER) which will continue to deliberate on all issues of external relations that are nested in the community dimension of policy-making; and via its chairing of the horizontal coordinating General Affairs Council, which will also coordinate various policies that are linked with CFSP tasks and priorities. Helping to create convergent interests between member states would contribute increasing the influence of the HR on the international stage.

Does the rotating presidency still matter?

Establishing a stable presidency of the European Council had been an objective of several member states for a long time. It was taken up by the Convention that drafted the Constitutional Treaty as a key element of the new institutional set-up and maintained when the Lisbon Treaty was negotiated. For the promoters of that idea, the six-month rotating presidency of the Council

prevented that institution from having a consistent long-term and strategic agenda, each presidency wanting to impose its own priorities. It was also intended to avoid the constant change of EU interlocutors in international bilateral and multilateral meetings. However, the deal that was struck during the Intergovernmental Conference is a hybrid one since the stable presidency only concerns the European Council and not the Council of Ministers.

The system is therefore from now on the following: all the formations of the Council including the General Affairs Council, most preparatory bodies and not the least the powerful COREPER, are chaired by the rotating presidency except for the European Council (chaired by the permanent President, designated for two and a half years) and the External Affairs Council and its preparatory Committees (chaired by the new HR for Foreign Affairs and Security Policy). The Treaty also emphasises the role of the Trio Presidency (successive groups of three rotating presidencies, the list of which is established in advance according to certain size and geographic criteria by the Council) in drafting an 18-month programme that is meant to complement and provide the overall consistency of the three agendas of the rotating presidencies.

This new setting is criticised for its complexity and for its failure to truly address the need for the countries dealing with the EU to be able to identify who exactly speaks for 'Europe'. Several analysts therefore predict that this hybrid solution can only be transitional and that the rotating presidency will not survive what is seen as the 'Brusselisation' of the function of agenda-

setting in the EU. The complicated character of the system is indeed clear and disappointing when one remembers that one of the objectives of the Laeken Declaration – which started the constitutional process in 2001 – was to simplify the existing treaties so that they would be more understandable by ordinary citizens.

However the think tanks which have contributed to this report believe that the rotating presidency will continue to play a role. They even argue that this role can actually be very useful provided that it evolves in the most fruitful and complementary way alongside the stable presidencies and that it makes the most of the coordinating mechanism provided by the Trio system. There are two major reasons to believe this to be true:

Firstly, the system of the rotating presidency has some virtues that have tended to be forgotten while devising the concept of a stable presidency of the European Council. One of these is even essential in a period when EU citizens' support for the European project seems at best lukewarm. The rotating presidency has shown itself to be an unparalleled opportunity to "bring Europe" to individual countries. It is a good opportunity for the national government to clarify its priorities in European Affairs, for a better coordination and Europeanisation of its administrations, and an incentive for national parliaments, political parties and trade unions to get involved in European networks.

Moreover, for six months, the people of one member state are exposed to an unusual level of media coverage of EU affairs, and many official events are organised in their country. We should not underestimate

people's pride at seeing their national government lead a union of 27 member states and represent these states in international meetings. Any diplomat who has been active in organising a country presidency would recognise that it has a learning and emotional effect on citizens' attitudes towards the EU that is difficult to achieve in any other way.

Secondly, the rotating presidency has taken on a new dimension with the formalisation of the Trio Presidency. The concept of the Trio has sometimes been criticised as a purely administrative process with no political dimension, but it has a number of obvious qualities. Above all, it creates a link between three countries that are not necessarily used to working together, given differences of size, geographical location, history or levels of support for European integration. A quick look at the last Trio (France, the Czech Republic and Sweden), the current one (Spain, Belgium and Hungary) and the next one (Poland, Denmark and Cyprus) suffices to illustrate that point. Compromises reached within these Trios can be useful to prepare the ground for EU negotiations. The Trio may indeed operate in a way similar to the functioning of the Franco-German axis: a shared position of three sometimes very different member states can become an excellent basis for an EU agreement.

Cooperation between these countries' administrations and diplomacies is not enough in itself, but the virtue of it should not be underestimated. Administrations are key actors in the preparation of decisions, and in their implementation once adopted at the EU level. Fostering a spirit of cooperation

and mutual understanding between them should not be overlooked. As for involvement at the political level, this has varied from one trio to the other, but it has improved over the years, and relatively rapidly given that the first 18-month programme was established by the German, Portuguese and Slovenian Trio in 2007. Since then, the work of the Trio has been increasingly visible, as is symbolised by the common logo and website of the current Trio.

Moreover, the Trio formula was provided by the Lisbon Treaty in response to the need for more coordination between rotating presidencies in the presence of a stable presidency. The Lisbon Treaty has only been in force since December 2009, so it would be hasty to condemn this formula before it can find its space in the new system. And there is no alternative for the rotating presidency but to make the most of the Trio if it wishes to keep any credibility in the agenda-setting process, one most likely to be dominated by the stable president of the European Council, who is more easily and more permanently in touch with the European Commission.

So, does the rotating presidency still matter? The answer is yes, for its unmatched potential to mobilise citizens in individual countries, and because it can have a unique contribution to the function of agenda-setting in the EU. However, this contribution will only be heard and respected if it is done in a way that complements the work of the stable president, and if it is made in close cooperation with the other two countries of the Trio as a means of facilitating a Council position.



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**SUSTAINABLE
GROWTH
CONDITIONS**

EU-2020 STRATEGY

Ten years after the launch of the Lisbon Strategy, this is the moment for a thorough critical assessment of the strategy and for the definition of a new EU growth strategy for the next decade. The interdependence of Europe's economies and of the challenges faced by member states – such as globalisation, ageing and climate change – demand coordinated action.

After the Commission's consultation on the EU-2020 Strategy, a new road map should be adopted during the Spring European Council of 2010. Nevertheless, the think tanks recommend that the Trio Presidency take more time to do a good diagnostic of the economic crisis and its social impact, to build a political consensus on a long-term growth strategy and to allocate consistent funding to the process (Notre Europe, Egmont, GKI, Real Instituto Elcano).

PART I ABSTRACT

When considering the EU's new growth strategy for the next decade, we should firstly ask what to keep from Lisbon and what to change. Understanding what failed with the Lisbon Strategy is essential in order to avoid committing the same mistakes.

The post-Lisbon Strategy should retain the founding philosophy of Lisbon – the importance of adopting an integrated approach, fostering positive synergies between economic, social and environmental action (Notre Europe). But it should avoid repeating mistakes. Lisbon's scope was too broad (Egmont, GKI, Real Instituto Elcano) and its goals too ambitious (Notre Europe) and it faced a weak implementation capacity (Notre Europe) and a lack of accountability (Egmont, GKI, Real Instituto Elcano).

In this context, the EU needs a new growth strategy with a restricted scope and clarified objectives (Egmont, GKI, Real Instituto Elcano), which places economic, social and environmental concerns on the same footing. The EU needs to be more competitive while ensuring the sustainability of its social model and honouring its commitments on climate change mitigation. Its new paradigm should therefore be to create a competitive and socially cohesive low-carbon economy (Notre Europe).

Having a better-defined strategy is fundamental but not enough to ensure its success. The EU needs to define who does what, clarifying the competences of the EU and of the member states. It also needs to build an improved system of monitoring with better indicators to evaluate achievements (Egmont, GKI, Real Instituto Elcano) and assess the synergies between economic, social and environmental policies (Notre Europe). In order to obtain better results, the EU should consider defining incentives and penalties (Egmont, GKI, Real Instituto Elcano).

In order to guarantee that the new strategy is applied, communication on the strategy has to be improved at all levels. Establishing ownership of the EU-2020 Strategy by EU institutions, member states, regional and local authorities and socio-economic actors is essential to ensure its delivery. In this context, permanent decentralised dialogue at all levels has to be promoted (Egmont, GKI, Real Instituto Elcano), and the member states should commit themselves to invest in an active communication campaign addressed to socio-economic actors (Notre Europe).

In defining its new growth agenda, the EU needs to take into account the consequences of the economic and financial crisis, especially the deterioration of EU member states' public finances – a situation which is not favourable to structural reforms. In 2009 fiscal policy-making in the EU was focused on pulling the economy out of recession. Discretionary measures and in-built fiscal stimuli have cushioned the downturn in economic activity and have been a factor in the recent improvement. However, they have also led to a deterioration in national accounts, and it is now time to pay down the debt that has been accumulated. A possible way to pay off the national debts is to increase green taxes or find additional cap-and-trade revenues. This would allow making the policy responses to the financial recovery and climate change mutually reinforcing (Bruegel). Additionally, to avoid the risk of dumping by non-European firms that are not submitted to the same burden as EU firms, the Trio should put on the table the possibility of creating an EU carbon tax on imports (Notre Europe).

ECONOMIC GOVERNANCE

The worst economic and financial crisis in post-war history has pushed to the top of the EU's agenda the need to strengthen European economic governance. The causes of and remedies to the crisis can only be tackled at the European level (SWP, Real Instituto Elcano).

The current European economic governance framework was set up by the Maastricht Treaty and was further shaped as new priorities and challenges emerged. At present it has three main elements: a single monetary policy endowed with an independent Central Bank; fiscal policies formulated by member states but coordinated through the Stability and Growth Pact; and national structural policies coordinated by the Broad Economic Policy Guidelines within the framework of the Lisbon Strategy for Growth and Jobs.

The 18 months covered by the current Trio Presidency is the time to improve this economic governance framework, since short- and long-term challenges will have to be addressed by the Spanish, Belgian and Hungarian Presidencies.

Firstly, the Trio Presidency will have to commit, together with the European Commission and the European Central Bank, to a close coordination of crisis-exit strategies. It will also need to tackle, at EU level, the consequences of these strategies – such as high unemployment rates, the aggravation of economic divergence in the EU and the deterioration of EU member states’ public finances (SWP).

Secondly, the Trio Presidency will need to address long-term issues concerning EU’s economic, social and environmental dimensions and its growth strategy for the next decade. The Trio Presidency should closely link the definition of the new EU-2020 Strategy to the debate on the future of the EU budget. It should state clear political priorities for the strategy – such as a return to sustainable growth and employment, a decisive improvement in the EU’s competitiveness, a guarantee for the long-term sustainability of public finances and social systems and the objective of convergence within the eurozone (SWP). It should also guarantee that the correct incentives for member state structural reform are provided in the new strategy, (Real Instituto Elcano) in order to ensure its successful implementation at the national level.

Finally, two main issues will have to be addressed by the Trio Presidency concerning the single currency: the eurozone enlargement and the external representation of the eurozone.

Concerning the eurozone enlargement, the Trio Presidency should work for a revision of the convergence criteria for joining the single currency (Real Instituto Elcano). The criteria set down almost twenty years ago in the Maastricht Treaty are outdated and have lost relevance from an economic viewpoint. The new criteria to be established should serve to measure the economic health of a country and include revised fiscal and monetary factors (Real Instituto Elcano).

The creation of a single monetary and exchange-rate policy, the emergence of the euro as a key international currency and the significant weight of the eurozone in the world economy have all increased the need for eurozone countries to coordinate their positions. The representation of the eurozone in multilateral financial forums remains fragmented and the eurozone is often unable to speak with a single voice. As a result the bloc punches below its economic and financial weight in the global arena. The Trio should be committed to strengthening the external representation of the eurozone in international financial institutions or other forums, such as the IMF, the World Bank and the G20 (SWP), and to working towards a single eurozone voice (Real Instituto Elcano).

Aside from the European economic governance framework, the Trio Presidency should also engage in concrete initiatives to support EU innovation and competitiveness. In this context, special attention should be given by the current Trio Presidency to the long-standing and unresolved issue of the European patent system. The Trio Presidency should make it a priority to reach an agreement on the Community Patent, in order to create a single market for technology in Europe (Bruegel) – one which would offer European industry better conditions to boost its competitiveness in the global market.



POST LISBON STRATEGY

The EU-2020 Strategy: Re-Launching (and Matching) the Ambitions for a More Competitive and Sustainable European Growth in the Globalised World

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The world economy (including Europe) is starting the recovery from the crisis at the beginning of 2010. However, the EU which is coming out of the crisis is, to some extent, wounded. Some of its most basic contents – such as the Single Market or the common currency – have been emphasised, whereas others – such as cohesion, the fiscal discipline of the Stability and Growth Pact, or the goal of coordinating economic policies – are in danger. The divergence of opinions and interests is continuing and national economic responses are over-emphasised. Some exhaustion is also observable. The EU does not seem strong enough to continue fostering reforms and it is not ready to handle the internal frictions.

The Trio Presidency and the new Commission step on such a scene. As President Barroso announced, one of the first of the Commission's tasks is to update and renew the Lisbon Strategy (which expires in 2010). The context outlined above is not very promising for a strategic planning process. Nevertheless, the EU-2020 Strategy in its rightful place as the most important priority to be addressed over the 18 months of Spanish, Belgian and Hungarian Team EU Presidency.

An evaluation of the strengths and weaknesses of the Lisbon Strategy

The EU needs to renew a somewhat unsuccessful strategy that failed to meet the goals set in 2000

All analyses of the results of the Lisbon Strategy over the last ten years of its existence largely concur. The Strategy launched in 2000 has not reached its goals, whether they are

measured in absolute terms (progress on general or specific indicators over that period) or in terms of the overall qualitative goal of making the European economy “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion...” Despite the mid-term measures taken following the Kok report, the disappointing figures from the first five-year period have not really recovered in the second phase, and the final outcome is a far cry from the original aspirations. There has even been a backward slide in some areas – for instance, the share of GDP devoted to R&D has fallen from 2% in 2000 to 1,8% in 2006 and, according to the European Innovation Scoreboard, the US is outperforming the EU in 11 out of the 15 most important drivers of innovation. Lastly, the fact that the results vary greatly from one country to another has undermined the credibility of the approach adopted for implementation of the Strategy.

Despite this relative failure, the Lisbon Strategy has been an interesting experience which deserves to be continued and consolidated

Despite its inadequacies in terms of results, the Lisbon Strategy has been an original response to the challenge of EU development, and bears witness to what has been a ‘dawning of awareness’ on four fronts. Firstly, a realisation of the dangers inherent in the gap in potential growth and the widening technology gap with the United States, after the period from 1945 to 1985, in which Europe caught up. Secondly, a realisation that a ‘holistic and sustainable response’ is required, enabling an innovation-driven economic dynamic to be reconciled with social and environmental concerns. Thirdly, a realisation that growth depends not only on traditional macro-economic policy but also, and perhaps essentially, on structural reform. And lastly, the realisation that this goal can only be reached by ‘pulling on several strings’ at once, in fields that come within both national and EU remits.

The above analysis of the facts, which dates back to 2000, remains fully valid today, and the fact that the desired results have not been forthcoming casts doubt not on the ‘soundness of the enterprise itself,’ but merely on the way in which it has been carried out. Moreover, in some ways the current crisis serves to press home just how important it is to consider the problems facing the Union today as a whole, and in the medium term. Of course we understand the need for short-term plans to save the financial sector and support the economy by creating demand, but nothing could be worse for the Union than giving up on the efforts made over the last ten years to tackle the weaknesses of its socio-economic structures at the root. The crisis doubtless demands a rethink especially of where the ideal balance between economic imperatives and the social dimension lies, but this is more a matter of fine-tuning than a total overhaul of the general approach. The interdependence of problems experienced by economies as closely integrated as those of the member states and the value of mutual learning through the exchange of best practice in a fast-changing world argue now more than ever in favour of a holistic, coordinated response to the challenges of the moment if the Union wants to remain in the vanguard of developed economies. The

time has therefore come to look back over the experience of the last ten years to analyse the reasons for the relative failure of the strategy so far, and draw the conclusions for the next decade.

The reasons for failure

The main reason lies first and foremost in having overestimated the Union's capabilities, while underestimating the obstacles it would meet in carrying out its programme. It was, in fact, presumptuous to declare out loud that the aim was to be the best in the world, and to set quantified goals without taking into account objective constraints and, in particular, all sorts of tensions involved in implementing a plan of this kind in a group as heterogeneous in composition and hybrid in nature as the EU. Moreover, the plan itself had numerous design flaws, the most serious of which have been clearly identified by all observers:

The scope was too broad and poorly defined

The ground originally covered by the Lisbon Strategy – which was already very broad – has not stopped expanding, with new areas constantly being added – for example, combating exclusion (Nice 2000), social protection in general (Stockholm 2001), the environment (Göteborg 2001), etc. Not to mention other, surreptitious add-ons depending on presidential whim or member states' special interests. And, as logic would have it, this endless mixed bag of disparate, unprioritised goals was accompanied by an equally long list of special indicators. To such an extent that in 2004 the Kok Report reached the disenchanted conclusion that “Lisbon is about everything and thus about nothing”, and suggested shifting the focus to growth and jobs, which was done, up to a point, from 2006 onwards. Nevertheless, though now more focused, the Lisbon goals are still too nebulous and diluted (no fewer than 24 guidelines and numerous sub-guidelines!) for the Union and member states to be able to concentrate their efforts on essential matters.

The types of action were confused when it came to implementation

The horizontal nature of the Lisbon Strategy involves, by definition, action by the Union in areas which come under shared competence and, very often, the exclusive competence of the member states. As the practical aspects of the mixed actions to be undertaken were not properly analysed, a whole series of regrettable consequences ensued. First of all there was a tendency, at least initially, to believe that the Union should engage on all fronts without having previously justified its interference in national affairs in relation to the Lisbon goals (posing problems of both rationality and legitimacy). Then, the lack of a clear distinction between the various levels of competence led to inevitable confusion as to responsibility, which generally resulted in the Union's share being overestimated and that of member states being underestimated – leading Mr Kok to say, still in the same report, that “everyone is

responsible and thus no-one”. The space given to the National Plans following the report has to some extent helped to rectify that impression. Nevertheless, the distinction between what comes under the general powers of coordination and impetus granted to the Union (soft law) and what comes under its powers *stricto sensu* should be indicated more clearly in future arrangements concerning the design and implementation of the Lisbon Strategy.

The procedures and texts were too complex

Its pursuit of the all-encompassing renders the Lisbon approach intrinsically complex. But instead of attempting to mitigate its complexity, the procedures introduced over time have only served to exacerbate it, mainly by “increasing the number of mandatory deadlines and stakeholders” each with their, albeit praiseworthy, interest in making their own contribution to the proceedings. Now the highlight of the spring European Council, and thus of every other Presidency, the Lisbon Strategy generates a glut of reports, firstly from the Commission and then from the Council (several configurations quite rightly feeling concerned); the paucity of content is often barely disguised by the summary into which those reports are laboriously distilled by the European Council, or rather, COREPER. In this respect the 2005 reform did not make any marked improvements, and to a certain extent even made the process more cumbersome by inventing an intermediary cycle of three years, the benefit of which has not really been demonstrated. Moreover, although their targets are better focused, the guidelines are still too complicated and are still poorly prioritised making them unsuitable as an instrument for steering government action along a genuine policy course. As for the new integrated guidelines born of the 2005 reform, experience has shown them to be often little more than a simple juxtaposition of the old Broad Economic Policy Guidelines (BEPGs) and Employment Guidelines, without any real added value.

There were no sanctions

One of the innovations of the Open Method of Coordination used for the Lisbon Strategy was having (in theory) resolved the delicate issue of not being able to impose sanctions in relation to member states’ political commitments outside the Community framework, by applying what is known as ‘peer pressure’. However, experience has shown that this system falters when faced with recalcitrant member states dragging their feet, being little inclined to participate in this type of exercise for various reasons, in particular a reluctance to name and shame their peers for fear of suffering reprisals when it comes to their turn (to put it in biblical terms: “Do not judge, and you will not be judged”). This fairly widespread aversion to the ‘peer pressure’ system has led the Commission, under the influence of certain large countries such as France and Germany, to reject the Kok Report’s proposal on the subject and, consequently, to abandon, to all intents and purposes, any serious system of benchmarking. This rejection effectively deprives EU bodies of the only operational instruments they had to supervise application of the Strategy. In the meantime, initial assessments have shown the great difficulty several countries have had in promoting reforms at the desired

pace and, consequently, how very uneven progress has been. How, in the circumstances, can we ensure that progress will be more evenly spread in the future, and that the whole of the Union will be mobilised in pursuit of reform? What place should be granted respectively to benchmarking, sanctions and incentives in the context of these endeavours? What concrete tools can be used? These are just some of the questions which forthcoming debate on the EU-2020 will have to answer.

The approach was too indiscriminate

Having the courage of their convictions, the designers of the Lisbon Strategy thought it should extend to all areas and all countries without taking account of the special circumstances in which it was to be applied. However, the desirable pace of reform varies from one sector to the other depending on their political sensitivity and lesser or greater external factors. Some developments can only be brought about in the long term, while others can occur fairly easily given a minimum of political will. Add to this the fact that the starting point is often very different from one member state to another, and it becomes artificial to set one and the same target figure for all, as was the case for instance for the target minimum level of investment in research, or employment rates. As far as employment is concerned, the soundness of an approach that focuses exclusively on the quantitative aspect while completely ignoring the quality of jobs is doubtful. These are just some of the approximations or anomalies which the forthcoming debate on the new, reworked EU-2020 will have to consider.

The abuse and misuse of panaceas and gimmicks

The growing gap between ambitions and results shown by the mid-term review (2005) gave rise to all sorts of comments, accompanied by various suggestions – including those made in the Kok Report – which have been partly, but only partly, taken up by the Commission and the Council. Before embarking on another discussion of the need to update the Strategy, it would be wise to quickly take stock of this array of suggestions in order to rule out or get into perspective a few ideas which are often presented as a panacea, but which can only scratch the surface given the magnitude of the overall challenge. These verbal inventions, hollow *clichés*, and false solutions include:

- **Mr (or Mrs Lisbon)** as the solution: appointing a single coordinator for national governments' actions is an innovation which is attractive on paper and is intended to address very real problems, but in an artificial, bureaucratic – and often media-friendly – way, without really addressing the causes of the problems which have been encountered in applying the strategy.
- **Ownership:** one of the most frequently quoted responses is to strive for better stakeholder ownership of the process, proponents of which include the Kok Report. This concept of ownership does deserve a moment's attention as it concerns very different realities depending on the angle from which it is viewed. From the procedural point of view, ownership means vesting member states with responsibility for designing and

conducting action the underlying principle of which has been determined at EU level. This is what happened when the national action plans were introduced, a move which was generally well received. From a political point of view, ownership means that governments fully and unreservedly stick to the Union's recommendations, including in their political statements for the benefit of their home audiences. This is a general point of governance which certainly concerns the Lisbon Strategy, but no more or less than it concerns any other of the Union's policies. Lastly, from a psychological point of view, ownership means that the European general public – in particular through national parliaments – endorses the Lisbon Strategy and identifies with its principles and demands. This is a laudable goal, but is somewhat overambitious for, despite any rousing calls that may be sent out, the truth is that – to paraphrase a familiar saying – it is and always will be very difficult for a person to fall in love with a Strategy, a Process or an Agenda. The point here is to put into perspective the potential impact of a catch-all concept which is all too readily presented by some as the miracle cure for current ills.

- **The budgetary solution:** several commentators saw a redeployment of the Community budget and specifically of the appropriations currently allocated to the CAP to what have come to be known as the new policies (R&D, innovation, etc.) as a key element in the relaunch of the Lisbon Strategy. Clearly any increase in Community support – particularly financial support – for the development of policies at the core of the Lisbon Strategy can only be positive. “It would however be quite unrealistic to overestimate the extent of this hypothetical boosting of financial resources and the practical effects it would have,” for numerous reasons. First of all, the contribution of Community financing to support for key Lisbon Strategy policies (e.g. R&D) is minimal compared with other sources of funding, and an increase in Community appropriations – however desirable and useful – would not be enough to improve the Union's mediocre performance in this area. Furthermore, the effectiveness of Community support should be measured not only in quantitative terms but also in qualitative terms. For instance, the recent initiative of the European Research Council enabled the Commission to finance projects in the Research and Development sector on the basis of strict criteria of excellence and “hence to maximise the effects of financial intervention by the Union for the same level of financial commitment”. Finally, there is no indication at present that significant budgetary amounts will be freed up in the forthcoming financial perspectives for measures under the Lisbon Strategy. A substantial minority of member states, the largest among them, continue to take an extremely restrictive line on any increase in resources (the 1% club) and the Common Agriculture Policy supporters (whose ranks have swelled following the last enlargement) have certainly not given up. And the hopes of some that there would be a mid-term review of the current financial perspective are now mere fantasy.
- **A better coordination between fiscal and monetary policies:** it would admittedly be difficult to claim today that economic policy coordination is completely satisfactory and the wide range of reactions to the crisis – ill-disguised by the appearance of a plan – has again shown this to be the case. But to see this weakness, however

regrettable it may be, as the main cause of the failure of the Lisbon Strategy is a step too far. Firstly, while there may be a link between macroeconomic policy and structural reform, this connection is no obstacle to progress being made with reforms, irrespective of whether or not simultaneous efforts to coordinate economic policies are successful. To link the two aspects too closely, as the aforementioned study does, is to risk giving those member states resistant to reform a convenient excuse for a certain apathy towards reform. One might even argue that it would be desirable in future to draw a clearer distinction between the structural objectives at the core of the Lisbon Strategy and short-term management of the economy which, while not incompatible with reform, has a different timetable and a different agenda.

Recommendations for the EU-2020 Strategy

The contents and goals of the Strategy

- **Refocus on the essential:** i.e. in practice what had already emerged from the Kok report; if possible restrict the scope even further, ‘clarify and rank the objectives in order’.
- **The EU-2020 Strategy as the Growth Pact of the EU:** the Stability and Growth Pact (SGP) should be divided into a stability and a growth section. Stability should remain with the, whereas growth should be channelled into the EU-2020 Strategy. Furthermore, in order to reduce the pro-cyclical feature and improve the contribution to crisis management it is worth making efforts for a more modern and flexible interpretation of the SGP. It is worth pondering the possibility of exceptions to the general rules of the SGP in a pre-determined fixed period if a country undertakes comprehensive structural reforms and the general government deficit increases due to the additional costs of the reform programme. As a result of the crisis the position of the European Central Bank has been strengthened among the institutions of the European Union. This may be an obstacle to the development of structural policy. The prospects of the EU-2020 Strategy become gloomier if the institutional weight of the European Central Bank increases. The macroeconomic environment could improve if in addition to the rate of inflation decision makers of the common monetary policy would consider other macroeconomic indicators (mainly unemployment) as well.
- **Be more realistic, more modest and more cautious** in expressing objectives in quantitative terms; envisage different scenarios, possibly with ranges of values; do not make systematic comparisons with the United States, which can be psychologically counter-productive, particularly at present.
- **Strengthen the social dimension of the basic paradigm** which states, broadly, “Give me a good economic policy and I will make you a good social policy”. Show in the new approach that, in the spirit of Lisbon, the relationship between the economic and the social is ‘two-way,’ which has been somewhat forgotten in the current implementation

of the Strategy, under the influence of a liberal mindset expressed a little too forcefully; while the crisis must certainly not be allowed to compromise the basic message (avoid a return to regressive utopias), certain balances need to be seriously reviewed and redressed if the spirit of the strategy is to be respected.

- **This refocusing requires a detailed prior reflection process at the highest level** which should result in a new reference text (or founding text) to inaugurate the new decade. The final report of the Felipe González Reflection Group may be that text.
- **Develop the external dimension of the Strategy** which so far has been largely missing and explains some of the disappointments encountered; the global nature of the present crisis provides an opportunity to use the Strategy as a means of projecting Europe's political and economic ideas on to the international stage.
- **Integrating structural and sustainability policies in the EU.** This would imply that the European Union has an overarching unified framework for implementing some long-term key structural objectives, such as employment growth, regional policy, climate change, energy safety, knowledge-based economy, innovation, education and training, etc. The major value added content of this could be that the new strategy would co-ordinate and harmonise the Common and Community policies as well as those of the member states in a comprehensive framework and extend them to additional fields (cohesion policy, common agricultural policy, etc.) not having been covered by the Lisbon Strategy yet. Harmonisation should be extended to both the time horizon and the contents of the individual policies and programmes. The guiding principle of the Strategy should be the integration of structural policy and sustainability. The objectives and the priorities of the other fields should be derived from the requirements of long-term structural changes. The proposed comprehensive strategy calls for the reform of the EU budget. This means that the expenditures of the Community budget should be based on the needs of the Strategy and the policies related to it rather than the other way round.

How to evaluate the achievements: indicators, incentives... and penalties

- Refine existing indicators such as that relating to the employment rate (too crude at present) or that for innovation and research (the point is to measure actual performance rather than the financial resources allocated).
- Introduce new indicators relating in particular to demographic change in the Union and the member states, which determines directly or indirectly a number of the Strategy's objectives.
- Distinguish medium-term structural policy aspects – which are the only ones that strictly come under the Strategy – and short-term aspects relating to the conduct of economic policy.
- Develop a more rational method for evaluating national plans.
- Reintroduce comparative performance reporting (peer pressure).
- Reflect on the delicate issue of incentives and penalties.

The role for member states and for EU institutions

- Distinguish more clearly at all levels (concept, decision, execution) what falls within the competence of the Union and what remains a matter for the member states; some of the present setbacks are a result of the confusion that prevails in this respect in current procedures.
- Within the general strategy, develop a specific strategy for members of the eurozone; restrict the role of the European Council to the setting of essential guidelines.
- Strengthen the role of the General Affairs Council (especially after the reforms introduced by the Lisbon Treaty); the GAC must be the real architect of the detailed strategy formulation and the periodic adjustments required. Entrusting this task to the GAC is also the best way of enhancing coordination at EU and member state level (much more effective than the appointment of a Mr Lisbon).
- Put the Commission back at the centre of the system for monitoring application of the Strategy by the member states; ‘a permanent decentralised dialogue’ at all levels between the Commission and the member states is the best way of ensuring that the Strategy is applied.

Radical simplification of procedures and fewer documents

- The system for the implementation of the Lisbon Strategy became bloated as regards the number of meetings at ministerial level and others and the number of documents produced, which makes it too easy for certain members to shirk their obligations to comply with the Union’s guidelines and directives.
- Make optimum use of the innovations of the Lisbon Treaty (Permanent President of the European Council, General Affairs Council (GAC) to simplify and better coordinate procedures.
- Strictly limit the number of operational documents to three: a *10-year plan for social and economic modernisation* laying down the broad guidelines adopted by the European Council and adjusted if necessary by the same procedure and, each year, *annual recommendations to the member states pursuant to the plan* and a *contribution by the Union to the implementation of the plan*, adopted by the GAC.
- A single annual meeting of the European Council (preferably in June to ensure better preparation), for the purpose of adjusting the ten-year plan where necessary and ratifying the two documents containing the recommendations to member states and the Union contribution.
- It is reasonable to distinguish two stages for the periods 2010-2014 and after 2014. Developing the EU-2020 Strategy is not possible with one leapfrog. Taking the EU realities into account, it would require three to four years of preparatory work, gaining gradual commitment by the member states, the Parliament and society, and assigning consistent funding to the process. Although the new Commission led by Barroso is likely to announce fundamental changes at the beginning of 2010, only some gradual,

smaller changes are possible in the 2010-2014 period. After that, it is possible to apply deep reforms and together with the new mid-term financial planning period. This way the whole budget could be changed, including the introduction of own EU financial resources (tax), the policy-driven reshaping of fiscal planning and increasing the EU's total budget; and, in parallel, fiscal framework conditions could be adopted to help structural changes.

POST LISBON STRATEGY

The Challenge of Building a Low-Carbon European Future: Combining Economic, Social and Environmental Policies into a Post-2010 Lisbon Strategy

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Ten years after the launching of the Lisbon Strategy, the EU needs to set new guidelines for assuring a sustainable path of prosperity in the coming decade, in spite of the many factors that work against such an important goal: global economic crisis, lassitude created by the 2000 Lisbon Strategy, lack of member states' involvement and a deficit of communication on the issue.

Until recently, little attention has been paid to this issue. The Swedish Presidency had the intention to launch a debate on the post-Lisbon Strategy during its six month mandate but the ratification of the Lisbon Treaty and the preparation of the Copenhagen Climate Change Summit eventually proved higher priorities. The launch of the Commission's consultation on EU-2020 has attracted public attention to the question, but it is quite likely that in the coming months national governments' priorities will stay focused on the short-term – how to exit from the crisis.

And yet, having reached in December 2008 an agreement on the energy and climate change package – the so-called “20-20-20 for 2020” – Europeans are more than ever before in need of a common strategy to promote prosperity and sustainable growth. Indeed, Europe's challenge for the coming decade is to honour the EU's commitments on climate change mitigation while maintaining the competitiveness of European economies and securing social cohesion. In doing so, they should avoid repeating the mistakes of the Lisbon Strategy – very ambitious goals but weak implementation capacity. They should nevertheless retain the founding philosophy of ‘Lisbon’: the importance of adopting an integrated approach, fostering positive synergies between economic, social and environmental action.

The post-Lisbon Strategy needs to be strongly linked to this new ambitious climate change target Europeans have set for themselves. Europeans have to end ‘Lisbon as usual’ by putting at the core of a European agenda the priority of building a low-carbon economy.

Creating a competitive and socially cohesive low-carbon EU economy: in search of a new paradigm for the post-Lisbon Strategy

There is growing consensus that shifting Europe into a low-carbon economy will require more than target-setting. Due to the uncertainty on long-term carbon prices and the high risk of investments in next-generation green technologies, market forces alone will not promote the level of investment in eco-innovation which is needed to switch quickly to a low-carbon production system. Even a well-known pro-market review such as *The Economist* recognised this point in a recent article commenting on the UK climate change plan (“questioning the invisible hand”, *The Economist*, 17th October 2009). Thus, public intervention is required in order to establish a predictable and significantly rising price for carbon that incentives long-term private investment in carbon reduction (something that the EU ETS system – European Union Greenhouse Gas Emission Trading System – has not so far attained) and support research and innovation in green technologies to promote their development and commercialisation.

One should take into account that technological innovation and energy efficiency gains will not be sufficient to provoke major emissions abatement. Witness what has happened in the field of transport: from 1996 to 2006, emissions from new cars have decreased by 12.4% thanks to improvements in fuel efficiency. Yet over the same period car ownership in the EU-27 has increased by 26% and passenger car use – calculated in terms of km per passenger – has risen by 18%. As a result, transport greenhouse gas emissions rose by 26% between 1990 and 2007 (EEA 2009). In order to reach the EU emission reduction targets for 2020, it will be necessary to provoke changes in both production and consumption patterns. This will imply the use of pricing measures and subsidies to influence consumers’ behaviour (particularly on transport and on household energy use) but also structural actions to promote more sustainable models of consumption and distribution (i.e. a heavy investment in urban and inter-city public transportation, regulations to promote environmentally-friendly products and services, a deliberate strategy to promote a switch away from air and road freight transport towards more environmentally efficient rail and maritime freight transport).

While the EU commitment to GHG (greenhouse gas) emissions abatement is frequently portrayed as a cost for economic competitiveness, it can also be seen as an opportunity. A major investment on green technologies can provide a first-mover advantage in global markets to those companies and countries which are quickest to develop new green products or services. Europe already has a lead in several ‘green economy’ areas, such as wind turbine technology, waste recycling and water treatment systems. It will be important

to maintain this comparative advantage – through actions such as support to on-going innovation and research or help to export commercialisation – and to forecast the opportunities of creating an advantage in new emerging green market niches. Even if Europeans succeed in exploiting these new opportunities, in the short-term the European climate change package will imply a loss of international competitiveness for some EU firms. In effect, the risk of dumping created by non-European firms that are not be submitted to the same burden is high, particularly in energy-intensive sectors. The final post-Kyoto agreement expected by December 2012 will help Europeans anticipate the kind of external economic competitiveness they should encounter while operating their transition towards a low-carbon economy. Yet, considering the outcome of the Copenhagen Summit, it is quite probable that the final post-Kyoto agreement won't give real and satisfactory transparency on the goodwill and capacity of EU's main commercial competitors to operate a similar transition to low-carbon economy and to limit environmental dumping. If this happens, the EU will have to find alternative ways to force the engagement of third parties in the fight against climate change and to protect the competitiveness of the EU enterprises. The possibility of creating an EU carbon tax on imports will have to be put on the table.

The transition towards a low-carbon economy will provoke major changes in our industrial structures. Processes of industrial restructuring will entail high costs, not only for the workers concerned but for the local or regional economies. This might endanger EU's social cohesion, which is not only a common EU good but an essential characteristic of the European social model. Measures to anticipate changes will be required, as well as accompanying policies to reduce the social costs to a minimum, by favouring the transition of workers to other jobs and promoting the economic diversification of the affected areas.

Particular attention will then have to be paid to the impact of climate change policies on employment. According to a recent ETUC / SDA study (*Climate change and employment 2008*), the measures to enable the EU to reduce its CO₂ emissions by some 40% by 2030 will not globally destroy jobs, but they will substantially change the supply and demand of jobs and qualifications. Workers will have to be redirected from energy-intensive sectors (such as coal and steel industry) to green sector with high employability (public transportation, renewal energies, sustainable building and construction). This transition will not be without difficulty: there is a risk that displaced workers will be trapped in structural unemployment if activation measures and social protection schemes are not correctly anticipated and followed up.

Apart from a redirection of workers from high carbon to low-carbon sectors, the transition towards a low-carbon economy will lead to a redefinition of skills across almost all sectors. In particular, increasing demand for 'green' jobs will lead to a shortage of certain environmental skills. In principle, market forces are expected to promote an increase of private investment in these skills. Yet, several sectors – such as renewable energy, energy and resource efficiency, building renovation, etc. – are already facing skill shortages and there

are signs that this is hampering their development. Removing current skill shortages and anticipating new skill demands will be crucial to facilitate the greening of EU economies.

Finally, as pointed out by various experts, the transition towards a low-carbon economy will entail socially regressive effects. In effect, many of the necessary measures to reduce greenhouse gas emissions – in particular fuel taxation – will penalise more those least well-off in our societies, as they spend more in fuel consumption in relative terms. In order to ensure that our low-carbon future is not inequitable, it will be essential to introduce compensatory measures to offset these regressive impacts. The latter is both right from a moral point of view and necessary from a strategic perspective: if we do not address the social effects of the transition towards a low-carbon economy, it will be very difficult to ensure the political consensus which is required to support such a transformation.

From compensatory and penalising social and environmental policies to productive integrated policies

Shifting Europe in a low-carbon direction will require a comprehensive and coherent strategy. So far, the EU action in this field has been piecemeal and sector-based, and it has mostly consisted of the establishment of targets and guidelines for carbon mitigation, leaving implementation to member states. It is time to recognise that de-carbonating our economy requires a fundamental re-think of our model of growth, and thus of the whole range of policies currently being implemented in pursuit of development. Hence the need to place climate change concerns at the centre of a post-Lisbon Strategy of development and growth.

The current Lisbon Strategy pays little attention to climate change considerations. Since 2001, it is supposed to integrate an environmental dimension – in the form of the so-called Sustainable Development Strategy (SDS). Yet, in practice the two strategies (SDS and Lisbon) have been kept as separate processes and environmental concerns have been largely excluded from the Lisbon process. On top of that, the balance between the social and the economic dimension of the strategy, which characterised the original version of Lisbon, has been broken with the 2005 decision to re-focus the Lisbon Strategy on growth and jobs. At present, the Lisbon Strategy is essentially focused on promoting growth and expanding employment, from which social and environmental benefits are expected to flow automatically.

Ironically we need to come back to the initial philosophy of the Lisbon Strategy: fostering synergies between social, economic and environmental dimensions. Social action should not be designed in a strict compensatory way but also in a way to become a productivity asset. And it is important as well to design environmental action in a way to create opportunity for growth. In a similar manner, there is a need to explore the ways to make social and environmental not only compatible, but mutually reinforcing. A low-carbon future will entail

social risks, but also opportunities for job creation. Inversely, employment and education policy, if well-gearred, will facilitate the transition towards a low-carbon economy. Thinking on the social / environmental synergies is particularly important, as there has been a lack of reflection on this topic so far. Three out of the seven objectives of the current SDS are ‘social’ – public health, social inclusion and global poverty – but they are those which have received less attention so far. And among the 57 indicators used to guide the implementation of the Strategy, none of them represents the interaction between the social and the environmental dimension.

Finally, it is important to take into account that synergies do not come automatically. They need to be promoted through the use of instruments and indicators designed appropriately. Too often, the Lisbon Strategy has led to an inventory of possible instruments without a clear strategy for a coordinated use of them. To promote a truly integrated approach, it is absolutely essential to solve these problems of coordination.

Recommendations to the Trio Presidency

A new strategic goal

The ultimate aim of the post-Lisbon Strategy should not be to convert Europe into “the most competitive and dynamic knowledge economy in the world”. The new programmatic slogan should be “to become the most competitive, socially-just and sustainable economy in the world”.

Timetable and duration

The post-Lisbon Strategy will not succeed if it is not built on a good analysis of the economic and social consequences of the crisis and the challenges of the energy and climate package. Forging consensus on a new analysis takes time, but it is essential to ensure the political legitimacy of the new Strategy. Introducing small amendments to the actual Strategy is therefore a recipe for failure. The Trio Presidency should modify the timetable for the definition of the new Strategy: the 2010 Spring European Council would preferably be dedicated to discussing national recovery plans and exit strategies from the crisis while an additional year would be needed to build an active political consensus on a long-term sustainable strategy for growth and jobs. The duration of the new Strategy should also be reviewed. Shifting Europe in a low-carbon direction will require a long time horizon. While Lisbon is a medium-term Strategy (10 years), the EU commitments on climate change mitigation adopt a medium to long-term view (10-40 years). If we want to place climate change concerns at the centre of the new Strategy, then we may have to envisage an extension of the calendar, with the establishment of objectives at both the medium-term (2020) and long-term (2050) horizons.

“Stick and carrot”

The exchange of best practice – the basic tool of the Lisbon Strategy so far – will definitely be inadequate to achieve the “3x20 for 2020” agreement sustainable targets. The Spanish government, which is the first to chair the presidency of the ministries council, should invite member states to propose ways of combining new EU regulation pressure and national initiatives adapted to national specificities.

Simultaneously, efforts should be made for more and better use of EU funding. As the Stern Report advertises, the short-to medium-term costs of investing in mitigation are likely to be high: hence, a strategy solely based on the ‘stick’ is unlikely to work: there is a need to provide some ‘carrot’ – that is, economic support to member states in their efforts to de-carbonise their economies. It is therefore important to significantly increase the amount of EU resources devoted to finance low-carbon energy and transport infrastructures and research on green technologies. In addition, sustainable conditionality should be integrated in the selective process of the European Globalisation Adjustment Fund. The budget of this fund is still symbolic and its existence is hardly known: it should be boosted in order to become a helpful support of a new sustainable strategy. Finally, revenues from the ETS system should be clearly earmarked to action on climate change, and part of these resources should be used at the EU level and allocated in a redistributive way (i.e. more funding for poorer countries and / or for regions or groups most affected by mitigation measures).

Instruments and indicators to promote synergies

As said before, ensuring a truly integrated strategy requires changes in the modes of governance as well as in the indicators. Social and environmental objectives should form part of the main integrated guidelines. It is also paramount to build up a system of monitoring and ex-post evaluation designed to assess whether the mutually reinforcing effects between economic, social and environmental policies occur in practice.

Making the strategy more ‘sexy’

The Lisbon Strategy suffered from the beginning from its very technocratic definition. Should the 27 agree on a new strategy, they must be careful to deliver a comprehensible definition and explanation of what is at stake, and they must commit themselves to invest in an active communication campaign addressed to economic actors at all levels. A renewed strategy should also be given a new name in order not to be handicapped by the “Lisbon Strategy fatigue”.

POST LISBON STRATEGY

Greening the Stimulus Debt

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Background: the two signature challenges of our time

Climate change and the global economic crisis are the two signature challenges of our time. The Climate Summit in Copenhagen has increased the sense of urgency surrounding the challenge of climate change. But two fundamental disagreements remain. First, there is disagreement on who ‘owns’ the atmosphere, especially between developed and developing countries. Second, there is disagreement on the best reduction path, and in particular the question how much reduction we should aim for now using current technologies and how much reduction should be postponed until technologies are more advanced and countries have grown richer. Hence, progress on preserving our climate may continue to be slower than what is required.

By comparison, responses by governments and central banks in addressing to the current economic crisis have been rapid and fairly effective to date. Actions have included massive fiscal and monetary stimuli in support of the banking system and the real economy, despite substantial disagreements on how best to proceed. However, it should be pointed out that we are likely to owe at least part of this capacity to act and coordinate in this economic crisis to the painful lessons of the Great Depression.

This arguably more developed capacity to fight the economic crisis is neatly captured by the quip: “If our climate were a bank, it would already have been saved”. It raises the question whether there might in fact be ways to kill two birds with one stone – to make our policy responses to these two challenges mutually reinforcing.

Status quo: greening the stimulus packages

Initially, one obvious approach was to green the expenditures of the fiscal stimulus packages. A sizeable proportion, estimated at 15% on average, of the adopted stimuli has been designated for green spending. This percentage could have been somewhat higher and perhaps a

greater proportion could have been allocated to promoting green innovation instead of supporting the construction sector.

However, since the primary objective of a fiscal stimulus is to support the economy in the short-term, it would have been difficult to devote a much larger proportion of the stimulus to the longer-term objective of fighting climate change. This explains why Nicholas Stern for example only called for 20% of the stimulus packages to be green, not radically more than planned.

Policy proposal: greening the stimulus debt

However, the world has moved on and countries now need to reflect not on new fiscal stimuli but on how to gradually withdraw their fiscal stimuli and pay down the stimulus debt that has been accumulated. In 2009 alone, the EU countries are piling up a stimulus debt of around €115 billion or 0.9% of GDP, with the US adding twice as much: an estimated €220 billion or 2% of GDP. These enormous additional debts could be ‘greened’ by a firm international commitment exclusively repaying that debt with additional revenues from CO₂ taxes and emissions’ cap-and-trade schemes. This is precisely what I propose should be done.

The additional green revenues should be raised as soon as our economies recover, to swiftly repay the stimulus debts. The time-path of debt repayment could be explicitly linked to the timing of the economic recovery. And once the stimulus debt has been repaid, the green revenues could then be used to reduce the fiscal burden on other activities, not least labour. Such a shift from taxation that reduces desirable employment to taxation that reduces undesirable pollution can lead to welfare gains.

The envisaged increase in green revenues is ambitious but not utopian. In the EU, green tax revenues already make up 2.6% of GDP, substantially more than the annual size of the stimulus packages to date. Green tax revenues in the US are substantially lower but the Obama Administration is working on plans for a cap-and-trade scheme that could eventually generate revenues of the amount of magnitude required. And even in China, a country still suffering from the communist legacy of low energy efficiency, the political interest in taxing energy and environmentally harmful activities is on the rise.

The proposal to commit to repaying the stimulus debt through green taxes once the economy picks up would have a number of advantages:

First, there are efficiency reasons to complement the carrot of green subsidies with the stick of green taxes. The latter addresses the underlying problem with great precision, namely that private agents do not fully take into account the negative climate externality of CO₂ emissions.

By contrast, the carrot of green subsidies is better suited to dealing with a narrower and positive externality: the spill-over effects of technological innovation aimed at reducing CO₂ emission.

Second, green revenues improve not only environmental but also fiscal sustainability. A credible commitment by countries under fiscal pressure on how to repay their debts in the future could serve to reassure financial markets. For this reason even countries like Ireland lacking the fiscal room for manoeuvre for discretionary stimulus packages, might be tempted to participate in the greening of part of its debt.

Third, the proposal implicitly acknowledges that fiscal consolidation after the crisis needs to occur through three means: (green) tax increases, but also, and at least as importantly, spending cuts and economic growth. Indeed, the stimulus debt to be greened is only a fraction of the total crisis debt, which to a large extent is due to automatic stabilisers and the fall in GDP.

Only a couple of years ago, this proposal would have been completely unrealistic. Ironically, the threat to fiscal sustainability during this economic crisis may be decisive in helping our economies to move towards environmental sustainability.

At the European level, the proposal to increase the green revenues raises the question how existing European initiatives can be leveraged to that effect. First, there already is the European emission trading system. It is of course possible to generate additional revenues within this system – for example, by reducing further the free allocation of certificates, by agreeing on an effective price floor on emissions (possibly in conjunction with the simultaneous introduction of a price ceiling), and by further increasing emissions coverage from about 40% at present. Second, there are a number of regulatory initiatives to enhance efficiency standards where the economic rationale could benefit by relying more on revenue-raising financial incentives and less on firm administrative limits. Third, the introduction of a European minimum eco-tax on all fossil fuels should be seriously considered, in line with the proposed minimum price for the emissions trading system. In that context, particular emphasis should be placed on eliminating the present reduced rates (for example in agriculture or heating), as well as those rebates and transfers that reduce the marginal cost of CO₂ emissions. Those in need could instead be offered social support that is not conditioned on fuel consumption.

ECONOMIC GOVERNANCE

Governing the Eurozone out of the Crisis

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Specific challenges for the Trio Presidency

The recent financial and economic crisis has posed the most serious challenge to the European Monetary Union (EMU) since it was created over ten years ago. At the same time, the EMU has proven a safe haven for its participating countries, having avoided currency turbulences and severe speculation against single member countries. It has formed a core of stability in the single market. The attractiveness of the euro has consequently risen considerably in the eyes of those member states which are not (yet) part of the single currency, notably in Central and Eastern Europe, and which were on average more strongly hit by the crisis than the EMU members.

At the end of 2009, economic indicators pointed to a possible economic recovery both in the EU and the US. But several risks remain and pose specific challenges to the current Trio Presidency:

- The situation of the banks in the EMU may still hamper economic recovery: a spill-back of corporate insolvencies into the banking sector would put new strains on Europe's banks and would increase the already very strong prudence in the financial system. Hence, the allocation of credit to companies may continue to be insufficient. This may cause short-term refinancing problems with a danger of provoking insolvencies and a reduction of investment – e.g. in research and development – which could, in the medium and long-term, negatively impact the competitiveness of the EU corporate sector.
- The political and social effects of the financial and economic instabilities will take the crisis into its third phase. Domestic developments such as rising unemployment (in some cases up to 15 to 20%, 10% on average for the EU) can make certain governments less cooperative and more protectionist. The context for pushing structural reforms and measures to complete the single market (e.g. in the financial and services sector) has thus deteriorated.
- The continued trend of economic divergence in the EMU (due to different degrees of competitiveness) has been aggravated by the crisis, which has hit less competitive

economies harder than those with a high degree of competitiveness. This results in continued economic and political tensions, manifest policy divergence and a politically and economically more complex context for the ECB to act in.

- The deterioration of public finances risks making public finances in some member states unsustainable (possibly even provoking a sovereign default) and could undermine the existing framework of fiscal surveillance in the EMU.

The current Trio Presidency comes in at a time when the adjustment process to the economic and financial crisis is reaching its potential. But all this must be managed in a context where, at the domestic level, the willingness to accept structural reforms, budgetary adaptations and cooperation within the EU will be somewhat low; and where, at the European level, the governance institutions and procedures of the EMU will continue to experience a crucial stress test. However, the way the EMU manages its adaptation to the economic and financial shock in the next two years will decide its medium-term performance in a world economy characterised by shifting power relationships, with emerging markets such as China recovering from the crisis at a quicker pace than Europe or the US.

Current status

In order to tackle the challenges of the crisis, policy change and institutional adaptation will be required, at the European, national and international levels. On the policy side, the economic and financial crisis has already caused certain dynamics:

- As early as 2007, the ECB reacted swiftly to the crisis by introducing large amounts of liquidity into the markets. The expansionary monetary policy persists to date.
- In the EMU member states, budgetary policies have shifted towards expansive growth stimulation. Meanwhile, consolidation and the long-term sustainability of public finances seem to have lost importance to most governments.
- Bank rescue packages and subsidies for key industries have decisively expanded the role of the state in most member states' economies. The European Commission has at least temporarily relaxed the application of EU competition policy.
- Rhetoric and policies in many member states have changed towards a more protectionist stance. In some cases, national announcements or even policy measures have been in contradiction with the principles of the single market.
- The financial crisis has revealed serious inconsistencies in the existing financial-market regulation in the EU, for instance in the field of deposit guarantees or mortgage credit. As insufficient standards in single member states are perceived as having EU-wide implications, the issue of financial-market regulation has made a strong return to the EU policy agenda – which, since the arrival of Charles McCreevy as Commissioner for the single market in 2004, had been characterised by a more market-driven approach with less appetite for EU regulation.

The management of the financial crisis has also caused certain dynamics on the institutional side:

- The first eurozone summit: in October 2008, the French EU Presidency brought together for the first time the heads of state and government of the EMU (together with the British Prime Minister) to discuss support measures for the European banking sector. This institutional innovation so far has had no follow-up, but it is a format which could be used by the current Trio to discuss the most important EMU issues (see below).
- Strengthened European financial supervision: the Ecofin of 9 June 2009 and December 2009 and the European Council of 18/19 June 2009 decided to put in place new structures for a more integrated macro- and micro-prudential oversight, following the recommendations of the de Larosière Group.
- Winners and losers in terms of credibility: while the European Central Bank has been able to strengthen its position and credibility due to its swift reaction to the crisis, the European Commission has lost authority due to its failure to assume leadership in the crisis management process, which was partly a result of the reluctance of the EU member states. It is a major challenge for the new Commission to re-establish its authority in order successfully to ensure the application and (in particular) the further development of the mechanisms for fiscal and economic policy coordination in the EMU.
- A new global governance debate: on the global scale, questions of economic governance have moved to the top of the agenda as the causes of and remedies to the current crisis can only be tackled at the global level. The creation of the G20, a move which takes into account the need to involve the emerging economies more strongly, is the most visible development. Yet the EU and the eurozone have so far come up neither with a consistent position on the future shape of global governance institutions in the field of economics and finance, nor with a proposal for how the EU and the EMU as entities will meaningfully engage in global economic governance.

Proposals for the Trio

Out of the three Trio partners, only Spain and Belgium are members of the European Monetary Union. Given the challenges outlined above, both should put EMU and EU economic governance issues high on their agenda. However, Spain in particular is in a difficult situation with regard to its economic outlook, its public finances and soaring unemployment rates. Belgium, on the other hand, does not have a particularly strong political role in the EMU. Both should hence seek close cooperation with partners such as other large EMU member states – in particular Germany and France – the European Commission, the European Parliament and in particular the Eurogroup, in order to advance the debate on the economic policy coordination framework in the EU.

One of the top priorities in 2010/2011 will be the management of exit strategies. Together with the European Commission and the ECB, the EU Presidency should take a strong role in the debate on when to leave the crisis-management mode (characterised by an expansion of central bank liquidity, massive public deficits and state interventionism). Interest-rate increases, budgetary adjustment and a withdrawal of government guarantees for the financial sector have to be coordinated in order to avoid a new economic downturn if uncoordinated fiscal and monetary restraint cause domestic demand slumps and weigh on corporate activities through higher interest rates. It is important to have the highest possible degree of confidential exchange between the member states and the ECB – for instance within the Eurogroup – and at the member state level to have close coordination between the two largest eurozone economies, Germany and France (at present these countries seem to be pursuing different fiscal exit strategies). The resulting domestic developments may increase internal tensions in the EMU.

The re-launch of the Lisbon Strategy (2000-2010) under the heading ‘EU-2020’ is on the agenda of the Informal European Council on February 11th and of the Spring European Council, under the Spanish EU Presidency. While the Lisbon Agenda has shown the limits of a ten-year project in a crisis context, this strategy should be structured in two sections of five years each, with a review of the achievements and the global context in 2015 in order to respond to the rapidly evolving European and global situation. The current Trio Presidency should, firstly, state clear political priorities for the new European growth strategy – such as a return to sustainable growth and employment, a decisive improvement of the EU’s competitiveness (given rapid development in other world regions), the guarantee of the long-term sustainability of public finances and social systems and the objective of convergence within the eurozone. The debate on EU-2020 should be closely linked to the debate on the future of the EU budget, which risks being blocked by the old conflicts already apparent in the previous budgetary negotiations (see Peter Becker’s contribution in this volume). Given the fact that the eurozone is technically one economy with a single monetary policy, specific attention should be paid to EMU-wide development needs. This includes both micro-economic aspects (such as the particularly strong need for structural reforms in some EMU member states, which no longer have the exchange rate as an adjustment mechanism) as well as macro-economic considerations (such as the discussion of the need for fiscal stabilisation mechanisms at the EMU level).

In close connection with the new European Growth Strategy, the economic policy coordination framework in the EU, and most importantly in the EMU, needs to be improved. The economic and financial crisis has revealed the deficiencies of supervision, both of the financial markets and the member states’ economic and fiscal polity. The future of the Stability and Growth Pact is not clear, given the fact that most EMU member states are in breach of the upper limits. There is no clear commitment in most member states to correct this situation once the exceptional circumstances of the crisis have ceased to exist. Debates on the reform of the coordination framework should logically be linked to the objectives of the future European growth strategy.

- The improved coordination framework should pay more attention to economic divergence resulting from discrepancies in the development of national and regional competitiveness. The surveillance framework, which so far has put the strongest focus on public finances, should henceforth be expanded to further indicators such as private debt, external balances and other indicators of the relative competitive position of a member state, leading to a more encompassing framework of macro-economic surveillance. This discussion should be directly linked to the debate on the future of the Stability Pact in order to devise a coherent framework. Within the EU economic policy framework, the EMU should receive particular attention.
- With regard to developments that undermine macro-economic stability, recommendations to single member states are of particular importance. Past experience (for instance with the recommendations to Ireland under the framework of the Broad Economic Policy Guidelines, BEPG, in 2001 which caused a huge national uproar as Ireland was asked to pursue more restrictive fiscal policies for macro-economic reasons – in times when it was running a budgetary surplus) have shown how difficult it is to recommend policy changes to single EU member states. Since this experience of 2001, the willingness of the European Commission (and the member states which review the BEPG before publication) to request policy change has diminished. Fresh political will to improve economic policy coordination is thus needed, which implies both a pro-active European Commission and a strong Eurogroup chair (to be chosen in 2010 for two and a half years) as well as a highly constructive role for the Ecofin Presidency (assured by the members of the Trio Presidency). This is a prerequisite for soft coordination to work (which will remain the dominant governance mechanism as there is no majority among the EU member states to transfer sovereignty in the field of economic or fiscal policy to the EMU or EU level).
- In order to broaden the trans-European element in the debate on economic policy in the EU and EMU, the European Parliament should be involved as much as possible and despite the fact that it has no formal competencies in this field. The monetary dialogue of the EP Committee for Monetary and Financial Affairs with the ECB President and the informal exchange with the Eurogroup President should therefore be maintained and even strengthened. The new special Committee dealing with the Economic and Financial crisis should equally be nurtured in order to become part of the European economic policy debate. Dialogue with national MPs should be increased, involving the key European policy-makers in the EMU, the ECB President, the Eurogroup President and the European Commissioner.

In general, in managing the EU and EMU economic governance agenda, the Trio Presidency must pay close attention to all relevant players. This is particularly true given that the governance structure of the EMU is still somewhat informal, is under constant evolution and must be reshaped in response to the changes the Lisbon Treaty brings about for the EU in general. A close and constructive working relationship with the new Commission is key – most importantly with its President (who must define the overall work programme of the Commission and

re-establish it as a relevant actor in the EU's response to the crisis), with the Commissioner for Economic and Financial Affairs, with the Commissioner for the Single Market and those for related policy areas. Furthermore, the involvement of the EP in the debate on the future of economic policy in the EMU and EU is important, most notably because it is a key player in the ambitious legislative agenda for financial-market regulation which the Commission will start to table from 2010.

Strong political commitment and a strengthening of the authority of all actors involved in economic-policy coordination would help the EMU and the EU to act more swiftly in a new round of the crisis. The EU under the Trio must prepare for new cases of crisis management which may be more complex to solve than many of the incidents since 2007. Today, for instance, a case of sovereign default within the EU cannot be excluded (for which the instruments currently applied to the comparable cases of Hungary, Romania and Latvia are not applicable, since the Balance of Payment Loans according to Art. 119 can only be granted to non-EMU-member states). Likewise, a possible dollar crisis (and hence a strong and uncontrolled appreciation of the euro) is a scenario which might hit the EMU under the EU Trio Presidency. Such incidents may require the convening of a new eurozone summit.

ECONOMIC GOVERNANCE

New Changes and Old Challenges in the Economic Governance of the Eurozone

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The tenth anniversary of the creation of the euro coincided with the most severe economic crisis since the Great Depression of the 1930s. And it did so amid uncertainty over the ratification of the Lisbon Treaty. Its entry into force will allow for some improvements, such as greater economic coordination, but some of its weaknesses will remain. Despite this, as a whole the eurozone will probably emerge strengthened from the crisis.

This article analyses criticisms and proposals for improved European economic governance, including those that remain up for debate after these ten years, those which will probably be applied following the entry in force of the Lisbon Treaty, and those which might arise as a result of the crisis. The crisis has focused much interest on the following two questions: who serves as the voice of the euro in the world, and which countries are going to join the eurozone and which ones are to be left out. We will address these two issues first, then the three traditional pillars of EU economic policy (monetary, fiscal and supply policy), and finish with a section on changes in the distribution of power caused by the crisis and the Lisbon Treaty.

External representation of the eurozone

One weakness of the eurozone economic governance which became clear during the crisis is that of its external representation in the world. This field includes on one hand communication on the euro's exchange rate against the world's major currencies and, on the other, the unity of discourse from the euro area countries in international fora such as the IMF, the World Bank and, especially now, the G20.

Communication on the euro's exchange rate corresponds to the Ecofin meeting of EU finance ministers, to the extent that it is the body with jurisdiction to decide on the value of the euro after consultation with the European Central Bank (so that such decisions do not jeopardise price stability). However, the Ecofin Council includes members that are not part of the

Monetary Union. For this reason, the person in charge of external communication is not the six-month rotating President of the Council, nor the new permanent President of the Council, but the Chairman of the Eurogroup (the meeting of finance ministers of the eurozone), currently Jean-Claude Juncker, the Prime Minister of Luxembourg.

This division of labour has its drawbacks. The political characteristics which make a good candidate for the job of President of the Eurogroup (being from a small country in order to put other members at ease, and having a strong knowledge of economics at the technical level) are the same ones which weaken the international visibility of the euro's main spokesman. The result is that communication on the euro ends up being informally shared out with other people.

For instance, the words of the President of the European Central Bank, currently Jean-Claude Trichet, can be interpreted as indications as to the desired euro-dollar value, since in any case his decisions on monetary policy will affect that exchange rate, even though that is not his goal from a legal standpoint. Another person who could be the external voice on the exchange rate is the European Commissioner for Economic and Monetary Affairs. However, being a collegial body, the members of the Commission must act in mutual agreement, and not all of the countries 'represented' on it (Commissioners are not supposed to represent their countries of origin in theory) use the euro. What is more, it is a post that lacks power to vary the euro-dollar exchange rates beyond what might result from public statements. As explained, the President of the Council or the rotating Presidency cannot fulfil this role either, since not all Council members are in the eurozone.

Therefore, anyone who expresses an opinion at a given time (it is often the President of France) may be interpreted as being a representative for the eurozone. This leads to confusion and repeated explanations to the public as to who really is qualified to speak on behalf of the entire zone.

Furthermore, the EU continues to debate how its external communications in international financial institutions or other fora, such as the G20, should be organised. The lack of agreement both at the EU and the eurozone level on a standard applicable to all cases affects the idea of a single seat at those institutions. It also affects the scope of common positions among countries, which historically have carried more weight in the international arena (and more contrasting positions) than they might do now, with the rise of the Asian economies. In most concrete cases, member states are in fact capable of speaking with a single voice, but they do not want to commit to doing it as a general rule. They arrive at that single message in painfully slow agreement processes and the margin of manoeuvre out of the negotiated common position is very narrow. Often, they concentrate more on achieving a common message than on the impact of that message on third players. When there is disagreement at the EU level, the common position leaves out the key issues (on which single member states take the floor), therefore becoming much less interesting.

Enlarging the eurozone

In times of financial turbulence, the advantages of having a strong currency become clearer. Denmark and Sweden are reconsidering their decision not to adopt the euro, and for the countries of Eastern Europe not yet using it, joining has become a top priority.

Membership rules are still the criteria of fiscal and nominal convergence set almost twenty years ago in the Maastricht Treaty. The Eurogroup has insisted several times that countries which want to join must fulfil these conditions. But it might be rational to revise them, not necessarily as a result of the crisis and the new member states' pressing needs, but because they are fairly outdated and have lost relevance from an economic viewpoint. The Maastricht criteria were designed in the 1990s, when the priority was to encourage fiscal restraint and force countries from outside the area of the German mark to adopt a strong-currency model.

The two criteria most subject to criticism are the monetary ones, which try to encourage strong-currency behaviour: inflation and the national currency are linked to the euro within bands for two years (something like purgatory). These criteria are irrelevant for very small and economically open countries, where only part of the economic activity is carried out in the local currency (and the rest in euros). In these countries, central banks do not have much control over economic variables, nor is it in their interest to invest political capital in building anti-inflation credibility, because their goal will never be to let their currencies float freely.

As it is usually the case, the problem with revising entry criteria is which ones to establish. They should serve to measure the economic health of a country. They should include (revised) fiscal and monetary criteria as well as other institutional requirements, such as, for example, transparency and good functioning of the statistics system of a country, as the case of Greece shows. The alternative, which does not seem feasible or desirable, would be to simply erase all membership criteria, and let in any country who wants to join.

The ECB and single monetary policy

Formally speaking, the only goal of the European Central Bank is price stability (the rest of the EU's goals, which include employment and growth, are secondary), so critics fear that it is biased against growth. Under the Lisbon Treaty, and despite resistance from the bank itself, the ECB has been moved from the category of 'other institutions' to that of 'EU institutions'. This means it is obliged to pursue all of the goals of the EU, including economic growth and employment. This is not a trivial change, from a legal standpoint. But it will probably not have major, real consequences because it has been shown empirically that the ECB already takes into account growth forecasts when it modifies exchange rates in order to ease excessive cyclical fluctuations. More specifically, several studies show that the ECB makes its decisions while keeping in mind the expected rate of inflation and the expected output gap.

However, it is true that the ECB acts more slowly and with less intensity in changing interest rates than does the US Federal Reserve. The minimum and maximum rates set by the Fed over the past ten years have been more extreme than those of the ECB, and the Fed tends to start a cycle of increases or decreases before the ECB does. One reason is that the European and American cycles are not perfectly synchronised, so their interest rates should not be either. Also, real markets in the eurozone itself are slower to react. It is for this reason that during the current crisis the ECB has been accused of lowering interest rates too slowly, especially after it became clear that the financial crisis had hit the real economy.

On the other hand, the bank has been praised for being swift in increasing liquidity and coordinating with the Fed. At this other extreme there is also worry over the impact this huge increase in liquidity will have due to the 'open bar' policy (as much liquidity as demanded, at the monetary policy interest rate, rather than setting a fixed rate at auctions).

Where the existing policy has clearly failed is in the prudent oversight and regulation of financial services. Blame for this should go not so much to the ECB, which has no jurisdiction in this area, but rather to the member states, which were ignorant of what was happening.

Reforms proposed by the European Commission are based on a report issued in February 2009 by a special group headed by Jacques de Larosière. This group certified the failure of the weak European mechanism previously created to respond to financial crises. But all it recommended was creating a coordination mechanism among national governments for the purpose of prudential oversight. The mechanism suggested by Larosière, strictly EU-based, consists of a decentralised system formed by a European Systemic Risk Council (systemic risk is not addressed so far by any supervisory body), led by the ECB, and a European System of Financial Supervisors (a network that coordinates the national oversight bodies). The usefulness of this mechanism will depend on its capacity for making sure that its recommendations are taken into account; in other words, on whether it has teeth.

Fiscal policy and the single European bond

Economic policy in the eurozone comprises three uneven pillars: monetary policy, jurisdiction over which has been ceded to the EU; fiscal policy, which is coordinated; and supply or structural reform policy. In the latter, one can say there is no more than an exchange of information under some general common guidelines.

The Stability and Growth Pact coordinates fiscal policy with the understanding that, under normal conditions – and not in the abnormal situation of 2009 – one must offset the tendency that governments have toward deficit spending because of their short life spans (the time

between elections). Following the reform enacted in 2005, the Pact allows governments to register a budget deficit in times of recession, and encourages them to ensure a surplus in times of economic expansion. Otherwise, the fear is that some member state will engage in deficit spending constantly and, overall, issue too much debt. Other states would then be forced to rescue that government, also issuing debt to finance the operation (this is known as the bailout problem).

In order to avoid this, a common procedure has been established to oversee and issue opinions and recommendations on each member's fiscal policy. There are no incentives for encouraging compliance (above all, for posting a surplus during periods of growth), while there are sanctions (at least, theoretically) for profligate countries. Because of the crisis, the priority came to be fiscal expansion, as a result of which most governments found themselves in the red. The Commission, which is tasked with proposing opinions and recommendations in this area, has gained influence, since its recommendations carry more legal weight when a country has registered an excessive deficit than when its budget deficit is less than 3% of GDP. It is, in fact, more influential in bad economic times than in good ones.

The result is that the fiscal exit strategy from the crisis has been designed at the EU level somewhat fast: budgetary consolidations are to start in 2010 or 2011 at the latest; it is also agreed that the magnitude of the challenge requires fiscal efforts to be greater than the general rule of the Pact (which implies a structural adjustment of 0.5% of GDP per year). Finally, all member states must register a budget deficit below 3% before 2013-14 (depending on the initial position). In this sense, the design of an exit strategy has been swift. In the following three or four years we will see whether it was sufficiently credible.

Meanwhile, the crisis focuses the spotlight sharply on the bailout problem. The concern is that capital markets, sensing that some member states might decide to rescue others by issuing debt of their own, could demand higher yields from the debt issued by the 'rescuers'. In this way, countries with prudent fiscal policies would have to pay a higher cost to finance their debt, because they issued debt to save those who were imprudent. It is said that the clause in the Treaty which bans bailouts is not credible. But the key issue is that in practice financial aid, with the consequent issuing of debt, comes before a state declares itself bankrupt, as was the case with the aid granted to Hungary and Latvia. Much remains to be seen in the case of Greece. Being a eurozone member, it cannot receive that existent kind of aid, but it could always receive another new type. At the same time, its government can be subjected to much greater peer pressure by the rest of the Eurogroup, forcing it to apply certain economic policies.

Finally, one could look at the proposed issuance of a single European bond. In the event that some member state is on the verge of collapse, and the political decision to rescue it is taken, all the other countries should get involved, out of solidarity and because the

externalities of the fall would affect everyone. To confront the cost of a bailout, one possibility would be to issue a single European bond, to which each member state would commit in line with negotiations held beforehand. Another issue is how the markets would digest the issuance of that bond in the current situation. It might also be the case that, at this particular time of high issuance, national treasuries do not want a European bond to enter as another competitor.

Structural reform policy

The customary mantra for the eurozone says that the absence of independent monetary and exchange rate policies requires firm application of structural reforms, mainly in the labour and services markets (including today financial markets), but also in retirement pensions, education and many other areas, so as to achieve adjustment to unsynchronised business cycles via wages and prices instead of employment and output. Flexibility in these markets will lead to a better functioning of the monetary area. The crisis may serve as a learning experience in each country to drive reforms, regardless of the incentives that the EU procedure seeks to offer. On top of that, during the Spanish Presidency of the EU (first half of 2010) the EU is reforming its Lisbon Strategy in what is to become the EU-2020 Strategy. But those are areas under the strict jurisdiction of member states, where the EU can only seek to provide incentives and create political momentum for reform.

Under the Lisbon Strategy, the EU established a multilateral oversight procedure similar to that of the Stability Pact: each member state drafted a programme (Stability Programme in the case of fiscal policy; a National Reform Programme in the case of structural reform policy) that presented its plans, in accordance with common lines agreed in the EU, and a year later the European Commission and the Council gave their opinion on whether the government had lived up to its commitments. However, this procedure did not play a useful role in establishing incentives for governments to implement the necessary reforms.

This is due in part to the fact that the Lisbon Strategy procedure had less legal force than the Stability Pact. This asymmetry has been addressed with the Lisbon Treaty, which gives the Commission powers in the former, equalling its power to that in the domain of fiscal policy (the right to present proposals and to make direct warnings).

But symmetry in the legal power of the procedures is not the main issue. The force of EU initiatives in areas that fall under member states jurisdiction depends on establishing a mechanism that is so visible and widely accepted that failure of compliance leads to significant political cost for individual governments. If governments feel that there is a reward from voters for compliance, the mechanism would be even better. What the EU-2020 Strategy will try to address is visibility of the Brussels-based examination, with the objective of creating the correct incentives for structural reform in member states.

The distribution of power

Distribution of power among institutions and member states is the reason why summits stretch past midnight and the reason why EU issues are obscure to the layman not versed in them. In the area of economic policy, to speak of the distribution of power is to speak, on the one hand, of the distribution of power among the Commission, the Council and the European Parliament; on the other hand, the power of the 'ins' as opposed to that of the 'outs' in the Council (in other words, the power of the Eurogroup (ministers of the eurozone) as compared to that of the Ecofin (all member states)).

Under the Lisbon Treaty, the Parliament gains power *vis-à-vis* the other two institutions, since it becomes involved in several legislative procedures. In this sense, both the Council and the Commission lose some freedom, since they need to take the Parliament into account. At the same time, the Commission probably gains more leeway both in the fiscal policy (as a result of the dire fiscal situation its recommendations gain legal force) and in structural reform policies *vis-à-vis* the Council. In this last area, the Commission definitely gains power on a legal basis: its rights are symmetrical now to its rights in fiscal policy and some articles are added in the Treaty which can be a legal basis for more economic coordination, depending on the content that the Commission wants to give them. But its effect in practical terms remains to be seen.

With regard to the second issue, the Lisbon Treaty increases the power of the 'ins' *versus* that of the 'outs'. Since it was created, the Eurogroup has seen its weight and influence increase, even though it is not a formal part of the EU institutional grid. The Lisbon Treaty acknowledges its existence with typical EU acrobatics: its meetings continue to be informal, but in those cases in which the Ecofin addresses issues which only affect members of the eurozone, non-members will not vote, if there is a vote. What this system actually does is prop up the *status quo*. These days, since meetings of the Eurogroup precede those of the Ecofin, issues that are dealt with in the former are presented as *fait accompli* to the Ecofin ministers. There, these issues can be debated again because it is the Ecofin which has formal decision-making power. But there are usually few changes. The paradigmatic example is that of application of convergence criteria for examining the entry of a new member into the eurozone. This is an issue which the countries of Eastern Europe would like to address in the Ecofin meeting, but the members of the Eurogroup arrive with their decisions already made.

The leadership shown by eurozone members with the meeting held on Sunday, 12 October 2008 has deepened this panorama even more. That meeting, convened by the French President, Nicolas Sarkozy, which then held the rotating EU Presidency, after the fall of Lehman Brothers, approved an action plan against the crisis which was later endorsed by all 27 member states.

Another effect of the greater power of the Eurogroup is that those who gain the most proportionally are the big member states of the eurozone; in other words, after the new voting rules

in the Lisbon Treaty come into effect, Germany will formally consolidate its power over the rest, followed by France and Italy. In the Eurogroup formation, the right to vote is suspended for countries which do not belong to the eurozone. So the weight of the large countries is relatively larger, and a small loss of power in the Ecofin is magnified in a smaller setting such as the Eurogroup. Of course, in actual practice the power of each country also depends on the effectiveness of their foreign service, and in this area United Kingdom and France are in one class and everyone else in another.

Conclusion

The crisis that began in July 2007 opens up new scenarios in the balance of power, both between institutions and member states. The three pillars of economic policy in the eurozone once again change in dimension: monetary policy emerges strengthened, the goals of fiscal policy change and questions arise over whether the crisis will serve as a lesson to encourage structural reforms. But the biggest change is that the crisis has given more relevance to other aspects of eurozone governance, such as its enlargement and its external representation.

It has never been more necessary than now for the EU to speak with one voice in the international arena. What is at stake for Europe is shaping the institutions that emerge from the crisis. If it is not possible to take part in the international debate with one voice representing the entire EU, it is the voice of the eurozone that will come forth. And extrapolating from what has happened in the past few months, it is the one that will be heard the most.

ECONOMIC GOVERNANCE

The Governance of the European Patent System

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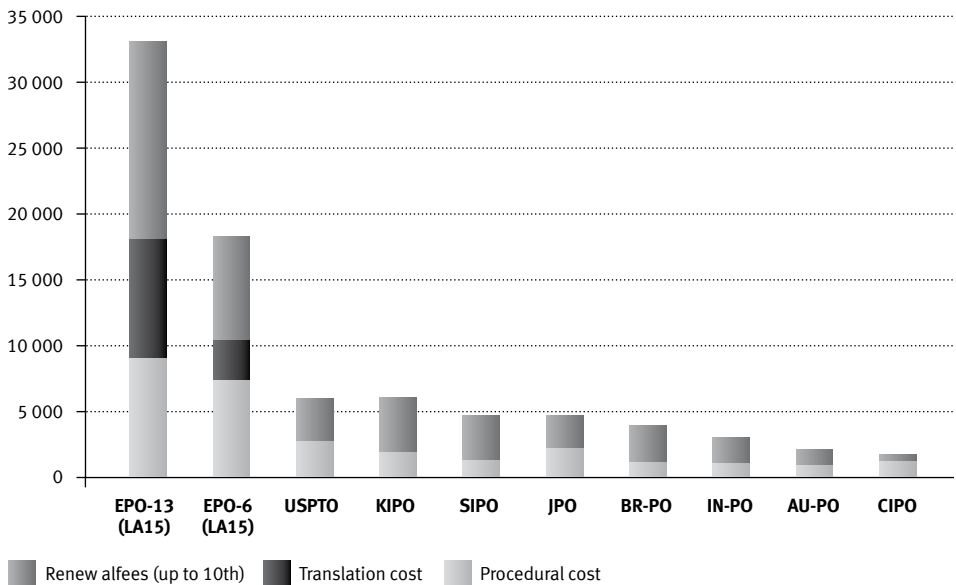
Nearly 50 years of missed opportunities

Inventors, spin-offs or companies wanting to protect their invention in Europe generally start with a priority (initial) filing at their National Patent Office (NPO). From this priority date, the applicant has one year to file an application before the European Patent Office (EPO) or longer if the Patent Cooperation Treaty (PCT) ‘beyond-Europe extension’ route is chosen. The EPO then carries out research (check for novelty) and the substantive examination (check for inventive step) and may eventually grant the patent. If the patent is granted, it can only be enforced in those member states of the EPC (European Patent Convention) where the patent has subsequently been validated and translated, involving additional fees and costs. Each year the owner must pay renewal fees in every country where protection is to be prolonged. On average, a patent granted by the EPO is validated in six countries only. In other words, once granted, a European patent essentially becomes a bundle of national rights. In case of litigation, national jurisdictions have the power to invalidate patent rights, even where the EPO has granted the patent, and to uphold a patent where the EPO has invalidated it. This is a paradoxical situation: we have EU-wide competition policy but national patent oversight. The European Union’s competition authority has jurisdiction throughout the European market but the countervailing leverage provided by intellectual property policy is ultimately run at the national level in each EU member state.

An obvious practical drawback of this asymmetry is that illicit parallel trade in patented goods is hard to prevent. It is relatively easy for imitators to import goods into the European Union through a country where the patent has not been enforced, and then to distribute them with impunity throughout the EU, including in the countries where the patent is enforced. As a result, companies have to deploy resources to protect themselves against potential patent infringers, a function performed pre-single market partly by border controls. Even if an infringer is identified in one of the national markets of the EU, the patent holder must subsequently rely on the legal system of the state in which the infringement takes place in order to uphold his or her rights.

This fragmentation of the European patent system leads to three ‘incongruities’ which radically reduce its effectiveness for all innovators and its attractiveness for SMEs and academic spin-offs. The first and most widely acknowledged incongruity is the prohibitive costs of patenting in Europe. This is illustrated in the figure below, which shows that patents in Europe remain much more expensive, in absolute terms, than anywhere else in the world (despite the substantial drop in translation requirements provoked by the London Agreement). The cumulated translation and procedural costs are of about 17,000 USD PPP if 13 countries are targeted and 10,000 USD PPP with six countries. In all other large patent offices the cost is about five times smaller and fluctuates around 2,000 USD PPP. If renewal fees for a ten-year protection period are included in the cumulated costs, a European patent fluctuates between 17,000 and 35,000 USD PPP, according to the geographical scope of protection. This is to be compared with about 5,000 USD PPP or less in the USPTO (United States Patent and Trademark Office) and all other patent offices. In other words, ten years of protection in the US and anywhere else in the world is at least three times less expensive than having a patent granted and translated in the European patent system. In addition, accounting for market size would worsen the picture. Patent cost per capita in Europe is four to six times higher than in the US.

International comparison of cumulated patent costs, 2008 (in USD PPP)



Source: M. Mejer and B. van Pottelsberghe, Economic incongruities in the European Patent Systems, Working Paper, 2009/01, Bruegel.

The second incongruity is related to the legal uncertainty over jurisdictions, especially in case of parallel litigations over a given patented invention. Empirical evidence and case studies all too amply illustrate the issue at stake. Entering into parallel litigations not only makes a

European litigation more expensive in relative terms than in the US, but it also makes it more unpredictable, as outcomes frequently diverge across countries.

Inconsistent patent quality is the third incongruity which is worth mentioning. The fact that national patent offices still grant patents independently from the EPO makes it possible and easy to file parallel applications before the EPO and before several national patent offices. This is particularly appealing when the patent is in the grey zone (patentability is not guaranteed). If the EPO refuses the patent it is still possible to get protection in national markets. Van Pottelsberghe (2009) shows that this is a frequent practice: among the 60,000 patents granted each year by national patent offices, 25% are granted to foreign companies who *de facto* leapfrog the EPO's examination process.

These 'incongruities' due the fragmented patent system in Europe have lasted for more than 47 years. Indeed, the original idea of creating a European patent was first put forward in 1962, before the creation of the EPO (1978). Since then, all attempts to eventually create an effective and attractive patent system have failed: there is still no single market for technology in Europe! Needless to say, Europe is far from being helpful to its innovators in this respect.

Current status

The Community patent project seeks to provide a 'one-stop-shop' for obtaining patent protection in the EU: once granted, the Community patent would be enforced automatically in the EU, with a single renewal fee schedule covering all countries. Any cross-border litigation could then be dealt with through a Unified Patent Litigation System (UPLS), and ultimately in the European Court of Justice. According to the current negotiations the Community patent would be an additional patent protection route in Europe, alongside the European patent and national patents. Companies would be free to choose between the European patent and the Community patent at the time of the EPO's grant decision. The Community patent and a UPLS are key ingredients for ensuring that the EU single market works properly. If European governments wish to foster innovation and create a suitable environment for fast-growing technology-based firms, the Community patent project should become a prime objective. A unified patent litigation system would further reduce the prohibitive costs caused by parallel litigations and ease the uncertainty generated by heterogeneous litigation outcomes.

The current situation in European policy-making institutions is as follows. The current Trio Presidency aims to make substantial steps forward by submitting first a 'Draft Council Conclusions' on the patent reform project and then a 'revised proposal for a Council Regulation' on the community patent. As the devil is in the details, several agreements or protocols must still be reached, despite the recent declaration on the EU patent, which is more symbolic than indicative of real progress. These details include 1) the renewal fee schedule (some NPOs want it very high, users and observers want it at an affordable level); 2) the distribution key of

the revenues generated by the community patent's renewal fees, of which half must be split between NPOs; 3) language arrangements (who is performing the translations of what parts of the patent and into what language?) and 4) the issue of enhanced partnership, which could be translated as making sure that NPOs still provide search and examination services.

Policy recommendations

Accelerate the feedback from the European Court of Justice (ECJ) on the proposed agreements related to the Community Patent. If Europe was able to create both the eurozone and the Schengen agreement, there are serious grounds for a 'legal' clearance for the Community Patent.

Converge as fast as possible on the proposed design of the Community Patent, including language arrangements and fee schedules (search, examination and renewal fees). In this respect, search and examination fees should cover most of the cost of performing these services. A specific agreement should be reached for more favourable fees for SMEs, small innovative companies and universities.

Adapt the EPO governance towards less NPOs and more stakeholders. The reform of EPO governance could be perceived as a real catalyst for change. The administrative council of the EPO is essentially composed of the representatives of national patent offices. The 35 member countries frequently have divergent – and sometimes conflicting – interests to those of the EPO (both in terms of control and financial flows). And these 35 members also elect the President of the EPO and the five vice-presidents. A patent policy is more effective when it is coordinated with other policies that affect innovation performances (e.g., competition, industrial, and science and technology policies). So far there is no coordination between these policies and the patent policy.

In order to ensure smooth decision-making and proper representation, the EPO administrative council should include representatives of major stakeholders of the patent system and a reduced number of NPO members acting as representatives of all NPOs. This arrangement would not preclude holding an annual EPO General Assembly which all NPOs could attend. The new administrative council would include representatives of the business sector (large and small firms), representatives of consumer associations and representatives from the academic sector (academic networks and technology transfer office associations). In addition, four to five members of the European Commission should have a seat: the Commissioners in charge of research, competition, enterprise, international trade and the internal market.

The Contribution
of 14 European
Think Tanks
to the Spanish,
Belgian and Hungarian
Trio Presidency of
the European Union



ENERGY AND CLIMATE CHANGE CHALLENGES

ENERGY

The energy issues faced by the European Union today and in the future are numerous and unprecedented in scale. The EU must guarantee an uninterrupted energy supply to its consumers at low and stable prices while preserving the competitiveness of its economy and ensuring sustainable development.

Mankind consumes more resources than nature can provide. At a global level, primary energy consumption is due to increase by 45% by 2030. The European Union's consumption will increase by 11%. Fossil fuel energy resources will continue to dominate the energy mix and their complete substitution by alternative energy resources remains unlikely in the near future. These fossil fuel resources are also becoming increasingly rare and the Union's dependence on external supply is therefore likely to increase. In 2030, the EU is due to import 67% of its energy needs, with a relative 95% of its needs in oil and 84% in natural gas.

PART II ABSTRACT

International competition for the increasingly rare fossil fuel resources will be more pronounced in the coming years. Without the diversification of energy sources and resources the vulnerability of major import-dependent countries will increase vis-à-vis fossil fuel supplying countries like Russia, which can use their advantage as a political lever.

This growing vulnerability and dependence of the EU member states is causing intra-European rivalries which undermine the solidarity principle at the heart of European integration. Repeated gas disputes between Russia and Ukraine have illustrated well this lack of solidarity between members of the Union, in this case to the detriment of Eastern and Central European member states. The insufficient diversification of energy types and resources in a number of member states; the increased dependence on Russian gas; the lack of necessary infrastructure for the creation of a Europe-wide energy network; and limited storage capacities are just a few issues that must be addressed by a wide-ranging European energy policy.

In order to support the development of such a common energy policy for Europe, contributors from the think tanks associated with this project have formulated a number of recommendations for the Trio Presidency.

In order to meet these major challenges, national solutions are no longer sufficient. It is now crucial that Europe develop a common policy in the field of energy. The Trio Presidency has a role to play in launching short-term initiatives to tackle the most pressing issues, like the building of an internal energy market, the revision of the EU budget allocated to energy issues, and enabling the EU to speak with one voice in the field of energy vis-à-vis third countries (Notre Europe). In this respect, active European foreign policy is necessary in the Caspian and the Middle East region to secure progress on the Nabucco project, critical for European energy security. In order to ensure the provision of natural gas quantities crucial for the viability of the project, the EU should devote more attention to the Caucasus and to the improvement of Turkish-Armenian relations (ELIAMEP).

The creation of a coherent energy policy, supported by all of the EU member states, should also allow the EU to ally the international leadership it has already demonstrated on climate change to the development of cutting-edge energy sectors. These sectors should enhance the competitiveness of European economies through the stimulation of technological innovation, the creation of global sectoral leaders, and the long-term reduction of energy and other input costs (Real Instituto Elcano).

In parallel, a wider debate on the mid- to long-term perspectives for the European energy policy should be launched by the Trio. The aim of the debate should be the identification of possible solutions to create an efficient legal framework to deal with energy at a European level and to establish a genuine European Energy Community over the long-term (Notre Europe).

CLIMATE CHANGE

The nefarious consequences of the advanced scenario of global warming oblige our societies to reduce carbon emissions in order to guarantee the sustainable development of the planet. According to the projections of the Intergovernmental Panel on Climate Change (IPCC UN), world emissions of greenhouse gases (GHGs) will increase in a constant scenario from 25 to 90% between 2000 and 2030, causing a temperature increase of 0.2°C per decade. Such a rise would have disastrous effects for nature, mankind, society and the planet in general. The fight against climate change demands the development of a low-carbon society, implying radical changes in production and consumption.

Faced with climate change challenges, the EU has played a driving role on the international stage and shown real leadership in the negotiations linked to

climate change and the reduction of greenhouse gas emissions. The EU has committed itself to reduce its GHG emissions by 20%, to increase renewable energy's share in the European energy mix to 20%, and to increase energy efficiency by 20%, all by 2020.

The European Union's action to combat climate change should rely on a solid internal and external strategy. Without a solid internal strategy that allows the EU to respect its own commitments, the Union will not be credible on a global level. Together with other developed countries it needs to show the way to emerging countries, committing itself to energy efficiency and taking action on energy demand, as well as by developing and financing low- or zero-pollution technologies.

The recommendations expressed by the participating think tanks address each of these challenges. The transition to a low-carbon economy is a must in the coming years. Putting it into effect will have to be one of the top priorities for the coming Trio Presidency.

Ensuring sustainable development and fighting climate change means the development of a sustainable energy and transport policy. In this regard, transport and environmental policies are closely linked. Since the transport sector is responsible for almost a quarter of European greenhouse gas emissions, there is an urgent need for an integrated 'transport and climate change package' that sketches out a pathway towards a low-carbon transport sector (CEPS).

Regardless of the commitments of the EU Energy and Climate Package, coal will remain an important source of energy in Europe. Reduction of carbon emissions from fossil fuel fired power generation will therefore be of key importance. It can be achieved through a rapid development of clean coal technologies, like carbon capture and storage (CCS) which requires a strong political support. The Spanish, Belgian and Hungarian Presidencies should jointly work on establishing a target for the use of CCT and CCS in the energy sector. Additionally, preliminary discussions on EU regulatory frameworks requiring new power plants to be equipped with CCS should take place in 2010 (demosEUROPA).

Low-carbon prices threaten the EU's environmental leadership. The EU's emissions trading scheme (ETS) works by capping the output of carbon dioxide and then distributing allowances to emit the gas to large energy users. The tighter the cap, the more expensive it is for firms to produce carbon dioxide. Carbon prices will need to rise quickly to preserve the credibility of the EU's ETS. The European Commission may have to intervene in the market to ensure the rise of carbon prices. Such a move would reassure firms that prices will remain high

enough to warrant investment in low-carbon technologies. Crucially, it would ensure that the EU has climate policies in place to match its rhetoric and to help consolidate its leadership of the international environmental agenda (CER).

In the light of the post-Kyoto-Protocol regime (post-2012), an equitable climate change agreement based on the widest international consensus possible should set realistic objectives to mitigate greenhouse gas emissions. Sector-specific agreements could provide a good instrument to bring the emerging economies on board and gradually integrate them into the climate change regime. The scope of the climate change architecture must be expanded, including forest management in particular. With regard to financing, the most cost-effective mitigation instrument remains the carbon market. However, the implementation of this mechanism requires an effective enforcement mechanism (Egmont).



ENERGY

Towards a New Energy Policy for Europe: the Need for a New Framework

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The energy issues faced by the Union today and in the future are numerous and unprecedented in scale. Whereas many constraints affect the energy situation in Europe today and increasingly so until at least 2030, the European Union must guarantee the energy supply to its consumers, while simultaneously preserving and improving the competitiveness of its economy and promoting sustainable development both internally and externally. The numerous factors blocking the creation of a genuine common energy policy, together with doubts over the current capacity of the EU and its member states to meet the challenge, lead us to ask whether the Union disposes of the necessary legal foundations to conduct such a common policy. The SBH Trio Presidency has a role to play in launching short-term initiatives tackling the most pressing issues, while launching a wider debate on the mid- to long-term perspectives for the European energy policy.

A worrying global energy picture severely impacting the EU

The challenge of energy security

Humankind consumes more resources than nature can provide. Europeans, who represent 7% of the world population, use 17% of world natural resources each year. In general, demand for energy should continue to grow markedly over the next 20 years. At a global level, primary energy consumption is due to increase by 45% by 2030. The needs of developing countries alone will account for 87% of this rise, with China and India taking half (*World Energy Outlook 2008*, IEA). The European Union's consumption will increase by 11% (*Trends to 2030 – European Energy and Transport*, DG TREN, 2007). Fossil fuel energy will continue to dominate the energy mix across the world (80%) and Europe (78%) during this same period. The complete substitution of fossil energies by alternative sources remains unlikely in the near future, in particular due to delays in developing the necessary new technologies and

1. The author is very grateful to Csilla Végh (Notre Europe) for her contribution to this article.

the persistent difficulty of connecting sources to the electricity network (*Trends to 2030 – European Energy and Transport*, DG TREN, 2007).

Fossil fuel resources are also becoming increasingly rare. Given proven resources, current technologies and the coming increase in consumption, the current extrapolated lifetimes are 40 to 50 years for oil, about 65 years for natural gas, and about 250 years for coal (*World Energy Outlook 2008*, IEA). The exhaustibility of these resources is paralleled in the European Union, where the production of primary energy has fallen considerably in the last 10 years, causing increased reliance on imported energy. Whereas the Union already imported 54% of its energy needs in 2006 (*EU Energy and Transport in figures*, DG TREN, 2009), its imports will reach 67% in 2030, with a relative 95% of its needs in oil and 84% in natural gas (*Trends to 2030 – European Energy and Transport*, DG TREN, 2007). The European Union's dependence on external sources for its energy supply should therefore increase. International competition for these fossil fuel resources has become a major issue for the years to come.

This competition has a particular impact in Europe, where the increasing vulnerability and dependence of EU member states are causing intra-European rivalries which undermine the solidarity principle at the heart of European integration. For example, the gas crises between Russia and Ukraine (repeated between 2006 and 2009) have shed light on the acute vulnerability of certain member states (essentially in Central and Eastern Europe) as well the patent lack of solidarity between members of the Union. A Russo-Ukrainian crisis can thus hide another crisis – an intra-European one.

Environmental factors

The nefarious consequences of the advanced scenario of global warming oblige our societies to reduce carbon emissions in order to guarantee the sustainable development of the planet. Such warming would have disastrous effects for nature, humankind, society and the planet in general, sparing no place but affecting poor countries the most. The necessary action will involve radical changes in production and consumption. Confronted with this situation, the Union has demonstrated its capacity to play a leading role in the fight against climate change at international level. The global governance of such a system is a major issue. It means associating all states – developed, emergent and developing – with a new and complex institutional architecture which accommodates the particularities of each country. In this respect, the EU's position must rest on a solid internal strategy in which it respects its own commitments – to reduce its GHG (greenhouse gas) emissions by 20%, to increase renewable energy's share to 20% of the total, and to increase energy efficiency by 20%, all by 2020.

In addition, the Union will not be credible unless it is able to act on its own energy consumption. It has become imperative to make progress on energy efficiency and to take action on the demand (consumption) of energy, as well as on the development and financing of low- or zero-pollution new technologies. Neither will European action be credible if the Union lets its

citizens believe that they can continue not to pay for energy at its real price. This price must take account of the fact that resources are rare and that their consumption has a negative effect on the environment. That will mean being able to harmonise taxation in energy matters, and channelling the resulting resources to a common fund which can finance useful actions for controlling consumption, developing alternative energy sources and reducing greenhouse gas emissions.

Economic and social issues

Energy is a major economic and social issue for the future of our societies. The priority must be to guarantee consumer access to energy at low and stable prices, and to protect these prices, but also to guarantee the competitiveness of European industry and develop green technologies. The Union faces numerous constraints in this domain.

The construction of an efficient Europe-wide network of infrastructure is indispensable if consumers are to be guaranteed secure access to energy. To this end, the Union must give itself a capacity for collective action in order to invest in energy transport networks and other infrastructure (e.g. oil and gas pipelines, electricity networks, storage facilities for liquefied natural gas (LNG), etc.). Member states' ageing infrastructure must be renewed, developed and completed by the interconnections and other facilities which currently lacks (trans-European infrastructure). These diverse projects necessitate major investments and a serious financial commitment on the part of the Union. According to the European Commission's Priority Interconnection Plan (2007), at least 30 billion euros will need to be invested in Europe's energy networks before 2013, comprising 6 billion for the transmission of electricity, 19 billion in gas pipelines and 5 billion in LNG storage facilities.

At the same time, the Union must give itself the means to finance research programmes and encourage the emergence of new technologies (especially renewable energies) which take into account the above mentioned factors – energy security, environmental, economic and social factors – involved in building a 27-countries network, assuring low-carbon energy transport and distribution, and guaranteeing energy security. These new 'green' or 'sustainable' technologies must allow the European Union to respond to demand and to advance towards greater energy efficiency by helping consumers to change their habits. According to a recent European Commission communication, the European Union should invest an extra 50 billion euros in low-carbon technologies over the next 10 years. This implies a tripling of annual investments – from 3 to 8 billion euros – (Press release IP/09/1431, 07/10/2009).

The Union's current position in relation to these factors

Among the main obstacles and weaknesses preventing the EU from responding effectively and coherently to the above-mentioned energy challenges are: a national sovereign-

ty on the choice of energy resources used (energy mix); the preference given by member states to national and / or international (non-EU) solutions to the late 20th century's energy crises, and preference accorded to bilateral relations with producer countries in the name of national interest; and a certain reluctance of member states to share natural resources with neighbours. To these various obstacles can be added the absence of a legal basis in the treaties permitting the Union to develop a genuine overarching energy policy, and the timidity of European institutions in promoting such a policy.

Concerning the internal energy market, the fragmented opening of gas and electricity markets in the 27 member states, along with weak transnational competition and weak added value for consumers in terms of reduced energy prices have obscured the potential benefits of a true Europe-wide liberalisation of energy markets. Recent legislative initiatives adopted in the framework of the internal market (Third Legislative Package) appear insufficient to build a single internal market. Such a market needs rules and authority, in the form of a single regulator of the gas and electricity markets which guarantee that the operators will supply, in good time and at the best price, the energy necessary to satisfy demand.

The Union also suffers from a damaging lack of credibility. It remains incapable of speaking with a single voice on the international energy scene, either within the relevant forums or, even more so, *vis-à-vis* producer and transit countries. This prevents it from exerting its full weight (economic, commercial and political) in its relations with interlocutors. The realisation of a true internal energy market would also make the Union a weighty partner in negotiations with producer countries. This lack of credibility is linked to the absence of energy solidarity between members, in practice and in law. To meet the challenge of energy security, the member states face a little-diversified range of sources; increased dependence on Russian gas; a lack of necessary infrastructure for the creation of a Europe-wide energy network; limited storage capacities; and persistent technical difficulties (for example, in allowing the direction of pipe flow to be switched between countries when supply is broken) which prevent states from helping neighbours in times of crisis.

Finally, the capacity of the Union to finance the necessary projects is at stake. One can regret the small size of the sums allocated to the energy issue in the European budget, which doubtless can be explained by the belated emergence of the energy issue in European debate. On average, the share of the annual European budget allocated directly to energy policy in the 2007-13 financial perspectives is around 20 million euros. Until now this budget has only allowed the financing of feasibility studies for energy projects, and not the realisation of the projects themselves. But given the figures mentioned and the need for increased investment in infrastructure, along with new technologies and alternative energies, this amount seems decidedly low if the Union is to bring any added value to the financing of such projects.

What strategy for the Union?

In light of the current situation and to meet these major challenges, national solutions are no longer sufficient. In general, the Union must above all develop a common policy in the field of energy and equip itself with a capacity to act collectively in order to invest in energy transport networks and other infrastructure, to finance research programmes and to conduct a common policy with regard to producer countries and transit countries. On these subjects, no added value comes from competition between member states. The Union cannot accept that the supply of energy to a member state be compromised. It must therefore ensure that solidarity can function, with the help of adequate interconnections, and that no third-party country can reduce supply in a targeted manner. The Commission has made proposals but the difficulties of decision-making lead one to ask whether the Union has at its disposal today the necessary legal foundations to conduct such policies.

Faced with these challenges, the current Trio Presidency envisages to undertake action in the field of energy and climate change, especially with regards to the results of the December 2009 Copenhagen Summit, the legislative progression of the energy and climate change package, in particular of the internal energy market and to the Energy Action Plan 2010-2012 on energy security, efficiency and diversification. The Trio initiatives seem to be promising but limited in terms of concrete propositions. Therefore, in order to move forward the integration in the field of energy, we address the following recommendations to the Trio Presidency.

On short-term:

- The building of an internal energy market and free competition are the two instruments given priority by the Union in order to guarantee that consumer demand is satisfied in the best conditions. These conditions must be fulfilled if the Union is to act effectively, both internally *vis-à-vis* the energy operators and externally *vis-à-vis* producer countries and transit countries. In that respect, the implementation of the Third Energy Package aimed at the creation of wide, contestable and liquid energy market throughout Europe, ensuring effective competition and therefore contestable markets between various suppliers, combined with the creation of an Agency for Coordination of European Regulators (ACER) for gas and electricity markets are a valuable step in that direction. However, it is the responsibility of the Trio with the European Commission to make sure that the package is implemented correctly and on time, and that the rules it contains is properly enforced by the competent authorities.
- Since the existing EU system is not suitable for delivering a coordinated response to an acute supply crisis, in order to prepare future supply crises, directives concerning safeguard security measures need to be revised.
- Compared to the required amount of investments, the part of the EU budget devoted to energy projects (infrastructures, new technologies, research programmes, etc.) is very limited. The share of the Community budget allocated to this issue in the new financial perspectives of 2014-19 should be significantly increased.

- In the implementation of the institutional innovations in EU's foreign policy brought by the Lisbon Treaty i.e. a new Permanent President of the Council (PPC) with a High Representative for CFSP / CSDP helped in its task by a European External Action Service (EEAS) the Trio Presidency should try to promote the capability for the EU to project its interest externally and to speak with one voice in the field of energy. The Trio could also push for better coordination of the Union's external action on energy through the new European External Action Service. In this respect, the EEAS should have a clearly defined and strong energy component.
- With regards to climate action, the Trio Presidency should try to guarantee that the EU's position must rest on both a solid internal strategy in which it respects its own commitments and a global one in which it supports the involvement of developing countries by taking the necessary financial commitment to allow these societies to adapt.

On medium to long-term:

- In light of the structural deficiencies that the EU energy policy is suffering (as explained above), it has become necessary to proceed to a real introspection on the way the EU energy policy has developed so far. This exercise would enable the EU to realise that it lacks the sufficient and necessary legal foundations to develop energy as a core policy and launch a process capable to deliver concrete and tangible results in achieving the three objectives (accessibility, sustainability and reliability) altogether. This analysis should not take too much time, and could be launched straight after the release, in June 2010, of the report of the González Group of Reflection on the Future of the EU.
- Once such analysis done, the Trio could launch a real debate on the various options on the way forward the creation of such a new dynamic and flexible process. Some of those main options can already be identified: using the existing Union structures and the framework of the current treaties and / or the Lisbon Treaty; creating a new framework and a genuine European Energy Community based on a new European Treaty dedicated to the energy question; and a partnership of a few member states (following the examples of Schengen or Prüm) at regional level.

ENERGY

Key Strategic Decisions for Europe in Energy and Climate Change

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The three-pronged challenge of energy policy is to improve energy security, guarantee environmental sustainability and enhance economic competitiveness. The countries of Europe, however, do not, on their own, possess the energy resources sufficient to easily attain all three of these goals simultaneously over the short-term. Therefore, Europe's goal is to design a coherent energy policy, supported by all of its member states, that allows it to blend the international leadership it has already exercised and demonstrated on climate change with the development of cutting-edge energy sectors that will enhance the competitiveness of European economies through the stimulation of technological innovation, the creation of global sectoral leaders, and the long-term reduction of energy and other input costs. At the same time, the EU should develop more fully a short-term strategy to manage more skilfully the EU's relations with the countries supplying the bulk of its hydrocarbon imports – particularly natural gas – in order to maximise security of supply. To achieve this triple objective will require strengthening the EU's single voice within a shifting international geopolitical landscape and taking tough but strategic decisions that will have major long-term implications for individual European countries, the future of the EU, and the stability of the world. The broad outlines of Europe's energy challenges are well-known: the current fossil fuel-dominated economy contributes to global warming, allows fears of energy security to grow and threatens the competitiveness of European economies in the future. This analysis, therefore, does not seek to be an exhaustive study, but rather to highlight some key aspects of the energy issue that we perceive as the most decisive and strategic.

The 'market-technology-regulation nexus' versus energy nationalism and geopolitical competition

The optimal European energy policy would rely on a well-regulated and supervised market that allows technological advances to emerge rapidly, particularly if they enjoy strategic support from the state, and even more so if other countries aggressively support such a

strategic orientation. This nexus between the market, technology and regulation obviously functions better in times of political stability and international cooperation, but the market-technology-regulation nexus can also contribute to international security.

However in the future, greater state intervention will be necessary to drive energy transformation fast enough to avoid the worst features of fossil fuel-induced climate change. It is essential to gradually stiffen the economic penalty for using fossil fuels and give priority to investment in clean energies. In order to do this, market-based mechanisms should be employed, within a regulatory framework coordinated at the EU level, with balanced, even-handed state intervention that causes as few market distortions as possible.

However, if Europe is the only major world player to embrace such a strategy, it will be difficult to sustain. Europe would be at a constant disadvantage because it would be playing under different rules than those followed by others powers with clear tendencies toward energy nationalism. In fact, if the United States and the emerging powers fail to reach agreement on how to advance a new post-Kyoto regime with at least a minimum of credibility, the EU – which would no longer be able to lead the fight against climate change – would have to consider an alternative, more ‘realist’, long-term energy strategy.

Such an alternative approach might involve replacing the ‘fight against climate change’ as the EU’s principal rallying cry for its new energy policies with the growing threats to energy security, leading the EU to be less inclined to international cooperation than it has been until now. If priority were given to the (more narrow) goal of energy security, more aggressive and nationalist policies might prevail, stemming from the growing concerns in the EU over security of supply. In this case, it would be necessary to design a new EU strategy for the battle against global warming, focused more on adaptation measures, and less on mitigation, given that the lack of an international agreement would make it very difficult to halt global warming and its many impacts. At the same time, such an approach would also facilitate the fulfilment of the goals of the Lisbon Agenda, since the large-scale deployment of renewable energy should enhance EU productivity and competitiveness.

Climate change versus energy security as the driving force behind European energy policy

In the past few years, the EU has made the battle against global warming the main rallying cry of its energy policy. However, even though the European consensus on climate change might survive, the fact that there has not been significant progress at the Copenhagen Summit means that Europe will have to consider altering its strategy and put more policy emphasis on energy-security issues. In a world in which there is insufficient consensus on how to fight climate change – and in which most countries perceive energy security in strictly national terms – it makes little sense for the EU to stick with a strategy based on

international cooperation, one that depends largely on the commitments and behaviour of other countries which to date have been relatively uncooperative. In this context, it would be better for the EU to highlight threats to energy security: a strategy which is in line with the dominant policy orientation in other countries, to say nothing of public opinion.

However, if the EU replaces the climate change cause with a discourse stressing the growing scarcity of fossil fuels, then the public electorates – faced over the mid-term with the possibility of high prices and potential supply cuts – might be more willing to accept a radical change in European energy policies. Supply shortages might end up being more of a motivating threat than the spectre of climate change: for example, in a scenario in which the countries of the world become more and more nationalist, and with geopolitical rivalry gaining momentum, public opinion might become more predisposed to the imposition of a carbon tax. Even with its weaknesses, this policy might be more efficient than the current emission trading system in terms of increasing energy efficiency, reducing consumption of fossil-based energies, stimulating the deployment of renewable energies and other clean technologies, and cutting emissions of greenhouse gases.

It would nevertheless be a good idea, however, to stress the ‘limitations to the supply of hydrocarbons’ rather than underline the ‘dangers of supply cuts’. This is particularly relevant for the EU in its relationship with Russia. It should avoid direct confrontation with Russia over supply cuts attributable to transit countries, and should aim for cooperation agreements in natural gas and oil while trying to reduce Central and Eastern Europe’s dependence on Russian gas. Ties with Russia aside, the EU should combat generalised, unfounded fear among the public by emphasising the possibility of supply limitations over the medium and long-term. This could result either from the possible depletion of hydrocarbon reserves (which would exert upward pressure on prices) or from the fact that in recent years the new energy nationalism has caused many producing and exporting countries to invest less than what is necessary for supply to continue to meet growing world demand.

In the worst case, if the world enters a period of geopolitical competition for energy and other resources, Europe should come to an understanding with Russia to obtain enough gas to allow the EU to remain on the sidelines of these intensifying international rivalries. Once security of supply is assured, Europe should unilaterally pursue the other goals in its energy triangle.

Lending priority to competitiveness within the energy policy triangle

Even if the central guiding reference of European energy policy shifts from fighting climate change to guaranteeing security of supply, from an economic standpoint it would still be essential to boost the competitiveness component of the triangle. This competitiveness

objective should be the major goal of EU Energy and Climate Strategy. It is necessary to give political support to new energy R&D investment. There must also be sufficient backing for policies to build new infrastructure (renewable energies, smart grids, international electricity interconnections), to move forward on the electrification of the vehicle fleet and to further develop and deploy systems to capture and sequester carbon dioxide. These investments should be undertaken in any case, but they will be even more necessary if a global scenario emerges that is non-cooperative and conflictual with regard to energy and the environment.

It is quite possible that all the sectors mentioned above will have a promising future, and that the countries that devise the first technological advances will come to dominate them, which would allow the EU at least to partially resolve its problem of insufficient competitiveness. If Europe can avoid major military spending – at least in relation to a potential arms race between the United States and China – then the EU will have the flexibility and the margin to invest in new technologies that generate high value-added and allow for increased productivity. And if eventually the rest of the world's regions, already behind in development of energy technology, return to cooperative solutions rooted in the “market-technology-regulation nexus,” Europe will have developed a solid foundation for energy-technology exports and energy and climate investment in other countries.

Priorities for electricity generation: interconnections, ‘smart grids,’ and electric cars

As we have stated above, the EU should pursue certain investments and strategic goals, regardless of what might happen on the international scene. These include large-scale investment in new electricity infrastructure. A new smart grid would allow for employing solar and wind technology in such a way that all units of the system – residential and office buildings, companies and households, appliances and vehicles, etc. – could be consumers and producers of energy at the same time (drawing energy from the grid when needed and selling it back into the grid during times of the day when there is a surplus). It is also necessary for Europe's various economies to have trans-European and international electricity interconnections to ensure that at least 15% of their national consumption can be imported. These two measures would ease the volatility of the supply and demand of the electricity system, making it possible to manage the system with more and more electricity generated from intermittent, renewable sources. Electrifying vehicles on a large scale would raise the potential of the smart grid while reducing oil consumption and crude imports. The more Europe invests in these three physical components of the electricity system, the more renewable energies could contribute (in percentage terms) to the primary energy mix, reducing the need to rely so heavily on non-intermittent energy sources (like coal or nuclear power) for base load generation.

Nuclear energy versus clean coal

Finally, Europe must make a very concrete strategic decision: a long-term strategic choice between nuclear energy and clean coal (achieved through the deployment of carbon capture and sequestration technology) as the necessary complement to natural gas as a source of base load generation. Clean coal offers several advantages over nuclear energy. First, it does not produce nuclear waste, or anything comparable. Second, and more importantly, a decision to back clean coal strategically would turn many political enemies in the fight against global warming (the coal lobby and many oil and gas companies) into allies, a political advantage which aggressive strategic backing of nuclear energy could never reproduce. For instance, the coal-abundant countries of Eastern Europe might feel more secure and become more cooperative if the EU were to follow a Clean Coal Strategy (CCS). The same might be said of the elected representatives of the 25 or so ‘coal states’ in the US.

But clean coal’s most important advantage over nuclear energy has to do with the global fight against climate change. Coal is still the main source of energy in China, the country which over the medium-term will pose the largest obstacle to a global accord on climate change. Deploying infrastructure and technology to capture and sequester carbon dioxide in China, given the size of its energy sector, could transform the international energy scene, creating new commercial and technological markets which the EU – with the right strategic approach – could come to dominate. If the EU were to develop clean coal technologies in a short span of time, it would be possible to win over China for the climate change cause and at the same time the EU would enhance its technological leadership in an R&D intensive sector. Without this technological and infrastructure alternative, it will be nearly impossible for China to cut its emissions significantly in time to avert the most devastating effects of global climate change. Not even a major increase in use of nuclear energy will be enough to replace the coal that China will consume in the coming decades.

Conclusion

In sum, although the EU faces many obstacles, a strategy blending market forces together with government encouragement of new technologies – albeit it is under proper regulatory oversight – should be the guiding principle of Europe’s long-term energy strategy. Even so, it is important to acknowledge that greater government intervention will be needed to support both the development of renewable energies and technology to capture and store carbon, especially if the international context becomes less and less cooperative in the realm of energy and climate change issues.

In the next two years EU countries should work together to achieve these goals. First, they should agree on some basic principles to build a common energy policy. Second, they should improve electricity interconnections within the EU. And finally, they should devote funds to R&D projects associated with clean energies, especially electric cars, renewable energies, and technology to capture and storage carbon.

ENERGY

The Nabucco Project: Implications for the EU Strategic Energy Review

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Global context and new specific challenges

Energy is a key issue of this year's European political agenda. Article 194 (1) of the Lisbon Treaty states that the Union energy policy will aim – amongst others things – to “ensure the functioning of the energy market,” “ensure security of energy supply in the Union” and “promote the interconnection of energy networks”. Article 194 (2) declares that the European Parliament and the Council will “establish the measures necessary to achieve the objectives in paragraph 1”. The development of a Southern Gas Corridor has also been declared in the 2nd EU Strategic Energy Review to be essential to EU energy needs. Energy projects in South-Eastern Europe, the Caspian and the Middle East, which used to be hampered by regional conflicts, are now facing the additional challenge of the global economic crisis. The signature of the Intergovernmental Accord for the Nabucco project was a positive step and a success of the last European Trio Presidency, yet much remains to be done. A strong European energy strategy would not only limit the scope for individual member state energy strategies and provide a clear example of European solidarity towards smaller member states and the rest of the world; it would also increase the probability that crucial projects such as the Nabucco are realised. Such a success would increase EU legitimacy in foreign policy-making, which is all the more useful as the provisions of the Lisbon Treaty come into force.

Current status

The signature on 13 July 2009 of the Intergovernmental Accord for the Nabucco project made headlines across Europe. A project ridden with doubt and uncertainty since its inception came closer than ever to realisation when representatives of Turkey, Bulgaria, Romania, Hungary and Austria signed an agreement which paved the legal ground for the realisation of the project. With an approximate budget of eight billion euros, a length of 3,300 km and a transport capacity of 31 billion cubic meters per annum, the Nabucco pipeline aspired to be one of Europe's main tools in its effort to improve its access to energy resources, as well as to reduce

its energy dependence on Russia by diversifying its natural gas supply. Non-Russian natural gas from the Caspian and the Middle East would gain access to the European energy market. An additional interesting feature of the project is that it would not directly involve any states or companies which export natural gas and normally control the corresponding pipelines. It would be a purely commercial project, open to any exporter and importer of natural gas.

Yet problems cast doubt on the feasibility of the project from the very beginning. First, the fact that Nabucco partners were not simultaneously natural gas producers meant that all of the pipeline's capacity had to be contracted in the Caspian or the Middle East. Yet political instability and Russia's preferential links with natural gas exporting states in the Caspian meant that Nabucco partners had to face fierce competition to secure natural gas supplies. The inability of the Nabucco partners to secure the supply of natural gas quantities sufficient for the operability of the pipeline remained a sword of Damocles hanging over the viability of the project. On the demand side, gaining a share of Europe's natural gas market was already a formidable task. This became even more difficult due to the raging economic crisis, which took a toll on European economic growth and energy consumption. Moreover, partners failed to come to agreement on the economic terms of natural gas transit. Turkey, where the largest part of the pipeline would be located, insisted on extracting a 15% discount on the gas price.

These fears were somewhat allayed when Azerbaijan committed large quantities from the Shah Deniz II natural gas field whose exploitation was expected to begin in 2013. Additional support for the project came from the Middle East. The Prime Minister of Iraq, Nuri Al-Maliki, stated that Iraq would provide 50% of the pipeline's natural gas capacity, about 15 billion cubic metres. Iraq's reconstruction and infrastructure development meant that the country would be able to export natural gas via pipeline for the first time and also commit quantities to the Nabucco project, which would be crucial for the viability of the project. Finally, the completion of the Trans-Arab pipeline linking the networks of Egypt, Jordan, Syria and Turkey would mean that Egypt could also become a Nabucco supplier, albeit a minor one. Turkmenistan and Kazakhstan were also earmarked as potential sources.

Nevertheless, the credibility of these statements was questionable on political and technical grounds. The ability of Azerbaijan to provide the promised quantities would depend on the successful completion of the offshore Shah Deniz II investment, as well as its determination to resist Russian bids to purchase its own gas. As regards the Iraqi statement, it depended on major investment in the upstream natural gas infrastructure, an agreement about revenue sharing between the central government and Northern Iraqi authorities and the viability of the Iraqi government and Iraq itself, following the planned departure of US troops from the country. In addition, Egypt's contribution – while welcome – could not be critical for the viability of the project. The contribution of significant quantities from Turkmenistan and Kazakhstan would only be possible through the construction of a trans-Caspian pipeline, a project which has been frozen for years due to the dispute among littoral states regarding the legal status of the Caspian.

The feasibility of the Nabucco project is also linked to regional politics. The course of Turkish-Armenian relations may prove critical, as they directly concern one of the Nabucco's chief prospective suppliers, Azerbaijan. Armenian-Azeri relations have been marred due to the war in Nagorno Karabagh. Turkey has since then maintained an adamant pro-Azeri position, demanding the withdrawal of Armenian forces. The recent rapprochement process between Turkey and Armenia which culminated with the signature of protocols of reconciliation on 10 October 2007 has the potential to lead to a serious deterioration of Turkish-Azeri relations. A major issue will be the reopening of the Turkish-Armenian border, one of the key items on the Turkish-Armenian negotiation agenda. The Turkish-Armenian border was closed in 1993 in retaliation against Armenian aggression in the Nagorno Karabagh war. Since then the closed Turkish-Armenian border, which has severely hurt the economy of Armenia, and also that of Turkey's Eastern provinces, has turned into a symbol of Turkish solidarity towards Azerbaijan. If Turkey agrees to the reopening of the border without a resolution of the Nagorno Karabagh conflict, this would create disillusionment and anger in Azerbaijan. Baku might then use its most powerful tool, energy, as leverage against Turkey and the West. Withdrawing from supply commitments in the Nabucco project or interrupting the flow of oil and natural gas towards Turkey would not be inconceivable then. This could derail the realisation of the Nabucco project.

Developments in Iraq will also have a critical bearing on the project. The attempts of the Obama administration to create the conditions for the departure of US troops from the country have not born fruit yet. While the Kurdish-controlled north of the country enjoys relative stability, it would not remain unaffected by a deterioration in Iraqi politics. The status of the city of Kirkuk and the dispute between Iraqi Kurdish regional authorities and the central government regarding control over revenues from Kirkuk's oil and natural gas fields are two key issues which have yet to be addressed and could have disastrous destabilisation consequences. Without a permanent settlement in Iraq it is difficult to imagine the completion of energy projects in the north of the country which might allow the fulfilment of Iraqi Prime Minister's pledge, namely that Iraq would supply half of the Nabucco's supply capacity in natural gas.

The state of EU-Turkey relations provides an additional point of concern. Turkey's EU accession negotiations are proceeding at a very slow pace. Only one negotiating chapter has been finished, while several others have been vetoed by France and Cyprus. In particular, the opening of the accession chapter related to energy has been blocked by Cyprus due to Turkey's refusal to extend its customs union with the European Union to the new EU member states. In addition, Turkey has refused to sign the Energy Community Treaty (ECT) of South-Eastern Europe, which would allow for the regional integration of energy markets in the Balkans. Its somewhat uncompromising stance on a range of issues of interest for the European Union – including the Nabucco negotiations – could be linked with disenchantment from Europe, as accession looks today more distant than in 2004.

Russia's regional strategy is another factor. Nabucco has been long seen as a project aiming to reduce Russia's energy leverage on the European Union. To counter this project, Russia came up with its own pipeline project in South-Eastern Europe, the South Stream, and increased efforts to purchase natural gas from Caspian exporting states, which could have been otherwise exported through Nabucco. Meanwhile, the stalemate regarding the legal status of the Caspian Sea and the resulting lack of trans-Caspian pipeline networks allowed for Russia's preferential access to the natural gas resources of Kazakhstan and Turkmenistan. Russia's recent agreement with Azerbaijan for the purchase of 0.5 billion cubic metres per annum concerned a negligible quantity but showed that Russia maintained considerable influence in the Caspian and that Azerbaijan should not be considered an exclusive energy partner of the West.

Recent overtures towards Turkey underlined the strength of Russia's regional energy policy. The bilateral agreement signed in August 2009 granted Russia the right to construct part of the South Stream in Turkish territorial waters in the Black Sea, thus avoiding crossing Ukrainian territory. This agreement underlined Russia's improving ties with Turkey, as well as the intention of the Turkish government to consolidate Turkey's transformation into an energy hub by promoting competing energy projects.

Proposals

The rotating Trio Presidency (Spain, Belgium and Hungary) should deliver the promised introduction of a new 'EU Energy Security and Infrastructure' instrument, as well as the implementation of the six priority infrastructure actions, outlined in the 2nd Strategic Energy Review, which include the Southern Gas Corridor. The European Commission needs to intensify efforts for the finalisation of the Security of Gas Supply Regulation and the promotion of natural gas diversification.

The High Representative of the Union for Foreign Affairs and Security Policy needs to come up with a coherent and comprehensive energy strategy and external energy policy which would greatly facilitate the realisation of the Nabucco project. The recent ratification of the Lisbon Treaty could be useful in that respect. The following policy initiatives would be of critical importance. In particular, the EU needs to play an active role in conflict resolution in the Caucasus. This includes active involvement in the Nagorno Karabagh negotiations, as well as the Turkish-Armenian rapprochement process. Resolving the Nagorno Karabagh conflict is essential for the feasibility of the Nabucco project. Given that a large part of the natural gas to be transported is expected to be of Azeri origin, Azerbaijan may be tempted to use energy as leverage in its relations with Turkey and the European Union. If there is no considerable progress in the Nagorno Karabagh question, Turkish-Armenian rapprochement could be interpreted as a sell-off of Azeri interests by Turkey and trigger commercial and diplomatic measures on behalf of Azerbaijan. This would not only have

negative effect on regional stability, it would also raise questions about the viability of the Nabucco project.

More attention should also be devoted to the political situation in Iraq. Supporting moderate forces and assisting the US disengagement should be coupled with mediation in Iraq's domestic disputes, such as the future of Kirkuk and control over hydrocarbon resources in northern Iraq. Making sure that Iraq does not recede into violence and instability is imperative for the fulfilment of the Iraqi commitment to supply half of Nabucco's transport capacity, which is in turn critical for the realisation of the project.

The revitalisation of EU-Turkey accession negotiations would also boost the chances of realising the Nabucco project. While the opposition of the current French President and the ambivalence of the German Chancellor could limit the leverage of EU officials, much can be done regarding the Cyprus issue. Intensifying efforts towards the resolution of this issue could help remove one of the biggest obstacles to the smooth conduct of Turkey's EU accession negotiations. It would also increase the bargaining power of European authorities on issues such as the ratification of the Energy Community Treaty by Turkey.

Last but not least, European authorities need to devise a new common energy strategy towards Russia based on mutual interest and interdependence. This would give European consumers a stronger voice in their negotiations with Europe's biggest natural gas supplier. By clarifying that the construction of the Nabucco and the South Stream are not necessarily mutually exclusive, European authorities could even – under certain conditions – allow Russia's participation in the Nabucco project. Promoting an international agreement on the legal status of the Caspian Sea would also not only advance regional peace and stability it would also facilitate access to natural gas resources east of the Caspian, thus promoting European energy security.

CLIMATE CHANGE

The Climate Change Agreement the World Needs... Rather Urgently

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The current international climate change regime is embodied in the United Nations Framework Convention on Climate Change and the Kyoto Protocol. Some fundamental elements, such as commitments to reduce greenhouse gas (GHG) emissions, are due to expire in 2013. The need for further steps in the international climate change regime beyond 2012 is undisputed, irrespective of whether or not one considers the initial steps to have been wholeheartedly successful.

The international community, under the aegis of the United Nations, is trying to conclude a successor agreement to the Kyoto Protocol for the period after 2012. Despite the impressive number of heads of state attending the 15th Conference of the Parties (COP-15) meeting in Copenhagen, no breakthrough was achieved and thus no comprehensive and binding climate change agreement was concluded. Nevertheless, progress was achieved on some important elements such as the recognition of the scientific case for climate change and a financing commitment by the industrialised countries to help developing countries.

In this contribution the fundamentals of a good deal are discussed, irrespective of when a post-Kyoto deal will be concluded.

Basic principles of an international agreement

It is imperative that any climate regime fulfils the following core principles in order to be acceptable and credible.

The principal focus of the post-2012 international agreement should be the reduction of GHG emissions in the atmosphere, because mitigating GHG emissions is central to succeeding in the long-term fight against global warming. The International Panel on Climate Change (IPCC) established in its Fourth Assessment Report (FAR) that the increase in global average temperature ought not to exceed 2°C above pre-industrial levels. Should this fail, the Panel states

that climate change is likely to have irreversible impacts. Notwithstanding the necessity of a long-term perspective, climate change currently causes acute problems for an increasing number of countries. Part of the post-2012 international agreement will thus also have to offer support to tackle these problems and adapt to the consequences of climate change.

Climate change is by nature a global problem which requires the widest international cooperation possible. Although countries will be affected to different extents, no country can shield itself from the consequences. Therefore, any climate change regime has to engage as many countries as possible in order to be effective. In particular, the world's largest GHG emitters should be involved. It would be a non-starter to repeat the situation in which the largest GHG emitter is not part of the deal, like the United States under the Kyoto Protocol.

Any agreement on international action has to be fair and equitable in order to receive widespread support. Common but differentiated responsibility should continue to be the guiding principle. Failure to take historical and future responsibilities into account would make any agreement unacceptable.

The post-2012 agreement should set a number of ambitious but realistic objectives, both short- and long-term. These goals should take into account the differences in responsibility and the different potential for mitigation. To that end it is important that the climate policy architecture is cost-effective.

Commitments

The emissions-reduction commitments of the agreement are probably the most intensely debated issue of the deal. Extensive discussions have taken place regarding which countries should make binding commitments, and to what extent. This is of course vital for all countries, but from a holistic point of view, it is more important that the commitments are as global as possible, combining short-term achievements and long-term objectives. This will only be attainable if every country's reduction commitment is fair, equitable and realistic. However, the urgency of the matter does require an ambitious global target of emissions reduction. The IPCC recommends reducing global emissions by at least 50% compared to 1990 levels by 2050. Developed countries would have to account for 80% of the reduction compared to 1990 levels. Developing countries could continue to increase emissions, thus allowing further economic development, but they would have to reduce emissions by 30% below the business-as-usual scenario by 2050.

It is clear that the industrialised countries (Annex I countries in the Kyoto Protocol) have to continue to take the lead in global mitigation efforts and take on new, ambitious binding commitments. They have the capacity to act and they have historically been the largest emitters of GHG. Per capita GHG emissions still largely exceed that of developing countries.

There remains a wide margin to reduce the carbon footprint of production and consumption patterns in Annex I countries. The current financial and economic crisis should not be an alibi for inaction either. The current reductions in GHG emissions due to reduced industrial activity are of a temporary nature only. However, the negotiations in Copenhagen have demonstrated the existence of an ‘ambition gap’ between the major industrialised countries themselves on how strong their commitments should be.

The group of developing countries (non-Annex I countries in the Kyoto Protocol) is not willing to accept any binding emissions reduction commitments, arguing that cutting emissions would unfairly hamper their economic development. However, the issue is not as straightforward as it seems. This group is immensely diverse as it includes oil-rich states, small-island states, as well as big emerging powers. What can be expected in terms of mitigation efforts of a large emerging economy like China is substantially different to what can be asked of a developing country like Malawi. The emerging economies are contributing increasingly to global warming and all projections show a continuously rising trend in GHG emissions in these countries. At the same time, they have the financial means to undertake mitigation actions. They should be gradually integrated into a climate change regime with binding reduction commitments.

So far, the majority of developing countries has only contributed marginally to global warming and cannot be expected to take on strict commitments. There is consensus that the least developed countries (LDCs) should not have to accept binding targets, since their contribution to the problem is limited. However, an incentive mechanism with non-binding reduction commitments (so-called ‘no-lose targets’) could offer an alternative to integrate the LDCs in the international climate system. It might offer them financial benefits if they meet their targets and are able to sell the non-used credits on the carbon market. Moreover, assistance can be provided to design policy roadmaps in order to gradually curb their projected GHG emissions.

Currently, the Clean Development Mechanism (CDM) is the single instrument to engage non-Annex I countries in the climate change regime. The CDM is one of the three flexible mechanisms enshrined in the Kyoto Protocol, together with International Emissions Trading and Joint Implementation. It enables industrialised countries to invest in more cost-effective projects in developing countries in return for international emissions credits that can be used to meet the domestic emissions reduction target. The CDM has become an important market-based instrument. A continuation of the system, albeit reformed, is fundamental in order to accelerate the participation of developing countries (especially LDCs) in climate change mitigation.

Any new international agreement should expand the scope of the climate change architecture to sectors currently excluded, such as forest protection, international aviation and maritime transport. Deforestation, which predominantly occurs in some major developing countries, is estimated to account for about 17% of global GHG emissions. The explicit acknowledgement in the Copenhagen Accord to act on deforestation and forest degradation and to establish

a mechanism to mobilise the required resources is an important progress achieved. With regards to international aviation and maritime transport, no significant progress was made during the COP-15. Nevertheless these sectors could serve as a model to agree on a sector-specific agreement i.e. an International Sectoral Cap and Trade System. Sector-specific agreements could be a potentially innovative and more effective way to bypass the thorny issue of agreeing to binding national commitments. Its sector-wide scope would alleviate some of the competitiveness concerns that exist in developed countries, because it would provide a gradual shift towards equal carbon constraints in developed and developing countries alike. In the current state of the debate, it is unlikely that carbon capture and storage and nuclear energy could be integrated in the post-Kyoto agreement.

Financing

Financing of mitigation and adaptation actions is another key issue. As the Stern Report stated, the benefits of strong and early action largely outweigh the economic costs of not acting. Nevertheless, large amounts of money will be required over a long period of time.

Developed countries agreed for the first time in the Copenhagen Accord to mobilise \$100 million every year by 2020 to contribute to mitigation in the developing world. Moreover a pledge was also made to give \$30 billion for adaptation and mitigation in developing countries during the period 2010-2012. So far however it's unclear how exactly these sums will be collected, although both private and public sources will be mobilised. Especially for the EU, the decision "to pursue opportunities to use markets" is an important recognition of the pathway chosen already.

The bulk of climate funding should be collected through market mechanisms on the carbon market. In recent years an increasingly important carbon market has developed, within which several cap and trade systems are developing. The European Trading Scheme demonstrates that large amounts of money can be raised in the private sector through the combination of imposed emissions limitations and an international market in carbon credits. For reasons of cost-effectiveness, the system should be expanded as widely as possible.

The CDM, another market mechanism, will most likely be part of a post-2012 agreement, albeit in a revised form. In order to make new and deeper commitments acceptable for industrialised countries, a wider use of the CDM is necessary to enable mitigation efforts in the most cost-effective way. How large the role of the CDM will be in the post-Kyoto agreement depends on how the reform will allow the CDM to better meet its objectives, notably to help industrialised countries reach their emissions reduction targets while at the same time promoting sustainable development in developing countries. To that end, the reform of the CDM will have to provide adequate responses to criticism regarding sustainability, effectiveness, economic efficiency and procedural complexity.

The CDM is also a considerable source of technology transfer towards developing countries. In Copenhagen, the establishment of a Technology Mechanism was agreed upon, which should improve technology transfer. However the extent of technology transfers realised depends largely on international trade regulation. On the one hand, trade can be a facilitator of technology transfer, by removing trade barriers for renewable energy technologies, clean coal and energy efficient devices. Climate policies might, however, cause trade policies to become more protectionist e.g. by way of border-tax adjustments on the basis of a product's carbon content. European trade policy should oppose measures that might impinge on international trade and continue to advocate trade facilitation and liberalisation.

Regarding international public funding for climate change policies in the developing world, the European Commission proposed in 2009 that the industrialised countries would contribute €22 to 50 billion annually by 2020 on the basis of two criteria: GDP and historical responsibility. Nevertheless when it comes to international public funding, it is imperative that funds currently allocated to development policy are not simply diverted towards the fight against climate change in developing countries. Reducing the amount actually spent on development assistance would make developing countries pay, once again, for the consequences of economic development in industrialised countries.

Control

The lack of an effective enforcement mechanism was one of the principal reasons why the United States did not ratify the Kyoto Protocol. Discussing binding commitments makes no sense if there is no system in place to reliably verify the evolution of GHG emissions and, if necessary, sanction non-compliance. The post-2012 climate architecture would require a strong compliance mechanism, to make binding commitments truly binding.

The creation of a solid and enforceable long-term climate change regime in developing countries also requires adequate capacity building in those countries. The focus of capacity building should be on institutional and regulatory capabilities, particularly in LDCs. European development policy, both at Community level and at national level, can contribute substantially to this objective – e.g. by supporting the development of national low-carbon policy roadmaps and establishing reliable GHG inventories.

Recommendation to the Trio Presidency

Despite the way in which the American-Chinese entente finally concluded the Copenhagen negotiations, the EU has previously shown it has the capacity to set the pace internationally on climate action. If it wishes to continue to do so, it will have to come forward with proposals and commitments on all of the policy aspects mentioned. However, the role of the Council of

the EU is limited with regard to the design of a new international climate agreement, because the Commission negotiates on behalf of the EU. However, on climate financing the Council does have important powers. The Presidencies will have to work towards an agreement in the Council in which the EU takes on ambitious financial commitments which inspire other countries to follow its example.

The successful conclusion of a post-Kyoto agreement requires continued leadership from the European Union. The EU must demonstrate ambition, in particular accepting binding commitments when others prove unwilling to do the same. Over the long-term the European Union has the means to encourage the gradually deeper involvement of developing countries. But new commitments alone are insufficient: an effective and credible climate regime needs a strict enforcement mechanism as well. Finally, the European Union has a particular role in guaranteeing that trade and development policies are accommodating to and coherent with climate policy objectives.

CLIMATE CHANGE

Weak Carbon Prices Threaten the EU's Environmental Leadership

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The EU's Emissions Trading Scheme (EU ETS) works by capping the output of carbon dioxide and then distributing allowances to emit the gas to large energy users. The tighter the cap, the more expensive it is for firms to produce carbon dioxide. The European Commission is relying on carbon pricing to encourage companies to invest in new green technologies. It also hopes that the ETS will form the basis of a global carbon market. However, carbon prices under the scheme have fallen by two-thirds in just over six months. At December's UN conference in Copenhagen, the EU wanted to persuade big emerging economies such as China and India to take action to curb their own output of greenhouse gases. This was a tough task, given that Europe's flagship environmental policy is not working.

Firms will only invest in new technology if they are confident that carbon prices will be high enough to justify the cost. In early November 2009, the carbon price stood at €14 per tonne. Although this represents an improvement on the low of €10 reached in February 2009, prices are too low to make such investment worthwhile. Back in July 2008, the carbon price stood at €30, a sufficiently high level to provide a strong market signal. The current state of the carbon market poses a bigger risk to the future of the ETS than the previous collapse of carbon prices. Prices fell to just €1 in 2007 because too many allowances were distributed for the first phase of the ETS (from 2005 to 2007) and firms were not permitted to hold on to surplus permits for use in the subsequent phases (2008-12 and 2013-20). However, the price of carbon for use in phase two remained above €18 per tonne during 2007 (and hence well above current levels), because investors were confident that emissions caps in the latter phases would be tighter. In terms of encouraging investment, it is the future price that matters.

There are cyclical and structural reasons for the current weakness of carbon prices. The cyclical reason is the decline in Europe's industrial activity, and hence energy use, since the middle of 2008. With the supply of carbon allowances fixed and emissions declining, carbon prices have inevitably fallen. The EU economy was on course to shrink by around 4% in 2009. The release of carbon dioxide by industries covered by the carbon market could

decline by as much as 10%. Moreover, the economic recovery will be slow to gain momentum, with economic growth (and hence energy consumption) set to remain weak for several years. In short, the EU economy will not grow anywhere near as fast between 2008 and 2020 as was assumed when the emissions caps were set, and hence emissions will be considerably lower than forecast. Instead of expanding by around 2.5% per annum – as assumed by the European Commission – economic growth is more likely to be around 1.5%. The cumulative impact of this on emissions will be huge.

The ferocity of the economic downturn has also highlighted two structural weaknesses in Europe's carbon market. First, the EU fixed the supply of carbon allowances until 2020. This was done for good reasons. Investors needed to be convinced that the cap on emissions would be sufficiently tight to ensure consistently high carbon prices, and that the emissions caps would not be altered under pressure from governments. However, the lack of a mechanism to amend the emissions allocations in the light of changed economic circumstances threatens the efficacy of the scheme and its demonstration value internationally.

Second, the method of distributing the allowances is exacerbating the weakness of carbon prices. In phase two of the ETS (2008 to 2012), the vast majority of allowances is allocated for free. In phase three (2013 to 2020) energy generators will have to purchase them through auctions. But auctioning will only be introduced gradually for the other industries covered by the market. The upshot is that very few businesses are actually paying to emit carbon dioxide at present. And it has become apparent that emissions will remain weaker than projected for a number of years, they will be able to put off buying allowances until well into phase three. If all businesses had to pay to emit carbon dioxide now (or at least from 2013), prices would not be as weak as they are at present.

If EU emissions are falling, why does it matter if carbon prices are low? Surely the main thing is that the EU reduces emissions of greenhouse gases? The answer is that it matters why emissions are falling. At present, lower carbon dioxide emissions stem from temporary factors, not structural ones and that weak carbon prices will delay the necessary structural changes. A structural fall in emissions (one that will not be reversed once the economy recovers) requires investment in new technologies, such as carbon capture and storage (CCS) and renewable energies. But companies will only make such investments if they are confident carbon prices will recover.

Weak carbon prices also threaten to paralyse the Clean Development Mechanism (CDM). Under the CDM, European emitters can earn carbon allowances by investing in projects to cut emissions in developing countries. The rationale for this is two-fold: it is often cheaper to reduce greenhouse gases in poor countries than in rich ones, and it leads to the transfer of capital and technology to developing countries. The CDM represents an efficient way of meeting developing country demands that the developed world help finance their decarbonisation. In the process, it also developing countries a stake in an embryonic global

carbon market. Unfortunately, at their current levels carbon prices are too low for it to be worthwhile for firms to invest in CDM projects.

Carbon prices will need to rise quickly to preserve the credibility of the EU's ETS. Given the dire economic outlook, the Commission may have to intervene in the market to ensure this happens. One argument against intervention is essentially ideological: that it would interfere with the working of the market. Another argument is that intervention would create uncertainty: investors would come to fear that the Commission would interfere in the market whenever it was unhappy about the price the market was putting on the price of carbon. Both fears are exaggerated. The carbon market – like many others – is the product of regulation – so altering the frame of that regulation in light of changed circumstances should not be considered problematic.

What could the Commission do? It could, for example, tighten the post-2020 (phase four) emissions cap, which is not yet set in stone. Given that emitters can retain allowances from phases two and three (2008-12 and 2013-20) for use in phase four, reducing the number of allowances available in the post-2020 period would help to prevent further falls in prices now. But this alone will not be enough to ensure that prices rise rapidly. The Commission should also announce that from 2013 auctions will be subject to minimum prices of €25. Those allowances that do not meet the reserve price would then be withdrawn from the market. Such a move would increase carbon prices and reassure firms that prices will remain high enough to warrant investment in low-carbon technologies. Crucially, it would ensure that the EU has climate policies in place to match its rhetoric and help the EU to consolidate its leadership of the international environmental agenda.

CLIMATE CHANGE

The Missing Link: an Integrated Strategy to Reduce Greenhouse Gas Emissions from Transport

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The Energy and Climate Package as adopted in mid-2009 is often referred to as paving the way towards a new industrial revolution, a revolution into a low-carbon and largely fossil fuel free future. While the package addresses two of Europe's most important challenges, climate change and security of energy supply, the future of transport has not yet included. Transport policy remains a patchwork of different initiatives aimed at different sectors and left to incremental policy change. However, incremental policy change will not be enough for the transition to a low-carbon transport sector. Bold moves will be required, starting with an integrated transport and climate change package, much in the same way as the Energy and Climate Change Package has opened the door to a low-carbon energy future. Transport and mobility are at the heart of European integration. The Treaty of Rome has foreseen a Common Transport Policy, which – amongst others things – helps to promote the competitiveness of European industry as well as social and economic cohesion in Europe. Environmental protection and addressing the risks of climate change are part of this.

The transport sector is not only vital for European integration, it also constitutes an important component of the European economy. The sector contributes some 7% of GDP and more than 5% of total employment in the EU. Progressive European (market) integration and, in particular, successive waves of enlargement have led to a substantial increase in transport volumes in recent years. On average, passenger transport (pkm) increased by 1.7% annually since 1995, mainly driven by air and road transport, while freight transport (tkm) increased by 2.7% over the same period – mainly driven by road and sea transport. These developments have led to an increasing recognition of the negative side-effects of mass transport in Europe, including deterioration of infrastructure, land use issues, congestion, air and noise pollution, injuries and deaths, as well as substantial amounts of greenhouse gas (GHG) emissions. The latter is of particular importance in the context of the EU's global climate leadership. Failure to address GHG emissions in transport would not only jeopardise the achievement of recently

adopted EU emissions reduction targets, it would also hinder the industrial transformation of the transport sector.

While GHG emissions have decreased in all sectors of the European economy since 1990, transport was the only sector that experienced continuous growth in emissions – by some 36%¹ in the period between 1990 and 2006. As a result, the European transport sector was responsible for almost a quarter of all EU-GHG emissions in 2006. The fastest growing modes of transport were civil aviation (+89%) and navigation (+51%), while in absolute terms the largest increase was in road transport (+29%). Road transport continues to contribute the bulk (71%) to transport GHG emissions and is responsible for some 17% of total EU-GHG emissions.

These figures clearly show that the transport sector will need to play a major role in the EU’s climate policy. In order to meet the 2°C climate change target, by 2020 emissions from road transport need to decrease in absolute terms while increases in emissions in the aviation and maritime modes need to be halted. In the longer term, i.e. until 2050, emissions from the transport sector need to decrease by up to 80% in order to achieve the global emissions reduction targets. Achieving these objectives will require a dramatic shift in the way people travel and in the way we move goods.

Reducing transport emissions will have additional benefits in terms of security of energy supplies. The transport sector today is 97% dependent on hydrocarbon fuels, and mainly on oil. Biofuels and other renewables will not be enough to address vulnerability. The overall EU transport demand is projected to increase to such an extent (18% by 2020 according to the IEA) that the EU target of replacing 10% of transport fuel use with renewable energy sources – although creating an additional security margin – can only moderately reduce European dependence on oil. In times of decreasing domestic oil production and increasing awareness about global warming, the transition towards a low-carbon transport system can have the double benefit of decreasing import dependence on oil and decreasing GHG emissions thus helping to achieve Europe’s climate targets. At the same time, it will ensure innovation in transport related industries, thus fostering competitiveness and securing jobs.

A transport revolution

While the EU Common Transport Policy has “assisted social and economic cohesion and promoted competitiveness of European industry, therefore contributing significantly to the Lisbon Agenda for Growth and Jobs” (European Commission), there has been little progress in designing an integrated and strategic response to rising GHG emissions, security of energy supply issues and the transport sector’s innovation challenge. European transport policy to date has largely been aimed at increasing efficiency, reducing costs and increasing the speed

1. All figures include international bunkers, i.e. international traffic departing from the EU.

of transport. But it has failed to take into account environmental considerations. The transport-related elements of the Energy and Climate Change Package (including the Renewables Directive, the Clean Cars Directive and the Fuel Quality Directive) represent a step in the right direction but fall significantly short of an integrated strategy that sketches out a pathway to a low-carbon transport sector. To do this, Europe needs a ‘transport and climate change package’ comparable to the recent Energy and Climate Change Package. This package must give answers to fundamental strategic questions about what a sustainable EU transport system should look like and how it can be achieved. It may include setting concrete (binding) targets for the decarbonisation of the transport sector. In addition, it should comment on the cost-effectiveness of alternative low-carbon transport options with the aim of building political consensus for their implementation.

The transport and climate change package needs to review a number of policies at European but also member state level. The polluter pays principle (PPP) will need to be applied to all modes of transport, including responsibilities for GHG emissions (which is currently not the case for heavy goods vehicles in the proposed revision of the Eurovignette Directive). Pricing mechanisms will need to reflect the real costs of transport. This also means that taxation will need to treat comparable fuels in a comparable way. The tax exemption of aviation fuels, in the fastest growing mode of transport, needs thus to be reconsidered.

Another central policy area will be infrastructure. Upgraded and new transport infrastructure will be required to master the transition to a low-carbon economy in much the same way as smart grids will become the backbone for the energy sector’s transition. In fact, road transport infrastructure and electricity grids will need to become more closely integrated because decarbonisation of road transportation will not be possible without an increasing share of low-carbon electricity in transport. The decarbonisation of the power sector and a strong commitment for innovation in the car and related industries are thus prerequisites for decarbonisation of road transport. Although it looks likely that future road transport will rely on electricity, this is not to say that other alternatives to conventional combustion engines (e.g. hydrogen) should not be examined.

The largest challenge for decarbonising the transport sector will be in international aviation and maritime transport because of a lack of technological options in the near future. Biofuels could play an increasing role, together with energy efficiency measures and demand reductions. In addition, the expansion of the high-speed train network may help in the substitution of air and road travel. Given that transport by rail is two to three times more energy efficient per tonne of cargo than by road, the continuing decline of the rail freight market share will need to be addressed (especially in the new member states) to facilitate a shift towards multimodal transport.

R&D and new technologies will be at the heart of greening the transport sector. On the one hand, technologies will need to be tested. On the other, only deployment ensures decreasing

costs. The new transport and climate package should thus introduce technology deployment targets, for example in the area of advanced car technologies. This could relate to the vehicles themselves (e.g. a certain share of the vehicle fleet needs to be carbon neutral), as well as to innovative infrastructure projects (e.g. minimum requirements for electricity infrastructure for cars).

To stimulate technological innovation, a number of demonstration or ‘flagship’ projects may be considered, aimed at using state-of-the-art technologies. These include advanced telematics technology in urban transport, to reduce GHG emissions and other harmful environmental effects, to reduce congestion, to increase efficiency and generally to increase competitiveness. Such systems can now be based on the GALILEO global navigation satellite system. Mandatory large-scale demonstration projects can be justified because they play an important role in bringing down the costs of equipment.

The contributions from technology should be complemented by those from other stakeholders, including users, government and associated industries. Technology alone will not be enough to bring down emissions and demand-side management will also need to be given consideration in the proposed transport and climate package, for example through pricing mechanisms. Internalising the full environmental and social costs according to the polluter pays principle together with better data and information will be crucial in influencing consumers’ behaviour.

Similarly, efficiency standards should be the backbone of any sensible climate change policy. Fuel efficiency standards have been introduced for cars with the revised Fuel Quality Directive in the context of the Energy and Climate Change Package. These should be extended to vans and trucks. Standards for aviation and shipping should also be taken into consideration.

The transition towards a low-carbon EU transport system is a European task. Despite the fact that transport policy is still largely determined by national and commercial interests rather than European considerations, one or several member states will not be able to achieve this transition alone. Greening the transport sector will require an integrated approach from all stakeholders, including the automotive industry, the fuel industry, different governmental institutions and consumers. Europe will need to develop the most viable pathways towards decarbonising the transport sector in different modes and to come up with cost-effective, incremental solutions to achieve this vision.

In his political guidelines for the next European Commission, President Barroso dedicated his second term in office (2010-2014) to keeping the momentum towards decarbonising Europe’s electricity supply and the transport sector. This will require close cooperation between the three new Directorates General of the Commission responsible for Energy, Transport and Climate Action as well as with other DGs such as Research and Industry and Entrepreneurship. The approaching end of the ten-year period of the last Commission’s White

Paper on European Transport Policy (published in 2001) and the upcoming publication of a new White Paper framing the transport policy for the next ten years is a good opportunity to prepare for the proposed transport and climate change package. This new White Paper will lay down a consultative process that could lead to the necessary legislature required to tackle GHG emissions from the transport sector.

The upcoming Presidencies will need to support this process while ensuring that the Council moves swiftly in putting the right policies into place. This is of particular importance given the inertia of the transport system and the actors involved, as well as the longevity of infrastructure and the transport fleet. With 2020 approaching quickly, the EU risks missing its climate targets if transport emissions are not addressed soon. At the same time, the European response needs to be based on a long-term vision for a sustainable transport in the future.

CLIMATE CHANGE

The Role of Clean Coal in Addressing Energy and Climate Policy

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Despite all the efforts aimed at development and global deployment of sustainable energy, the world is going to depend on fossil fuels in the coming decades. Green technologies are being developed and energy efficiency is one of the top priorities of energy policies of countries all around the world, But to counteract global warming we will need to reduce the emission of CO₂ into the atmosphere very rapidly. By 2050 the OECD countries must reduce their greenhouse gas emissions by 80%.

A rapid transition to a non-fossil fuel world economy will need to take place in the context of projections (made in Energy Technology Perspectives 2008) that CO₂ emissions in the energy sector will increase by 130% above 2005 levels by 2050 if there is no long-term low-carbon strategy and transition-oriented action.

The UE has already decided that a low-carbon economy is a must in the coming years. Putting it into effect will need to be a top priority for the current Trio Presidency. Regardless of the commitments of the EU Energy and Climate Package from December 2008, coal will remain an important source of energy in Europe. In 2007, it accounted for 30% of the EU energy mix. It is Europe's goal to gradually produce more and more electricity from renewables but in the meantime some EU member states will still be heavily dependent on coal because it is cheap and abundant.

What is more important, both developed and developing countries rely heavily on fossil fuels to provide energy and demand for that energy is increasing. China alone accounted for 42% of global coal consumption in 2008, compared to 17% for the United States and 16% for Europe and Eurasia. This means that in order to achieve global goals China, the United States and Europe will need to agree to drastically reduce their consumption of coal and set a plan for transition to a low-carbon global economy where clean coal will have a role to play as a transition technology before the full potential of renewable sources, nuclear energy and energy efficiency is achieved.

Clean coal technologies

Reduction of carbon emissions from fossil fuel fired power generation will be of key importance. It can be achieved through different methods, but three of them are particularly effective.

Firstly, there is the improvement of coal-fired power stations' efficiency, which can ensure that less fuel is required to generate power. This can be achieved *inter alia* by advancing boilers and improving turbines and gasifiers. Increased efficiency of power stations can result in a 20% emissions reduction.

Secondly, combining fuel with biomass in cogeneration is an example of how biomass should best be used in low-carbon heat and energy production. Co-firing coal with biomass can decrease CO₂ emissions of a power plant by about 10%.

Thirdly, there is the possibility of capturing and storing in geological structures the carbon dioxide emitted during the process of fossil fuel combustion technology called carbon capture and storage (CCS). As this technology can reduce CO₂ emissions from a power plant to as little as 0%, the EU has decided to concentrate its initial efforts on CCS.

Carbon capture and storage

While producing a unit of electricity from coal, approximately twice as much CO₂ is emitted as compared to a unit of electricity produced from gas. Therefore in the coming years it will be crucial to implement carbon capture and storage in coal-fired power plants and to commercialise them as soon as possible. In fact, CCS is the only technology available to mitigate greenhouse gas emissions from large-scale fossil fuel usage in fuel transformation, industry and power generation.

Estimates show that there are worldwide geological conditions for storage of 10,000 billion of tons of CO₂. Experts predict that in the energy sector and in the industry, CCS can contribute to one fifth of the reductions that are needed to limit by 50% the emissions of greenhouse gases by 2050.

The International Energy Agency CCS Roadmap enumerates how many CCS installations are to be deployed globally. There are 213 active or planned projects with 101 of commercial scale. There are 55 fully integrated commercial scale projects planned to be deployed, each of which demonstrates every stage of the CCS process chain of CO₂ capture, transport and storage. But there are only 7 plants already operating.

This means that CCS global deployment will require great industrial and engineering revolution. There is no time for an evolutionary approach. The race for full-scale deployment of CCS

has begun. Whoever is the first to build a large-scale power plant with CCS will also be the first to become global leader in the field and will also be the first ready to export the technology. It is a game worth playing. According to the World Energy Outlook, China, with its large domestic base of coal resources and continuing strong economic growth, alone accounts for 71% of the increase in world coal consumption. It builds about 1GW of new coal power generation every week. This means that, to meet its international obligations linked to counteracting climate change, China will need to invest in clean coal. However, it will also need to be sure that the technology is economically viable. And this can be ensured only by global CCS deployment.

It is clear that developed countries will need to lead this process. There is a general consensus, reflected by the declared aims of the G8, the International Energy Agency and the European Technology Platform for Zero Emission Fossil fuel Power Plants (ZEP), that the next step towards commercialisation of CCS is commercial scale demonstration. There is a need not only for deployment of more projects, but also for development of more types of projects in order to design the best possible facilities, bringing down costs and creating a valid business case for CCS. The G8 set a goal of announcing 20 full-scale demonstration projects by 2010. These projects are intended to develop the technology and make it commercially viable, in order to enable developing countries to make use of it.

The EU should ensure that it deploys at least seven full-scale CCS demonstration projects and develops at least three types of the technology:

- Post-combustion: CO₂ capture from the flue gas after combustion of the fossil fuel
- Pre-combustion: removal of CO₂ from the fossil fuel prior to combustion
- Oxyfuel: combustion of fossil fuel with pure oxygen rather than air

Financing clean coal

Carbon capture and storage is currently (at its early stage of development) very costly. Market forces alone are unlikely to deliver sufficient investment in this technology, and both the costs and risks of demonstration projects can therefore proceed only with governments' financial support. Huge investments will be needed globally. The International Energy Agency predicts that in order to set up 100 CCS projects by 2020 and over 3,000 by 2050, there will be a need for \$2.5-3 trillion of additional investments.

The effort must be led by the developed world. The IEA called on developed countries to make available between \$1.5 and \$2.5 billion to fund CCS demonstration in developing countries. This is a lot, bearing in mind the 29-30 October 2009 European Council proceedings and conclusions. It was impossible for 27 EU members states to agree upon the rules of burden sharing concerning climate change related financial support for developing countries.

The EU has agreed to spend €1.05 billion for the CCS demonstration projects of seven member states. This is little compared to the \$3.4 billion allocated in the US Economic Recovery Act and \$3 billion announced by Canada (1.2 billion from the Canadian federal government and 1.8 billion from the Alberta provincial budget). Australia committed a similar amount to the EU \$1.65 billion.

Additionally, the EU proposed to allocate “300 million allowances in the new entrants reserve for the co-financing of CCS and innovative renewables (RES) demonstration projects which provide for the development of a wide range of technologies that are not yet commercially viable”. This is a good starting point, although there is still a need to decide who will carry out the project selection. In the initial proposition the European Commission wanted to do it itself, but some member states formed a coalition against this proposal – they would prefer their governments to make the final decisions on financing. This argument needs to be resolved soon in order to promote CCS deployment.

Financial support from the recovery package and the New Entrants Reserve (NER 300) is designed for CCS demonstration projects, although it is not enough for broader CCS deployment. The EU should establish long-term financial mechanisms for GHG emissions reduction. So far, the EU budget has played a relatively minor role in meeting climate policy objectives. In fact, the way it is structured very often contributes to increases in carbon emissions. 9% of the EU greenhouse gas emissions come from agriculture but the current financial perspective lacks a proper mechanism to address that problem. The EU budget should be an important instrument in ensuring that the EU can compete with the United States, Canada and Australia when it comes to CCS development and full-scale deployment.

There are three possible approaches to consider in this context. One possibility is to introduce a horizontal criterion for all EU spending to meet the low emission requirement. Another possibility is to concentrate EU budget spending on assisting the least developed member states in their transition to the low emission economy. The third scenario would be to create a dedicated fund to invest in strategic green technology such as carbon capture and storage and innovative renewables.

Carbon price

A very strong stimulus for a full-scale deployment of CCS in Europe would be a stabilised carbon price. Industry estimates that €40 per tone of CO₂ would make power plants with CCS economically viable. For the time being CCS installations do not attract the interest of investors because they cannot compete with conventional power plants. Therefore, the EU should make its Emissions Trading Scheme work in a way that it stimulates private-sector investments in innovative low-carbon technologies.

Recommendations for the SBH Trio Presidency

Political support

There is a need for strong political support for clean coal technologies (especially CCS). They have not been adequately supported in the framework of the EU Energy and Climate Package. While a specific target of 20% in the EU energy mix in 2020 was set for renewable energy, next to greenhouse gas emissions' reduction and bio-fuels, there was no specific measure to support the development of clean coal technologies. The Spanish, Belgian and Hungarian Presidencies should jointly work on establishing a target for the use of Clean Capture Technologies (CCT) and CCS in the energy sector. The UK government has introduced regulatory frameworks requiring new power plants to be equipped with CCS. This kind of solution should also be considered at the European level and the preliminary discussions should start next year.

Lisbon Strategy

A new energy and climate policy will require a transformation of the economy. In this process, innovation will play key role and development of skills will be crucial. The low-carbon economy should therefore be one of the principal priorities within the framework of the new Lisbon Strategy: it should be one of new thematic strategies. There is a need for research projects that will advance CCS technologies while providing graduate and undergraduate student training opportunities. These projects should aim at advancing CCS scientific, technical, and institutional knowledge while simultaneously producing the expertise and workforce needed for the emerging carbon capture and storage industry. This kind of stimulus should be introduced into the discussions on the new Lisbon Strategy as soon as possible. The current Trio Presidency should put more emphasis on this issue.

Public acceptance

The transition to the low-carbon economy will require changes in different areas of public life. Initially, these should include activities to increase awareness among European citizens of the risks associated with climate change and the opportunities that flow from the introduction of clean coal technologies. There is a need to build public acceptance in order to address misgivings associated with the safety of CCS installations. The SBH Trio Presidency should pay special attention to education campaigns on CCS backed up by information about existing test units all around the world.

Infrastructure

The EU has already established legal frameworks to guarantee the safety of the geological storage of carbon dioxide (the so called CCS Directive). However, when considering incentives

for CCS, it is important to remember that deployment of the installations will also depend on the development of CO₂ infrastructure. Since there is a potential for transnational storage sites, special attention should be paid to a trans-European network of pipelines transporting CO₂. This is a task for multiple future Presidencies: building the proper infrastructure will take time and require heavy investments.

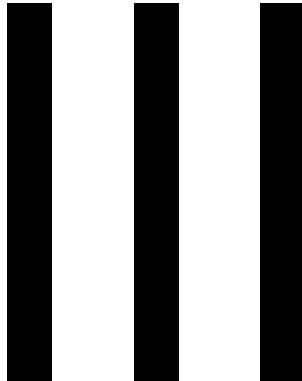
Financing

Many currently existing power stations will have to be replaced in the next five years or so. With a proper financial framework, coal power stations with CCS could be a significant component of the replacement plant. The EU has established a financial framework to support CCS demonstration plants, although the agreement between member states and the European Commission on the new entrants reserve should be resolved as soon as possible, preferably in the first half of 2010. Additionally, funding will need to increase to make sure the CCS technology is available in the shortest possible time-frame. The Trio Presidency should introduce the idea of new financial mechanisms into the discussion on the EU budget.

Global engagement

United Nations Climate Change Conference in Copenhagen in December 2009 did not deliver a meaningful result to the international negotiations on tackling climate change. The outcome of the 15th Conference of the Parties (COP-15) is bad news for Europe. First of all, the EU was not able to speak with the legendary one voice after a fiasco of its internal negotiations on an emission reduction target of 30% by 2020 to be put on the table in Copenhagen by all 27 member states. Secondly, Europe was ignored in the final round of negotiations by the US delegation, which preferred to talk to China, India, South Africa and Brazil. The Spanish and Belgian Presidencies should redouble their efforts and ensure that the EU is able to prepare a new roadmap to COP-16 in Mexico. The roadmap should first of all include an early enough decision on a common EU position during the final negotiations in December 2011 and a more business-like conversation with the United States. It is almost certain that in the next decades, greenhouse gas emissions will increase in emerging economies. In the second half of 2009 the US government has decided to start strategic cooperation with China in key areas and to take several meaningful initiatives for counteracting climate change. If Europe does not want to lag behind, it will have to respond to this challenge before the post-Kyoto protocol is in place.

The Contribution
of 14 European
Think Tanks
to the Spanish,
Belgian and Hungarian
Trio Presidency of
the European Union



A RENEWED ACTION IN JUSTICE AND HOME AFFAIRS

MIGRATIONS

The institutional reform brought by the Lisbon Treaty will not automatically increase the Union's capabilities in areas such as internal affairs. To do this, a serious effort of politico-strategic thinking is needed – something that does not feature in the Stockholm Programme adopted in December 2009.

The programme provides five-year objectives without the support of a serious negotiated political compromise, and without the benefit of a genuine political direction. In its current state it resembles not so much a policy programme as a technical action plan intended for the follow-up.

PART III ABSTRACT

Problems which might arise from the Lisbon Treaty (in particular, that of exacerbated tension between member states, since the Treaty formalises the European Council's strategic role – a role small states have always preferred the Commission to play) and the weaknesses of the Stockholm Programme will mean that the policy agenda for asylum and immigration remains controversial over the next few years. It is also likely that serious political conflicts, which might have been

avoided, will persist (SWP). The programme's deficiencies have then created a heavy responsibility for the Trio Presidency as without a lasting political agreement on migration policy, the usual inter-institutional quarrels will continue.

In the area of freedom, security and justice (AFSJ), one of the main challenges of the Trio Presidency will be to put into practice the institutional and political innovations of the Lisbon Treaty – from the European Public Prosecutor to a permanent Internal Security Committee within the Council. Another key item for the Trio is the implementation of the European Pact on Immigration and Asylum adopted in 2008, on the basis of solidarity between member states and applied in close cooperation with third countries.

The consolidation of the European immigration policy will also demand to pay a special attention to the surveillance of external borders – which requires additional resources for the Frontex agency (Real Instituto Elcano). But political action in this area remains affected by the balance between security and freedom (right and liberties) that has to be maintained.

With the Stockholm Programme the Union should move by 2012 at the latest from the current system of minimum standards to one of a common European asylum. The European Asylum Support Office, launched by the 'Immigration Pact' is another important innovation. But the Stockholm Programme has gaps. In particular, it provides no solution to the fundamental question of solidarity between member states. The Trio Presidency must then focus on (DIIS / SIEPS):

- *adopting a resettlement programme for refugees, which is both binding and effective;*
- *ensuring that cooperation with third countries on irregular migration – for example, concerning pre-border checks – does not harm the right to asylum or other human rights obligations;*
- *extending policy to unqualified workers, with regard to legal immigration;*
- *getting involved more actively in the debate concerning migrants integration.*

The AFSJ finds itself at a crossroads. The gradual development of a strategy to control the Union's frontiers has created a difficult dialectic between human-rights-related obligations and the EU's need to control its external border. The 'Europeanisation' of border-control policy does not exempt member states from their international obligations – particularly the principle of non-refoulement, by which states must take into account demands for international protection which arise at Europe's borders.

The system of pre-border controls, directed by the Frontex agency, has moved the management of human flows beyond the borders of the Union, which makes the right of asylum difficult to exercise. Therefore, during the next phase of the AFSJ (CEPS):

- *a monitoring system for the Union's borders and for migration should be put in place;*
- *the activities of Frontex must be subjected to objective and impartial evaluation, before this agency's capacities and competences are increased;*
- *cooperation between the Union and third countries must be developed in an open manner and with clear guarantees for human rights;*
- *member states and candidate countries must guarantee their capacity to ensure the respect of migrants' fundamental rights in all circumstances.*

INTERNAL SECURITY

The internal security of member states does not fall within the competence of the Union. Its institutions are not in charge of preventing terrorist attacks: their

main role is to make sure that the legal and practical structures for anti-terrorism cooperation are solid and effective.

Since 2001, ministers of the interior have harmonised the definition of terrorism – which is essential for the cross-border pursuit of terrorists by police. They have also classed as a crime the act of recruiting or training terrorists. The European arrest warrant, which was agreed upon following the 11th September attacks, has simplified and accelerated extraditions of suspects between member states.

The first objective of EU countries is to make the common market as ‘watertight’ as possible with regard to terrorism. This implies adopting European legislation to facilitate tracing and controlling the movement of explosive substances, to establish common safety rules for airports and other transport centres, and to ensure that private infrastructure is capable of managing potential emergencies.

Terrorism is a difficult subject for Europe’s foreign ministers as a result of the deep divisions which appeared over the Iraq war and over the war against terror in general. But the EU should take advantage of the arrival of the Obama administration to agree with the United States on a joint strategy focused on sharing foreign-policy priorities where these concern terrorism – in relation to Pakistan, where Al-Qaeda and the Taliban have sanctuaries, and also concerning peace efforts in the Middle East and Africa (North Africa and the Sahel, East Africa and the Horn of Africa – including Sudan and Somalia).

On the issue of security, the EU must take action on three urgent matters (CER):

- Firstly, it must reconcile the European Parliament with the member states’ anti-terrorism policy. It would be particular desirable for MEPs to create an Internal Security Committee, separate from the Civil Liberties Committee.*
- The Commission should also create a European Internal Security Committee – a coordinating body comprising security experts, Europol, Eurojust, Frontex and others.*
- Lastly, the High Representative for Foreign Affairs and Security Policy should appoint a special representative for internal security, in the form of a senior official chosen from the new European diplomatic service.*

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Judicial cooperation in criminal matters is one of the areas where European legislation is advancing the most quickly, but one of the most sensitive fields from the point of view of national sovereignty. As a result, European initiatives often

attract opposition on the ground. The European arrest warrant, for example, has come before constitutional courts in Germany, Poland, the Czech Republic, Greece and Cyprus – together with the European Court of Justice. Judicial cooperation therefore demands that member states have a high level of trust in each others' legal systems.

For a 'free circulation of judicial decisions,' the implementation of a system of mutual recognition of judicial decisions between member states is needed. But this principle of mutual recognition is not directly applicable in member states, and its legal instruments for application must still be defined and clarified. In addition, as the debate around the Stockholm Programme has shown, existing regulation concerning judicial cooperation in criminal matters has an important flaw: the absence of detailed procedural protections for individuals subject to judicial proceedings.

To accelerate the creation of an area of judicial cooperation in criminal matters, the Trio Presidency must (Europeum):

- *adopt a catalogue of minimum demands concerning the rights of the defence in criminal procedures;*
- *clarify, in criminal matters, the question of competent jurisdictions;*
- *see to it that the content of the Charter of Fundamental Rights passes into European legislation on criminal matters;*
- *organise a citizen information campaign about the consequences of judicial cooperation in criminal matters, in order to avoid misunderstandings;*
- *promote the communication and sharing of experience between national jurisdictions, concerning European rules.*



MIGRATIONS

The Area of Freedom, Security and Justice: a New Horizon for European Integration

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Justice and Home Affairs: deepening and integration

The creation of the ‘third pillar’ in the Maastricht Treaty (1992) and the introduction of the main elements of the Area of Freedom, Security and Justice (AFSJ) in the Amsterdam Treaty (1997) were key turning-points in the development of the European integration process as regards Justice and Home Affairs. The AFSJ brought together, in terms of institutions and regulations, matters such as police cooperation, immigration, border control, visas and judicial cooperation, including the Schengen *acquis*. The overall aim of the AFSJ was to ensure the free circulation of persons in an internal market, which is ultimately what determines and drives many of the EU’s competences.

There is little doubt, however, that the original driving force – the need to establish a common public space, primarily for economic reasons – has been displaced and supplemented by the internal development of the European integration process itself. Over the past few years, the changing international and security context has prompted the EU to take on competences in the field of internal security and to express a clear commitment to guaranteeing the fundamental rights of citizens, in an increasingly restrictive environment marked by the need to ensure the maintenance of security.

This new scenario is reflected in the Lisbon Treaty, which made it one of the EU’s prime objectives to offer its citizens an AFSJ that has now become a hallmark of the European project. Although considerable progress has been made in this field – such as the mutual recognition of judgments and court rulings that has given rise to the European arrest warrant; the creation of the Judicial Cooperation Unit (Eurojust) and, more recently, the adoption of a common approach to immigration and the creation of Frontex – these are merely elements that must be built on – ensure that freedom, security and justice become the new frontier of European integration.

Challenges facing the Spanish Presidency

The entry into force of the Lisbon Treaty, after a tortuous ratification process, has opened up new vistas, marked by two factors that will affect the Trio Presidency (Spain, Belgium and Hungary) with regard to Justice and Home Affairs (JHA). First, the application of the Lisbon Treaty has set off the complex process of implementing the measures included in it, which will hopefully contribute to the consolidation of the AFSJ as incorporated in Title V of the Treaty establishing the European Community. Second, the completion of the Hague Programme will give way to a new project, presented by the Swedish Presidency, namely the Stockholm Programme. This sets out the priorities for the next five years and requires the adoption of an action plan, which will have to be negotiated under the Spanish Presidency during the first semester of 2010 if the EU wants the political and institutional goals, agreed to under the Swedish Presidency, to become a reality for Europe's citizens.

Another challenge to be tackled by the Trio Presidency will be to ensure the coherence and unity of the internal and external dimensions of the JHA field. It is widely recognised that all spheres of action have an external dimension and that the cooperation of third countries is increasingly necessary. This is more than evident in issues such as the war against terrorism and the management of both legal and illegal immigration. Internal European coordination is equally necessary to ensure that both sectoral and general objectives are met. In this context it is essential that the new Stockholm Programme and its future action plan are provided with adequate means to ensure the coordination of all the policies directly or indirectly related to these matters.

In this context, the Spanish Presidency can only be praised for seeking to improve the EU's coordination of its JHA policies with third countries, most notably the United States and Russia. More specifically, JHA will probably play a significant role in the renewal of the Transatlantic Agenda that will presumably be agreed to on the US-EU summit due to take place in May 2010. This would give a renewed boost to the AFSJ generally, providing it with a high degree of visibility while contributing to the internal and external coherence of European action in this area.

The Lisbon Treaty and the Area of Freedom, Security and Justice

Now that doubts surrounding the Lisbon Treaty's implementation have been dispelled, the Trio Presidency (Spain, Belgium and Hungary) – and the Spanish Presidency in particular – will be responsible for setting its institutional innovations in motion. Furthermore, it must also overcome the added difficulty of multiple unresolved issues: the need to avoid decisions capable of hindering the ratification process led to the freezing of all controversial innovations that might have raised objections among those least favourable to a further deepening of European integration.

The Lisbon Treaty introduces a number of significant innovations in the field of Justice and Home Affairs. Firstly, the EU has finally been recognised as an international organisation with its own legal status, an apparently technical novelty that could nevertheless contribute significantly to its credibility as a global actor. Furthermore, the Lisbon Treaty has done away with the existing three-pillar structure, with the result that in the future the entire contents of the Treaty establishing the European Community on AFSJ will be subject to the control of the Court of Justice of the European Communities in Luxembourg. However, the jurisdiction of the Court of Justice and the powers of the Commission to open proceedings for non-compliance against member states will have no direct effect until the expiration of the five-year transitional period applicable once the Lisbon Treaty comes into force.

Second, it can be said that the reasons for furthering the AFSJ have evolved and have effectively been decoupled from the internal market. It could even be argued that the AFSJ has overtaken the internal market in importance, judging by the order in which they are ranked in the list of EU objectives set out in the Treaty (Article 3, Title 1). According to this text, the EU's second major objective (with precedence over the establishment of the internal market) is that "the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime".

Third, under the terms of the Lisbon Treaty, the ordinary legislative procedure will only require a qualified majority in Council and co-decision with the European Parliament for issues such as the right of asylum, border management and control, visas, immigration, and the like. Nevertheless, unanimity will still be necessary for sensitive issues such as passports, identity cards, family law with cross-border implications, and police cooperation.

Fourth, the European Commission has reinforced its role in Justice and Home Affairs, having strengthened its right of initiative and gained the ability to initiate proceedings against member states for non-compliance with European rules, something that was impossible under the framework of the third pillar. This could prove a very significant novelty, which could help to overcome one of the main problems that currently hinder the implementation of measures agreed at the European level but inadequately applied at the national level, thereby undermining their coherence and effectiveness.

Fifth, the aim of the Treaty is to foster cooperation on specific issues between member states, with the possibility of establishing enhanced cooperation as regards police and judicial-penal matters.

Finally, and although this is not an exhaustive listing of the improvements and the novelties introduced in JHA in the Lisbon Treaty, it is important to highlight the creation of a Standing Committee on Internal Security within the Council "in order to ensure that

operational cooperation on internal security is promoted and strengthened within the Union” (Article 71, TEU). Nonetheless, the Treaty still specifically says that “national security remains the sole responsibility of each member state” (Article 4.2 TEU). Another significant institutional novelty will be the creation of the position of European Public Prosecutor, to act under the auspices of Eurojust. Although it is stipulated that he / she is to act in affairs of financial crime, the future prosecutor could have an impact on cases of transnational crime such as international terrorism and drug trafficking as well.

One of the Spanish Presidency’s main challenges will be to implement most of the institutional and political novelties introduced in Lisbon, ranging from the President of the European Council to the new European Public Prosecutor, and to establish the groundwork for the Standing Committee on Internal Security, among other tasks. But it will also have to negotiate the criteria for the Stockholm Programme’s action plan, thereby helping to set the agenda for the next five years on all matters relating to Justice and Home Affairs. Hence, the Spanish Presidency, and subordinately the Trio Presidency, will be of prime importance in establishing the procedures and coordination guidelines for the new EU to arise from the Lisbon Treaty.

The Stockholm Programme’s action plan: an immediate and unavoidable goal for the Trio Presidency

The Stockholm Programme, adopted in December 2009, will set out the Union’s priorities regarding JHA for the next five years. The previous multiannual programmes, adopted at Tampere and The Hague, aimed to provide political direction in an area that had come up against significant resistance from national governments because it impinged on the so-called ‘hard core’ of state sovereignty. For this reason, the Stockholm Programme is expected to follow on from its predecessors, in that it will include all those initiatives that are recognised as fundamental to the EU’s actions but which are carried out by its member states. This in no way implies that the future programme will not include novel initiatives, but rather that in addition to them it must strive to rationalise those that are already in place. In short, it must devise the mechanisms whereby political consensus can be translated into concrete measures that can then be adequately implemented.

The lofty proposals that generate such high expectations among Europe’s citizens come into collision with the fact that their implementation, dependent on each member state, can often be proved difficult, and that numerous obstacles must be overcome before the man in the street can actually perceive the benefits deriving from the mere existence of an AFSJ. For this reason, the Commission and member states like Spain have pressed for a Stockholm Programme whose priorities focus on the citizens’ general interests.

The overall aim of the programme is to make progress in protecting fundamental rights, and to this effect the Spanish Presidency will carry out preparatory work for a swift endorsement

of the European Convention for the Protection of Human Rights. As regards data protection, in the first semester of 2010, efforts will be made to reach the consensus necessary to approve a European Information Management Strategy and thereby establish the international legal basis for the use of personal data.

The Stockholm Programme aims to establish an effective European Area of Justice with the aim of overcoming the current state of fragmentation in this area. It is therefore incumbent on the EU to provide the necessary means to progress in the application of mutual recognition in civil and criminal procedures. More specifically, the Spanish Presidency is analysing a proposal to create a European Investigation Supervision Order while reinforcing the operational efficiency of the existing joint investigation teams.

The Spanish Presidency will also aim to enhance the protection of Europe's citizens by reinforcing the security aspects of the AFSJ. With this in mind, it will seek to define a sustainable European Internal Security Model to give greater coherence and efficiency to the various mechanisms and actors operating in the field, especially as regards the fight against international terrorism. It will also strive to promote operational cooperation in the prevention of crime, especially in assisting victims of gender-based violence, thereby reflecting one of the primary concerns of the Rodríguez Zapatero government.

Another key issue on the European agenda is the consolidation of an immigration and asylum policy based on solidarity between the member states and implemented in close cooperation with third parties, namely the countries of origin and transit. In this respect, both the Stockholm Programme and the Trio Presidency must focus their efforts on the enforcement and evaluation of the European Pact on Immigration and Asylum – a French initiative supported by Spain – that has succeeded in addressing three fundamental issues: the management of legal immigration, the fight against irregular immigration, and the commitment to long-term development processes. At the same time, they must also make progress on the external dimension of this policy, and initiate cooperation with other countries to ensure a comprehensive approach towards an issue that can only be managed from a global perspective. In this respect, one of the Spanish government's priorities will be to deal with the problem of 'unaccompanied immigrant minors', which is of particular concern to the EU's Mediterranean member states. Finally, over the next 18 months the Trio Presidency will have to improve the structures and resources currently available to Frontex.

Looking ahead

Spain's semester will be a 'transitional presidency', since it will have to deal with the implementation of the Lisbon Treaty and the move towards what will hopefully become a stronger and more credible EU, equipped with a better array of instruments with which to face up to the challenges of a highly complex European and international scene.

Spain has traditionally championed a greater EU involvement in Justice and Home Affairs and the consolidation of the AFSJ. While it is true that Madrid's leadership in these matters has, in general terms, declined somewhat over the past few years, they are still very much at the heart of its European ambitions.

We therefore believe that Spain should place JHA firmly at the centre of its programme for the 2010 Presidency. Goals such as the definition of a sustainable Internal Security Strategy and the setting up of a Committee on Internal Security are of prime importance and deserve its full attention during this semester.

Similarly, Spain can contribute to the ultimate objective of reinforcing the AFSJ's external dimension by doing its best to provide fresh content to the renewed Transatlantic agenda.

The other major issue that should figure prominently in the Trio Presidency Programme, given its medium-term objectives, is the consolidation of the EU's immigration policy from a comprehensive perspective, with a special emphasis on the management of external frontiers – a matter of special interest for both Spain and Hungary – that includes strengthening the resources available to Frontex and improving its day-to-day operation. It is equally important to step up the negotiations for signing cooperation agreements with third countries on the subject of migration.

Spain should take full advantage of the double opportunity offered by its six-month presidency in 2010. On the one hand, it will be the last time that the country holding the rotating presidency will be able to shape the EU agenda to this extent, since the appointment of a President of the European Council and a High Representative for Foreign Affairs and Security Policy will inevitably limit the role of national governments in future. On the other, Spain will also have the opportunity to influence the way in which many of the novelties incorporated in the Lisbon Treaty are implemented. As regards JHA, it would be advisable to adopt a stance that focuses on the tangible benefits that the AFSJ can secure for the Union's citizens overall, thereby helping to reduce the opposition of those national governments that still harbour doubts about this crucial dimension of the European project.

MIGRATIONS

Achievements and Challenges towards a European Asylum and Immigration Policy: the Stockholm Programme and Beyond

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Asylum and immigration have become a key policy area both at member states and European level. For the 2009 Stockholm Programme, migration remains a top priority with the aim of establishing “a Europe of responsibility, solidarity and partnership in migration and asylum matters”.

Following on from the 1999 Tampere and the 2005 The Hague Programmes, the Stockholm Programme is set to bring about substantial changes and policy developments. In the area of asylum the Stockholm Programme will entail the leap from minimum standards of harmonisation to the realisation of a Common European Asylum System (CEAS). As regards irregular migration, cooperation with third countries will be further developed to ensure return of those rejected, and increased pre-frontier border control. Lastly, new and more substantive policy developments on legal immigration may lie ahead, as qualified majority voting will finally be introduced in this area.

At the same time, policy-making in this area remains wrought by two inter-linked tensions. In substantive terms, it remains a challenge to strike a balance between ‘security’ and ‘freedom’ in the immigration area. On the one hand, guaranteeing and expanding the rights and freedoms of asylum-seekers and immigrants remains a vested ambition. This is important not only to ensure adherence to fundamental EU principles and international human rights, but also to be able to attract the needed labour migrants that Western countries increasingly compete over. On the other hand, many policy-makers continue to see all aspects of immigration as something primarily connected with threats. Whether it be the challenge to control our borders, the economic risks of uncontrolled immigration or concerns over national or

even European identity, asylum and immigration continue to prompt calls for more restrictive policies.

Closely linked to these concerns is the institutional dilemma of handing over national sovereignty in a policy area such as asylum and immigration. While member states realise that hardly any of the challenges brought about by immigration can be effectively addressed by each country in isolation, the willingness to let go of national prerogatives and independence has been much less visible when actual negotiations begin. Exactly because of the politicised nature of this policy area, EU policies on asylum and immigration have consistently fallen short of declared ambitions. From 1999 until today, negotiations in this area have remained tough, marked by the original third pillar procedures, and advances often delayed and marked by substantial national fingerprints, derogation possibilities and legal ambiguities.

In this light, the current EU framework on asylum and immigration should be considered important achievements. The Stockholm Programme is set to take the existing policies substantially further and attempt to fully 'normalise' and mature this policy area as a matter of EU policy. Yet, the two tensions set out above remain and will continue to structure policy-making in the years to come.

Asylum

With the Stockholm Programme, the EU moves from the current 'minimum standards' towards the establishment of a CEAS by 2012 at the latest. Following its consultation round in 2007, the Commission has thus already tabled proposals to revise all the major legal instruments.

With the new proposals the hope is to end what the critics have named the 'asylum lottery'. Wide discrepancies continue to exist among the member states as regards who is granted protection and how they are treated. To counter this, the Stockholm Programme aims to introduce both better procedural guarantees based on 'higher standards' and compulsory training modules and regular evaluations for all national asylum authorities.

At the same time, the second phase legislation will have to do away with the substantial number of discretionary rules allowing member states to depart from the current procedural safeguards in the asylum procedures and rights afforded to those granted protection. Arguably, the European Court of Justice and the European Court of Human Rights have already gone some way to set limits for restrictive national interpretations.

The European Asylum Support Office is another important innovation. Its mandate is set to include monitoring functions, training activities and coordination of practical cooperation

among member state asylum officers. As such, the hope is that the new EU agency will help address the current gap between the legislative framework and its practical implementation in each member state. But the proposal has already met resistance and attempts to limit its mandate by several countries, concerned that an institutional watchdog in this area might prove a bother rather than a boon.

From a more critical perspective the Stockholm Programme still has a number of shortcomings. An important gap concerns the growing number of persons that have been denied refugee and subsidiary protection, yet due to the situation in their country of origin cannot be removed. Perhaps most problematic, the Stockholm Programme does not provide any solid solution to the fundamental problem of solidarity among the member states. The revision of the Dublin Regulation contains only minor adjustments, and the Mediterranean and Eastern member states are thus obliged to continue to process the majority of asylum cases arriving at their borders.

Some of these countries are also those most behind in the implementation of the asylum *acquis*; the Commission has already brought several infringement proceedings and more may be under way. Ensuring compliance under new and strengthened directives is likely to become even more difficult as long as these countries can rightly claim that the same EU rules place a disproportionate and unrealistic burden upon them. The financial burden-sharing under the European Refugee Fund has so far had limited success. A more important step will be taken if an intra-EU resettlement scheme is eventually realised. Yet, the Stockholm Programme remains cautious in this respect, and such a scheme will be crucially dependent on the ongoing willingness of member states to relieve those countries facing the largest caseloads.

Irregular migration and border control

In the area of irregular migration and management of the external borders, the Stockholm programme is clearly influenced by the Immigration Pact introduced in 2008 by the French Presidency. Emphasis is placed on tougher penalties for those facilitating irregular immigration, be it human smugglers and traffickers or employers of illegal migrants in the EU. Secondly, ensuring the return of illegal migrants is set to become the challenge *par excellence*. Following the adoption of the much debated Return Directive last year, the legal framework is now largely in place, which means that practical cooperation and readmission agreements with third countries will be the main priority for the coming years.

The entire approach to ensuring readmission agreements seems likely to change. So far common EU readmission agreements have mainly been signed with prospective member states, a number of Eastern and South Eastern European countries in exchange for visa facilitation agreements and a few less important countries from an EU immigration perspective.

The critical transit and origin countries to the south have so far resisted signing EU readmission agreements, probably because they would thereby play their most important negotiation card once and for all. The Stockholm Programme asks for an evaluation of the current approach to readmission agreements by 2010 and puts new emphasis on pursuing more flexible and temporary readmission agreements, either through bilateral arrangements or as part of the new Mobility Partnerships.

As regards management of the external borders, the Stockholm Programme focuses on increasing surveillance, expanding the role of Frontex and cooperation with third countries. EUROSUR, a European system for sharing surveillance data relating to border crossings, is under development and should be in place by 2013. In addition, the next few years will see the roll-out of the Visa Information System and the revised Schengen Information System. On top of this, the Stockholm Programme calls for new proposals to set up an entry-exit system to record data from all travellers to and from the Schengen area, which is to become operational by 2015. If successful, such a system may play an important role in curbing the largest group of irregular immigrants in the EU, namely those who enter legally but subsequently overstay their visas. On the other hand, the proposal has already been widely criticised for both clashing with EU data protection laws and providing disproportionate obstacles to travellers. In addition, one might fear that the use of such a system with regard to overstaying migrants might see national authorities engage in large-scale biometric checks of migrant populations.

The EU's border agency, Frontex, is set to become even more important. The Stockholm Programme calls for an enhancement of Frontex's role in providing common analysis and coordinating operational activities, such as joint border patrols and return flights. It also calls for a clarification of Frontex's mandate. At present Frontex is limited in its possibilities for engaging in cooperation with third countries. It thus seems likely that Frontex will eventually have its mandate extended to allow it to carry out technical assistance projects and migration control operations in third countries.

This links to a more general emphasis on cooperation with third countries. The external dimension of EU's immigration policy has already expanded rapidly since its introduction in the Tampere Programme. Agreements to combat irregular migration and ensure readmission are now an integrated part of EU's external relations framework. Several transit countries thus aid the prosecution of human smugglers and carry out border control of irregular migrants heading towards Europe. At the same time bilateral and EU cooperation have facilitated Frontex-coordinated operations to intercept migrants within foreign territorial waters. The Lisbon Treaty offers new possibilities for concluding international agreements and negotiating with third countries, and the Stockholm Programme thus calls for the High Representative of the Union for Foreign Affairs and Security Policy and the European External Actions Service to ensure that policy priorities in the field of migration and border security are fully integrated in the EU's foreign policy.

A particular problem of this ‘externalisation’ of EU border control concerns its relationship with asylum. In a policy paper that elsewhere places great emphasis on ensuring ‘the right to asylum’ and a European asylum system in full accordance with international law, the lack of attention to access to asylum as part of the EU’s integrated border management is striking. As the borders of the Union have effectively moved outwards, the possibility of launching an asylum claim with an EU member state has so far stayed at home. The result not only highlights the European hypocrisy in this area. It has also prompted many traditional transit countries, now increasingly destination countries, to replicate similar mechanisms to shift asylum responsibilities further away despite calls and EU funding to improve refugee protection capacity in these countries.

Legal economic migration

One of the Stockholm Programme’s main objectives is to develop a common policy on legal migration. The ambition includes the development of a more flexible immigration policy that standardises visa policy and admission procedures and is easily adaptable to fluctuations in labour demands.

The first challenge in this regard will be to expand the focus to increasing the access of semi and low skilled workers to the EU. Up until now, achievements have focused on highly skilled labour immigration. Nonetheless, the EU still lacks far behind in the competition among other Western countries. At present only 5% of highly skilled emigrants from Africa move towards the EU, while almost 90% go to North America. A better regulatory framework for semi and low-skilled labour migrants would, however, bring important benefits to EU productive industries like agriculture, construction, and the service economy. At the same time, more ambitious and concrete policies in this area may help combat the informal economy in these sectors (which in many member states thrive on irregular migration), and thereby reduce illegality and its attendant problems for migrants.

A second challenge concerns the need to establish increased dialogue and partnership with countries of origin and transit outside the Union. The Stockholm Programme points to the necessity of integrating social, economic and trade policies into a comprehensive approach, but it arguably fails to properly incorporate the relevant elements of external relations, and to address the functioning of Europe’s employment market for migrants and social affairs.

The third challenge will be to narrow the wide gap between rules and policies approved at European level and their implementation at national level. The integration of Union and national policies on immigration has hitherto proved slow and laborious. The individual member states still decide how and to what extent they wish to set up labour importing schemes and engage in partnerships with developing countries. Methods and progress vary greatly between countries, and much recruitment is employer based and left to private

national actors. In this respect the Lisbon Treaty continues to defer the crucial question of deciding how many third country nationals may gain access to individual member states' territory to seek employment or set up businesses. Given the large differences in labour deficiencies between the member states, it will be crucial to find a way to further the process, which is both coherent with the extended Schengen Agreement and respectful of the differences in national labour requirements.

Finally, migration not only introduces new workers into a labour force but also new people into societies. The Stockholm Programme incorporates a common approach to integration that may benefit all parties and the introduction of an immigration code that grants legal immigrants a clear and uniform status in all member states. This is laudable and much needed. Yet, given the economic, social and cultural divergences between the member states, implementing common policies in the domestic arena is likely to remain a challenge.

Conclusions

Asylum and immigration is and should be one of the top priorities for the Stockholm Programme. Besides the political difficulties of developing a European migration policy, emphasis needs to be put on the efficiency of current and future policies and striking a balance between concerns over immigration challenges and ensuring freedom and the protection of human rights.

In particular, we recommend that the Trio Presidency from January 2010 to June 2011 consisting of Spain, Belgium and Hungary should strive to:

- Adopt both an intra-EU and external refugee resettlement programme that is binding and effective. This will be crucial both to alleviate the unfair distribution of protection burdens brought about by the Dublin system and to show solidarity with third countries.
- Ensure that cooperation with third countries on irregular migration and implementation of pre-frontier border controls does not undermine access to asylum and other human rights obligations.
- Expand policies in the field of legal migration to include semi and unskilled workers and de-link cooperation with third countries from efforts to combat irregular migration.
- Engage more thoroughly in the broader debate about how migrants' social integration, or the lack thereof, influences the development of European societies.

MIGRATIONS

Migration Policy-making under the Stockholm Programme and the Lisbon Treaty: Getting back to the Serious Business of Governing?

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It is a myth long peddled by supporters of the Lisbon Treaty: with ratification of the Treaty complete, political leaders will finally be able to place a full stop after the question of institutional issues and “return to the serious business of governing”. We can apparently look forward to some serious politico-strategic thinking about the big issues – not least immigration policy in times of economic crisis.

The myth is a particularly mendacious one for two reasons:

Firstly, by increasing the clout of the European Parliament, giving national parliaments new powers to scrutinise policy and recognising the European Council as an institution with a semi-permanent President, the Treaty actually looks set to sharpen existing tensions between the EU’s institutions, at least in the short to medium-term.

Secondly, uncertainty about the EU’s institutional architecture has not been the sole, or even the main, reason for the focus on inward-looking, inter-institutional issues. More generally, there has been a marked loss of appetite for far-sighted – potentially divisive – political thinking, especially following the negative referendums in France and the Netherlands as well as enlargement.

In immigration and asylum policy the formulation of the Stockholm Programme has provided an opportunity to overcome the gulf between excitable public expectations and mundane European realities. It has marked a chance to set out a politico-strategic agenda sufficiently ambitious to ensure that the Lisbon Treaty’s institutional blueprint for justice and home affairs (JHA) is put to good use.

But the document adopted in December 2009 lacks the two core elements necessary to reinvigorate policy-making: a political rationale for cooperation and a concomitant horse-trading package defusing foreseeable tensions between the member states.

The likely deficits in the Programme place a heavy onus on the current Trio Presidency. Without a lasting political settlement for migration policy in place, the usual inter-institutional squabbling will ensue. In asylum and immigration policy, this wrangling has in the past entailed a concerted attempt to disrupt and even reverse the progress of European legislation by recalcitrant national ministries, sub-standard communication with EU citizens and a lack of coherence both within migration policy and between migration policy and ‘neighbouring’ policy areas.

Against this background the paper suggests means for the current Trio Presidency to overcome a trend towards the re-nationalisation of policy-making, to enhance the public legitimacy of policy and to improve links between EU policies.

The backdrop: despite an incipient economic crisis...

The economic crisis, which will increasingly define migration flows over the coming years, is already making itself felt. Receiving countries are experiencing a slowdown in labour immigration, whilst sending countries are confronted with increasing re-migration. And many migrants – especially low-qualified and irregular immigrants – are being forced to make tough choices between staying in the host countries under deteriorating conditions or returning home only to be met by even worse situations. Even if firm comparative data and in-depth assessments of the impact of the economic downturn on migration are still lacking, it can be expected that in the wake of the current crisis international labour migration will decline further.

Nevertheless, it is not at all certain that such a reduction of global labour migration would be large-scale or permanent. For decades, all industrialised countries have noticed a structural and increasing demand of foreign labour. Challenged by growing global competition and unfavourable demographic trends, many industrialised countries have become aware that labour migration is of critical importance for their future competitiveness and wealth. According to UN surveys, in 2007 13% of industrialised countries intended to increase the numbers of temporary immigrants, and 44% planned to increase the immigration of highly skilled workers.

Even before the crisis many European governments had already begun to review their migration policies and to develop new migration strategies. They introduced new instruments and institutional settings for a more comprehensive, although more selective, migration approach including shortage lists, quotas and caps, and new cooperation schemes

with sending countries. Competition between industrialised countries – especially between Europe and North America – has intensified, especially as regards efforts to fill future labour market shortages and attract highly skilled migrants.

European countries began introducing new human-capital-oriented immigration schemes and new options to allow foreign students to stay in the country (United-Kingdom). The definition of ‘skilled’ was extended (France, Norway), and the options for employer-driven labour migration were expanded (Sweden). Since a rising demand for highly skilled labour usually leads also to an increasing need for unskilled and low-skilled labour, some countries also opened new channels for these migrants to enter (Spain, Italy, Greece, Portugal), while other countries have encouraged ‘incidental’ migration (promoting working holidays, student jobs, etc.) or introduced new seasonal migration programs (Spain). In addition, most of the ‘old’ EU countries finally opened their labour markets to migrants from the new member states, which in many cases filled unskilled and low-skilled positions.

Now, due to the recession, governments have started to postpone these reforms. In particular, they have become more reluctant to admit labour migrants in sectors with uncertain economic perspectives. It can be expected that some governments will revise national shortage lists and remove occupations from these lists, reduce caps, quotas, and other quantitative migration targets, introduce new return policies, and generally further adjust to a more demand-driven migration policy to support their ongoing struggle with irregular migration.

Such restrictive migration policies are increasingly considered a legitimate means of ‘protecting’ national labour markets. Faced with a long-term, structural demand for labour migration, therefore, the Lisbon Treaty should – in theory – provide the means for the member states to overcome immediate political pressures for restriction and exploit the benefits of common action.

More inter-institutional wrangling...

The institutional changes made to EU JHA policy-making count amongst the most far-reaching of the Lisbon Treaty’s innovations. The intergovernmental traits of policy-making, including in the question of labour migration, will be thoroughly diluted. Yet, this will not automatically facilitate policy-making, and the institutional changes imposed by the Treaty may actually induce sclerosis rather than alleviating it.

For one thing, the Treaty gives the Commission new clout in the policing of policy implementation in former third pillar issues. This is a far cry from the current situation where decisions have actually been facilitated by member states’ expectation of never having to realise these common commitments. Should the Commission take its new policing role seriously, therefore,

decision-taking in Council will probably prove rather more laborious, as member states give more thought to the implications of their signatures – something which will have an impact on the speed of decision-making across the range of home affairs.

Lisbon's shift to qualified majority in Council on issues like police cooperation will do little to speed such decisions or move them beyond a lowest common denominator. After all, the member states tend to take decisions according to the consensus principle even when unanimity is no longer the rule. Even if the Commission adopts a more 'conciliatory' line to policing implementation and proposes the re-evaluation and re-negotiation of policies that have been poorly implemented rather than instituting proceedings, this will do little for the dynamism of the policy area. It will simply see old compromises unravel.

The European Parliament's influence in migration policy is boosted in two significant ways: firstly, the Parliament's new powers of co-decision in the former third pillar will have an impact on its clout over migration. In the past, MEPs have frequently engaged in 'issue-linkages': they made their approval of the migration proposals over which the Parliament enjoys rights of co-decision conditional upon the member states in Council taking account of their will in the largely intergovernmental third pillar. Under the Lisbon Treaty, the third pillar will collapse, and the Parliament will no longer have to dilute its influence over asylum and illegal immigration in this way. Secondly, and more simply, the Parliament receives more powers over questions of legal migration. Add to this potent mix a third factor – the powers afforded to national parliaments by the Treaty – and the spectre of 'legislative-executive' tension so familiar at the national level could become further entrenched at the European one.

The Treaty also looks set to exacerbate tensions between the member states. The Treaty formalises the European Council's role in setting the strategic guidelines for this area of policy. Small member states have often objected to the policy-planning role of the European Council, arguing that the European Commission – where parity between large and small member states is more robustly safeguarded – should take the lead.

And an inward-looking political programme

This situation clearly increases the pressure for politico-strategic thinking to replace inter-institutional wrangling. With the potential for inter-institutional deadlock unleashed by the new Treaty, moreover, it would also help if the tensions within the Council at least were defused at an early stage.

With the elaboration of the European Council's Stockholm Programme, the EU has had a plum opportunity to fulfil both tasks – setting politico-strategic guidelines and forging the concomitant political horse-trades between the member states.

Yet, the Programme makes a serious, if incomplete, bid to set out five years worth of proposals in advance without setting out either a political rationale or underpinning it with a serious compromise package. The Programme resembles much less the kind of political programme to be expected from the European Council than the technical Action Plan due to follow it up.

The relative absence of analysis of upcoming migration problems suggests that the Programme's misplaced bid for clairvoyance will follow its own logic. And that logic is one of entrenched institutional interests, played out in a long and laborious drafting process of future groups, migration pacts, Commission evaluations and 'non-papers'. This is a tug-of-war in which no political actor wishes to be identified as the winner for fear of jeopardising the semantic nuances they have succeeded in inserting into the text.

Without the mobilising force of a political rationale, however, or the credibility that derives from its authors standing by their prescriptions, the Programme's guidelines will likely fall prey to these same inter-institutional pressures.

The task for the Trio: finding a political rationale for policy

The challenges of the Lisbon Treaty and the deficits in the Stockholm Programme mean that the agenda for immigration and asylum policy will remain contested over the coming years, and key political conflicts that could have been settled will live on. The onus on the current Trio Presidency is clear.

Yet, the circumstances for the Trio seem hardly propitious. cursory analysis suggests the three will struggle to remedy the situation. After all, the influence of the member state presidency in the European Council diminishes with the establishment of the semi-permanent president, just as that body's role in agenda-setting receives a boost.

In other respects, however, the three governments have considerable advantages: between them, they incorporate the major political fault-lines in immigration and asylum policy – big member states versus small; southern versus eastern states; resource-rich versus resource-poor states; 'land-locked' states versus states on the external borders of the EU.

Their 'personification' of these political conflict lines presents the Trio with an excellent opportunity to resolve points of tension in the Stockholm Programme from the mutual recognition of asylum grants (land-locked / external), to the geographical focus of the external dimension (eastern / southern), from the powers of Frontex and the European asylum support office (large / small) to the financing of integration policy or the sharing of data on countries of origin (resource rich / poor).

However, they can only go about achieving political consensus on these disparate issues if they identify a common politico-strategic rationale for European JHA cooperation under their aegis. And this is perhaps the more intractable issue: how can they imbue the prescriptions in the Stockholm Programme with a political rationale?

Three competing political strands are visible in European JHA. In the 1980s, cooperation was driven by a liberal vision – the notion of a border-free Europe. The realisation of this agenda still counts as one of the defining achievements of European integration. A rights-based agenda has, by contrast, been identified in the cosmopolitanism of the Tampere Programme, where the interests of immigrants, asylum-seekers and third countries were afforded unexpected prominence. A more security-centric agenda was apparent in the emphasis placed on law and order by the Hague Programme, crystallising under the banner “a Europe that protects”.

The original liberal agenda not only boasts a legitimacy that reaches beyond the current political make-up of the European institutions, it also chimes with efforts to attract labour migration to the EU – something which is shaping up to be the defining political challenge of the next phase of cooperation.

Many elements conducive to such an agenda are actually contained in the Stockholm Programme, albeit without being tied to a clear rationale or compromise package.

Most obviously, there is mention of the principle of free movement – the original liberal goal of European cooperation in this area. This principle could usefully receive proper reaffirmation *vis-à-vis* labour migration from new member states. It could also be strengthened for third country nationals as a means of attracting certain kinds of labour to the EU – an aspiration which the Union has pursued and foundered upon in the past.

The Programme’s focus on the evaluation and review of existing measures also lends itself to a liberalising agenda that takes a critical eye to intrusive interventions in society and the economy. Too often, such intrusions unnecessarily disrupt the passage of labour migration to the EU, even pushing migrants into ‘grey’ situations in the name of combating irregular migration.

The Programme’s sympathy for economic and societal actors to become involved in policy-making is also to be welcomed. One useful suggestion made by the Commission has, however, been omitted – a platform in which social and economic actors could discuss ways of injecting dynamism into the regulation of migration.

The Programme’s openness towards palliative solutions to migration control is perhaps the final key element in a liberalising approach that requires a shift away from more traditional – and reactive – checks and controls. Sadly, various key proposals have gone missing as

negotiations have progressed. The Commission's proposal for a study on the long-term need for labour migration has disappeared. Meanwhile, the notion of a 'comprehensive' approach to migration has lost importance. It is precisely by comprehensively joining up the various elements of migration regulation – from the Union's increased competency to ensure proper recognition of migrants' qualifications and their social integration, to the full use of the EU's new foreign policy structures to offset brain drain, foster circular migration and reduce the push factors of migration – in a long-term perspective that Union action can make a valid contribution to the member states' migration goals.

In short, by joining the liberal dots and forging a comprehensive horse-trade in its wake, the Trio has the potential to turn the building blocks of the Stockholm Programme into a meaningful political and strategic settlement.

MIGRATIONS

Strengthening EU Borders at the Expense of the Fundamental Right to Asylum? The Externalisation of EU's Asylum Policy

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The EU's Area of Freedom, Security and Justice (AFSJ) is at the crossroads. The next Multi-annual programme on "An open and secure Europe serving the citizen" (the Stockholm Programme) – which outlines the EU's political priorities to guide EU policy between 2010-2015 on issues such as asylum and borders – has been adopted by the Council on 10-11 December. It has placed the construction of a 'Europe of asylum' and the commitment to further develop the Common European Asylum System (CEAS) amongst its key priorities, while at the same time moving ahead with the implementation of the integrated management of EU's common external borders. During the last five years the EU has often asserted that "the strengthening of European border controls should not prevent access to protection systems by those people entitled to benefit from them". Nevertheless, the progressive development of EU's border management strategy has created a difficult relationship between the respect of international human rights obligations and the control-oriented logic pursued by the EU along its common external border. On the basis of Article 33.1 of the UN Refugee Convention of 1951 and Article 3.1 of the UN Convention against Torture – the latter consolidated by the European Court of Justice (ECJ) case law and incorporated in Article 19.2 of the EU Charter of Fundamental Rights – member states are obliged to accept and examine applications for international protection at their borders.

The Europeanisation of border control related policies launched by the Schengen Agreement has nonetheless justified the implementation of certain external border policies, mainly targeted at preventing irregular migration and which disregards 'the mixed nature' of human flows taking place on the edge of the EU. Notwithstanding the progressive emergence of a CEAS, the EU border management strategy has prompted a securitisation and externalisation of the asylum procedures at the expense of member states' human rights engagements.

1. This contribution has been carried out under the supervision of Prof. Elspeth Guild and Dr. Sergio Carrera. The author would like to express her gratitude for their comments.

The legislative proposals currently under discussion in this field and the relevant measures of the Stockholm Programme, such as the Asylum Support Office, seem unlikely to resolve this dilemma which puts EU's fundamental rights obligations at stake.

Asylum and border controls in Europe

The establishment of a European Agency for the Management of Operational Cooperation at the External Borders of the member states of the EU (Frontex) was the first institutional initiative formalising the call made by the second multi-annual programme on an AFSJ – the 2004 Hague Programme – for an Integrated Border Management (IBM) Strategy in the EU. Frontex's main tasks consist in coordinating operational cooperation of the common EU external border, while the main responsibility and equipment for managing the external borders remain entrusted to member states. The formalisation of IBM was subsequently reinforced by the adoption of the Schengen Borders Code (SBC) which now regulates in a uniform legal layout the crossing by any individual of the internal and the external borders of the EU. While the SBC contains human rights obligations – such as the principle of 'non-refoulement', the right to non discrimination, the right to be treated with dignity, the right to be informed of the reason for refusal by a substantiated decision and the right to appeal such decisions – these are not explicitly binding for Frontex as the SBC was adopted after the establishment of the agency. Furthermore, notwithstanding the theoretical application of these administrative guarantees at all borders of the EU, the fact that their enforcement sometimes takes place at the boundaries of (and even outside) the Schengen area, undermines the possibilities for scrutinising the ways in which border controls actually take place in Europe.

The Europeanisation of external border control policies does not relieve member states from their international obligations and more particularly from the principle of 'non-refoulement', whereby, member states are obliged to accept and examine applications for international protection at the EU border. The first multi-annual programme on an AFSJ – the 1999 Tampere Programme – provided that the CEAS would be "based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution". The first steps in the development of the CEAS consisted in the establishment of the Dublin system, which provided that asylum seekers would have their claim examined in the first European country of arrival. The subsequent asylum measures which were proposed, described common procedures and rights. Nevertheless, their nature as minimal legislative standards – prompted by the reluctance of certain member states towards a Europeanisation of this right – has resulted in uneven results across the Union. The Dublin logic basically implies that a member state which lets a potential asylum seeker enter its territory is then obliged to examine his / her claim for protection in the absence of other linking criteria. Logically, another consequence of the Dublin system has been to concentrate asylum claims at the external borders of the EU – especially those close to geographical areas where tensions

exist. In particular, since the establishment of the system, the Mediterranean border of the EU has seen a significant rise in arrivals, including high proportions of asylum seekers.

In 2008, two thirds of Frontex operational budget were allocated to joint operations in the Mediterranean. Its activities are mainly concentrated in this region, which has been constantly considered to be a priority area for the EU from the perspective of border controls. Based upon bilateral agreements concluded between EU member states and third countries (which all too often remain non-public and therefore not subject to proper parliamentary scrutiny), enforcement operations for detecting and arresting boats prior to their arrival (pre-border control) in European waters are conducted under the coordination of Frontex. For instance, according to Frontex figures, during 2008 the ‘Hera operation’ enabled the diversion of 5,596 migrants back to the African coasts in collaboration with Mauritanian and Senegalese officers who took responsibility for their ‘refoulement’. These preventive border control processes have relocated the management of human mobility beyond the external borders of the EU without due account of the fact that, as highlighted by the United Nations High Commissioner for Refugees (UNHCR), asylum seekers may be on board such small ships. This is indicative of the increasingly important external dimension of the EU’s border policies in the context of the so-called EU global approach to migration, which calls for responding to irregular immigration through enhanced cooperation with third countries. The compatibility of the EU external border management strategy with the upholding of the right to asylum in the EU is thus jeopardised – because of the non-transparent ways in which Frontex operates, because of the lack of democratic accountability of the bilateral agreements upon which joint-operations are taking place, and due to the human rights tensions emerging as a consequence of pre-border surveillance measures.

Human rights implications of the increase in controls at EU’s external borders

In spite of the open questions in relation to the ways in which the control of common EU external borders is taking place, no substantial modification to the way Frontex operates has yet taken place. In the Stockholm Programme, the European Council asked the Commission to put forward proposals in early 2010 in order “to clarify the mandate and enhance the role of Frontex,[...] elements of these proposals could contain preparation of clear common operational procedures containing clear rules of engagement for joint operations at sea, with due regard to ensuring protection for those in need who travel in mixed flows, in accordance with international law”. The clarification of the mandate from this perspective would be indeed most welcome. However, the enhancement of its ‘border control’-related powers together with the increase of its financial and operational resources (to include regular chartering of joint return flights) continue being the main political priorities.

Indeed, in February 2008, the European Commission submitted a ‘border package’ presenting the future developments in border management in the European Union. The Communication

aimed to give substance to the “comprehensive vision for an integrated European border management system” and consisted of three specific proposals for new (large-scale) computerised databases, as well as two documents proposing substantial modifications to Frontex competences. In particular, the Commission proposed the implementation of pilot projects (which usually precede further joint operations) with non-EU countries previously identified as problematic through the joint operations and risk analysis carried out by Frontex. A new satellite-based border surveillance system, EUROSUR, would enable member states to be fully aware of the situation at their borders and beyond. It would be managed by Frontex which would become a border-management situation center so as to “increase the reaction capability of law enforcement authorities” in particular for monitoring all movements at the external border. The implementation of the border package has been confirmed by the Stockholm Programme.

In the meantime, the situation at the southern maritime border has over the past year increasingly come under the spotlight, something which has led to an increase in calls for European solidarity. In fact, the unilateral responses by some member states to human flows tensions prompted the French delegation to submit a discussion paper within the Council in order to further develop Frontex capacities. The French political desire to “enhance member states’ joint maritime operations and find innovative solutions for access to asylum procedures” emerged as a reaction to a succession of tragic deaths which took place in the Mediterranean Sea over the summer 2009 culminating on 20 August 2009 with the disembarking of only five out of 78 potential refugees from Eritrea in Italy. While they had already been spotted by other boats, none had provided the necessary help for fear of sanctions for contributing to the irregular entry of migrants. In May 2009, the Italians had already been singled out by the UNHCR, for escorting a boat full of migrants back to Libya, a country which has not ratified the Geneva Convention and where human rights violations are often reported by human rights NGOs. The Italians justified their actions on the basis of an agreement concluded with Libya which they argued was necessary for safeguarding their own security as the EU had so far failed to address the critical situation they were facing and which the EU had itself created. The lack of willingness by Malta and Italy to take responsibility over those migrants blocked by Frontex in the Mediterranean Sea has thus led to them entering bilateral agreements with third countries to ensure that the migrants’ journey is stopped at an ever earlier stage (and thus before entering EU’s territory).

The French paper aimed at further strengthening practical cooperation with neighbouring countries (in particular Turkey and Libya) for monitoring the EU’s external borders. Frontex activities could evolve to intervene as early as the coastal state of departure, off-shore and just before reaching the coast of destination, to ensure migrants are unable to disembark. Looking at the practical implications of such an initiative, this would imply modifying Frontex rules of procedures as well as increasing its financial means. From the perspective of potential refugees, this means that access by sea to European territory will be prevented, thus jeopardising the possibility to file an asylum application. It is striking to see the way in which this

is fully acknowledged by the French delegation: the third part of the proposal is dedicated to ‘innovative solutions concerning asylum,’ which involve ensuring that migrants have access to the procedure outside the EU. The French initiative seems to disregard the fact that a few days earlier, the European Commission had proposed paths for the reallocation and resettlement of refugees to relieve member states along the external border. While these demonstrate the desire to re-examine the CEAS, ‘the burden-sharing rhetoric’ that has been used further moves away from a humanitarian tradition towards considering the granting of asylum as a chore requiring financial compensation. This, together with the voluntary dimension of such a scheme, further undermines the binding nature of the obligation to grant asylum (as enshrined by the EU Charter of Fundamental Rights).

Policy recommendations for the next phase of the AFSJ

The processes described above are taking shape in two different policy fields of the AFSJ – borders and asylum – but they are so closely intertwined that developments in one should necessarily take into account their implications over the other. While the Stockholm Programme and the Council Conclusions of October 2009 suggest rules of engagement for Frontex joint operations at sea “with due regard to ensuring protection for those in need”, the increasing securitisation of the European external borders is already having severe consequences in terms of European respect for the principle of asylum. This Human Rights Principle, to which all member states have in the past committed themselves, has progressively lost its sacrosanct nature and is now considered to be the subject of abuse as well as a barrier or threat to internal security.

It is therefore recommended for the next phase of the EU’s AFSJ:

- An EU border and migration monitor should be created to ensure that EU border controls, wherever they take place, are consistent with EU law (the Schengen Border Code) and the Charter of Fundamental Rights – in particular its Article 18 on the right to asylum and Article 21 on the prohibition of discrimination. Its activities could comprise overseeing the respect by member states of the provisions contained in the returns directive.
- Before expanding its capacities and competences, Frontex activities must be subject to an objective and impartial evaluation as well as to the principles of transparency and democratic accountability, in particular when its border control activities take place outside the EU.
- Collaboration between the EU and third countries should be transparently developed with clear guarantees for human rights and in particular with commitments to guarantee the fundamental right to asylum.
- Member states and countries wishing to join the EU need to guarantee their capacity to ensure respect for the fundamental rights of all migrants in all circumstances, including in detention centres, and to guarantee the conditions for full compliance with fundamental rights obligations.

INTERNAL SECURITY AND JUDICIAL COOPERATION

The EU and Counter-terrorism: Next Steps

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Several years after bombs claimed over 250 lives in London and Madrid, Europeans still face risks from terrorism. Recent events in Afghanistan, India and Pakistan have served as a reminder to western governments and their allies that Islamist terror cells remain active worldwide and continue to plot attacks at home and abroad. The growing strength of jihadist cells in North Africa, close to the EU's borders, as well as in Yemen and the Horn of Africa, causes concern. And the United States still views the EU's passport-free Schengen area as a potential haven for militants planning new attacks against America.

The EU has no direct role in ensuring the internal security of its member states. Its institutions are not actively engaged in the day-to-day business of preventing terrorist attacks: their chief contribution is to ensure that the legal and practical structures for counter-terrorism cooperation are robust and effective. Terrorism is one of the main priorities of the G6, an internal security vanguard made up of the interior ministries of Britain, France, Germany, Italy, Poland and Spain. Almost all these countries feel threatened by terrorism and have elaborate national counter-terror systems. That means they have agencies and resources specifically dedicated to gathering counter-terrorism intelligence; can respond rapidly in the event of a terrorist attack to protect civilians and infrastructure; and, to some degree, have integrated counter-terrorism priorities into their foreign policies.

Amongst the other EU countries, Denmark and the Netherlands also feel threatened and have similar security set-ups as regards terrorism. But the rest of the member states have less developed counter-terror capabilities and rely on normal law enforcement and intelligence-gathering. Thus, a central purpose of the EU's work on counter-terrorism is to help protect those member countries which feel threatened, by raising the internal security standards of all. The EU did agree on a common strategy in 2005 in which the member states categorised their common counter-terrorism efforts under the headings 'prevent', 'protect', 'pursue' and 'respond'. But the strategy was mostly intended to show how the EU's existing responsibilities were relevant to national counter-terrorism efforts, both before (prevent and protect) and after (pursue and respond) an attack. These objectives include

regulating to protect civilian infrastructure and secure hazardous materials, helping to fight cross-border crime, improving border security and trying to speak with one voice in foreign policy.

Since 2001, EU interior ministers have harmonised the definition of terrorism (essential for police to pursue terrorists across borders), as well as making it a crime across Europe to recruit or train terrorists. Agreed in the aftermath of 11th September, a ‘European arrest warrant’ has dramatically accelerated and simplified the extradition of suspects between member states, as seen in some high-profile terrorism cases. Experts from the EU’s Joint Situation Centre (SitCen) – a body composed of national intelligence experts seconded to Brussels – brief EU policy-makers about the latest terrorist trends and risks on an ongoing basis.

Modern states no longer control communications or utilities, such as power and water in the way they once did. Therefore private sector cooperation is indispensable to cope with modern security threats. Businesses may find it unpalatable and expensive, but counter-terrorism regulations can make people safer by reducing the opportunities for terrorists to develop low-tech weapons or to target travellers and tourists. The main goal for EU countries is to make the single market as ‘terrorism-proof’ as possible. That includes agreeing European legislation to track and control the movement of explosive substances like ammonium nitrate (the principal substance used in numerous terrorist bombings); setting down common safety requirements for airports and other transport hubs; and attempting to ensure that privately-owned infrastructure can withstand foreseeable emergencies.

Terrorist cells need considerable sums to maintain their organisations long enough to plan and carry out serious attacks, and to recruit and radicalise others. Contrary to popular belief, substantial amounts of terrorist funding still go through the formal banking system. Consequently, EU money-laundering laws require private sector workers, such as bankers, lawyers and accountants, to file reports about suspicious activity to the local authorities whenever they suspect terrorist groups may be moving funds. EU interior ministry officials also maintain two terrorism blacklists, updated every six months. One list incorporates Al-Qaeda and Taliban members already blacklisted by the UN Security Council, and another deals with other terrorist organisations from Europe, the Middle East, Latin America and Asia. Individuals and groups on these lists have had their bank accounts frozen and their travel rights suspended (however, the way groups are added to or deleted from these lists has provoked controversy).

Traditional foreign policy seems absent from European counter-terror efforts. For example, the EU has neither the capabilities nor the political will to deploy a military mission in support of counter-terrorism objectives, unlike NATO in Afghanistan. Partly, this is because the EU’s clout in hard power is even weaker than in internal security. But more fundamentally,

terrorism is a difficult subject for EU foreign ministers because of the deep divisions between European countries over the Iraq war, and the war on terror more generally. Controversies over the extraordinary rendition of terrorist suspects, ‘targeted’ killings of suspected Al-Qaeda operatives and abuses at the Abu Ghraib prison and Guantánamo detention camp ensured that collective EU efforts remained low-key and limited in scope.

The United States has moved away from the ‘global war on terror’ concept to a more multi-lateral approach, emphasising a return to the conventions of international law and engagement with key partners such as the EU, United Nations and mainstream Muslim forces. President Obama’s decision to close the Guantánamo Bay detention centre represents a huge opportunity for the EU to deepen security cooperation with the United States in the coming years. The EU and United States should agree on a joint strategy on internal security in areas where they have shared concerns arising from terrorism, organised crime and unmanaged migration. The strategy could be agreed at an EU-US summit expected under Spain’s EU Presidency in 2010. The part of the strategy that deals with counter-terrorism should include cooperation on threat assessment; and better cooperation between the FBI and Europol, as well as between the CIA and SitCen. The accord would also incorporate current EU-US efforts to forge agreements on the sharing of passenger information, data protection and the monitoring of international financial transactions. More broadly, the main point of the strategy should be to agree on joint foreign policy priorities where these are linked to the threat of terrorism.

Pakistan must be at the forefront of these priorities. The fluctuating political and security situation there is a constant source of concern for western policy-makers. Al-Qaeda and a resurgent Taliban both have sanctuaries in Pakistan’s tribal borderlands. The country is simultaneously facing open warfare with the Taliban in its ‘federally administered tribal areas’, and other Islamist extremists who have carried out a number of major attacks in urban areas. In the worse case scenario, it is not inconceivable that Pakistan – and its nuclear weapons – could fall into the hands of extremist political forces. Nevertheless, despite these risks, on a per capita basis the EU gives 20 times as much aid to Nicaragua as it does to Pakistan. EU countries have gone some way to addressing this imbalance by setting aside €5 million of the EU ‘Stability Instrument’ for counter-terrorism efforts in Pakistan, but this is tiny compared to what some member states give individually.

A second priority should be the Middle East peace process. Arguably, no other issue feeds Muslim resentment towards the West more than the Israeli-Palestinian conflict. Political conditions for a settlement do not look good: Israel’s Prime Minister, Benjamin Netanyahu, has spent his career opposing concessions to the Palestinians. Meanwhile, the Palestinian territories were disastrously split in 2007, when Hamas asserted control over Gaza. Nonetheless, President Obama raised the political stakes in June 2009. In a well-received speech to the ‘Muslim world’ in Cairo, Obama committed the United States to a fresh push for a sustainable, two-state settlement to which Netanyahu has been compelled to respond.

The EU has a role to play in this shifting game. France and Britain – member states with a colonial history in the region – are happy to direct much of their diplomatic effort on this issue through EU structures. Yet, despite being the largest single aid donor to the Palestinian Authority, the European Commission’s regional office there lacks even an Arabic-speaking spokesperson in a part of the world where Al-Jazeera serves as “the Parliament of the Arabs”, according to one British official. The establishment of a European External Action Service (EEAS) would do much to give EU diplomatic efforts in the region more capability and visibility (discussed below). To support US efforts, the EU should embrace Israel with ‘tough love’ – it should make clear that it is keen to deepen bilateral relations and provide full assistance for peace talks, but insist on the need for Israel to recommit fully to the peace process.

Turkey should be another priority. The country has become more popular in the Arab world due to its refusal to cooperate with the United States invasion of Iraq and its Prime Minister’s very public protest against the 2008 Israeli incursion into Gaza. During the same period, Turkey’s relations with both the United States and EU have worsened. The EU, meanwhile, must continue membership negotiations with Turkey, since a unilateral suspension would permanently sour relations. To most European Muslims, Turkish membership would send a powerful message about the viability of a moderate European Islam. EU countries should clamp down on the European organisation of the Partiya Karkerên Kurdistan (PKK), an ethno-nationalist group already on the EU’s list of outlawed terrorist organisations. That would help ensure greater cooperation from the Turkish security services in preventing extremist attacks in EU countries.

In Africa, both the EU and United States would be more effective if they sponsored counter-terrorism efforts in regions. The Europeans need to work with the countries of North Africa and the Sahel desert region, such as Niger and Mali, which are vulnerable to penetration by Al-Qaeda’s new presence. This fragile region is a potential future sanctuary for Al-Qaeda: it is already being used to host camps to train terrorists and insurgents. These are amongst the poorest nations on earth and are ill-equipped to confront extremist agitation; governments there already struggle to cope with a mass of problems like organised crime, and the smuggling of drugs, weapons and people. Meanwhile, the United States should focus its efforts on East Africa and the Horn of Africa, including Sudan and Somalia.

Governments on both sides of the Atlantic are now more aware of the need to counter extremist propaganda with better media and communications strategies. Some even train and assign counter-terrorism bloggers to challenge extremist narratives in internet chat rooms. In general, media and communications strategies are needed to undermine the narratives that sustain Islamist terrorism. For example, instead of overtly linking democracy promotion and counter-terrorism – a linkage which undermines both causes – the West should concentrate instead on the promotion of free media, economic reform and direct development aid to anti-corruption efforts in Middle Eastern and African countries.

Next steps in EU internal security

The EU faces three pressing challenges in internal security, each of which has important implications for national counter-terrorism policies. The first problem is the most immediate: how to reconcile the European Parliament – a hitherto toothless critic now empowered with co-decision rights under the Lisbon Treaty – to the member states’ counter-terrorism agenda? To wield such powers effectively the Parliament needs to demonstrate to interior ministries that it is a serious, thoughtful partner in internal security matters.

Hence, over the period 2010-2011, a major priority of the EU Presidency will then be to establish political ground rules with the European Parliament. The Trio Presidency should begin a frank dialogue with the European Parliament’s civil liberties committee, proposing the Parliament to establish a separate Internal Security Committee to vet legislation: this committee would audit proposed laws for their effectiveness, while the Parliament’s Civil Liberties Committee would continue to scrutinise EU legislation for its impact on freedoms. Equally the EU Presidency should begin a dialogue with the Parliament laying the ground for political compromise on issues MEPs care deeply about, such as the protection of personal data. Concurrently, the Trio Presidency should encourage the European Commission to take forward plans to ‘terror proof’ the Single Market.

The Lisbon Treaty will also make the European Commission a real actor in internal security matters by giving it greater powers to propose new laws and sanction member states which fail to implement agreed legislation. It would also establish an EU Internal Security Committee – or COSI – involving SitCen, Europol, Eurojust and EU’s border agency Frontex. The potential powers of COSI should not be over-stated: it would be concerned with day-to-day security issues, and would not be a policy-maker or strategy setter on anything like the scale of United States National Security Council. But the committee could mitigate the coordination problems currently experienced by existing agencies.

Central to solving the foreign policy conundrum is the second challenge of bringing leadership and direction to the EU’s expanding system of bodies involved in internal security matters. Despite its counter-terrorism strategy, the EU’s institutions have had to eke out a role for themselves in this area almost on a case-by-case basis, leaving a messy, frequently overlapping system of committees, agencies and legal frameworks. Little wonder that De Kerchove’s predecessor, Gjis de Vries, resigned in frustration in spring 2007. One idea would be to merge the jobs of the next European Commissioner responsible for internal security matters with the current post of counter-terrorism coordinator. That post will be an anachronism in the post-Lisbon era.

The final challenge is whether the EU can speak with one voice on the foreign policy aspects of internal security, given that member states face different levels of threat from terrorism and cross-border crime. Despite the fact that there is increasingly an external aspect to European

internal security cooperation, great uncertainty remains as to ‘who speaks for Europe’ in negotiations affecting domestic security. The EU could ensure that internal security issues, like terrorism, feature more prominently in general EU agreements with other countries. For example, the EU’s new Central Asian Strategy contains only vague references to how the EU will work with countries in the region to deal with terrorism-related issues, the movement of dangerous substances, organised crime, and illegal immigration. The Spanish Presidency should also take advantage of a change of approach in the United States on counter-terrorism to seek a new EU-US agreement in 2010 on a range of internal security matters, from the exchange of passenger and financial data to police cooperation and foreign policy priorities related to counter-terrorism.

The new EEAS established by the Lisbon Treaty will merge the parts of the EU’s foreign policy machinery currently based in the European Commission, the Council of Ministers and some 140 overseas missions. The EU’s High Representative for Foreign Affairs and Security Policy, who will serve as the head of the new service, should ensure that a senior EEAS official is appointed as special representative for internal security. This person should also sit on COSI. If the EEAS is established, SitCen will for the first time be able to task the EU missions overseas to collect counter-terrorism intelligence, if requested to do so by the member states.

INTERNAL SECURITY AND JUDICIAL COOPERATION

EU Police and Judicial Cooperation in Criminal Law: Balancing Efficiency and Human Rights Protection

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Global context and specific challenges

Judicial cooperation in criminal law is one of the most rapidly developing areas of the EU law. At the same time, EU regulation of criminal law belongs to the most sensitive areas from the perspective of national sovereignty and regulatory autonomy. The EU rules also frequently trigger conflict(s) with both the EU and the national human rights standards / rules. Therefore, new EU initiatives in the area of criminal law are frequently (mis)interpreted in the media and / or challenged before national judicial authorities. For example, the pilot instrument of the judicial cooperation in the criminal law, the European arrest warrant mechanism, was challenged before the constitutional courts in Germany, Poland, Czech Republic, Greece, Cyprus as well as before the European Court of Justice.

From the institutional perspective, the EU activity concentrates on the establishment of standards of judicial cooperation while the implementation is left to the member states. The application of the rules on judicial cooperation in individual cases is also left to the national judiciary. The European Court of Justice is involved only indirectly, via answers to preliminary questions formulated by the national courts. The decentralisation of the implementation of judicial cooperation thus requires a high level of trust among the EU states in the quality of their respective legal and judicial systems.

The lion's share of expenses linked with the judicial cooperation is covered directly by member states; the impact of the EU rules of judicial cooperation in criminal law on the EU budget is relatively modest.

Regarding the dynamics of the judicial cooperation in criminal law, the year of 2009 is important for two reasons: the finalisation of the ratification of the Lisbon Treaty and the formulation of the Stockholm Programme for 2009-2014. The impact of the Lisbon

Treaty on the future of the EU judicial cooperation in criminal law is threefold: firstly, the Lisbon Treaty replaces unanimity in the Council of the EU by qualified majority voting and it includes the European Parliament into the EU legislative process. Secondly, the Lisbon Treaty strengthens the control mechanisms over the implementation of the EU rules by member states, in particular by extending the Commission's power to use enforcement actions against member states for violation of (non-compliance with) the EU rules in the domain of criminal law. Thirdly, the Lisbon Treaty incorporates, albeit in rather vague terms, the EU Charter of Fundamental Rights into the EU legal / constitutional system – and the EU Charter also explicitly guarantees several rules important / relevant for criminal law, such as the ban on inhuman and degrading treatment or punishment, the right to fair trial, the principle of presumption of innocence, the principle of legality and the principle of *ne bis in idem*.

The Stockholm Programme is the follow-up of the previous five-year plans for the EU activity in the domain of internal security, which were adopted in Tampere (1999-2004) and The Hague (2004-2009). Regardless of the fact that the Stockholm Programme will be a 'soft-law' norm, it will establish a very influential political commitment and a benchmark for the future EU activities in criminal law. The conclusion of the five-year period of The Hague Programme in 2009 also provides for an evaluation of the results of the EU activities so far and for a more long-term and strategic analysis of future EU action.

Current status

The EU regulation in the domain of internal security is primarily focused on four categories of activities:

- Establishment of agencies and other structures at the EU level which support and coordinate activities of national agencies and institutions. The role of the EU bodies is, however, only supplementary and does not intend to replace the national structures.
- Establishment of standards of visa, asylum and immigration procedures at EU level, while the implementation and application of these standards is left to national authorities.
- Limited substantial harmonisation of criminal law (i.e. common EU rules on the definition of the criminal activity and the respective sanctions) for selected crimes with strong interstate elements. Again, EU activity is relatively limited and does not aspire to create a general EU criminal code.
- Establishment of a regime which guarantees mutual recognition of judicial decisions issued / produced by an individual member state's judiciary in all other EU states. The mechanism of mutual recognition thus respects the autonomy of the member states' systems of criminal law and establishes *de facto* 'free movement of judicial decisions' within the EU.

From the four approaches mentioned, it is the principle of mutual recognition which is the core of the judicial cooperation in criminal law in the EU. The priority of the mutual-recognition approach over the harmonisation of the substantive criminal law is stressed in the Lisbon Treaty which states that “the Union shall endeavour to ensure a high level of security [...] through the mutual recognition of judgements in criminal matters and, if necessary, through the approximation of criminal laws”(Art. 67 TFEU).

However, the principle of mutual recognition is not directly applicable in the member states and needs to be elaborated in more detailed instruments of EU law (framework decisions, directive). In practice, the EU used a ‘step-by-step’ approach and adopted specific framework decisions establishing rules (and setting their conditions and limits) on mutual recognition regarding specific types of decisions issued in the course of the criminal process – such as arrest warrants, evidence warrants, judicial decisions on financial penalties and / or confiscations of property or judicial decisions imposing custodial sanctions. Some kinds of judicial decision are not regulated yet, e.g. those suspending a driving license as a sanction for a criminal offence.

A relatively large gap in the current EU regulation of judicial cooperation in criminal law is the absence of detailed procedural safeguards for individuals prosecuted; in particular, taking into account the more vulnerable position of a person prosecuted outside his / her country. Another missing element of effective judicial cooperation is the absence of common EU rules on criminal jurisdiction.

The debate on the Stockholm Programme for 2009-2014 reflects these missing elements of the EU regulatory framework. The Swedish Presidency stated that the Stockholm Programme should “strike a balance between better law enforcement and measures for legal rights and enhanced protection of private life”. As examples of the potential EU actions strengthening the human rights protection in the context of the EU judicial cooperation in criminal law, the Swedish Presidency mentioned the expected EU’s accession to the European Convention for Human Rights, a more intensive role for the EU Agency of Fundamental Rights in the EU legislative process and the adoption of common EU rules for defendants during the criminal investigation and process. The Stockholm Programme has been adopted at the European Council Summit in December 2009.

Since the Lisbon Treaty, which simplified the adoption of the EU legislation by the Council of the EU in the domain of judicial cooperation in criminal law, and which entered in force on 1st December 2009, intensive related legislative activity can be expected in the years 2010-2011. By the same time, the increase of powers of the European Parliament in the EU legislative process might enhance the public debate on the practical implications of the EU norms and on the absence of mutual knowledge / understanding of the specifics of systems of criminal law in individual member states.

Proposals

The current Trio Presidency should consider these actions to both further enhance the creation of the EU as an area of judicial cooperation in criminal law and to ensure a high level of human rights standards in the criminal proceedings:

- Adopt a catalogue of minimal EU standards of rights for the defendant in the criminal procedure. In particular, the EU rules should reflect the more difficult position of the defendant in a country different from the state of his / her citizenship regarding his / her weaker knowledge of the local legal system, access to legal advice, weaker knowledge of the local language, the absence of a social network and (last but not least) the financial burden caused by his / her presence in a foreign state during trial.
- Make clearer rules on the jurisdiction in criminal cases. In particular, the EU rules should clarify the proximity of the offender's behaviour with the territory, citizens and / or interest of a member state which would establish a criminal jurisdiction of the state concerned over the person/offender. This would prevent situations where a member state might punish / regulate by its criminal-law activities concentrated in other EU states and thus effectively 'export' its criminal-law standards and preferences into other EU states.
- Elaborate, by means of soft law or binding legislation, the impact of the EU Charter of Fundamental Rights on criminal law in the EU.
- Organise an information campaign on the impacts of EU judicial cooperation in criminal law. EU information could eliminate many myths about the practical impact of EU rules on citizens. These myths might misinterpret the EU role as an extensive intrusion into state sovereignty, or they might (also incorrectly) cause expectations that the EU will radically improve national systems of criminal law or that the EU courts will serve as an appellate body against the national criminal courts' judgments (e.g. by making an incorrect analogy between the role of the European Court of Human Rights in Strasbourg and the role of the European Court of Justice (ECJ) in Luxembourg).
- Promote communication and the exchange of experience with EU rules between national judiciaries (e.g. via Eurojust) and between national courts and the ECJ (by the preliminary question procedure).

The Contribution
of 14 European
Think Tanks
to the Spanish,
Belgian and Hungarian
Trio Presidency of
the European Union

IV

EU IN THE WORLD

GLOBAL GOVERNANCE

The recent global financial crisis has shown how interdependent the world has become and brought to light the need for enhanced global governance. The pursuit of better governance beyond EU borders is needed not only because of the growing interdependence driven by economic globalisation, but also because of the rise of transnational challenges such as climate change, energy security and supply, terrorism and poverty, which require greater effort and shared responsibility at the global level.

In this context, the European Union, as a leading player in the global economy and as a model of multilateral cooperation itself, plays a major role in establishing a viable framework for global governance (GKI). The period of time covered by the Trio Presidency (Spanish, Belgian and Hungarian) is a crucial time for the definition of the EU's role on the international scene.

PART IV ABSTRACT

For the EU to exert its influence outside its borders, it needs efficient governance from within. The entry into force of the Lisbon Treaty is an opportunity that must be seized by the Trio Presidency to narrow the gap between the EU's widening and deepening. It is a fundamental step in creating the institutional and legal framework for a more active EU (HAS / GKI, Bruegel) and it offers a chance to improve economic coordination inside the EU (demosEUROPA).

The current Trio Presidency will in the first place have to manage the exit from the crisis. This includes putting into practice the lessons learned from the crisis and redesigning the financial sector. The EU will need to promote tight coordination with the G20 for the regulation of financial markets (CEPS, demosEUROPA), to continue to stimulate self-regulation – as not everything can be regulated and controlled by public authorities – and to make the EU's new institutional supervision structure work (CEPS).

The Trio Presidency should also make every effort to promote a coordinated exit strategy from the crisis and to address the financial, economic and social consequences of the crisis at the EU level. Special attention must be given to the huge budget deficit and growing public debt in most of the EU, the need

to promote active labour market policies to fight unemployment and the need to ensure the proper functioning of the single market (GKI, Bruegel).

While shared problems call for common action, the interests and perceptions of the international actors, with the emergence of major new global and regional powers such as China, India and Brazil, may be growing more diverse. This growing multilateralism makes global governance more complicated to achieve.

Therefore, in order to maximise the EU's influence on decisions and policies designed by international bodies, the Trio Presidency should work towards a common EU-level representation in key world governance bodies (HAS / GKI, Bruegel, demosEUROPA). Speaking with a single voice would force the EU to seek genuine internal consensus and would enhance European influence in international bodies (demosEUROPA).

In this multilateral world order, one of the main issues for the EU is to make globalisation go hand in hand with regionalisation (GKI). The EU needs to organise its own regionalised neighbourhood in order to reinforce its role in global governance.

EU FOREIGN POLICY

It has become commonplace to underline the EU's inability to act coherently and effectively with a single voice in the international arena – despite being the most powerful trading bloc in the world, having the second most active currency in international exchange markets, and providing the most generous assistance to developing countries. However, and acknowledging the internal and external obstacles to the goal of a real common foreign policy, the EU is slowly becoming a global political player.

The European Union's external policy is traversing an uncertain period, but there is a window of opportunity that must be taken (HIIA, GKI). The Trio Presidency of Spain, Belgium and Hungary has a historic responsibility in the coming months, since it will be responsible for implementing the new institutional architecture under the Lisbon Treaty. It is known that the EU's global partners have often been disoriented for having to deal with the institutional complexities of the European Commission, the EU Council Secretariat and the national diplomatic services. The foreign policy innovations included in the Treaty now demand a clear effort to overcome the mess of bureaucratic obstacles and to

achieve a more coherent EU international position (CER, Real Instituto Elcano). The launch and implementation of the new External Action Service is thus crucial and will be high on the European agenda during the entire period of the Trio Presidency. The Trio will determine such fundamental aspects as its scope and staff, organisation and relations with national diplomatic services. And although the goal of designing an effective external action service to support both the High Representative and the European Council President is an effort to simplify procedures, the task is still a complex and difficult one (CER, Real Instituto Elcano).

A solid institutional architecture for EU foreign policy is essential in order to give a more coherent voice abroad. Nevertheless, Europe needs to build a consistent position on international challenges such as development, climate change, counter-terrorism, nuclear non-proliferation, the Middle East peace process, energy supply, the implications of situations of 'state failure,' and the effects of the global financial crisis (ELIAMEP). The Trio can facilitate and optimise the transition to the new institutional structure, while also constructively helping to rethink the main principles of European foreign policy and the improved coordination between the policies and actors involved (HIIA,GKI).

There is no doubt that the support and defence of human rights and the rule of law are among the principal goals of the European Union's external policy. The principles are reaffirmed in the Lisbon Treaty, and also include the obligation to ensure that they apply consistently across the EU's internal and external policies (ECFR). This issue is particularly important in the fight against terrorism. As it is known, there were serious misunderstandings with the Bush Administration regarding how to confront this challenge. The willingness of President Obama to reverse the legacy of his predecessor on this point may open the way, during 2010 and 2011, to developing a set of principles as a common reference in transatlantic efforts to counter terrorism (Real Instituto Elcano). The domestic political situation in the United States and the complexity of some of the issues involved mean that those principles will not be agreed during the Spanish Presidency (ECFR). However, the Trio has the responsibility and difficult task to assure that this possibility is not abandoned.

EU DEFENCE POLICY

Ten years have passed since the European Security and Defence Policy was launched, with the aim of allowing Europe to respond to international security crisis. The defence dimension of the EU is essential to strengthening the European

Union and its credibility. According to Benita Ferrero-Waldner, “those who believe the EU is still principally a soft power are behind the time.”¹ Despite the commonplace of associating the Common Security and Defence Policy (CSDP) – former European Security and Defence Policy (ESDP) – with a failure to strengthen Europe’s military resources, there is a relevance to the 23 peace-support operations in Europe, Africa and Asia since 2003, which use civil as well as military instruments. However, the EU is still far from having the necessary tools and capacities to ensure the defence of the European interests and values, and also to play the international role that other world powers expect.

One of the most important steps in the short history of the EU defence policy is the Security Strategy Paper produced by Javier Solana in the aftermath of the Iraq crisis. The European Security Strategy (ESS), approved in December 2003, describes potential threats to the EU and how the EU might respond. Despite the positive impact of this document on European strategic thinking, the ESS mostly tells us how to do things and is much more vague on what to do (Egmont).

Unfortunately, the debate about the ESS that was concluded by the European Council in December 2008 (with the adoption of an implementation report) did not set out concrete guidelines for the CSDP (Egmont). The Trio Presidency should push for launching a second Strategy Paper which would complement the revamped ESS (HIIA, GKI).

In defence policy, the Trio Presidency should maintain the debate over a high-level EU military strategy, working in parallel with the new NATO strategic concept. The debate should focus on how to link the EU objectives and priorities with particular tools. The European Defence Agency and the Permanent Structured Cooperation included in the new Treaty should be at the top of the Trio Presidency agenda (Egmont, SWP).

In the field of crisis management operations around the world, the assessment is impressive for some of the missions, while others have had real difficulties in finding the personnel or adequate military equipment for the operation (SWP).

Regarding capacities, the recommendations for the Trio Presidency include such delicate topics as the need to establish long-term and strategic planning for CSDP deployments (SWP); the establishment of a binding and institutionalised ‘lessons learned’ process or the reinforcement of the ‘gendarmierie’ type forces (Egmont); and the adoption of the post-2010 Headline Goals (HIIA, GKI).

1. This sentence is part of a speech by Ferrero-Walner “The European Union and the World: a hard look at soft power,” at Columbia University, September, 2007, New York.

ENLARGEMENT AND THE NEIGHBOURHOOD

Enlargement has always played a decisive role in the EU. Every time a new group of member states has joined, the integration process has also increased the EU's policy remit and strengthened its institutions. The 1970s enlargement round preceded the creation of the European Council, the direct election of the European Parliament (EP) and led to important innovations in the fields of regional, monetary and foreign policies. The two Mediterranean enlargements in the 1980s were immediately followed by the Single European Act. Thirdly, the 1990s enlargement towards the North took place only two years before the Amsterdam Treaty. Finally, the big two rounds of Eastern enlargements in the 2000s were directly linked to the interim Nice Treaty and the constitutional experiment that eventually resulted in the Lisbon Treaty. Even the Maastricht Treaty was also connected to the fall of the Berlin Wall and the mini-enlargement represented by the absorption of East Germany. It is clear that the process of European integration itself may be interpreted as a virtuous combination of widening and deepening. Both from the EU and the newcomers' perspectives, this process is surely among the most successful policy instruments for providing political stability and economic prosperity.

Despite this historically positive assessment, the prospect for the enlargement process is not very promising in 2010-2011. To be sure, the EU continues to be attractive in the West Balkans – new applications have just arrived from Podgorica and Tirana, and the recent visa liberalisation has fostered some optimism in Macedonia, Montenegro and Serbia. This is also the case in Turkey (despite the slow progress of the negotiations, which are also blocked informally by Paris and Berlin) and in other areas where accession was not seriously considered until recently, such as Iceland and Ukraine. However, those voices which (since the 1960s) have tried to create the impression of widespread European disapproval of new enlargements seem now to be stronger than ever. Furthermore, this 'enlargement fatigue' – which is evident in the scepticism of many citizens and in the low profile of EU institutions towards new accessions – is reinforced by the perception that Bulgaria and Romania have not been able to cope with their obligations as members. It has not helped that some EU members have bilateral disputes with candidates – this is producing serious crisis in the negotiations with Croatia, Macedonia and Turkey. The best way to overcome such deadlock is to use the unique opportunity of the new institutional settlement – not only the top jobs introduced by the Treaty but also the fresh mandate of the European Commission and the Trio – to give a new boost to enlargement policy and place it higher on the EU agenda (Europeum, demosEUROPA).

A clearly defined roadmap for future enlargements is needed – one that will describe when each country will be able to liberalise visa regimes, receive candidate status and / or open chapters in the accession negotiations, using explicit conditionality. In the current EU member states, this strategy should be connected to the guarantee by all member states that they will respect the principle of pacta sunt servanda. Regarding the present candidates or future ones, it will create a healthy competition among the potential future members – as it was the case in the previous 2000s enlargements, most of the EU-related economic reform and democratisation in candidate countries is achieved once the negotiations are open. In addition to this roadmap the EU must adopt a more assertive role, as the membership perspective alone cannot deliver a solution to the worrying stalemate situations of Bosnia, Kosovo and Northern Cyprus. This may include a clear EU membership prospect in the medium or long-term. The EU must also enforce the solutions that enable them to emerge from the stalemate situation and avoid the risk of instability (Europeum, demosEUROPA).

Whether this clear strategy for future enlargement is agreed or not, the European Neighbourhood Policy (ENP) should help to provide political and policy answers for the EU in its relations with its Eastern and Southern neighbours. The original ENP has become more vague, with the creation of new different – and often unconnected – regional and bilateral cooperation forms for the area surrounding the EU: Eastern Partnership (EaP), Union for the Mediterranean (UfM), Black Sea Synergy, Northern Dimension, ‘advanced status’ agreements, etc. It is unclear if these initiatives represent alternative formations in the EU’s neighbourhood or, in some cases, intermediate steps to enlargement.

Brussels may officially treat Eastern Partnership countries as potential candidate states but it is nonetheless unclear that Ukraine, Moldova, Belarus or the three Caucasus countries are convinced that their future is or should be in the EU. Their post-Soviet political elites and societies are losing their commitment (never massive) to the European project. Three key realities clearly differentiate the Eastern Neighbourhood from the accession states of the 1990s: (i) Russia is another pole of attraction in the region, (ii) these states are weak ones, and (iii) they are sovereignty-seeking, with leaders whose priority is to bolster statehood, strengthen their personal position and excuse a lack of reform. Since it is impossible to ignore Europe’s energy or security needs and given that relations with Moscow is one of the most divisive issues for the EU, the stance towards Russia should avoid confrontation and be at least cooperative, supporting the idea that the EU’s multilateral cooperation in the Eastern neighbourhood could constructively complement the existing EU-Russia relationship. Notwithstanding this, the EU should build its own and autonomous strategy to help its Eastern neighbours prevent and cope with political and

economic crises, thinking imaginatively of ways to counter Russia's strong power of attraction in the region (SWP, ECFR).

Regarding the Northern African neighbours, the under-performance and fragmentation across different lines of the EU foreign policy towards the region is clear. The 'variable geometry' uncovers the difficulties in creating a North African region that is ridden with inter-state conflicts and heterogeneity. Wealthy regimes, such as Algeria and Libya, can cope and go global. Morocco and Tunisia look for the EU for support, while Egypt is situated somewhere in the middle. Underpinning these tensions, there is a continuing 'securitisation' of the Mediterranean debate in the EU, which centres on threats emanating from the South: Islamist terrorism, illegal immigration and organised crime. The Trio Presidency cannot resolve this deep-rooted quandary, but a gradual shift of the European narrative on North Africa is advisable. The EU should acknowledge the objective tensions facing its policy and place a renewed emphasis on fundamental political reforms in the partner countries, which Brussels has not been able to encourage so far. Without a membership horizon, political conditionality is difficult in countries like these. But the EU can improve its democracy-promotion record by concentrating on what can actually be achieved on the ground (DIIS).



GLOBAL GOVERNANCE

Internal and External Challenges for the EU: the Economic Agenda of the Spanish-Belgian-Hungarian Trio Presidency

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The Spanish-Belgian-Hungarian (SBH) Trio Presidency covers not only 18 months in time, but a period of historical challenges for the future of the European integration. Some of them will be concentrated into this one-and-a-half-year period, while others will continue (or even become more acute) in the period beyond the SBH Presidency. But the first and most decisive steps concerning their nature, direction and intensity will be taken before mid-2011.

Pre-crisis role of the EU in global developments

Prior to the crisis, the EU could be described as a 'fragmented power' in international relations, that is, as a power whose effectiveness varied depending on the field, and as a potential power whose effectiveness was being hampered by internal fragmentation.

As a result of several decades of development, the EU has become a leading player in international trade, global capital flows (including mergers and acquisitions due to the developing internal market) and development aid. Also, it has created a much-envied social welfare system, high living standards, political and social stability and (somewhat balanced) prosperity. Despite shortcomings which are in some ways increasing (particularly as compared to the USA), the EU is also a global player in research and development, as well as in education and innovation potential.

Alongside the United States, the EU has also emerged an international standard-setter. The rules of the game of most international economic and financial institutions are based on laws

and norms inherited from, and transferred by, Western Europe and the United States. More broadly, the institutional representation of the EU is fragmented (between community level and nation-state competence), but its weight in international organisations and decision-making processes is undeniable.

There is however a substantial and in some cases growing gap between the EU's global economic role and its political and security roles. Member states, often cross-competing for more influence, can cope less and less effectively with the emerging influence originating in other large countries (or groups of countries) of the world. The lack of a common strategy towards China, Russia, Latin America – let alone the USA – represents a major barrier to the full exercise of Europe's economic (and potential political) weight in the global arena.

Additional gaps can be identified: the quality and speed of the community level decision-making process. There is a serious challenge to streamlining European institutions, legislation and procedures.

The SBH Trio Presidency will face three fundamental challenges:

- Crisis management, including exit strategies and the handling of the financial, social and probably also ideological consequences of the crisis and its management,
- Re-emerging global issues (e.g. migration, energy, international stability, monetary issues, etc.),
- The development of European integration, including a new balance between deepening and widening.

Although with different urgency, all of them will shape the SBH Trio Presidency.

From crisis management to exit strategies

The global crisis has not ended, even if the main part of the financial crisis seems to be over. The unfolding of the macroeconomic crisis has sent rather contradictory signals, both regarding recovery and also the possibility of new risks and a potential negative turn. Moreover, the social crisis, as a result of the macroeconomic downturn and the collapse of international trade, is likely to deepen during the SBH co-Presidency. Finally, an ideological and political crisis may be unfolding, as an unfortunate but inevitable accompanying factor of the deep economic recession. It could entail growing anti-global, anti-EU, anti-capital sentiments as well as nationalism and xenophobia. In order to avoid the real danger that the post-crisis environment of Europe will be quite different from the pre-crisis environment, immediate action is necessary across the EU, both at European and member states' levels.

Bruegel has contributed to the discussion on the European exit strategy. It envisages five main actions to be phased in over time. First, the identification and recapitalisation of stil

ailing banks must be completed, with a clear phasing-out schedule for state support. Second, member states should adopt medium-term sustainable budget plans to be implemented from 2011. Third, monetary policy should remain as supportive as possible (keeping interest rates low). Fourth, the planned European Systemic Risk Board should become operational in summer 2010. Finally, an *ad-hoc* reinforced consultation mechanism must be set up in order to ensure the necessary coordination of emergence between member states, and in consultation with central banks (for a period of 2.5 years but renewable once).

These measures aim at addressing the consequences of the crisis – one that has already resulted in huge budget deficits and rapidly growing public debt in most of the EU, not least in the eurozone. The proposed strategy emphasises the need for strengthened coordination in exceptional circumstances, over and above what is called for by the Stability and Growth Pact.

The SBH Trio Presidency will take place at a period of abnormally high budget deficit and increasing public indebtedness. Available instruments to reverse negative developments include:

- Substantial cuts in budget expenditures (with inevitable consequences for welfare spending – a rather difficult step in a period of deepening social crisis),
- Tax increases (potentially threatening even modest economic growth),
- Making use of inflation to liquidate large part of the outstanding debt (a possible scenario in the US but a less likely one in the EU),
- Spreading the costs of the crisis over a longer period (this, however would mean a partial redistribution of the costs to the younger generation)

None of the responses at hand is thus without adverse consequences and all are bound to result in severe economic and political difficulties. The role of the Presidency and the Commission will be to trigger adjustment, to help mitigate the adverse effects of it, and to avoid that divergences in the speed and nature of the responses give rise to intra-EU tensions. It is by no means an easy task.

The EU-27 is unlikely to be able to return to its pre-crisis growth path in the next few years. Although (sharply) negative growth rates may be overcome in 2010-2011, overall growth will be insufficient to offset the fall in output and may remain sluggish. In addition, pre-crisis growth and catching-up in new (and potential) members will be seriously affected, even according to the most optimistic scenario. While enlargement could be considered a major success story prior to the crisis, the continued development of the new member states can no longer be taken for granted, especially in countries that relied extensively on foreign savings under a fixed exchange rate regime.

One of the most difficult situations to be faced by the EU and the member states is that of the labour market. While labour shedding has been avoided in most EU countries (with the

exceptions of Spain and some of the new member states, especially the Baltic countries), adjustment has now started and subdued growth is unlikely to reverse it in the short-term.

What, in effect, will probably be done is some form of redistribution of jobs among more people (through, e.g., the promotion of part-time contracts). Since unemployment (and high inactivity) rates are unlikely to be reduced during the SBH Trio Presidency period, active labour market policies will need to be promoted without jeopardising Europe's global competitiveness. In this context, the SBH Trio Presidency could produce a feasibility study identifying the pros and cons of a future-oriented employment strategy, including its potential financial burden.

A last issue is the functioning of the single market. Government's interventions, starting from the bailing-out of banks through substantial financial injections into selected sectors (mainly the car industry with its cross-industry implications) and the saving of many jobs, did not generate fundamental restructuring or the creation of future-oriented job opportunities. On the contrary, it seems in some cases to have consolidated vested interests and unviable structures. The new engines of growth are yet to be seen and their emergence may be delayed by dysfunctional capital and labour markets. As a consequence, Europe's relative loss of weight and dynamism in comparison to China and other emerging economies will continue, and the shift of the global growth pole(s) away from Europe risks being accentuated.

The EU and global challenges

International trade has started recovering and is likely to recover further in 2010 and 2011, provided trade protectionism remains contained as it has been so far. However, China is expected to become the leading export nation even if it successfully rebalances its growth model. This rise of emerging countries should not be taken as a threat. It will not jeopardise the EU's ability to play a global role in international trade discussions, but will create more balanced power relations, with growing weight for the emerging economies. Limitations to the EU's power and influence are in fact more internal than external.

International capital flows may also recover but a different pattern is likely to emerge. FDI can be expected to become a genuine two-way street. The EU has to adapt to the fact that it is not only European companies that are allowed to invest in rapidly growing markets, such as China, India, Russia, Brazil, etc., but also Chinese, Indian, Russian, or Latin American capital that may look at the EU as a promising location for their direct investments.

Europe will face serious challenges in the task of restructuring international economic and financial organisations. A sustainable solution for the global crisis does not only need a prudent and internationally accepted regulatory framework but also institutional restructuring that takes into account the current (and partly future) changes in the global balance of power. The challenge for Europe is twofold:

- First, it should aim at preparing the ground for a common, EU-level representation and interest implementation (enforcement) in the leading international organisations. The aggregate weight of EU members will be reduced across the board, since more space and weight has to be given to emerging global players. But Europe will not necessarily be on the losing side if it can act as a community. For instance, even in the case that the voting share of EU member states in the International Monetary Fund (IMF) were to shrink substantially, if there were an EU-level representation the EU could easily acquire the largest voting share in this organisation, probably on par with the US. In this context, a lot depends on the integration capability and willingness of the member countries (mainly the large ones).
- Second, the G20, a necessary but only the first step to reckon with ‘new global realities,’ could be used by the EU to create a genuinely multipolar global system with strong EU positions. The first signs do not confirm this direction. Even if talks of a G2 are exaggerated in view of the difficulties of involving China in global governance, the US-China relationship has undoubtedly gained considerable strategic importance. And the question is absolutely justified: where is Europe in this game and what should Europe’s role be? In this context, the urgent task of defining the ‘mission of Europe’ in the 21st century emerges. It must not be missed in the Trio Presidency agenda.

A number of other global issues determining global development or substantially affecting Europe’s future must be dealt with in more detail. Environment and climate change will be a constant component of the SBH Trio Presidency. Additional issues waiting for a clear (or clarified) position at the community level include energy security, a common migration policy, instruments and implementation forms of the EU’s ‘soft power’ in current and potential future international conflicts, etc.

Internal development of European integration

Although practically all global issues mentioned in the previous chapter have an obvious impact on the future of the EU, some internal developments have to be addressed by the Trio Presidency as well. (*Ceteris paribus*, they would have an effect on the EU’s global position as well.)

Beyond any doubt, the entry into force of the Lisbon Treaty is a fundamental step in creating the institutional and legal framework for a more active EU, despite a number of barriers that remain and, more importantly, due to the still growing gap between the decision-making process of the EU and that in major competing countries / regions (it should not be forgotten that the ratified Lisbon Treaty mainly contains changes that are based on the global reality a decade ago and certainly well before the crisis; it has to be seen to which extent the Treaty will be able to cope with or adjust itself to the new and rapidly changing global realities). What is now urgently required is twofold. First, the rapid and unrestricted implementation

of the Treaty ('institutional deepening'); and second, the narrowing of the gap between widening and deepening, mainly in certain key economic policy areas of the EU (internal market, labour market, social issues). It must be emphasised that, with the exception of the big-bang enlargement, the decades-long enlargement process of European integration was always preceded by an ongoing process of deepening (common trade policy at the time of the British accession, Delors's single market programme during the Mediterranean enlargement, or the EMU at the time of the accession of three small and developed countries in 1995. The 'integration vacuum' created by the lack of the necessary deepening before the enlargement in 2004 (and 2007) must be filled, without stopping further enlargement – an issue on the SBH Trio Presidency agenda. However, this agenda must be more balanced and put more emphasis on the process of deepening. The new institutional framework and, hopefully, the management of the post-crisis situation will be able to generate the critical minimum of a breakthrough in this field.

Final remarks

Considering:

- The rapidly changing global environment, the impact of the crisis on different geographic areas and on different economic and social structures in the world,
- As well as the looming medium- and longer-term challenges,
- Plus recent intra-EU developments,

the SBH Trio Presidency should launch a major Europe-wide campaign, involving a large number of citizens, on the following issues:

- How to define 'European values' and 'identity' in the 21st century,
- Based on such values (and deficiencies or shortcomings), identify the strong and weak points of Europe in the changing global setting,
- Define the key issues of 'Europe's mission' (much more than the outdated formulation of *finalité politique*) in the emerging new global balance-of-power game,
- Finally, the clarification of instruments, institutional forms, international or regional cooperation schemes (including temporary or lasting alliances), timing and sequencing (and intra-EU leadership) of implementing the main objectives of such a 'mission'.

GLOBAL GOVERNANCE

Crisis Calls for Greater EU Cohesion to Manage Globalisation

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The need for economic and financial policy coordination in Europe and globally is going to be even greater in the post-crisis environment than during the French and Czech Presidencies, when the crisis hit with full strength and forced initially disorganised public authorities into an unprecedented global response to shore up the financial sector. The crisis provided the ultimate, painful evidence that globalisation has taken deep root in the world and that no market, no region or individual country can claim immunity to large-scale economic disruptions taking place anywhere on the globe. The myth of ‘decoupling’ between mature and developing economies, between old and emerging powers has been consigned to the garbage bin. Multilateral dependencies between saving and deficit nations, the transnational character of trade and financial flows have made the argument for strengthening global governance more compelling than ever. Hence the role of G20, the World Trade Organisation (WTO) and the International Monetary Fund (IMF) is likely to continue growing in the years ahead. The challenge for the EU is going to be how to translate the bloc’s combined economic strength into political clout and maximise its influence on decisions and policies designed by the G20 and other international bodies. The broad representation of European powers at such bodies is just an illusion of influence because it is not backed by a vigorous common stance. The forging of such a common stance should become a prime task for the new President of the European Council, the High Representative and President of the euro group as well as the Commission and the ECB. The rotating Presidency should have an auxiliary role in the process.

Redesigning global finance: EU needs inward reform and external action

A major task around the world is how to redesign the financial sector, the malfunctioning of which was an important cause of the crisis. Following the G20 meeting in Pittsburgh in September 2009, there is a consensus among leading developed and emerging economies that financial sector regulation will need to increase substantially in the coming years.

The debate about specific measures focuses on closer and more coordinated supervision, limits on derivatives, and basic design of the financial system that could reduce opportunities for excessive risk-taking. The last part is particularly challenging. The basic moral and economic dilemma of policy-makers in Europe and elsewhere is between, on one hand, the need to prevent a financial system collapse and restore normal credit action for businesses and, on the other, allowing the financial sector to return to bad old ways on the back of the generous capital injections and liquidity provision by public institutions. The former could nip the recovery in the bud, while the latter creates a sense of impunity or moral hazard which could result in another asset bubble and another, more painful recession. The way out of this dilemma seems to be a gradual shift away from thinking which holds that there are financial institutions in Europe and the United States that are too big to fail. To quote Professor Robert Wade of the London School of Economics: “If a bank gets to be too big to fail – that is, where it has an assurance that the government will bail it out – then it is too big to exist”. One idea making the rounds in Europe and the United States is to return to a strict division of financial institutions into ‘plain vanilla’, or utility banking (based on deposit gathering) and investment banking (based on arbitrage and risk-taking for maximum profit). Critics argue that this may lead to over-regulation and arbitrary decisions on where classic banking ends and investment banking begins. As a way forward they point instead to higher capital and reserves requirements as a means of restricting the financial sector’s tendency to over-leverage. Another aspect worth taking into account is the attachment of policy-makers to maintaining interest rates close to zero. Central banks are gradually withdrawing the extra liquidity measures that sustained the financial system, but only a few have had the courage to actually hint at higher rates. But a higher cost of capital remains a key tool for preventing excessive borrowing. The trouble is that as governments in Europe and the United States struggle with growing fiscal deficits, they are interested in low borrowing rates for themselves. The three EU Presidencies – all in the hands of heavily indebted governments – may struggle to come clean on the trade-off inherent in this approach: lower rates may help finance the budget deficits but they also provide an incentive to investors to borrow cheaply and seek higher returns, which can easily re-inflate asset and commodity bubbles. There is some evidence of such bubbles building up already and unless this trend is moderated soon, there is a potential for another major market disruption and a double-dip recession. The 3rd November recommendation by the outgoing Commission that the fiscal and monetary stimuli be reeled in during 2011 is a point of departure for more detailed discussions, and these may require strong leadership from the current Trio Presidency.

Another major long-term challenge is the reform of the international monetary system. The world’s over-reliance on the dollar as a reserve currency means the corrective mechanisms that normally affect a currency’s performance and adjust it to economic fundamentals are distorted. This is aggravated by the over-representation of Western nations in the International Monetary Fund. Although in theory the IMF could operate a new global currency that could reduce the world’s dependence on the dollar, it will not be able to perform this function without additional funds provided by rising economic powers such as China, India or

Brazil. But these countries are reluctant to engage in what they see as an institution serving the interests of Western powers. The current Trio Presidency, working closely with the now normalised Eurogroup and the Commission, should take the lead in working towards a major rebalancing of the IMF's voting power (as recommended by the G20 meeting in September) in favour of emerging economies, even if this is at the expense of individual EU member states. The fact that the current Trio Presidency is held by small and medium-sized EU players should be encouraging in this respect, provided that they take a sufficiently broad view and engage closely with at least one of the big EU players which stand to lose out. France, Germany and Britain together have over 15% of IMF votes compared to China's 3.7%. Another way to a more diversified monetary system is to maintain pressure on China to liberalise its currency regime, something the Commission but also the Council will need to keep in mind as global imbalances refuse to correct themselves. The limited international exchangeability of the yuan as well as its tightly controlled exchange rate are major hurdles for the Chinese currency's ability to serve as another reserve currency. This paradoxically reinforces China's dependence on investing its huge savings in loans to the US government. The EU will need to engage the Chinese more vigorously alongside the United States in talks on the global currency regime, to ensure a fairer and more balanced pattern of trade and to help secure a new trade liberalisation deal. This is a diplomatic task for all key players, including the Chairman of the Eurogroup (institutionally formalised under the Lisbon Treaty), and the Presidents of the European Council, European Commission and European Central Bank.

The Eurogroup, hopefully with the support of the Presidencies, faces another challenge – the euro's difficulty in becoming an alternative to the dollar as a reserve currency. There are two main reasons for this: the fragmentation and lack of adequate liquidity in the EU's sovereign bond market (aggravated by Britain's self-banishment from the eurozone), and insufficient political and fiscal coordination in the eurozone. The fluctuations and disparity in bond spreads between Germany, other eurozone members, the UK and new member states which remain outside the euro area is a constant drag on the euro's credibility. However, the EU has the potential to gradually enhance the currency's appeal. A crucial element in this should be to shore-up internal coordination and the EU's ability to react to internal shocks. It was disconcerting in late 2008 and early 2009 to see the EU almost dormant in addressing the sudden capital stop experienced by poorer EU nations. The eurozone laggards were offered tentative support, which helped them weather the storm, but the non-euro nations of Central Europe found themselves confronted with a monetary form of the old Iron Curtain. Although the worst-hit economies received balance-of-payment support from the EU, for many observers it seemed like a throwback to the early days of post-communist reforms when the IMF rather than the Commission, the ECB or the European Council took the driving seat. Protectionist impulses of some leading eurozone politicians who sought to attach national strings to government bailouts of banks and other forms of support for companies did nothing to boost confidence in the European project. The Czech Presidency bravely sought to resist both the protectionism and the over-simplistic perception of the risks in Central Europe. Aided by other newcomers, notably the recession-resistant Poland, the Czechs managed to put

together enough critical mass to get the message across to EU partners and markets, but their ability to follow through was limited due to domestic political instability culminating in the collapse of the government in the middle of the Presidency. The subsequent Swedish Presidency saw the situation calm down thanks to modest signs of recovery but the topic of eurozone's internal cohesion is set to come back as the EU designs its post-crisis strategy. The opening of the EU's new political cycle, crowned by the coming into force of the Lisbon Treaty, is providing policy-makers with an opportunity to consolidate the eurozone. The new German government's plan to ease taxes and not to rush with fiscal consolidation aligns the eurozone's largest economy closer with France, boosting chances of a more coordinated exit strategy. If this is coupled with a credible plan of reviving the Growth and Stability Pact as well as credibly extending the eurozone further east, the euro is bound to consolidate its position. One factor which could take the euro closer to a reserve currency status would be to return to discussions about the EU becoming an independent issuer of bonds, thus creating a pool of liquidity directly linked to the currency. So far the idea has received a very cool reception from Germany, which fears that such bonds would amount to an easy way out for recalcitrant budgetary offenders such as Greece, Italy, Spain and Portugal, at the expense of more disciplined eurozone members. Eurozone outsiders in Central Europe are also loath to the idea, fearing they would be left out in the cold in the crowded sovereign credit market. Yet, the idea seems worth revisiting in the context of the next EU budget. One possibility is that the budget contains a reserve fund for dealing with internal shocks, financed through EU borrowing in the market. The fund could also be used for financing clearly pan-European projects such as on energy security and climate change, and could be offset by a mechanism under which eurozone members would limit their domestic borrowing in proportion to EU level borrowing. A stronger mechanism for monitoring compliance with the Growth and Stability Pact is provided for in the Lisbon Treaty, but work should begin on enforcement. A determined Presidency could begin such discussions during 2010 in the run-up to the likely coordinated push for exit from stimulus and discussions on the next financial perspective, both set to take place in 2011.

Combine carbon tax debate with Doha round

International trade has been one of the biggest casualties of the crisis. The Doha round of WTO talks aiming to further liberalise trade has been largely marooned, with an increasing number of diplomats expecting that the 2011 deadline for a deal may need to be pushed back. Despite a body of evidence suggesting trade liberalisation would aid the global recovery, many governments are treading water, fearing the impact on their domestic industries. The shifting global economic landscape and the uncertain future of the post-Kyoto deal on combating climate change are additional impediments in the trade talks. The growing debate on the global carbon tax, which the European Commission sees as one way to finance the climate change adaptation of developing nations, should be dealt with in the WTO context even if this could cause further delay in the talks. Here the role of the EU Presidency could be comple-

mentary to the Commission's WTO negotiating mandate. The lack of a binding agreement at Copenhagen in December 2009 reinforces the case for such an approach going forward. The reasons to include the carbon tax in the Doha negotiations are good even though there are a number of respectable voices arguing the opposite. Angel Gurría, head of the Organisation for Economic Cooperation and Development (OECD), said recently that "the danger is that arguments over border (carbon) taxes could make an agreement (in the Doha round) even more difficult to negotiate. There is no need for this distraction, as fears about the potential impact of leakage and loss of competitiveness are exaggerated". He has a point. The developing nations are generally expecting the EU and the United States to lower barriers on agricultural products and reduce subsidies to their farm sectors. In return they are prepared to open up to non-farm goods exports from the developed nations. The exact formula and scale of liberalisation on both sides remain sticking points and would be further complicated by the carbon tax, which – unlike the emission trading schemes – would apply to transport and farming goods. Yet, in reality, it is misleading to separate international trade from the push to make global industry (producing tradable goods) more environment-friendly and energy efficient. In the same way as global currency imbalances distort trade by giving a *de facto* unfair competitive advantage to some countries, carbon-intensive industries enjoy a similar advantage over industries which are switching over to low-carbon technologies. If the EU genuinely wants to play a leading role in combating climate change, it should design a formula linking farm trade liberalisation with making the carbon tax universally accepted.

Fewer Europeans, more Europe in international bodies

The Lisbon Treaty bears a promise of making Europe's voice on the global scene more coherent. Both the President of the European Council and the High Representative will have the capacity to represent the Union in external relations. The Presidency will from now on have a more auxiliary role in presenting the EU's views to the outside world. However, it has a significant role to play in creating the internal EU unity that is necessary to give the new posts a strong influence. The logical next step is for the EU to rethink its representation in key world governance bodies. The issue of EU over-representation at the IMF and the need to rebalance the voting power at the Fund has already been discussed and it seems some progress there is possible. One way to move things forward would be to break with the tradition that the top IMF job always goes to a European. If Europe wants to see greater engagement of emerging powers in global monetary governance, backing an Asian, possibly Indian, candidate to succeed Dominique Strauss-Kahn would be a gamble worth taking. It would bear witness to Europe's seriousness in seeking a more balanced, multi-polar global order, and would display Europe's trademark model of consensus-building on the world stage.

Whereas the outside pressures for IMF reform create an incentive for Europeans to act, the European representation at the G20 and on the UN Security Council is a much trickier issue. Yet the establishment of the President of the European Council and High Representative could

offer a much-needed stimulus to revisit the issue. Regarding the G20, the EU should seriously consider a much leaner representation. At the moment, six EU nations sit in the G20 meetings – France, Germany, Britain, Italy, Spain and the Netherlands. The last two have sneaked into the group on dubious grounds. The benefits of such wide representation of Europeans are hard to find, apart from creating a feel-good factor in some capitals. The argument that it is better to have more people voicing the European point of view is misguided – who wants the same message repeated six times in one meeting? Negative effects are more tangible. It creates yet another division line in Europe, with new member states in particular feeling that they have been short-changed and deprived of influence on the G20 agenda. To the outsiders, the plethora of Europeans at the table is symbolic of Europe’s inconsistency. On the one hand, it shows that European nations still harbour an ambition to dominate the global agenda despite their shrinking individual power, and on the other it shows the inability of Europeans to pool resources, reach internal consensus and speak with a single voice. This state of affairs reinforces the perception that Europe is satisfied with appearances of influence rather than real power. To illustrate the point: even if Europeans actually reach a consensus on an issue discussed by the G20, as they did before Pittsburgh, will all the six EU representatives deliver the same speech or will each try to be original, muddling the message as a result? How quickly will some of the partners at the table stop listening to yet another European, or will they all listen attentively to spot rifts in the allegedly unified EU stance? And what if the EU is indeed divided on an issue – does it benefit the bloc to paper over the divisions in the run-up to the G20 only to put them on display during the meeting? One way or the other, this is no way to do serious business, avoid irrelevance and win the respect of partners. The institutional changes provided by the Lisbon Treaty should therefore be used as an opportunity to radically overhaul the system. The G20 should be purged of all national European representation and replaced by the Trio of the President of the European Council, the Commission President and the ECB. This would force the EU to seek genuine internal consensus around consistent policies. The paradox is that such a smaller European representation, speaking with a single voice, would enhance rather than reduce European influence. It would certainly be welcomed by the United States and could boost Washington’s appetite for a closer coordination with the EU on global governance issues. The prospect of a world increasingly run by a G2 comprising the United States and China (with Europe, India, Brazil and Russia in the back seat) could thus materialise as a G3, in which Europe would wield political influence consistent with its economic clout.

GLOBAL GOVERNANCE

The Post-Crisis Financial Market Agenda

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The post-crisis financial market agenda

The EU is in the midst of a fundamental institutional and regulatory overhaul in response to the financial crisis. This process is primarily driven by domestic agendas, but G20 commitments also come into play. Following the de Larosière report, the Council acted rapidly with the endorsement of the new institutional structure in December 2009, as proposed by the European Commission. After adoption by the European Parliament, the main task ahead is to make the new structure work. On the regulatory side, a huge agenda lies ahead, covering the upgrade of prudential, conduct of business and product rules. Many decisions await the incoming European Commission, although the EU Council of finance ministers has already taken a clear line. A tight coordination with the G20 in general and the US in particular is needed to counter concerns in the financial sector about regulatory overkill and an uneven playing field. In addition, market mechanisms must be respected and, as much as possible, stimulated.

The *de Larosière* follow-up

The new structure brings a sea change in financial supervision in the EU. At the top is the European Systemic Risk Board (ESRB), which will give general risk warnings and recommendations on specific risks. It will specify the procedures to be followed by the European Supervisory Authorities (ESA) to act upon its recommendations. The ESAs will have the powers to enact standards and to control their implementation. They will ensure large cross-border financial groups are adequately supervised through their participation in supervisory colleges. All new legislative measures are regulations, hence they will be directly applicable, and do not need to be transposed into national law. A political agreement on the different measures was reached in the EU Council in December 2009 under the Swedish Presidency. The readings by the European Parliament are not expected to change the proposals much, as the legislature is largely in favour of the new structure.

The ESRB will only be consultative, but is supposed to derive its authority from its reputation and expertise. It will be run by the European Central Bank (ECB) and largely composed of EU

central bankers, with limited participation of the supervisors, and only one representative of the Council of EU finance ministers. The ESAs on the other hand will have legal personality, and the power to impose binding agreements to effectively coordinate supervision of cross-border groups and structures. However, such decisions may not impinge upon the fiscal responsibilities of the member states, hence the fact that the powers to liquidate a cross-border bank will remain at the home-country level, in cooperation with the respective host countries.

The changes which are being discussed in the US (House Act of 11 December 2009) are different from the EU in that they leave the powers at the macro-prudential level largely with the Secretary of the Treasury, who will chair the Financial Services Oversight Council (FSOC), which brings together the different supervisory authorities and the Federal Reserve. On the micro-prudential side, the institutional changes in the US comprise the merger of the two banking supervisory authorities OCC (Options Clearing Corporation) and OTS (Office of Third Supervision), and the creation of a federal insurance authority and a consumer financial protection agency. They stop short, at least for the moment, of going towards a more radical restructuring.

The main challenge for the EU is to make the new structures work. This task is for the ESRB more of a conceptual nature: what are macro-prudential risks, and how will it act once these risks have been identified? For the ESAs, the challenge is more of an operational and organisational nature: how to cope with the enormous workload ahead. EU policy makers will have to monitor whether the job division between the ESRB and ESAs is clear-cut, and eventually intervene to clarify the distinction between macro and micro-prudential supervision. As for the ESAs, policy makers will need to further clarify their tasks: what is a single rulebook, and how will this be enacted? What will be the division of responsibilities between the EU Commission and the ESAs in the enforcement of rules? Will member states accept formal mediation between supervisors by the ESAs? A prioritisation in the workload of the ESAs by the EU Council Presidencies and Commission will thus be welcome.

The regulatory agenda

The agenda for the incoming Barroso II Commission has already been set, but many decisions need to be taken. The crisis revealed important shortcomings in the regulatory framework, to the extent that a core principle of the single market, the single passport and home country control, was called into question. To restore this principle, the European Commission will have to engage in moving towards a much higher degree of harmonisation in certain areas – a more European approach and less reliance on member state systems – and stricter enforcement. The workload could be subdivided into:

- **Prudential rules:** further modifications to the capital requirements directive, as further to the December 2009 proposals of the Basel Committee; further harmonisation of deposit protection schemes or the creation of an EU-wide fund; prudential rules for clearing and settlement systems;

- **Product rules:** more harmonisation of financial products, i.e. hedge funds (alternative investment funds), mortgage loans; an EU regime for retail investment products;
- **Conduct rules:** stricter rules for transactions in certain products, such as OTC derivatives; better control of transparency and equality of access to securities markets; tighter penalisation of market abuse; remuneration rules.

Following the EU's 1993 deposit protection directive, three different schemes of protection co-exist: the protection offered by the home country (applicable to the head offices and its branches or through free provision of services), the protection offered the host country (where the bank is a subsidiary of a foreign bank) and the home country scheme 'topped up' with the level offered by the host country (where the level of protection for a branch operating in the host country is lower than that of its home country). Until the crisis broke out, an overwhelming majority of consumers was not aware of the consequential differences in protection schemes. In the midst of the crisis, the member states provisionally agreed in the EU Council to increase the minimum levels to €50,000, but did not change the basics of the 1993 EU directive, nor the method of funding or the statute of the national deposit protection schemes. The European Commission will need to decide soon in the second Barroso Commission on how to reform the system for the long-term. In the interest of the single market, it will need to decide to create a European-wide fund, analogous to the Federal Deposit Insurance Corporation of the US, but this will undoubtedly lead to acrimonious discussions with the member states.

Other elements will need to be reformed to get consumers back on board of the single market. Mortgage lending, for example, is not subject to any degree of EU harmonisation, whereas (short-term) consumer lending is. Although mortgage lending is about 9 times more important than other forms of consumer credit, a consultation in 2007 concluded that the different forms of national legislation seemed to work well enough, and that there was no immediate need for European harmonisation. However, principles such as responsible lending and loan-to-value ratios could well be harmonised and enforced at European level, as lax mortgage lending standards in one member state have European-wide implications.

A related priority for the incoming European Commission is to continue to stimulate self-regulation. The principle may have been discredited in the crisis, but it is an illusion to believe that everything can be regulated and controlled by public authorities. Strengthening the role and clout of standard setters and self-regulatory organisations is a part of a well-functioning enforcement system.

Apart from the regulatory agenda, the Barroso II Commission will also have to continue the work of applying the EU's state aid rules to the financial sector. This work led to the first results in November 2009, with the first Commission decisions on state-aided banks, such as ING and KBC, but many more are in the pipeline. It will be important to examine how the Commission will enforce the Treaty rules to maintain an integrated financial market, and which principles will be applied.

Recommendations

Post-crisis, the EU will have to ensure that all the commitments taken during the crisis are respected and lead to effective change, as much in the new institutional structure of supervision as in rule-making and enforcement. The pressure is already widespread to return to business as usual in the financial sector, but with this financial crisis having cost about 11% of the EU's GDP according to the European Commission, a fundamental change is imperative. This is also in the interest of the EU, since Eurobarometer surveys indicate that EU citizens' trust in the EU institutions was badly damaged during the crisis, and demand for stronger statutory regulation has increased. Policy makers will thus need to take utmost care that the lessons of the crisis are not forgotten.

GLOBAL GOVERNANCE

Global Governance as Multilateral Regionalised World Order: Planning for the Global Role of the EU in the SBH Trio Presidency

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Towards the new multilateral regionalised world order

In the tough global competition of the early 21st century, which includes conflicting efforts at global governance, the main issue for the EU is globalisation-cum-regionalisation – namely the regionalisation of its neighbourhood as a special kind of the EU ‘widening’ and ‘deepening’. Due to its subsequent enlargements, parallel with its own internal regionalisation, the EU has restructured the political space in its increasing ‘near abroad’ and it has generated external regionalisation around the EU. Rightly so, since a ‘new multilateral regionalised world order’ has been emerging and the EU as a global actor can only be successful if organises its own regionalised neighbourhood. Europe as a soft, civilian power can only play a leading role in the new global governance and world order when and if it organises a special relationship as a means of stabilisation in the West Balkans, as well as in the neighbouring Eastern and Southern mega-regions. The main principle of regionalisation for the EU is ‘integrative balancing’. Integrative balancing means empowering the unequal ‘external’ partners by applying the partnership principle in the process of widening, through which the neighbour states are to be integrated into the common policy-making process at all levels. Integrative balancing implies a sense of partnership with a balancing mechanism by which the relatively weaker partners are empowered, thereby creating synergy by optimally representing common interests.

Globalisation has generated regionalisation at four levels:

- *Mega-regions* embracing continent-size territories of several countries like the EU, NAFTA and ASEAN, or the ‘East’ and ‘South’ around the EU; the dominating trend in the global system has been their interaction and competition with the entry of the mega-region-sized great powers into the global competition, like the BRICs (Brazil, Russia, India and China).

- *Macro-regions* containing some countries within the EU, like the Nordic Region or Central Europe; this regionalisation will be a continued process in and around the enlarged EU – thus the West Balkan region, or Eastern Europe proper (Belarus, Moldova and Ukraine); South Caucasus (Armenia, Azerbaijan and Georgia) are also emerging macro-regions, like the North African and Middle East macro-regions in the South.
- *Meso-regions* like the sub-national regions (NUTS2) in the EU member states and the corresponding territorial units of other states; they can also cooperate intensively with the proper regional partners across borders and they usually strive for some kind of autonomy / self-governance within their states.
- *Micro-regions* like the smaller sub-national territorial units (NUTS3, or earlier NUTS4, now LAU1) in the EU with their trans-border organisations (for instance euro-regions and / or territorial cooperation); again, they can establish strong ties across the state borders, or even across the borders of macro- and mega-regions.

Multilateral regionalisation as widening and deepening of the ENP

The EU Neighbourhood Policy needs its own ‘widening’ and ‘deepening’ to fill the obvious gap in the EU’s planning for its neighbourhood. Widening in this respect means the geographical extension of partial / sectoral European governance, and deepening presupposes the better extended governance with a more differentiated institutional system for more policies. The ENP has been so far a series of the *ad hoc* reactions to the emerging conflict situations in an increasing number of neighbours instead of a proactive project with a coherent vision for the Neighbourhood Policy. The development of widening, like the efforts for extended European governance, has taken place in three main stages. These three efforts for creating the Southern, Northern and Eastern Dimensions came together in the late 1990s and influenced the emergence of the ENP document on 12 May 2004. Since then, beyond the basic convergence, this mega-regional competition and tension between East and South has also re-emerged. For its part, in April 2008 the European Commission formulated “the need for an increased visibility of the European Neighbourhood Policy to advance ownership of the reform process, and to underpin the EU’s support for its neighbours as they come closer to the Union. (...) Within the EU, the importance of strengthening relations with our neighbours has moved closer to the centre of the policy debate”.

In order to make the ENP manageable given this tremendous heterogeneity, it would be necessary to separate the ENP into two regional organisations or units, under a larger common umbrella. First, to create symmetry between its two parts, some kind of an ‘EU-Eastern European Union’ (in brief Eastern Union) would also need to be established in parallel with the Mediterranean Union (in brief Med Union). There are three reasons to organise these two separated ‘Unions’. First, as the above Communication of the Commission has also explained, there is a large “political, economic and cultural diversity among ENP partners”. Therefore it would be better to have a more differentiated institutional framework according

to the existing separation of Association Agreements (AA) in the South from the Partnership and Cooperation Agreements (PCA) in the East. This would enable the East to move forward towards the planned 'deep' and comprehensive free trade area as a core element of the New Enhanced Agreement (NEA). Second, the intra-regional cooperation has to be intensified in both mega-regions as "promoting regional integration beyond the borders of the Union", but the 'deepening' of the ENP presupposes the separation of South and East according to their regional specificities. This will allow also the fine-tuning of the sectoral policies, since these sectoral policies still are, and must be even more, mega- and macro-region-specific. Third, although the enlargement to the Eastern Europe proper is not yet on the agenda in the foreseeable future, still the constitutional situation in these two mega-regions is basically different, since the South has no European perspective and the East has a virtual European perspective. The separation of the Eastern and Southern ENP-type of 'widening' policies could allow for a more accentuated separation of the Western Balkans (WB) 'enlargement' policies.

Under the pressure of global crisis, and as a result of the long-term preparation process, the EU has taken a further step in transforming its own global environment with the Eastern Partnership (ENP-EaP). The main actors in promoting of the EaP have been Germany, Poland and Sweden, since the 'old' Baltic cooperation and the 'new' Northern Dimension initiatives have been culminating in this new project. The other East-Central European (ECE) member states are not major players, since their main interest is the WB integration, and they have made initiatives in this field (see the Slovenian Presidency). This does not mean that they do not support the EaP initiative. On the contrary, they do so very actively, as the Czech Presidency proves. The EaP is high on the agenda for them too, because of the new key issues for the EU – especially since energy security and the promotion of democracy (with the decline of democracy in Russia) have recently come to the fore. The widening policy towards the East, meaning Ukraine firstly, is important also for the ECE countries, both positively (trade, culture, minority issues) and negatively (migration, crime and black-market labour). Therefore, Hungary plans to continue the EaP initiatives from the Czech Presidency during its Trio Presidency with Spain and Belgium, and to retain momentum in order to hand these over successfully in 2011 to the next rotating presidency, Poland.

For the whole structure of the EU moving to the East, the European Council decided on 20 March 2009 about the Eastern Partnership. On 10 June 2009 the Baltic Strategy was formulated in the Commission document, and the June 2009 European Council "welcomed the launch of the Eastern Partnership". It may be a breakthrough in the treatment of the six Eastern neighbours as well as in the institution-building policy of the EU. Already in the Declaration attached to the March 2009 Presidency Conclusions the European Council invited the heads of states and governments of the new 27+6 partnership formation to a summit meeting on 7 May 2009 in Prague. The Declaration reorganises that the main objective of the ENP's Eastern Dimension is "to create the necessary conditions for political association and further economic integration between the European Union and Eastern partners"

by introducing ‘the principle of joint ownership’ and suggesting a ‘multilateral framework’ for regional cooperation. The most important message is that “the European Union’s Comprehensive Institution-Building Programmes will help the participating countries to improve their administrative capacity”. In this spirit “the multilateral framework (...) should operate on a basis of joint decisions of EU member states and Eastern partners”. The Prague Summit has adopted a Joint Declaration on the Eastern Partnership by the participating 33 states. Based on that Declaration there will be a summit of heads of states and governments once every two years, and the foreign ministers will meet once every year. After this basic turning point, introducing partnership at macro level, the elaboration of multi-level and multi-actor democracy can begin in the six Eastern partner states. Given the fact that the EaP is a Swedish-Polish common proposal, the Swedish Presidency has continued to push energetically for this initiative.

All in all, the shift of focus in the ENP from the South to the East has been an unavoidable process with the Eastern enlargement, since it has become necessary to develop new and more intensive contacts with the new neighbour states. As a result, it has also created tensions of necessity between the Southern and Eastern ENP directions, including their financing. These tensions have been increased by French efforts to transform the Barcelona process according to their tastes, which have produced new misunderstandings and controversies. From the very beginning of the Eastern enlargement there have been overheated statements on “the dilution of the commitments of the EU towards the MEDA region” or about “the end of the Euro-Mediterranean vision”. The shift of the focus in ENP to the East should not mean that the EU neglects its commitment to the Med mega-region. On the contrary, it is the clear interest of all member states that the EU should provide enough support for the economic, social and cultural developments of the Med mega-region. Instead of victimising the Eastern ENP for the rebalancing of their relationships with the EU, those directly interested in the development of the Southern ‘Near Abroad’ should investigate the internal obstacles slowing down the Barcelona process. The ‘modest results’ of the Barcelona process have occurred for three main reasons: (i) the failure of democratic conditionality in the South, (ii) the interference of the United States and (iii) the lack of horizontal or intra-regional cooperation of the states concerned. The removal of these obstacles to ENP deepening in the South is of great importance for the EU as a whole. Its delay is not due to any financial controversy, but to the growing uneasiness and reluctance of the Southern ENP partners towards further Europeanisation. Therefore the shift of focus in the ENP to the East has not done any harm to the South – on the contrary, the achievements in the East suggest new ideas for the widening in the South, too.

The functional regions (EBS and EDS) as flagships of regionalisation

The European Union Strategy for the Baltic Sea Region (EBS) and most recently the European Danube Strategy (EDS), and to some extent the Black Sea Synergy, have brought a turning

point in the EU regionalisation / widening policy as in terms of extended European governance. The mega-regions in the East and South, as well as their macro-regions, can be described as large geographical-geopolitical units – but they are not functional units, since they have not been interconnected through some key policies. They hardly form real units because they have not become interdependent by the common functions of the economy oriented policies – or, taken in the wider meaning, they are not organised into one unit by development policy. Of course, the mega-regions (and even more their macro-regions) have their own traditional contacts and forms of cooperation, but usually these are not intensive enough and not made by ‘design’, i.e. not sufficiently planned and regulated, to form a functional macro-region. In fact, the first step was only taken ‘inside’ the EU by the EBS. The June 2009 Communication also claimed to show the model for the other functional macro-regions: “the area could be a model of regional cooperation, where new ideas and approaches can be tested and developed over time as best practice examples”.

Consequently, the regionalism has to be understood as a complex of parallel intra-regional and inter-regional, multidimensional and multilevel region-building processes based on a strategic design elaborated and agreed upon by the partners concerned with the spirit of integrative balancing that empowers all partners. Thus, the EBS goes very much beyond the simple territorial definition of the Baltic Sea area and it has been conceived as a project, involving bigger and smaller states in a common scheme as integrative balancing. The Baltic Sea cooperation occurred organically in its earlier institutions, but the EBS was much more, since it emerged ‘by design’. The strength of the EBS is that it has been built on the existing and well-functioning cooperation schemes – and that it has developed them further by a comprehensive strategic project. This project has also offered a perspective for the ‘outsiders’ –Norway and Iceland on one side and Russia on the other side– to intensify their cooperation in key policies, driven by their own direct interests. The Baltic Sea Region Strategy is a ‘bottom-up’ project, which starts from the existing policies, instead of the usual ‘top-down’ approaches in the EU, in which the EU suggests only general schemes that could be filled by concrete projects as Action Programs, somewhat later if at all.

The strategic commitment of the EBS in the June 2009 document leads to the implementation of the idea of territorial cohesion requested in the informal meeting of Ministers at Leipzig already in 2007: “The Baltic Sea Region is a good example of a macro-region – an area covering a number of administrative regions, but with sufficient issues in common to justify a single strategic approach. Other areas of the European Union are beginning to self-identify as macro-regions and the approach adopted in this strategy will offer important lessons as to the potential of the macro-regional approach. This follows the territorial cohesion proposals of the Commission in the Green Paper of October 2008, whereby interventions are built around the needs of functional regions rather than according to pre-determined financial and administrative criteria. (...) The analysis described above demonstrates the need for a common strategic vision to guide future territorial development for the Baltic Sea Region”.

From boring to daring – from *status quo* to political innovation in the EU

In 2008-2009 there has been a sharp turn from ‘boring’, *status-quo*-oriented and routine approaches to ‘daring’, brave visions in the EU widening policy. The main issue on the Western side is still the incoherent, patchwork character of widening policy. The transformative power of the EU has been tested with little impact so far in the Med Union. It remains to be tested in the WB region as well as in the Eastern Union in the next decade. Therefore, the invention of the future widening policy means above all the creation of a coherent and integrated system by connecting the ‘technical’ issues in ‘low politics’ with the security issues in ‘high politics’, organically and systematically – i.e. the whole range of policy areas has to be arranged into one strategic ‘macro-project’, as seems to be emerging in the EBS, and in the European Danube Strategy (EDS) to follow. Given the reform fatigue or treaty fatigue in the EU, the preparation of a new vision for the EU widening policy can only be a very long process. Hence, the Spanish, Belgian and Hungarian Trio Presidency has to start to prepare a new vision very early in a draft stage by suggesting new ideas and elaborating the next big vision step-by-step, instead of the business-as-usual approach. The WB ‘enlargement’ and the ENP ‘widening’ innovations have to appear well before the new budgeting period in order to be taken into account in terms of financial impact.

Globalisation-cum-regionalisation has been the main effort of the EU to answer the global challenge. This effort has recently been reinforced by the EU due to the global economic crisis. ‘Regionalism’, or organising various levels of regions by strategic design, has come to the fore, as in the cases of EBS and EDS. Multi-dimensional external and internal regionalisation has enabled the EU to play a dynamic role in creating global governance in a multilateral regionalised world order. It has also been a win-win game of integrative balancing for the other global powers, as the first tentative steps of the G20 organisation suggest.

FOREIGN POLICY AND DEFENCE

Building a European External Action Service: a Difficult Birth?

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“*In fulfilling his mandate, the High Representative (HR) shall be assisted by a European External Action Service (EEAS). This service shall work in cooperation with the diplomatic services of the member states and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the member states. The organisation and functioning of the EEAS shall be established by a decision of the Council. The Council shall act on a proposal from the HR after consulting the European Parliament and after obtaining the consent of the Commission” (Article 27.3, Treaty of Lisbon).*

In foreign policy terms, the EU’s global partners often have to deal with the competing external relations bureaucracies of the European Commission, the EU’s Council Secretariat (itself acting separately for both the HR and the six-month EU Presidency) as well as the different diplomatic services of the member states. That situation reflects the uneven development of the Union’s foreign policy machinery since the development of ‘European political coordination’ in 1970 and the EU’s beginnings as a purely economic entity. Nevertheless the Union has managed – through the creation of a HR for Foreign Policy and almost 20 years of adopting common positions on all but the most controversial external issues – to create the expectation that it ‘should’ have a serious foreign policy that can mobilise diplomatic, military and civilian resources and deploy them worldwide.

The foreign policy provisions of the Lisbon Treaty are a clear effort to satisfy that expectation. The clauses sketch out how the EU should overcome the mess of bureaucratic (and the resulting legal and political) obstacles to more coherent decision-making and delivery on external policy. On the delivery side, a major priority is the need to overcome the artificial separation between the political wishes of the EU’s foreign ministers and the Commission’s technical and financial resources. Hence the Treaty’s negotiators agreed to the establishment of a foreign policy council and quasi-diplomatic service to link the political legitimacy of the member states to the EU’s amalgamated foreign policy machinery.

Moving on from ambiguity: confronting difficult questions

The establishment of a new semi-permanent Presidency for the European Council and a newly empowered HR are attempts to make EU external action more politically legitimate. Though the politicians and civil servants will wrestle to define the boundaries between those posts, two factors would seem to suggest the posts will add value. First, similar tensions tend to exist between the Prime Minister and Foreign Minister in normal nation states, but these are not insurmountable. Second, the first incumbents of the posts – Herman Van Rompuy and Catherine Ashton – are consensual rather than combative figures. Their shared disposition is likely to keep inter-institutional rivalry under control.

However, the job of designing an effective external action service to support both the HR and the Council president will still be a complex and complicated business, not least due to the challenges of incorporating over 130 Commission overseas representations and establishing control over a foreign policy budget worth up to €50 billion (over the period 2010-2013). Other key issues to be tackled in the negotiations that will establish the service are its scope and size, legal status, the recruitment, rotation and promotion of EU ‘diplomats’, the establishment of a headquarters, and the level of control the service will have over its own organisation and finances.

Scope and staffing

The EEAS should start small, but should be flexible enough to grow where there is demand for its services. Early proposals tabled by the EU’s Swedish Presidency show that the core of the new service will be composed of single geographical and thematic desks (human rights, counter-terrorism, non-proliferation and so on) currently working separately in the Council and the Commission. Enlargement will remain the responsibility of the Commission even where the EEAS has geographical desks dealing with candidate countries. Trade and development policy will also remain the responsibility of other Commission directorates. This rather minimalist approach highlights the natural reluctance of well-established Commission directorates to be absorbed into any new body and underlines that effective coordination with other bodies will be a central factor in whether the new EEAS works as a concept. However, the EEAS will – uniquely – incorporate the EU’s crisis management structures set up to service the Common Security and Defence Policy (CSDP). That includes the so-called ‘Crisis Management and Planning Directorate’, the ‘Civilian Planning and Conduct Capability’, the EU military staff and the Joint Situation Centre, a small unit of seconded intelligence experts. EU ‘special representatives’ – political figures appointed as the EU’s face in particular regions or on thematic issues – will be included, too. The EU’s entire budget for Common Foreign and Security Policy (CFSP) matters as well as its supplemental ‘Stability Instrument’ should become the core of the EEAS budget, though spending decisions will still have to be rubber-stamped by the Council and largely administered through Commission structures.

Member states seem content to let the Council and Commission decide between themselves how best to amalgamate their services. But the governments have set the proviso that one third of staff vacancies in the EEAS should be filled by secondees from their own services. This is to avoid excessive weighting of the service towards the organisational culture of the Commission. A formula for making HR decisions on EEAS appointments compatible with geographical balance is to recognise the HR as the appointing authority, using a transparent and meritocratic procedure while ensuring adequate geographical balance (due to the need for a meaningful presence in the EEAS of nationals from all EU member states). A recruitment procedure would be established, associating representatives of member states, the Commission and the General Secretariat of the Council.

Finally, it has been accepted that the EEAS should have a wide scope, assisting not only the HR but also the President of the European Council and the President as well as the members of the Commission in their respective functions. The EEAS will be more useful and relevant, and ensure coordination between the new President with the new HR. Of crucial importance is whether the EU's external delegations will serve as an effective information-gathering system, which is the key added value the EEAS might provide to member states and the Union's institutions. Central to this is how effective its heads of delegations become in coordinating external EU action. For example, not all staff in the new 'EU' overseas representations will be EEAS-affiliated: the Commission will still post separate representatives abroad, for example, for trade and development. But the head of the EEAS delegation will need to coordinate the activities of all EU staff serving under the delegation's roof, a power that the Lisbon Treaty does indeed imply (under the Treaty, the HR has the right to coordinate all externally related policies of the Union, an authority which presumably will extend to the management of the overseas missions.)

Training

The EEAS will gradually develop its own diplomatic culture. In the absence of a European diplomatic school, this will occur through an organic blending of different foreign policy traditions from the member states and the administrative culture of the Council and Commission. It is too early to tell if this will culminate in something more profound: a sense of purely 'European' interests in international relations. But at the start the service will at least require basic diplomatic training programmes, the embedding of Brussels *'fonctionnaires'* in national diplomatic ministries, and special accelerated training for specific vacancies in delegations overseas.

There are currently two different EU diplomatic programmes, funded and owned by the member states that could be a useful basis and experience for training in the new service. These are the 'Young Experts in Delegation', started in 1984, and the 'Seconded National Experts in Delegations', started in 2002. The aim of both was originally to train young experts and officials from member states, over a two-year period, to serve in the European Community External Service. But since an external action service was first proposed almost

ten years ago, both programmes have been developed as a basic training platform for a future EEAS (the YED even styles itself as a nascent “European Diplomatic School”). Both programmes also offer one-month crash courses to officials due to be posted to delegations overseas.

In the longer term, the EU may decide to establish an actual European Diplomatic School. Such an academy would be designed to give junior diplomats the linguistic, diplomatic, leadership, negotiating and protocol skills necessary to do their jobs. But the parameters of such training could only be set after the service has existed for at least a few years.

Organisational and financial independence

EU leaders have already agreed that the EEAS – and therefore the HR – should have full control of its own budget and staff. The High Representative will propose an EEAS budget as a separate section of the EU budget and be the final authority for the release of funds and the appointment of staff. This system would allow the European Parliament to have an indirect but important instrument to control the EEAS (the leaders ignored a weak attempt by the European Parliament to make the service financially dependent on the Commission, but the Parliament will still have some control of the service via its control of the overall EU budget). Staff from member states should have temporary status, but with the same opportunities, rights and obligations as those of staff coming into the service from the Commission or from the Council.

Relationship with national diplomatic services

Inevitably, the EU’s national diplomatic services will have mixed reactions to the fledgling EEAS. Many ambitious diplomats are naturally attracted by the new opportunity that the EEAS represents. But some will see it either as a competitor or a potential nuisance. The appointment of two relatively unknown candidates to the posts of Council President and HR in November 2009 was a ‘coming down to earth’ moment. It is clear that most member states will not wish to interpret much of the Treaty in an ambitious way where this could constrain their future action. The Treaty already contains two declarations underlining that the HR or the EEAS will not affect the current competences of member states in foreign policy or their standing in bodies like the UN. But the main text of the Treaty requires the member states to second staff to the service and provides for close coordination between the service’s overseas delegations and the member states’ diplomatic and consular missions around the world. Hence a rather existential question facing the EEAS at its inception would seem to be: if it cannot become a centralised ‘European diplomatic service’, how exactly can it add value to the efforts of national services and how will it work with them abroad and in international institutions?

In general, one area of value-added is coordination: the head of the EEAS delegation in each country should coordinate overall EU policy on site with the so-called national ‘heads

of missions'. But a more specific idea is that the new EU delegations would assume some responsibilities for consular services, the coordination of humanitarian assistance and interventions in crisis situations. Though diplomatic protection can only be provided by a state, emergency consular services could be carried out by the seconded national diplomats serving in EU delegations. The EU delegations could also assist in the processing of visa applications in some regions. This is also a national power but member states have long applied uniform rules for the standard issuing of visas. Member states – while insisting that they maintain the final say on whether to grant or refuse a visa – have indicated they are open to the EEAS performing such tasks, not least because of the costs of individually equipping their consular services to deal with biometric technologies. However, the establishment of a European external action service will not automatically imply a reduction of most national diplomatic services: the majority of member states will still wish to conduct most of their foreign relations on a bilateral basis. It is more important in the medium-term that the Union's current foreign policy becomes more coordinated and more tangible than rhetorical, particularly in international organisations such as the International Monetary Fund and United Nations.

Other recommendations

The reality is that it will be several years before observers can measure whether the reforms to the EU's external representation laid out in the Lisbon Treaty can be judged as fundamental improvements. For example, most analysis carried out to date do not consider what role the EU's rotating presidency will have at working group level, or whether these will now be chaired by an EEAS official. But in the initial period of creation it seems certain that – to have a discernible impact – the service must:

- Begin cautiously. The EEAS will take at least five years to build before it is able to display its potential and make a proper submission for funds from the EU budget. A simple merger between the relevant desks of the Council and Commission will be work enough for the first two years. More ambitious structures and roles can be developed later, such as consular services and so on. The member states should be patient and give the service time to deliver.
- Develop a system of deputies. Javier Solana, the previous HR, worked an average of 100 hours per week. The very significant expansion of the new HR's role will require deputies to be appointed. There should be at least two: one in the Council and one in the Commission. The HR should expand the current system of double-hatted special representatives, which will form the upper tier of the EEAS.
- Develop unique specialisations. Aside from its peacekeeping and civilian protection wing, the EEAS should have a special representative to oversee external action related to internal security threats like terrorism and mass migration. This person should sit on the proposed Standing Committee on Internal Security (COSI), also being established in the 2010-2011 period, as a means of joining up the different EU agencies working in the area. The EEAS should keep abreast of the external effects of EU internal security

cooperation and be able to feed in its own priorities from the foreign policy side, for example, on counter-terrorism.

- Be elite. To succeed, the EEAS will need the best people. This is an obvious point but one which cannot be taken for granted. In the past, member states have off-loaded difficult or below-par staff to the Council and Commission. Commission delegations abroad have been criticised at times for lacking staff with proper diplomatic training or crisis management credentials, and for poor political reporting. It is crucial that the EEAS avoids such a reputation and develops a tradition of excellence early on. In this initial period, the onus needs to remain with the member states to ensure that the service has some of Europe's most capable diplomats and for the HR to insist that this is the case from the start.

FOREIGN POLICY AND DEFENCE

A Realistic Ambition: Setting Priorities for CSDP

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The 2008 ‘review’ of the European Security Strategy (ESS), as it was often called – although that was never the mandate given to Javier Solana by the December 2007 European Council – generated great expectations. That the European Council in December 2008 decided, after a long debate, to leave the ESS untouched should in itself not be a reason for disappointment. If the EU today is not the global power that it could have been, it is not because its strategy is invalid, but because it has been half-hearted about implementing it. Rather than amending the ESS, the European Council adopted a *Report on the Implementation of the European Security Strategy – Providing Security in a Changing World*. The report did not meet expectations for a true strategic review. It provides a concise overview of implementation, confirms the holistic and multilateral approach, and ends with a firm call to action: “To build a secure Europe in a better world, we must do more to shape events. And we must do it now”. But it offers little in terms of concrete recommendations.

The problem is that one is now left with the impression of unfinished business. The report can therefore only be the end of the beginning: once started, the exercise must be brought to a good end, regardless of one’s initial opinion about its opportunity. On the basis of the report a true strategic review can yet take place. On the one hand, such a review will lead to a more complete ESS, notably in terms of objectives: today the ESS mostly tells us ‘how’ to do things – it is much vaguer on ‘what’ to do. The result will be a *grand* strategy, because that is the scope of the ESS already today, embracing all of the instruments and resources at the disposal of the EU and the member states, and because that expresses the high level of ambition which the EU as a global power must have. On the other hand, this review will determine the topics on which more detailed ‘sub-strategies’ to the ESS have yet to be adopted.

The Common Security and Defence Policy (CSDP) is undoubtedly one the major areas in which more strategic thinking is required.

The elaboration of a military strategy?

There are, sadly, too many conflicts and crises for the EU to deal effectively with all of them, certainly in a leading role. Therefore, as the report states, “We need to prioritise our commitments, in line with resources”. The ESS is not very clear on priorities for CSDP operations though, resulting in a missing link between the overall political objective in the ESS – “to share in the responsibility for global security” – and CSDP operations and capability development. Quantitatively, CSDP is based on the 1999 Helsinki Headline Goal, i.e. 60,000 troops. Not only has this objective been overshadowed by the much more limited battlegroup project, but the actual availability of the forces declared cannot be assessed, as they are not pre-identified and member states have mostly declared similar numbers to NATO as well. If all ongoing CSDP, NATO, UN and national operations in which EU member states participate are counted, Europe today deploys more than 80,000 troops, but EU member states obviously cannot mobilise 60,000 additional troops. It is equally obvious however that even the combined CSDP and NATO level of ambition still falls far short of the total combined armed forces of the EU-27: 2 million troops. Here there is no grand vision, even if collective defence is taken into account.

What is required is a unified vision on the level of ambition, cutting across organisational divides – whether operations are conducted through CSDP, NATO, the United Nations or an *ad hoc* coalition, is secondary. The EU as the political expression of Europe must decide on a military or civil-military strategy for CSDP, a ‘White Book’ that would function as a sub-strategy to the ESS. How many forces should the EU-27 be able to muster for crisis management and long-term peacekeeping, for which priorities, what reserves does that require, and what capacity must be maintained for territorial defence? In all probability the result will be that Europe does not need 2 million uniforms.

Elaborating such a CSDP strategy will require a thorough debate, but some outlines can already be discerned. Because of its proximity, the neighbourhood logically appears as a clear priority. In the ESS, “Resolution of the Arab / Israeli conflict is a strategic priority” – although that clear statement does not necessarily translate into proactive engagement – and the report adds that “We need a sustained effort to address conflicts in the Southern Caucasus, Republic of Moldova and between Israel and the Arab States”. But if the neighbourhood is a clear geographic priority, it is less clear in which types of situations the EU will undertake which type of action. Whether the ‘broader neighbourhood,’ including Central Asia and the Gulf, is a priority as well should also be debated. Next to the neighbourhood, only Iran is singled out as a priority, and the EU has indeed been “at the forefront of international efforts to address Iran’s nuclear programme,” as the report states. Other conflicts are mentioned in the ESS: “Problems such as those in Kashmir, the Great Lakes Region and the Korean Peninsula impact on European interests directly and indirectly, as do conflicts nearer to home, above all in the Middle East” – whether that implies the EU should actively contribute to their resolution is not clear at all. Sub-Saharan Africa has been an important area of focus for CSDP, though the strategy behind it is not always clear – e.g., if the EU twice

intervened in the DRC at the request of the UN, why was the third request refused? This demonstrates that without strategy, it is impossible to define what operational success means. Other strategic players are becoming increasingly active, but are mostly unwilling to contribute to crisis-management on the African continent – what are the EU's priorities there? Securing Europe's lines of communication with the world, of which the operation off Somalia is an example, is a more obvious priority.

Importantly, the collective security system of the UN, and therefore of the EU, as its main supporter and with two permanent members of the Security Council in its ranks, can only be legitimate if it addresses the threats to everyone's security – too much selectivity undermines the system. Even though it cannot always play a leading role, the EU must therefore also shoulder its share of the responsibility for global peace and security by playing an active role in the Security Council and by contributing capabilities to UN (mandated) crisis management and peacekeeping operations. In particular, if anywhere in the world the threshold to activate the mechanism of the Responsibility to Protect (R2P) is reached, the EU, in view of its support for the principle, and in view of its vital interest in upholding international law, should contribute.

Capabilities

All of these commitments require deployable military capabilities that the EU is currently lacking. A substantial increase in deployments is only possible in the medium-to long-term, as a function of the ongoing transformation of European armed forces. Member states should abandon the national focus: rather than at the level of each individual member state, the EU-27 together must be capable. A resolute choice in favour of pooling could reduce intra-European duplication and thereby produce much more deployable capabilities within the current combined defence budget, notably in the framework of Permanent Structured Cooperation as provided for in the Lisbon Treaty.

Permanent Structured Cooperation can be a very flexible instrument, allowing all EU member states to participate, if they so choose, according to their own means, in the way that they choose:

- Member states wanting to take part can declare which contribution, of which size, in which timeframe they are considering; in which specific capability areas, and / or with which force packages, and / or with regard to which longer-term, future capabilities.
- Simultaneously, the participating member states, with the support of the European Defence Agency (EDA), can agree on criteria that apply to each specific contribution, regardless of size, in terms of deployability, sustainability, interoperability and per-capita investment in equipment, in addition to a minimum level for participation in EDA programmes and, perhaps, operations.
- The EDA can then assess the opportunities for different forms of cooperation and pooling in accordance with member states' declared intentions, allowing member

states to decide which contributions they will offer on a national basis and which in cooperation, in which format, with other member states.

- This will result in a set of concrete capability objectives, to be achieved by pre-identified units, some national, some multinational, in an agreed timeframe.
- The EDA is responsible for monitoring progress and assessing contributions against the agreed criteria and the evolving needs, as well as continuously updating and proposing opportunities for cooperation.

One specific capability that ought to be focused on is ‘gendarmerie-type’ forces. Most analyses of the current security environment agree that today’s threats to the EU countries differ from what we have witnessed in past. Not only do the threats cross traditional state borders, blur the distinction between inside and outside and take on various forms, but they also strengthen and depend on each other. As a consequence, they must be tackled by various means, such as military, police or administrative support, and they cannot be dealt with one by one, but rather as part of the whole picture only. The ESS has acknowledged the holistic approach from the very beginning, emphasising the link between different threats and stating that different instruments and capabilities should be brought together as all the threats require a mixture of responses. It also believes that the EU is particularly well equipped for a comprehensive approach to crises management.

The lessons from Iraq and Afghanistan have vindicated the ESS’s conviction that nothing can be achieved by purely military means. They have also confirmed that even if we know it is necessary, the implementation of a common civil-military crisis management is a great problem in reality. Although military leaderships are not as afraid of ‘mission creep’ as they were in Bosnia in the 1990s, we still lack sufficient capabilities to bridge the gap between a high-end military operation and a low-end law enforcement mission. The same problem remains: soldiers are not trained and equipped to fulfil law-enforcement tasks and police are not ready to work in a violent environment.

However, there is an option that may serve as a remedy to the gap between military and police operations. The European Gendarmerie Force (EGF), fully operational since July 2006, is not part of the EU institutionally, but clearly aims at providing the EU with the necessary niche capability: police forces with military status. The ‘gendarmerie-type’ forces are a flexible instrument that can be deployed under both military and civilian command, thus providing the missing link between the two. At the moment, only six EU countries contribute to the EGF (France, Italy, Spain, Portugal, the Netherlands, and Romania; Poland is associated and Turkey is an observer to the EGF), but their forces have already been deployed under the EU flag in Bosnia. It cannot be expected that countries without a gendarmerie tradition in their force structure would introduce one. The tasks, however, will remain and there is a need to deal with them. Giving regular soldiers some quick additional training in handling a crowd before sending them on a mission cannot be a long-term solution. An option might be a ‘gendarmerie minus’ or ‘military police plus’ – not creating a proper gendarmerie as

known in France or Italy, but expanding the role of the military police outside the scope of the internal military order and training them in engaging with civilian populations. The Polish military police / gendarmerie may serve as an example of such transformation.

The issue deserves a high-profile debate at the EU level and the current Trio Presidency is well suited to launch it, as Spain is one of the EGF members and has long-term experience with this type of force. Even if the final decision remains with the member states themselves, the EU debate would help to attract the attention of politicians and European publics alike. Implementation of a comprehensive EU crisis-management solution will not be successful without filling niches that have the potential to undermine all previous efforts, be it by high-end military forces or low-end preventive assistance.

Conclusion

2010 is an important year for makers of strategy. President Obama will undoubtedly mandate the elaboration of a new National Security Strategy (NSS). At the NATO Summit in April 2009, the drafting of a new 'Strategic Concept' has been tasked. If it wants its interests and priorities to be taken into account, the EU must make sure to have its voice heard. Rather than every member state participating individually, EU strategy should be the basis for the European input in the debate: only where the NSS and the ESS overlap, can a truly shared NATO strategic concept emerge, reflecting the growing importance of the EU as a global security actor. The report on the implementation of the ESS is important in this regard – but it should be the start rather than the end of a process. On the basis of the work done, the next European Council should identify the priority areas in which action plans must be drawn up to improve implementation, or 'sub-strategies' elaborated to steer policy, with follow-up assured at the next meeting of the heads of state and government. CSDP is an obvious priority. A continually proactive stance must follow.

The current Trio should focus on the following issues in particular:

- The debate on an EU grand strategy must not wait for the next ESS review in four or five years' time. Instead, the Trio should keep the strategic debate high on the agenda of CSDP in particular, possibly feeding the parallel work on the new NATO strategic concept.
- The debate should focus on linking the EU's overall objectives to particular tools. Sub-strategies may be a useful instrument in this respect, allowing for better formulation of concrete programmes and their implementation.
- The European Defence Agency should be used in the implementation process, as well as the new options included in the Lisbon Treaty.
- The idea of comprehensiveness should guide implementation, building on the EU and its member states' comparative advantages in crisis management.

FOREIGN POLICY AND DEFENCE

More Coherence, more Normative Power: Key Elements in the Consolidation of CFSP / CSDP

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The foreign policy challenge is twofold and serious

The 1990s brought about the emergence not only of an institutional framework for a common European foreign policy, but also of a discourse that sought to define a specifically European approach to interacting with the world. At the same time, commentators also noted the – initially – ‘empty drawers’ of the new Common Foreign and Security Policy. It was the late 1990s and the new millennium that saw the broader CFSP framework really come to life in a series of institutional innovations beginning with the Amsterdam Treaty. Placing a skilful supranational entrepreneur (Javier Solana) with little formal power but great informal clout in a position to oversee and energise the process while streamlining decision-making and approving a flexible institution-building process in the second pillar led to a rapid expansion of capabilities. At the same time, these developments also contributed to a steep increase in the complexity of European external action. This, in turn, has understandably led many to deplore the lack of coherence and coordination between community and intergovernmental branches, which was seen as hampering both policy-making efficiency and contacts with third parties.

It follows from the above that the European Union today faces the daunting challenge of making its foreign policies more coherent if it is to increase its influence in its neighbourhood and in the world at large. This institutional dilemma is, however, compounded by a second dilemma: that of adapting its branches of external action to the changes in the international system and providing them with the appropriate procedures and guiding principles. This paper therefore urges European Union players, and especially the incoming Trio Presidency, to adopt a two-pronged approach to CFSP and CSDP. This approach would include making a concerted and sustained effort to facilitate and optimise the transition to

the new institutional structure, while also constructively contributing to the rethinking of the principled foundations of European foreign policy. Only through the buttressing of new offices and institutions and the consolidation of the ideational backbone of foreign policy will the Lisbon Treaty reforms pay the expected dividends. The alternative scenario, one of turf battles, dragged out transition and a foreign policy torn between particular interests, would seriously hurt CFSP and the Union as a whole.

Halfway to policy coherence: CFSP / CSDP and the ideational backbone in the ongoing reform process

The European Union is currently in the midst of reforming its institutional structure. With the ratification of the Lisbon Treaty, an extensive institutional overhaul is about to commence, yet in the case of CFSP / CSDP this is complemented by other strategic tasks, such as adopting a new European Security Strategy and planning for the next Headline Goal and Civilian Headline Goal. A number of changes are predetermined by the Treaty, yet it is clear that the upcoming period will be one of bargaining and working out compromises.

The “demise of the rotating Presidencies in External Relations,” as observed by Antonio Missiroli among others, has many commentators fearing various informal bargains among clubs of member states that would aim at ensuring visibility for the rotating presidency beyond the implementation of the Lisbon Treaty. Some degree of visibility and representation will (and should) of course remain for the rotating presidency, but it is of vital importance that efforts at securing this do not hamper the emerging foreign policy architecture. This means, for instance, that the new European External Action Service (EEAS) should be given unambiguous priority in representing the Union, and the Trio Presidency could, as has been proposed, ‘co-locate’ diplomats to its delegations. Obvious parallel structures, however, should be avoided.

Furthermore, the EEAS, as a key element of the new institutional structure, should be seen through to emerge as a balanced organisation in the end. The new High Representative (HR) is expected to submit a draft proposition in spring 2010, and it will thus fall upon the Spanish Trio member to launch its discussion and try to secure consensus among the member states.

The office of the HR is itself undergoing significant changes, and will be overseeing the External Action Service as well as presiding over the new Foreign Affairs Council. Also, the European Council is to be chaired by the new permanent President. This does not mean, however, that the Trio Presidency will have only the choice between trying to avoid complete eviction from CFSP through prevarication and obstruction, or politely bowing out of the foreign policy game. It will have to cooperate with the new HR, notably through Committee of Permanent Representatives (COREPER), since COREPER will continue to

deliberate on all issues of external relations that are nested in the community pillar or, after Lisbon, community dimension of policy-making. The situation of the General Affairs Council, strengthened as a horizontal coordinating body while divested of its foreign policy tasks, will not be dissimilar: it will also have to coordinate various policies that are linked with CFSP tasks and priorities. The frequent linkages in these areas have fuelled much discussion about ‘grey’ or inter-pillar areas of European external action and the lack of policy coherence in recent years. Through cooperation and support afforded in such areas, and by setting an example in unambiguously entrusting the High Representative with managing external relations, the Trio Presidency can do more for an efficient European Foreign Policy than any amount of retained influence could ever help to achieve.

In terms of the new institutional structure and the new set of roles needed to make it functional, an additional, more informal role should also be considered by the Trio Presidency. Much of European foreign and external security policy is being overseen by the High Representative and various *directoires* composed of interested and large member states. This is simultaneously an efficient and a *Realpolitik* arrangement, and it would be both overly idealistic and potentially unproductive to upset it. At the same time, in the long-term it will be imperative to establish complementary channels for all member states to feel included as ‘indirect players’ if massive disenchantment amongst the European public and smaller member states is to be avoided. This will require either the High Representative as chair of the Foreign Affairs Council or the new permanent President as chair of European Council meetings to assume the task of acting as liaison between *directoires* and member states. The Trio Presidency should push to direct attention to the need to include this among the duties of the new office-holders, and, at least for the transition period, will have to be involved in ensuring effective liaising in such areas.

Beyond the new offices and responsibilities, there are also a number of policy questions where the Treaty represents clear advances over previous conceptualisations. These include the emphasis on explicitly linking all branches of EU external action under the label of promoting good relations, sustainable development, trade liberalisation and democracy in one framework. The Treaty also introduces the concept of structured cooperation for CSDP which represents a grafting of the enhanced cooperation mechanism into the areas of security and defence, and formalises existing practices of *ad hoc* coalitions for participating in CSDP missions. These represent points where institutional reform is able to contribute to a more regulated and calculable operation of foreign policy.

At the same time, the Treaty text leaves a number of ongoing *ad hoc* institutionalisation processes unchanged and in some other sub-sectors it does not provide an answer to new challenges and dilemmas, simply because these are not institutional in character. What these areas require is a sustained thinking through of how existing and emerging instruments and resources can be used, and, perhaps even more fundamentally, what principles should be invoked in deciding upon their use.

One of the fundamental and problematic features of current European external action has become the overlapping of policy target regions. Accession and neighbourhood in the Western Balkans and in the East overlap today with important CFSP and CSDP tasks. This should not be perceived as a handicap, but capitalised upon to make EU influence more variegated and establish more interface points than would otherwise be possible. At the same time, the situation does call for a clarification of foci.

In this respect, it is tempting to conceive of CFSP as the proper incarnation of an emancipatory Normative Power Europe, a partner that provides assistance in times of crisis, yet has the important long-term goal of helping autonomous, peaceful and stable political structures to emerge in partner countries and regions. This idea represents a strong conceptual decoupling from conditionality-based enlargement and neighbourhood policies and redirects focus towards helping others, especially neighbours, to experience political entrepreneurship, responsibility and cooperation themselves – elite and societal skills that will be useful in the future, potentially during an eventual accession process.

The above implies adding emphasis to existing practices geared towards promoting stability, good governance and related capabilities, as well as functioning economies and societies. This additional point is the promotion of local and regional fora of dialogue at all levels and in various degrees of institutionalisation, in a manner that transcends borders and where, if applicable, neighbouring or otherwise involved member states, municipalities and / or Non-Governmental Organisations (NGOs) may sit next to partners as equals and sharing agenda-setting powers.

This would represent a return to the narrower idea of a Normative Power Europe where procedural norms are permitted to transpire or emerge through practice, as opposed to being prescribed in an itemised fashion. Importantly, such innovation neither prevents existing programmes from functioning in the future, nor does it undermine their rationale. It merely locates in the more permissive environment of CFSP an additional space of emancipation and cooperation that contributes to helping fashion regionally distinct communities of political partnership with a meaningfully broad notion of legitimate local difference.

Recent initiatives such as the relocation of the Regional Cooperation Council from Brussels to Sarajevo and the Baltic and Black Sea initiatives represent promising inroads into what might otherwise look like a desperate attempt at squaring a circle: exporting the EU model in a non-imperial fashion. It is this dimension of external action that could find a new permanent home in CFSP, if given the appropriate form and support and properly linked with the appropriate community portfolios, such as development and trade.

The question of how to formalise and thus render permanent this dimension of foreign policy leads one to the most pressing issue concerning the ideational backbone of European external action, and CFSP / CSDP in particular. The European Security Strategy was formulated in 2003 and its updating has been on the table since the initiative of the French Presidency.

It is high time to close this process (productively, of course), finishing the discussion which has already yielded a valuable report by the High Representative.

The imperative to conclude the process, however, must not overshadow the challenges and opportunities that need to be addressed in the future document. In particular, increased attention should be given to the civilian dimension of CSDP and even to some interlinked aspects more properly constituting CFSP affairs. Alternatively, a second Strategy Paper could be launched which would complement the revamped ESS. Either way, a more comprehensive set of strategic guidelines would be made available for the newly reinforced CFSP architecture, ensuring its functionality in practice and its legitimacy at the same time.

All players have at least a rough idea of what CFSP and CSDP have been about and all have some sense of where on occasion this idea has been insufficiently served by decisions and institutions. Helping these ideas to be updated and further specified will do a world of good, as they are one of the instruments that have a real effect on policy coherence and contribute to preventing both rumours about and instances of European foreign policy initiatives being hijacked by particular preferences. While institutional transition is of paramount importance, it is hardly less important to keep alive the process of defining the ideas that govern European external action.

Recommendations to the SBH Trio

As the above perhaps shows, it is very hard to talk about CFSP / CSDP in the present tense. The EU is moving from a period of intensive, but *ad hoc* growth towards a more consolidated structure. Currently, it is neither ‘there’, nor ‘here’, but under construction. In this delicate situation, facilitating agreement, brokering long-overdue deals such as accepting the new ESS, smoothing edges and actively searching to fill the residual permanent niches for the rotating Presidency is not a task that should be looked down upon or taken lightly. As a transitional Trio Presidency, the SBH team can make a unique contribution to a future, more coherent European external action. In this regard, a number of key items may be listed.

- Providing support to the new office-holders, especially the High Representative of the Union for Foreign Affairs and Security Policy (HRFASP), and foregoing any visibility or representational prerogatives that would hamper the efficiency of emerging Lisbon structures such as the EEAS.
- Developing a conscious attitude towards linkages in the institutional structure that are required for CFSP to function effectively and where the Trio Presidency will still have tasks and responsibilities. COREPER and the new General Affairs Council stand out in this respect.
- Helping procedural norms to emerge which ensure that small and medium member states can act as participants in CFSP / CSDP operations and not feel excluded from the processes.

- Preventing the institutional overhaul from overshadowing the importance of the ideological backbone of all branches of EU external action. Focusing on having the new European Security Strategy and the post-2010 Headline Goals accepted is eminently important.
- Promoting the idea of a second Strategy Paper, complementary to ESS, that would complement its scope by laying out the contours of normative foreign policy action.
- Making sure that CFSP focuses also on fostering an autochthonous political culture of coexistence and cooperation in partner regions that lays the groundwork for a future of stability and prosperity both outside and inside the EU. This involves daring to think about the EU as an entity which may act through its political identity, and prevent relations with neighbouring regions from becoming excessively determined by various conditionality schemes. In practice, this requires focusing on projects such as the Black Sea Initiative, the Regional Cooperation Council and the new Danube Strategy.

FOREIGN POLICY AND DEFENCE

Becoming a More Effective Actor in Crisis Management and Post-Conflict Peace Building: Strengthening CSDP Missions and Operations

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In 2003 the EU declared its civilian and military crisis management instruments ready for deployment. Since then, EU member states have convincingly demonstrated their capability to act as a global security player: they have deployed civil missions and military operations to Sub-Saharan Africa, the Balkans, the Eastern Neighbourhood, the Near and Middle East and even to Asia. These engagements have encompassed a variety of approaches and tools for crisis management and stabilisation, ranging from the training of security forces and the support for the rule of law, to the provision of a military or civilian presence to safeguard elections or to monitor border arrangements and ceasefire agreements, to the fight against piracy or other forms of organised crime. Altogether, the EU has conducted 23 missions and operations under the Common Security and Defence Policy (CSDP). Two of the current engagements – the ceasefire monitoring mission in Georgia (EUMM) and the anti-piracy operation Atalanta in the Gulf of Aden – have been decided and launched under the last Trio Presidency. In order to achieve the EU’s aim of effectively providing security in a changing world, Spain, Belgium and Hungary will have to lead a process aimed at substantially improving the planning and conduct of CSDP missions and operations and at smartly putting into practice the CSDP-related clauses of the Lisbon Treaty.

CSDP missions and operations in practice: a mixed record

So far, CSDP deployments have seen varying degrees of success with regard to the implementation of their mandates, their contribution to conflict management and stabilisation, and their usefulness in serving additional European policy objectives, such as the fostering of effective multilateralism. Without any doubt, in some cases EU deployments have contributed to the peaceful settlement or management of conflicts. Here, the 2005-2006 Aceh

Monitoring Mission (AMM) or the operation EUFOR DR Congo, are cases in point. AMM was instrumental in pacifying a decade-old conflict by actively monitoring the implementation of a ceasefire and peace agreement between Indonesia's central government and the Free Aceh Movement. In the Democratic Republic of Congo, the EU in 2006 temporarily supported and backed up UN troops (MONUC) and thus made it possible for presidential elections to take place without any serious disruptions or violence.

However, other CSDP deployments have been less successful. EUPOL Afghanistan, for example, which was established in mid-2007, has lagged far behind its objective to substantially contribute to the training of Afghan police forces. The monitoring mission at the Rafah border crossing between the Gaza Strip and Egypt, established in late 2005, has been *de facto* suspended since mid-2007. The 2008-2009 operation EUFOR Chad / CAR did neither help to tangibly improve the refugees' plight in Chad nor was it in a position to indirectly contribute to conflict resolution in Darfur.

Thus, the EU cannot be identified as being particularly successful or unsuccessful in any specific type of engagement. The assumption, for example, that the 'civilian power Europe' – with its rich experience in helping states with reforms so as to make them fit for EU membership – would be particularly capable, and therefore do well, in its support for structures and institutions safeguarding the rule of law, has not been confirmed by the CSDP experience. Rather, looking at the total of deployments so far, one cannot avoid the impression that member states and European policy makers have focused on demonstrating their ability to intervene globally. In addition, some seem to regard the CSDP as being in an experimental phase, in which they consider it more important to try out the whole of the CSDP tool box, rather than focusing on a specific component of the EU's instruments for crisis prevention and management.

Weaknesses and potential for improvement

As a consequence, no clear criteria or agreed-upon priorities exist on which member states could base their overall planning for CSDP deployments – with regard to where, when and how to get engaged – in addition to individual decisions as to whether or not to engage in a specific context. On the contrary, it seems that member states have not shown an interest in achieving consensus on priorities with regard to certain regions or types of activities. They have also abstained from early planning for possible future deployments. And CSDP deployments have not been preventative, but rather reactive and driven by acute crises or external demand. In this way strategic planning has remained elusive. In addition, rapid deployment – an essential factor if the EU wants to be on the spot so as to manage acute crises – has not been a general feature of EU deployments. Only the missions in Aceh, Rafah and Georgia, as well as the operations Atalanta in the Gulf of Aden and Artemis in the DR Congo, were in place within less than four weeks. In other cases, actual deployment was delayed due

to disagreements among member states over the mandate (EUFOR Chad / CAR, EUFOR DR Congo), the necessity to clarify the legal basis (EULEX Kosovo) or, as has turned out to be a major difficulty, the slow response from member states to provide personnel. Furthermore, decisions on a concrete operation, its objectives, the resources and equipment needed, are taken without sufficient recourse to the expertise and knowledge prevailing among other EU institutions in the region or country of deployment. As links between EU policies and bodies remain weak, the EU Special Representatives and the EC Delegations are barely consulted or made part of the operational planning process – with few exceptions to the rule. It is precisely such expertise, however, that would help to realistically define the objectives of the CSDP engagement in question, to identify actors on the ground with whom to cooperate and actors who might operate as spoilers, and to establish coherence between the mission or operation’s objectives and measures and those of the local EC Delegation.

Coordination between CSDP missions and EC Delegations also remains particularly difficult, although its success would significantly increase the EU’s effectiveness abroad. Even if cooperation works out on the ground, competing institutions in Brussels keep a suspicious watch and hence often undermine its success. This unhealthy competition is especially pronounced in cases in which CSDP activities touch upon traditional tasks of the Commission, e.g. support in the justice sector. But exactly these missions need an ‘integrated approach’ in the form of close cooperation and a reasonable division of labour between EU institutions. How can police training and security sector reform be expected to contribute effectively to stabilisation if they are not accompanied by measures to improve the rule of law?

Disputes between the Council and the Commission have in some cases also prevented CSDP missions from having sufficient or even any financial resources of their own (other than their running budget). Such monetary means, however, would significantly increase the chances for success of CSDP deployments on the ground. Having a budget for ‘quick impact projects’ would enable the missions to back up training measures for police forces with necessary infrastructure investments – such as communication facilities or other basic equipment of police stations. This in turn could provide palpable incentives for local officials to cooperate and make reforms more attractive.

Solidarity among member states appears to be another determining factor in the success of CSDP missions. In several cases, CSDP engagements have been set up on the initiative and pressure of one of the larger EU states. They were realised in spite of serious reservations of other member states. In these cases, the bargaining process usually led to a narrow mandate regarding the deployment’s duration, tasks, theatre of operation, etc. What follows is that the EU’s engagement often contributes little to conflict management (as the case of EUFOR Chad / CAR demonstrated) or the operation’s success is imperilled (as was the case with the restricted duration imposed on EUFOR DR Congo). Besides, such missions and operations suffer in particular from the reluctance of other member states to deploy sufficient personnel. The cases of EUFOR Chad / CAR and EUPOL Afghanistan show that while EU member states

have been willing to go along with a professed interest of one member state to have the EU act, they expect the initiator to bear the main burden of the engagement.

Last, but not least, once CSDP missions are launched, member states rarely critically follow up on their progress. In fact, while Brussels regularly receives Heads of Mission reports, these often gloss over the missions' difficulties. The practice of overemphasising the EU's achievements is criticised in national ministries as well as in Brussels, but tacitly accepted by member states. Hence, for lack of adequate information, there cannot be a sincere and continued examination of achievements, setbacks, and stumbling blocks, nor a serious debate on when and how to redirect a mission. This is all the more problematic considering that a number of deployments have struggled with fundamentally changing conditions over time. If member states and experts were to review ongoing missions more closely, they would be in a better position to react to changes in the theatre of operations and to adapt the mandate, staffing and equipment of the mission or operation accordingly. Whenever mandates have been adapted promptly, e.g. when the Aceh mission's mandate was expanded to actively oversee disarmament, it proved essential to the successful completion of the mission.

Recommendations

While the EU has proven to be capable of initiating civil missions and military deployments on an almost global scale and of a variety of types and profiles, it has much less effectively employed these missions and operations to follow through on the objectives it has set for itself in the ESS. It is time now for EU member states to conclude the 'experimental phase', to draw the lessons of hitherto existing deployments, and to move ahead and use the tool more strategically. Only then will EU member states be in a position to effectively and sustainably fend off threats to European security emanating from fragile states and regional conflicts, to stabilise the EU's immediate neighbourhood, and to enact effective multilateralism in crisis management in a more meaningful way.

In this, the Lisbon Treaty does not show the way forward. While it extends the Petersberg Tasks to include joint disarmament operations, military advice and assistance, and the support of third countries in combating terrorism on their territories, it does not indicate how to improve the EU's operational performance in crisis management. There is one exception: two mechanisms should allow for 'guaranteed rapid access' to the community budget or to a 'start-up fund' financed by member states depending on the type of mission or operation. If these mechanisms are put into practice in a way that does indeed guarantee rapid access to funding, they would certainly help to speed up deployment. In this vein, the current Trio Presidency should work towards putting into practice the CSDP provisions of the Lisbon Treaty in a fashion that allows effectively for rapid deployment. It should also focus on setting up an External Action Service that increases coherence rather than allowing member states and Brussels institutions to get bogged down in disputes over personnel and posts. With regards

to CSDP missions and operations, Spain, Belgium and Hungary should join forces to initiate a serious debate among member states and convince them to:

- **Establish long-term, strategic planning for CSDP deployments.** It is in the nature of crisis management that the EU will always have to respond to crises, often unexpected ones, at short notice. That fact is, however, not in contradiction with the requirement to initiate a discussion and seek a consensus among member states on criteria and priorities for deployments. Against the backdrop of limited resources, EU member states will have to take decisions about where to engage and under which circumstances. As a rule, the EU should rather concentrate on few deployments that start early, are carefully chosen and consistently implemented, and integrated into a comprehensive approach of conflict management. With regard to deciding about a concrete deployment, an important question to ask is if and as to how far the EU can make a decisive contribution to crisis management and long-term stabilisation with the capabilities at its disposal and in a given situation. It will also be important to ensure that deployment of personnel can be sped up by early planning, genuinely available personnel reserves and flexible procedures.
- **Ensure member states' active support for deployments.** Ahead of a specific deployment, member states should discuss openly whether a sufficient number of them are willing to actively support a planned EU deployment, rather than just reluctantly agree to it. The fact that member states 'tolerate' deployments, but then impose all kinds of restrictions on their mandates, do not provide sufficient personnel and at times withdraw their personnel ("vote with their feet") undermines not only the specific deployment's success in the field, but also the EU's credibility as an actor in crisis management in general. Member states should also think about mechanisms that ensure that the burden of deployments is shared among all. One possibility could be to cover all (or part of the) cost incurred in military operations by a common budget rather than continuing the ATHENA mechanism (the mechanism for financing military operations) and the practice of "costs lie where they fall".
- **Establish a binding and institutionalised 'lessons learned' process and constant follow up.** Missions and operations can only be concluded successfully if mandates and codes of conduct can be easily adapted to changing circumstances and if lessons learned in other deployments are taken into account. Such a process would systematically and sincerely evaluate strengths and weaknesses of current and previous missions. It would then feed into the conceptualisation and adaptation of new and existing mandates and plans of operation. In this context, the collaboration of functional and regional units within the Council Secretariat would have to be improved and EU Special Representatives, the EU Commission and EU Delegations as well as independent experts be incorporated in the endeavour. Also, measures aimed at enhancing the EU's 'institutional memory' would be needed so as to make sure that valuable experience is not lost.
- **Endow CSDP missions and operations with financial resources and overcome competition between EU institutions in Brussels and on the ground.** Having independent budgets would allow CSDP deployments to complement training activities by technical

and infrastructure support. In this context, cooperation between CSDP deployments and the work of EC Delegations needs to be improved – activities should always be executed by the EU institution that is best suited to ensure successful implementation. Here, the establishment of the External Action Service provides an opportunity for increased coherence between various EU activities – but only if member states and Brussels institutions allow for that to happen. Ensuring a smoother process of coordination between the Council’s Secretariat, Special Representatives, member states, and EU Delegations would significantly enhance the standing of Europeans and facilitate coherent action in conflict zones. Coordinated action would also provide the Europeans with meaningful incentives for local actors to cooperate and be induced to reform.

FOREIGN POLICY AND DEFENCE

A New Standard for Fighting Terrorism under the Rule of Law

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The support of human rights and the rule of law are among the primary goals of the European Union's external policy. These principles are reaffirmed in the Lisbon Treaty, and there is a new obligation to ensure that they apply consistently across the EU's internal and external policies. One area where these principles have particular relevance is in fighting terrorism. In the years since the attacks of 11 September 2001, governments around the world – and most damagingly the United States – responded to the threat of terrorism with measures that violated human rights in far-reaching ways. Now there is an opportunity for the EU to take the lead, in collaboration with the Obama Administration in the United States, in defining a new set of principles for fighting the new security threats posed by international terrorism in a way that complies with human rights and the rule of law.

The response of the United States to the attacks of 11 September was widely decried in Europe. Such policies as indefinite detention of terrorist suspects at Guantánamo Bay, the use of interrogation techniques that Europeans generally regard as torture, and secret detention in 'black sites' did more than anything else to discredit the Bush Administration in European eyes. These policies also had direct and harmful consequences for EU member states. In the eyes of many Europeans, they provided a propaganda gift for Al-Qaeda and associated groups that threaten European countries as much as the United States. They made operational cooperation between EU countries and the US on the ground in Afghanistan and elsewhere more complicated, because Europeans could not presume that American forces and intelligence agents would comply with international standards. Most importantly, they drew many European countries into complicity with policies that violate EU principles, and prevented Europe from projecting a clear message about the importance of respecting human rights and international law while confronting terrorism.

For these reasons, the European Union responded enthusiastically to early moves by President Obama to reverse the legacy of his predecessor. In June 2009, European foreign ministers agreed a joint statement with the United States reaffirming that "respect for the rule of law and our respective obligations under international law, including international human rights,

refugee, and humanitarian law makes us more secure and strengthens us in the fight against terrorism”. The statement committed the EU and the US to deepen their dialogue on international legal principles relevant to counter-terrorism, and said the EU and US might explore “the possibility of developing a Set of Principles that might serve as a common reference point within the context of our shared efforts to counter terrorism”.

Not only would such a common set of principles put the EU and its closest security partner at the forefront of a principled approach to contemporary security threats, but it could also establish an international standard of ‘best practice’ and a reference point towards which the practices of other countries might be pulled.

This chapter aims to outline the contours of a possible set of principles, and to suggest how the European Union should pursue this objective in light of developments in the United States and globally since the agreement with the US was concluded last June. To reach agreement on a set of principles, the EU will have to refine its own thinking on some difficult issues raised by overseas military operations that engage with terrorist groups. It will also have to take account of the political climate in the United States, where issues of national security and international law have become the subject of intensely partisan debate.

European approaches to counter-terrorism

European countries do not all view terrorism in the same way, but it is possible to speak in broad terms of a European approach to fighting terrorism. Europeans regard terrorism, at least in its domestic manifestations, as a law enforcement problem, to be handled primarily through the system of criminal justice. Human rights law, in the form of the European Convention on human rights, provides a limiting framework. Where there is a threat to the life of the nation that cannot be met using criminal justice methods, European countries can derogate from some – though not all – human rights obligations, but only as far as is strictly necessary. Europeans also believe that human rights law provides the primary framework for action against terrorists overseas, except in a situation of armed conflict, where international humanitarian law is also relevant. There is no significant support in Europe for the concept of a world-wide armed conflict against terrorist groups that brings with it a global entitlement to kill terrorist suspects or detain them without trial.

There are some areas, however, where European thinking on counter-terrorism remains unresolved. Above all, European governments do not have clearly agreed policies on some difficult questions raised by external military operations against non-state armed groups, where the United States has largely taken the initiative. In Afghanistan, European members of NATO have struggled to deal with the problem of detaining people suspected of hostile activity. Initially, some European countries adopted a quiet policy of handing prisoners over to the US forces, but this approach became untenable after it was revealed that some of these

men had been transferred to Guantánamo. NATO subsequently agreed on a policy of handing all detainees over to Afghan authorities within 96 hours, but this has also attracted criticism because of widespread reports of abuse of prisoners by Afghanistan's National Directorate of Security. The underlying problem is that European nations do not have a common understanding of what the appropriate standards are for determining the detention authority of armed forces fighting against a non-state group on the territory of a third state.

An assessment of Obama's record

European officials were encouraged by the early actions of the Obama Administration to hope that a new common approach to counter-terrorism between the EU and the United States might be possible. Within two days of entering the White House, Obama directed that the Guantánamo Bay detention facility should be closed within a year, ordered the closure of the CIA's secret prison system, and restored the United States to a conventional understanding of the Geneva Convention standards for treatment of detainees. He also set up a series of task forces to advise about future US policies on detention, interrogation and the transfer of prisoners.

A year later, European perceptions are more mixed. The greatest cause for concern among European observers is that the Obama Administration has not renounced the idea of a global armed conflict against Al-Qaeda and affiliated terrorist groups (though it has abandoned the inflammatory concept of a "war against terror"). It is not clear (at the time of writing, in early January 2010) what the implications of this will be for US detention policy. Will the United States continue to assert that it is entitled to detain without criminal trial people alleged to be linked to Al-Qaeda, even if they were not apprehended in a zone of hostilities? Or will it move to put in place a standard for future detention that is more clearly limited to people detained in connection with an armed conflict as traditionally understood? The situation is complicated for the Obama Administration by the fact that it must not only determine policy for future captures, but must also deal with the legacy of the Bush Administration, in the form of just under 200 detainees held at Guantánamo. President Obama has said that there is a group of these prisoners against whom the United States cannot bring charges, but whom it is reluctant to release. Obama has also said he will miss his one-year target for closing the detention camp.

As Obama's team struggles with these complex questions, they have also been faced with a series of harsh attacks by Republican opponents charging that Obama is weakening US defences against terrorism. The attempted bombing of an airplane en route to Detroit on Christmas Day 2009 intensified the political debate within the United States on counter-terrorism policy. Against this background, US officials appear reluctant to move quickly to agree a new and comprehensive set of principles with the European Union. EU officials involved in discussions with the United States report that the Obama Administration does

not want to begin formal consideration of such an agreement before it has concluded its own review process. Senior US officials have made the same point in discussions with the present author. At the same time, these officials have said that the Obama Administration remains committed to the long-term project of establishing a shared framework for counter-terrorism between the United States and the European Union.

European officials had initially hoped to conclude a joint set of principles with the United States during the Spanish Presidency of the EU. This would have particular resonance in light of Spain's experience of Islamist terrorism with the Madrid bombings of March 2004. Spanish officials still intend to propose an EU-US declaration on terrorism during their Presidency, but it now appears highly unlikely that any substantive set of principles could be agreed in time to be attached to this declaration. It may therefore fall to the succeeding Presidencies of Belgium and Hungary to continuing working with the United States on principles for counter-terrorism. In addition, the declaration proposed under the Spanish Presidency might reaffirm the possibility of a joint set of principles in order to give continued momentum to the idea.

At the same time, a closed-door dialogue between EU and US legal advisers on counter-terrorism which was launched during the second term of the Bush Administration is set to continue. EU officials and EU member states have also had input into the task force reviews conducted by the Obama Administration. In these ways, discussions that promote mutual understanding and convergence between EU and US approaches are already taking place and can feed into any future work on a formal set of principles.

An outline of a common approach

While any precise outline of a suggested common framework must wait for the conclusion of the US internal reviews, it is still possible to sketch out the areas of likely agreement and potential discord.

General principles

An agreement on a shared framework of principles should start by affirming that terrorism represents a serious threat but that it must always be fought in accordance with the rule of law and human rights. There must be oversight and accountability for all forms of counter-terrorism activity, including that of intelligence agencies and military forces.

Detention

This remains the issue of greatest complexity, in particular regarding the definition of armed conflict and the detention powers associated with it. However it may be possible to agree principles that set reasonable limits to detention and prescribe meaningful forms of

due process. Such principles might include that detainees can only be held without charge if they are held in connection with an armed conflict or a state of national emergency (or perhaps where authorised by the UN Security Council); that even in these cases, security detention (except in the case of prisoners of war in an international armed conflict) can only be ordered on an individual basis for imperative reasons of security; that all security detainees are entitled to challenge the grounds for their detention before an independent body; and that they are entitled to regular review.

It seems likely, however, that EU officials will only regard such a principle as meaningful if the United States is willing to recognise some geographical limitation on its definition of armed conflict. One touchstone issue may be the fate of detainees at the US detention centre at Bagram in Afghanistan who were captured outside the Afghan military theatre. It would be helpful for European officials to try to clarify their own views on detention, and what their minimum requirements for an agreement with the United States would be.

Secret Detention

This issue has caused problems for EU member states as well as the US, following claims that the CIA maintained secret prisons on the territory of European countries including Poland, Romania and Lithuania. However both the EU and US should now be able to commit themselves to hold all detainees in a registered place of detention and give their names to an independent organisation such as the International Committee of the Red Cross.

Torture

The use by the United States of interrogation techniques widely regarded as torture, such as waterboarding (near-suffocation with water), was perhaps the most divisive issue between Europe and the US under President Bush. Since President Obama has renounced the use of such ‘enhanced interrogation techniques,’ it should be possible for both the EU and the US to reaffirm that the use of torture or cruel and inhuman treatment is never justifiable. A more complex problem, on which the EU should try to clarify its policy, concerns the questioning or provision of information about detainees held by third countries that do not comply with human rights standards.

Rendition

The policy of ‘rendition’ whereby individuals are transferred from one country to another outside any legal process of extradition was not invented by the Bush Administration. What was new in the Bush Administration’s use of rendition was that suspects were transferred not to face legal process but for the purposes of interrogation, often to countries with a well-documented history of using torture. While Obama’s government has suggested it will continue to transfer suspects outside legal processes, it has committed itself not to do so where there are substantial grounds for believing they might be tortured. Within Europe, too,

there is controversy about EU governments' use of diplomatic assurances to return foreign nationals to countries that are known to use torture. Although neither European countries nor the US appear willing to abandon the use of such assurances, which they claim provide effective protection against abuse, they should be able to reaffirm that there are no circumstances where individuals should be transferred to countries where they face a significant risk of torture.

Fair trials

The decision by President Obama to continue with the use of military tribunals for some terrorist suspects came as a disappointment to European officials, but at the same time the United States has introduced further protections for defendants. These include a complete ban on evidence obtained through coercive interrogation, restrictions on the use of hearsay evidence, and greater powers for the defence. For the EU, the important question is whether any trials before military commissions comply in practice with international standards of due process. Assuming they do, the EU and the US could jointly reaffirm that anyone charged with a terrorist offence is entitled to a fair trial before an impartial and regularly constituted court offering all essential procedural guarantees.

Targeted killing

This is one area where President Obama has continued the policies of the Bush Administration with little change. His administration has authorised a series of strikes by pilotless 'drone' aircraft over Pakistan, and in September 2009 it carried out a helicopter attack that killed a leading Al-Qaeda suspect in Somalia. Many European officials regard the widespread use of such targeted strikes as ill-advised, but there is little consensus in Europe about their legality. Moreover, the subject is clouded with ambiguity, as there is often little certainty about how far such attacks have consent of the government of the country where they are carried out. For these reasons, this topic should probably be omitted from any agreed set of principles.

Conclusion

The European Union has a strong interest in working with the Obama Administration in the United States to establish a new set of principles for combating terrorism in a way that respects human rights and the international rule of law. Such a set of principles would remove difficulties that European countries have faced in working together with their most important security partner. They would indicate to the world that the EU is firmly committed to the highest standards of human rights in its counter-terrorism policy. Most important, they would prevent injustice and would help establish an international standard for confronting new security threats in a legitimate and accountable way.

The domestic political situation in the United States, and the complexity of some of the issues involved, will probably mean it is not possible to conclude a full set of principles during the Spanish Presidency of the EU. However, the EU should seek to ensure that the commitment to explore the possibility of a set of principles is not abandoned – for instance, by including a reference to it in any declaration signed in the next six months. EU officials should work among themselves to refine their own views on the appropriate standards for counter-terrorism, especially regarding operations overseas, and should continue to deepen their dialogue with the United States. The ambition of working toward a new transatlantic framework for counter-terrorism should remain on the agenda for the forthcoming Belgian and Hungarian Presidencies.

FOREIGN POLICY AND DEFENCE

Integrating Peace, Security and Environmental Priorities in EU Development Cooperation Policies

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New challenges for the EU development cooperation policy in the global context

Development, peace and security are at the top of the EU's external agenda. The EU and its member states have long constituted a critical mass in the field of development cooperation. Solidarity and cohesion are declared aims both within the Union and globally. As such, the EU and its member states constitute the world's largest development assistance and humanitarian assistance donor. The investment that has been made – in terms of resources, human capital and political involvement – renders European development policies highly relevant in advancing the UN's Millennium Development Goals.

In the current global context, development, peace and security need to be approached in dynamic, flexible, inclusive and participatory ways. The challenges to the triptych – development, peace and security – come from a number of directions. The most disconcerting ones can be grouped into three core categories: the consequences of climate change; the implications of situations of 'state failure' or 'state fragility'; and the effects of the global financial crisis.

Climate change

Environmental degradation and climate change have been identified as development challenges, particularly as their adverse effects will disproportionately affect poorer countries with economies predominantly based on natural resources and related economic sectors (agriculture, forestry and fisheries). Environmental sustainability is identified as one of the eight Millennium Development Goals (MDGs), yet prospects for a global framework within which to address climate change – one that will be workable and will have impact – are still grim.

State fragility and the poverty trap

Fragile countries that do not possess the capacity or legitimacy to govern effectively account for a third of the world's poor. Fragility – combining underdeveloped infrastructure, widespread food insecurity, low levels of human capital – severely affects the development prospects of these countries, as well as their security. There are serious repercussions for the countries' citizens, for neighbouring states and for the global community as a whole.

The global financial crisis

The global financial crisis has been exacerbating the situation for the poorest of the poor. In a period where financial resources are scarce it is vital that the EU maintains its development commitments to the more vulnerable regions of the world in order to contain – and eventually break – vicious cycles of poverty. Increasingly restrictive migration policies, falling remittances, shrinking aid budgets and a shift of political and administrative focus to other policy priorities are each posing significant challenges to the global development goals.

In this context, the commitment that the EU has demonstrated to the development of the world's poorest and most vulnerable needs to be maintained. Ideally, it needs to be further improved. Moreover, the security-development nexus which has been at the core of the EU's foreign policy and its steady emergence as a global civilian power needs to be expanded. This contribution therefore attempts to elaborate on some of the relevant dimensions of integrating and addressing security and peace-related priorities in order to contribute to sustainable development. It also notes the role that regional cooperation initiatives on environmental issues can play in assisting sustainable development and peacebuilding.

The current state of affairs

Development has been at the core of EU external action for decades, and cooperation policies have defined a significant portion of EC / EEU relations with African, Caribbean and Pacific countries since the 1960s.

The European Community and the member states are the largest Official Development Assistance (ODA) donors representing over 55% of total ODA and more than two thirds of grant aid, while the European Community's share is more than 10% of total ODA worldwide. Through DG ECHO, the EC is also the largest donor of humanitarian aid in the world, with grants covering emergency aid, food aid and aid to refugees and displaced persons which worth a total of more than €700 million per year. The share of European aid managed by the European Commission and the European Investment Bank (EIB) has gradually increased to just under 20% today.

Without a doubt, the EU has been pivotal in framing global development priorities. Poverty eradication in the context of sustainable development, including the achievement of the MDGs, has been among the overarching objectives of the EU's development policy. The EU's Policy Coherence for Development Initiative aims at reinforcing the EU's assistance to developing countries pursuing the MDGs. It made an essential contribution to the 2005 Paris Declaration on Aid Effectiveness and the subsequent Accra Agenda for Action (AAA), aimed at improving aid effectiveness. Meanwhile, respect for human rights, fundamental freedoms, the rule of law, promotion of peace, democracy, good governance, gender equality, solidarity and justice have been placed at the centre of EU partnerships and dialogue with developing countries.

In this context, it is worth considering two dimensions in particular that are interconnected with development cooperation: security and climate change.

To take security first, the European Report on Development (2009) placed the security-development nexus at the core of the EU's distinctive approach to foreign policy and its ambitions as a civilian world power. There has been much rhetoric, over decades, about the importance for development of individual security, sustainable security, the need to address the root causes of 'state failure' or 'state fragility', and the moral and practical imperatives of the need to address security challenges – real and potential – arising from climate change and environmental degradation. There remains, however, an exasperating gap between declared intentions and the implementation of policies building security and sustainable development 'on the ground'.

There is already wide acceptance across the EU and its member states (see EU Council Conclusions November 2007; European Report on Development: 2009, *Overcoming fragility in Africa – Forging a new European approach*) of the need for development policies and security-building activities that are holistic in scope, people-centred, transparent, locally appropriate and locally owned. However, there are significant implementation gaps and challenges in trying to translate EU policy commitments into actions – particularly into actions that have impact and results.

Five core challenges can be identified in this context:

- Development cooperation projects and security-building initiatives have little (if any) impact and result in conflict-ridden regions if they do not involve local communities and actors at all stages of the policy formulation and implementation process. Even though there is wide-spread recognition of the importance of participatory and people-centred projects, there is still limited public / local participation in many EU projects, which restricts their impact and legitimacy.
- Donor governments and agencies involved in security projects rarely exchange information and communicate with donor governments and agencies involved in development projects, or with the respective, relevant agencies and actors of the recipient countries. Development and security actors fail to coordinate their agendas: they are frequently oblivious of each others' priorities and actions leading to missed opportunities for synergies and wasted resources.

- Actors involved in security-building programmes tend to rely on weak analyses and evidence and are rarely informed by adequate monitoring and evaluation mechanisms.
- There has been a growing effort to mainstream gender issues in Security Sector Reform practices and to bridge this with gender mainstreaming in development policies, however, this is still hap-hazard and treated more as an *ad hoc* consideration rather than a core issue to address.
- Development and security programmes frequently stumble due to widespread lack of trust and a culture of impunity and lack of accountability in conflict-ridden societies, and due to recurring outbreaks of violence. A sense of justice is necessary for security: restoring the rule of law contributes to re-engaging all segments of society. The reform of the justice sector is key in this and is frequently overlooked as Security Sector Reform efforts overwhelmingly focus on reforming and democratising the military / paramilitary / police forces.

Second, global climate change has its place on the agenda for sustainable development and has been at the core of EU development policies since the late 1990s. Although the EU is undoubtedly the leader in this area, it needs to further upscale its efforts and integrate environmental concerns more comprehensively into its development projects. There is potential for more.

Managing natural resources and addressing the effects of climate change are both clear opportunities for regional cooperation (including among rival populations and countries). They offer the platform for working across conflict divides in order to address shared problems for mutual benefits (Commission Communication, COM(2003) 85 final – *Climate change in the context of development cooperation*). Water cooperation initiatives in the Middle East and biodiversity protection in the South Caucasus can serve as confidence-building efforts in spite of the political and military tensions in both regions. Similarly, energy cooperation in the Great Lakes Region can also serve as a peacebuilding potential. Yet, significant obstacles hamper the potential that these challenges offer for tackling both sustainable development and regional peace and security.

Asymmetric power relations between involved parties hamper efforts to meaningfully pursue regional environmental projects. Asymmetry may apply to different levels of capacity between the stakeholders; different levels of political will; different sorts of resources available and invested in a project; and different benefits – or even rival / diverging interests – for the various partners involved. These asymmetries need to be taken into consideration from the outset of any development, peacebuilding, conflict resolution or confidence-building initiative on behalf of the EU. It is important, and so far it has been quite rare, to include needs-and-interests assessments of all concerned parties from the preparation of regional cooperation initiatives. The needs and interests of all parties must be acknowledged and addressed in order for local actors to have a stake and an interest in motivating cooperation across dividing lines, and in investing (usually very scarce) resources in environment-protection objectives that will also contribute to longer-term development plans.

Thus, there is frequent confusion about what needs to be prioritised in development planning, with little if any attention given to synergies and complementarities with conflict prevention / peacebuilding projects and environmental protection projects (particularly regional ones).

Proposals

Development, peace and security interdigitate and are mutually reinforcing. Improved coordination and coherence are needed not just between donors and between donors and receivers; they are also needed between security, peacebuilding and development strategies. This must be translated into policies that respond to both security and development needs on the ground.

The Spanish-Belgian-Hungarian Trio Presidency can constructively contribute to these efforts, given the priorities that they have identified in common and individually.

Spain has declared its intention to attribute renewed attention to the MDGs and to Europe's relationship with the ACP countries. Similarly, Belgium wishes to play an important role in the reform of the European Development Fund (EDF) and the EU's Development Cooperation policies. In the context of the 2010 third EU-Africa Summit, Belgium has declared its intention to concentrate on Africa – where development, security and peace are core priorities. The follow-up to the Copenhagen Climate Change Summit (December 2009) constitutes another cornerstone of the Spanish, Belgian and Hungarian Presidencies' priorities.

Thus, this Trio Presidency can concentrate efforts on three areas:

- Encourage developing partner countries – and especially the ACP – to pursue comprehensive development policies that branch out to include Security Sector Reform (SSR) strategies and environmental considerations;
- Strengthen EU commitment to development cooperation projects that take into consideration security-building activities and conflict-prevention priorities in their planning, formulation, funding and implementation phases;
- Identify areas where regional cooperation on the environment and natural resources can contribute to specific environmental protection goals and wider security implications (i.e. feed into wider peacebuilding efforts).

Finally, Hungary has decided to attribute a major role to NGOs during its Presidency. It can ask NGOs and research networks that have partners both on the ground (and are therefore aware of the local constraints and vulnerabilities) and in the policy-making centres (and are therefore aware of the policy and resource constraints and political concerns and balances) to develop tool-kits, handbooks and training seminars for EU policy-makers and state officials in the recipient countries.

ENLARGEMENT AND THE NEIGHBOURHOOD

Enlargement: Stalemate or Breakthrough?

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The year of 2009 has not been very promising for the enlargement process. Despite hopes associated with the respective Presidencies of the Czech Republic and Sweden – both countries with clear political support for enlargement and which put them high on the Presidency’s agenda – little has been achieved in practice. Some problems relating to the enlargement were carried over from the previous period: ‘enlargement fatigue’ on part of the EU member states, reiterated by the nervousness surrounding the Lisbon Treaty ratification and due partially also to the somewhat poorly perceived accession of Bulgaria and Romania, as well as to sceptical public opinion especially in the older EU member states. Some additional points, however, played into the stalemate in the enlargement process. Firstly, the bilateral disputes of some EU members and the candidate countries blocked the process to a degree unseen before: this relates to the Slovenia-Croatia border dispute, the Turkey-Cyprus issue over extending the Ankara protocol to Cyprus, and the Greece-Macedonia name dispute. Although the unblocking of the Slovenian-Croatian dispute in September 2009 could pave the way for the negotiations to proceed fast, it might still create a backlash – as the disagreement has not been settled and a solution will have to be found before Croatia’s accession, expected in early 2012.

Despite enlargement featuring high on the Czech Presidency’s agenda, the Presidency’s activities eventually focused more on crisis response and the Eastern Partnership, thus derailing the Western Balkans accession agenda in particular. The planned high-level summit between the EU and Western Balkans, intended to boost the countries’ accession drive, turned into a mere ministerial meeting ahead of the spring 2009 Gymnich that dealt mainly with Bosnia. Also the Swedish EU Presidency, with large parts of its diplomatic efforts concentrated on finalising the ratification of the Lisbon Treaty and ensuring a strong outcome of the Copenhagen Summit on Climate Change, limited the importance of the enlargement agenda, despite areas where Sweden could potentially play a strong role, such as brokering the Cyprus negotiations and making progress with Turkey.

Also the European Commission, the traditional driver of the enlargement process, took a lower profile with its approaching end of term: it was unwilling to push for a politically more sensitive and divisive agenda.

On the contrary, the determination of the potential candidate countries to pursue the enlargement path was demonstrated by the lodging of the membership applications by Montenegro in December 2008, Albania in April 2009 and Iceland in July 2009. These illustrate certain enduring dynamics. During the Czech EU Presidency, the Council referred the Montenegrin application to the Commission for evaluation while no such step was made in relation to the Albanian application. The length of the process (several months) sharply contrasts with the application of Iceland, where such a decision was taken by the Council only in one month, thus raising questions about the possible fast-track accession of Iceland and the likely negative response from the other candidate countries – despite Iceland's undoubtedly superior alignment with the EU through its participation in the European Economic Area (EEA). In case of Montenegro the Commission's evaluation is expected to be given only in the autumn of 2010, which seems to be appallingly late given that the Commission is regularly and deeply monitoring the developments in all the candidate countries.

Western Balkans: new perspectives ahead?

Despite the lack of movement in the enlargement process in the Western Balkans, some positive trends in the region could be observed.

The most visible and tangible progress was undoubtedly achieved in the visa liberalisation process, where three countries of the region – Macedonia, Montenegro and Serbia – will be granted a visa-free regime as of January 2010, while the others have such a perspective during 2010, supposing they further comply with the criteria set out in the roadmaps. This example clearly demonstrates that the EU conditionality still brings results, if concisely defined benchmarks are set and applied. This begs a question of whether such an approach could be used for the enlargement process as whole.

One of the major problems of the EU *vis-à-vis* the region is the absence of a clearly defined roadmap, describing when each country will be able to receive candidate status and open accession negotiations. This lack of vision is undoubtedly a result of politicisation of the enlargement process, where the Commission strives to meet various concerns of the EU member states rather than act as an independent policy driver. One could argue that based on the example of the 2004 accession, the greatest reform progress in candidate countries is achieved once the negotiations are open. This allows a clear set of criteria defined for each negotiation chapter through the EU common positions. Furthermore, opening the negotiations with more candidates from the Western Balkans will create the desired competitive race which worked so well in the case of the previous enlargement. This momentum is badly

missing now, as the Turkish accession is still very much decoupled from others and blocked, thus leaving Croatia being the only negotiating candidate.

Also, the progress reports of the European Commission issued in October 2009 are positive about the developments in the Western Balkan countries, except for Bosnia and Kosovo. The key elections in Serbia in 2008 brought to power a pro-European government as well as President, which can be illustrated by the decision of the Serbian government to unilaterally apply the Interim Agreement between the EU and Serbia. The Commission reports also praise the uncontested elections in Macedonia and Albania, which was an important litmus test in terms of their compliance with the political part of the Copenhagen criteria. In relation to Montenegro, strengthening of the administrative and institutional capacity, formerly the most criticised point, progressed significantly. This positive assessment indicates that obstacles to labelling other countries as candidates should not be invented and that a swift opening of negotiations can take place. The newly appointed European Commission with a fresh mandate should, along with the next Trio Presidency, try to give a new boost to the enlargement process.

However, at the same time, the European Union must be aware of the worrying developments in the region and should adopt a more courageous strategy of tackling them. More attention and resources have to be given to the two most vulnerable states in the region: Bosnia and Kosovo. With the gradual departure of the international community from both states, the EU is assuming more responsibility. Neither of the countries is self-sustainable at the moment, but the EU is doing very little to remedy this. In Kosovo, the biggest problem is that the EU has failed so far in ensuring Kosovo's full participation in all the regional initiatives, stabilisation and association process and visa liberalisation due to the lack of consensus among the member states over its recognition. The EU is even now unwilling to put the issue on the table when dealing with Serbia, hoping for some kind of gradual settlement and the preservation of the *status quo*, which might be tackled only once Serbia is close to actual accession. Apart from the fact that this policy creates false expectations in Serbian society that are fed by even some pro-European politicians, it has many other negative consequences. It preserves a *de facto* frozen conflict on the doorstep of the EU, hampers economic development in the country, stalls its integration prospects, and makes Kosovo a hostage to the EU's own incapacity to enforce a solution proposed and endorsed in the Ahtisaari plan. If Kosovo is further derailed from the enlargement process, the ensuing instability seriously risks spilling over to the neighbouring countries in the region.

In case of Bosnia, the main problem in relation to the EU is the weakness of its institutions, which are not able to manage the integration process of the country. The representatives of Bosnian entities are not able to agree upon an institutional settlement which would allow the country to implement necessary reforms and undertake steps bringing Bosnia closer to the EU. At the same time the EU is afraid of using its different tools in order to push for solutions on which the Bosnian entities cannot agree – but which would benefit the country and

especially its citizens, regardless of their nationality. If the Bosnian politicians are not able to agree upon new state arrangements within a certain time, the EU should – through the Office of High Representative – make extensive use for the last time of its powers to create, implement and enforce new institutional arrangements. These would enable Bosnia to emerge from the stalemate situation that is a negative externality of the Dayton agreement arrangements.

Turkey and Ukraine: a permanent stalemate?

Turkey and Ukraine's European aspirations are in serious crisis. The pace of Turkey's accession negotiations is very slow. Since October 2005 Turkey has opened 13 negotiation chapters out of 35 and closed only one. Five negotiation chapters are blocked informally by France on the pretext of their link to full membership. Since December 2006 eight negotiation chapters have been frozen because Turkey has not fulfilled its obligation to extend the Custom Union to all new members of the EU, including Cyprus, whose Greek Cypriot government Ankara refuses to recognise until a negotiation settlement between both communities living on the island is reached. The new phase of peace talks started in September 2008 but until now has not brought a breakthrough.

After the Orange Revolution in 2004, Ukraine did not receive incentives similar to those of Turkey in 1999, when it obtained candidate status despite all its shortcomings. In case of Kiev the EU was willing only to declare that "the future of Ukraine is in Europe". Until now Brussels has not been treating Ukraine as a potential candidate like the Western Balkan states. On the other hand, the post-Soviet Ukrainian political elite – in contrast to Turkey's political elite in the 90s – quickly lost its commitment to the European project. In consequence, European-Ukrainian relations focused on the 'low profile' issue of negotiations for the Association Agreement (AA), which started in March 2007. Nevertheless, the pace of these is slow. A new impetus to the process could bring Ukraine's application for candidate status. According to declarations by Ukrainian officials, this will take place in spring 2010.

The stalemate in Turkey's accession process arises from the exceptional character of the Turkish candidacy in comparison to previous ones. Turkey's uniqueness originates from its 'super heavyweight' demographic, the religious-cultural 'otherness' factor which influences both sides, and serious internal and external problems. In particular, the Muslim character of Turkish society, which is more conservative than societies in Europe, and has the potential to increase in population to 100 million, causes stronger opposition from EU societies and political elites than with past European accession candidates. According to the Eurobarometer 69 (2008), 45% of Europeans approve Turkey's accession after fulfilling all the conditions and 45% are against.

Turkey's candidacy is also the most controversial because it has to cope with serious internal challenges (e.g. Kurdish armed separatism) and external ones (e.g. non-recognition of

Cyprus). In consequence of these challenges Turkey remains a partially democratic country, and fears concerning its accession are strongly rooted in Turkish society (loss of territorial integrity, sovereignty and national identity). The golden age of Turkish-European relations was between 1999 and 2005, when Turkey obtained candidate status and then launched democratic reforms that were unprecedented in its history. These developments showed explicitly that Turkey's democratisation strongly depends on the Europeanisation process and that this could not start without a favourable political balance of power in the EU. The increase in opposition towards Turkey's accession in Europe after 2005, the changes of governments in France or Germany unfavourable to Turkey's European aspirations and deadlock in the Cyprus peace process (the rejection of the Annan Plan by the Greek Cypriots in 2004) caused a significant slow down, even regression, in Turkey's democratisation process, as well as a spectacular fall in public support for accession. Nevertheless, 55% of Turks still support accession and 35% oppose it. The Turkish government can reverse at least partially the negative trends concerning democratisation, by implementing "the Kurdish opening" the package of reforms aiming at significantly extending the Kurds' rights.

In the case of Ukraine, European public opposition to its membership is weaker than to the accession of Turkey and even to some potential Balkan candidates. The European political elite is not explicitly opposed but rather very reluctant to take a stance on the issue of Ukraine's bid. This cautious approach can be explained by Ukraine being a demographic 'heavyweight,' its poverty, extremely high level of corruption, and the Russian factor. Support in Ukrainian society for accession to the EU has never been massive and has in fact decreased in the last few years. At the moment, around 40% of Ukrainians support EU membership and almost 30% oppose it. Close cooperation with Russia is a strategic priority for around half of Ukrainians, and with the EU for less than 30%. Significant regional discrepancies in attitudes towards the EU exist between the decidedly pro-Russian Southern and Eastern Ukraine, and anti-Russian Western Ukraine. Last but not least, Moscow is still the most important player in the Black Sea region. Russia perceives Ukraine as being in its own sphere of interest, and possesses military bases on Ukraine's territory (Black Sea Fleet).

The deadlock in Turkey and Ukraine's relations with the EU has a negative impact on the Common Foreign and Security Policy (CFSP) and the EU's geopolitical position – its soft power potential in the neighbourhood and credibility in the international arena. The disagreement among EU members on Turkey's and Ukraine's accession is one of the most serious challenges to the cohesion of the CFSP. Tensions between Turkey and the EU are one of the factors increasing Ankara's tactical cooperation with Russia and Iran, which could significantly diminish the EU's influence in the Black Sea Region, the Caucasus, Central Asia and the Middle East. On the other hand, the reluctance of Brussels to officially recognise Ukraine as a potential candidate strengthens Russia's aspirations to be the main centre of gravity for the post-Soviet countries. Since the Turkish negotiations are intensely followed in Muslim countries and treated there as a test of European intentions towards Muslims, the impasse in Turkey's negotiation process limits the EU's soft power capacity in the Middle East.

The informal blocking of some of Turkey's negotiation chapters by France is plainly going against the principle of *pacta sunt servanda*. According to the EU-agreed negotiating framework, "the shared objective of the negotiations is accession". Another challenge to the credibility of the EU is that it did not keep its promise to lift the embargo from the Turkish Cypriots as a reward for their support of the Annan Plan. Since the Orange Revolution, Ukraine has been a democratic country, and according to Article 49 of the Maastricht Treaty, any democratic European state may apply to join the Union.

Top 10 recommendations to the EU:

1. Use the unique opportunity of the EU institutional settlement to give a new boost to enlargement policy and put it higher on the EU agenda. This should be done in cooperation between the Trio Presidency, the new Commission and the new EU High Representative and President.
2. Pave the way for opening the negotiations with all the Western Balkan countries – which will create a regatta, encourage the reforms most effectively in these countries and lead to a healthy competitive group dynamic, as was the case of the 2004 enlargement.
3. Adopt a more assertive role in Bosnia and Kosovo, since the membership perspective alone cannot deliver a solution to the issue of Kosovo status and the necessary constitutional and institutional arrangements in Bosnia.
4. Work consistently on EU public opinion through awareness raising campaigns, using the positive example of the 2004 enlargement.
5. Increase funding to and open a dialogue with civil society organisations in Western Balkan countries and Turkey, to legitimise their effort for democratisation and implementation of necessary EU related reforms, as with the Civil Society Forum launched as the part of the Eastern Partnership.
6. Accelerate negotiations on the AA with Ukraine. In the AA, Brussels should officially state that "Ukraine's future is in the EU". The next steps should be clear roadmaps for candidacy status and liberalisation of the visa regime.
7. Engage much more assertively in the peace processes concerning Cyprus. A settlement on the island would accelerate Turkey's European bid and have a positive impact on Turkish-EU cooperation within the Common Security and Defense Policy (CSDP).
8. Invite Turkey to all European missions in Eurasia (using the Western Balkans as a paradigm). Establish a strategic partnership with Turkey in the CFSP.
9. Increase energy sector cooperation with Ukraine (modernisation of its infrastructure) and Turkey (Nabucco project).
10. Increase pressure on France to respect the principles of the negotiating framework and unblock Turkey's accession process.

ENLARGEMENT AND THE NEIGHBOURHOOD

The EU's Role Towards Russia and the Eastern Neighbourhood: Between Consultation, Cooperation and Confrontation

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The EU's relations with Russia are shaped by the tensions between Central and Eastern European security interests and Western Europe's energy needs. After a brief honeymoon at the start of Putin's first term in 2000, and unsuccessful attempts to revive the spirit of cooperation after 11th September 2001, relations with Russia have consistently been one of the most divisive issues within the EU. Whereas France, Germany and Italy tend to take a relaxed position in relations with Russia (not least due to their dependency on Russian energy supplies) some of the Central and Eastern European states (though Poland under Tusk is keen not to be perceived as anti-Russian within the EU) and states such as Sweden see Russian politics in the Caucasus as an immediate threat to their own security and therefore join Britain (as the foreign policy ally of the United States) in calling for the EU to take a harder line on Russia.

These differing preferences are also reflected in the different approaches to the European Neighbourhood Policy (ENP), where major political projects such as the Mediterranean Union initiated by Paris stand unconnectedly side by side with the Polish / Swedish Eastern Partnership (EaP) for deepening cooperation with the EU's Eastern neighbours. It also remains unclear how the Eastern Partnership will fit in with the Northern Dimension (EU, Russia, Norway and Iceland) and the Black Sea Synergy. Nor has the EU yet developed successful instruments for preventing conflict in the Eastern neighbourhood. Finally the EaP does not contain any forward-thinking proposals as to how the EU's proposed multilateral cooperation with Armenia, Azerbaijan, Georgia, Moldova and Ukraine could constructively complement the existing EU-Russia relationship. Following the events in Georgia in 2008 and the positioning of the EU as the only mediator in the conflict, EU member states now find themselves forced to rethink their policies in the Southern Caucasus, and how to handle Russia. Three alternative paradigms offer themselves to the EU.

Consensus-building within Europe and consultation with Russia

Russia's latest demonstration of military strength and power aspirations in neighbouring territories has clearly widened the gap between the EU member states that call for a more confrontational course towards Russia and those that prefer to pursue cooperation.

The EU wants to remain present in the Caucasus through the vehicles of the United Nations and the Organisation for Security and Cooperation in Europe (OSCE). Beyond that, it has sent a Common Security and Defence Policy (CSDP) mission to monitor the ceasefire agreement. The EU will continue supporting Georgia with humanitarian aid and reconstruction assistance. As well as a donors' conference and talks about a free trade zone, it is also planned to lift visa restrictions on Georgian citizens entering the EU.

It is quite possible that Russia aims to become a new hegemonic power and restore former spheres of influence, which is bound to give rise to new disagreements between EU member states. In November 2008, the EU decided to return to the negotiating table with Russia in order to agree a new Partnership Treaty. But Lithuania refused to endorse the move, describing it as 'a mistake'. Consultations with Russia by individual member states and the EU as a whole are necessary to make sure the distance between the two sides does not become so large that it ends up being difficult to bridge (a tendency that is also encouraged by the American course). The conflicts that need tackling within the EU and with Russia are obvious. Apart from the crisis in the Caucasus, they include cooperation on global issues, the US military presence in Poland and the Czech Republic (which Obama's 2009 decision to drop missile stations has not entirely defused), and common energy policy in the neighbourhood (and in the EU, given the penetration of the EU market by Russian energy companies).

Certain EU member states are interested in maintaining or even expanding existing relations with Russia. Alongside dependency on Russian energy imports and other economic interests, they are motivated by the conviction that many crucial global problems cannot be solved without Russia, certainly not those in Russia's own neighbourhood. The European Commission emphasised in its communication of December 2006 on strengthening the ENP that a state of lasting peace in the neighbourhood can only be achieved with Russia's participation. But in line with its self-image as a 'global actor' Russia rejected integration in the ENP, instead agreeing a 'strategic partnership' with the EU designed to shape four 'common spaces': a Common Economic Space; a Common Space of Freedom, Security and Justice; a Common Space of External Security and a Common Space of Research and Education, including Cultural Aspects. However, progress in the development of these four common spaces has recently been stalled; Russia is not even a World Trade Organisation (WTO) member.

Despite the crisis in the Southern Caucasus and differences within the EU on how to deal with Russia, certain core states of the EU might seek to intensify dialogue in order to prevent Russia slipping into isolation. Germany, France, the Benelux countries and Italy could continue the

negotiations over the Treaty on Strategic Partnership. One central project in this partnership could be the planned development of a Common Space of External Security. A cooperative course towards Russia would initially find the approval of just a few EU member states, but it only really makes sense if it enjoys the fundamental support of all the EU member states. The ‘new Europeans’ are not yet convinced that urgent international problems are unsolvable without Russia’s participation.

The goal of a cooperative policy towards Russia must be to prevent new arms races in Europe and jointly tackle global and regional problems (whether they be hard security risks like Iranian nuclear weapons or soft risks like organised crime). The precondition for the success of such a policy would be a willingness on Russia’s part to take the EU’s interests into account in its activities in the EU’s Eastern neighbourhood. Has Russia under Medvedev changed to the extent that cooperation with the EU in this area could be boosted?

The Eastern Partnership: good start or false start?

The Eastern Partnership (EaP) was not conceived as a response to the war in Georgia in August 2008 (as the original Polish-Swedish non-paper was drawn up months before), but it was certainly given additional momentum at the special EU summit after the war in September 2008.

However, several underlying issues have not been solved. Is the EaP a training ground or clearing house for eventual EU membership or an alternative to it? Is engaging with the six former Soviet states (Belarus, Ukraine and Moldova, Georgia, Armenia and Azerbaijan) an alternative to an EU-Russia relationship which is increasingly dysfunctional, or a means of rebuilding it? Or is the EaP nothing to do with Russia, and solely a matter between the six states and the EU? How can the EaP deal with the conditionality principal, especially as Belarus, which was never a member of the Eastern Neighbourhood Policy, has leap-frogged straight into the EaP?

One group of EU member states – the Reinvigorators – thinks the Eastern Partnership got off to a poor start. Normally this group would include the Baltic States, many but not all in ‘new Europe’, Sweden, sometimes Denmark and the UK. They would like to see the EaP play a stronger role in building up a belt of friendly states that would serve as a buffer zone against an unfriendly and revisionist Russia and maintain and even advance the case for a membership perspective for its leading states – Moldova and Ukraine, and sometimes Georgia. But the Prague Summit that launched the Eastern Partnership in May 2009 was a disappointing affair. Only two member states failed to send a President or Prime Minister to the Union of the Mediterranean Summit in July 2008; but ten were absent from Prague, including big hitters like Brown, Sarkozy, Berlusconi and Zapatero. The Austrians only sent their representative to the EU, the Italians their welfare minister. Even Sweden, one of the co-sponsors of the EaP project, failed to send Foreign Minister Bildt. In the Summit *communiqué*, the neighbourhood

states were downgraded from ‘European countries’ – a phrase which it was feared would encourage hopes of accession – to ‘partner countries’. And Germany and France succeeded in watering down the language on visa liberalisation, a key issue for neighbourhood states.

The Swedish Presidency added some extra momentum, including a key foreign ministers’ meeting of the EaP six in December 2009 and the start of visa facilitation negotiations with EaP states; but there were also problems in incorporating the civil society dimension in the EaP’s project ‘platforms’. Supporters of the EaP worry it will lose momentum under the Spanish and Belgium Presidencies in 2010.

Another group of member states – the Stand-Patters – think the EaP was actually launched with relative speed, with less than a year from conception to the first summit. Harsh economic realities after the global economic crisis mean that its budget of €600 million over four years is actually quite generous. The existing framework is deemed sufficient, as the six states are a long way from meeting the Copenhagen criteria and anyway should achieve its targets by their own efforts.

This second group has arguably grown in the last two years, as a result of several factors. Traditional friends of the East like the Baltic States have their own problems with the global economic crisis. So-called ‘Ukraine fatigue’ has spread with the country’s endless internal bickering and the gas crisis with Russia in January 2009, even affecting states like Slovakia. Poland under Donald Tusk has pursued a more pragmatic foreign policy, less focused on ‘special causes’. ‘Neighbourhood fatigue’ is also a reality for those who see a region of constant crisis, ranging from political deadlock in Ukraine to war in Georgia to Moldova’s constant elections, with corrupt and incompetent governments.

A third group of states – Russia Worriers – such as Spain, Italy, and traditionally Germany, though the FDP is pushing for a more balanced eastern policy, worries about Russia’s hostile initial reaction to the EaP. They would like to use the ‘third party’ provision in the EaP to include Russia in some key areas, or reassure Russia by offering it some parallel synergies. This group also suffers from ‘neighbourhood fatigue’, but is often prepared to go further in instrumentalising the EU’s relations with the EaP six in the name of ‘broader’ policy goals, such as disarmament or Russian cooperation on Iran.

Policy recommendations

Avoiding confrontation with Moscow

Some of the countries of Central and Eastern Europe that joined the EU in 2004 are pushing for a policy of confrontation towards Russia. For instance, Poland delayed the EU’s negotiation of a new Partnership and Cooperation Agreement with Russia. The Polish-Russian

conflict escalated when Russia restricted energy supplies to Europe and banned imports of Polish meat. More recently – two weeks after the fighting broke out in Georgia – Poland signed a treaty (which had been under negotiation for two months) allowing the United States to station missile defence systems on its territory. However, both US and Polish policy has become less confrontational since 2008.

When the conflict in Georgia escalated in August 2008, the states of Central and Eastern Europe, supported by Britain and Sweden, called for the negotiations over a new Partnership and Cooperation Agreement with Russia to be suspended and for visa restrictions to be reimposed. Other sanctions were also proposed, such as refusing membership of the World Trade Organisation (WTO), excluding Russia from the G8, freezing Russian bank accounts or boycotting the 2014 Winter Olympics in Russia. Since the spring 2008 NATO Summit, some of the new members like Poland have been calling for quick NATO membership for Georgia and Ukraine.

- In view of the ongoing tensions in Georgia, one of the tasks of the current Trio Presidency (Spain, Belgium, Hungary) is to sensitise the EU to Central and Eastern Europeans' fears about Russia, while at the same time preventing a policy of confrontation on the part of individual states from narrowing the options for the EU as a whole. A harder line would perhaps increase the political pressure on Moscow in the short-term. But in the longer term confrontation would be counter-productive for overall European security. Foreign and security policy interests in the EU-27 diverge and the Central and Eastern European states will not succeed in preventing 'old Europe' from coming to an arrangement with Russia, so in the medium-term there is a risk of a deep and lasting internal rift in the EU.
- The EU could try to establish a small group of EU member states representing the widest possible range of stances on Russia to act as consensus-creators. Following the great expansion of 2004, the obvious core of such a group would be the Weimar Triangle, supplemented by Britain and the two countries following France in the Council Presidency, Sweden and the Czech Republic. There is certainly a chance that Germany, France and Poland working with selected partners would be able to find a foreign policy consensus on Russia that was acceptable throughout the EU, especially given that Poland's Prime Minister Donald Tusk and Foreign Minister Radosław Sikorski see Europe as the channel of choice for Polish foreign policy.

Getting the Eastern Partnership right

Whatever the internal differences, the EU debate on the Eastern neighbourhood needs to be reframed away from the case for and against enlargement. Instead the EU should concentrate on three key realities. First, it is not the only pole of attraction in the region – Russian soft and hard power is a factor that was largely absent for the accession states of the 1990s. Second, the Eastern states are weak states, not the *acquis*-absorbing states of the 1990s. Third, they are sovereignty-seeking states. Their leaders' priority is to use 'Titoist' balancing strategies to build up weak statehood, strengthen their personal position and excuse a lack of reform.

The EU should therefore tread carefully. It should support cooperation with Russia in the neighbourhood where possible: it should, for example, be prepared to discuss President Medvedev's proposals for talks on a 'new European security architecture,' first floated in June 2008. But member states must also accept that a significant degree of competition will remain in the neighbourhood between an activist Russia that aims to bring countries into its sphere of influence, and an EU that wants to spread democracy, stability and the rule of law – although this is mainly a competition between different *modus operandi*.

Rather than a one-size-fits-all policy of enlargement-lite, the EU therefore needs to develop a two-pronged political strategy to complement the bureaucratic processes of the ENP and EaP. First, EU member states and institutions need to boost their powers of attraction in the neighbourhood. Second, the EU needs to develop imaginative policies to help its neighbours prevent (where possible) and cope with (where necessary) political and economic crises.

There are many practical measures the EU could take in 2010, but in the limited space available here it will suffice to mention five examples.

- 'Political theatre' – all six EaP states are geographically or psychologically small. A little diplomatic attention – more visits by the President of the European Council, the new High Representative, and national foreign ministers – would go a long way.
- Visa liberalisation is the number-one issue for public opinion in the EaP states, but is currently stalled. The EaP states should learn from the experience of the Western Balkan states that put delivery (passport and border reform, etc.) before declaration. EaP '27+6' meetings of ministers of internal affairs and regular working groups on immigration and organised crime would help ease fears about organised crime and mass emigration amongst member state public opinion. Until visa liberalisation is achieved, member states could follow the example set in Chişinău in establishing joint visa centres and easing the bureaucracy of today's Schengen visa system (the problem is not only fees, but the number of different documents each state requires the applicant to bring). EU states could establish 'visa white lists' for groups of people (students, civil society activists / journalists, tourists) who would not have to pay the fees and present the same high number of documents every time they apply for a visa. If this can't be achieved within all Schengen countries, states willing to do so should establish their own national visa white lists for their national visa.
- Security solidarity – the EU has announced a mission to Crimea, but not yet decided how it will function. Such a mission should focus on helping diversify the economy of the region. It could also massage local egos by celebrating the rich Russian-language culture of the region, perhaps by making Yalta a City of European Culture. The guiding principle should not be sending Europeans to Crimea, but opening up Europe to the isolated peninsula. An EU contribution to the construction of infrastructure in EaP countries (roads, drainage systems, etc.) and support for inter-regional cooperation would also help – and these EU funds are quite easily accessible.

- The EU should think imaginatively about ways of countering Russia’s strong position in local mass media. Under the EaP’s civil society dimension, the EU should help create a regional network of free media funds and a ‘new media school’ to encourage bloggers and net-starters, promote web fora that strengthen networks and exchange ideas, and websites that translate western media. ‘Internetisation’ would be also helpful, especially in rural areas.
- EaP is a sensitive matter not only for Russia – Turkey should also be involved in multi-lateral projects, especially energy security and security (it has already become one of the leading partners in the Nagorno-Karabakh process).

ENLARGEMENT AND THE NEIGHBOURHOOD

The European Neighbourhood Policy and North Africa: Acknowledging Tensions and Putting Reforms First

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The context

Since 2004, bilateral relations between the EU and North African countries – Morocco, Algeria, Tunisia, Libya, and Egypt – have been organised through the European Neighbourhood Policy (ENP). As a result of a ‘variable geometry’ of sort, this has led to some Arab-Mediterranean states being drawn closer to the EU than others.

Some North African countries are indeed regarded as part of a ‘ring of friends,’ as the European Commission initially characterised it. In October 2008, Morocco was the first ENP partner to be granted an advanced status, in the framework of the so-called ‘Governance Facility,’ which the European Commission had proposed in its December 2006 Communication in order to encourage neighbouring countries in their reform process. By embarking on selective top-down liberalisation, and by presenting itself as a vanguard of Arab reform, Morocco is presented as a success story in this context. Rabat has also been willing to cooperate on illegal immigration, drugs trafficking and crime prevention, all items dear to some EU member states.

Tunisia is also considered a good partner. Its repeated infringements of human rights have apparently not weighted heavily in EU considerations; Tunisian economic reforms, westernised elite and ‘stable’ regime have instead made it an attractive country. Tunisia was the first south Mediterranean country to establish a free trade zone with the EU when the last remaining customs barriers were lifted on 1st January 2008. Tunisia, like Morocco, needs Europe because of its lack of natural resources. Some EU member governments in turn need to cooperate with them, in order to show progress on sensitive issues such as illegal immigration and terrorism. Morocco and Tunisia have as a result turned into Brussels’s poster children for the ENP in North Africa.

The case of Egypt is different. Cairo is an important player in the Middle East, and perceives itself as having a pivotal role between North Africa and the Middle East. Furthermore Egypt has major gas and oil resources, which makes it attractive to some EU countries. Whereas Morocco and Tunisia signed the Action Plans in 2005 without any major contentions, Egypt did not sign until 2007 because ENP's political conditionality is (mildly) critical of President Mubarak's authoritarian regime and particularly of its unwillingness to recognise influential opposition movements such as the Muslim Brotherhood.

Algeria is a 'reluctant' neighbour. It remains the only South Mediterranean country included in the ENP not to have signed an Action Plan. Algeria is one of the main oil and gas 'arteries' towards Europe, which makes it strategically relevant not only for the EU, but also for Russia, the United States, and China. Thanks to skyrocketing oil prices, it has amassed huge foreign currency reserves and has paid its foreign debt. Seen from Algiers, the ENP does not provide added value. As an indirect testament to this, Algeria is displaying more interest in membership of the World Trade Organisation (WTO).

Libya, the former rogue state, has come in from the international cold after the lifting of the UN and US sanctions. With billions of dollars collected from the oil and gas sector, combined with a small population, Libya is the North African nation that appears best prepared to weather the global economic downturn. Like Algiers, Tripoli does not need the ENP; it is not part of the policy and has declined the invitation to be a member of the Union of the Mediterranean. Libya is interested in exporting hydrocarbons and cooperating with the EU on illegal immigration and terrorism. As EU Commissioner for External Relations Benita Ferrero-Waldner recognised in a visit to Tripoli in February 2009, Libya has the potential to be an extremely important partner to the EU with regard to energy, illegal immigration and trade.

The unintended effect of the ENP's bilateralism is that it exposes how differently the five North African countries react to European proposals of joint partnership. It uncovers the difficulties in creating a North African region that is ridden by inter-state conflicts (including the frozen West-Sahara conflict) and closed borders (between Morocco and Algeria since 1994). Wealthy regimes, such as Algeria and Libya, can cope and go global. Morocco and Tunisia look for the EU for support, while Egypt is situated somewhere in the middle.

Although the narrative underpinning the ENP has concerned avoiding new dividing lines being erected between the EU and its neighbours, these recent developments confirm there is an inbuilt tension between the declared goals of the policy and their implementation. This tension is primarily due to the ambiguous relationship between the EU's self-representation as an exporter of standards such as democracy, and the threat perception in relation to the Mediterranean neighbours. The EU discourse on the promotion of its norms and values has been challenged by a perception of the Southern Mediterranean space as inherently conflictual.

The threat of Islamist terrorism, illegal immigration and organised crime have made a more cautious and less pro-active EU policy look justified, which has in turn indirectly contributed to the preservation of regime *status quo* in the Southern Mediterranean countries. Southern Mediterranean regimes have themselves been willing to cooperate with the EU and in the ENP context on Islamist terrorism and illegal immigration because these items are perceived as threats to their own stability. As a result, threat perceptions on both sides have reduced the space for political reform in the Arab-Mediterranean space. EU initiatives aimed at promoting democracy in these countries have so far have primarily concentrated on technical support, e.g. the purchase of electronic equipment for monitoring elections, rather than focusing on the institutions and standards that are supposed to strengthen a functioning liberal democratic process.

The European Commission is well aware of these dilemmas. For example, the General Affairs and External Relations Council stated in the June 2007 document *Strengthening the European Neighbourhood Policy* that “the shared political commitment must be translated into more attractive and palpable incentives for the partners, notably in the area of democracy, governance and the rule of law”. But notwithstanding some notable innovations such as the so-called Governance Facility, aiming at rewarding well-performing neighbours, not even this enhanced Neighbourhood Policy ‘Plus’ has turned the tide on democracy promotion in the Southern Mediterranean. This is ultimately not related to the type of incentives that the EU is able to put on the table, but rather to the limits of EU conditionality-based mechanisms. North African regimes are interested in access to the EU internal market and in European investments in their countries. At most, they want freer movement of persons, a long-term goal that is hampered by restrictive EU visa-policy.

EU statements frequently acknowledge that political and economic reforms cannot be imposed from the outside. While it is hard to disagree with such statements, this insistence on a currently non-existent inside-out dynamic has ended up as a justification for placing political reforms on a backburner of EU policies in the Southern Mediterranean. As a result, the record of the ENP in the South testifies to the crisis in the EU’s self-representation as an exporter of universal values. It demonstrates the obvious difficulties in defining a policy towards the neighbours that have no prospect of EU membership. It leaves unanswered the question of whether and how the EU can resume the ‘pull factor’ that has defined the relations with its neighbours elsewhere in the European periphery.

Significant developments of the past eighteen months

At a pan-European level, the most significant development during the past Trio Presidency has been the launching and initial implementation of the Union for the Mediterranean, at the outset of the French EU Presidency. In the run-up to the grand opening of the Union for the Mediterranean, when 43 heads of states and governments joined President Sarkozy in Paris in

July 2008, a compromise was struck on the actual scope and structure of the new initiative. The new Union would be embedded within EU policy, upgrading and complementing the ongoing work in key sectors such as the environment, energy, research, and transportation. In order to signal the desire to revitalise existing institutions, its official name has become 'Barcelona Process: union for the Mediterranean'. Rather than a centralising executive, the secretariat of the Union was designated to be a technical office for project coordination, chaired by two rotating consul-like figures, one from the EU and one from a North African country. The first should be from France and the second from Egypt which has a long, special relationship with France and serves as a pivotal point between the Middle East and North Africa.

Less than two years after its inception, it is too early to evaluate and pass judgement on the implementation record of the Union for the Mediterranean, but a few considerations can nevertheless be made. For one, the Union for the Mediterranean, diluted as it now is, remains aimed at addressing some of the more blatant shortcomings of the regional approach of the EU policy. The holistic approach of the Euro-Mediterranean Partnership, although endowed with some €8.8 billion in financial assistance between 1995 and 2006, failed to deliver concrete benefits for North African partners. The rather delimited scope of action of the Union of the Mediterranean aims at tackling this deficiency and may well succeed in delivering some significant results.

On the other hand, the more inspired political rhetoric that accompanied Sarkozy's initial project has underlined the same contradictions, and so far suffered a similar fate, of previous EU initiatives, most notably the Euro-Mediterranean Policy. Over the past eighteen months, a blatant example of EU foreign policy fragmentation in the region was the war in Gaza in January 2009 and the European reaction to it. The Gaza war painfully underlined EU policy constraints, with the Czech EU Presidency sending a diplomatic mission on behalf of the Union, several European governments placing the blame for resuming the hostilities squarely on Hamas, while some segments of the French government condemned the Israeli offensive and President Sarkozy put together a diplomatic mission of his own.

As is the case with other policy issues and in other geographical areas, EU divisions also have a more pro-active dimension, taking shape in bilateral relations between EU member states and individual partner countries in North Africa. Over the past year and a half, the more high-profile cases in this respect have arguably pertained to Libya's fledgling 'normalisation'. In August 2009, Scotland released (on compassionate grounds) convicted Lockerbie bomber Abdelbaset Ali al-Megrahi. European public opinion was outraged to witness the hero-like welcome that Megrahi received upon his arrival in Tripoli. Opinion makers voiced concerns about the negative impact of commercial interests on the relationship between the British government and Gaddafi's dictatorship.

The evolution of the bilateral relations between Italy and Tripoli has also proven controversial for the EU's international standing. Since August 2008, the Italian government is

tioned to Tripoli by a ‘Treaty of Friendship, Partnership and Cooperation,’ under which Rome has agreed to paying \$5 billion in economic reparations as compensation for Italy’s colonial rule. The agreement also opens the way for substantial Italian investments in Libya’s hydro-carbon sector, and for investments by Libya’s sovereign wealth funds in the Italian market. Moreover, the accord provides for the ‘forcible return’ of African migrants – and potential asylum-seekers – trying to reach Italy from Libya by sea. Italian Prime Minister Silvio Berlusconi has defended the deal as being about “less illegal immigrants and more oil”.

The limits of the EU’s holistic approach as perpetuated in the Union of the Mediterranean, coupled with EU foreign policy fragmentation as witnessed in initiatives involving individual EU member states, point to the broad themes which we wish to identify in our conclusion.

Conclusions

Five years since the inception of the ENP and two years since the launching of the Union for the Mediterranean, the current Trio Presidency needs to look again into the under-performance of the EU policy mix in North Africa. The foreign policy architecture provided by the Lisbon Treaty – including the new High Representative and the External Action Service – will take shape during this time-span and it is likely to have only a limited impact on the more profound deficiencies of Euro-Med relations. At the same time, for reasons pertaining to its geo-strategic positioning and interests, the Spanish EU Presidency is likely to inject some political momentum into the EU’s North Africa dossier.

If anything, the past fifteen years of European engagement have confirmed that the EU recipe has not notably affected the societal, political and economic situation in North Africa. It will not be possible to turn this tide in 18 months. At the same time, the EU’s attempts have perpetuated a number of trends, in some cases rooted in serious strategic and conceptual misconceptions, which the current Trio should reflect upon for further consideration.

First, there is the tension between multilateralism and bilateralism – and between the strategic logics underpinning both – which have led to what might be termed a malign competition among the parties involved. This competition is not always perceptible, but it explains how the policy formats launched by the EU over the past fifteen years have, in effect, undermined each other. On the multilateral side, competition has played out most notably in the animosities among the Southern EU member states that should be most naturally interested in fostering cooperation with North Africa (as well as between these countries and the European Commission).

On the bilateral side, the ‘positive conditionality’ promised in the ENP has yet to bear fruits in terms of North African’s reform potential and its approximation to EU standards. In fact, it is fair to argue that the ENP has so far failed to deliver on the virtuous cycle, whereby progress

in one country was expected to encourage reforms in neighbouring countries. If anything, Brussels' hub-and-spoke bilateralism may have indirectly reignited entrenched rivalries and made international partners other than Europe look more attractive. To make the point: the EU's rewarding of Morocco's performance has not been conducive to reforms in Algeria or Libya. Quite to the contrary: emboldened by their hydrocarbon riches, the regimes in these countries have opened up to other geopolitical scenarios and investors, including Sub-Saharan Africa, Russia and China. Multilateralism and bilateralism are indeed 'complementary,' as the standard EU mantra on this matter goes. But specific sectoral niches for each need to be identified, and more importantly, they require painstaking work in order to be reconnected to an overarching, shared narrative about the EU's goals in the region.

Not unrelated to this priority, the second theme concerns the ways in which the discourse and practice of EU democracy promotion have played out in North Africa. Differently from the EU enlargement process, in which the advancement of democratic standards in the candidate countries is embedded in the conditionality machine, in ENP countries, and in the South in particular, the assumption has been that economic cooperation and development would eventually spill over into political reforms. The catch with this approach is not only that, as North African policy makers and observers constantly point out, economic cooperation prospects have been hampered by protectionism on the part of EU countries in key sectors such as agriculture and textile. It is that the actual debate on democracy in the countries in question has been systematically coupled with real or perceived security concerns. This 'securitisation' has featured prominently among some North African autocratic regimes, which argue that reforms on their part would pave the way for a takeover of Islamist extremists. The EU (and, to be fair, also the United States) has reinforced this argument by linking the promotion of democracy in the region with the fight against terrorism. A more pragmatic EU strategy on this point would counsel a lower profile for the strategic importance of political reforms in the domestic transformation of these countries.

The EU can improve its democracy promotion record by concentrating on what can actually be achieved on the ground in terms of, e.g. independence of the judiciary, the rule of law, separation of powers and the inclusion of non-violent Islamist parties in the political process. Notwithstanding the relatively scarce means available to Brussels institutions to promote democratic reforms, some EU governments, political foundations and civil society actors have provided the kind of long-term engagement with regional actors whose potential impact remains underexploited at the EU level. A more coordinated approach on democracy promotion among the European parties involved could in turn go some way towards reconciling the tensions between the multilateral and bilateral agendas highlighted above.

The Contribution
of 14 European
Think Tanks
to the Spanish,
Belgian and Hungarian
Trio Presidency of
the European Union

V

GOVERNING THE EU: WAYS AND MEANS

INSTITUTIONS / EUROPEAN POLITICAL SPACE

It is of course no surprise that the entry into force of the Lisbon Treaty is either the subject or the starting point of all the contributions contained in this chapter. From the Laeken Declaration, which launched a new dynamic of institutional reform, it took almost ten years for the new Treaty to come to life. In such a context, most authors understandably welcome this progress with a sense of relief and an eagerness to see the new system rapidly functioning in the most effective way. The growing gap between an EU stuck in institutional deadlock and the fast-changing world around it could not have gone on any longer. The challenges facing the EU are numerous and of an unprecedented scale since the economic crisis broke out in 2008. The Trio Presidency led by Spain, Belgium and Hungary will therefore hold an important responsibility as the first to implement the new Treaty provisions and the main agent of this transition to a new phase of development for the EU. During this new period, most authors agree that there will be no wide-ranging Treaty reforms in the short-term, and that the focus will rather be on policy delivery.

PART V ABSTRACT

However, the papers of this chapter draw the attention of the Trio Presidency to at least three major challenges they will be confronted with while acting on their responsibility.

The first is of course the multiple-choice question that will arise at every stage of the implementation of the Lisbon Treaty. And the answer that will finally (and probably painfully) be worked out is crucial, as it will establish either the definitive norm or at least a practical precedent likely to survive after the Trio. This is particularly obvious with regard to the relationship between the new stable President of the European Council and the rotating presidencies. The search for a harmonious modus vivendi is not only needed at the level of meetings of Heads of State or Ministers but also in the functioning of the different preparatory bodies, the list of which is impressive for those not acquainted with the work of the Council (demosEUROPA). The European External Action Service, conceived as the diplomatic force to back up the new High Representative for Foreign Affairs and Security Policy, is definitely the second most difficult dossier. This major innovation of the Lisbon Treaty, designed to give greater coherence to the EU's external action and to develop its strategic culture, could be deeply damaged by

administrative rivalries. The Trio Presidency is particularly well-placed to mediate between member states in order to avert that outcome (demosEUROPA).

But implementation of the Lisbon Treaty conceals many issues other than these two major subjects much covered by the media. One of them is the question of competences. The Lisbon Treaty provides for a classification of competences in different categories but leaves many loopholes in the way the distribution of these competences between the EU and the member states will work in practice. The Trio Presidency can play a constructive role in guaranteeing the coherence of the system by enhancing the strategic role of the General Affairs Council. The Trio could also take the initiative to establish a working group of high-level experts on better distribution of competencies and policy efficiency (ELIAMEP).

In their rush to implement the Lisbon Treaty efficiently, the Trio should be careful not to forget the citizens on the side of the road. Past referenda and European elections have sent worrying signals about citizens' satisfaction with and understanding of the European construction in its present state. Engaging citizens within the Union after Lisbon is also a matter of urgency. Contributions in this report have highlighted at least two means by which the Trio could address the 'citizen issue'. It could, firstly, take a decisive role in promoting a healthy politicisation of EU debate. This does not signify the transposition of a bipolar left-right majority model to the EU, but rather the creation of conditions for the expression of more clearly identified opposition in the EU political system (Notre Europe, SIEPS). There are at least two arenas where these more overt political confrontations – likely to raise citizens' interest and clarify the terms of the debate – could take place: the European and the national parliaments. In particular, their close links with three national political scenes could help make the Trio instrumental in ensuring that the new role of national parliaments in the control of subsidiarity is exercised in a constructive way, as a tool to stimulate more regular and timely national debate on EU affairs, with the full involvement of national legislatures (Notre Europe, SIEPS). The Trio Presidency will also have the responsibility of ensuring the proper implementation of the citizens' initiative. It could, in particular, ensure that those initiatives considered inadmissible by the Commission on a competence basis are not simply thrown into the bin but that the Commission identifies who has the power to address the issue and commits itself to report on further developments (CEPS).

As mentioned earlier, it is commonly accepted among the authors of this report that the Lisbon Treaty will be the last full-scale revision of the EU for quite some time, given the immense difficulties that the ratification process has encountered. However, they also point to two factors that the Trio should keep in mind. First, it may not be the end of national expressions of reticence

towards the pursuit of European integration and towards a maximalist application of the innovations in the Lisbon Treaty (SIEPS). The recent ruling of the German Constitutional Court and the subsequent change in the law in order to further define the role of the German parliament in monitoring the exercise of EU competences, are probably the best illustration of this point. It is not to be excluded that other member states decide unilaterally to introduce new constitutional requirements of this sort, thus hindering the smooth development of the EU (SIEPS). Furthermore (and all the more so given this context), it is necessary to keep alive and make the most of all the elements of flexibility allowed by the Treaty or to be developed outside its realm. Modes of differentiated integration (Real Instituto Elcano), the new formula of enhanced cooperation or passerelle clauses provided by the Treaty (Notre Europe, Egmont), or more narrowly-focused Treaty revisions (demosEUROPA) are all possible avenues to be considered by the Trio in trying to unleash the potential of the Lisbon Treaty after years of caution and stagnation.

BUDGET

As the EU turns the page of institutional debate, a decisive new issue is emerging with the reform of its policies and budget. The Trio will lead these debates with the review of EU spending and the adoption of the post-2013 pluriannual financial framework. Spain, Belgium and Hungary will have the challenging task of avoiding the deadlock of national interest and net payments which influences the current structure of EU spending, and instead responding to the needs and challenges of the 21st century, as European citizens expect of it (SWP, Europeum). A debate which proceeded in the right order would focus firstly on future challenges of the EU, secondly on discussion of policy instruments and lastly on budgetary aspects (Notre Europe). The authors of this report mention, in particular, the need for the Spanish Presidency to launch a discussion on the budget before concrete negotiations begin. This debate would deal with a ‘new Lisbon Strategy’, the crisis and the reform of the CAP (Europeum, Notre Europe, SWP). A few guidelines are also recommended for reshaping the budget – for example, taking into account the European-level added value of spending and the solidarity principle.

The Trio should also avoid unproductive debates on the budget, particularly relating to the CAP. Firstly, the common EU budget does not reflect the total public expenditure of European countries; it reflects a heterogeneous political integration process in which agriculture is the only economic sector which depends on a common budget and common policy (Notre Europe). Secondly, the

debate often ignores the fact that the proportion of CAP expenditure has been constantly decreasing (Europeum). The current CAP does not respond to agricultural and rural needs. The Trio should seize this opportunity to thoroughly reform this policy, in response to imperatives such as food security, water scarcity and climate change (Europeum). Neglecting this reform would deprive the EU of one of its most effective tools for protecting its environment, and would destabilise both the farming sector and the European countryside (Notre Europe). The unknown quantity in these debates on EU policies and budget is the impact of the new institutional context and particularly the strengthened role of the European Parliament.



INSTITUTIONS

Delivering on the Institutional Reform of the Lisbon Treaty and Looking beyond

Paweł Świeboda President, demosEUROPA

Challenges of governance in the Lisbon Treaty framework

The new institutional set-up is the biggest promise of the Lisbon Treaty and the much awaited result of a reform that it has taken nearly eight years to approve. High hopes and expectations will be associated with the new institutional framework irrespective of the sense of exhaustion that accompanies the last leg of the Treaty ratification process. The key aspect will be the functioning of the new triad of the permanent President of the European Council, the President of the European Commission and the High Representative (HR) for Foreign Affairs and Security Policy as well as their relationship with the rotating presidency. The Treaty is far from providing all the answers as it creates a hybrid system with many intrinsic relationships still to be sorted out. It is the practice of the current three presidencies that will determine the functioning of the Lisbon framework.

The key question mark lies over the new permanent President of the European Council and the role he manages to carve out for himself. The permanent President is meant to “chair [the European Council] and drive its work” (Article 9b). On the basis of the work of the General Affairs Council, he shall also ensure the “preparation and continuity of the work of the European Council in cooperation with the President of the Commission”. Finally, he “shall, at that level and in that capacity, ensure the external representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the powers of the HR of the Union for Foreign Affairs and Security Policy”. The way that President van Rompuy has launched his term in office, calling an extraordinary European Council on economic issues in February 2010, signals an activist approach with a strong commitment to shaping the EU agenda.

The HR receives a stronger mandate and role in the system as chair of the Foreign Affairs Council but the relationship with the rotating presidency and the permanent President of the European Council will also need to be worked out. The rotating presidency remains in charge of the new General Affairs Council and COREPER and by those means will continue

to have a bearing in the area of external relations. The personalities of the first duo of top leaders as well as the operational code that will be agreed at the time of the entry of Lisbon Treaty into force or immediately after will guide the eventual outcomes. One can assume that the first two-and-a-half year term of the President of the European Council will be a period of many adjustments. The rotating presidency will play the role of a critical intermediary given its responsibility for the work of the Council formations and especially the General Affairs Council as well as COREPER (Committee of Permanent Representatives). New competencies of the European Parliament will obviously also be an element of the equation. A pattern of cooperation, consultation and coordination will be indispensable.

The new institutional set-up will require a fresh discussion about the relevance of the programme of the Trio of successive Presidencies and their efforts to coordinate among themselves. The Brussels-centric view suggests that there will be less and less rationale for cooperation between the Trio to continue. On the other hand, the capitals will undoubtedly cling even more strongly to the remaining vestiges of power. The work of the Trio could be helpful in that process and is likely to be maintained.

The spirit of the Lisbon Treaty points to a functional system within which the High Representative and the supporting European External Action Service (EEAS) are given a clear role in the new chain of command on foreign policy issues. The one issue that still remains to be resolved is the chairmanship of the Council's preparatory bodies. Declaration 9 annexed to the Final Act makes it clear that the presidency of the COREPER is to be chaired by the rotating presidency and the Political and Security Committee (PSC) is to be chaired by a representative of the HR. Article 2 of the Declaration indicates that the preparatory bodies of the Foreign Affairs Council configuration should not be chaired by the rotating presidency ("the chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4"). In its note to COREPER / Council, the Presidency has put forward a number of suggestions as to the chairmanship of the respective working parties and preparatory bodies (Presidency note on the state of work on the Chairmanship of the Council's preparatory bodies – Foreign Affairs Configuration, Brussels, 22 October 2009, 14852/09). These envisage that the rotating presidency would remain in charge in the trade and development area while the geographic and Common Security and Defence Policy (CSDP) related preparatory bodies will be chaired by representatives of the HR. A transitional period of 6-12 months was proposed during which the rotating presidency would remain in charge. Horizontal preparatory bodies should be chaired by a representative of the HR except for RELEX Counsellors (Working Party of Foreign Relations Counsellors), COTER (Working Party on Terrorism), COCON (Working Party on Consular Affairs), COJUR (Working Party on Public International Law) and COMAR (Working Party on the Law of the Sea), which should be chaired by the rotating presidency.

The European External Action Service

The bringing into life of the European External Action Service is perhaps the greatest single promise of the institutional order introduced by the Lisbon Treaty. In line with Article 27 (3) TEU, the EEAS is meant to assist the HR in fulfilling his mandate. Its formation is bound to be the most extensive merger operation ever undertaken in Brussels and a taste of things to come if the experiment is successful. The EEAS is to comprise officials from the General Secretariat of the Council and the Commission as well as seconded from the national diplomatic services in the member states. The activities of the EU Special Representatives will also fall within the area of responsibility of the EEAS.

The October 2009 European Council invited the future HR to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of the Lisbon Treaty, with a view to its adoption by the Council at the latest by the end of April 2010. It should be a service of a *sui generis* nature separate from the Commission and the Council Secretariat with autonomy in terms of administrative budget and staff. Officials from all three categories of personnel will be equally treated and will be able to assume all positions within the Service. With their status as temporary agents, staff from the member states will be in the same position as staff coming from the two other sources of origin.

The preparatory work on the EEAS has been carried out by the Presidency, the member states, the Commission and the Council Secretariat and endorsed by the European Council. It has already been decided that the scope of the EEAS should allow the HR to “carry out his / her mandate as defined in the Treaty”.¹ In order to avoid duplication and ensure cohesion, the EEAS is also to assist the President of the European Council and the President of the Commission in their external relations functions. Crucially, it has also been decided that the EEAS will be composed of single geographical and thematic desks bringing together tasks performed separately by the Commission and the Council Secretariat today. They are meant to play “a leading role in the strategic decision-making”.

The red lines for the future scope of the EEAS have been drawn by reference to enlargement, trade and development policy as the continued prerogative of the Commission. On the other hand, the CSDP structures, including the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPC) and the Military Staff (EUMS) will be integrated into the EEAS. The Situation Centre will also be part of the EEAS while continuing to service the European Council, the Council and the Commission.

Operational problems are bound to be experienced in the field of financing where the HR is expected to prepare actions related to the CFSP budget and the Instrument for Stability

1. Presidency report to the European Council on the European External Action Service, Brussels 23 October 2009, 14930/09.

but the decisions will be taken by the Council and the Commission respectively with the Commission running the technical implementation. Achieving clarity between the Commission and the EEAS on the division of labour with respect to the geographical and thematic instruments will be extremely important.

Undoubtedly, cooperation and consultation between the HR, the EEAS and the relevant directorates in the Commission as well as EU delegations will be crucial throughout the programming and implementation activities. Consultation will need to be streamlined with the services of the Commission which have external responsibilities. The EEAS will also have to explore ways of strengthening communication with the European Parliament, given that the HR will need to regularly consult the Parliament on key CFSP issues.

The EEAS will need to strike an equilibrium between the different components of the service, with at least one third coming from the member states, including in senior positions and in delegations. It is already decided that the HR will be the appointing authority while representatives of the member states, the Commission and the General Secretary Council (GSC) will be associated in the recruitment procedure. There will be a rotation inside the service, including between Brussels and the delegations, between the EEAS and the national diplomatic services as well as between the EEAS and the Commission and the GSC. This will require a solid degree of joint training.

Transitional arrangements with respect to the financing of the EEAS will be a challenge. The EEAS should aim at avoiding unnecessary duplication of tasks, functions and resources with other structures. Apart from direct transfers from the Commission and the GSC, transformation of temporary posts in the Commission and the Council Secretariat will be necessary, as will the filling of posts freed up through retirement and other means. The October 2009 decisions speak of “a limited number of additional posts for member states temporary agents” that will need to be financed within the current financial perspectives.

The entry into force of the Lisbon Treaty will transform the existing Commission delegations into EU delegations under the authority of the HR and as part of the EEAS structure. They will contain both regular EEAS staff and staff from the different Commission services, although in a clear chain of command under the Head of Delegation. Since delegations will take instructions from both the HR and the different services of the Commission, there will continue to exist a margin for disagreement. The Delegations should stay in close touch with the diplomatic services of the member states. There should be an active exchange of information between the EEAS, the delegations and the member states. The HR is meant to draw up a roadmap and timeframe for upgrading the EU delegations in close coordination with the incoming Presidency, so that they assume the role and functions of the rotating presidency in terms of local coordination and representation. The EU delegations should play a supporting role when it comes to diplomatic and consular protection of Union citizens in third countries. Modalities for the EU delegations to be accredited to international organisations still need to be worked out.

The European Council has already endorsed a roadmap for the preparation of the EEAS which envisages three stages:

- From the entry into force of the Treaty to the adoption of the Council Decision on organisation and functioning of the EEAS, when preparatory work should be carried out. A small preparatory team composed of representatives of member states, Commission and the GSC should assist the HR in this function right from the start.
- From the adoption of the Council Decision onwards, with the first status report in 2012.
- Several years into the functioning of the EEAS, when a review could be carried out (most likely in 2014).

The future of the Treaty reform in the European Union

Whatever the challenges of implementing the provisions of the Lisbon Treaty, it may be the last for a generation. One reason for which it has been so difficult to agree is its all-embracing character. The Lisbon Treaty is a typical revision treaty which aims to modify aspects of nearly all areas of the EU's activity. It reflects the conclusion that was drawn from the failed French and Dutch referenda on the Constitutional Treaty, that citizens did not accept a high level of ambition for Europe. As a result, a lot of attention went into pricking the bubble of Europe's constitutional aspirations, much less into having the public on board.

It seems that holistic Treaty reforms, in the course of which all issues are open and re-examined, are no longer feasible in the EU of twenty-seven members with the requirement of ratification by all. They are an invitation to all sorts of populism which exploits the complexity of the European process. The answer is not only to try to write treaties in a more understandable fashion. As a community of law, the European Union needs contracts to be concluded between the member states. These are bound to be complex and unreadable for the general public.

The way forward for the EU is to accept the current Treaty base as having constitutional nature and envisage thematic treaties comparable to the United State style constitutional amendments, rather than today's fully-fledged Treaty reforms. Surgical precision will help the public debate and improve understanding of what Europe is trying to achieve. Future Treaty reforms should be about single issues such as energy and climate, or foreign policy. This would mean referring back to the point of departure and in particular to the European Coal and Steel Community, which had a clear emphasis on an area of vital importance to Europe's future at the time.

Single issue treaties would contribute to better communication with the citizens by tackling one question at a time. Such an approach would make life difficult for governments since they can now pick and choose what aspects of an EU treaty they want to communicate to

the citizens. As a result, public debates in the member states often run in opposite directions. Single issue treaties would mean that the citizens are taken seriously and considered partners in the discussion. Importantly, the integration project would advance on substance rather than merely on the institutions as in the last decade. A commentator said after the 1997 Treaty of Amsterdam was passed that “fudge is the necessary condition of progress in Europe”. This does not need to be the case. Fudge is not the condition of progress; it is a condition of regression. The sooner we realise it the better.

Recommendations to the Spanish, Belgian and Hungarian Trio Presidency

The first Trio Presidency taking place under the Lisbon Treaty has a special responsibility for implementing the document’s institutional innovations and living up to its spirit. It needs to agree with the new permanent President of the European Council and the reformed HR the new *modus operandi* and the functional division of labour. The patterns of consultation, cooperation and coordination that emerge in the course of 2010 and 2011 are likely to be binding for future presidencies.

The Trio Presidency should assist in the creation of a strong EEAS. The logic of this institutional innovation points to a Service with a vital role to play, both in representing the EU externally and in forging a strategic culture in the EU. The Trio Presidency should ensure that the establishment of the EEAS takes place in a conducive environment, not troubled by excessive rivalry with the other institutions and with the member states.

The issue of the future of Treaty reform in the European Union should not be cast aside as irrelevant or unnecessarily divisive. The EU needs a serious discussion about the methodology of improving and modernising its legal basis. The ground for this needs to be prepared in the near future, regardless of the sense of exhaustion surrounding the Lisbon Treaty.

INSTITUTIONS

The Distribution of Competences under the Reform Treaty: Some Suggestions towards an Improved Policy-Making Process

Filippa Chatzistavrou Research Associate, ELIAMEP

New challenges in the global context

The question of distribution of competences within the European Union has often been overlooked in policy-making discussions as a purely legal matter. In fact, the way competences are exercised within the EU is mainly a political matter and one of the ‘core issues’ to be tackled by the EU over the coming years.

The new Reform Treaty of the EU abolishes the so-called ‘pillar structure’ and proposes to give the EU competence in new areas such as energy, climate change, and fundamental rights. Furthermore, it proposes the extension of existing competences, such as the environment, right to asylum, or social security matters.

Notwithstanding such changes, the new Reform Treaty adopts a similar approach to all previous amending treaties. It proposes the classification of different domains according to the classical categories of competences (exclusive, joint, complementary, and the specific arrangements for the coordination of economic and employment policies, and for the Common Foreign and Security Policy [CFSP]). However, it does not specify the distribution of competences in the EU, thus leaving open the relevant question regarding the separation of powers between the EU and member states. This vague definition of competences is still broadly considered to be the best solution in order to preserve the essence of the European construction (internal market and compensatory policies). According to the majority of EU legal experts, such flexibility on the allocation of competences is deemed necessary for enhancing the EU capability to respond to new challenges.

Indeed, the new Reform Treaty comes into force within a context of specific challenges for EU governance. These challenges result from economic, social, and demographic shifts in the regional and international context.

The following question is posed here: what are the distinctive features of such challenges? Three medium-term challenges for the EU may be identified:

The challenge of inter-policy coherence in a multi-level system of governance

The interdependence among policies at international level is increasingly striking nowadays, suggesting that no policy can be put forward without considering other policies. For example, managing the Common Agricultural Policy (CAP) is just one aspect of the EU's responsibilities, which also include the global fight against hunger, the protection of nature and biodiversity, trade policy, development policy, etc. In general, the EU's ability to anticipate or deal with interconnected risks is fragmented in different policy domains. Enhancing inter-policy coherence, while achieving the optimal balance between centralisation and decentralisation of competences, might prove a difficult task for the EU and its member states.

Political challenges during crisis

We have entered a new era where human activity entails potential risks for human security, which may result in crisis situations. Transnational business, commercial, and financial activities increase the probability of facing similar types of risks (economic risk, ecological risk, public health risk, energy supply risk etc.). The global economic downturn has set a new agenda while raising one fundamental question: which eurozone mechanism would assist individual countries, thus averting the financial crisis, or preventing its consequences? Undoubtedly, there is an urgent need to develop crisis mechanisms at the EU level.

The challenge of preserving the EU's economic, political and legal *acquis*

The prospects for a growing, dynamic and popular Europe are not encouraging. The failure of the member states' recovery plans may erode the stability of the EU system. The preservation of a single market with a single currency is considered to be the most important task and a major objective for the EU. Furthermore, the controversial experience of the Constitutional Treaty and its replacement by the new Reform Treaty may lead to further disbelief in European politics. The opt-out facility sets a dangerous precedent for other member states to exclude themselves from aspects of emerging common policies, thereby causing fragmentation.

How well-equipped is the EU in terms of decision-making capacity under the new Reform Treaty to deal with such challenges?

Current situation

While the Reform Treaty stipulates the formal delimitation of competences, it is widely accepted that their practical exercise comprises the most decisive factor for policy outcome.

One of the key drivers of European integration is the fact that the extension of competences from the national to the supranational level has been defined by power struggles (creeping competences). Despite disagreements, the Reform Treaty maintains the current legal provision that opens the possibility for the expansion of the EU agenda. Nevertheless, the risk of this mechanism being terminated should not be underestimated. Some reasons that may hinder the EU's ability to expand its competences are presented below.

In recent years, an 'increased fear of centralisation' within the EU has been reported. In fact, European law specialists confirm a reduction in the number of hard EU law acts since the mid-90s. Such concerns regarding the shift in the loci of authority and power are expressed through the strong dissent among member states over which level should different policies be conducted at (e.g. redistributive policies, core functions of the welfare state, employment policy, fiscal policy etc.).

The new set-up still entails many overlapping fields of competence between the EU and member states (i.e. policies, such as social or health policy, identified with more than one category of competence). Due to the vagueness of competence allocation pursuant to the Reform Treaty, the precise practical functioning of subsidiarity will become even more a matter of political negotiation. The greater involvement of national parliaments in EU law-making should reinforce this trend. According to the new Treaty, the question of whether a newly proposed EU law ought to be dealt with at European level, or at national or local level, will be answered in close consultation with national parliaments.

The Reform Treaty will significantly extend the scope of the classic 'Community method' from 2009 by introducing majority voting in new areas (e.g. energy policy, international representation of the euro area) as well as in other areas currently under the unanimity requirement (e.g. areas in the field of Justice and Home Affairs). Nevertheless, some might argue that the stronger role of the European Parliament might sometimes make it harder to reach consensus, for instance in the fight against cross-border crime and terrorism. Moreover, the new qualified majority voting system applied from November 2014 is rather complicated, giving primacy to the population criterion. The fact that no government will be able to easily predict its relative weight in the negotiation process will reinforce further consensus building, thus affecting the EU ability to adopt coherent decisions.

Finally, while new dispositions towards enhanced cooperation propose a solid framework for joint action within the EU's legal framework, much doubt exists about its feasibility. This form of cooperation put forward by the new Treaty has been conceived as an instrument for the enhancement of policy-making rather than the promotion of the idea of a multi-speed Europe. However, this reform will not necessarily make enhanced cooperation less complex; given its complexity and current flexible forms of cooperation (opt-outs or pre-defined forms of intergovernmental cooperation), triggering enhanced cooperation will be a difficult task to achieve.

Proposals

The Reform Treaty came into force on 1st December 2009. This makes Spain, Belgium and Hungary the first Trio to take office under the new institutional provisions. While the new key functions of the President of the European Council and the HR for Foreign Affairs and Security Policy should be properly defined, the nature and role of other aspects of a rotating Council Presidency deserve further clarification.

The EU rotating presidency must take direct political responsibility for the work done during its six-month presidency in all areas except external relations. During the transition period (2010-2011), the Trio Presidency will probably exert great influence over the usual activities of the European Council.

Under the authority of an institutionalised and, therefore, long-term Presidency (European Council, Foreign Affairs Council), the rotating presidency chairs most Council configurations, with the exception of foreign affairs, as well as Coreper. More precisely, Prime Ministers of rotating presidencies maintain the Presidency of the various formations of the Council.

In accordance with the new provisions, the President of the European Council has more input in agenda setting. Moreover, it is clearly stipulated that the new General Affairs Council (GAC) should promote greater coordination and consistency in policy between the European Council and the other configurations of the Council.

In this context, the rotating presidency will play a leading role in shaping EU policy. The GAC faces the challenge of moving beyond the routine tasks of organisation and representation that are often driven by purely national concerns and interests. In fact, the overall effectiveness of the EU Presidency will also depend on the role given to the GAC.

Under the auspices of the GAC, the rotating presidency may embrace a strategic role in improving EU decision-making capacity in day-to-day politics and guaranteeing the political coherence of the whole system. By adopting a competence-coordinator role, the rotating presidency may contribute to the control of the allocation of competences between the EU and member states and support the European Commission's legislative work. Thus, the issue of optimal assignment of policy tasks to different levels of government could be addressed according to specific policy priorities, as set out by the Presidency of the EU and the European Council. The creation of a working group (comprising high-level experts) on better distribution of competences and policy efficiency would certainly be helpful. It could enhance discussions among member states on controversial issues (preferences for core public goods or macroeconomic stabilisation etc.) and promote constructive debate on any issue deemed essential to be dealt with at European level.

By promoting joined-up thinking in various EU policies, the GAC may combine issues and set objectives in close cooperation with the European Commission (e.g., establish a connection between free movement and family law matters). The GAC may also develop a genuine collective strategy, fully supported by sectoral ministers representing relevant policy domains.

The further expansion of the co-decision procedure may signal the beginning of the rotating presidency's role as a negotiator between the Council and the European Parliament. Moreover, national parliaments may become an informal negotiating partner for the rotating presidency in order to facilitate the application of the principle of subsidiarity, or even the activation of *passerelle clauses* for the simplified revision procedure that until now has remained a dead letter.

Finally, the GAC may assist the triggering of an enhanced cooperation procedure. Enhanced cooperation might be envisaged in areas where flexible forms of cooperation, other than enhanced cooperation *stricto sensu*, are already operational (for instance in the field of Justice and Home Affairs or in policies directly connected to European Monetary Union, as well as in areas of joint competence (community policies governed by unanimity, such as social policy or taxation, as well as energy policy)).

As part of its overall coordination role, the GAC will be informed of any existing political constraints or potential blockages to the adoption of new legislation. Enhanced cooperation will present an alternative option to all inefficient, low-denominator compromises, which may include soft law instruments to the detriment of legislation or privilege other flexible forms of cooperation outside the institutional framework of the EU. The GAC may examine the feasibility of any cooperation granted as a last resort in the event of emerging dissent among member states. Besides, the decision authorising enhanced cooperation will be adopted by the Council on a proposal from the Commission and after obtaining the consent of the European Parliament (except in the case of cooperation within the CFSP). Enhanced cooperation will create hard law, which is binding on participating member states and potentially binding upon all future participants.

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The Potential of the Lisbon Treaty: How one Treaty May Conceal Another?

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Understanding the present and controlling the future require a proper assessment of past events, however unpalatable they may be. The upsets recently experienced by the Union in the latest revision of the Treaties, the Constitutional and then the Lisbon Treaty, come into that category. It would therefore be a serious mistake to move on without learning the lessons from them. This long and painful process of ratifying the Lisbon Treaty illustrates, once again, the need for more flexible mechanisms to adapt the EU's institutional framework and substantive policy options to the rapidly changing reality of an enlarged EU. Indeed, the difficulty of obtaining unanimous agreement at an Intergovernmental Conference and subsequent ratification within the member states in accordance with their constitutional procedures is only exacerbated in an EU of 27, with its increased degree of national diversity. In view of these limitations of the traditional treaty amendment procedure, the Lisbon Treaty contains certain alternative revision strategies intended to facilitate this process, but also to facilitate the potential for differentiated integration. The purpose of this contribution is to assess the potential of those various flexibility instruments.

Learning the lessons from recent experience: future Treaty revision prospects

How has the Union managed, within the space of three years, to move from a draft 'Constitution,' seen by many as the penultimate step on a federal path and drawn up with the utmost transparency in a prestigious forum, the Convention, to an unreadable Treaty, definitely representing a step backwards in form and, in a way, also in substance, produced by an exercise in diplomatic secrecy living up to the worst pre-enlightenment traditions? How has such a U-turn been carried out with the active collusion of the European Parliament, not long ago so critical of the slightest liberty taken with transparency and democracy? The answer is simple: just by virtue of the principle of reality, whereby dreams cannot be sustained indefinitely and any venture ignoring the facts, which are well known to be stubborn, is doomed to failure.

Under that principle of reality, there is little or no likelihood of any similar exercise over the next few years. While the Treaty does lay down a revision procedure involving the convening of a Convention, which suggests that any such aspiration has not been killed off altogether, it goes on straight away to stipulate that, with the European Parliament’s agreement, that formality may be dispensed with where the issues at stake do not require it. It is a fair assumption that, for a decade or more, member states will make sure they do not lose control of the basic treaty-revision procedure, as they did recently; the price to pay for that would be too high.

There is another lesson to be learned from this sorry tale: in allowing multiple potential vetoes, the present treaty-revision procedure courts disaster. As the course of full-scale revision is fraught with risk, the new Treaty’s authors took care to offer their successors a range of means of adapting the basic texts to the new opportunities and fresh challenges to be faced by the Union over the years ahead. The general thinking behind those future-development clauses is to provide the Union, from the outset, with the political and legal tools with which to make inconspicuous yet tangible progress as needs and openings arise. This can be seen as a way of reverting to the founding fathers’ pragmatic, workmanlike approach.

General treaty-revision clauses

The revised Treaty thus brings a radical innovation, in stipulating that the provisions of the Treaty on the Functioning of the European Union (TFEU) – i.e. policy formulation in particular – may be amended merely by a unanimous decision of the European Council, subsequently ratified by member states in accordance with their respective constitutional procedures (Art. 48(6) Treaty on European Union [TEU]). While this arguably does not involve any great change, as the need for consensus and national ratification still remains, the effect of the innovation is to be seen elsewhere. It lies in the option of dispensing with an Intergovernmental Conference, which will make the use of this procedure more routine, taking the heat out of substantive debate and in all likelihood improving the chances of a favourable outcome. It should be pointed out, however, that, in making use of this provision, the European Council cannot “increase the competences conferred on the Union in the Treaties”.

Also in the interests of calmer, more focused discussion of any new needs, it will in future be possible to move from unanimity to a qualified majority and hence from a special legislative procedure to the ordinary legislative procedure (i.e. a qualified majority and co-decision) merely by a decision of the European Council, together with a procedure for tacit consent by national parliaments (Article 48(7) TEU). This general bridging *clause passerelle* is, however, subject to restrictions: its application is limited to the provisions of the TFEU and Title V of the TEU; aside from the need for the European Council to adopt such a decision unanimously and obtain the consent of the European Parliament, the national parliaments *de facto* obtain the right to ‘veto’ that decision within a six-month period; moreover,

for decisions with military implications or in the area of defence, no such adjustment from unanimity to qualified majority voting (QMV) can be accepted. It should also be noted that Article 353 TFEU explicitly excludes the application of this general bridging clause in respect of the voting and decision-making procedures laid down in the following articles: Article 311(1) and (4) TFEU relating to decisions on ‘own resources’; Article 312(2) TFEU on the adoption of multiannual financial frameworks; Article 352 TFEU incorporating the ‘flexibility clause’ and Article 354 TFEU on the suspension of membership rights.

Enhanced cooperation and other bridging clauses in particular areas

Another factor making for flexibility in the revised Treaty stems from improvement of the provisions on enhanced cooperation. In a Union with a wider membership and greater diversity, use of enhanced cooperation would seem, in theory at any rate, the prime way of enabling the Union, for the time being at least, to live with differing levels of ambition, while maintaining overall political consistency and preserving the unity of the institutional framework. Since its introduction under the Amsterdam Treaty, enhanced cooperation has not met with the anticipated success, firstly because it was available in another form where the need was greatest (currency, Schengen, etc.) and secondly because the requirements for its implementation were too stringent. The new Treaty tries to put this right in a number of ways.

First of all, by generally relaxing the requirements for use of enhanced cooperation. The main instrument available for enhanced cooperation between some member states is Article 20 of the Lisbon Treaty, allowing them to “establish enhanced cooperation between themselves within the framework of the Union’s non-exclusive competences”. This new Article 20 thus provides opportunities to cooperate on policy issues, even if the support and participation of all EU member states is not (yet) forthcoming. Under enhanced cooperation, the member states can make use of the EU institutions and exercise those competences by applying the relevant provisions of the treaties. The three main innovations meant to facilitate the triggering of enhanced cooperation are as follows: firstly, the last-resort condition has been clarified and downgraded, i.e. a deadlock in the decision-making process can now be established by the Council in the initial decision authorising enhanced cooperation; secondly, the initial authorising decision is to be enacted by a qualified majority, without any further qualifications (except in Common Foreign and Security Policy); thirdly, the authorising decision may lay down conditions for participation, to test the capacity, or the goodwill, of the initial participating member states. This is aimed at preventing the participation of unwilling member states, only interested in keeping some influence over the development of enhanced cooperation, or even impeding it.

However, the use of Article 20 is subject to certain conditions: the scope for enhanced cooperation is limited to non-exclusive competence; at least nine countries should participate; the decision authorising enhanced cooperation is to be adopted by the Council; it should

respect the *acquis communautaire* and not undermine the internal market or the social and economic cohesion of the Union; and the instruments, procedures and rules laid down in EU primary law also apply to the operation of differentiated cooperation.

Secondly, by stipulating that the countries participating in enhanced cooperation may decide of their own accord to move from unanimity to a qualified majority, in order to facilitate adoption of implementing measures. Under Article 333 TFEU, the Lisbon Treaty provides that the Council can adjust either the voting requirements from unanimity to QMV or the decision-making procedure from a special to an ordinary legislative procedure, although such an amendment to the Treaty provision to which enhanced cooperation relates still requires unanimity within the Council. The application of the bridging clause might be easier in that it will only be necessary to reach such unanimous agreement among those member states that participate in enhanced cooperation, in order to approve the amendment to the decision-making procedure.

It is clear from the analysis so far that a serious effort has been made, in the Lisbon Treaty, to render the enhanced cooperation mechanism more attractive and effective, at the initial stage (triggering arrangements), at the functioning stage (bridging clause) and in relation to non-participants. However a number of uncertainties, ambiguities and potential problems remain. Some of those uncertainties are legal in nature. How will enhanced cooperation affect the Union's judicature, e.g. in assessing the applicability of decisions enacted in enhanced cooperation to situations in one way or another involving non-participating members states or their nationals? What will be the impact of enhanced cooperation on the Union's external action and on further enlargements? What may turn out to be the legal nature of enhanced cooperation and its *acquis*?

Lastly, in some areas where the value of such cooperation is already acknowledged, such as security and defence or justice and home affairs, by laying down various pre-established arrangements (structured cooperation and opting out or in) in anticipation or furtherance of enhanced cooperation.

Judicial cooperation in criminal matters, including minimum harmonisation of national criminal law, is another potential area for enhanced cooperation. In the Lisbon Treaty, an 'emergency brake' on the legislative procedure has been devised but, in the event of continuing deadlock, authorisation to pursue enhanced cooperation "shall be deemed to be granted" to willing member states. It is therefore the whole former third pillar (Title VI of the TEU) which will be covered by that special procedure aimed at easing the creation of enhanced cooperation.

Another innovation under the Lisbon Treaty concerns extension of the scope of enhanced cooperation to Common Foreign and Security Policy (CFSP), without confining it to mere implementation of common action or positions on behalf of the Union. Being formally part of

CFSP, defence policy has also become a potential area for enhanced cooperation. Enhanced cooperation is allowed in that field under the heading of “permanent structured cooperation”. This is to be set up in order to increase and further integrate the forces of the participating member states and to engage in the most demanding Petersberg missions. Permanent structured cooperation resembles enhanced cooperation in that it will be set up by a Council decision identifying the participating member states. It will be confined to willing member states that fulfil the criteria and have made the predefined military capability commitments set out in a protocol in that regard. Non-participants will be precluded from voting in the Council (whereas no express provision is made regarding their right to take part in deliberations). And they can at a later stage submit to the Council their intention to participate. Such cooperation consists in practice of entrusting the implementation of a Petersberg mission to a group of states “which are willing and have the necessary capability for such a task,” presumably on behalf of the Union. Such missions are supposed to be carried out “within the framework of the Union”. The Council is to be kept informed and may amend the mandate for the mission. However, management of the mission remains in the hands of the group of States, “in association with the High Representative”.

Even though the rather disappointing experience to date gives reason for some caution, the combined value of these highly technical-looking provisions should not be underestimated. The Union can now, with the new treaty, be said to have a more flexible and more appealing framework providing real opportunities for those member states wanting to fulfil their legitimate ambitions without undermining the whole edifice.

Conclusion

To conclude, assuming there to be no substantial revision of the Lisbon Treaty within the foreseeable future, it is highly probable that a need will be felt to make use of the wide range of instruments available under the new Treaty in order to adapt the Union’s policies to the opportunities or needs of the day. The most go-ahead member states are also likely to try out the various options opened up by the new arrangements for enhanced cooperation, an inclination naturally made all the stronger as considerable reluctance is shown by the slowest-moving member states, particularly in justice and home affairs, under the ‘brake / accelerator’ system. Other potential areas of application can be identified, including Community policies governed by unanimity, like taxation, social policy and some aspects of energy policy, as well as European citizenship.

This trend, were it to materialise, could in time lead to the formation of the oft-mentioned ‘pioneering group,’ long called for in some quarters. Time will tell, although the main obstacle standing in the way of that development continues to be the diversity and wide range of aspirations, making it more realistic to refer to ‘pioneering groups,’ in the plural, particularly regarding the euro and defence, rather than any real structured, homogeneous political

avant-garde. Such clearer, more radical differences in aspirations cannot be ruled out in the longer run, however, depending in particular on proper use being made of the practical opportunities opened up here by the new treaty.

In addition, use of various means of reflecting such differences would then have to be accompanied by greater practice of democracy within the Union, something at present largely artificial in the absence of any real shared policy. Some reforms introduced by the new Treaty should help bring that about.

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Differentiated Integration and Flexibility in the EU under the Lisbon Treaty: Challenges for the Trio Presidency

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The entry into force of the Lisbon Treaty brings a number of institutional innovations. Among these, the Treaty includes a number of modalities of differentiated integration which did already exist (such as enhanced cooperation or opt-outs) and it adds some new forms: ‘oriented’ enhanced cooperation; opt-ins and permanent structured cooperation on defence. Given the subsidiary character that these forms have *vis-à-vis* the standard Community methods (all states through the same legal instruments), the Trio cannot anticipate an agenda of application for any of them. Nevertheless, some issues may crop up in the agenda that require action by means of these instruments.

The term differentiated integration refers to a variety of forms of cooperation and / or integration in which not all members of the EU take part, and which therefore do not have uniform legal and political effects for all of them. All of these modalities owe their existence to the answers they provide to this question: how can one move forward if there are countries which can and want to do so but there are others who do not want to or cannot? Flexibility is the operating principle that allows the EU to conceive of and put into practice methods of differentiated integration, as opposed to institutional, procedural and formal ‘rigidity’ that implies exclusive application of the EU system in all cases and for all countries.

Debate on differentiated integration and flexibility intensified with the failure of the EU Constitution and the troubles the bloc faced in getting the Lisbon Treaty ratified. This is not a new issue, however. In fact, proposals for and discussion of differentiated integration go back to the 1970s, to the time Britain joined the EU, and since then they have been a fixture, updated depending on the circumstances.

In the current context, there are essentially two circumstances that raise interest in this issue. On one hand, the size of the EU (27 members and rising) introduces a growing

‘heterogeneity’ (size, per capita income, geopolitical orientation, etc.) that causes European leaders and commentators to wonder if, at times, some of these member states have the will and / or ability to move forward in some policies and even with the process of integration in general (that is to say, if they really want to accept EU policies across the board and have the means to do so). Along with this traditional question, a non-inclusive idea is being hinted at more and more openly: that one group of states might want to provide themselves with a public good from which the rest is excluded.

Meanwhile, this growing heterogeneity among states coincides with a greater ‘internal diversity’ in political options regarding the EU. In some of the older member states, the existence of Eurosceptic parties, groups or tendencies has been constant; such is the case of Britain or France (where part of the left or right have at several times objected to the EU project). Joining them are some of the new states that became members in 2004, such as the Czech Republic (where Vaclav Klaus voices strong criticism of the EU), Poland (where conservative parties hold a reactionary vision of the EU) and even new anti-EU splinter groups in traditionally pro-European countries such as the Netherlands and even Italy. Indeed, there is a greater internal plurality that also means the absence of national consensuses on the EU and its integration project.

Theoretical conceptual schemes for differentiated integration

The theoretical schemes that have been presented over the years tend to be rather ambiguous approaches which often overlap and have little ability (beyond visual images) to get to the heart of the real problems involved in differentiated integration. As they are mixtures in this sort of discourse, a brief description of the concepts most often used is useful.

- **Core (vanguard):** this notion means that a group of countries take part in all possible schemes and modalities of integration and / or cooperation, in such a way that they automatically define the centre of gravity around which policy in Europe pivots. The idea of a ‘vanguard’ or ‘pioneering group’ is halfway between the ‘hard core’ (static) and the ‘multi-speed Europe:’ The vanguard seeks to open up a path that other countries will follow later.
- **Concentric circles:** this concept was more in fashion in the 1980s and 90s, and has since fallen into disuse. Although it is applied both to the EU and its relationship with its surroundings, it actually serves more to relate the various international European organisations with the idea of integration. Starting off from a central core, cooperation and integration among states would be organised through different bodies, the greater or lesser intensity of which would generate circles around this central point. The circles would essentially define areas of cooperation and / or integration and their legal-political intensity (EU / European Economic Area / Council of Europe / Organisation for Security and Cooperation in Europe).

- **Directory:** more than an academic approach, this is an idea that is occasionally raised in political circles and involves (unlike the more neutral concept of a central core) a conscious will to direct, guide or influence policy in Europe and the EU. Obviously, it is not a 'formalised' concept stemming from an organisational or institutional model.
- **Variable geometry:** this is a descriptive model of the system in which, within a common integration scheme, different groups of states participate in different policies.
- **Multi-speed Europe:** unlike the previous concept, all states would take part in all EU policies, also within a common integration scheme, but would embrace these policies at different times, depending on their ability to implement them.
- **Europe à la carte:** the areas of specific policies and ways of cooperation / integration are presented as if on a restaurant menu, from which countries can choose at will, depending on their interests.
- In relation with the previous concept, the idea of **selective or differential membership** is being increasingly used in order to describe the United Kingdom's position within the EU (because of its selective repeal of parts of the EU *acquis*), but also as a possible model for incorporating Turkey, for instance. Here, it should be mentioned that Norway has adopted much of the EU *acquis* without being a member.

Existing modalities

Of course, the existing models of differentiated integration have not followed these theoretical models, but rather have responded to the need to provide *ad hoc* solutions to the specific demands of certain states in given circumstances. Formulas for differentiated integration were incorporated for the first time into the Single European Act and have been retained, in their different variations, up to and including the Lisbon Treaty.

Voluntary exclusion (opt-out)

The opt-out is characterised by the following features. In the first place, it is defined under primary law (normally, through protocols) which, furthermore, spells out specifically which states accept this voluntary exclusion (in other words, it is not a generic option that is open to each and every state at all times). Also, the opt-out is applied to issues and areas that are clearly defined (it is not something that is available for any EU policy). Strictly speaking, the first case was Britain's opt-out from the European social charter adopted as a protocol to the Single European Act. The best known case, however, was the British and Danish opt-out from the third phase of Economic and Monetary Union (Sweden, which in a referendum rejected joining EMU, has no *de jure* opt out, although it does have a *de facto* one). Curiously, Article 139 of the current Lisbon Treaty refers to states which have not fulfilled the criteria for advancing to the third phase of EMU as 'member states with a derogation'. Opt-outs have gone from the monetary realm to the Schengen *acquis* (once it was incorporated into the Treaty), from which the United Kingdom, Ireland and Denmark are excluded.

Finally, the last case of an opt-out came with the Charter of Fundamental Rights, which was incorporated into the Lisbon Treaty with a protocol. The United Kingdom and Poland have excluded themselves partially (the Czech President Klaus has demanded similar treatment for his own country).

Opt-outs have traditionally been viewed with wariness, the idea being that they undermine the EU integration model. But the cases mentioned earlier show the positive side: opt-outs allow integration to be applied to a sector without depending on the will of those who exclude themselves. Furthermore, such countries are the ones who assume the cost of their own exclusion (although Britain's opt-out from the social charter did involve a lot of free-riding on the higher social standards that the charter introduced for other member states. Nevertheless, the UK did finally renounce its opt-out).

Enhanced cooperation

Unlike opt-outs, enhanced cooperation is a mechanism for affirming a will to advance and by definition it refers only to participating states. Primary law defines a framework but does not identify *a priori* the areas for specific application (although those in which it can be applied are identified: they are non-exclusive areas of jurisdiction which do not affect the internal market or economic, social and territorial cohesion) nor the specific countries which participate and which are excluded *a priori*. On the other hand, the pre-requisites for activating this policy are spelled out: there have to be at least nine member states interested (it was eight under the Nice Treaty), it must be open to including new participants, although "conditions of participation" can be established (Articles 328.1; 333.1 of the Lisbon Treaty).

In the first place, the Treaty defines the 'situation' in which enhanced cooperation can be activated (as a last resort, once it has been confirmed that agreeing on ordinary EU rules is impossible) and also the 'procedure' for doing so: the initiative affects the relevant states, and the proposal is to come from the European Commission or the High Representative if it is a question of foreign and security policy. The final decision is adopted by the Council by a qualified majority (or unanimity in the case of foreign and security policy) and the European Parliament must grant its consent (in the case of foreign and security policy, the Parliament will only be informed).

Enhanced cooperation has drawn attention because it brings together the appeal of 'cartesian' models favoured by academics with its concrete legal existence. However, its greatest defect is the scant operational effectiveness it has shown since being created in the Amsterdam Treaty (1996). So far only one case of 'enhanced cooperation' has been implemented: the European norm that allows couples from different member states to choose which national jurisdiction will apply in divorce cases (the participating states are Spain, France, Italy, Romania, Luxembourg, Greece, Austria, Hungary and Slovenia). Aside

from whether it is actually used or not, some commentators say that the value of enhanced cooperation lies more in its value as a threat to get a particular measure approved through regular EU channels.

‘Oriented’ enhanced cooperation...

This is a variation of the previous concept, applicable to certain realms defined *a priori* within the area of freedom, security and justice: under the Lisbon Treaty, mutual recognition of sentences, judicial and cross-border police cooperation (82.3), the creation of a European Public Prosecutor’s office (86.1), and judicial cooperation (87.3). The most notable innovation is that its activation is almost automatic if the ordinary legislative procedure fails; only a unanimous ‘no’ vote from the European Council can block its implementation (the so-called ‘accelerator’). This automatic mechanism is the biggest advantage of a system designed with the goal of overcoming the prospect of a British veto.

...and its corollary, discretionary participation (opt-in)

The aforementioned modality is pre-configured to anticipate a British (and possibly Irish) opt-out. It carries with it the possibility of Britain deciding in a discretionary fashion if it wants to take part in those areas in which it has previously stated it wants an opt-out (*sic*) (Protocol 22 of the Lisbon Treaty). In the past, member states of the EU adopted two Regulations (establishing the Frontex agency and regulating the anthropomorphic data to be included in databases on electronic passports) and the United Kingdom appealed both before the European Court of Justice on grounds that it had been illegally excluded! The Court wisely rejected both lawsuits (sentences C-77/05 and C-137/05).

Permanent structured cooperation

Applying enhanced cooperation to the area of defence (permanent structured cooperation) involves some differences compared to enhanced cooperation in foreign and security policy. Fundamentally, decisions can be adopted by a qualified majority, and participation requires the reaching of more binding commitments to carry out more demanding missions and the fulfilment of higher-level military capability criteria. The French government has already presented a proposal to begin articulating permanent structured cooperation.

Besides this, in the area of defence there are modalities which, without being forms of structured cooperation in the strict sense, nevertheless apply the principle of flexibility. Thus, the Lisbon Treaty allows for member states to organise cooperation and coordination among their administrations responsible for national security (Art. 73); for the European Defence Agency (Art. 45.2), in which any member state which wishes can participate (in actual fact, all do except for Denmark); and to organise missions outside the EU to preserve peace, prevent conflicts and boost international security – this can be assigned to groups of countries

(Art. 42). However, it should not be forgotten that there is flexibility within the structure of security policy. Thus, a joint action within the framework of security and defence in which only some EU countries take part is what gave rise to the EU mission in waters off Somalia to prevent piracy (EU NAVFOR Somalia).

Parallel functional integration

The choice of the term ‘functional’ is not arbitrary. In the 1950s, the functionalist theoreticians of integration (Mitrany, etc.) embraced the principle that form (legal and political) would flow from the function that was sought and the top priority was in fact to define these functions and tasks. Thus, this modality involves creating schemes, which are parallel and concurrent with the goals of the EU, with participation by a number of members smaller than the total in the EU and which do not adopt its institutional model or its regulatory model. There are many examples, from the oldest ones (the Western European Union, finally absorbed by the EU itself) to the most current ones, such as the Prüm Convention (2005) and the European Space Agency (1975), the Schengen Agreement (1985) or the Eurocorps (1992).

Pros and cons of differentiated integration

After this descriptive summary, it is a good idea to evaluate differentiated integration as a whole, albeit briefly. The disadvantages it entails can be summarised in the following:

Potential for reversing integration

Most advocates of orthodox EU thought systematically conclude their analysis by saying that differentiated integration modes can undermine what has already been achieved and block further progress. But this argument is inaccurate because differentiated integration proposals have emerged rather as a reaction to the lack of drive toward integration on the part of the EU as a whole. The idea that there are integration-curbing mechanisms in these modalities is correct only if one contrasts integration with differentiated integration. However, the comparison is incorrect.

Rupture of legal unity within the EU

This argument is constructed in a parallel fashion to the previous one, and stresses the application of some EU norms only in some countries and to some EU citizens. At a tactical level, there is no denying this. But if we are realistic, it should be viewed as a problem only in certain circumstances: if discrimination and / or legal insecurity arise. Without downplaying this possibility, it does seem clear that the existing modalities of differentiated integration discussed earlier have not caused major problems in this regard.

Encouraging free-riding

Perhaps the most solid objection refers to the possibility of free-riding: obtaining benefits from differentiated integration without assuming the costs of taking part in it. Some of the existing examples, namely EMU, show that these schemes actually externalise (transfer to countries not included) some of their costs (as seen in the lack of autonomous monetary policy of those which are excluded). Looking to the future, defence is often cited as an area in which free-riding will be inevitable. However, this argument can be countered in two ways. Firstly, some of the existing schemes (the European Defence Agency and Eurocorps) have generated momentum in which participation is extended. Secondly, it is doubtful that a common, alternative scheme in which the possibility of free-riding disappears altogether can be attained.

The democratic nature of certain kinds of differentiated integration

Finally, many commentators are concerned by the inter-governmental tendency inherent in these modalities. Although it is hard to generalise, some of these escape the Commission's capacity to take initiatives, and / or the control of the European Parliament, and / or the jurisdictional control of the Court of Justice, and / or could even skirt control by member states. This is a real problem, but the scope of it should be dealt with on a case-by-case basis, rather than prejudged as a possible generic situation.

As for the pro's, they should be viewed with this in mind: differentiated integration exists and seems inevitable (in one form or another) in the future. Given this fact, the following advantages should be considered:

- Differentiated integration does not curb progress, but rather just uniform progress by all the member states of the EU.
- Differentiated integration serves to accommodate the diversity and plurality of the member states. What is more, if its creation, probably as part of primary law, is handled skilfully, the EU might be able to avoid downward negotiation by offering escape routes to minimalists (as happened with the United Kingdom with the Charter).
- In general, costs are assumed by those which are not integrated and / or those which are excluded (in actual practice cases of free-riding have not arisen, although they cannot be ruled out in areas such as defence policy).
- Finally, from the point of view of the Trio Presidency, it must be underlined that the 3 countries share a similar approach: Spain and Belgium participate in all existing modalities (with the exception of Belgium's non-participation in the norm on applicable national jurisdiction for divorces) and Hungary has shown its willingness to take part as soon as possible in the most significant one (the euro). This means that they may easily share a similar approach towards these modalities and, eventually, they may steer any eventual prospective application.

INSTITUTIONS

Use or Abuse of National Constitutional Requirements in the Dynamic Development of EU Treaties?

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The Lisbon Treaty is the result of a process of at least ten years, which aimed to clarify in which fields the member states wish the EU to have competence and to improve its capacity to exercise that competence. Following the entry into force of the Lisbon Treaty this process may finally be said to have come to an end. Considering the efforts made to negotiate the Treaty, and the difficulty to complete ratification in all member states, it is not likely that another full-scale reform will be ventured upon within a foreseeable future. And quite probably, the time is forever gone when disparate, even competing, demands for improvements of the constitutional framework of the EU could be melted together in all-amending ‘fudge’ treaties.

But it is a lot less difficult to imagine that the simplified revision procedures set out by the Lisbon Treaty will be operated in order to enhance the capacity of the EU to exercise that competence which has already been conferred upon it. Most notable among these is, first, a procedure which enables limited amendments to be made to existing treaty provisions on internal policies and action, and, second, a general bridging clause or *passerelle* which enables shifts in decision-making procedures from unanimity to qualified majority voting and increased participation of the European Parliament.

Another type of treaty changes which must be expected is that which will accompany future enlargements and admission of new member states. Even if such changes are supposed to be confined to the “adjustments of the treaties... which such admission entails” it is likely that attempts will be made, successfully, to give this a very broad meaning. Indeed, it would seem that the political reasons to use future Acts of Accession as vehicles for other treaty changes than those strictly needed for admission of new member states (i.e. redistribution of votes in the Council and the European Parliament) are growing with the awareness how difficult it is to conclude an ordinary procedure for treaty revision.

Support for that conclusion can be found in the promises made to the Irish people and the Czech President during the run up to Lisbon Treaty ratification. In both these cases the concessions granted will only acquire their legal status after being introduced in the form of “Protocols to the Treaties” and as such “form an integral part” of the Treaties and thus, the primary law of the EU. But this in turn requires that the procedures which may be used for adopting or amending protocols must be the same as the procedures which may be used for adopting or amending treaties. This leaves not only the ordinary and simplified revision procedures provided for by the Lisbon Treaty, but also the procedure for making adjustments in the context of enlargement. It is important therefore to note that the commitment to transform the promises made by heads of state or government into protocols “at the time of the conclusion of the next Accession Treaty” is the centrepiece of the solution to the Irish and Czech demands.

But even if political agreement has already been reached between the heads of state or government, the fact remains that a future accession treaty – and every protocol attached to it – will require fresh support from all member states and subsequent ratification “in accordance with their respective constitutional requirements”. This in turn means that there is an obvious risk, first, that member states represented by new governments will find an opportunity to invoke new demands and, second, that national parliaments will want a return to concerns that were held back during the ratification of the Lisbon Treaty.

So, for example, there was considerable support in the Swedish *Riksdag* for making a demand that the Lisbon Treaty ought to be supplemented by a ‘social progress protocol’ which could correct the effects of the European Court of Justice’s ruling in the notorious *Laval* case. But despite knowing that postponing its approval of the Lisbon Treaty could be strategically useful, the *Riksdag* did what was expected of it, sticking loyally to the government’s tight schedule for ratification of the Lisbon Treaty. Perhaps a responsibility was also felt not to create a situation which could handicap the upcoming Swedish Presidency of the EU. But, importantly, none of this meant that the perceived need for a social progress protocol disappeared from the political agenda. Therefore, the next round of ratification of another (accession) treaty may be seen as a new opportunity for strategic considerations. This is particularly relevant if such ratification is not limited to questions of new accession(s) but cover also questions of former concessions. Obviously, the logic holds not only for the Swedish *Riksdag* but for everyone in all member states who is granted a decisive say in accordance with national constitutional requirements.

In the light of the above it would appear that the remaining step in delivering the concessions made to the Irish and the Czech cannot be taken for granted. Furthermore, the risk must be acknowledged that the required approval will have to be paid for by new concessions to others. Presumably, if member states’ negotiation or ratification of the next accession treaty – and protocols attached to it – turn out to be problematic, the principal responsibility for securing resolution will fall upon the European Council. Therefore that treaty is also likely to offer a first major test for its new President.

This text emphasises the significance of the national constitutional requirements which must be complied with before amendments can be made to existing primary law of the EU, whether in the form of treaties or protocols. From the perspective of the EU, the cumulative content of such requirements is a crucial factor to consider before attempts are made to obtain amendments or adjustments. From the perspective of each member state, the content of its own national requirements is a factor which may complicate its relationship with the EU: representing an obstacle to integration but also a protection. In the light of the experience of the ratification of the Lisbon Treaty there are more compelling reasons than ever before to assess the national constitutional requirements – in both existing and incoming member states – but also how they can be changed and how much they can be allowed to change. The contrasting images which immediately come to mind are the honest concerns of the Irish people and the one-man charade which the Czech President was allowed to play. But it is submitted that nothing deserves more serious attention than the ruling of the German Constitutional Court.

The dynamic development of the treaties after Lisbon: a lesson from Germany?

The official reactions to the *Bundesverfassungsgericht's* ruling on the Lisbon Treaty of 30 June 2009 were surprisingly positive. Not only the German Chancellor Angela Merkel but also Commission President José Manuel Barroso and Council President Fredrik Reinfeldt immediately embraced the ruling as an eagerly awaited 'yes' to the Lisbon Treaty. But for a less uncritical reader it is clear that the answer of the German Court rather amounted to 'no,' and that 'yes' was not possible until a new law, fulfilling specific criteria, had been adopted by the *Bundestag* and *Bundesrat*. It was only after the demand stated by the court had been complied with – when a more modest law first intended to accompany the Lisbon Treaty had been replaced by a stricter one – that Germany could finally complete its part of the process for ratification.

In its ruling the *Bundesverfassungsgericht* confirms that the EU, after the Lisbon Treaty, will continue to rest on a principle of conferral of competence to act in limited fields. But, importantly, emphasis is placed on the difficulty in deciding exactly which those fields are, or, in other words, what the EU has been authorised to do. The existing ambiguity is added to by the Lisbon Treaty, which introduces new provisions that give rise to such questions. According to the German Court the situation is still acceptable as long as the institutions of the EU behave responsibly: not evidently transgressing the limits of the competence entrusted to them or the conditions underlying its conferral. But this requires sufficient mechanisms for national control of what these institutions do and how they do it.

Against the background of that reasoning, what the *Bundessverfassungsgericht* found most objectionable were a number of situations where it would become possible, after the Lisbon Treaty, to bring about Treaty amendments “without a ratification procedure solely or to a decisive extent by the institutions of the Union, albeit under the requirement of unanimity”.

With respect to those situations, the Court said, a special responsibility is incumbent on the German parliament – rather than the government – as regards participation. Therefore, in order not to have to judge the Lisbon Treaty incompatible with the German Constitution, the *Bundesverfassungsgericht* concluded that a new law had to be adopted which would fill the gaps of the Lisbon Treaty, thus enabling the *Bundestag* and the *Bundesrat* to “exercise their responsibility for integration in numerous cases of dynamic development of the Treaties”.

The new law resulting from the ruling of the *Bundesverfassungsgericht*, the Act Extending and Strengthening the Rights of the *Bundestag* and of the *Bundesrat* in Matters Concerning the European Union, was adopted on 22nd September 2009 and three days later the German procedure for ratification was concluded by President Horst Koehler. Apparently, what that law did was to enable German ratification of the Lisbon Treaty – a ratification which for a while was not possible – by introducing national constitutional requirements that could compensate for the lack of corresponding requirements in that treaty.

In the light of the German experience and after the Lisbon Treaty, it is said to be clearer than before that national parliaments may have different roles and different strengths within the EU depending on the design of national constitutional requirements. So, for example, the new constitutional requirements resulting from the ruling of the *Bundesverfassungsgericht* – the pronouncements of the Court and the resulting legislation – mean that the German Parliament is in a position which is formally stronger than that of the Swedish Parliament. Similarly, because of the corresponding constitutional requirements in the UK, introduced prior to ratification of the Lisbon Treaty (at the insistence of the House of Lords), the UK parliament is in a position which is formally stronger than that of the Swedish Parliament but weaker than that of the German one.

In the case of both Germany and the United Kingdom, the new constitutional requirements that have accompanied ratification of the Lisbon Treaty focus on those situations where simplified procedures may be used to make amendments to Treaties and other EU instruments of primary law. Because of the concerns of *Bundesverfassungsgericht* about the “numerous cases of dynamic development of the Treaties,” the situations covered by Germany include also the future application of the so-called flexibility clause as a legal basis for adoption of secondary law (and also cases where member states can halt a deepening of European integration subject to so called ‘emergency brakes’). Essentially, in the case of both Germany and the United Kingdom, constitutional requirements have been introduced which serve to secure a decision-making role for the national parliament in some of those situations where the Lisbon Treaty only stipulates such a role for the national government. Overall, these requirements are constructed so that where any draft decision under the relevant procedures comes before the European Council or the Council, the national government may not agree to the adoption of the decision unless the national parliament has first given its approval.

In comparison with the way in which Germany and the United Kingdom have made use of the possibility to unilaterally supplement the Lisbon Treaty with constitutional requirements

that give the national parliament a formally stronger role, the solution opted for in Sweden (and probably most other member states) is somewhat more minimal. Here focus has been placed on the wish to establish in national constitutional law the procedures needed for the tasks which the Lisbon Treaty explicitly expects national parliaments to perform, in particular subsidiarity control. But in sharp contrast to Germany and the United Kingdom, there has been little interest so far in the tasks which the Lisbon Treaty implicitly expects. In Sweden this may perhaps be explained by the fact that there is no Constitutional Court or, indeed, any House of Lords. But once the Lisbon Treaty has entered into force and there has been some time to reflect over reactions, Sweden and its *Riksdag* may find it difficult to reconcile an increasing awareness that the EU has become an integral part of modern democracy with an understanding that this democracy is being built on an asymmetric constitutional construction where national parliaments are not equal.

The most practical conclusion which may be drawn from this is that no national parliament has to satisfy itself with a weaker role than any other and that every national parliament holds the power to do something about this. But at the same time it is important not to forget that the existing possibility – to unilaterally supplement the constitutional framework of the EU with national provisions that give one’s own parliament a stronger role – must be balanced against the need for a common system which is able to act. In every situation where the requirement is made that one national parliament or, indeed, 27 must give approval prior to the adoption of a common decision, the likeliness increases that there will never be any decision. The dilemma finds no better illustration than the new requirement, with which we all have to live, that the flexibility clause may not be acted upon unless support for this is first manifested in a law carried by two thirds of the members of the *Bundestag* and two thirds of the votes of the *Bundesrat*. Undoubtedly, this will deprive that provision of much of its usefulness.

Conclusion

The experience of the ratification of the Lisbon Treaty, and in particular the result of the ruling of the German Constitutional Court, suggests that the particular design of national constitutional requirements may have far-reaching effects on the overall system. It remains to be seen whether a process of constitutional protectionism has been set in motion, where more member states unilaterally introduce new requirements in order to restore balance. However, there are more compelling reasons than ever for the European Council and its new President to undertake a thorough assessment of these requirements, and of how they can be changed and how much they can be allowed to change. But every government in charge of the rotating Presidency is well advised to pay attention. Following the entry into force of the Lisbon Treaty, the successful operation of the EU will become more vulnerable than ever before to national constitutional requirements. And the importance of the matter reaches far beyond the practical or strategic considerations that will need to precede the next attempt to secure treaty changes.

EUROPEAN POLITICAL SPACE

From Institutional Reform to Mass Politics or How to Engage Citizens in the Union of Lisbon

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The coming into force of the Lisbon Treaty will most probably mark the start of a new phase of the EU's development. The institutional fatigue provoked by the multiple hurdles that the ratification process had to overcome will probably, for a relatively long time, exclude wide-ranging treaty reforms. The EU can now concentrate on making the most of the Lisbon Treaty and creating the policies that are urgently needed in a globalised world confronted with huge challenges such as climate change, migrations or the spread of inequalities. And this development should indeed be welcomed with a sense of relief. However, there is a trap into which the EU could easily fall – that of focusing exclusively on what should be done and forgetting to reflect on how it should be done.

Referenda, European elections and opinion polls have all pointed to a growing distance between citizens and the EU that needs to be taken seriously (1). In that perspective, the 'how' question is essential. The popularity of the European project may grow if the EU is successful in delivering policies. But, connecting with citizens upstream of decisions is fundamental for the clarity and the legitimacy of the action. Citizens need to feel that they can influence not just the pace of European integration, but also its content, and that they can do this through a recognisable democratic process. This implies the introduction of more overt political confrontation within the European institutions in order to enable citizens to determine political options and to participate in a debate (2). However, the politicisation of EU institutions should be done in a way that is faithful to the nature of the EU and does not impede its ability to reach compromises.

In the new institutional setting of the Lisbon Treaty, the Trio Presidency has a pivotal role to play when it comes to 'bringing in' the citizens. They can contribute to breaking the artificial wall that separates the European political scene and the national one. The Spanish, Belgian and Hungarian Presidencies hold a specific responsibility in this regard, because they are the first to address the 'citizen' issue in the EU of Lisbon (3).

Addressing the ‘citizen’ issue

The problem of a ‘disconnection’ between the EU project and its citizens is a rather volatile issue when it comes to mobilising the attention of Europe’s elites and media. With the Lisbon Treaty ratification now completed, the issue will probably be once more relegated to a low priority or even considered by some as a waste of time considering the pace with which the world is changing around the EU.

The EU indeed has enormous challenges to face in a global and fast-changing world. However, minimising or denying the ‘citizen issue’ could be very damaging for the prospects of the European project. Even if the debate on the relevance of referenda for ratifying such documents as EU treaties is legitimate, the fact that the Irish no of 2008 marked the 5th rejection (the first being the Danish ‘no’ to the Maastricht Treaty in 1992) by a national population, through a referendum, of a treaty intended to deepen European integration should not be disregarded. These negative results do not come out of the blue: Eurobarometer surveys have indeed shown a decline in popular support for the EU which began around the ratification of the Maastricht Treaty.

The situation regarding European elections should not be underestimated either. Average turnout across the EU for the elections of June 2009 was 43.2%. It was 45.5% in 2004 and 62% in 1979. Even though participation increased in 8 member states and remained stable in 7, it remains that 18 countries – two thirds of member states – have had turnouts of less than 50%. Eurobarometer surveys carried out before the European elections showed that a majority of citizens justified their intention not to participate by a lack of interest. 60% of the respondents explained this lack of interest by the belief that their vote would not change anything. The surveys also show that if one out of two citizens believes that his or her voice is heard in his or her country, only one out of 3 believes so in the case of the EU.

Politicising the debates in the EU

From the ‘majority straitjacket’...

The ‘citizen issue’ has been a concern of most institutional reforms, especially since the 2001 Laeken Declaration made it particularly prominent. It is in this perspective that the powers of the European Parliament have been regularly extended. The Lisbon Treaty goes even further by making the co-decision procedure the rule and giving national parliaments a specific task in the control of subsidiarity. Time will be needed to see whether these changes have an impact on the involvement of citizens. But in an era of no treaty reforms, it is time to think about the political dimension of EU policy-making, about ‘mass politics’ rather than institutional developments.

The content of EU policy-making has evolved. Alongside the traditional debates about ‘more or less Europe,’ more familiar controversies from a national point of view, such as the level of regulation of the market, the place of social issues, the mix of energy or green taxation, have emerged. The evolution of political debate within the European institutions was brought into sharp focus by the discussions around the ‘services directive,’ which highlighted the complexity of the European political arena and, to some extent, the increasing politicisation of European institutions in which a classic debate between left and right became apparent.

However, these developments have not really affected the national political scene and citizens generally realise what is at stake very late in the legislative process (for example when an EU directive is transposed into national law). It is high time to stimulate and propagate political debate within the EU, making it more transparent and familiar to European citizens. This implies injecting into the system some competitive elements characteristic of the political process, which would help citizens to identify the major players and force these players to express their positions and respond to their opponents in the media. It would thereby help the citizens to understand the possible consequences to which they would be exposed if one actor or the other succeeds in implementing its agenda.

But those, like Simon Hix, who advocate this kind of politicisation are too often trying to transpose the bipolar ‘majority model’ as is found in some member states such as France or the United Kingdom. They advocate an opening of EU political debates to partisan competition along traditional left-right lines and the application of the majority principle in the decision-making process – a principle which might eventually lead to the same majority dominating in the European Parliament, the Council and the Commission. However, in doing so, they fail to consider the EU’s political system as it has taken shape over the last sixty years, as it is likely to develop and as it would be desirable to develop it. As Lijphart has shown, in political regimes that are geographically, culturally or socially pluralist, such as the EU, a concept based on consensus, proportional representation and coalition government is preferable to a majoritarian approach implying the centralisation of the power to set the agenda and a single-party government.

Moreover, the ‘constitutive’ questions (linked to membership of the EU, its frontiers, competences and the decision-making process) are still far from exhausted within the Union. And in EU policy-making it is harder than in domestic politics to separate those issues from ones of substance. The division over ‘more or less European integration’ and the need to find the right balance between the supranational and intergovernmental nature of the EU remain pertinent. This is why federal political systems are more useful sources to draw on when envisaging the politicisation of the EU because they involve the articulation of unity with diversity and of politics with territorial (or constitutive) concerns. In that perspective, politicisation cannot be applied in the same way to all EU institutions. It has a clear logic within the European Parliament, where MEPs sit according to their political affiliation. But the Commission is the supranational body supposed to promote the common European interest,

while the aim of the Council is to defend the interests of member states – i.e., two missions not essentially defined by ideology.

The inadequacy of the system to a clear-cut majority approach has been demonstrated by the latest developments. When looking at the 2009 EP-elections, one could argue that there were favourable conditions for the establishment of a clear EU political majority. The outcome of the elections indicated a loss for social democratic parties across the continent, leading to a relatively stronger European centre-right. At the same time most governments around the EU are mainly centre-right, which means that this political orientation dominates the council and that the composition of the Commission is of a similar kind. The alignments of the three institutions are therefore unusually homogenous. This could foster greater policy coherence and a better opportunity for citizens to hold office-holders accountable in a way that is familiar with majority regimes.

However, if the renewing of Barroso mandate as President of the Commission was a direct result of the European elections, the drafting of the Commission programme as well as the nomination of the entire Commission did not proceed with the same logic. Faithful to its mission of defending the common European interest and anxious to win a large majority in the European Parliament to support this claim, Barroso launched a work programme which aimed at pleasing the opposition. Moreover, national governments nominated Commissioners who in their political affiliation reflect the incumbent governments around the EU (meaning that the centre-right and liberals dominate the new Commission), but it appeared that balancing the main party families is still the normal procedure in European politics. This was indeed the way it worked for the allocation of portfolios and the debate surrounding the nomination of the President of the European Council and the High Representative.

...to ‘opposition politics’

Rejecting a strict majoritarian approach and respecting the specific missions assigned to the institutions by the Treaties does not imply that we should be happy with the *status quo*. The EU system is excessively geared towards consensus and often characterised by secrecy. Political alternatives should be made more visible and political parties are key actors in formulating these alternative policy frameworks. One aspect of democratic politics as we know it from the nation-state but which is missing in the EU is the notion of opposition. We argue that the expression of a clearer opposition is possible in the EU without applying strict majority logic and damaging the ability of the EU to find the best compromise. The consensual policy style and the collusive forces within the nascent EU party system need to be shaken up in at least two arenas: the European Parliament and the national political scene.

The EU will remain a Union founded on two kinds of legitimacy: one coming from the states and the other derived directly from the citizens. The European Parliament incarnates the second and, as was said earlier, it has been the great winner of the latest institutional reforms,

constantly extending its powers so that nowadays it is a quasi co-legislator with the Council. The European Parliament should not be shy in claiming to be the centre of political debate within the EU institutions. It should make more visible, for citizens and the media, the healthy political confrontations that take place within it on major political dossiers. This will probably imply a more frequent breaking of the grand coalition between the European People Party and the European Socialist Party in order to allow more diverse and *ad hoc* coalitions to be formed.

European elections are the major moment when citizens can express a choice between European policy alternatives. The decline in citizens' participation in these elections over the last thirty years, parallel to the gradual increase of the European Parliament's power, is not acceptable. With all the caveats described earlier on the role of the Commission and the limits of the majoritarian approach, the stakes of these European elections should be raised by establishing a clearer link between parliament and executive – essentially by elaborating upon the mechanism that makes the choice of the President of the Commission dependent on the results of the elections. For this mechanism to work properly, the European political parties must be able to present their candidate and campaign around him or her. There should be public and media debates between these candidates. The idea is not new and has been gaining ground, but during the last elections the European parties failed to act on it. Even if a Commission President will always try to accommodate different political sensitivities during his or her five-year mandate for the reasons expressed above, his or her personality and personal political affiliation has an obvious impact on the overall orientation of EU policies.

One of the major problems regarding the democratic functioning of the EU is the fact that there seems to be an artificial wall between the EU political scene and the national one. Ministers come to Brussels to decide in the Council as representatives of states in a legislative process, but they do not communicate on their decisions once back in their country. Sometimes they even end up blaming 'Brussels' for that decision. There are at least two ways to fight that tendency: one is to strictly apply the Lisbon Treaty prescriptions about the transparency of the work of the Council when it acts as a legislator; the other is to rely on national parliaments to become more demanding watchdogs of their governments' activities in Brussels.

With the current institutional set-up of the EU, there is a tendency towards national-executive dominance. The Lisbon Treaty acknowledges the essential role of national parliaments in EU decision-making. The issue now is for national parliaments to seize on these new powers to act as a catalyst of political debates on EU issues rather than as a simple controller of subsidiarity. The fact that the action of national parliaments is foreseen by the Lisbon Treaty at the stage of policy formulation is a good thing. Debates surrounding EU policies often emerge too late on the national scene. Such time-lags exacerbate the problems of the democratic credentials of the political system. National parliaments are the natural venue for political confrontations. The shortcomings of the Europe-level parties (lack of cohesion etc.) are less present in the national setting and parliamentary life is structured around

government-opposition relations. Therefore, parties belonging to the opposition should more actively engage in debates about policy formulation at the EU level and have more regular contacts with their European network.

Politicisation and the Trio Presidency: some recommendations

The Trio Presidency can play a key role in activating these two arenas of potential political debates on EU issues. More particularly, it could:

- Make sure that preparations for the next European elections begin now and not on the eve of the next ones in 2014. The reflection on the implementation of the Lisbon Treaty and more particularly on the mechanism planned for the election of the Commission President by the European Parliament should provide the occasion for the Trio to formalise the need to have a more open competition between candidates proposed by European political parties. As the High Representative is now another key post within the Commission, a similar more open confrontation between candidates could also be considered. Other actions aimed at fostering more active European citizenship in the EU, such as EU mobility programmes, should also be promoted.
- Improve the transparency of the work of the Council as foreseen by the Lisbon Treaty. The Council has much to do in terms of transparency in order to catch up with the Commission and the European parliament. It seems indispensable to open up the debates in the Council and make more systematic the recording of its votes. Although the ‘Chamber of States’ will undoubtedly retain a mode of functioning focused more strongly on negotiation, there is no reason why its legislative practice should always remain so different from that of the European Parliament.
- Communicate in the media and before the national parliaments before and after Council meetings. This should be done by the Trio not only in their role as EU Presidency but also as examples of national good practices to keep the political debate alive on EU issues.
- Contribute to the implementation of the new role of the national parliaments in a way that will encourage a broader perspective than the one foreseen by the ‘orange card’ mechanism. The Trio should support the role of national parliaments in stimulating EU policy debates at the national level at an earlier stage than at present.

EUROPEAN POLITICAL SPACE

Citizens' Europe: How to Re-Engage the 'European Political Public?'

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In June 2009 European citizens voted in the 7th direct elections to the European Parliament (EP). What really happened on that election night? Why a year later do very few people remember the debate of spring 2009 and the alarming prognosis of the lowest ever turnout? The June 2009 elections presented European decision-makers with two main messages. First, the turnout was the lowest in the history of the EU. 43% does not wholly undermine the legitimacy of the European project, but it sounds an alarm bell that action needs to be taken to reverse a 30-year trend. To correctly identify the necessary action it needs to be understood that the declining participation rate in EU elections does not prove that there is disappointment with the European project. Declining turnout proves that there is a growing lack of interest on the part of the European electorate with the European political class (turnouts in national elections are also decreasing).

The second message is equally significant. The party balance has shifted radically towards the conservative parties. This fact has already impacted the way the Parliament takes decisions, as seen with the elections of the European Commission president last summer and autumn. What is most striking in the results is that the geographical distribution of the election results was more unified than ever before in the history of Europe. Cross-border cohesion, in terms of turnout as well as results for leading right-wing and left-wing parties, has increased radically. In a way, in a situation where there were simultaneous elections in all EU member states rather than a one pan-European vote, and where national campaigns were run by national actors, the message sent by the peoples of Europe was clear: they trusted the conservative politicians to lead the way out of the crisis, regardless of whether they already held office nationally (i.e. in France or Poland), or whether they were in opposition (i.e. in the UK and Spain). If these trends continue in years to come, it may mean that in June 2009 we witnessed the emergence of a European 'political public' – one where people in their national contexts, asked by national politicians, give a pan-European answer.

The EP election results gave a new legitimacy to the centre-right majority in the Parliament. The domination of the ex-European People's Party-European Democrats (EPP-ED)

group (now in two groups, EPP and ECR) could challenge the conservative-socialist *ad hoc* coalition, as it existed over the past decade. We have seen the first examples of a coalition composed of the conservative groups and the liberal formation. More importantly, the issue of the legitimacy of conservative or conservative-liberal (rather than grand coalition) political choices has been removed, since the national party members of the ex-EPP-ED group won in 18 member states, including all the six largest ones. It was not legitimate (or possible) in 2004 to elect a conservative-dominated Commission, as the electorates of France, Italy, Spain and many smaller nations gave priority to social-democratic parties. In 2009 this problem was averted in a concerted vote by the European public. In this way, a major legitimacy obstacle for the further partisan politicisation of the European decision-making has been overcome. The appointments in the new European Commission suggest that enhanced politicisation took place in this institution too.

What we have seen since the elections is indeed a much greater partisan politicisation than ever before. The new European Commission can no longer claim to be a purely bureaucratic, politically balanced body if a majority of the Commissioners are conservative, and the number of left-wing Commissioners is equal to the number of liberal Commissioners. The new European Commission is therefore a conservative dominated body; and this reflects not only the majorities in the European Council and the European Parliament, but also the political choice made by Europeans.

There is a significant problem with the established European political public: its fragility. For this reason, together with falling interest and falling participation rates, there is a growing need for action. What can the Trio Presidency do to engage the European political public? The obvious first task is to fully and correctly implement the Lisbon Treaty. Among the most important institutional innovations is the citizens' initiative. This provision can help engage European citizens with the European project; in particular it can help mobilise civil society and strengthen the pan-European debate on European policies.

In November 2009 the European Commission published a Green Paper. In the consultation process it asked for feedback on ten issues:

1. Minimum number of member states from which citizens must come;
2. Minimum number of signatures per member state;
3. Eligibility to support a citizens' initiative – minimum age;
4. Form and wording of a citizens' initiative;
5. Requirements for the collection, verification and authentication of signatures;
6. Time limit for the collection of signatures;
7. Registration of proposed initiatives;
8. Requirements for organisers – transparency and funding;
9. Examination of citizens' initiatives by the Commission;
10. Initiatives on the same issue.

The process initiated with the Green Paper will end with a new law organising not only how the citizens' initiatives should be collected, but also what citizens' initiatives are in the political sense. From this perspective, there is a major missing link in the Commission's Green Paper consultation process, one which possibly will be missing in the implementing legislation. This concerns the Commission's response. In the Green Paper the Commission asks one question on the issue: "should a time limit be foreseen for the Commission to examine a citizens' initiative?"

The answer to the question cannot be full, because it does not concern the timing alone. It also concerns the Commission's proper reply. In the Green Paper, it said the following: "during this period the Commission would assess both the admissibility of an initiative – i.e. whether the initiative falls within the framework of its powers – and whether the substance of the initiative merits further action from its side. Once the Commission has examined an initiative, its intention would be to set out its conclusions in relation to the action it envisages in a communication which would be made publicly available and notified to the European Parliament and the Council. The action envisaged in the communication may include, as appropriate, the need to carry out studies and impact assessments in view of possible policy proposals" (COM(2009)622/3).

It is therefore clear that the first stage is the proposal's admissibility. Once the proposal is admissible, the outlined procedure would begin and be finalised with a communication, perhaps leading to a change in policy legislation.

That is all very noble, but what would happen if the proposal is considered inadmissible? If this is the case, the citizens' initiatives should not end in a bin. Such a response by the Commission, without due explanation, would actually risk further alienating millions of citizens from the European project. Every single citizens' initiative means that there is a societal problem that calls for an action by a public institution. Therefore a simple reply to the effect of 'this is outside of EU competences' is far from enough. If the Commission rejects the motion and has no legal power to initiate legislative process on the proposal in the given initiative, then it should do two things. First, it should say who has the powers to address the problem in question; and second, it should commit itself to monitoring how the process develops and report on it.

There should be also a role for the European Parliament in the process. The chamber should be the 'guardian' of citizens' initiatives and follow up on them with the European Commission. In the event that the Parliament feels that the Commission has not done everything possible to address a specific issue, it should reserve a right to call on a responsible Commissioner to give an explanation to the Parliament on the issue.

In political terms, the citizens' initiative should be treated by the European Commission in a similar way as it approached the Parliament's requests to "submit any appropriate

proposal[s]” (current Article 225 TFEU) and the European Council’s invitations to address issues it considers important. In this way the EU’s decision-making process would distinguish between the formal exclusive competence of the Commission to initiate legislative process (with a few Lisbon Treaty exceptions) and a ‘political’ right of initiative. This political right of initiative would then belong on an equal basis to the European Commission, European Council, European Parliament and organised civil society (through the citizens’ initiative).

The Spanish-Belgian-Hungarian Trio Presidency will not have sole responsibility for the correct implementation of the citizens’ initiative. It will be the first task during the first half of the 18-month cycle. In the second half, the real life tests will come: how are the citizens’ initiatives to be dealt with by the Commission? Will they be given appropriate attention? It will be the rotating presidency’s task also to monitor on an ongoing basis the application of the citizens’ initiative law. If there should be a review clause in the system, then the rotating presidency should examine the issue.

BUDGET

The Forgotten Reform

Peter Becker Senior Associate, SWP

Reforming the EU budget will be the next major reform after the settlement of institutional reform with the Lisbon Treaty. In the context of the financial framework 2007-2013, the Council of the European Union called on the European Commission in December 2005 “to undertake a full, wide ranging review” of how the EU funding system can be reformed and to present a report on this in 2008-2009. On the basis of this report the Council would then “take decisions on all the subjects covered by the review,” which are to be taken into account in the negotiations for the next financial perspective.

The European Commission will present in early 2010 its long-awaited communication presenting proposals to make the European Union fit for the next decade and to tackle economic, demographic and social challenges. The aim of the revision debate will be a comprehensive and far-reaching reform of the EU’s financial constitution, which examines both the spending and revenue sides. It is expected that the Commission will propose new spending priorities and a new own resource.

Although the member states mandated the European Commission to review the budget in depth, it seems that their resolve and the incentives to thoroughly overhaul the European budget have faded somewhat. Instead the member states are preparing to negotiate the next financial framework 2013-2020 as business as usual. Today it seems that they will miss the opportunity of the mid-term review.

But the next negotiation round will be different for two reasons:

- The Commission started the mid-term review of the financial framework in September 2007 with a broad public consultation. All member states submitted their position papers and national parliaments, regional and local authorities, Non-Governmental Organisations (NGO) and interest groups also took part and outlined their expectations. This broad public discussion, with close to 300 contributions discussing the priorities of European policies, equipped the Commission with some new ideas and with some public support to propose a complete refocusing of EU spending priorities.

- The Lisbon Treaty provides a different arena for the budgetary negotiations, with a new player. The new Treaty removes the distinction between compulsory and non-compulsory expenditure and this strengthens the European Parliament's role in European budgetary policy. In addition the prerogatives and sources of influence enjoyed by the European Parliament in the adoption of the annual budget have been reinforced too. This massive strengthening of the European Parliament means an upgrading of the parliamentary dimension of European budgetary policy.

The European Parliament adopted in March 2007 a report on the future of the European Union's own resources, the so-called Lamassoure Report. It proposed a two-stage reform, with the first step being to abolish all exceptions and rebates by 2013 and to fund the EU budget through a uniform percentage of the gross national income of each member state. The second stage, starting in 2014, would be to introduce a system of genuine 'own resources' for which the European parliamentarians proposed the payment of a limited and clearly identifiable proportion of an existing national tax. A second resolution argues for a prolongation of the current financial framework as a transition to future financial frameworks of five years' duration. This means there is new player with its own interest and its own agenda – and the member states will have to respect this and include the new player in the game.

The budget review must bring together various contradictory aims:

- The interest of the member states to keep budgetary discipline, to limit the volume of the financial framework and to retain more or less the *status quo* of spending policies. The national policy-makers show little inclination to venture away from well-trodden negotiating paths. Any fundamental change to the negotiating framework at first brings only increased insecurity and reduced predictability, especially where the national net balance is concerned. So, as a rule, the member states stick to existing agreements and merely attempt to influence the outcome of the negotiations by tweaking existing controls.
- The interests of the European Commission and the European Parliament to obtain a higher degree of budgetary independence from the member states and to be able to decide autonomously on spending priorities.
- The interest of European citizens, who expect that the European Union will be prepared for the challenges of the 21st century and will have the financial means for efficient and purposeful European policy-making.

The member states conduct usually the budget negotiations strictly according to the outcome for their national net balance. This net balance logic has a number of negative consequences. Firstly, the negotiations regularly involve a large number of *quid pro quo* deals, which are mostly not the forward-looking compromises needed by the European Union to meet the challenges of diminishing cohesion and increasing competition in a globalised world. The net-balance logic and the dominance of national fiscal interests therefore prevent solutions orientated towards the common European interest. The result of this kind

of behaviour is that necessary modifications are delayed and the results are often inadequate or come too late. Additionally, once compromises have been reached and exceptions agreed (and concessions made too), these tend to become entrenched. Because such compromises can subsequently only be altered by consensus they thus attain a binding status that is equivalent to European treaty law.

On the other hand it is obvious that the Commission's first proposal will touch on all dimensions and aspects of the EU budgetary policy – revenues, spending, institutional and procedural questions and some matters of principle:

- To steer the process, some principles or leitmotifs are necessary to balance the different aims and interests. The Commission, referring back to the public consultation, will underline the principles of generating European added value as a kind of yardstick to justify European spending policies. It will be difficult to define a common understanding of what European added value could or should mean and how it could be measured. Improved efficiency, economies of scale, cross-border or transnational improvements and measures integrating European markets are probable indicators for European added value. The principle will therefore be similar to the principles of subsidiarity and proportionality. However, these principles will not weaken the Community policies like Common Agricultural Policy (CAP) or cohesion policy. The leitmotif of European solidarity will remain.
- Nevertheless, the Commission is expected to propose a shifting of spending policies from the current CAP to new policies like research and innovation or climate and energy. This means the Lisbon Strategy for growth and jobs will serve as the guide for the financial framework 2013-2020, as President Barroso has already laid down in his guidelines for the new Commission.
- The current system of own resources, with the UK rebate and the other exceptions, is becoming increasingly complex and unfair. Abolishing the Value Added Tax (VAT) resource and linking national budget contributions more clearly to the wealth of individual member states would transform the system of own resources into a more conventional system of financing for international organisations. Therefore the Commission will propose to phase out all rebates and correction mechanisms, and it will probably also raise the possibility of introducing a new own resource.

It is thus the special format of the negotiations – and especially the net-payer logic – which defines the rationales of national positions. It is not the revenue or the spending side of the EU budget which structure the negotiations and the national positions; it is rather their interplay and the effect on the net-payment balance which national governments calculate. For that reason, it is important that the overhaul of the financial perspective explicitly links the revenue and spending sides as the two main components of reform.

The Trio Presidency will have to steer the debate in the Council between the member states. However, a format for the negotiating process has not been specified. The wording of the

revision clause is extremely vague, not naming any key points or setting any objectives for the in-depth overhaul of the EU financial framework. For example, will the review lead to a definitive result, concrete proposals and targets for adapting the political and budgetary priorities for the next financial framework, and will those proposals be expressed in precisely calculated budgetary terms?

Only the timetable for the revision process is set. The Commission was asked to present a report in 2008-2009, but it decided to publish this report early in 2010. The current financial framework runs until the end of 2013, giving the EU a solid legal and financial basis. Negotiations on a new financial perspective will begin as usual with the publication of a communication by the Commission. In the Interinstitutional Agreement the Commission agrees to publish this communication no later than 1st July 2011. So the time frame for a thorough reform debate among the member states is limited to no more than one year.

The member states should use the revision process to discuss new principles, targets, and structures, and to agree upon them unanimously. Then these demands should gain the necessary political weight by a decision of the European Council. The review process should then enable a decision of the European heads of state and government in accordance with the European Parliament, containing the guiding principles and priorities to be respected by the Commission, European Parliament and the Council when negotiating the next financial framework. The revision can subsequently be implemented in the course of the regular negotiations in 2011-2012. The European Council will have to prepare the regular negotiations of the financial framework 2013-2020. A common understanding of reform necessities and an agreement on common policy priorities should be the first aim of the budget review. The member states will need to take the European Parliament's positions into account. This process will stand on two pillars: (1) the improved Lisbon Strategy for growth and jobs, to modernise the European Union and to make the Union fit for new challenges and global competition, and (2) the principle of solidarity and social justice to strengthen the cohesion and the stability of the Union.

The European Council will discuss the matter for the first time under the Spanish Presidency. This should be the occasion to agree on a negotiation framework, a timetable and the expected results of the process. The heads of state and government could connect the renewal of the Lisbon Strategy – which is on the agenda of the Presidency – with the identification of policy priorities for the budget. In addition, the European Council could mention the upcoming reform of European cohesion policy and the publication of the Commission's next cohesion report.

The Presidency conclusions could emphasise two key points for the budget review: the strategy for growth and jobs, including the focus on research, development and innovation, and the principle of solidarity expressed by European cohesion policy. These had been the two key points mentioned in the government's position papers for the consultation process.

Solidarity will remain a cornerstone of European integration. However, all member states should share the understanding that European solidarity has to be more than European cohesion policy or redistribution. The European Union cannot abandon compensation and redistribution instruments. However, if solidarity develops into a mere redistribution instrument and the Union changes into a Union of financial transfers, mutual understanding will be lost and the EU will lose one of its fundamentals. Hence, the principles of solidarity, efficiency and European added value must be brought together.

Using the revision clause to reform the EU's financial constitution depends on the common will of all participants to overcome the *status quo* and the net-payments logic. The revision process creates the opportunity to agree on a clear shift in the priorities of EU spending to allocative policies, and on the revenue side to give the EU greater autonomy. In the medium-term the multi-annual financial perspective could then be developed into an integration planning instrument where political priorities are given concrete financial backing.

It will be the task of the presidencies and the new President of the European Council to develop a revision debate orientated around these goals.

BUDGET

The EU Budget Reform: Agenda for and beyond the Next Trio Presidency

Lukáš Pachta Research Fellow, Europeum

After the Lisbon Treaty came into force, protracted institutional debates have ended and the Union could now focus on its policies at last. One of the main issues the EU will be dealing with during the upcoming years is the reform of the budget. First of all, the EU will have to adopt a new financial perspective for the period of 2014-2021. Furthermore, the 2005 deal on the perspective 2007-2013 contained the condition of a fundamental review of EU spending with a special focus on reform of the CAP. Under this condition the United Kingdom agreed to the phasing out of its rebate and the retention of agricultural subsidies at the current level of more than 40% of the EU budget. The first phase of the CAP reform took place in 2008 with the so-called ‘health check’ of agricultural spending. It was decided to abolish dairy quotas, bolster rural development and cut direct subsidies. This deal will expire in 2013 when an in-depth reform will have to be adopted.

Positions of the Commission and the Trio Presidency

The second Barroso Commission has already announced its plan to make the budget reform one of its top priorities. In its 2020 vision, the Commission outlines its basic stance on the issue of CAP reform. This will be further developed in a white paper dedicated to the new EU budget. The Commission insists agriculture has its place in EU expenditure but must undergo adjustments in order to be modernised for 21st century needs and in response to challenges such as food security, water scarcity or climate change. The Commission launched a public consultation procedure and organised a high-level conference dedicated to EU budget reform. A number of European think tanks are following the issue (CEPS, Notre Europe, etc.). The results of the public consultation reflected a general perception of needs and expectations regarding policies of the European Union. It found that the EU budget should mainly cover competitiveness (research and development), energy security and the environment (climate change).

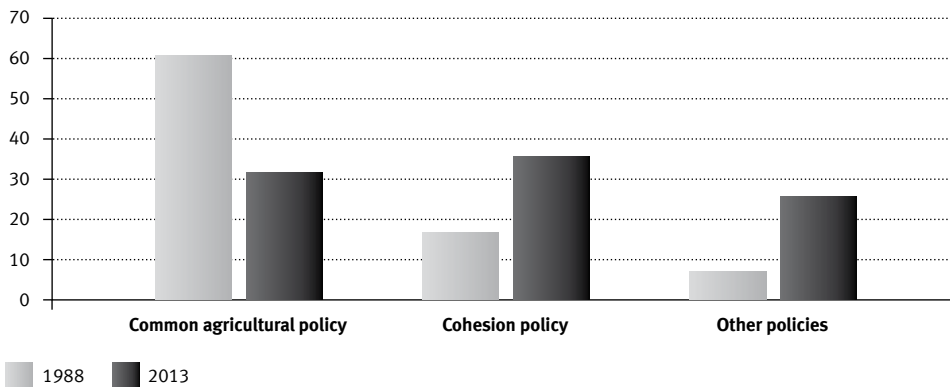
The budget reform will be a challenge for the current Trio Presidency as well. The three Presidencies are supposed to lead the debate on behalf of the EU Council on the Commission

reform proposal. Nonetheless, the concrete negotiations on the budget reform will not take place before mid-2011, when the Commission is due to present its proposals for the next financial perspective. The Spanish Presidency is expected to launch a discussion on a new ‘Lisbon Strategy’ and its interconnection with the current economic crisis. Such a debate could affect budget reform discussions to a large extent as the Spanish Presidency may try to link the two issues together. Discussion on future competitiveness strategy is likely to put the main emphasis on research and development and the knowledge-based economy as preconditions for sustainable growth in Europe; similar arguments are used in the budget reform debate. On the other hand, the Hungarian Presidency, the last of the Trio, will probably stress the importance of regional policy, as all new member states oppose cuts in this kind of spending from which they profit greatly.

Pitfall of the budget debate

The EU budget is generally considered outdated. The structure of its expenditures reflects national desires to get back as much as possible from the EU budget (the logic of *juste retour*) and does not reflect the real needs of Europe’s economies and societies. There is an ‘evergreen discourse’ that with reform, more money should be allocated to R&D, infrastructure or internal and external security, while less or no money to agriculture or regional development. Such a critique, however, omits the fact that the proportion of CAP expenditure has been constantly decreasing.

Expenditures structure in 1988-2013 (% of total)

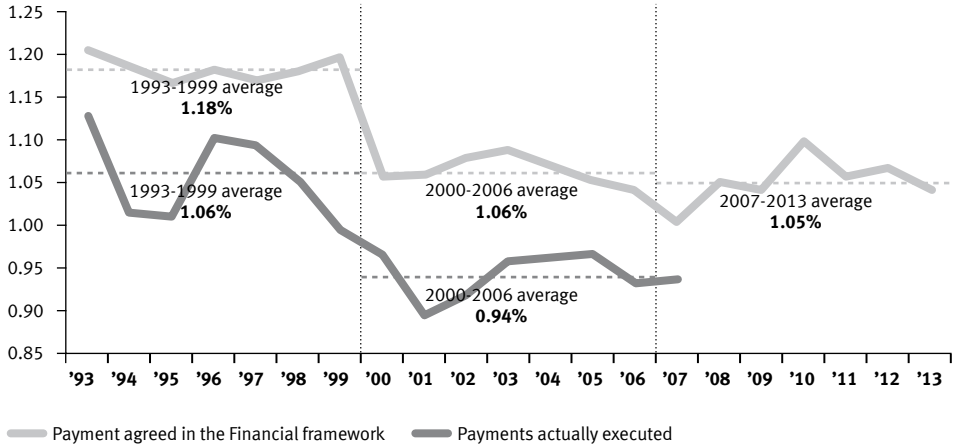


Source: European Commission

On the other hand, solidarity between the rich member states and the poorer ones should be embedded in the EU budget. This principle, however, has been substantially weakened by the above-mentioned logic of *juste retour* and by the decreasing trend of the overall EU budget figure in relative proportions. While there is a cap for the EU budget proportion (1.27% of

the Gross National Product), there is no bottom limit which would provide more long-term stability to EU financing. Progressive decreasing of the budget in both absolute and relative terms is a real threat, especially in a time of economic crisis.

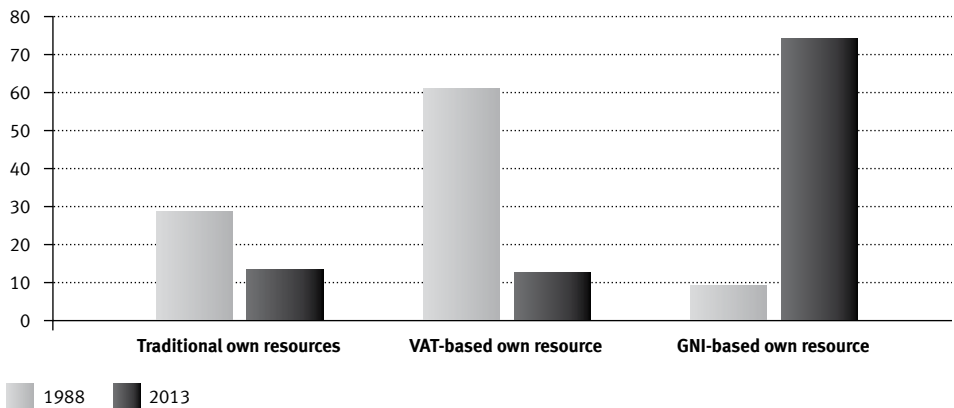
The size of the EU budget (% of EU GNI)



Source: European Commission

The income side of the budget will need to be reformed, too. The system of traditional own resources (import duties) and VAT-based (Value Added Tax) own resources has become very complicated and obscure with so many correction mechanisms. The general trend (evident for some time already) is to abandon the own resources system and finance the budget only from GNP-based national contributions.

Revenues structure in 1988-2013 (% of total)



Source: European Commission

Some suggest introducing a European tax, which would provide resources to the budget, bring citizens closer to EU and make them more sensitive to EU issues. Such an impact on citizens is, however, very arguable: most people still do not see tangible benefits of the EU membership and the media often give an image of the EU as an institution producing a large amount of useless regulation. If a special direct European tax was imposed on citizens, those citizens might become even more discontent with the EU.

Similarly, Daniel Gros from the Centre for European Policy Studies suggests that the financial perspectives should be synchronised with the European Parliament mandate so that the EU's only directly elected body would gain more importance in people's eyes and thus benefit from increased elections turnout. On the other hand, the European Parliament has gained substantial budgetary powers and its role in this area is further reinforced by the Lisbon Treaty, while positive impact on elections turnout has not been noticed.

Although all the main recipes for a better EU budget are known and generally accepted, the debate follows a Catch-22 logic. Everybody knows what must be done, but the deal will nonetheless be difficult and it will probably take the form of a compromise reconciling all national interests (seeking to get back as much money as possible). The vicious circles cannot be broken unless political will is found from all countries over the idea of a fundamentally different EU budget. Net contributors should accept the prospect of 'no money back' (at least in the short-term) and the net beneficiaries should embrace the view of less solidarity of the rich with their poorer regions. Above all, there are France, Poland and Romania, and politically influential farmers who must be willing to give up their generous agriculture subsidies. However, none of those actors will surrender easily and the 2011 reform is thus threatened from the very beginning. Furthermore, a new conservative government in the United Kingdom may turn into a real obstacle to any kind of compromise. British pressure for reform of the budget will be enormous, but the 'Thatcher logic' of "I want my money back" could easily prevail in the minds of British government officials. Although Tony Blair and Gordon Brown accepted the phasing-out of the British rebate in 2005, it is possible that the Conservatives would revoke the decision.

Is there a way out of the deadlock?

The EU budget represents 'only' 1% of the EU's GDP. It is, however, a substantial amount of money which can make a difference and produce tangible results. Undoubtedly, the budget needs a reform and this reform will be difficult to achieve. An increased role of the European Parliament, now empowered by the Lisbon Treaty to give assent to all expenditures, could be a promising factor, hinting that the upcoming negotiations could extend beyond the so-far predominant (and antagonistic) national interests.

In order to avoid another halfway reform, the EU's main actors (Commission, Parliament and the member states) need to adopt a holistic approach towards budget issues. Package

deals are likely to lead nowhere as well as dogmatic economic attitudes arguing in favour of the complete replacement of redistributive policies by investments. What has to change is the very reasoning about the EU budget. So far, the criteria for allocations have been too political. The CAP was set up to respond to a political demand by France, and all other ‘costly’ policies – notably regional and cohesion policy – were added as a sort of compensation for those predestined to exploit them. Politicisation of the EU budget decision-making, locked up by the purely national interests, is the first thing to blame for an EU budget that does not correspond to real needs. Nonetheless, political logic should not be replaced by pure economic (or neo-classical economic) logic. The latter would mean all EU money being allocated to R&D (Research and Development) and new technologies, to the detriment of less developed countries and regions, and the solidarity element disappearing. Such a scenario is unlikely to happen given the strong national preferences in redistributive policies.

This paper argues that the best way to handle the EU budget reform is to embrace the ‘fiscal federalism’ logic as a main criterion for EU funding.

POLITICAL CRITERIA	PUBLIC ECONOMICS	FISCAL FEDERALISM
Conformity with EU policies?	Public failure or equity?	Positive cross-border externalities?
Political acceptability?	Regulation, taxation or funding?	EU public goods?
	Cost-effective in practice?	Economics of scale and scope?
		Wide income dispersion between EU countries?

Source: Copenhagen Economics

Such an approach is an analogy of the ‘subsidiarity principle’ in EU regulation. It consists of evaluation of expenditures on the basis of the added value at the European level. All expenditures should be assessed from the point of view of the advantages of pooling capacities and spending at the EU level (e.g. positive cross-border externalities). Coherence with other kinds of EU actions has to be taken into account, too. The fiscal federalism approach would therefore downsize agricultural payments because those have already been nationalised and there is no added value of a common budget in this area. On the other hand, regional policy makes sense with regard to fiscal federalism if cross border regions are targeted in the first instance. Similarly, support to infrastructure should place emphasis on trans-European networks etc. Such an assessment should be carried out for all EU expenditures, even at the cost of completely redesigning spending structures within EU policies.

Key recommendations for the Trio Presidency:

- Adopt the fiscal federalism approach and re-assess all expenditures in relation to the European-level added value
- Keep a solidarity element in the EU expenditures
- Introduce a bottom limit for the GNP proportion of the EU budget (e.g. 1%)
- Connect the budget debate with the new 'Lisbon Strategy' discussions
- Abandon traditional own resources and VAT-based resources together with all correction mechanisms
- Respect the expectations of EU citizens regarding EU policy outcomes

BUDGET

Reforming the CAP Budget – A Perfect Test for the EU

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“EU money for jobs, not cows”. Who can forget Tony Blair’s 2005 speech when he asserted before the European Parliament that a “modern budget is not a budget which, in 10 years, will still dedicate 40% (of EU spending) to the Common Agriculture Policy (CAP)”? At that time, the British Prime Minister was formulating a concept that has since become widely accepted – namely, that any sort of budget that devotes most of its spending to agriculture, food and rural development should be viewed as obsolete. Tony Blair’s criticism would have been justified if the EU budget was that of a federation, but rather it is one of a heterogeneous political integration process. As the only common economic policy to be endowed with an EU budget, the agricultural and rural policy is also the only one almost entirely funded by Brussels. This particular Community status has earned the reputation of being an ever-recurrent topic of contention in budgetary negotiations since 1979. Viewed as being costly, as compared to cumulated European public spending (member states and EU spending) broken down by sector, agricultural policy ranks only 11th, with 1.1% of total public spending (Bertoncini, 2009).

Spain, Belgium, and then Hungary, will share the challenging task of initiating debate within the European Council on budget revision followed by the post-2013 Financial Perspectives. These negotiations will be a perfect test for assessing the EU’s ability to venture beyond the ‘budget rebate’ approaches which have impeded the latest budgetary discussions since then. By demonstrating its ability – or inability – to reform the CAP, along with the agriculture budget, the Council will prove that it is capable of formulating a renovated agricultural common project. But the context bodes difficult negotiations: 27 member states share a budget nearly identical to that of the EU-15 and the EU is facing new climate and energy – as well as economic and social – challenges. Failure to seize this opportunity would deprive the EU of one of its most effective tools for protecting its environment, cause a definitive destabilisation of the sector and of European campaigns, and threaten the EU’s food production capacities. Leading this debate goes to the Trio Presidency.

Agriculture in the 21st century: a key for food and natural resources management

Global agricultural markets are increasingly unsettled

In a context of rising volatility in commodity prices, bolstered by the interconnection of global markets, farmers will be facing additional uncertainties in the next few years on top of the long list of natural vagaries that periodically destabilise their sector. The horizon is becoming more complex due to a combination of several phenomena, with uncertain consequences for European agricultural markets. As developing countries become richer, consumption patterns are changing to include more meat products, leading to an expansion of agricultural demand (one animal protein requires, on average, seven plant proteins in order to be produced). World population is currently increasing at a rate of 80 million people annually (a population equal to that of Germany), and is expected to reach 9 billion people by 2050. To these developments may be added an increased demand for energy production (biofuels) which increases the volatility of some commodity prices now linked to petrol prices. In order to deal with this growing challenge, and after having spent more than 20 years backing policies aimed at liberalising the agricultural sector, international institutions (World Bank, OECD) are calling for massive investments in Least Developed Countries' (LDCs) agriculture. In rich countries these changes remind us of the elementary role of agriculture and of the need to be cautious when reforming market regulation instruments, which are needed when prices are uncertain.

The environmental challenge

Protecting natural resources and biodiversity has become a primary concern, in view of accelerating environmental damage. At the same time, given the increase of agricultural demand in the medium-term, an intensification of production will be necessary. And yet farming activity has a considerable impact on natural resources. On the one hand, agriculture can pollute and overexploitation often leads to the irreversible destruction of an ecosystem. Rich countries' agricultural policies, inspired by green revolution principles such as those of the CAP, are still helping to foster the intensive use of exhaustible natural resources, particularly water. On the other hand, agriculture can enhance the preservation of biodiversity and natural spaces. In that case abandoning the practice of farming can lead to very serious environmental problems. Fragile zones (such as mountains and the Mediterranean region) are still experiencing soil erosion and depopulation phenomena.

The uncertain fight against global warming

The inclusion on the global and EU agenda of the fight against climate change issue has recently generated new expectations with regard to the agricultural sector, which produces 13.5% of the world's Greenhouse Gases (GHGs). However, beyond statements about the

necessary participation of agriculture in the fight against global warming, no clear and precise implementation plan has yet been formulated. Moreover, research findings – still highly experimental at this stage – have yet to identify any promising options for farms with carbon-neutral environments. In addition, agriculture's contribution to the reduction of GHGs is bound to be offset by the extensive reshaping of the global agricultural map which should result from the rise in the average temperature. This uncertainty is compounded by considerable doubt as to whether populations in the newly productive areas will be able to attain productivity levels equal to, or higher than, what they are today. Will they reserve sufficiently fertile land for farming? Will they invest in the sector in order to equip themselves with the necessary means of production? Will they secure the manpower and know-how needed?

Reforming the CAP in order to meet 21st century challenges

Agriculture, the environment and European rural areas would ultimately suffer as much from a dismantling of the CAP as from a lack of reform. The very likely reduction in the agriculture budget anticipated in the next financial perspectives should usher in a new policy approach – one which offers answers to future challenges and serves the medium-term strategy of the EU. A flawed policy, despite past reforms.

Reformed since 1992, the CAP has been constantly revised in order to improve its regulations. The Single Payment Scheme nonetheless plays a particularly noteworthy role as a price-fluctuation shock absorber; eco-conditionality has begun to have positive results for natural resources as has the increased expenditure in favour of the environment and rural development. The merits of the improvements made and of budgetary discipline should not mask the current system's limitations. The primary criticisms concern the efficiency of support for 1st pillar income; the efficiency of the transfer of income linked to aid distributed under the 2nd pillar; management costs; the leakage of aid towards unintended beneficiaries; the concentration of payments; and the unequal exposure of sectors to price volatility. In environmental and rural matters, criticisms deal with water pollution incentives and the limited impact of agri-environmental and eco-conditionality aid programmes. Next, agricultural crises are continuing despite the market instruments available. Lastly, the CAP has not yet been made consistent with other EU policies: it is still a more agricultural than food policy; the EU competition policy sanctions some organised groups of producers, while it tolerates certain excessive concentrations within the agro-food industry; 1st pillar financial aid is sometimes deployed in a way that conflicts with the cohesion principle because of its inequitable distribution.

Reforms should not be made for the wrong reasons

In 2008, the CAP represented 44% of the EU budget, or €52.3 billion. Many protesters have denounced this situation, even though Eurobarometer survey has shown in March

2008 that 58% of EU citizens believed that the CAP's budget should either stay the same or increase. The recurring criticisms of the CAP are sometimes surprising inasmuch as it ranks eleventh in the cumulated national and EU public expenditures with 1.1% – far behind the leading trio, which are social protection and active policies in the labour market (41.4%), health (14.2%) and education / training (11.3%) (Bertoncini, 2009). Also, a brief worldwide comparison shows that Europeans rank among an average of developed countries in terms of the relative share of GDP devoted to this sector with 0.5%, compared to 0.2% in the United States, 0.4% in Canada and 2.4% in Japan. Similarly, while the pre-reform CAP may have had a negative impact by allowing for unfair competition against LDCs agricultures, that is no longer the case. In view of the current CAP's flaws, particularly its inequitable way of distributing aid by sector – few realise that a majority of European farmers and breeders are not benefiting from the CAP – it appears possible to regulate more effectively with equivalent financial resources by formulating new rules and using a new method of allocating funds.

A distinctive economic sector which calls for cautious CAP reforms

The 27 member states could thus decide not to improve the regulation of their agricultures, considering the strongest farm businesses should, as in other sectors, be able to compete and food supplies could be secured through international trade. Nonetheless, some economic foundations dictate that the regulation of the agricultural sector should differ from that of the industrial and service sectors. Indeed, the 'health check' (adopted in 2008) and the informal Agricultural Councils' discussions led by the last Trio Presidency on the CAP's post-2013 objectives have all confirmed unanimous agreement on this issue. Several points of consensus emerged from these discussions between the 27 member states on the need for a common agricultural policy in order to avoid competitiveness distortions to the greatest extent possible. The question of the potential dismantling of this common policy is raised outside of non-specialist circles which are unaware of the sector's economic specificities. All agricultural economy analyses point at least to the following conclusion: agricultural markets must be regulated, for three reasons. First, the limited elasticity of agricultural demand (once consumers are satisfied, they no longer buy agricultural commodities) is facing an extremely variable supply that is not closely linked to price level (attributable, for example, to unpredictable weather conditions). Second, supply and demand adjustment mechanisms do not operate properly and take too long to be implemented (for example, crop growing time). Lastly, these markets include major entry barriers because of investment level, land capital, necessary know-how and time necessary to become competitive in the marketplace.

A budgetary and political intolerable situation

For the first time in its history, the EU will institute a budgetary negotiation involving 27 voices whose tone will translate highly heterogeneous economic and agricultural

backgrounds, amplified by the crisis. The positions in the future negotiation and alliances which may be formed are still uncertain. However, the member states who joined the EU in 2004 and in 2007 are expected to be opposed to the current allocation of funds. Indeed, the Copenhagen European Council (2002) which completed negotiations for the accession of ten new member states anticipated that the latter would receive 2nd pillar aid and benefit from market measures, but would only gradually be entitled to receive direct assistance. Therefore, since 2004 and 2007, the allocation of CAP support has been following a discriminatory principle with respect to the 12 newest EU members. This situation, which has allowed the CAP budget to remain stable, has confirmed an inequitable situation that the 12 States expect to see eliminated after 2013. This claim is all the stronger in that since 2008, the crisis has curtailed the granting of loans to farms and, in some cases, deprived the States of resources needed in order to co-finance the aid planned by the EU. It is against this background, in which wide gaps in agricultural competitiveness subsist between older and newer member states, that the negotiations will take place.

Good ways to reduce the CAP budget

Debating issues in the right order

The way in which the price regulation system derailed in the 1980s tarnished the CAP's image. Various reforms have corrected these problematic mechanisms but they were never accompanied by a revision of the fundamental CAP principles. Today, this multi-layered policy suffers from a lack of legitimacy that is eroding its legitimacy. Therefore, before debating the budget, the EU should assess medium-term challenges, in order to define new agricultural policy objectives. J.C. Bureau and L.P. Mahé (2008) stressed that “any serious effort to undertake a long-term analysis of the CAP objectives for this 21st century must begin with two questions: what types of market failures require an agricultural policy? What policies should lie within the EU's competence and funding?” Discussions could then logically focus on the toolbox needed to attain those objectives, and lastly on the funding level.

Avoiding unproductive debates on CAP funding

Due to the exceptional nature of the CAP's governance which, unlike the other sectors, is common and to the fact that 72% of the expenditure is incurred by the common budget, this minority spending within the European public expenditure is automatically more closely scrutinised. In a primarily urban Europe which has witnessed a decline in the number of its farmers and in the share of European GDP produced by the economic sector, it is an easy mistake to view that trend as a Community money reserve from which it can draw to fund other projects or to meet new challenges.

Even though the CAP's budget has not been extensively changed in terms of its allocations between the two 'pillars,' the aid modulation mechanism – which transfers part of the aid from the 1st pillar towards the 2nd – provides some more flexibility to States which co-finance 2nd pillar measures. Moreover, the recent milk crisis allowed the States to raise the national aid ceiling. This rampant renationalisation of the CAP is exposing farmers to differentiated amounts of aid from one country to the other. The consequence of this could be the return of competitiveness between national agricultural policies in a distorted market.

Calling for an overhaul of European public support for agriculture

Setting aside the CAP's normative achievements, which are very positive (in health security, for example) to consider measures which have had a budgetary impact, three objectives can be assigned to the post-2013 CAP: the environment (preservation of natural resources and the fight against global warming); the regulation of agricultural markets (inherently unstable); and rural public goods (i.e. landscapes, recreational areas). The directions to be taken call for the creation of objective-specific instruments so as to better identify and measure their effectiveness. European public funds must finance European public goods and the payments must be designed as incentives rather than as 'rights'. Indeed funds must be allocated according to a contractual principle that compels the Community to remunerate farmers who provide a service (such as farming lands in rural regions according to strict environmental rules; compensation associated with natural handicaps; services in environmentally sensitive or high nature-value areas). Finally the CAP helps to ensure agricultural competitiveness, rather than income, but it must also anticipate the safety nets and guaranties which will enable agricultural markets to withstand price volatility.

The Contribution
of 14 European
Think Tanks
to the Spanish,
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Trio Presidency of
the European Union

**15 SELECTED
RECOMMENDATIONS
TO THE SBH TRIO
PRESIDENCY**

1. Ensure that the new General Affairs Council – chaired by the Trio Presidency – fulfils the role of a strategic coordinator of policy-making in the EU.



2. Focus on improving European economic governance and strengthening Economic and Monetary Union within a broadened framework of macroeconomic coordination and surveillance.



3. Endorse a highly constructive role for the Ecofin presidency, along with a pro-active Commission and a strong Eurogroup chair, in order to foster better economic coordination.



4. Maintain the momentum for reform of financial-market regulation, specifically through close coordination with the G20.



5. Strengthen EU influence through a single representation in international bodies, starting with the Eurogroup, in the institutions and forums of world economic governance (G20, IMF, World Bank).



6. Ensure that the EU-2020 Strategy, integrating social, environmental and growth objectives, rests on an in-depth diagnosis of the economic crisis and its social impact. Striving for quick agreement should not take precedence over the need to build a solid political consensus.



7. Identify complementary EU initiatives within a framework of European-wide employment policies in order to better meet the challenge of high unemployment.



8. Build an internal European energy market supported by a Europe-wide infrastructure network.



9. Complement the EU climate change strategy by a transport and climate change package, major initiatives on clean coal technologies, and an increase in carbon prices, with the aim of preserving the credibility of the EU's emissions trading scheme.

10. Guarantee that cooperation with third countries concerning illegal immigration and pre-border controls does not undermine the right of asylum and other human rights obligations.



11. Work with the United States towards shared priorities on counter-terrorism, specifically on aid for North and West Africa as well as stabilising Pakistan.



12. Help the High Representative set up a European External Action Service (EEAS) that adds real value to EU foreign policy. The EEAS should be given the means to deliver high-quality political reporting and to tackle energy, migration, and security issues.



13. Contribute to a peaceful debate on enlargement in order to maintain the issue high on the agenda, with a clearer roadmap, and to make sure that the momentum for reform in the countries applying for accession is not damaged.



14. Encourage intensified dialogue with national parliaments in order to foster constructive attitudes in a way that allows EU affairs to enter the national political scene earlier in the policy-making process.



15. Start the debate on the revision of the EU budget with a clear understanding of political priorities and common principles, such as coherent and consistent EU funding for traditional policies (particularly Cohesion and Agriculture) and for new priorities (such as the EU-2020 Strategy); work on overcoming the net-contributor logic, linking revenue and spending sides and reforming the Common Agriculture Policy beforehand.

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NOTRE EUROPE

(TGAE Founder and Coordinator), Paris

Notre Europe (www.notre-europe.eu) is a European independent think tank dedicated to promoting closer European unity. Under the guidance of Jacques Delors, the association's aim since 1996 has been to "think a united Europe".

This involves participating in current debates from a vantage point of informed positions based upon thorough policy analysis and relevant policy proposals that are designed to help Europeans achieve closer unity. It also entails fostering the active involvement of citizens and civil society in the process of European integration and in the emergence of a European public space. Its analyses and policy proposals focus upon four themes: Visions of Europe; European democracy in action; Competition, cooperation and solidarity; Europe and world governance. Notre Europe is committed to maintaining strict independence of thought as well as work, in keeping with the spirit of promoting the public good. The association was successively headed by Jacques Delors (1996-2004), Pascal Lamy (2004-2005), and Tommaso Padoa-Schioppa (since November 2005).

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The Elcano Royal Institute (www.realinstitutoelcano.org) is a private entity, independent of both the public administration and the companies which provide most of its funding. It was established on 27th December 2001, under the honorary presidency of HRH the Prince of Asturias, for the purpose of generating ideas on the international scenario and on Spain's strategic options in international relations that are of practical use to politicians, the business world, academics, the media and public opinion at large. From its inception, the Elcano Royal Institute considers itself a non-partisan – but not neutral – institution that seeks to promote the values by which it was inspired and which, by means of multidisciplinary analysis of existing and, especially, forward developments, aims to establish a global strategy resulting in political proposals having a practical application. The chairman of the Elcano is Gustavo Suárez Pertierra.

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Egmont – The Royal Institute for International Relations (www.irri-kiib.be) is an independent think tank based in Brussels. Its interdisciplinary research is conducted in a spirit of total academic freedom. Drawing on the expertise of its own research fellows, as well as that of external specialists, both Belgian and foreign, it provides analysis and suggests international policy options that are meant to be as operational as possible. Along with research and meetings, the Institute has also developed specialised training activities both in Brussels and abroad. It can, on request, offer specific programmes for visiting and resident diplomats and foreign professionals.

Closer collaboration with other research centres, both in Belgium and in the rest of Europe and beyond, has resulted in a growing number of joint conferences and in more structured cooperation on research and publications. It has proved to be mutually beneficial and enriching. The president of Egmont is Etienne Davignon.

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GKI Co. (www.gki.hu) is the market leader in the market of independent macroeconomic analyses and forecasts. It continues and refreshes the best traditions of its predecessor, the Economic Research Institute (established in 1928 by István Varga). It uses the most up-to-date domestic and foreign research achievements and the methods developed in the European Union. It is member of the AIECE – Association of European Conjuncture Institutes and of the joint organisation of institutions that follow the economic expectations (CIRET – Centre for International Research on Economic Tendency Surveys). Its basic principle is the objectivity: it regularly revises and publicly corrects its forecasts.

GKI Economic Research Co. continuously develops and expands its activity. By 2002 it had developed into a group of companies. It is the majority owner of the: GKleNET Internet Research and Consulting Ltd.; GKI Health Care Research Institute Ltd.; GKI Energy Research and Consulting Ltd.; GKI Consulting Ltd. The president of GKI is András Vértés.

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BRUEGEL

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Bruegel (www.bruegel.org) is a European think tank devoted to international economics.

It was created in Brussels in early 2005 with the intention of bringing a new voice into Europe's economic policy discussions.

Its governance and funding model makes Bruegel unique, being the only think tank partly funded by EU member states. It is supported by 16 European governments, as well as a number of leading private corporations. Bruegel does not represent any particular policy doctrine. It aims to contribute to economic policy-making in Europe through open, fact-based and policy-relevant research, analysis and discussion. The director of Bruegel is Jean Pisani-Ferry.

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Founded in Brussels in 1983, the Centre for European Policy Studies (www.ceps.be) serves as a leading forum for debate on EU affairs, but its most distinguishing feature lies in its strong in-house research capacity, complemented by an extensive network of partner institutes throughout the world. CEPS' funding is obtained from a variety of sources, including membership fees, project research, foundation grants, conference fees, publication sales and an annual grant from the European Commission.

The goals of the CEPS are essentially to carry out state-of-the-art policy research leading to solutions to the challenges facing Europe today; to achieve high standards of academic excellence and maintain unqualified independence; to provide a forum for discussion among all stakeholders in the European policy process; to build collaborative networks of researchers, policy-makers and business representatives across the whole of Europe; to disseminate our findings and views through a regular flow of publications and public events. The chairman of CEPS is H. Onno Ruding.

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The Centre for European Reform (www.cer.org.uk) is a think tank devoted to improving the quality of the debate on the European Union. It is a forum for people with ideas from Britain and across the continent to discuss the many political, economic and social challenges facing Europe. It seeks to work with similar bodies in other European countries, North America and elsewhere in the world. The CER is pro-European but not uncritical. It regards European integration as largely beneficial but recognises that in many respects the Union does not work well. The CER therefore aims to promote new ideas for reforming the European Union.

The CER makes a point of bringing together people from the worlds of politics and business. The conclusions of our research and seminars are reflected in our publications, as well as in the private papers and briefings that senior officials, ministers and commissioners ask us to provide. The CER's work is funded by donations from the private sector. It has never received core funding from governments or EU institutions. The director of CER is Charles Grant.

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demosEUROPA – Centre for European Strategy (www.demoseuropa.eu) is an international, non-partisan, policy-oriented research institution which aims to provide answers to the challenges facing the European Union, its member states and its citizens. It is a forum for ideas about the political, social and economic dimension of European integration and international relations. demosEUROPA – Centre for European Strategy has four programmes which have to do with the political aspects of European integration, economic reform in the EU, sustainability and the EU's role in the world. The think tank publishes policy papers and reports formulated on the basis of interactive discussions, conferences and seminars. The president of demosEUROPA is Paweł Świeboda.

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The Danish Institute for International Studies (DIIS, www.diis.dk) is an independent research institution engaged in research in international affairs. The institute started activities on 1st January 2003. The institute draws up reports and analyses and follows developments in international affairs continuously in order to assess the security and foreign policy situation of Denmark.

DIIS also communicates research findings, analyses and knowledge, and performs functions concerning documentation, information and library services. Furthermore, DIIS contributes to the education of researchers, supports the development of research capacity in developing countries and establishes contacts between Danish and international research environments.

DIIS's research and activities are organised in several research units and a few major commissioned works. DIIS and the Danish Institute for Human Rights (DIHR) together constitute the Danish Centre for International Studies and Human Rights (DCISM), sharing a common administration and library.

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The European Council on Foreign Relations (www.ecfr.eu) was launched in October 2007 to promote a more integrated European foreign policy in support of shared European interests and values. ECFR was founded by a Council whose members include serving and former ministers and parliamentarians, business leaders, distinguished academics, journalists and public intellectuals. ECFR has developed a strategy with three distinctive elements that define its activities: a pan-European Council; a physical presence in the main EU member states; and a distinctive research and policy development process. With its unique structure, ECFR brings a genuinely pan-European perspective on Europe's role in the world.

ECFR's pan-European work through advocacy, the mass media and campaigns make the necessary connections between innovative thinking, policy-making and civic action. The director of ECFR is Mark Leonard.

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Established in 1988, the Hellenic Foundation for European and Foreign Policy (www.eliamep.gr) is an independent, non-profit and policy-oriented research and training institute situated in Athens, Greece. ELIAMEP's mission is to provide a forum for public and political debate on issues of European integration and international relations and to conduct scientific research that supports policy makers in making informed decisions.

ELIAMEP provides decision-makers, both in the public and private sectors in Greece, Europe and beyond, with authoritative and independent information, analysis and proposals for action. The president of ELIAMEP is Loukas Tsoukalis.

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Europeum formulates opinions and offers alternatives to internal reforms in the Czech Republic with a view of ensuring her full-fledged membership and respected position in the European Union. Its mission statement is: "Czech visions for Europe, European visions for the Czechs". The director of Europeum is David Král.

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The Swedish Institute for European Policy Studies (www.sieps.se) conducts and promotes research on European policy and policy-making. The research is conducted under three broad themes: power and democracy; the external dimensions of the European Union; consequences of EU policies. SIEPS considers that it is important to broaden and intensify research into matters that are significant for the future development of the European Union and, towards that end, actively seeks to develop close cooperation with institutes and research centres in Europe and globally.

SIEPS strives to act as a link between the academic world and policy-makers at various levels. By publishing reports and arranging seminars and conferences, SIEPS aims to further stimulate research on the future of Europe. The director of SIEPS is Anna Stellingner.

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With the establishment of the permanent European Council presidency and the High Representative of the European Union for Foreign Affairs and Security Policy, the role of rotating presidencies has changed. This will have an impact on the role of the Trio Presidency in future. Does the rotating presidency still matter?

In this new edition of *Think Global – Act European* (TGAE), launched by Notre Europe, 14 Europeans think tanks answer that question by scrutinizing the 18-month agenda of the Spanish, Belgian and Hungarian Trio Presidency. For each specific issue (structural reform, economic governance, energy, climate change, migration, internal security, global governance, foreign policy defence, enlargement, neighbourhood, EU institutions, European political space and budget) they analyse the global context, existing challenges and put forward concrete proposals concerning key initiatives that can be taken by the Trio Presidency during this period.

In the sensitive context of the Lisbon Treaty implementation and complex management of the economic crisis, specific attention is given to the decisive coordination role that can be played by the Trio Presidency in defining more efficient – more integrated – European strategies.

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