

Priorities for the Finnish Presidency of the EU

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This CEPS Working Document is intended to provide concrete policy recommendations on a range of EU policy areas facing the Finnish Presidency of the EU. It was prepared as a background paper to stimulate discussion at the CEPS dinner debate on the priorities of the Finnish Presidency, with Matti Vanhanen, the Prime Minister of Finland, 12 July 2006, chaired by H. Onno Ruding, Chairman of the CEPS Board of Directors.

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Preface

‘Thinking ahead for Europe’ is our motto. In this reader we have collected our thoughts and recent writings on what should be done in the near future to get Europe moving again. We offer these ideas to the Finnish Presidency of the EU as food for thought at the start of its six-month term. These views are based on the research experience of our multinational staff, who have the privilege of working in complete independence.

We address many of the most important areas that need attention from EU policy-makers. We have not tried to cover everything, preferring instead to concentrate on what we consider the key strategic issues.

All of the contributions contained in this reader can be read individually. To provide at least a rudimentary road map, however, we have grouped them into five broad policy areas: economics, environment, justice and home affairs, wider Europe and the future of Europe. These areas are quite heterogeneous. In some, for example, the competence of the EU is not well established, whereas in others the EU can act, but fundamental choices still need to be made. We believe that the initiatives taken by the Finnish Presidency could make an important difference in all these areas.

Some of the contributions presented here have already been publicly available in one form or another. But we believe that this collection will be of use to those who wish to have a clearer idea of what priorities should be selected – from among the thousands of big and small issues that the Finnish Presidency must grapple with over the next six months. Those with the interest and the time to dig deeper will find a wealth of supporting material on our website (www.ceps.be).

Daniel Gros
CEPS Director
Brussels, July 2006

1. Economic Policy

Economic ‘patriotism’: Does it make sense?

By Daniel Gros

The smooth working of the internal market has been disrupted in recent months by several high-profile cases of political intervention in cross-border projects of mergers or acquisitions. A general feature of these cases has been that national politicians have interfered with the market (to be more precise the market for corporate control) in order to save ‘their’ enterprises from being taken over by a foreign firm. This is somewhat ironic given the fact that EU politicians otherwise spend most of the time competing with each other to attract foreign capital by offering all sorts of incentives (e.g. lower taxes or better infrastructure). Such competition is particularly intense when it comes to FDI (foreign direct investment).

FDI is particularly valued because it is considered the best way to gain access to foreign technology and know-how. The flipside is that it comes together with foreign control. But while the former aspect of FDI is welcome, politicians tend to gloss over the fact that FDI consists of the takeover of a domestic firm. This reticence changes into hostility when a foreign firm threatens to take over a domestic firm that is regarded as strategic (which often also means a firm with close political connections). Under these circumstances foreign capital is no longer welcome – the ‘national champion’ has to be protected.¹

Political interference in merger and acquisition (M&A) activity very often leads to positions that do not reflect national interests – both when politicians step in to keep a company ‘national’ and when they defend the attempts by their own companies to forge an empire. One question that seems to be seldom asked is: *How truly ‘national’ are ‘national champions’ anyway?*

Politicians usually assume that any company headquartered in their country somehow has *their* nationality. They do not realise, however, that in an age of integrated capital markets their ‘national’ champions might actually be owned to a large extent by ‘foreigners’.

If we leave aside publicly-owned firms (for which a takeover bid is impossible), the perceived ‘nationality’ of a large firm is usually determined by the stock market on which it is listed. This does not necessarily mean, however, that the firms are owned by residents of the country in which they are registered. In particular, investors (and financial firms in particular) prefer to diversify their portfolios across countries, with the consequence that a high and increasing proportion of most countries’ stock markets are foreign-owned.

The table below shows that, in most European countries, a high proportion of their stock market is, in fact, owned by foreigners. We provide two estimates here: the first column is the proportion that is listed by FESE (Federation of European Stock Exchanges) as directly owned by foreigners, which ranges from 8% in Slovenia to 86% in Slovakia. Even on this measure, in only five countries is less than 30% of the stock market owned by foreigners. This is an underestimate, however, since much of the remaining share ownership is listed as being owned by companies of one form or another. A significant part of the shares in these may, in turn, prove to be foreign-owned.

¹ The takeover battle involving the utility companies Enel, Suez and Gaz de France once again brought this ambivalent attitude of politicians to the fore. The French government was trying to keep the French energy firm in domestic hands, while at the same time citing the high level of FDI in France as an argument to deny that France is protectionist. Many other governments display similar attitudes, albeit usually in a more discreet manner.

A better estimate of foreign stock market ownership might therefore be to compare the shares directly attributed to foreigners with only the shareholdings we can tell for certain are domestic (i.e. the public sector and private individuals). In only four countries – Slovenia, Italy, Norway and Germany (just) – do these categories account for a higher proportion of share ownership than that owned by foreigners. A tentative conclusion is that, with these four exceptions, it is misleading to view the ‘nationality’ of a company as meaning that most of its ownership is actually locally-based.

*Share ownership in Europe, 2003**

	Foreign % of total shareholdings	Foreign % of foreign+individual +public shareholdings
Slovakia	86.0%	97.7%
Hungary	72.6%	84.6%
Netherlands	69.0%	84.1%
Poland	53.0%	88.2%
Lithuania	51.8%	81.7%
Belgium	40.3%	78.9%
Portugal	38.9%	70.3%
Spain	35.1%	57.2%
France	34.8%	72.8%
Sweden	33.2%	55.1%
UK	32.3%	68.4%
Greece	31.3%	51.2%
Norway	27.8%	36.9%
Denmark	27.3%	51.9%
Germany	17.5%	46.8%
Italy	14.4%	28.1%
Slovenia	8.0%	15.5%

* 2002 data were used when 2003 data were not available.

Source: FESE.

Data on the nationality of the employees of large companies are harder to come by, so it would be a sizeable task to assess on the basis of this criterion just how ‘national’ are large companies based in any one country. Nevertheless, with the expansion of FDI and outsourcing (including the offshoring in recent years of services sector jobs which had previously been considered by economists to be ‘non-tradable’), it is probably fair to say that, in terms of employment, these large companies are rarely as ‘national’ as they used to be.

All in all, it thus appears that most large firms in Europe no longer have a well-defined ‘nationality’, either in terms of share ownership (which should determine where profits go and where ultimately control lies) or in terms of employment, which would provide the only potential justification for political interest in ‘champions’. The Finnish presidency should be well placed to impress upon member governments that they should stop defending the interests of large firms, whether they are acquiring ownership of another company or whether they are the target of a takeover bid, and let the market for corporate control finally work on a European scale.

Further recommended reading

Gros, Daniel (2006), “Economic ‘patriotism’: Protecting national champions or competing to attract FDI?”, CEPS Commentary, CEPS, Brussels, 22 March (http://www.ceps.be/Article.php?article_id=517).

Growth and competitiveness: The key role of education

By Daniel Gros

More than half way through the decade, it is clear that the ambitious goal of making the EU the world's 'most competitive economy' by 2010 will be missed. The reasons are manifold, but one key factor stands out: more investment is needed in education to create more jobs, a key Lisbon goal. Reaching the Lisbon goal of an employment rate of 70% would be possible even without labour market reforms if the average EU citizen attained the level of qualifications that have been set as benchmarks in this area (which in turn are very close to what has been achieved by the best-performing member states). Moreover, improving the skills of the EU's population would also have a direct impact on productivity and thus on economic growth.

The data also show that the modest improvement in employment rates that has taken place in recent years is entirely due to a small but significant upgrading in the EU population's skill level. There is no indication that labour markets had any impact on this.

Why should one focus on education and employment? After all, one could argue that the EU's track record in employment is not that bad. Over the last six years, the average EU employment rate (those employed as a percentage of the working age population) has indeed crept up by about two percentage points, from around 62% to 64-65%. There has therefore been some progress even if it has been too slow to put the Lisbon target within reach by 2010.

Most discussions about fostering employment focus on labour markets. This is not wrong, but there is another key aspect that is often overlooked: namely the link between skills and employment. Two conclusions emerge from a quick look at the data presented in Table 1:

1. The EU's key problem in terms of employment is not so much the *structure* of its labour markets, but the *insufficient skill levels* of its population. Indeed it is easy to demonstrate that the small improvement in the overall employment ratio that has taken place since the beginning of the Lisbon strategy can entirely be explained by the way that EU's labour force has picked up additional skills. Labour market reform does not seem to have had any impact on employment ratios.
2. If the EU work force had the same skills make-up as the US (or some of the more advanced member states), the employment rate in the EU could easily reach the Lisbon goal even without any labour market reforms.

Table 1. Education and employment (2004)

	Share of population (%)		Employment rates (%)	
	EU15	US	EU15	US
Below upper secondary	35.6	21.3	49.2	43.0
Upper secondary	43.8	52.3	70.1	71.1
Tertiary	20.6	26.5	82.5	82.9

Source: Own calculations based on Eurostat and OECD data.

Ad 1) The official mantra is that reforms, especially labour market reforms, are needed to reach this goal. The Lisbon employment target was chosen because, implicitly, the aim was to catch up with the US in terms of employment rates. The presumption was that the EU needed to price its marginal groups, especially the less qualified, into its labour markets. It is true that the employment rate in the EU is low because some groups are not very active in the labour market, but it is not widely appreciated that the EU-15 actually has a slightly better (or rather not so bad) record as the US in providing jobs for the less skilled. In fact, the employment rate for those with less than upper secondary skill levels is *higher* in the EU (49.2%) than in the US (43%). The EU's problem is therefore not so much that the less skilled cannot find a job in a rigid

labour market but rather that there is an excess of low-skilled workers. The evidence for this is that in the EU over a third (35.6% of the population of working age) has not even completed upper secondary education against around a fifth (21.3%) in the US.

US employment rates are only marginally higher than those in the EU among the higher skilled. The big difference here is the fact that in the US the proportion of the working age population with higher skills is about a quarter higher than in Europe: over 26% of the US population has tertiary education compared to around 21% for the EU.²

Ad 2) A simple piece of reasoning illustrates the importance of raising the skill level for the EU compared to the US: assuming that there are no reforms in EU labour markets, one can assume that the employment rates by skills should remain roughly constant even if the skill composition of the population changes. One can then ask what the EU employment ratio would be if the EU population had, on average, the same composition in terms of qualification levels as that of the US. The answer is simple: the employment rate in the EU would be roughly equal to that of the US (and pretty close to 70%).

This simple result is due to the fact that employment rates in different skill groups are quite similar in the EU(-15) and the US. As mentioned above, the employment rate for those with less than upper secondary education is actually somewhat higher in the EU. But the difference is rather small and this is also the case for other skill levels.

Given the considerable differences in the employment ratios at different skill levels documented so far, it is clear that trends in the overall employment ratio will depend not only on labour market reforms but also on changes in the skill composition of the potential work force. An increase in the percentage of the work force made up of higher skilled workers should lead to a higher employment rate even in the absence of reforms, simply because the higher skilled tend to have a higher employment rate.

Table 2 below provides the relevant data for the five year period from 1999 to 2004. The last row gives the overall employment ratio for the EU-15 in 1999 and 2004. This overall ratio has increased from 62% to over 64%, and thus by a small, but not negligible amount over these five years. However, looking at the employment rates by skill levels provides a different picture: for the lowest of the three skill levels considered here, the employment rate has actually fallen. The drop has been very small, but there has definitely been no improvement in the overall ratio. The conclusion is that the overall employment ratio has increased mainly because the percentage of the lower-skilled workers making up the work force has declined over this period. Labour market reforms inspired by the Lisbon agenda should have increased the employment rates of the lowest skills, but the opposite has been the case.

Table 2. Education and employment: What has improved since Lisbon?

	Share of population (%)			Employment rates (%)		
	1999	2004	Change	1999	2004	Change
Below upper secondary	39.4	35.6	-3.8	49.6	49.2	-0.4
Upper secondary	42.3	43.8	+1.5	69.0	70.1	+1.1
Tertiary	18.3	20.6	+2.3	81.8	82.5	+0.7
Overall	NA	NA	NA	62.0	64.5	+2.5

Source: Own calculations based on Eurostat data.

² International comparisons of skill levels are inherently difficult because of differences in national education systems. Different sources give somewhat different figures, but the broad picture is the same across all sources: employment rates are very similar on both sides of the Atlantic within most skill categories, but the skill composition of the population is quite different, with a much higher proportion of the US population having higher skills.

The one area where there has been some progress towards the Lisbon goals is that of employment. However, it appears that very little of the improvement in the employment rate observed since 2000 has been due to labour market reforms. Instead, what seems to have happened is that the skill composition of the EU population is slowly improving. Since the higher skilled generally have a much higher employment rate, any improvement in this skill composition automatically leads (i.e. even without reforms) to a higher employment rate.

The ongoing improvement in the skill level of the EU population is not a reason to become complacent. At the pace at which it is proceeding, it will take almost two generations to start closing the gap that exists in this area between the EU and the US.

Upgrading the skill level of the EU labour force is further hampered by its unfavourable demographics. The average skill level improves much more quickly if each generation is of the same size than if each generation is smaller than the preceding one. In those member countries where birth rates have settled at a value of around 1.3, each generation is 35% smaller than the preceding one. This implies that the improvement of the average skill level is also proceeding at a correspondingly slower pace.

One key transatlantic difference that explains a large part of the difference in economic performance is the gap between the EU and US in terms of education levels. This difference is most marked at both ends of the spectrum: the EU has a much higher proportion of its population at the lowest level (below secondary education) and a much lower proportion at the highest level (namely tertiary education). The weakness at the tertiary level also implies that it does not make sense to call for more spending on R&D. Additional spending in this area makes sense only when the number of people who can actually undertake research has increased, but this will take a generation.

The question that follows is what should be done to increase the educational achievements of the EU population. This is in the first instance a responsibility of member states. Instead of signing solemn declarations at their annual Spring summits, national leaders should get down to the more serious business of improving the education levels of their own people. This task has been neglected in recent decades and is one of the key reasons why the EU's economy is not performing well at present. Labour market reforms are always useful and welcome, but in the long run it is at least as important to foster investment in human capital.

The EU is making a small contribution, for example via its ERASMUS programme. But funding for this programme has been cut under the compromise just agreed for the EU's next seven-year budgetary framework. This once again shows the gulf between rhetoric and reality when it comes to the Lisbon strategy.

It is true that the impact of education on employment is felt over a longer time horizon than that of labour market measures, but that is no excuse to delay action in this area. The example of Finland shows how determined and concerted action can create over time a world-class economy. If this remains the aim of policy-makers in the EU, they should make education a real priority. The Finnish Presidency is well placed to provide a good example and to prod others to start acting to improve their education systems. It might be time to shift the attention from the Lisbon to the Bologna process.

Further recommended reading

Gros, Daniel (2006), *Employment and Competitiveness: The Key Role of Education*, CEPS Policy Brief No. 93, CEPS, Brussels, February (http://shop.ceps.be/BookDetail.php?item_id=1301).

Gros, Daniel (2005), *Prospects for the Lisbon Strategy: How to increase the competitiveness of the European economy?*, CEPS Working Document No. 224, CEPS, Brussels, July (http://shop.ceps.be/BookDetail.php?item_id=1244).

Unleashing the potential for pan-European communications services

By Andrea Renda

During the first half of 2006, the debate over the future of the European Information and Communications Technology (ICT) sector has heated up. The European Commission has repeatedly announced the resurgence of competitiveness in the EU's ICT sector while many academic scholars, commentators and industry players claim that most EU member states still lag behind the US and the Far East in terms of investments, competition, technological advancement and productivity. The stakes are certainly high: ICT currently accounts for 40% of productivity growth and about a quarter of GDP growth in the EU25, and is a major pillar of the EU's Lisbon strategy.

EU institutions have been particularly active in the ICT sector over the past few months. However, recent initiatives such as the review of the Television Without Frontiers Directive and a Communication setting out proposals for the review of the regulatory framework for electronic communications, published by the Commission on June 28, have elicited mixed reactions from practitioners and stakeholders. According to many commentators, it remains to be seen whether the proposed new rules will prove conducive to innovation and investment in new technologies in a timely and effective manner. Even more importantly, these new rules are not expected to take effect before 2010, and as such will not provide much of a contribution to the EU i2010 strategy launched in June 2005. Needless to say, pro-active policy-making is needed well before 2010, and the Finnish Presidency can play a fundamental role in ensuring that timely action is taken.

The key questions are: How can European policy-makers boost growth and jobs in the ICT sector? What role can be played by the EU Presidency to ensure that European citizens will soon be able to reap the advantages of an 'information society for all'?

The objective of achieving the three 'i's of the i2010 strategy – internal market, investment in ICT and inclusion – depends on a combination of many factors. These certainly include the availability of adequate, high-speed network infrastructure, the reform of current rules governing intellectual property protection, the review of the regulatory framework for e-communications and, most urgently, a more pro-active and coordinated EU spectrum policy. On this latter issue, the Finnish Presidency has planned to take action in the coming months with a Resolution. This appears to be a timely initiative, which is expected to have a major impact on many industry sectors.

The importance of access to valuable spectrum bands has dramatically increased over the past few years, and today the total value of spectrum-dependent services in the EU is estimated to be in excess of €200 billion, i.e. between 2% and 2.5 % of the EU's annual GDP. In most member states, however, spectrum is still inefficiently and rigidly allocated, with structural shortages that inhibit the arrival on the market of new services. This is a major threat to the EU's ambitious goals of generating growth and jobs, and it would be unwise to wait for the day when switching off analogue TV will free up valuable spectrum. The long-awaited 'digital dividend' will become available only in 2012, whereas new services such as mobile TV and new broadband access technologies such as 3G or Wi-Max are already on the way to European consumers.

In more practical terms, what can the Finnish Presidency of the EU do for EU spectrum policy? The magic words resounding in Brussels are now 'trading', 'liberalisation' and 'harmonisation'.

Spectrum trading and liberalisation would mean that the current administrative allocation of spectrum bands adopted in most member states – and known as a 'command and control' approach – would be replaced by a market-based approach in which industry operators can

freely trade radio frequencies by acquiring ‘exclusive usage rights’ on portions of spectrum within defined geographical areas. Spectrum bands would then be divided into blocks and exclusive rights granted for each pre-defined block and geographical area. A spectrum management authority would then need to specify the maximum acceptable interference levels and ‘spectral separation’ between the signals of different service providers. This would in turn determine the maximum number of players that can enter the market. The potential gains from introducing spectrum trading and liberalisation have been (conservatively) estimated at € billion a year, with additional costs of only €100 million a year. But introducing secondary trading of spectrum would mean that clear rules would have to be set concerning spectrum policy. First, spectrum rights would have to be defined. Secondly, centralised or coordinated systems for the delivery of information on spectrum accessibility would have to be created. Thirdly, spectrum bands that can be made available for trading would have to be identified. Finally, future mechanisms for selecting and agreeing on bands to be subjected to trade would have to be put in place.

But even the introduction of spectrum trading and liberalisation would not suffice. Investments in new interactive services mostly require a pan-European dimension: the development of new technologies is so costly that larger markets should be made available for the achievement of sufficient scale and the recovery of investments. This, in turn, calls for *harmonisation of certain spectrum bands*. The WAPECS (Wireless Access Platforms for Electronic Communications Services) project launched in 2005 by the European Commission’s Radio Spectrum Policy Group is a first step towards the identification of suitable spectrum bands to be harmonised for pan-European services. The idea of identifying bands has also been welcomed by most industry operators, but political consensus still seems to be lacking, especially amongst national governments.

This is where the Finnish Presidency should concentrate most of its efforts in the ICT field, if it wants to boost efforts towards achieving an ‘information society for all’. A Finnish Presidency resolution on spectrum should provide the political momentum towards the identification of common tradable bands, the selection of harmonised bands and, finally, the legal, administrative and technical rules accompanying trading and liberalisation. This result has to be achieved in 2006: Europe cannot afford to wait for the review of the regulatory framework for electronic communications.

Further recommended reading

Renda, Andrea (2006), *Last Call for Lisbon? Suggestion for the future regulation of e-communications in Europe*, CEPS Task Force Report No. 59, CEPS, Brussels, June (http://shop.ceps.be/BookDetail.php?item_id=1352).

2. Environmental Policy

EU-style emissions trading – A pioneering role post-2012?

By Christian Egenhofer

The EU Emissions Trading Scheme (ETS) is the flagship of EU climate change policy and the single most important tool underpinning the EU's domestic and international aspirations in the field of climate change. As the first-ever cross-border tradable permit scheme, 'teething problems' should have been and should continue to be expected. That is why a decision was taken to review the Emissions Trading Scheme Directive (2003/87/EC), a process that will begin in the second half of 2006 and is expected to be completed in the course of 2007. The review will ultimately lead to proposals to amend the directive.

While there is general consensus on the need for a review, there is no clear consensus on what this review should include and even less agreement on how the directive should be amended. Nevertheless, we can identify three broad areas in need of review:

1. Implementation, mainly by member states (e.g. infrastructure requirements; monitoring, reporting and verification systems; definitions; rules of conduct for member states regarding sensitive market data);
2. Reassessment of design features (e.g. allocation methodologies, coverage of gases and sectors, economic impacts); and
3. Making the EU ETS fit for the period beyond 2012 when the Kyoto Protocol expires.

We expect most of the attention to focus on areas 1 and 2 as they are crucial for the economic efficiency, environmental effectiveness and distributional impacts, i.e. who will be winners and losers, of the scheme. A host of enquiries, studies and projects have already been carried out to deal with the two areas, i.e. implementation issues as well as critical design features. If too much emphasis is placed on these issues, which are all valid and important, there is a danger of losing sight of the strategic objective of making the EU ETS fit for an uncertain world beyond 2012 when the Kyoto Protocol expires.

As discussions in areas 1 and 2 will proceed through established processes such as the European Climate Change Programme, the Comitology Committee and member state-led initiatives, there is doubt as to whether the overriding strategic issue will receive sufficient attention. This will require strong leadership of the Finnish EU Presidency in the first and possibly decisive stage of the 2006-07 review.

Towards an EU ETS that could increase participation & technology development/diffusion

The EU and its Emissions Trading Scheme face a situation in which many countries will probably not be part of a global agreement or undertake domestic efforts comparable to what is implemented in the EU in 2012 and beyond. This would inevitably bring concerns about competitiveness to the fore and raise the question about how the EU should position itself vis-à-vis developments outside the EU that are not within its control. Led by Finnish Presidency, the EU could make the ETS a pioneer for a global climate change agreement. Otherwise it could end up finding itself a hostage to international developments.

The EU has a good chance to establish this pioneering role as there seems to be strong political backing in the EU for a moderate total cap on the emissions trading sector irrespective of whether other industrial regions in the world undertake similar efforts or not. If the EU and its ETS are to play a pioneering role, they need to provide answers to two challenges. First, from a

global perspective, the EU ETS needs to demonstrate that it reduces emissions in a cost-effective way, thereby proving that emissions can be reduced without ‘wrecking the economy’. This might motivate other countries to apply a similar instrument. Second, from a long-term climate change perspective, it needs to encourage investment in low-carbon technologies. As confirmed in a forthcoming (September)³ joint study by CEPS and the Energy Research Centre of the Netherlands ECN on the costs and the benefits of climate change options, putting in place proper policy frameworks that foster the development of new energy and carbon-saving technologies is a particularly high priority from the perspective of both climate change and long-term security of energy supply.

Based on the above context, we have identified five specific actions to be pursued by the Finnish EU Presidency to make the EU ETS fit for the period beyond 2012:

1. Consider whether a compliance factor (below or above 1) should be introduced when future allocations to installations beyond 2012 are being determined. This would allow the EU and its member states to react to international developments in a simple and transparent way.⁴
2. Explore the merits of specific support mechanisms for advanced low carbon technologies such as carbon capture and storage, renewables or other.
3. Search for further improvements in the Clean Development Mechanism (CDM), Joint Implementation (JI) projects or possibly other project-based instruments with global reach.
4. Commit to continuously allowing CDM and JI credits beyond 2012 through their recognition in the EU ETS post-2012, so that the ETS project’s mechanisms do not fail due to lack of certainty.
5. Explore sectoral industry approaches or if possible, crediting mechanisms to foster global co-operation among industry sectors.

Implementing these measures will provide the EU ETS with the flexibility it needs while allowing it to play a pioneering role to move towards global carbon markets.

Further recommended reading

Egenhofer, Christian and Noriko Fujiwara (2006), *Setting Priorities for the 2006/7 review of the EU emissions trading scheme*, Interim Report by a multi-stakeholder CEPS Task Force on “Strategic Implications of the EU ETS Review in a post-2012 perspective”, CEPS, Brussels, June (http://www.ceps.be/Article.php?article_id=507).

Fujiwara, Noriko, Jorge Núñez Ferrer and Christian Egenhofer (2006), *The Political Economy of Environmental Taxation in European Countries*, CEPS Working Document No. 245, CEPS, Brussels, June (http://shop.ceps.be/BookDetail.php?item_id=1339).

Kruger, Joe and Christian Egenhofer (2006), *Confidence through Compliance in Emissions Trading Markets*, CEPS Policy Brief No. 99, CEPS, Brussels, April (http://shop.ceps.be/BookDetail.php?item_id=1323).

Egenhofer, Christian and Noriko Fujiwara (2006), *Reviewing the EU Emissions Trading Scheme: Priorities for Short-Term Implementation of the Second Round of Allocation (Part II)*, CEPS Task Force Report No. 57, CEPS, Brussels, March (http://shop.ceps.be/BookDetail.php?item_id=1308).

³ Jaap Jansen, Christian Egenhofer and Stefan Bakker (2006), *Revisiting EU Policy Options for Tackling Climate Change: A Review of the Literature on Social Cost-Benefit Analysis of GHG Emissions Reduction Strategies*, CEPS Special Report, forthcoming.

⁴ Adjusted by one-off country- and sector-specific correction factors to accommodate the EU-15 burden-sharing agreement.

3. Justice and Home Affairs

Is the Agenda on Freedom, Security and Justice delivering for the EU's citizens?

By Elspeth Guild and Sergio Carrera

Strengthening the 'Area of Freedom, Security and Justice' (AFSJ) is a strategic objective for the EU in the coming years. The AFSJ was established in 1999 when the Council agreed an ambitious programme of measures with tight deadlines to provide the EU with a common area in justice and home affairs to mirror the creation of the internal market. However, in such sensitive fields as criminal justice, policing and immigration (which are at the heart of the AFSJ), legitimate concerns about national sovereignty and civil liberties have emerged in opposition to further EU integration. For example, a considerable number of EU constitutional courts have questioned or even rejected the European Arrest Warrant (EAW), a crowning achievement of the AFSJ; a variable constellation of member states have made agreements to proceed independently on policing, effectively snubbing EU initiatives (for instance the Prüm Treaty or the Sarkozy initiative); and efforts to agree common standards of legal migration to the EU have reached an impasse. Where is the AFSJ going?

The EU is at a crossroads: either it abandons the objective of integration in the AFSJ and leaves the field to member state sovereignty or it pushes ahead. But in the latter case, a change of strategy is imperative. While the member states in the Council express their enthusiasm for more AFSJ, individual ministries at the national level (and most commonly home affairs ministries) continue to act in their traditional fashion which is at odds with the stated objectives. All too often, by the time the national experts from home affairs ministries have finished with an initiative in the field, it has been transformed so much that it provides either for the continuation of national practices without any integration (for instance measures on irregular immigration) or for one-sided integration privileging the coercive institutions without ensuring the protection of the citizen (for instance the EAW). In both cases there is resistance – either criticism that 'Europe' does nothing, or societal disquiet (expressed through judicial channels) regarding the protection of constitutional rights.

The mechanisms for the adoption of measures in the AFSJ encourage both reactions by failing to provide sufficient centralising weight at the institutional level to counterbalance the voices of one set of ministries at the national level. While at the national level, the home affairs ministries must find consensus with other ministries such as justice, social affairs, development or education before proposing new national legislation, at the EU level the isolation of the AFSJ in the third pillar or a 'muffled' first pillar⁵ means that home affairs ministry concerns are not counterbalanced by other ministries responsible for constitutional protection, social cohesion, development, education, etc.

What are the answers to these challenges? Two measures are imperative. First, 'more Europe' through the expansion of the 'Community method' to all the AFSJ areas is highly desirable if not inevitable. Without a change in the mechanisms by which the EU operates in AFSJ and the abolition of the current pillar structure, the AFSJ is not going to succeed. Secondly,

⁵ As Title IV EC, which incorporated immigration, asylum and borders into EC law, does not yet assign full competence to the European Court of Justice and includes the participation of intergovernmental bodies such as SCIFA (Strategic Committee on Immigration, Frontiers and Asylum) in addition to COREPER (Committee of Permanent Representatives), it does not yet come within the classic EU governance rules of the first pillar.

strengthening the freedom dimension of AFSJ (rule of law and fundamental rights) in all areas is urgently required if the project is to be acceptable to the people of Europe.

The second multi-annual programme on AFSJ, known as ‘the Hague Programme’, provides the political mandate and the overall policy agenda for the 2004–09 period. A key error in the programme is its presentation of ‘freedom’ and ‘security’ as antithetical values and therefore requiring a ‘balancing procedure’ (i.e. the need to find the right balance between freedom and security). Its predecessor – the Tampere Programme of 1999 – rejected this understanding of the relationship between freedom and security: “shared commitment to freedom based on human rights, democratic institutions and the rule of law” was the starting place.⁶ “Securing rule of law”, as rightly emphasised by the former UN Human Rights Commissioner Mary Robinson,⁷ needs to be at the heart of the project. The moment that coercive security is divorced from the rule of law and balanced against freedom rather than understood as a flanking measure to secure freedom within the rule of law there is going to be trouble with the constitutional courts of the member states. To exacerbate the problem, the Hague Programme marginalises the protection of fundamental rights and freedoms, fair and equal treatment of third country nationals and the key role of the European Court of Justice.⁸ The Hague Programme does not offer the policy and institutional mechanisms necessary to create the AFSJ.

There are two essential elements that the EU needs if it is effectively to meet the citizens’ agenda in the light of a failing Constitutional Treaty and the deficiencies inherent to The Hague Programme.

First, the structure: the AFSJ which currently (and uncomfortably) straddles the First and Third Pillars of the Union must be consolidated in the first pillar. The dismantling of the current pillar structure is a prerequisite for comprehensive, legitimate, efficient, transparent and democratic responses to the dilemmas posed by the Europeanisation processes and the creation of a common AFSJ. The European Commission has already suggested in its Communication 2006/211 that it will make a proposal under Article 42 Treaty on European Union to this effect. The Finnish Presidency should embrace this proposal and push forward its adoption. Paradoxically ‘more Europe’ may be the only way to protect the principle of subsidiarity. More transparency by consolidating the whole of the AFSJ into one European Community pillar will permit member states to have more control over all the policy developments in these fields. The shortage of input in the AFSJ from other ministerial areas such as social affairs, development and justice can only be remedied by a radical change in the decision-making process. The EU has a tried-and-tested system to ensure plurality of views: the Community method. Extending this system of decision-making to all AFSJ areas will also strengthen the protection of civil liberties and fundamental rights.

Secondly, the AFSJ needs to make its commitment to ‘freedom’ based on human rights, democratic institutions and the rule of law. To do this, the EU needs to adopt its Charter of Fundamental Rights and Freedoms as a legally binding instrument. The incorporation of the charter into the EU’s legal framework is vital in order to give legal weight to those rights that are at the core of the EU and in whose name the AFSJ acts are being carried out. A uniform

⁶ See CHALLENGE, “A Response to the Hague Programme: Protecting the Rule of Law and Fundamental Rights in the Next Five Years of an EU Area of Freedom, Security and Justice”, 2005 (retrievable from www.libertysecurity.org).

⁷ See M. Robinson, “Five Years on from 9/11: Time to Reassert the Rule of Law”, Justice, International Rule of Law Lecture, Middle Temple Hall, London, 20 March 2006.

⁸ UK Parliament, House of Lords Select Committee on the European Union, *The Hague Programme: A Five-year Agenda for EU Justice and Home Affairs, Report with Evidence, 10th Report*, HL Paper 84, Session 2004-05, London, 23 March 2005, pp. 11-13 and p. 34.

legal framework that incorporates fundamental rights as norms of Europe is obligatory, not merely desirable.

These two steps also resolve two central problems: 1) democratic control: the European Parliament would then have a full part in the decision-making process under the Community method; and 2) judicial oversight: the European Court of Justice would have competence to interpret issues of EC law (although the restriction regarding referrals from national courts found in Article 68 and applying only to AFSJ matters would need to be removed).

In conclusion, we recommend two lines of action to the Finnish Presidency to foster the creation of a true Area of Freedom, Security and Justice:

1. Support the Commission's initiative to use Article 42 TEU to transfer all the responsibilities of the third pillar into the first pillar; and
2. Promote the position, taken by the German Government in 2000, that the EU Charter on Fundamental Rights be given immediate binding legal effect in the EU legal sphere.

Both goals could be reached even in the absence of a new Treaty. They 'only' require the active support of the member states and compliance with their national constitutional requirements.

Further recommended reading

Carrera, Sergio and Elspeth Guild (2005), *No Constitutional Treaty? Implications for the Area of Freedom, Security and Justice*, CEPS Working Document No. 231, CEPS, Brussels, October (http://shop.ceps.be/BookDetail.php?item_id=1266).

Balzacq, Thierry and Sergio Carrera (eds), *Security versus Freedom: A Challenge for Europe's Future*, Hampshire: Ashgate Publishing (forthcoming).

4. Strategic Issues in the Wider Europe

By Michael Emerson

Many issues of strategic importance for the EU's future enlargement, neighbourhood and foreign and security policy are on the agenda – concerning Russia, Ukraine, Turkey, the Black Sea, energy security and political Islam.

These may be addressed as separate issues, but together they have a major bearing on whether or not the wider European neighbourhood will evolve broadly in line with modern European values interests, which depends in part at least on whether the EU effectively deploys its remarkable potential for political action to these ends.

The overall conclusion is that EU policies in this domain justify a boost.

Turkey and Cyprus

According to the Enlargement Commissioner Olli Rehn, the EU's accession negotiations with Turkey are heading for a "train wreck" unless Turkey has recognised the Republic of Cyprus and opened its ports to Greek Cypriot ships by the end of the year.

These are in themselves reasonable conditions to put to the candidate state. However Turkey is also making a reasonable request, namely that the EU removes its present embargo on traffic through northern Cypriot sea harbours and airports. The Commission proposed removing this embargo after the Annan Plan was rejected, but Greek Cyprus vetoed it.

The citizens of northern Cyprus are (or can be) passport-holding citizens of the Republic of Cyprus, and therefore also citizens of the EU. As a result the EU has its obligations to the citizens of northern Cyprus, first of all their right to enjoy all the four freedoms that are at the heart of the EU's legal order. Northern Cyprus cannot be blamed for the continued division of the island since they voted for the Annan Plan, which is the only internationally recognised formula for resolving the conflict.

The Greek Cypriots rejected the Annan Plan in a democratic referendum, whose legitimacy has not been contested. However the government of the Republic of Cyprus has not made clear how it would like to renegotiate the Annan Plan and has in the meantime blocked Commission proposals to lift the sea port and air embargoes.

The stakes are high: the future of Turkey's relations with the EU, Turkey's future political orientations and even stability, and the EU's reputation for effective and equitable policy-making. The future on all these accounts is now held hostage to Greek Cyprus's wish to renegotiate the Annan Plan according to its (so far unspecified) wishes. This is a counterproductive and unacceptable situation. Counterproductive, because in overplaying its hand Greek Cyprus will get no benefits for itself, yet achieve huge collateral damage to wider European interests. Unacceptable, because northern Cyprus is being punished after accepting the Annan Plan by the Greek Cypriots, who did not.

What can be done? There are three alternatives.

In principle, the first and best approach would be actually to get agreement to an amended version of the Annan Plan. The two presidents have agreed to meet to talk about this. But Greek Cypriot politics and discourse leaves little grounds for optimism, since the Greek Cypriot desire to revert to a much more strongly centralised federation would be unacceptable to the Turkish Cypriots, and fail in a referendum on their side.

The second is for the rest of the EU to apply pressure on Greek Cyprus to agree to cancel all EU restrictions on movements in and out of the ports and airports of northern Cyprus. But the difficulty here is that the 24 other EU members states are disinclined to have an open confrontation with a fellow member state, something that would be contrary to EU values.

The third approach would be to bypass and ignore the absurd legal blockage. A number of EU member states could open up bilateral channels of assistance to northern Cyprus. The legal blockade of northern Cypriot sea and air ports are pretty ineffective in any case. There are presumably many ships registered in Panama, as well as from Turkey, that are happy to visit Famagusta port. The use of the port might be legalised with the aid of some special international status. Tourists from the EU can fly into northern Cyprus with a short stop in Istanbul. At some point the Greek Cypriot leadership may appreciate that their blocking tactics are counter-productive, since in the meantime they will not have achieved any of the gains they could have got (for example territorial) through the Annan Plan. The Turkish government could go along with this approach, recognise the Republic of Cyprus, and welcome Greek Cypriot ships. Turkey would gain goodwill and secure continuation of the accession negotiations. The Northern Cypriot side for its part is already proceeding with regularisation of the title and disposal of Greek properties in the North, which will progressively unwind an important problem in the status quo.

A new agreement between the EU and Russia

The EU-Russia summit of 25 May 2006 in Sochi concluded in favour of “... *the start of negotiations for a new agreement which should provide a comprehensive and durable framework for the EU-Russia strategic partnership and agreed to allow the PCA [Partnership and Co-operation Agreement] to remain valid until a new agreement enters into force*”. Since then the Commission on 3 July adopted draft negotiating directives for a new agreement, to be agreed with the Council and Finnish Presidency by the end of the year. The President of the Commission has also now proposed negotiations of a free trade agreement, to follow Russia’s WTO accession.

The EU and Russia need an ordered relationship because they are ever-closer neighbours, and they are Europe’s only two major powers, both with aspirations to be global actors. Their list of common concerns and interests is extremely long and cannot be ignored. In general terms the EU wants its big neighbour to be the friendly and reliable partner, both on concrete matters of which the provision of energy supplies is the most important, and on matters of political values for both internal and external affairs. Russia wants to confirm and deepen its presence and identity in modern Europe, but without being tied to the EU’s all-entangling mass of legal and normative rules and regulations.

But the model of the comprehensive treaty, covering all sectors of mutual interest in legally binding form, ratified by the parliaments of all EU member states, is ill-suited to the needs of the EU-Russia relationship. The comprehensive treaty model is suited to the case where the partner state wishes to accede to the EU, since in these circumstances the permanent stock of EU laws provides a mutually acceptable anchor. However for Russia, and other cases such as the United States (for which the idea has been considered at times, but not pursued), this form of agreement has serious disadvantages. It is extremely rigid, given that the process of negotiating across the board on all economic, political and security matters requires that many issues are brought to the point of agreement at the same time. And this has to be followed by the heaviest of ratification procedures on the EU side, which experience shows can take up to three years, with the non-negligible risk that a single member state’s parliament might wreck the endeavour right at the end of the laborious process.

Negotiating multiple sector-specific agreements, each adapted to the most appropriate timing and format, would seem to be a far more realistic and efficient model. There could be strategically important agreements for free trade after Russia's WTO accession and on energy questions. There are so many issues of mutual interest that one can also envisage loosely connected packages of agreements, allowing for the advantages of some 'log-rolling' (i.e. a balanced set of advantages between several agreements of unequal interest to each party). This would be somewhat similar to what has emerged as the EU-Swiss model of multiple agreements, rather than the Europe Agreement model with the EU's accession candidates. The Partnership and Cooperation Agreement (PCA) started as an experimental and watered down version of the Europe Agreement model, and the experiment failed basically because Russia does not fit into the mould of a long-term accession candidate. The successive strategy documents and roadmaps for the four common spaces that have emerged in recent years have been a search for a better model, but they too have failed to satisfy.

For the immediate timetable, negotiations over a new agreement will not begin in any case until Russian accedes to the WTO, most likely in 2007, but the expected date has been pushed back so many times already. Allowing two years for negotiations will take into 2009, to be followed by 2 or 3 years to complete ratification. This goes way past the end in mid-2008 of the Putin II presidency, which means there will be time to consider the nature of the next Russian leadership. President Putin say there will be no Putin III, but with his continuing high popularity some Russian observers doubt this, and could imagine a constitutional amendment. This timetable is so long that negotiations must proceed in any case on currently important sector-specific business, notably in the energy field. Such agreements could be later consolidated in the new comprehensive agreement.

In the longer run, the time may and hopefully will come when a deeper and more mature relationship can be established. However even this should probably not be in the shape of a huge comprehensive treaty document. Rather, it would consist of some basic institutional provisions and a solemn commitment to fundamental political and societal objectives, for which the French-German Treaty of 1963 offers a very different model. The wisdom of this model is that there can be historic moments when political leaders can take steps to consolidate trust and chart a fresh course for history. But trust is not something that legislation can create. Either it exists or it does not. For modern Europe this would have to be based on deeply shared common values.

A new agreement between the EU and Ukraine

Following the EU-Ukraine summit in Kiev on 1 December 2005, the press communiqué states: *"EU leaders confirmed their commitment to initiate early consultations on a new enhanced agreement between EU and Ukraine to replace the Partnership and Cooperation Agreement, as soon as the political priorities of the Action Plan have been addressed. ... EU leaders reconfirmed the goal of promoting deep economic integration between the EU and Ukraine and, in order to achieve this, looked forward to an early start of negotiations of a Free Trade Area once Ukraine has joined the WTO."*

It is possible that Ukraine could accede to the WTO by the end of the year. The EU would then need to work out the mandate to be given to the Commission to negotiate the new 'enhanced agreement'. What might its content be?

For Ukraine the model of a comprehensive, multi-sectoral agreement is more relevant. Ukraine has ambitions to accede to the EU in the long run. Yet it also has a precarious and for the time being manifestly unstable system of democratic governance. In these circumstances the idea of maximum anchorage onto the technical and political norms and standards of the EU has,

potentially, special value. The EU is not ready to offer a ‘membership perspective’ declaration to Ukraine at the present time. However a more constructive formula needs to be found than External Relations Commissioner Ferrero-Waldner’s infamous remark that the “door is neither open nor shut”. The new agreement, or treaty, should use the words of the Treaty of Rome, which were recently recalled by the Finnish Prime Minister, that the EU is “open to all European democracies”.

Until recently there was the idea that Ukraine could have a relatively fast ‘NATO first’ option, which could be a partial substitute for some years for their not having the incentive of joining the EU. Recent months seem to have dispelled this idea, given the extreme difficulties of forming a coalition government, which include deep divisions over the NATO question. In addition to anti-NATO demonstrations in Crimea, which may have been partially orchestrated by forces outside the country, opinion polls are overwhelmingly negative towards NATO, but relatively favourable to the EU.

In terms of its economic content, a new ‘enhanced agreement’ with Ukraine can draw on the recent study contracted to CEPS by the Commission on *Prospects for Deep Free Trade between the EU and Ukraine*. This charts the way for a selective alignment of regulatory policies on EU norms and standards in ways that reach extensively into matters of economic governance.

There is also an extensive agenda for border management and justice and home affairs where Ukraine can make use of anchoring itself onto EU practice.

Cooperation in the field of foreign and security policies is already progressing, with the notable example since the beginning of 2006 of the EU Border Assistance Mission on both Ukrainian and Moldovan sides of the secessionist Transnistria. Ukraine’s defence sector reform has made good progress in recent years. It is participating in various EU and NATO crisis management missions. These activities could lead to a more advanced model of political dialogue in the fields of security and defence.

The apparent virtual ungovernability of Ukraine at the present time could lead some to conclude that the EU might simply sit back and wait for things to become clearer. An alternative view, which we advocate, is that Ukraine is a highly plausible subject for a very strong neighbourhood policy. If a next government want this, which remains to be seen, Ukraine should be encouraged to anchor as far as possible on relevant EU norms and standards of governance even more because of their domestic institutional weaknesses.

Security of energy supply

When Russia turned off the gas tap for supplies to Ukraine on 1 January 2006, it opened a new chapter in the politics and economics of the European energy market, even if the tap was turned off for only a few days.

For Russia this was part of a policy to stop supplying gas at cheap and effectively subsidised prices to the former Soviet republics. The same process has been used for the South Caucasus states, Moldova and even now with Belarus. The monopolistic supplier was seeking to maximise its income.

For Ukraine, Moldova and Georgia, however, the gas policy was part of a package of Russian measures, which also included trade sanctions (wine and other agricultural products) that were manifestly not the behaviour of a candidate state fit for WTO accession, but were acts of political pressure. Statements about the new Russian security doctrine by Deputy Prime Minister Sergei Ivanov, which had hegemonic overtones towards the ‘near abroad’ states, were made at the same time.

While Russian leaders protested at being misunderstood, the EU interpreted these events as a big wake-up call for its own security of energy supply. The Commission produced a Green Paper, and the European Council adopted conclusions on the subject. The EU's response falls into four categories:

First, engagement with Russia in the run-up to the G8 summit to be held in St Petersburg on possible conditions for a better legal framework for trade and investment in energy supplies. This focuses on Russia's possible ratification of the Energy Charter Treaty and negotiation of the draft Transit Protocol.

Second, renewed emphasis by the Commission on the completion of the internal energy market, especially for gas. The Commission is preparing to apply its competition policy instruments more vigorously, as illustrated by the raid on 20 main energy suppliers for documents that might be evidence of market-fixing.

Third, decisions to expedite some gas supply diversification projects, for example the Nabucco pipeline to link Central Europe to Caspian and Middle East gas supplies (signed on 26 June by the transit states and the European Commission); in addition various liquefied natural gas (LNG) terminals seem to be being given higher priority.

Fourth, a re-weighting of the potential interest of long-run diversification options, including nuclear power.

However the first and second of these lines of action are now seen to be interdependent. This is because the draft Transit Protocol has two distinct provisions of key importance. Article 8 requires all transit states to make available spare capacity to third-country suppliers (e.g. Russia as the transit country for Turkmenistan gas to reach Ukraine or the EU). Article 20 requires the EU internally (so-called 'regional integration organisations') to give third countries no less advantageous access to its networks and to provide equivalent conditions of access.

But the EU's internal gas network is extremely poorly integrated. An expert in these matters has written (see Riley, 2006): "... despite Member State and EU institution endorsement of market liberalisation in the gas sector, liberalisation has almost entirely failed. DG Competition's recent Sectoral Review paper in March of this year reads like a bill of indictment against the institutions,⁹ the Member States and the incumbent energy firms as to their collective failure to liberalise European gas markets. Liberalisation is not a rightist free-market ideology, it is itself a means of enhancing European gas security and should over time reduce consumer prices. ... If the EU wants to engage with Russia in respect to encourage Russia to open up its energy market it must take real and effective steps to liberalise its own market."

EU leaders therefore have to decide whether to move decisively towards making the EU's internal energy market, especially gas, genuinely integrated. This would be both as a direct act to improve security of supply since large markets can absorb supply shocks more easily and as part of a negotiation with Russia to open its pipeline network to competing third-party supplies. The St Petersburg summit on 15-17 July may not be able to get beyond a declaration supporting the principles of the Energy Charter, but the task from then until the next EU-Russia summit before the end of 2006 should reveal whether operational agreement is possible.

⁹ The 'bill of indictment' includes legacy contracts, confidentiality clauses, market-sharing agreements, market concentration and vertical foreclosure.

The upcoming Black Sea dimension

The final decision on the timing – in 2007 or 2008 – of the Bulgarian and Romanian accessions to the EU will be taken at the December 2006 European Council meeting, and at the same time the EU will become a legitimate Black Sea power.

The Finnish Presidency has indicated its intention to put the so-called ‘Northern Dimension’ back on the agenda, presumably to reconsider how it can work most effectively in the light of the fact that eight out of nine Baltic Sea states are now in the EU.

The original Northern Dimension concept, for a region of states with diverse relationships with the EU, is becoming more relevant to the Black Sea region, which will include two full member states, one candidate state, three states (Georgia, Moldova, Ukraine) that have declared their European identity and integration ambitions and Russia.

The recent past has seen various initiatives by the Black Sea states to give renewed momentum to regional initiatives in line with EU values, notably the Community of Democratic Choice initiated by Georgia and Ukraine, whose summit meeting in May was hosted by Lithuania, and the Black Sea Forum in Bucharest in June hosted by Romania.

These initiatives have so far been lacking in credibility, and the EU has almost ignored them. But the EU does have the political and financial resources to promote a ‘Black Sea Dimension’. The new European Neighbourhood Policy Instrument is designed to operate regionally across states with different relationships with the EU. Discussion has been taking place within the EU institutions over Black Sea issues, but a political initiative has not yet emerged.

However the EU has seen that each of its enlargements has brought new dimensions to its external policies, thus internalising and Europeanising the interests of its new member states. There is no reason why the Black Sea enlargement should be different. A possible scenario therefore would be for the December European Council to add an invitation to the Commission to prepare a proposal for a Black Sea Dimension to its decisions on Bulgaria and Romania.

A new and positive development is that Russia has recently changed its position on possible EU cooperation with the Black Sea Economic Cooperation Organisation (BSEC). While until recently it opposed EU involvement, the current Russian Presidency of BSEC has advocated in its priorities “... *BSEC-EU interaction, with a view to the eventual joint formulation of ‘Black Sea Dimension’ of the EU policy ... firstly in such spheres as transport, energy and informational technologies, environment protection and combating terrorism and organised crime.*”¹⁰ This opening towards cooperation with Russia in Black Sea affairs should be welcomed, and followed up by the definition by the EU of its conception of its ‘Black Sea Dimension’.

A ‘stake in the internal market’ for the European Neighbourhood

A serious weakness in the European Neighbourhood Policy (ENP) is that so far it is underspecified in the economic chapter of its action plans. In official documents, partner states are offered a ‘stake in the EU’s internal market’, yet two years since the policy was launched this idea has not been systematically translated into practical details. Recently the Commission hosted a huge conference for about 500 participants concerned with the Mediterranean partnership under this title, yet there is still no official document providing a user’s guide to what this consists of. Indeed this is not an easy task, since the neighbourhood partner state is in

¹⁰ See ICBSS Black Sea Monitor (2006).

no way obliged to take on the obligations of accession candidate states and become 100% compliant with the whole *acquis*.

Part of the problem seems to be that responsibility in the Commission for this ‘stake in the internal market’ is distributed between many directorates general, including those responsible for trade, internal market, agriculture, industry, competition, financial services, transport, energy, telecommunications, etc. For each of these domains it is a complex matter to define objectively, according to a cost-benefit analysis, the most advisable degree to which neighbourhood partner states should anchor their policies onto the *acquis*. It may be recalled that when the Commission embarked on its 1992 programme to complete the single market, it proved necessary to undertake a huge set of sector-specific studies to define the actions needed and evaluate their economic benefits and costs.

The Commission is devoting relatively large amounts of resources to technical assistance projects to help partner states implement their action plans. However so far these entirely lack a consistently designed set of templates to help the partner states choose what exactly to do. The partner states are left free to choose. But these are extremely complex matters, requiring deep levels of technical professional competence, which the Commission has but the partner states mostly do not.

Meanwhile, the European Neighbourhood Policy proceeds only semi-operationally. The action plans are full of underspecified objectives, while the general idea is to evaluate how far they have been achieved after two or three years. This assessment will inevitably produce ambiguous conclusions. Our proposal therefore is that the Commission should be invited by the Council to produce a set of sector-specific ‘ENP handbooks’ to establish templates for how to choose the optimal degree of *acquis* convergence or compliance, as a function of the economic structure and administrative capacities of the partner state.¹¹ It might have been best to have already started with such an approach, but these last two years have been a learning process for both sides. The above proposal seems to be an essential requirement for the policy to progress in the years ahead.

Political Islam

The European Union currently seems to have hardly any official dialogue with the most significant rising force in the politics of the Muslim states of the Mediterranean basin, namely the Islamist parties that seek to gain power through non-violent and regular democratic processes (‘moderate Islamist’ may be the shorthand name). Such parties in some cases are represented in parliament or as minority partners in government (Algeria, Morocco). In others such as Egypt they are a rising political force that each year seems to be challenging the party in power more effectively. In yet others, such parties have been forced into exile (Tunisia). In the Palestine Territories, Hamas has been democratically elected yet its role in government is mired in the intractable conflict with Israel. Only in Turkey, in the role of the presently governing Justice and Development (AKP) party, has an Islamist party both transformed itself to become what Europe and the West can regard as a rather conventional political party, admittedly in the context of the otherwise very secular Kemalist state.

Amidst this range of different roles in the politics of Arab Mediterranean states, there are two general points to be made. One is the ongoing political struggle among Islamist parties between those that pursue power within the framework of democratic procedures, and those fundamentalist or radical Islamist movements that adhere to jihadist ideas, i.e. to establish an

¹¹ A partial experiment along these lines was undertaken in the study by Michael Emerson et al. (2006).

uncompromisingly Islamist state at home and wage war against the West abroad. Everywhere in the Muslim world this division and ideological competition is being fought.

The second point is that the EU's many recent episodes of violent disorder among its Muslim minority communities, including several acts of large-scale terrorism (e.g. the London and Madrid bombings), have reached the point that the politics and sociology of Islam are now a mainstream concern in the politics and sociology of the European Union. Moreover the links between the EU's Muslim minorities and the Islamist politics of their home countries are significant (dissemination of ideas, links with representative bodies and parties).

For these reasons the present lack of engagement between the EU institutions and its member states and the moderate Islamist parties of the Arab Mediterranean countries is becoming an increasing anomaly, and one that hinders the pursuit of the objectives of the Barcelona process and neighbourhood policy. It is time for the EU to reach out to moderate Islamist parties, not to imply that they are the only political future for their countries but to normalise their inclusion in the political processes. How this can be done in terms of practical details is beyond the scope of this short note. Possible methods include so-called 'track 2' diplomacy.¹² A more innovative method could be to experiment with inviting both government parties and 'moderate' Islamist parties, either in opposition or where minority government parties, into political dialogues with the EU and member state governments.

Further recommended reading:

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De Wijk, Rob, Samir Amghar, Amel Boubekeur and Alexei Malashenko (2006), *Between Suicide Bombings and Burning Banlieues: The Multiple Crises of Europe's Parallel Societies*, CEPS/IISS/DCAF European Security Forum Working Paper, CEPS, Brussels, June (http://shop.ceps.be/BookDetail.php?item_id=1350).

¹² 'Track 2' diplomacy is being prepared for a project on political Islam by CEPS with the Spanish think tank FRIDE and Fundacion Tres Culturas of Sevilla.

5. Future of Europe and Institutional Reform

Increasing transparency and citizens' involvement in EU policy-making

By Julia De Clerck-Sachsse and Sebastian Kurpas

The biggest problem on the agenda of the EU remains the question of what to do with the draft Constitutional Treaty, which was supposed to define the 'Future of Europe'. In addressing this, the Finnish Presidency is not facing an easy task. The last European Council (of June 15/16) did not provide it with a concrete mandate on EU reform issues. Instead, the responsibility for presenting a set of deadlines and finding possible solutions for the question of the EU Constitutional Treaty have been deferred to the subsequent German Presidency. Finland's main contribution to the EU Constitution might thus be its own ratification of the text. This will send a signal that the ratification process has not stopped and that – whatever happens next – the views of countries that have already ratified the Constitution also need to be respected.¹³ With member states in disagreement over the way ahead, little other concrete progress on the question of the Constitution can be expected in the next six months.

However, the vagueness of the European Council conclusions of June of this year should not lead to inaction on the part of the Finnish Presidency. It can still make a contribution by ensuring that an open discussion on the Constitution is continued, keeping all possible options on the table.

In response to the alleged sense of unease that the term 'Constitution' has triggered among European electorates, the Finnish Presidency has taken up the EU discourse on a 'Europe of projects' in their preliminary Presidency agenda. Undoubtedly, there is much to be said for delivering on concrete policy issues. However, the Council conclusions reveal very little in terms of what these projects might be. Rather than renewing commitments to better performance on all EU policies, a Europe of projects would suggest selecting a field of importance and on which tangible results can be achieved. Justice and Home Affairs was a priority during the last Finnish Presidency in 1999 and will be so again during the upcoming one. A further push towards the adoption of the Schengen Information System and the common protection of borders in an effort to define a unified approach to fighting terrorism and further headway in the area of security would show how the EU can take concrete steps forward and contribute solutions to citizens' concerns.

But besides delivering on certain key policies, the Finnish Presidency can and should make efforts to tackle the public's 'malaise' with respect to the EU. In many member states public support for EU membership has fallen in recent years and, despite great promises of 'reconnecting' with the citizens, political leaders have not delivered on increasing people's awareness and involvement in EU issues so far. In this respect, the 'period of reflection' has largely been a period of inaction. The Finnish Presidency therefore needs to make a substantial contribution to the improvement of public debate on European matters. It should actively encourage member states to hold public discussions that reach beyond the 'usual suspects' already interested in EU matters. The Commission's 'Plan D for Democracy, Dialogue and Debate' rightly states that the deeper involvement of citizens has to be a long-term priority in which member states play a key role.

¹³ Sixteen countries representing 53% of the EU population will then have approved the existing text. In a strictly legal sense, however, Germany has not yet ratified. The German president has vowed only to sign the ratification act for the Constitutional Treaty once all doubts about its accordance with the German basic law have been cleared by the country's constitutional court.

At the national level, the Finnish Presidency could propose to organise joint debates on practical issues that are of great concern to the public. Citizens from other member states should participate in these debates to share different points of view and to promote cross-national exchanges of ideas. At the EU level, the Finnish Presidency should take up the idea of inviting stakeholders and representatives of civil society to public roundtable discussions several days before certain Council meetings. The Presidency should select Council meetings where ministers will discuss (and possibly decide on) a matter that is of potential interest to the wider public. Public ‘pre-Council roundtables’, coordinated and promoted by the Presidency, could stimulate media interest and a broader debate among citizens.

In its recent White Paper on a European Communication Policy, the Commission presented a comprehensive analysis of the current problems in the field of communication. The ongoing consultation phase on the White Paper will now probably be extended until November, but the input from national governments has so far been very limited. The Finnish Presidency should raise awareness among EU governments and other national actors and encourage them to engage actively in this process. One of the central points in the White Paper is the so-called ‘partnership approach’, which underlines the importance of cooperation between the national, regional and local levels. However, there is a real risk that some of the White Paper’s more ambitious proposals will be watered down or lost in the process due to a lack of political commitment from the member states. Since the national level is the main generator of media interest and public debate, member states are indispensable actors when it comes to raising awareness of EU issues among citizens. The Finnish Presidency should thus ensure that the White Paper becomes an important part of member states’ common agenda rather than allowing the latter to restrict themselves to criticising the final outcome of the process.

In order to raise political awareness of the EU’s achievements, responsibility will also fall on national leaders to acknowledge the political headway made at Union level and to refrain from ‘blaming Brussels’ for national setbacks. The decision to open up Council sessions to the public would prevent political leaders from continuing to sell popular decisions as their personal success while reproaching ‘the EU’ for policies with little public appeal. The Finnish Presidency’s decision to make transparency one of their priorities is therefore a step in the right direction. In order to boost public confidence in how the EU works, they have pledged to transmit Council sessions via the internet. For the moment this will be limited to the areas falling under the co-decision procedure, but there are plans to make at least the opening session of other Councils accessible to the public as well as press conferences. The ultimate ambition of the Finns, as far as transparency is concerned, is to open up the summit meetings, but this idea has been received with scepticism in some quarters. While online transmission of Council meetings is unlikely to generate widespread public interest, it will be a good way to inform journalists and EU policy experts. It will also have some symbolic relevance in showing that the EU is serious about constructing ‘a citizens’ Europe’.

Further recommended reading

De Clerck-Sachsse, Julia (2006), “After the European Council: A Europe of projects without a plan?”, CEPS Commentary, CEPS, Brussels, 16 June (http://www.ceps.be/Article.php?article_id=528).

Kurpas, Sebastian, Michael Brüggemann and Christoph Meyer (2006), *The Commission White Paper on Communication – Mapping a Way to a European Public Sphere*, CEPS Policy Brief No. 101, CEPS, Brussels, May (http://shop.ceps.be/BookDetail.php?item_id=1328).

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