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## The Potential of the Council Presidency

An Analysis of Germany's Chairmanship  
of the EU, 2007

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**The Potential of the Council Presidency.  
An Analysis of Germany's Chairmanship of the EU,  
2007**

Germany acceded to the Presidency of the EU in the first semester of 2007 at a difficult time in the history of European integration. The proposed European Constitutional Treaty had been scuppered by two referendums; indeed, nine member states refused to ratify this Treaty following its signature. In such a situation, the German Presidency had to operate on the assumption of a considerable growth in reservations against the further integration planned in the Constitutional Treaty, as well as against the European Institutions and their policies. The Federal Government perceived this crisis as a task—namely, to recalibrate the European project in order to meet the great challenges of the age.

The authors of this study seek to do more than merely tick off the goals achieved—or not—by the EU-Presidency. The individual contributions concentrate on the twin questions what kind of demands particular situations placed on the German Presidency, and whether the Presidency efficiently and effectively matched its various functions—management of Council business, negotiation of compromises at all levels etc.—to these demands.

The processes and strategies by which the Chair sought to fulfil these functions receive particular attention in this study. The individual contributions examine the resources the Chair had at its disposal, how it used them, the particular *modi operandi* for which it plumped, which national contextual factors defined its scope for action and which 'external' factors affected its capacity to meet these demands. The analysis of the tasks performed by the Presidency are thus judged against a more nuanced background taking account of divergent situations and the different scope for action which these situations offered up.

The stocktaking of the German Presidency made here is broadly positive—in line with the impression given elsewhere. Almost all the contributions to this study credit the German Presidency with a solid management performance, which paved the way for numerous breakthroughs in negotiations. Contrary to the expectations of many commentators, the German Presidency proved itself an open, determined, and broadly neutral broker of compromises. In the most

sensitive dossiers, the factors contributing to German success included: resorting to expertise from within the Federal Government as well as from the country's regional level; efficient management and a clear setting of priorities; an array of resource-intensive bilateral consultations and informal talks; the decisive personal commitment of the Chancellor and the Foreign Minister.

In its function as impulse-giver, the Presidency launched a notably large number of projects, like the uploading of those parts of the Prüm Treaty dealing with transnational criminality to the legal framework of the EU. At the same time, the Germans' long-term strategic guidance of conflict-loaded negotiations was less happy. Detractors pointed out that the national interests of the German Presidency inhibited the efficient performance of this function—not least in migration policy.

The analysis offered here leads to the broader question whether the German Presidency—crowned as it was with success in the short-term and bolstered by wide-ranging political and personnel resources—has provided a sustainable model for future presidencies. In the areas of Common Foreign and Security Policy (CFSP) and of co-operation in the area of police and criminal law it was clear that, in an EU of 27, unanimous decision-making in Council has reached its limits. Germany could only achieve the necessary consensus by undertaking a range of bilateral consultations and informal talks within the framework of its slick, focussed, highly-disciplined and resolute organisation of the proceedings in the working bodies of the Council. Small and medium-sized EU states, bereft of comparable resources, would have difficulties handling a similarly broad range of dossiers in as energetic a manner. This points to the limitations of the rotation system of the Council Chair under certain decision-making rules involving all 27 member states.

Similar reservations apply to the *modus operandi* of the German Chair during the negotiations over the Berlin Declaration and the Constitutional Treaty—two issues which threw up exceptional challenges for the German Presidency, and which it approached in a manner which was intensive in terms of organisation and negotiation. Analysis of both cases poses the question whether discretionary negotiations on the basis of informational asymmetries can and should become the rule. As practiced by the Germans, such negotiations proved effective: thanks to the high degree of confidentiality associated with it, the process proved suitable for achieving consensus in a highly

sensitive area between 27 member states. At the same time, this success negated the original goal of bringing the basic questions of integration out from behind closed doors. In the case of the Berlin Declaration and the Constitutional Treaty, the German Presidency did not attempt in the first place to foster a sufficient degree of consensus within society; the priority remained to achieve consensus between democratically elected governments. The risk was clear: in repeated referendums on the Reform Treaty, the population of one or more countries could block the implementation of the Treaty by recourse to a veto. Yet, irrespective of whether referendums brake the integration process, the challenge of creating a new consensus in European policy between governments and voters remains.

The study closes with a glance at the changes to the Council system conceived in the Reform Treaty. These change the contextual conditions for the work of all Presidencies from 2009. In particular, the projected introduction of a president of the European Council and the strengthening of the Council within the institutional system of the EU, pose questions about the coherence of the current institutional design. Can one expect the future President to enjoy the same capacity for giving impulses as an individual head of state and government in his or her current function as President of the European Council? One need only think of the strategic actions and commitment of the German Council President, Angela Merkel, and of the Chancellery in climate policy or transatlantic economic co-operation, where manifold national administrative and political resources were successfully put to use. The heads of state and government today enjoy a (fleeting) prominence as Council Presidents for a semester, which is unlikely to be compensated for by the system of 2009. Their apparent demotion suggests that there will be tension between the new President and the heads of government. The latter will in future merely be 'normal' members of the European Council even under their own Presidency.

# The Presidency in the Council System: Functions, Scope for Manoeuvre and Room for Improvement

Daniela Kietz

The analysis and evaluation of the work of Presidencies, and in particular the identification of “best practice” and reasons for success, can help to improve the functioning of the Council System as a whole. Conceptual clarity as well as an empirically grounded understanding of the functions and tasks of the Presidency are both necessary conditions for successful analysis.

Those readers who are most interested in the results of German activity in individual policies or the overall stocktaking can simply skip over this chapter. It explains the framework for analysis which underpins the subsequent contributions, and will be of most interest to those interested in methodological considerations. Since, however, this study makes a contribution to that discipline by further developing methods employed in the study of previous Presidencies and giving input into modes of studying future Presidencies, the foundations of our work are set out in the following.<sup>1</sup>

A Presidency is here deemed successful if it manages to align the interests of those national, supranational and other actors involved in the EU policy process in such a way that substantial progress is achieved, whilst leaving space for the Presidency's individual accents and initiatives. At the heart of this study is an effort to evaluate these results against the background of the national and European-level restrictions on the Presidency's scope for manoeuvre, rather than to tally the results of the German Presidency in the first semester of 2007 with the goals it elaborated, as other presidency evaluations have done.

## 1. Difficulties in the Analysis and Evaluation of the Presidency's Performance

Even if EU Presidencies<sup>2</sup> do count amongst the central actors in the EU's decision-making process, they are

constrained by a whole series of *structural, material and procedural limitations*, which are scarcely known to the public.

- ▶ Firstly, the Presidency is obliged to bring forward and implement the EU's existing political agenda. Prescriptions laid down in the numerous working and legislative programmes of the EU-Institutions reduce the scope available to the Presidency to set its own agenda. Often, unexpected external developments (conflicts, wars, terrorist attacks, natural catastrophes) divert a large part of the Presidency's capacity at the expense of its original plans. Practitioners often estimate—as a rule of thumb—that some 90 percent of the presidency agenda is inherited from previous presidencies or fixed by existing planning.
- ▶ Secondly, presidencies are temporally restricted, lasting for just one semester. This six-month time span usually suffices to launch new projects, to advance existing negotiations, or to complete projects which previous presidencies and other EU actors have already promoted.
- ▶ Thirdly, presidencies are just one actor in the constellation of European agenda-setting and legislative processes which includes the Commission, European Parliament (EP), national delegations in the Council and third states in the field of external relations. All these actors have “vital interests” in the individual dossiers. A Presidency possesses but limited instruments—laid down in the Council's rules of procedure—to structure the political process.

The core dilemma encountered in any evaluation of the Council Chair derives from precisely these restrictions on its scope for manoeuvre: what degree of success or failure can be laid at the feet of the Presidency? Results feted or dismissed as successes or failures of a particular Presidency can actually be ascribed

The Presidency,” in: id., *The Council of Ministers*, 2nd edition, Basingstoke 2006, pp. 133–161; Ole Elgström (ed.), *European Union Council Presidencies. A Comparative Perspective*, London 2003; Jonas Tallberg, *Leadership and Negotiation in the European Union*, Cambridge 2006 and see the links in the SWP Dossier “EU-Ratspräsidentschaft Deutschlands 2007” (German only) under: [www.swp-berlin.org/de/brennpunkte/brennpunkte](http://www.swp-berlin.org/de/brennpunkte/brennpunkte).

<sup>1</sup> For a more detailed analysis on the literature on studying Presidencies see: Daniela Kietz, *Methoden zur Analyse von EU-Ratspräsidentschaften*, Berlin: Stiftung Wissenschaft und Politik, Mai 2007 (SWP Working Paper, 5/07).

<sup>2</sup> For recent literature on EU-Presidencies see: Fiona Hayes-Renshaw and Helen Wallace, “Taking Turns at the Wheel:

to a multitude of factors: successes and failures might well be caused by factors internal to the Presidency (i.e., factors which the Presidency can be expected to influence); on the other hand, they might derive from external constraints on the Presidency's scope for manoeuvre, with factors beyond the influence of the Chair determining the chances of a happy ending. In the first case, then, we are dealing with variables such as the Presidency's organisational or diplomatic capacity; in the second case, the variables are external—a hangover from the previous Presidency for example, the completion of a dossier in the EP alone, or the influence of negotiations between powerful third countries.

A one-dimensional tallying of programmes and their realisation, or a simple listing of projects completed under the Presidency, tell us little about the activism of the Presidency then. At the same time, normative analyses of the qualitative substance of political decisions taken under the aegis of the Presidency fall short of the mark. This is because of the limits of the Presidency's influence over the substance of measures adopted on its watch.

## 2. Conceptual Frame— A Supply/Demand Analysis

In our efforts to provide a consistent conceptual framework for the contributions to this study, and thus to overcome the problems set out above, the editors have built on the work of Adrian Schout and Sophie Vanhoonacker<sup>3</sup>

The contributions to this study rest on the premise that there are certain observable functions performed by Presidencies: as Council Chair, the Presidency must organise the political process at the European level; it must act as broker at all negotiation levels; it has to encourage member states to reassess their short-term, national interests from a long-term, European perspective; moreover, it has to represent the Union “outwards,” beyond the borders of the EU, and “inwards,” to national societies; lastly, it must function as a point of contact for the other EU institutions (see section 3).

<sup>3</sup> Adrian Schout and Sophie Vanhoonacker, “Evaluating Presidencies of the Council of the EU: Revisiting Nice,” in: *Journal of Common Market Studies*, Vo. 44, No. 5, 2006, pp. 1051–1077. For a more detailed explanation of the distinctions between the framework employed here and the work of Schout and Vanhoonacker see Kietz, *Methoden zur Analyse von EU-Ratspräsidentschaften* [see fn. 1].

From the standpoint of a supply/demand analysis, we assume that differing conditions in negotiations create different demands upon the Presidency in the performance of its diverse functions. Should these demands be met, this will boost the prospects of a compromise in negotiations. For example, some situations create a demand for the Presidency to perform a strong, but neutral, brokerage role. In other situations, the Presidency will have to place current political debates in the context of long-term European goals in order to extricate them from the grip of short-term national interests. In all this, the Chair's margin for manoeuvre will be determined by a whole range of domestic factors—the presence of strong self-interest or interministerial differences—as well as the extent of its resources. The scope for action available to the Presidency in its efforts to meet demand will also be constrained by external factors beyond its influence. Presidencies acting efficiently will identify the tasks necessary to bring dossiers to a happy ending.

The central question in this study is therefore: *to what degree did the German Presidency succeed in matching the performance of its various functions to the demands placed upon it by different negotiation contexts*. We assume that this demand arises from the need to achieve compromises in order to bring forward, complete or initiate new projects.

In their efforts to identify the demands to which the Presidency was subject in terms of its roles in management, brokerage etc., the authors have relied upon a common series of ‘situational’ variables and related hypotheses. The demands vary in every single dossier depending on the negotiation situation. Authors have thus posed questions such as: how controversial was the object of negotiations; what deadlines were in evidence (see section 4). Rather than tallying the express goals of the Presidency with its eventual achievements as many previous analyses of Chairs have done, the present study therefore judges the actions of the Presidency against the demand for such activity in every single dossier.

We also take into account the national political context, which may both constrain and facilitate the performance of the Presidency roles. Here the authors ask questions such as: was the dossier the subject of interministerial differences or of differences between governing coalition parties? And if so did this constrain the government in fulfilling its presidency roles at the EU-level (section 5)?

The resources available to the Presidency too are taken into account (section 6). Efforts to gauge these

resources take into consideration obvious “general” resources, e.g., administrative capacity, whilst also seeking to capture sometimes overlooked “specific” resources such as special bilateral relations with third states or an established role as trailblazer in European integration in certain policy fields.

*External contextual variables*, which lie only partly within the Chair’s sphere of influence, but which may be partly responsible for the success or failure of a Presidency, are not systematically and exhaustively listed in our framework. These extremely diverse variables are fathomed inductively as and when they arise in the individual contributions. They run the gamut from delays in the presentation of proposals by the Commission, through external crises, to negative effects from related dossiers either arising from a technical “spillover” effect or their inclusion by other actors in negotiations as part of a package deal.

Our analysis differs in manifold ways from other studies of the German Presidency.<sup>4</sup> The contributions in this study are not interested in tallying the Presidency’s stated goals with their fulfilment or indeed in analysing events from a normative perspective. On the basis of a clear and uniform conceptual framework, they concentrate on the question what demands the negotiating environment threw up for the German Presidency’s various functions in the EU policy process asking in turn to what degree the German Presidency met this demand.

At the forefront of the analysis are the *processes and strategies* by which the Presidency seeks to fulfil its various functions. The individual contributions thus systematically analyse the specific resources at the Presidency’s disposal in order to assess how they were used, and which *modus operandi* it plumped for. In all this, the domestic contextual variables which defined its scope for manoeuvre and the external factors that alleviated or complicated its task are taken into account. This method of analysis allows for a more nuanced evaluation of the Presidency, since it takes into account the demand placed upon it by the negotiating environment and the scope for manoeuvre left it by context variables.

<sup>4</sup> Centrum für angewandte Politikforschung (CAP), *Bilanz der deutschen EU-Ratspräsidentschaft. Analyse und Bewertung*, Munich, July 2007 (CAP Analyse 6/2007); Sebastian Kurpas and Henning Riecke, *Is Europe Back on Track? Impetus from the German Presidency*, Brussels: Centre for European Policy Studies (CEPS), July 2007 (CEPS Working Document No. 273).

## 2.1 Sources and operationalisation

The authors of this study are analysing developments in fields in which they have an established expertise. The background information on the work of the Presidency was acquired through a number of sources: the official documents of the EU Institutions and the German Presidency; confidential briefing-, strategy- and background-papers produced from mid-2005 by those actors involved in the preparation and execution of the Presidency; and a large number of semi-structured interviews with central actors in the EU institutions, in the permanent representations and the Berlin ministries.

We do not of course claim that our conceptual framework allows for complete objectivity. Certainly we have set out a range of criteria upon which to base evaluation of the fulfilment of the Chair’s functions (see section 4.2); yet the fulfilment of the Presidency function cannot be captured mathematically. In order to achieve as great a degree of objectivity as possible, we have approached interview partners with a broad range of institutional backgrounds. Information included has been drawn from, refined in and confirmed by a broad range of points of view.

In deciding which policy fields should be examined, the editors were principally concerned with providing as broad a spectrum as possible. Because of the wide range of decision-making processes and constellations of actors in different policy fields one can safely assume that the demands and scope for manoeuvre of the Presidency will differ from area to area. In the Common Foreign and Security Policy (CFSP) it is not merely the interests of the EU member states but also those of third countries which are at play. In such a policy area, the Presidency will be subject to different demands than those which greet it in the field of, for example, climate policy, where instead the Chair must reckon with a greater degree of influence from the European Parliament and Commission.

## 3. What Are the Functions of the Presidency?

It is a truism to state that the EU-Presidency is simultaneously required to fulfil a number of different tasks, whether this be acting as broker of deals, or manager of aspects of the political process. Schout and Vanhoonacker include amongst these tasks the function of pursuing national interests. Yet, this point of view leads to fundamental incompatibilities with the

other roles associated with the Presidency—for example between the need to act as a *neutral* broker and the need to represent *special* national interests. For this reason, we conceptually distinguish between the Presidency and the government holding it (which is also represented in Council as a national “delegation”).<sup>5</sup> It is almost a precondition for the successful fulfilment of its functions, and in particular the brokerage role, that the Presidency does not use its position as Chair in negotiations to promote special national interests. Instead it must adhere to the Council’s rules of procedure, which demand neutrality.

With the aid of this heuristic distinction, we can conceive of the functions of the Presidency as a “temporary service” which is performed by the government of one of the member states at the European level. This is not to say that the presiding government will cease to fulfil its elementary function of pursuing the national interest, nor that it will avoid tension with its Presidency functions, merely that it would be confusing to see a Presidency which was used as a vehicle for the pursuit of national interests at the expense of the Presidency functions as a successful one. A good Presidency must achieve that happy medium between facilitating progress in a neutral manner and representing particularist interests (see section 5). The existence of strong national interests or of subnational differences of opinion on national goals will therefore be treated as a contingent constraint on the Presidency’s capacity to perform its functions in the EU policy process (on this point too see section 5).

There are above all seven functions for a Presidency to fulfil, and it is the definition of these functions which provides much of the basis for this study. They can be found in tabular form below (see p. 12f).<sup>6</sup> Some of these functions boast three dimensions or levels for action. These functions are: the management of Presidency business; brokerage between negotiating parties; the long-term strategic guidance of dossiers; and the giving of impulses. The first level for action which these functions comprise involves the achievement of compromises within the Council. The second level arises in cases where the Parliament and Commission have a right of say. Thirdly, the presidency tasks frequently have a foreign policy dimension, i.e.,

when the object of negotiation stretches beyond the scope of the EU. We acknowledge these three dimensions in the functions included in the table as “external representation of the EU in CFSP” and “representation of the Council *vis-à-vis* the other EU Institutions.”

### 3.1 The Presidency as manager of Council affairs

The main function of the Council Presidency is the efficient and effective management of the daily work of the Council. This entails, in particular, the planning and co-ordination as regards time and content of the up to 4,000 Council sessions on all levels (working groups, committees, ministerial meetings) during the six-month term of the Presidency. The work of the Council bodies also has to be co-ordinated in inter-institutional negotiations with the EP (especially concerning those legal acts negotiated as part of the co-decision procedure), as well as with the negotiations with third states. The successful fulfilment of this role is dependent on the close co-operation of the Presidency with the Council Secretariat. The Secretariat is in charge of versatile and tried-and-tested co-ordination resources, which it can put to use quickly due to its permanent presence in Brussels and to its well-rehearsed capacity for co-operation with its counterparts in the EP.<sup>7</sup>

The tasks of formulating the agenda for the Council, of deciding when certain dossiers move within and between the various Council working levels, of presiding over the Council sessions as well as structuring and moderating the debate are in principle left to the Presidency. As a rule, this also applies to the conduct of negotiations itself and the drafting of Presidency proposals (proposals for compromises etc.). Other tasks for the Presidency include the composition of background studies as well as drafting working and discussion papers which identify the positions of individual member states and discuss the relevant aspects of the subject matter.

<sup>5</sup> For a critical evaluation of the representation of national interests in the concept of Schout and Vanhoonacker see Kietz, *Methoden zur Analyse von EU-Ratspräsidentschaften* [see fn. 1].

<sup>6</sup> On this point see Hayes-Renshaw and Wallace, “Taking Turns at the Wheel” [see fn. 2], and the rules of procedure of the Council at [www.consilium.europa.eu](http://www.consilium.europa.eu).

<sup>7</sup> On the Council Secretariat, see Fiona Hayes-Renshaw and Helen Wallace, “Bureaucrats Organise and Advise: The Council Secretariat,” in: id., *The Council of Ministers* [see fn. 2], pp. 101–132.

### 3.2 The Council Presidency as neutral mediator and broker of compromises

In its function as mediator, it is up to the Council Presidency to manufacture consensus between the positions of different EU member states during the negotiations in the Council itself, as well as in inter-institutional negotiations between the Council and the EP, and between the Council and third states in the area of external relations. Apart from the mediation efforts undertaken during sessions of the respective Council bodies, the Presidency also utilises bilateral talks (“confessional sessions”) in order to explore the negotiating positions of participant actors (member states, EP, third states). Other instruments include the assignment of expert groups (e.g. “Friends of the Presidency” or High Level Groups) to draw up reports on the main issues of a dossier as the basis of negotiations in the Council. At occasions also groups of like-minded member states work out compromises in parallel to the negotiations in Council bodies in order to speed up negotiations or contribute to the de-escalation of on-going conflicts. Furthermore, the strategic choice of whether and when to call a formal vote on a dossier in the respective bodies is an important instrument at the Presidency’s disposal for swaying the delegations in the Council towards greater willingness for compromise.

In the search for and manufacture of compromises, the Council Presidency may draw upon the officials of the General Secretariat in regards to content, tactics and strategy during the negotiations.<sup>8</sup>

### 3.3 Strategic Guidance by the Council Presidency

The core of those presidency tasks which we subsume under the general term “strategic guidance” (in the Anglo-American literature often known as “political leadership”) is to place current debates between the member states in a broader perspective of the upcoming challenges for the EU. The Chair has to urge member state delegations to put their short-term, national interests behind long-term goals that all EU members can agree on. In this way, long-drawn-out and blocked negotiations may be revived.

### 3.4 The Council Presidency as a source of initiatives and impulses

The long-term political agenda and objectives of the EU are determined through the use of various planning instruments such as the annual working programme of the Commission or the five-year working programmes in the area of Justice and Home Affairs. As shown above, a central task of Council Presidencies is to take care of the continuing implementation of this agenda. In addition, the term of the Presidency is limited to six months, so that the time and space for setting distinct priorities is much smaller than usually assumed. Nevertheless, there are instances where a Council Presidency might manage to launch new projects and initiatives in the framework of current planning or to establish new approaches to existing projects or indeed to formulate new goals outside the framework of current planning. Such initiatives often draw on the particular political resources of the Presidency and tend to have a regional character, i.e., the ‘Northern Dimension’ introduced by the Finnish Presidency in 1999 or the German Presidency’s special focus on the Eastern Neighbourhood. In general, all Council Presidencies aim at leaving their mark on the European political agenda by launching at least one initiative of their own. In a limited way, a Presidency can also use this function to promote national interests during its term. But, for the most part, this is only rewarded with success if the Council Chair manages to present its initiatives to both the other member states and the public as part of a common European interest and rather than as a “national project.”

### 3.5 The Council Presidency in the external representation of the EU (CFSP)

The external representation of the EU in the area of the Common Foreign and Security Policy (CFSP) is also incumbent upon the Council Chair. Jointly with the High Representative for the CFSP and the Commissioner for External Relations, the Presidency represents the Union *vis-à-vis* third states in all diplomatic affairs. In addition, it speaks on behalf of the Union in international organisations and at international conferences. In negotiations on international agreements in the area of CFSP as well as Police and Judicial Cooperation the Presidency is mandated with the conduct of negotiations by the Council (art. 24 TEU).

<sup>8</sup> Rules of Procedure of the Council, article 23(3).

**Table 1**  
**Functions and associated tasks performed by presidencies**

<b>Management</b> (see section 3.1)	<b>Brokerage</b> (see section 3.2)	<b>Strategic Guidance</b> (see section 3.3)	<b>Impulse-giving</b> (see section 3.4)
<ul style="list-style-type: none"> <li>▶ Time- and agenda-management, as well as co-ordination of meetings in Council and its working committees</li> <li>▶ Co-ordination of negotiations within Council with those between Council and Parliament, and, where necessary, those with third states</li> <li>▶ Chairing Council meetings and structuring debates</li> <li>▶ Preparation of summarising and explanatory background documents</li> </ul>	<ul style="list-style-type: none"> <li>▶ Sounding out the positions of the member states, the European Parliament, the Commission and, where necessary, third states</li> <li>▶ Devising forward-looking negotiating strategies and fall back positions</li> <li>▶ Identification of points of consensus and package deals</li> <li>▶ Formulation of compromise proposals</li> <li>▶ Fostering a positive negotiating environment</li> <li>▶ Persuasiveness in pursuit of mutual understanding between member states</li> </ul>	<ul style="list-style-type: none"> <li>▶ Placing current discussions in a long-term perspective bringing in future challenges for the EU</li> <li>▶ Persuading national delegations to look beyond their short-term, national interests, and to think in terms of a European goal</li> <li>▶ Reinvigorating negotiations that have become bogged down</li> </ul>	<ul style="list-style-type: none"> <li>▶ Launching new projects in the framework of current planning</li> <li>▶ Highlighting new approaches to existing projects</li> <li>▶ Defining new goals for the EU's agenda</li> </ul>
<p><b>Focus</b>  <i>Efficient organisation of day-to-day business</i></p>	<p><b>Focus</b>  <i>Fostering a consensus</i></p>	<p><b>Focus</b>  <i>Guiding negotiations in light of long-term European interests</i></p>	<p><b>Focus</b>  <i>Launching new projects and goals</i></p>

<b>External Representation of the EU in the CFSP</b> (see section 3.5)	<b>Representing the Council to other EU-Institutions</b> (see section 3.6)	<b>Internal Representation of the EU</b> (see section 3.7)
<ul style="list-style-type: none"> <li>▶ Representing the EU to third countries in the troika format                             <ul style="list-style-type: none"> <li>▪ negotiations in international and regional crises</li> <li>▪ co-ordination of the presidency communications in the name of the EU</li> </ul> </li> <li>▶ Representing the EU position in international organisations and conferences</li> <li>▶ Co-ordination, negotiation and realisation of decisions in CFSP</li> </ul>	<ul style="list-style-type: none"> <li>▶ Representing and negotiating on behalf of the Council <i>vis-à-vis</i> the EP and Commission</li> <li>▶ Representing and speaking for the Council in committee and plenary meetings in the Parliament</li> <li>▶ Co-ordination of inter-institutional contacts</li> </ul>	<ul style="list-style-type: none"> <li>▶ Dramaticisation of the EU policy process <i>vis-à-vis</i> citizens, media and political actors to demonstrate the EU's capacity to act</li> <li>▶ Strategically reducing the EU-agenda to a few, well defined priorities or conflict-lines, which then form the focus of the European Council's meetings</li> <li>▶ Staging negotiation results—in particular from summits—using EU-related symbolism, all for the edification of the media</li> </ul>
<p><b>Focus</b> <i>External representation of the EU</i></p>	<p><b>Focus</b> <i>Representation of the Council in inter-institutional dealings</i></p>	<p><b>Focus</b> <i>Dramaticisation of the policy process and demonstration of the EU's capacity to act</i></p>

### **3.6 The Council Presidency in contact with other EU institutions**

The Council Chair is also responsible for the representation of the Council to other EU-Institutions. At the beginning of each Presidency, the respective Council Chair presents its programme to the plenary of the EP. Usually, representatives of the Presidency attend all sessions of the Parliament's committees in order to speak on behalf of the Council on the matter at hand as well as to present its views on current legislative projects. In addition, the Chair represents the Council in inter-institutional negotiations with the EP. Legal acts falling under the co-decision procedures, but also negotiations on the budget, are pre-negotiated in the so-called trilogue format, (i.e., between the EP rapporteur, the responsible Commissioner and the Council Presidency). These contacts between the Council Chair and other EU-Institutions take place on various levels. On the working level, negotiations proceed either directly between officials of the Presidency, the administration of the European Parliament and officials of the Commission or over the General Secretariat. On the political level, the head of government, ministers and state secretaries of the Presidency conduct the talks with the President of the EP, the Parliament's political groups, the committee's chairmen and individual rapporteurs as well as with the President of the Commission and individual Commissioners.

### **3.7 Internal representation of the EU: staging the political process**

One of the tasks for a Council Presidency is to demonstrate the Union's capability to act to EU-citizens, the media and various political actors in the presiding government's native country. As in comparable processes in the national political arena, Council presidencies aim to stage negotiations and their results with maximum effect in the media using dramaturgy and symbolism—tools particularly in evidence at summits of the European Council. Part of these well-targeted effects are the planning of suspense curves, the selection of locations for extraordinary summits and informal sessions of the Council of Ministers, the presentation of the Presidency's logo and the coining of a catchy slogan. Thus, the political agenda of the EU is usually concentrated on a few, closely defined priorities and conflict lines, which then form the

focus of the two meetings of the European Council, around which the work of the six-month term is in turn structured. Common European challenges and problems (illegal immigration, climate change, external crises) are heavily dramatised and the respective solutions set on stage so that observers receive the impression that the heads of state and government meeting in the European Council have identified and solved an acute problem.

## **4. Variables for the Determination of Demands on a Council Presidency**

### **4.1 Determination of demands**

Which 'situational' variables define the demand for specific functions of the Council Chair? Should the Chair act as a mediator or should it rather give its own impulses? In most cases it has to fulfil several functions at once. But which one is the dominant function using up most of the Chair's resources? As mentioned above, this depends on the context in which negotiations take place: different situations establish different demands on the Presidency.

#### **a. Degree to which the member states' positions on current dossiers are already known on the European level**

Approaching new topics, it is mainly up to the management capability of the Chair to explore national positions. Concerning dossiers that have already been under negotiation for a long time, its tasks lie in mediation efforts. Strategic guidance, in particular the introduction of a long-term perspective on the European agenda, may be both relevant for newer dossiers, where positions are yet unclear, or for long-term, highly sensitive dossiers in order to detach debates from short-term negotiating deadlocks.

#### **b. Existence of additional actors that take on a mediation role**

The existence of additional mediators (Commission or other national delegations), reduces the demand for brokering, management and guidance by the Council Chair. In addition, the requirements for its role as representative of the EU in CFSP may be smaller if, for example, other member states or groups of member states engage in the name of the Union in mediation efforts in the case of regional conflicts or crises.

**c. Existences of time limits, which may result in high political costs if they are not met or if negotiations break down**

Fixed deadlines on EU negotiation processes place high demands on management and mediation efforts. In particular in dossiers under the co-decision procedure, the Presidency is under pressure in its function as representative of the Council to the EP and the Commission. In the same way, time limits in the area of CFSP increase the demand on the Council Chair as representative of the EU.

**d. Degree of sensitivity of issues at stake**

Politically-sensitive issues, which according to some member states gnaw away at the foundations of national sovereignty (Justice and Home Affairs, bio technology policy, industrial and defence policy) and are heavily contested amongst the actors involved, place high demands on the management, mediation and guidance capabilities of the Council Presidency. In the case of sensitive dossiers that are under negotiation with the EP under the co-decision procedure, the Council Chair is needed in its position as co-ordinator and representative of the Council in the EP.

**e. External crises and shocks**

Sudden external crises place exceptionally high demands on the management and mediation capabilities of the Presidency. The unexpectedly high demands placed on the Council Chair by unforeseen events in CFSP are inevitably to the detriment of its other priorities. Management capabilities are, therefore, particularly needed in view of the necessary reallocation of resources within the government chairing the Council. Moreover, in crisis situations it is up to the Chair to demonstrate the ability of the EU to act quickly and collectively. This is necessary to ensure that the Union is perceived internally as an efficient community that earns the trusts of its citizens.

Although the aforementioned variables are analytically viewed in separate terms, they do have mutual effects on each other. The demands on the Presidency in emergent, highly sensitive issues are different from those that have been debated for a long time with equal sensitivity. An analysis of the conduct of a Council Presidency therefore has to keep the interaction between the individual variables in mind. They may be mutually reinforcing or complementary, but also result in contradictory demands on the Presidency (dossiers that have already been debated in the EU-Institutions for a long time in general place low

demands on the management function of the Presidency; however if they count as sensitive, the demands in all functions are high). In this respect, some of the variables have a stronger impact on the conduct of the Presidency than others.

**4.2 Factors for success and instruments for implementation**

How can one measure the degree to which a Presidency has effectively and efficiently fulfilled the demands placed upon it? Firstly, it is to be noted that a Presidency may fulfil all functions very well and may still not reach the desired negotiation results as it is just one actor amongst many in the negotiation process. A clear cause-and-effect relationship between the fulfilment of Presidency functions and a negotiation success does not exist. However, the better a Chair fulfils its function, the greater its chances are for making progress in the negotiations.

The achievement of a Council Presidency in the fulfilment of its functions cannot be calculated “mathematically,” but for each function certain factors for success can be identified; these may be consulted as assessment criteria for a “satisfactory” fulfilment. Still, such an assessment is prone to a certain degree of subjectivity, being generally based on incomplete information, a risk that may be minimized, but not completely dispelled, by means of our research method (see above, p. 9, chapter 2.1).

In its management role, it is particularly essential for the Presidency to plan its working programme on the national level as regards to content and strategy well before the beginning of its presidential term by defining and hierarchically ordering the central issues for the upcoming negotiations. Clear priorities are a prerequisite for an efficient use of management and mediation resources. Part of this preparatory phase is also the co-ordination with its predecessor and successor in the Council Chair in order to guarantee coherence and continuity in European politics. In order to allow for a smooth policy process, co-ordination procedures also have to be conducted with the Commission, as that Institution is responsible for the annual legislative programme, around which the Council has to orient its work. Furthermore, processes safeguarding coherence have to be initiated in a timely fashion in view of inter-institutional schedules for on-going negotiations and multiannual programmes authorised by the European Council in some policy

areas (e.g., the Hague five-year programme in Justice and Home Affairs). Internally, they also have to be co-ordinated within the administration and relevant functional ministries of the country holding the Presidency. Finally, a few weeks before the beginning of the Presidency's term, its working programme should be presented officially in the Council.

An important aspect of chairing Council sessions is that the Presidency prepares the agenda and background documents for the national delegations as early as possible, so that they may formulate their positions in due time. It is important that the Presidency sticks as closely as possible to the meeting schedule it sets up in advance since the smaller member states in particular need sufficient time to formulate their positions and consult with their national parliaments. Negotiations also have to be focused on a limited number of points, and thus be pre-structured in such a manner as to avoid discussions from getting out of hand. Interventions by the Presidency have to be concise and at best include proposals for concrete modifications.

As regards the "broker function," "strategic guidance" as well as the "initiative and impulse function" a good Chair may distinguish itself primarily through its neutrality. This is the main prerequisite for its credibility as the broker of compromises between different actors. A good fulfilment of these tasks also requires that the government holding the Chair removes possible conflicts between its own national interests as a Council delegation and its impartiality as Council President early on (see chapter 5). In order to avoid jeopardizing the other member states' trust in its neutrality, the Chair has to disclose to all delegations in the Council those areas where it has a strong national interest and to counter reservations voiced by other member states before the beginning of its term with confidence-building measures. In any case it is up to the Chair to make an effort on presenting compromises acceptable to the majority in the Council and possibly also in the EP even in the face of its own distinct self-interest. At its disposal, the Presidency has a range of instruments aiming at avoiding conflicts of neutrality. For instance, the Chair may turn brokering over to more neutral actors such as the Commission or other national delegations in the Council. Or it may pursue the postponement of accordant issues to the term of the succeeding Presidency, although this course of action has to be co-ordinated with the respective country. Instead of authorising its own reports or initiatives, the Chair may delegate

this to the Commission, expert groups or groups of like-minded member states incorporating its own ideas and priorities via these "indirect" channels. If a government aims at putting its own, new projects on the agenda during its term as President, it has to show early on that this is not only in its own interest but also in that of all EU member states.

Another positive element for mediation efforts is a high degree of inclusiveness, a term referring in essence to the inclusion of as many member states as possible before negotiations start, the recourse to bilateral consultations and informal discussion fora as well as personal engagement and commitment from the central actors of the country holding the Presidency.

In order to effectively fulfil the function of strategic guidance, the Chair also has to face up to locked negotiation situations and supply them with new impulses while referring to long-term European goals or EU programmes that member states have already reached a consensus on. It is this function in particular where the Chair has a relatively broad room of manoeuvre. If the situation arises, the Chair may justify its own inaction in a dossier which is pressed by third parties by pointing to its limited resources and the necessity of dedicating them to other priorities. Alternatively, the Chair may argue that the ground for renewed negotiations is still too boggy to allow for an agreement during its term. Still, the Chair has to avoid giving the impression that certain dossiers are being promoted—or not—solely due to his national self-interests.

In order to fulfil its representative functions properly and to demonstrate to act to the citizen the Union's capability, the Chair also has to stage the suspense curve. This has to be done in such a way that only a handful of controversial negotiation items remain for the two summits of the heads of state and government; these may then be declared priorities and, when an agreement is reached, presented with dramaturgical skill to the public.

This list of the instruments and factors that form a basis upon which to assess whether a Council Chair has fulfilled its respective functions well, is not complete. The analysis of the conduct of the German Presidency in the individual contributions will therefore elaborate further factors for success while at the same questions will be raised as concerns their applicability to future presidencies.

## 5. Internal Variables that Support or Limit the Presidency's Capability to Act

Variables originating from within the country holding the Presidency may restrain or support it in fulfilling the tasks demanded of it.<sup>9</sup>

### a. Extent of the preparation of negotiations by the Presidency

It goes without saying that extensively preparing for the term as EU Chair has positive effects on the fulfilment of tasks associated with this position. If working documents and compromises are provided too late, if fall-back positions are not defined and if debates in the Council sessions are structured badly, this will have unfavourable consequences for the productivity of negotiations and therefore the chances for reaching a compromise. Moreover, the ability to subordinate one's own interests or at least disclose them and delegate mediation tasks to third actors (Commission, other delegations in the Council etc.) is important to generate confidence in the Chair.

### b. Ability to reach consensus at the national level

Competing visions apparent at the national level may damage the Chair's capacity to act on the European level and impede it in the fulfilment of its tasks. If national ministries hold opposing views on certain issues, time and again this leads to a situation where the EU Chair either fails completely at advancing the respective dossier in Council negotiations or only does so in the face of high transaction costs. Similarly, frictions between partners in a governing coalition, between various domestic governmental levels or between government and parliament may have negative effects on the Presidency's capacity to act.

In addition, if a government attempts to use its prominent position as Chair to promote an objective with great importance for its national standing, this usually has a negative effect on its ability to fulfil its tasks as EU Council President. The existence of strong self-interest in one policy area by the government chairing the Council or one part of the government (e.g., a part of a governing coalition) make it more difficult for the Presidency to act as a neutral broker in Council negotiations. In particular, if formal or

informal deadlines have to be respected, if there is a strong pressure to find an agreement and/or if other states aim at pushing sensitive dossiers, the insistence on national interests to preserve internal peace, i.e., at the national level, may turn out for the worse in negotiations. Even the task of putting urgent negotiations in perspective with long-term European objectives is hardly achievable in a desirable fashion for a Chair entangled in its own short-term national interests or coalition disputes. In view of its role in the management of Council business, a Chair may be tempted to structure and pace negotiations solely for the benefit of its own position, which may severely reduce its credibility and the will for co-operation of other national delegations in the Council.<sup>10</sup>

The privileges enjoyed as Chair and representative of the Council *vis-à-vis* other EU-Institutions may also be misused by the Presidency for the promotion of national objectives. Time and again allegations have been voiced against Council Presidencies accusing them of using their privileged position as speaker and representative of the Council in the EP in order to promote special positions in the negotiations with the Parliament. After all, negotiations with the EP—in particular the trialogue format in the co-decision procedure—are closed, so that the other delegations in the Council are unable to monitor in “real time” the Chair's conduct of negotiations nor the degree to which it sticks to the mandate given to it by the Council.

There are a few situations where the careful pursuit of national interest overlaps with progress on the European level. For instance, the introduction of a topic new to the European agenda might be such a case: here the government holding the Presidency might aim to combine its national interest with the task of giving impulses, as the negotiating positions of the other member state delegations are still uncertain. The same applies to blocked or locked negotiations that are to be revived with new initiatives. In these cases, it is especially important that the Chair manages to *disclose its own initiative as such, and communicates it as a project of overall European interest*. Only then can other delegations build up the necessary confidence in the Presidency's neutrality.

<sup>10</sup> Among other things, this may occur by determining which working level and which working group or committee is concerned with the respective dossiers, or by setting the agenda of Council meetings and curtailing discussion points or restrictions on speaking time. On the instruments available for a Council Presidency to promote its own interests, see Tallberg, *Leadership and Negotiation* [see fn. 2].

<sup>9</sup> In the following chapter, our analytical framework departs significantly from the narrower analysis by Schout and Vanhoonacker; for details see Kietz, *Methoden zur Analyse von EU-Ratspräsidentschaften* [see fn. 1].

## 6. A Presidency's Resources

In order to fulfil its tasks, the Council Chair has certain resources at its disposal. First and foremost, Council Presidencies may draw on the staff and facilities of their administration exclusively dedicated to European Union affairs (e.g., EU departments in ministries). This administrative staff often brings with it a working experience of many years in the EU Council system. The extent of such resources varies strongly from Chair to Chair. In terms of the Union's external relations, meanwhile, a Presidency can also build upon the expertise of bodies in its foreign ministry as well as in other ministries which supervise special bilateral relationships (towards the Maghreb in the case of Spain or Italy; towards Eastern Europe in the German case, etc.). The Presidency can, by the same token, use the political weight of these relations in the European and international arena. Finally, policy-specific resources (e.g., the wide acknowledgement that the presiding country holds a leading position in the respective area) may be employed in negotiations in the Council of Ministers. One example might be Germany's standing in climate and environmental policy.

## 7. Limits of Our Approach

By applying the analytical framework outlined above, the contributions present a detailed picture of the negotiating context in which the Presidency found itself in the various policy fields and dossiers, as well as its tasks, options and limits for action. The subsequent results are, of course, also set out.

All the same, this study has deliberately avoided two tasks: *firstly*, we refrain from a normative evaluation of the negotiation results, instead analysing the Presidency's functions and the success factors and limitations identified in that context. As such, this approach allows for the fact that, as only one of 27 member states in the Council, the government holding the Presidency bears only limited responsibility for the contents of negotiation results. The results are always a compromise between the preferences of the member states (and those of the European Parliament as well as, on occasions, of third states) and as such do not simply reflect the interests of the Presidency. In order to make a statement on the Chair's performance, we can only analyse the way it has supported the achievement of compromises by

fulfilling its tasks in the political process. Nevertheless, the Chair's efficient fulfilment of its functions does not guarantee (normatively) good results. Here one encounters the limits of process-oriented analytical frameworks. The assessment of negotiation results from the point of view of their content will therefore be given only limited room in this study. *Secondly*, we do not question the general priorities of the German Presidency; our study aims at analysing the fulfilment of the various presidency functions in those policy areas in which the German Presidency declared that it wanted to achieve progress.

# The ‘Berlin Declaration’— Trial Run for Negotiations on the Constitutional Treaty

Daniela Schwarzer

The ‘Berlin Declaration’ was adopted on the fiftieth anniversary of the Treaties of Rome. The Declaration, which had been drafted by the German EU-Presidency, was signed on 25th March 2007 by EU Council President, Angela Merkel, together with the President of the European Parliament, Hans-Gert Pöttering, and the President of the European Commission, José Manuel Barroso, at an informal summit of the 27 heads of state and government.

The Declaration is neither a treaty nor an official document of the Council and as such not legally binding. It summarises the achievements of European integration since the Treaties of Rome and underlines the importance of the European community of values. In its second part it sets out the challenges to which the European Union should present an answer. In the third and final part, it emphasises the necessity of “renew[ing] the political shape of Europe in keeping with the times.”<sup>1</sup> Although it avoids the term “constitution,” the Declaration does refer to the “aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.” A large amount of political weight was attached to this part in particular.

## 1. Starting Point and Challenges for the Presidency

The Berlin Declaration was an important part of Germany’s strategy for dealing with the Treaty establishing a Constitutional Treaty for Europe (here referred to as the Constitutional Treaty) which had been defeated in two referendums.<sup>2</sup> After June 2005, the European Union had entered into a collective period of ‘self-reflection’ on its constitutional future. The first twelve months of this ‘reflective period’ had been so unproductive that the European Council

had to extend the period in June 2006. At this point the German government, which continued to support the provisions of the Constitutional Treaty, did not know whether there would be another attempt to bring the Treaty into force. At the start of the German Presidency, 19 member states had ratified the Constitutional Treaty<sup>3</sup> and both France and the Netherlands had rejected the Treaty in referendums. The remaining eight member states had decided not to ratify the Constitutional Treaty on this basis, and some governments had started to question its provisions: Poland baulked at the “double majority,” Great Britain objected to the Charter of Fundamental Rights and the proposed EU foreign minister, while the Netherlands demanded more subsidiarity and a stronger role for national parliaments. France was no longer active on the European scene because of the political weakness and lack of ideas of Jacques Chirac; meanwhile, the candidates to succeed him established their European political positions during the campaign for the French presidency: Ségolène Royal promised new negotiations and a new referendum; Nicolas Sarkozy campaigned for a mini-treaty which would retain the most important reforms and be ratified by parliament.

In these complex circumstances, the European Council in June 2006 asked the German government to provide a roadmap in respect of the Berlin Declaration and the Constitutional Treaty and to foster consensus. Observers saw it as a stroke of luck that this task had fallen to the German EU-Presidency: The largest member state, and one which was perceived to be in favour of integration, Germany was seen (despite a few points of tension) as fair towards large and small EU member states alike. It was thus perceived as a credible actor interested in a rational debate. The German government was well equipped for this role. Domestically, it was stable as there were no impending elections and arguments over European policy and

<sup>1</sup> Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome, 24 March 2007, [www.eu2007.de/de/News/download\\_docs/Maerz/0324-RAA/English.pdf](http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf).

<sup>2</sup> See the contribution by Andreas Maurer in this study [pp. 25].

<sup>3</sup> This figure includes Germany because the Treaty was approved by the lower and upper houses of parliament. However, in order for the Treaty to take effect, it would have had to be signed by the President who at the time was waiting for a ruling of the Federal Constitutional Court before completing the ratification.

competences in the coalition between CDU and SPD were contained so as not to endanger the Berlin Declaration and the June Summit.

Because of the sensitivity of the matter, high demands were placed on the management, brokerage and guidance abilities of the German EU-Presidency *vis-à-vis* the 26 other EU governments. At the same time, there was a debate about how to engage citizens and how to deal with the problem of national governments unable to conjure the support of their electorates.<sup>4</sup> That said, it was not possible to detect any general increase in EU scepticism among citizens.<sup>5</sup>

### 1.1 Choice of procedure

Two possible approaches to using the Berlin Declaration as a means to engage citizens and give direction to the EU political process were put forward: the participatory approach (input legitimacy) would have favoured a broad public discussion about the values, aims and structure of the EU. The result would be one for which the EU population (or at least the members of the EU and national parliaments)<sup>6</sup> would have a sense of ownership not just because of the contents but also because of a procedure which was seen as legitimate, transparent and efficient. The group in favour of this approach included EU- and national parliamentarians<sup>7</sup> and parts of the Commission, in particular the EU Commissioner for Institutional Relations and Communication Strategy, Margot Wallström. She tried to link debates and initiatives launched in the framework of the communication strategy (the so-called "Plan D") with the drafting of the Berlin Declaration. Critics of this public-orientated approach were wary that a broad discussion would

<sup>4</sup> France and The Netherlands had rejected the Constitutional Treaty. The polls manifested a growing opposition of enlargement negotiations with Turkey and Croatia, one of the few dossiers in which there had been substantial progress between the failed referendums and prior to Germany taking over the Presidency in January 2007.

<sup>5</sup> See the Analysis of Andreas Maurer and Anne Laumen, *Jenseits des "Permissive Consensus." Bevölkerungsorientierungen gegenüber Europäischer Integration im Wandel?*, Berlin: Stiftung Wissenschaft und Politik, August 2006

<sup>6</sup> So for example the possibility of a "parliamentary editorial conference" was suggested in addition to a broad public consultation.

<sup>7</sup> See for example the petition of the Green Party in the German Bundestag on 31 January 2007, Bundestagsdrucksache 16/4171, <http://dip.bundestag.de/btd/16/041/1604171.pdf>.

not lead to any result in the given timeframe and complex conditions.

The alternative approach finally chosen by the German EU-Presidency was to initiate a non-public procedure and to then present the public as good a result as possible at the end which would have mobilised and inspired the public through its content and the means of its presentation (output legitimacy).

Public involvement was not a significant aspect of the procedure chosen by the German Presidency. The preparation of the Berlin Declaration was for months treated as highly confidential. The German EU-Presidency sought to avoid a public debate about the form and substance of the Declaration. The intensified public consultation and communication processes within the framework of Plan D which ran parallel to the preparation had only an indirect influence, if any, on the content of the Berlin Declaration. This choice of *modus operandi* has always been portrayed as the only practical option under the strict timetable (Declaration in March, Constitutional Treaty Roadmap in June). However, the basic features of this procedure were decided upon a year before the Presidency started. Had the Declaration been accorded a different strategic role (e.g., to involve parliaments or the public), it could probably have been handled differently in co-operation with other Council presidencies.

## 2. Roles of the Council Presidency

### 2.1 The impulse-giver function of the Council Presidency

The Berlin Declaration was released as part of the compulsory programme of the Council Presidency. While there was no debate about whether the signing of the Treaties of Rome would be celebrated, there were rival offers with regard to the location—the Italian government had declared an interest in arranging the celebration in its own capital.<sup>8</sup> The German government laid the formal basis for the festivities to take place in Berlin in June 2006. Political communication was not yet amongst its prime motives. It saw the Declaration as an important part of its strategy to save as large a part as possible of the Constitutional Treaty at the June Summit, and hence wanted to retain full control over the process. Germany had successfully introduced into the conclusions of the final

<sup>8</sup> Celebrations were also planned in Brussels.

Summit of the Austrian EU-Presidency the formulation that “the European Council calls for the adoption, on 25th March 2007 in Berlin, of a political declaration by EU leaders...commemorating 50 years of the Treaties of Rome.”<sup>9</sup> This declaration was to set out European values and ambitions and confirm the EU leaders’ shared commitment to deliver them.<sup>10</sup> The conclusions insert the declaration into the future procedure for dealing with the Constitutional Treaty. The German Presidency thus exercised its function to provide impetus even before the beginning of its tenure began.

## 2.2 Management of procedure in preparation for discussions on the Reform Treaty

The German government opted for a confidential *modus operandi* despite this procedure’s inferior ability to mobilise the public, as it was convinced that the constitutional procedure could only be reactivated if it was possible to define the aims and values of the 27 member states by the informal anniversary summit and that this confidential procedure had to be completed without public involvement. The most important motivation behind the Berlin Declaration was to give direction at the highest level and so create a common starting point for a political impetus in the direction of a reform treaty.

The Berlin Declaration was to signal that the 27 member states were ready for a new common effort. So as not to threaten this position, the German EU-Presidency was careful not to allow the preparation of the Berlin Declaration to be interpreted as an attempt to solve the constitutional crisis. It made only one exception: the decision to set 2009 as target date for the ratification of the new Reform Treaty provides a strict timetable for the negotiations. Because the ratification of a treaty concerning primary law takes about eighteen months, the Berlin Declaration anticipated that the intergovernmental conference on the Reform Treaty would have to be completed under the auspices of the Portuguese Presidency in December 2007. However, the EU-Presidency avoided any more far-reaching commitments in the section dealing with the reform of EU institutions/Constitutional Treaty in

the expectation that there would be political arguments which would endanger a common approach in respect of the Constitutional Treaty in June.

## 2.3 Management and brokerage between 26+2 Focal Points

In a letter dated 2nd January 2007, EU Council President Angela Merkel asked the 26 other heads of state and government to nominate a so called “focal point” (personal delegate) and a possible deputy. These were in the main the most important EU advisors of the heads of state and government and functioned as ‘sherpas’ for the consultations on the Berlin Declaration and on the way ahead for the Constitutional Treaty.

As cosignatories of the Berlin Declaration, the European Commission and the European Parliament had the same rights as the national focal points. The President of the Parliament, Pöttering, had been given the mandate to sign by Committee Presidents; Barroso had been authorised to sign by his colleagues in the Commission. Both of them nominated personal delegates for the talks.

Working with the focal points had two advantages from the point of view of the German Presidency. Firstly, these bilateral discussions made it possible to quickly grasp the positions of the heads of state and government and to integrate these individuals directly and personally. Secondly, the Chancellery could circumvent the Permanent Representations in Brussels by working directly with the focal points. The main concern was that the exchanges would not be kept confidential and that dealing with the declared public commitments of individual governments would be more difficult if the discussions ran via the Permanent Representations. The goal of the Council Presidency was to avoid the necessity of negotiations on the text of the Berlin Declaration by establishing a consensus and putting forward a consensual draft with the possibility of giving feedback bilaterally.

The focal points received a questionnaire in mid-January which asked key questions about the structure, length, language, the main substantive points and the procedure of the Berlin Declaration. These points were dealt with in the first round of bilateral consultations led by Uwe Corsepius (Chancellery) and Reinhard Silberberg (State Secretary in the Foreign Office). For most of the delegations, one meeting was sufficient in order to elaborate the most important preferences and solutions. Only in some of the more

<sup>9</sup> Conclusions of the Council of the European Union, June 15 and 16, 2006, [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/90111.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf).

<sup>10</sup> see above

complex cases (e.g., the Czech Republic) were follow-up meetings required.

The Council Presidency was keen to demonstrate confidentiality and fairness towards the focal points (and thus the heads of state and governments). Regarding the Constitutional Treaty (in the context of which the Berlin Declaration was rightly seen by most delegations), the Presidency had made clear what it wanted to achieve: to revive the discussion on the Constitutional Treaty in order to implement a maximum of the proposed reforms.<sup>11</sup> In order to achieve its intentions, the German government had to make it clear that it would function as a neutral broker between the positions of the other governments. It took care, therefore, that all focal points felt that they were taken seriously and had the same amount of time in the first round of consultations so as not to allow an impression that it was differentiating between small and large countries or between countries that had ratified or rejected the Constitutional Treaty.

Apart from the structured bilateral consultations there was the possibility for the German EU-Presidency and the focal points to seek further exchange via telephone. During the preparation of the Berlin Declaration, the EU-Presidency consciously demonstrated that it was open and responsive should individual delegations require meetings or information. Because there were no multilateral discussions on the text, the Council Presidency put forward certain decisions for or against individual points of the Declaration to the focal points and explained any counter-arguments. It referred to the long term perspective of EU integration in order to embed areas of dispute into the larger context and to strategically guide the discussions. In this way, a consensus was worked out which included the 27 heads of state and government and the European Parliament and Commission. The Council Presidency was the only institution to exercise a brokerage function in respect of the Berlin Declaration. The Commission and the Council Secretariat did not play an active mediation role but were kept informed.

During the bilateral consultations, no draft declaration was made available to officials as a basis for discussion. The Council Presidency prevented a debate on the text in the national parliaments and in the European Parliament by releasing the draft shortly before the anniversary celebrations. This limited the pos-

<sup>11</sup> This was made clear in a number of Angela Merkel's speeches in 2006 and 2007.

sibility of public involvement.<sup>12</sup> On the sole occasion that the 27 heads of state and government had the opportunity to discuss the Berlin Declaration together, only an annotated draft structure was made available to them.

The Council Presidency chose the evening dinner at the Brussels March Summit (two weeks before the anniversary summit) in which the heads of state and government (but not the foreign ministers or advisors) participated for a discussion of the draft. Chancellor Merkel presented the opinions on the content of the Declaration which had emerged from the bilateral consultations. The heads of state and government put forward their priorities (such as the mentioning of immigration, energy and other important policy areas) and discussed how to deal with points of conflict (such as the mention of the Constitutional Treaty or of future enlargement, the date for a reform of the institutions etc.).

On that night the Council Presidency also secured support for the further procedure: it would elaborate a draft after the Brussels Summit. National delegations would have access to critical parts of the text prior to the anniversary summit so that they could react before the final version was released shortly before the informal summit. There would be no discussion at the anniversary summit itself. The heads of state and government would approve the text during the festivities as an informal Council document. Chancellor Merkel (with the mandate of the Council), Commission President Barroso (mandated by his Commission colleagues) and President of the Parliament Pötering (mandated by the party groups in the Parliament) would sign the document.

From the point of view of the German government, the successful conclusion of the March Summit was a basic condition for the release of the Berlin Declaration. There were two reasons for this: on the one hand, a visible failure of the negotiations on energy and climate policy would have cast doubt on the decision-making and abilities of the EU in a policy area which at that time enjoyed a high measure of public attention. Internally the failure of these negotiations would have brought with it a large amount of political tension because some countries (such as Poland) associated very clear—and from their point of view

<sup>12</sup> Foreign Minister Frank-Walter Steinmeier gave the Committee on EU Affairs of the German Bundestag an update on developments; see [www.bundestag.de/aktuell/hib/2007/2007\\_074/07.html](http://www.bundestag.de/aktuell/hib/2007/2007_074/07.html). All governments could have followed this procedure even without detailed knowledge of the draft text.

vital—interests with the forging of a common policy for energy security. In the event of a failure, these countries' position towards the Berlin Declaration would have hardened and made a compromise less likely. On the other hand, the energy compromise of the Spring Summit made possible the adoption of concrete goals in the second part of the Berlin Declaration and the signalling of a common willingness to act: "We intend jointly to lead the way in energy policy and climate protection and make our contribution to averting the global threat of climate change."<sup>13</sup>

Although both the Brussels Summit and the informal summit in Berlin were closely linked in political terms, the separation of political issues proved a success. Had the Brussels and the festivities been closely connected, the finished text would have had to be put forward before the Brussels Summit (or there would have been extensive negotiations on the text in the evening). The quick succession of meetings between the heads of state and government created a positive dynamic. This was useful for the second half of the Presidency which was mainly spent preparing the June Summit on how to proceed with the Constitutional Treaty. The creation of a consensus in the framework of elaborating the Berlin Declaration, and the achievement of a commitment to common values and aims, made it possible to refer in the Declaration to the aim of completing the reform of the EU by 2009. Together, these two elements put into context the later efforts to find a compromise on how to proceed with the Constitutional Treaty.

## 2.4 Internal representation

One of the roles of the Council Presidency is the 'stage management' of the European political process with regard to the citizens of the EU, media and officials in the member states. This is done in order to demonstrate the EU's ability to act.<sup>14</sup> The March Summit with its decisions on energy and climate policy played an extremely important role in this respect, because these decisions—following public disagreement—demonstrated the EU's ability to act and find a compromise.

<sup>13</sup> Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome, 24 March 2007, [www.eu2007.de/de/News/download\\_docs/Maerz/0324-RAA/English.pdf](http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf).

<sup>14</sup> See the role-description in the introductory chapter on methodology by Daniela Kietz [pp. 7].

Whilst, on the whole, the text of the Berlin Declaration was not criticised<sup>15</sup>, there was criticism of the way it was drafted<sup>16</sup>. This criticism concentrates on two aspects dealing with the internal representation and the stage management of the political process: Firstly, that there was too little public participation in the discussions and, secondly, that information about the Declaration came too late for member state governments to involve their national electorates. If one recalls the various available modes of drafting the Declaration that were outlined above, it is clear that its critics based their arguments on different premises from the Federal Government: they argued that an open and—as such—more broadly legitimated drafting process would have been appropriate. From some critics' point of view, internal representation did not just mean presenting finished results but also seeking positive participatory dynamics and thus strengthening the long term sustainability and social support for the ongoing process of integration.

In the wake of the failed constitutional referendums, various answers have therefore been proposed within the EU to the twin questions, on which level should direction be given (on the level of heads of government or the general public) and to what extent does European integration as an elite project carried out behind closed doors remain a sustainable strategy following the negative experience of the Nice Summit (which led to the calling of the constitutional convention via the Declaration of Laeken) as well as subsequent referendums.

The German Council Presidency wanted to give the 27 governments a political impetus in the right direction. In its opinion, there was no need for the participation of the citizens in order to speak of "We the citizens of the European Union" because the national governments are legitimated by their voters. However, doubts were articulated in respect of the countries in which the failed referendums had taken place: Had not the failed referendums proven that the electorates had refused to follow their governments in an important future issue? Can a procedure which focuses on governmental consensus be sustainable if

<sup>15</sup> One of the few exceptions was (apart from the Czech President) Pope Benedict XVI who at a European Bishops' Conference lamented the fact that the declaration contained no reference to God.

<sup>16</sup> For criticism in the German Bundestag see the summary of the discussions in the Committee on EU Affairs of 21 March 2007, [www.bundestag.de/aktuell/hib/2007/2007\\_074/07.html](http://www.bundestag.de/aktuell/hib/2007/2007_074/07.html).

the reservations and the demands of the citizens are not appropriately considered?

The initiatives of the EU Presidency to represent the EU internally towards its citizens in the whole of the EU were comparatively weak. This does not mean that the EU-Presidency had no interest in fostering media attention around the Berlin Declaration. The decision to hold an informal summit in Berlin with all the heads of state and government to commemorate the anniversary of the Treaties of Rome was seen by the German government as an integral part of the 'communication of Europe' at the national level because the presence of the heads of state and governments in addition to the public events (parties, concerts) would secure special national attention. The challenges of communicating European policy in other countries (such as the "difficult" referendum countries) have not yet been dealt with.

### 3. Conclusions

The German EU-Presidency was able to commit all governments to common values and aims under politically highly complex circumstances and to settle a time frame for the reform of the EU institutions. Within the framework of the chosen logic to give direction on the level of the heads of state and government the objective was successfully achieved under very difficult conditions. The work with the "focal points" made possible confidential and efficient consultations and contributed to the fact that the first fundamental discussion on the values and aims of the EU since the first enlargement round of 1st May 2004 led to a consensual result. This was an important step in the success of the June Summit on the EU Reform Treaty.

This conclusion does not, however, provide an answer to the question whether the procedure leading to the Berlin Declaration was a method which will make possible further integration in the complex configuration of the EU-27. When analysed in accordance with the criteria of the rival premise, namely that giving direction in a *sustainable* manner requires the involvement of elected representatives and electorates, the contribution of the Berlin Declaration and its drafting procedure must be considered less significant. The public visibility of the Declaration disappeared within a few days, whilst the heads of state and government did not visibly convey the new consensus to their electorates. The European leadership

performed by national politicians in some member states has, like the ability of these politicians to mobilise electorates in favour of European political goals, decreased rather than increased in recent years.<sup>17</sup> Against this background, the question remains whether the consensus achieved is sustainable and effective in the long-term and how long it will serve to politically bind the governments.

<sup>17</sup> For a discussion of the possible reasons of this trend see: Kai-Olaf Lang and Daniela Schwarzer, "Die Rolle der Nationalstaaten in der größeren Europäischen Union," in: *Ausblick: Deutsche Außenpolitik nach Christoph Bertram*, Berlin: Stiftung Wissenschaft und Politik, September 2005, pp. 34.

# Pruning, Plundering and Reconstructing. Work on the Constitutional Treaty

Andreas Maurer

Of the various functions which an EU Council Presidency<sup>1</sup> needs to fulfil in relation to the preliminary discussions and subsequent negotiations on treaty revision (in this case the Treaty establishing a Constitution for Europe [ECT]), the most important ones for the German Presidency were the role of impulse-giver, manager and broker. The ECT was signed in October 2004, but rejected by two member states through referendums in May and June 2005. The rules for the subsequent reform negotiations were derived from the EU Treaty (Article 4 TEU and Article 204 TEC) and the Council's rules of procedure. Yet, they were also derived from a practice which had become common in treaty reforms, namely, that negotiations of the European Council were not initiated solely by the Council for General Affairs composed of the foreign ministers and the Committee for Permanent Representatives II, but were prepared confidentially by a group of "personal representatives" of the heads of state and government.

## 1. The Context for the Negotiations: Demands on the Presidency

The events preceding the negotiations are well-known: in June 2005, the European Council agreed on a "period of reflection" on the ECT without specifying its objective. Specific ideas on the future of the EU were expressed during this period. They ranged from measures which would have been tantamount to plundering or pruning the ECT (through partial reforms based on this new treaty or within the framework of the existing treaties), to attempting to adapt the ECT's political substance to the existing treaty structure and adopting a classic reform treaty along the lines of the Treaties of Maastricht (1992), Amsterdam (1997) and Nice (2000). It was not until June 2006 that the Austrian Presidency brought together what had up until then been separate strands of ideas and set a timetable for the further handling of the EU

reform so urgently needed. The most important phase included in this timetable was to fall within the German Presidency.

The EU bodies together with the member states' parliaments and governments expressed particularly high expectations of the Federal Government in relation to the questions if, how, in what time frame and with what outcome the crisis surrounding the Constitutional Treaty could be resolved.<sup>2</sup> This was not surprising. As a large state, Germany was in the position to provide, at least nominally, the material and staffing resources necessary to fulfil the various management tasks of a Presidency in the EU's Council system. In addition, it was to be expected that the domestic conditions in Germany would be more conducive to taking on an impulse-giving role in relation to the ECT than would be the case with other EU states such as France, Great Britain and the Netherlands, whose scope for action had been considerably restricted through a change of government.

Analytically, the issues dealt with in the ECT dossier could be largely attributed the category "intensively pre-cooked". The Austrian Presidency had significantly advanced the debate on the ECT in the first half of 2006 and set a clear mandate for the German Presidency in the conclusions of the European Council in June 2006. An initial sounding out of national positions was, therefore, not yet required of the German Presidency's organisation skills. Similarly, the Federal Government was able to foresee the demands which would be placed on its time- and strategy-management capacities. At the same time, only the key issues of the national positions were known at the beginning of preparations for the Council Presidency. The Presidency did not, in most cases, enjoy insights into shallow national fall-back positions. Therefore, what was needed most on this uncertain terrain were brokering qualities. This was even more the case as the "ECT" dossier was one of the most politically sensitive issues

<sup>2</sup> cf. Andreas Maurer, "Die Zukunft der Präsidentschaft im Ratssystem der Europäischen Union" [The future of the Presidency in the Council system of the European Union], in: *Österreichische Zeitschrift für Politikwissenschaft*, Vol. 35, No. 2, 2007, pp. 139–156.

<sup>1</sup> See the introductory contribution of this paper by Daniela Kietz (pp. 7).

of the Council Presidency and therefore placed the highest demands on the management and guidance functions.

The Council Presidency could only rely on other brokers to a limited extent. The European Commission was ruled out as an alternative broker since there was no obvious common position within the College on the dossier of revising the ECT. This meant that in the various phases of negotiation, the Council Presidency had to seek strategic support itself from like-minded member states and in the European Parliament, without marginalising critics of the ECT and, in so doing, reducing the chances of reaching agreement. In particularly intense disputes, such as that with Poland on the issue of the voting system in the Council of Ministers, the Presidency was able to activate an existing circle of co-brokers— in this case France, Great Britain, Spain and Luxembourg, with the Lithuanian Prime Minister acting as “messenger”—which conducted discussions with the Polish President and negotiated after consultation with the Presidency.<sup>3</sup>

The Council Presidency was not working to any deadline which it had not set itself. However, the current budget (2007–2013), which will undergo an initial review in 2008/2009, was a source of time pressure, albeit an informal one, because at this time negotiations on the next budgetary period will begin. Large and wealthy states in particular threatened to block financial transfers to the EU if discussions on the ECT were delayed. Apart from this time pressure, however, the relatively high demands on management and brokering were of the Presidency’s own making and had already been taken into account—ever since an initial rough draft of the presidency programme was prepared in November 2005.

## 2. Limitations Imposed by Domestic Factors at the Interface between the Impulse Giver and Broker Functions

The brokering function performed by a, of necessity, neutral EU-Presidency is often a balancing act between the roles of representing national interests and acting

<sup>3</sup> cf. Dana Spinant, “Twisted Compromise Leaves EU with la Mème Chose,” in: *European Voice*, Vol. 13, No. 25, 2007; Karsten Kammholz and Peter Müller, “Was in der Nacht von Brüssel wirklich geschah” [What really happened during the night of Brussels], in: *Welt online*, July 14, 2007, [www.welt.de/politik/article1027152/Was\\_in\\_der\\_Nacht\\_von\\_Bruessel\\_wirklich\\_geschah.html](http://www.welt.de/politik/article1027152/Was_in_der_Nacht_von_Bruessel_wirklich_geschah.html).

as an impulse-giver. In terms of domestic policy, the Federal Government was under less pressure than in previous similar situations (Maastricht, Amsterdam and Nice treaty negotiations). Neither the Bundesrat nor the Bundestag had made proposals on the reform of the ECT which would have deviated from the government’s aim of “preserving the ECT’s substance.” The Presidency’s room for manoeuvre was limited solely by the Federal Constitutional Court’s decision to freeze proceedings on the constitutional complaint lodged by Peter Gauweiler, a member of the Bundestag for the Christian Social Union (CSU), against the law confirming Germany’s support of the European Constitutional Treaty. The decision from Karlsruhe “not to decide anything” meant that Germany unexpectedly found itself no longer among those states which backed the ECT unconditionally. This indirectly strengthened countries such as Great Britain, Poland and the Czech Republic, which had leaned back after the failed referenda. The German government refrained from commenting on the Karlsruhe decision.<sup>4</sup> In this way it was able to conduct negotiations with its authority largely intact and a relatively unlimited degree of leeway, albeit without the desired clean slate.

## 3. The Negotiations and the Presidency’s Strategy

In light of the stagnating ratification process for the Constitutional Treaty, the European Council of 15th–16th June 2006 mandated the German Council Presidency to conduct extensive consultations with the EU member states in the first half of 2007 and to then submit a report on this basis. This was supposed to set out possible future developments and serve as a basis for decisions on the question how the EU reform process was to proceed.<sup>5</sup> For the German Presidency, this meant that it was to a great extent confronted with the demand of playing the role of *pioneer*, as well as functioning as a *manager of expectations*.

<sup>4</sup> Andreas Maurer and Daniela Schwarzer, “Federal Constitutional Court Undermines German EU Presidency,” American Institute for Contemporary German Studies. [Original article appeared in German in: *Financial Times Deutschland*, November 11, 2006, p. 30].

<sup>5</sup> cf. Council of the European Union, Revised version of the Presidency Conclusions of the European Council (meeting of June 15 and 16, 2006 in Brussels), Doc. No. 10633/06 REV 1, Brussels, July 17, 2006, point no. 47, p. 17.

The German government created an important premise for the whole project's success with the "Berlin Declaration"<sup>6</sup>: the government's aim was that this document would "have a positive influence on the mood in Europe for a possible compromise on the Constitutional Treaty." Even if the ECT itself was not actually mentioned in the document, the Chancellor succeeded in reaching agreement among all the heads of state and government, as well as the Presidents of the EU Commission and European Parliament to place "the European Union on a renewed common basis before the European Parliament elections in 2009." This concluding statement officially mandated the Council Presidency to impose a time limit on the further reform process of the ECT. Based on the target date of June 2009, a tight timetable had been established: the Intergovernmental Conference would have to be concluded in December 2007 at the latest, since including legal-linguistic examination of the treaty text, according to past experience ratification of a new treaty in 27 states would, in ideally, take one and a half years. The Presidency derived two operative measures from this timetable: firstly, the mandate had to be set out by June 2007 and would have to be sufficiently specific in order to conclude the Intergovernmental Conference within a maximum of six months. Secondly, for this reason only a restricted circle of representatives who were directly appointed by the heads of state and government, could be entrusted with the role of preparing this mandate.

The German government's "red line" had already been agreed internally at the end of 2005, and had been explained to all its European partners on a number of occasions before the beginning of the German Presidency. This "red line" consisted of agreeing on a treaty reform which would be closely in line with the ECT which had already been ratified by 18 states. Although the Presidency was obliged to be impartial, German government representatives backed this stance. They made no secret of the fact that Germany openly supported the Constitutional Treaty and wanted to preserve "its political substance."<sup>7</sup> Otherwise the Presidency would have risked

losing the support of the circle of "Friends of the ECT." Its meeting in Madrid and declaration "For a better Europe," published there on 26th January 2007, were of vital importance to the negotiations. At the initiative of the governments of Spain and Luxembourg, those states gathered (21 after all) which had already ratified the ECT or which had a generally positive stance regarding it (Ireland, Denmark, Sweden and Portugal). By taking part in the conference they wanted to express their willingness to ratify this text.<sup>8</sup> The conference did involve a risk of opening a front between the supposed supporters and opponents of the ECT. However, it was precisely this risk which made it easier for the Presidency to consolidate its authority as a broker between the two camps. At the same time, this meeting brought about a shift in the balance of power in the debate: whereas until that point it had been mainly the "nay-sayers" and critics of the ECT who had drawn attention to themselves by engaging in a virtual competition to see who could find the most pithy terms for the demise of the disliked Treaty, now the vast majority of governments realised that they—together with the German government—would preserve the substance of the Treaty and would only negotiate on further action upon this basis. Once this message was sent, it was then up to critical states to submit concrete proposals about how they intended to make an alternative to the ECT acceptable to all.

The Council Presidency's work was also made easier by the new Dutch government. Following the precedent of the French presidential candidate, Nicolas Sarkozy, the new Dutch government headed by Balkenende clarified at an early stage in their coali-

Anlage zum Umlaufbeschluss der Europaministerkonferenz der Länder, [Conference of European ministers for the Länder, Priority concerns of the Länder within the context of Germany's Council Presidency, Annex on a resolution passed by circulation at the Conference of European ministers for the Länder], June 7, 2006; "Steinmeier will 'politische Substanz' der EU-Verfassung" [Steinmeier wants 'political substance' in the EU constitution], in: *Münchener Merkur*, July 23, 2006; Rede von Bundesaußenminister Steinmeier in der Haushaltsdebatte des Deutschen Bundestags [Speech by Federal Minister for Foreign Affairs, Steinmeier, during the debate on the budget in the German Bundestag], September 6, 2006.

<sup>8</sup> cf. "Die 'EU-Verfassungs-Freunde' sammeln sich. Treffen der Befürworter des Entwurfs in Madrid" [The 'Friends of the EU constitution' gather. Meeting of the draft's supporters in Madrid], in: *Neue Zürcher Zeitung*, January 27, 2007, as well as: Friends of the Constitutional Treaty, *For a better Europe*, Ministerial meeting of the Friends of the Constitutional Treaty, Madrid, January 26, 2007.

<sup>6</sup> cf. contribution of Daniela Schwarzer in this paper (pp. 19).

<sup>7</sup> cf. Christine Heuer, "Neuer Schub für die EU-Verfassung. Staatsminister Gloser: Text bleibt in der Substanz erhalten" [New push for the EU constitution. Minister of State Gloser: substance of text will be preserved], in: *Deutschlandfunk*, June 16, 2006, [www.dradio.de/dlf/sendungen/interview\\_dlf/510889/](http://www.dradio.de/dlf/sendungen/interview_dlf/510889/); Europaministerkonferenz der Länder, *Prioritäre Anliegen der Länder im Rahmen der deutschen Ratspräsidentschaft*,

tion agreement which parts of the ECT needed to be improved as well as the form they envisaged for a “consolidated” treaty or reform treaty, which was formally different from, but in practical terms strongly modelled on, the ECT. This showed not only the Council Presidency, but also states which were critical of the Constitutional Treaty, such as Great Britain, the Czech Republic and Poland, that any “pruning” of the ECT would not be of its entirety, not even from the perspective of the two countries whose electorate had said “No” to the ECT in a referendum. Rather, this showed that France and the Netherlands intended to largely adhere to the reforms which had been agreed in the Convention and subsequent Intergovernmental Conference of 2004.

With regard to member states’ individual positions on the ECT, the German government developed a hierarchy of priorities which, although not explicit, was important for the further course of the negotiations: firstly, it had to “take note of the position of [its] French and Dutch partners, i.e. that the Treaty cannot be resubmitted in its present form.” The second priority was that those states which had not ratified the ECT by the beginning of 2007 and did not intend to do so were to be taken into consideration. Only in third place were those states to be considered that had ratified the treaty and backed the German government’s starting position. This hierarchy was expressed in the Federal Government’s attitude that “all members must move, but perhaps some should move more than others.”<sup>9</sup>

The role of a “manager of expectations” which the German Chair needed to take on to a particularly large degree, had an important effect on the character of the Presidency’s work: due to its own positive attitude to the constitutional process, the German government retreated to negotiation settings in which meetings were not public and which only took place within a very small circle. The Council Chair made use of specific instruments in order to guide informal consultation and formal negotiation processes. The typical methods were used, for example, at intergovernmental conferences to acquire information on individual governments’ scope for manoeuvre in negotiations and, in the run-up to the European Council of June

<sup>9</sup> Reinhard Silberberg, *A Preview of Germany’s EU Presidency: The Status of the Federal Government’s Preparations*, Speech by State Secretary Silberberg for the lecture series “EU countdown: a 100 days to the EU Presidency,” October 4, 2006, [www.diplo.de/diplo/en/Infoservice/Presse/Rede/2006/061004SilberbergEuropa.html](http://www.diplo.de/diplo/en/Infoservice/Presse/Rede/2006/061004SilberbergEuropa.html).

2007, to identify potential key interests which might be concealed behind official positions, bring these closer together and finally to combine them in such a way that a consensus could be reached.

In contrast to previous intergovernmental conferences, which were usually prepared by political officials and state secretaries in the Foreign Ministries, Chancellor Merkel suggested in a letter dated 2nd January 2007, which was addressed to the heads of state and government, that they should negotiate with each other directly. The list of those who were subsequently appointed, in each case a maximum of two special representatives—the so-called *focal points*—showed that the level of the foreign ministries and their staff in the Permanent Representations to the EU which were normally involved would be largely excluded. Negotiations on the reform treaty were to be conducted mainly “between the capitals,” with equal participation of the presidents of the European Parliament and Commission.<sup>10</sup> The negotiators too kept the actors involved in consultations between the *focal points* to a minimum. An asymmetric flow of information ran between the embassies and governments. In other words, information increasingly flowed in one direction, from the embassies to the governments.

The dates for bilateral meetings with *the focal points* were set for the period between the end of April and the beginning of May 2007. Consultations were based on twelve questions formulated by the German focal points after consultations on the Berlin Declaration.

#### 4. Twelve Questions on the Mandate

The fact that the ECT was rejected in some countries can be traced back to three basic motives: individuals’ concerns about the consequences for their own lives (with regard to social security and societal—national—

<sup>10</sup> At the same time, the circle of those actually participating was larger on the Presidency’s side: all German representations in EU states were given the task of drafting reports, based on a framework set out by the Federal Foreign Office, on the respective positions and their mobilising effect on domestic policy (opinions from ministries, parliaments, press etc.). In contrast, embassies were explicitly instructed to refrain from any communication on the consultation process between the *focal points*. Speakers’ notes for interventions by German government representatives within the context of parliamentary hearings, speeches and press articles were specifically edited by the Federal Foreign Office in order to contain as little information as possible on the state of play of consultations between the *focal points*.

identity), fears related to EU enlargement and the wish to preserve the autonomy of the state as the supposed last bastion against globalisation, which the EU has driven by liberalising the internal market, rather than counterbalancing it by being more socially acceptable and sovereignty or “autonomy friendly.” The Council Presidency’s chief negotiators added these three motives to a questionnaire in April 2007, which was discussed with the other focal points during meetings between 23rd April and 4th May 2007 (see overview, below, p. 30).

The questions were discussed among the *focal points* both bilaterally, as well as at a joint meeting. The aim of the discussions was to decide the mandate for the intergovernmental conference which was to be concluded before the end of 2007. The Chancellor herself, in close consultation with the French president and the heads of state of Spain, Luxembourg and Italy, conducted intense individual talks with their counterparts from Great Britain, the Czech Republic and Poland to ascertain at the highest level the “real” pain thresholds as distinct from the highly publicised “red lines” of the treaty reform.

On 14th June 2007, the German Chair submitted a report on continuing the treaty reform which fixed some key points for the mandate: abandoning the term Constitution and a new structuring of the treaties according to the classic pattern of previous intergovernmental conferences emerged as the common point of departure. In addition, the list of twelve questions from April 2007 was reduced to three open questions and four new points were introduced by Great Britain, the Netherlands and the Czech Republic. This painted a relatively clear picture of which issues the European Council would probably be dealing with at its meeting:

- ▶ the question of symbols and the primacy of EU law over national law (Question 4);
- ▶ terminological amendments to the treaty text resulting from this (Question 5);
- ▶ the legal quality of the Charter for Fundamental Rights (Question 6);
- ▶ the specific features of the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP) in relation to the overarching policy area of European foreign policy;
- ▶ the practical implications for the delimitation of competences between the EU and the member states;
- ▶ the role of national parliaments in the European Union.

In addition, Poland had introduced another issue into the discussion, namely, its wish to modify the decision-making procedures in the Council of Ministers from how they had been agreed in the ECT. Although this point was not mentioned in the Presidency’s report, it was one which all concerned were aware of.

On the basis of this report, the German *focal points* produced a draft mandate for the intergovernmental conference. During the fine-tuning with their colleagues, the Chair held the power of decision at all times on the “original text” which was drafted in English. In this way, working together with the Council Secretariat’s legal services, a text was drafted and submitted to the European Council with considerably more substance than is usually the case for mandates convening intergovernmental conferences. In actual fact, this was a “closed” mandate, which mapped out the political contour, functional scope and substantive-legal extent of the pruning of the constitutional treaty and its reconstruction to a reform treaty based on the existing EC and EU Treaties.

This result is a huge success for the Council Presidency, the *focal points* and all actors involved which none of them would have seriously expected in January 2007. The specific treaty formulations of the mandate make it possible to achieve the goal—agreed on the occasion of the Berlin Declaration in March 2007—to place the Union on a “new institutional basis” before the European Parliament elections in 2009. At the same time, however, the highly concrete terms of the mandate forced the Council Presidency to desist from applying the practice of convening an intergovernmental conference with a simple majority—although it had already been used on several occasions and was in line with treaty provisions. For even if “only” Poland or Great Britain had voted against this mandate, the course and result of the intergovernmental conference would have been far more open and uncertain than if it was subject to a unanimous mandate.

**Overview****Twelve questions from the Council Presidency's chief negotiators (focal points) on amending the ECT**

<i>Questions on the amending of the ECT</i>	<i>Protagonists among the member states from which these questions originate*</i>
1. Preservation of the existing treaty structure (not all-encompassing treaty) with the introduction of legal personality for the EU	F (consolidated “mini-treaty” to amend the existing treaties), GB (technical amendments to the treaty mean a referendum is not necessary), NL and CZ (avoid any “constitution analogy”)
2. Preservation of the first part of the ECT as the core of a Reform Treaty	F (see above) with the support of I. In negotiations, however, F explicitly disassociated itself from references to part I of the ECT
3. Abandoning “constitutional language” (e.g., state-like terms, such as “foreign minister” or “law”)	NL, GB (see above) with passive support from CZ und PL
4. Abandoning ECT article on EU symbols	NL, GB, CZ with broad support from nearly all delegations (except B, LUX)
5. Abandoning ECT article on the primacy of Community legislation over national legislation	NL, GB with support of CZ (and passive support from German actors)
6. Replacing Part II of the ECT (Fundamental Rights Charter) with a reference to it and its legally binding character	GB with support of PL, with GB even opposing the legally binding character of such a reference
7. Preserving the ECT's institutional reform package	“Friends of the ECT” with support of DK, S, P und IRL (declared opposition only from PL with passive support of CZ)
8. Preserving other ECT reforms as key part of the new treaties	Open question which, during the course of the negotiations, led to the questioning of other areas which had not been included in the questionnaire; this was the “enabler” for NL and GB, to grant, within the context of the ECT subsidiarity protocol, national parliaments more competences to intervene
9. Adding new treaty elements (and the related power to act) in the areas energy/climate and illegal immigration	GB, PL, EST, LIT, LET, HU, A (energy/climate) and D, NL (illegal immigration)
10. Re-affirming Copenhagen accession criteria in the treaty (through a reference or by naming them)	F, NL with support of A, D and of the EPP-ED group of the European Parliament
11. Re-affirming or emphasising more strongly the social dimension of the EU in the treaty	F, D, B and PES group of the European Parliament (after the presidential elections this issue was indirectly discarded by F)
12. Adding specific opt-outs and/or special rules on enhanced co-operation in particular areas	For the opt-outs: GB, PL For enhanced co-operation: B, I, LUX, D

\* On the positioning of the actors during the course of negotiations for the European Council in June 2007 cf. Peter Ludlow, *Angela Merkel's Mandate. The June European Council and Treaty Reform*, July 2007 (Eurocomment Briefing Note, Vol. 5, No. 3–4).

## 5. “Procedurally Induced” Successes and Risks

In agreeing on a mandate to convene the intergovernmental conference, the German Presidency had achieved a result which committed all states to a political goal, namely the swift development of a revamped treaty.<sup>11</sup> In light of the fact that all of the central actors had, even in confidential discussions, originally assumed that at best, consensus would be reached on a timetable and roadmap on the ECT reform, this agreement represents a considerable achievement. The risk to which Germany and its partners exposed themselves due this process was, however, a significant one. Firstly, because the draft mandate went hand in hand with another weakening of the European Commission’s initiative function, as the national parliaments, the European Parliament and the Council of Ministers were granted more veto rights and rights of intervention. Secondly, due to the number of new opt-outs, the mandate consolidated the EU’s moves in a direction in which formal membership rights and real membership obligations are drifting further apart, without “partial members”—which do not fulfil all membership obligations—having to accept losses in relation to their formal membership rights. Thirdly, the procedure of conducting confidential negotiations under the auspices of the highest political level may have proven to be the most successful in terms of the result achieved. It does, however, also involve the risk that frustration on the part of parliaments, foreign ministries, as well as other ministries may be heightened significantly. Even during the Intergovernmental Conference, the ratification process for the new treaty forced the heads of state and government to make considerable concessions towards actors who had been isolated during the German presidency, as well as the public. Fourthly, another failed attempt at a reform would be disastrous, not only in general terms, but also in relation to Germany’s role in the EU: the reform mandate would be condemned as being “too narrow” (representatives of the former Polish government have expressed this view) and would attribute this to the “predominance” of Germany. This would link the failure of the Reform Treaty to Berlin’s role in European policy. Germany’s

<sup>11</sup> cf. Council of the European Union, *Presidency Conclusions of the European Council in Brussels* (June 21 and 22, 2007), Doc. No. 11177/07, Brussels, June 23, 2007, annex 1: Draft IGC mandate, pp. 15–30.

claim to (co-)leadership in the EU would be severely damaged.

## 6. Outlook

What lessons can be learnt for future Presidencies from the German Presidency’s approach in relation to the ECT dossier? Firstly, even a large presiding state is dependent on a “circle of friends” in order to assume its functions as an impulse giver, broker and manager of expectations in crisis situations whose aim is to produce a treaty for ratification. This circle should enjoy a high level of confidence among all EU states and bodies and should be able to be easily mobilised in the Council of Ministers in the case of severe controversies—such as the dispute with Poland.

Secondly, a brokering function which satisfies all sides is only possible in these cases either at the price of extreme transparency (e.g., the convention method) or a considerable lack of transparency. If one chooses the first option, it is easier to mediate successfully between different interest groups if this function is performed together with impartial actors who are not subject to any instructions from member states, but are able to act credibly in the common interest of all concerned. If, however, member states use the method of secret negotiations as applied by the German Presidency, there is a great risk that not only individual actors, but also the Council Presidency itself will “lose touch” with the interests and needs of citizens and society and fail to take these into consideration when they act.<sup>12</sup> The price for this will be paid, at the latest, at elections when voters increasingly turn away from established parties and give their vote to populists and extremists.

<sup>12</sup> On this, see the remarks by Daniela Schwarzer on the Berlin Declaration in this paper (pp. 19).

# Lisbon in Berlin and Brussels— the Lisbon Strategy under the German Presidency

Peter Becker

Ever since the so-called Lisbon Strategy was adopted in March 2000, the European Union has focused on socio-economic questions in the first quarter of each calendar year. In Lisbon, the EU's heads of state and government subscribed to the strategic goal of making the Union the most competitive and dynamic knowledge-based economy in the world by 2010. With the agreement of the Lisbon Strategy, a co-ordination process started in which the governments of the EU-27 strive to forge a common approach in the areas of economic, employment and social policy, which had previously been dominated by national legislation. Since then, the agenda of the Council of Ministers has been defined in particular by the following issues: promoting innovation, research and technology, improving the business environment (especially for small and medium sized enterprises), creating good macroeconomic conditions, overhauling state finances, increasing the compatibility of family and work, fighting social exclusion, creating more and better jobs.

For the first three months of the year, the work of the Commission and nearly all the Council formations, as well as their preparatory working groups, is focused on the European Union's Spring Summit. The Council, in its various formations, prepares "key issues papers" (KIPs) for the Summit.

The main substantive focus to be set depends mainly on the European Commission's progress report for the Spring Summit.<sup>1</sup> In addition, there are further mandatory Commission reports which are required by the EC Treaty, such as the Council recommendations on the update of the broad guidelines for economic policy and on the implementation of member states' employment policies, the proposal for a Joint Employment Report and for a Joint Report on Social Protection and Social Inclusion, as well as the Report from the Commission on Equality between Women and Men. All of these documents form the material basis for the Council formations' consultations and

<sup>1</sup> The European Commission actually submitted its progress report for the 2007 Spring Summit as early as December 2006, so before the official beginning of the German Presidency; cf. COM (2006) 816 final of December 12, 2006.

determine the tenor of negotiations between member states.

Beyond the mandatory issues—included in order to ensure the continuity of reporting—the German Council Presidency set further priorities and a number of tasks for the European Union and its member states, upon which it wished to place a specific focus: better regulation and reducing red tape, completing the European Internal Market, establishing a single tax base for company taxation, improving external conditions for competitiveness by successfully concluding the Doha Round, as well as strengthening the social policy aspects of Community action.<sup>2</sup>

## 1. Juggling with Several Balls—The Presidency as a Co-ordinator, Broker and Priority Setter

The Lisbon Strategy is marked by two characteristics:

1. its particular nature as an ongoing process and the complexity of the procedure that this entails;
2. its lack of substantive focus.<sup>3</sup>

The annual implementation reports—both from the member states and the Commission—follow on naturally from the relevant reports of previous years. This automatically leads to a high degree of continuity in terms of substance and structure.<sup>4</sup> The extraordinary procedural dynamics which characterise the strategy are reflected in the way that the European

<sup>2</sup> cf. Federal Government, "Europe—succeeding together." *Presidency Programme 1 January–30 June 2007*, Berlin 2007, Chapters II.1 and II.2.

<sup>3</sup> cf. Report from the High Level Group chaired by Wim Kok, *Facing the Challenge—the Lisbon strategy for growth and employment* (Kok Report), Luxembourg, November 2004, and Peter Becker and Ognian Hishov, *The Lisbon Process—a Compromise between Ambitions and Reality*, Berlin: Stiftung Wissenschaft und Politik (German Institute for International and Security Affairs), February 2005 (SWP Comments 9/05).

<sup>4</sup> It is only the revision of the "Integrated Guidelines for Growth and Jobs" in spring 2008 which will formally provide the opportunity for a fundamental re-orientation of the Lisbon strategy. The "Lisbon year" of 2007 was therefore regarded as an "interim year" in the Commission before the overhaul of the integrated guidelines, due in 2008.

Council assigns tasks to subsequent Presidencies and the Commission.

The agenda-setting of each Spring Presidency and that Presidency's room for manoeuvre are hence determined and restricted by the need to complete these tasks—which is mainly documented by reports from the Commission—, the requirements set out in the Lisbon Strategy in relation to the procedural steps to be followed, as well as deadlines and competences. The Chair's mandatory tasks consist of ensuring that negotiations on the Lisbon key points are concluded in the relevant Council meetings (in its various formations) in time for the Spring Summit, as well as eliminating potential contradictions from the papers to be presented and preparing the conclusions of the European Council. The Chair is therefore most in demand in its role as a co-ordinator and manager of the narrow timetable as well as the wide range of issues on the agenda, and as a broker between the various policy areas. The demands on the Presidency as an impulse giver and representative to other EU bodies are, however, considerably lower. Most political guidance occurs at the technical or working level. When it comes to scheduling and organising meetings at expert, attaché, ambassadorial and political level, the Presidency is dependant on the expertise of the Council's General Secretariat, as well as on its close co-operation with the Permanent Representation in Brussels. In view of the large number of policy areas to be dealt with at the same time, the Presidency needs to have significant administrative capabilities at its disposal in order to guide and co-ordinate the negotiations processes in the working groups. Furthermore, refined internal co-ordination procedures within the ministerial administrations are vital.

The second striking characteristic of the Lisbon Strategy is its one-sided focus on improving competitiveness, increasing employment rates as well as social policy goals, without regard either to potential conflicts of competencies or to the fact that some areas fall outside the EU's responsibility. This wide range of themes allows the Chair to focus on self-defined priorities and present these topics to the European public. The fact that Spring Summits of the European Council have, since the Lisbon Summit of March 2000, been reserved for economic and social policy matters, is an intentional signal: with this thematic focus, the European Council wants to emphasise that strengthening growth and competitiveness and respecting the European social model are a matter for the "chiefs."

## 2. The Presidency Programme and the Attempt to Set Own Priorities

In order to set the main issues for the Lisbon agenda during the German EU Council Presidency, the Federal Ministry of Economics, which was in charge of this, drew on two existing institutions:

1. The "National Co-ordinator for the Lisbon Strategy (Mr. Lisbon)": When the Lisbon Strategy was reformed in spring 2005, each member state appointed a national Lisbon co-ordinator, whose tasks mainly consist of the co-ordination of the ministries involved in the agenda, acting as a point of contact for associations and interest groups and, finally, monitoring the definition and implementation of the national Lisbon targets.
2. A co-ordination unit had been established at an early stage for internal co-ordination between the Berlin ministries. The "Lisbon permanent working group", chaired by the Federal Ministry for Economics, was used intensively prior to the drafting of the German Presidency's programme, in order to jointly agree on the main issues between the departments.

Two key goals for the German Presidency were quickly agreed upon in the Lisbon working group. In contrast to the usual long-winded conclusions, which lacked concrete terms and had previously been characteristic of previous spring summits of the heads of state and government, the text for the Summit to be chaired by Germany was to be kept short and concentrate on a maximum of four priority political tasks.

As early as March 2006, almost a year before the Germans took over the Presidency, the Federal Government produced a document co-ordinated between the ministries and addressed to the German Bundestag containing initial reflections on its own main priorities within the framework of the Lisbon Strategy.<sup>5</sup> According to this document, the particular emphasis of the Germans was to be placed on the area "better regulation." The main social policy goal had been announced by the Federal Ministry for Family Affairs as being the adoption of a "European Alliance for

<sup>5</sup> Federal Ministry for Economics and Technology, *Lissabon-Strategie: Kurzbericht für den Wirtschaftsausschuss des Deutschen Bundestages*. Thema: "Mit welchen Schwerpunkten wird Deutschland die Lissabon-Strategie vorantreiben?" [*Lisbon Strategy: brief report for the Economic committee of the German Bundestag*. Subject: "What priorities will Germany use to drive the Lisbon Strategy forward?"], March 8, 2006.

Families.”<sup>6</sup> Further issues which were to receive particular attention were energy policy, European research and innovation policy, as well as—in light of foreign economic policy—the conclusion of the WTO Doha Round. The fact that considerable attention would be devoted to the area of better regulation was reflected in the official Presidency programme and also became obvious when it was presented to the media in autumn 2006.

Internal co-ordination on the substance of the German’s Lisbon presidency programme began with an exchange of views among federal ministers in summer 2006. Departments were asked to propose issues which they thought absolutely needed to be covered under the German Lisbon aegis and to justify this choice. At the same time, ministries were requested to submit initial drafting proposals in relation to their priorities for the text of the conclusions of the Spring Summit. This procedure required the various departments to engage in initial, informal consultations with the other member states in order to ascertain the prospects for success of a particular issue submitted. Within the context of the abovementioned restrictive specifications regarding the length of the text and the number of political key issues to be mentioned for the Spring Summit, this process led almost automatically to the imposition of a hierarchy on the goals and substance of the Lisbon Strategy which saw the emergence of higher priorities, high priorities and lower priorities. The concentration of issues was reinforced by the fact that the Chancellery had reserved the right to determine the main political issues for the Spring Summit at a later stage. As the work of the various Council meetings is focused on the European Council in March, the Chancellor’s prerogative to make the final decision meant that media attention on consultations in the Councils came second to that of setting the issues for the European Spring Summit. This effectively reversed the ideal hierarchical structure of the Lisbon process: the European Council did not examine the key issues papers submitted by the various Council formations and only then choose the central Lisbon issues. As a matter of fact, the Chancellery dictated the key issues for the Spring Summit beforehand and thus prejudiced the work of the Council meetings and the substance of their opinions and

<sup>6</sup> The goal of the German Council Presidency was, within the framework of the Lisbon Strategy and with the help of the special instrument of the strategy to initiate an exchange of views and experience in the EU on the role of family-friendliness in attracting business investment.

recommendations. It was not the groundwork of the Council formations which determined the European Council’s agenda, but the choice of issues for the European Council’s agenda which determined the work of the Councils.

### 3. Between Berlin and Brussels

A total of seven Council formations (the General Affairs and External Relations Council, the Economic and Financial Affairs Council, the Employment, Social Policy, Health and Consumers Council, the Competitiveness Council, the Infrastructure, Telecommunications and Energy Council, the Environment Council, as well as the Education, Youth and Culture Council) worked on key issues papers to be presented at the Spring Summit. According to the prescribed timetable for the Lisbon Strategy, the months of January and February<sup>7</sup> were left for the actual drafting of the KIPs. The work of the Council formations had to be concluded by the last spring summit preparatory meeting of the General Council on 5th/6th March. As the first meetings were as usual reserved for the presentation of the presidency programme, negotiations with the other delegations in the various Council working groups on the KIP proposals could not begin until the second half of January at the earliest.

Even before Germany actually took over the Presidency, the first KIP drafts had already been written in Berlin and co-ordinated with the relevant ministries and the Permanent Representation in Brussels by the end of 2006. This required intense prior consultations with the European Commission, whose annual Lisbon progress report determines the general tenor of the evaluation by the heads of state and government. However, contrary to the practice of small member states, dossiers were drafted and co-ordinated mainly in Berlin. In this way, ministries were able to introduce their own priorities and influence the course of routine procedures in Brussels. The German Presidency was by no means a “Presidency run by Brussels.” Nevertheless, the Permanent Representation to the EU played an important role, as it checked the ideas from the federal ministries against the realities of Brussels,

<sup>7</sup> The already short co-ordination and negotiation phase from mid-January to mid-March had been shortened by two weeks, due to the scheduling of an extraordinary European Council summit to adopt the “Berlin Declaration” on 24th March. This meant that there was only a timeframe of six weeks to negotiate the Lisbon agenda.

thus ensuring the timely and consensual adoption of the KIPs.

Throughout the whole process, the work of the Council formations concerned was constantly cross-coordinated and so the internal Lisbon-co-ordination between ministries in Berlin remained intact until the March Summit. This was important in order to preserve the material coherence of the KIPs. Communication among the departments in Berlin was made easier by the fact that they had reached agreement beforehand that the responsibilities of the Berlin ministries for the respective Council formation will determine the charge of drafting the KIPs. In this way, the distribution of responsibilities within the Federal Government became the yardstick for the responsibility for certain Brussels dossiers. This minimised the influence of any divergences between Berlin ministries and within the Grand Coalition on the negotiation process in Brussels.

Initial discussions on the KIPs were due to take place at the first political-level meeting of the Councils in February. Only the Council for Employment and Social Affairs had a special role. It had already held an informal meeting in Berlin, 18th–20th January, where it had discussed the most important issues of its contribution for the Spring Summit. Similarly, the Presidency conference of 8th/9th February in Nuremberg, titled “join forces for a social Europe,” was aimed at agreeing on the KIPs in the area of employment and social policy. The conference adopted “central messages,” which the Presidency drew on as a basis for the formal meeting of Ministers for Employment and Social Affairs on 22nd February. The actual adoption of the key issues in the Council did not pose any problems after these intense and informal preparations.

Not all Council formations reached agreement on the KIPs so easily. What is striking is that conflicts occurred particularly in cases where member states were to agree on quantifiable targets or concrete legislative procedures. Specifically, this was the case for the following issues:

- ▶ in the Competitiveness Council, establishing a maximum non-transposition quota for the internal market acquis of 1 percent by the year 2008 (until now a transposition deficit target of 1.5 percent has applied);
- ▶ the statement committing to a comprehensive liberalisation of the postal services;

- ▶ commitment from the member states and the European Commission to reduce administrative burdens by 25 percent and to submit an implementation plan by 2008;
- ▶ the statement that the EU should undertake renewed efforts in 2007 in order to bring the WTO negotiations to a successful conclusion;
- ▶ in the ECOFIN Council, the proposal of the Chair in relation to the question of harmonising direct taxes to achieve progress on a common tax basis.

The other issues in the KIPs were, for the most part, agreed upon unanimously and at the working level.<sup>8</sup>

Parallel to the substantive work in the different Council formations in formulating the KIPs, preparations for the Spring Summit had begun. The General Affairs and External Relations Council (GAERC), which was in charge of this, deliberated on the issues of the Lisbon agenda and the European Commission’s progress report within the framework of general consultations already on 22nd/23rd January 2007. As early as one month later, the annotated agenda and substantive main issues for the Spring Council were submitted to a meeting of the co-ordination council of foreign ministers or ministers for European affairs on 12th February 2007, in a document titled “Europe—succeeding together.” In submitting a draft for the structure of the European Council conclusions, the German Chair had, on the one hand, fulfilled the duty of the Spring Presidency of taking stock of the Lisbon Strategy’s progress. On the other hand, by excluding the issue of “better regulation” from the actual Lisbon chapter, this concern was once again emphasised, as it had been a central priority of the German presidency programme.

Negotiations on drafting the conclusions of the European Council were the responsibility of the GAERC and the ambassadors to the EU in Coreper-2. The latter had the task of choosing the political priority issues for the conclusions of the heads of state and

<sup>8</sup> A total of 8 KIPs were submitted to the spring summit:

1. Key Issues Paper by the Council (ECOFIN);
  2. Key Issues Paper by the Competitiveness Council;
  3. Key messages from the Council EPSCO;
  4. Key messages in the field of education and training;
  5. Key messages in the field of youth policy;
  6. Council conclusions on the contribution of the transport sector to the Lisbon Strategy;
  7. Recommendation for a Council Recommendation on the 2007 update of the broad guidelines for the economic policies of the member states and the Community;
  8. Contribution of the ECOFIN Council in the field of “better regulation.”
- In addition, there was 9. Recommendation for a Council recommendation on the implementation of employment policy.

government and of submitting the draft text to the GAERC. The ambassadors' first meeting for this purpose took place on 14th February, in other words, after the annotated agenda had been presented and after the structure of the European Council conclusions had in principle been approved at the political level of the GAERC. The final consultations among the ambassadors took place on 28th February, only a few days before the final meeting of the GAERC on 5th/6th March 2007.

The European Council then had hardly any points of conflict which needed to be resolved in its own negotiations in the area of the Lisbon Strategy. Nevertheless, on the second day of the Summit, the German delegation was clearly able to make some small changes to the conclusions which had not been possible within the circle of the Council formations and Coreper. For example, number 24 of the conclusions states that member states should "set their own national targets of comparable ambition within their spheres of competence by 2008" to reduce administrative burdens, like the European Commission has done. It had not been possible to agree on the same almost word-for-word statement, either at the working level or the political level within the Competitiveness Council during discussions on the KIPs.

#### 4. New Actors? The Parliamentary Dimension

The Lisbon Strategy had been subjected to an overhaul in spring 2005. Among other reasons, this had been done in order to strengthen the parliamentary dimension in implementing the strategy. Since then, an inter-parliamentary dialogue has taken place between the European Parliament and the national parliaments prior to the annual Spring Summit. Representing the Federal Government, the head of the Federal Chancellery, Thomas de Maizière, took part in the Third Joint Parliamentary Meeting on the Lisbon Strategy on 5th and 6th February in Brussels. While the Council was working on the KIPs, the committees of the European Parliament had also begun with consultations on a resolution proposal. In order to avoid the emergence of inordinate discrepancies between the Parliament's and the Council's evaluation of the Lisbon Strategy's progress, informal discussions took place between the Presidency and the EP's Lisbon

co-ordination group.<sup>9</sup> However, neither the parliamentary meeting, nor the European Parliament's resolution of 14th February 2007<sup>10</sup> made any mark on the actual work of drafting the KIPs.

German domestic actors did not have any direct influence on the German Chair either. As is usual practice, the Europe committee of the German Bundestag was informed by the Federal Minister for Economics, Michael Glos, before the Spring Summit, on 28th February. Further debates were held in this committee in relation to resolution proposals from the political parties on the programme of the German Presidency directly before the Spring Summit on 7th March. As consultations in the Council meetings on the KIPs had already been concluded by then, it was no longer possible to exert any influence.

#### 5. Conclusion

The mandatory tasks of the EU Council Presidency concerning the implementation of the Lisbon Strategy begin, as discussed, long before the official tenure itself. However, the issues, deadlines and procedures which are dictated by the long-term programme make the preparatory work and its operative planning easier. What is most important for the Presidency is to carefully co-ordinate its work with the services of the European Commission and the Council's General Secretariat, in order to be able to submit proposals for the *key issues papers* to the Council working groups right at the beginning of its tenure. In view of the fact that a period of only about six weeks remains for the adoption of these papers, co-ordination between the various policy areas, as well as between the working-, ambassadorial and political-level must be efficient and as conflict-free as possible.

As a founding member and the largest member state, Germany has considerable experience in chairing the Council, as well as sufficient financial and administrative resources to fulfil consistently and at the same time in a goal-orientated manner, the immense organisational and co-ordination demands which the Lisbon Strategy involves. It is also possibly an advantage for Germany that the complexity of the

<sup>9</sup> This informal co-ordination was made easier by the fact that there were two Germans among the four rapporteurs, Klaus-Heiner Lehne (CDU) and Alexander Lambsdorff (FDP).

<sup>10</sup> Resolution of the European Parliament on the input to the 2007 Spring Council in relation to the Lisbon Strategy, P6\_TA-PROV (2007) 0040, of February 14, 2007.

Lisbon Strategy, with its large number of parallel negotiation rounds and levels, is similar to the difficult decision-making process in the co-operative federal state of Germany. The German ministerial administration is, in this sense, very well prepared for the demands of balancing different interests and the interplay with, and on, the various competency levels.

In view of the wide range of issues involved and the lack of focus of the Lisbon agenda, the German EU Council Presidency set itself the task of confronting the associated risk of any further “fraying” of the strategy. This primarily defensive effort could only be successful if the Federal Government imposed restrictions on itself in introducing new Lisbon issues, without, however, allowing the efficiency of its co-ordination work in Brussels to suffer excessively and without refusing too many wishes from other member states after taking on individual concerns in the KIPs. At the same time, it is precisely the Lisbon Strategy’s lack of focus which enabled Germany to play to the gallery with its Council Presidency’s catchy slogan “removing red tape.” However, this example also illustrates that the Presidency, when acting as an impulse-giver, encounters resistance from other member states which are not prepared to automatically take on the costs of changing the status quo. Nevertheless, the Chair was able to push through the goal, which had been agreed on internally with the Commission in advance, of setting European *and* national targets for removing red tape. This was due to the fact that it had pursued this fundamental goal as a political issue right up to the European Council. Although the Chair’s main tasks regarding the Lisbon agenda are to act as an organiser and efficient co-ordinator, it is perfectly possible to set own priorities in implementing the strategy. The German Chair used this limited flexibility by making not only the issue of removing red tape, but also its own initiative “Alliance for the Family” the centre of attention.

On the other hand, the German Presidency did not succeed in pushing through its plans (which would have extended beyond its own tenure) to harmonise direct taxes and criticise unfair tax competition in the EU-27. Nor did it succeed in securing a commitment on behalf of the EU to successfully conclude WTO negotiations before the end of the year. A statement on the WTO Doha Round was a highly sensitive issue for France and some of the new member states could not, for their part, agree to a reference to unfair tax practices. Particularly in relation to these very sensitive issues, upon which agreement could only be

reached at the level of heads of state and government, the Presidency made it its business to limit points of conflict for consultations within the European Council to a few chosen areas. In this way, the Presidency was able to differentiate between dossiers which needed to be discussed again at the level of the heads of state and government, and those which could be adjourned by finding a compromise. In relation to this, the Federal Chancellery had decided at an early stage for energy and climate policy, as well as the removal of red tape.

As far as taxation policy was concerned, the German Chair was wise enough to finally put aside national interests—in other words, the clear qualification of taxation competition between member states as unfair. In the medium-term, however, both of the open exchanges between the ministers for finance in the Council on this highly contentious issue at the end of January and at the end of February could mean that this question will be dealt with at a later stage in accordance with the German position. This is because the debate illustrated the urgency of finding a consensual solution and sensitised the finance ministers of the new member states to the problems faced by some of the old member states. Even if the German Chair did not achieve the result on this point which was envisaged in the presidency programme, the debate could pay off sooner or later at the political level. The same applies to the extremely difficult negotiations with the French delegation on modifying the statement on continuing the WTO negotiations. Here too, the real progress could lie in demonstrating the majorities in the Council. If this analysis is correct, the German Chair would in both cases have combined in an exemplary way national interests with the prerogative of every Presidency to determine the agenda, without giving up the neutrality required by the mandate. In other words, it would have succeeded in demonstrating national preferences and seeking partners for this in the Council without fighting out potential conflicts to the very end.

# Between Transatlantic Integration and the Doha Round: The German Presidency as Impulse-Giver and Impartial Broker in Trade Policy Making

Stormy-Annika Mildner

“The German Presidency supports initiatives to boost the competitiveness of European business outside the EU.”<sup>1</sup> This was the guiding principle of the German Presidency’s agenda for trade policy, thereby building on the EU Commission’s new trade strategy “Global Europe: competing in the world.” The Federal Government focused on three main issues: firstly, the WTO’s Doha Round was to be concluded as soon as possible, or at least advanced considerably. Secondly, multilateral trade negotiations were to be complemented by the conclusion of preferential trade agreements (PTAs—bilateral and regional free trade agreements) with selected partners, particularly in Asia. And, thirdly, renewed and decisive impetus was to be given to the existing dialogue within the context of the EU/US Economic Initiative of 2005.<sup>2</sup>

## 1. The Council Presidency within the Institutional Structure of EU Trade Policy-making

In trade policy, the Council Presidency’s scope for exerting influence is limited both institutionally and legally. In accordance with Article 133 of the EC Treaty, the Commission is in charge of implementing the common trade policy: it holds the right of initiative and is responsible for enforcing decisions. The Commission’s recommendations must first be approved by the Council of Ministers. Once this approval has been granted, the common trade policy is implemented by the Commission, with the support of a special committee—the so-called 133 Committee,

which is composed of representatives from the 27 member states and the European Commission. The tasks of the Council Presidency in developing trade policy are therefore limited. Nevertheless, its *initiative and impulse functions* should not be underestimated: as Chair of the 133 Committee, the Council Presidency determines the agenda for meetings and thereby has the opportunity to set new priorities for existing projects. In addition, it can launch new initiatives in the Council of Ministers. The Council Presidency also has the function of providing *strategic guidance* and, in this respect, is required to put negotiations—often dominated by national, sector-specific vested interests—in a long-term, general European context. In view of the interests of other member states, however, performing both functions is not without problems. Large member states, in particular, are frequently accused of abusing the position of President to push through their own interests. The Council Presidency therefore usually takes on the role of *neutral broker* in meetings of the 133 Committee. Its task is thus to chair discussions professionally and bring about a consensus on contentious issues.

Demands on the Council Presidency to *co-ordinate inter-institutional contacts* are considerably smaller. In general, the Council Presidency represents the Council to other EU bodies. However, the 133 Committee is the central co-ordination body between the Commission and the member states for trade policy. Within this Committee, member states discuss Commission proposals once a week and develop a joint EU-trade position. The Council Presidency also plays a relatively small role in terms of co-ordination with the European Parliament. Although the Parliament does exert some influence on trade policy through its own resolutions, it does not have any formal say in trade policy. Finally, the demand for the Council Presidency to represent the EU to third countries in external trade relations is limited, as the Commission is usually the sole negotiator at the international level.

1 Federal Government, “Europe—succeeding together.” *Presidency Programme 1 January–30 June 2007*, Berlin 2007, p. 23.

2 The Programme also included a revised EU market access strategy and the reform of trade defence instruments. However, these projects did not play a role comparable with the other three dossiers. For a comprehensive analysis of all trade dossiers, see: Stormy Mildner, *Impulsgeber oder neutraler Vermittler? Die deutsche Ratspräsidentschaft in der EU-Handelspolitik [Impulse giver or impartial broker? Germany’s Council Presidency in EU trade policy]*, Berlin: Stiftung Wissenschaft und Politik (German Institute for International and Security Affairs) August 2007 (SWP Working Paper FG4/2).

## 2. Demands on the German Council Presidency

### 2.1 Dossier: transatlantic economic integration

Average customs duties in transatlantic trade—with the exception of some areas with high import tariffs, such as trade in agriculture and the textiles—are now at the very low level of less than four percent. Yet, non-tariff market access barriers (NTBs) continue to represent serious trade barriers. These barriers are to be found particularly in standards set for industrial goods, in customs systems and in the field of government procurement. According to the OECD, liberalising transatlantic trade could therefore result in considerable growth of up to three percent of the gross domestic product for both trade partners. However, such a plan is not easy to implement, as illustrated by initiatives to form a transatlantic free trade area (TAFTA) in the nineties. These efforts all failed, due to a lack of interest on the part of the USA and resistance on the part of EU members like France. Similarly, harmonising or mutually recognising regulatory systems has been called for again and again. However this would require complex legal and regulatory changes on both sides of the Atlantic, which are hardly possible without commitment from the highest political level. This is why such initiatives often get bogged down at the working-group level. The results of the EU-US Economic Initiative, founded in 2005 with the aim of removing NTBs, also remained very modest at the beginning of the German Council Presidency.

Bearing in mind the US Summit planned for the end of April 2007 in Washington, the German government's task was to take on the role of *impulse-giver* and revive deadlocked initiatives through political leadership at the highest level. This urgently required the setting of new priorities and a clear vision for the future of transatlantic economic relations. The idea of a TAFTA, in particular, is no longer appropriate, as the classic instruments of a free trade agreement have hardly any effect on NTBs. The task of the German Federal Government was rather to pave the way for deeper economic integration with an emphasis on regulation and standards. Demands on the German Council Presidency to provide *strategic guidance* were accordingly high. Finally, this dossier placed considerable demands on the Presidency in terms of external and internal representation. On the one hand, the Presidency had to win the USA over to the project. On the other hand, a highly complex issue needed to be

brought more strongly into the public domain in order to create pressure for the bilateral Summit to succeed and, at the same time, generate sufficient public interest so that the initiative would continue to be pursued after the end of the German Council Presidency. The Presidency also had to be careful not to create the impression that Germany no longer had any interest in the WTO or the Doha Round.

### 2.2 Dossier: Doha Round

The starting point for the Federal Government for the Doha Round dossier was anything but favourable: not only had WTO member states been negotiating unsuccessfully a new trade agreement for the last five years, WTO talks had also been suspended indefinitely on 24th July 2006, as the main negotiators had been unable to agree on modalities in particular for liberalising agricultural trade. In addition, there was considerable time pressure: in view of the presidential elections in the USA at the end of 2008, WTO members would probably have their last opportunity to conclude negotiations in 2007. A favourable phase for finding a compromise was that between the Presidential election in France at the beginning of May 2007 and the end of the US President's negotiation mandate (Trade Promotion Authority) at the end of June 2007.

The EU Trade Commissioner's current mandate to conduct multilateral negotiations is based on the conclusions of the Council of Ministers of 26th October 1999. This meant there was no demand for defining targets (*impulse and initiative function*), nor one for *external representation* on the part of the German Council Presidency. EU Trade Commissioner Mandelson's scope for negotiation is increasingly restricted in the sensitive area of agriculture. France, in particular, is strictly opposed to liberalising trade in agriculture. However, since an improved EU offer on reducing import tariffs for agricultural goods is one of the main preconditions for a breakthrough in the Doha Round, hopes were placed on the German Council Presidency that it would be able to achieve an intergovernmental consensus on this matter (*broker function*). At the same time, it was clear, given the upcoming presidential elections in France, that its scope to play a proactive role as broker would be limited, as open confrontation would endanger success in other policy areas. In addition, this dossier required a considerable degree of *internal representation* and *inter-institutional co-ordination* from the Council Presidency: on the one hand, it

had to publicly support the aim of concluding the Doha Round and, on the other hand, it had to defend Mandelson's negotiation mandate from the pressure of some member states. In fulfilling both of these functions, the Council Presidency always needed to be cautious of sending any false signs to the emerging economies: despite the need for action on the part of the EU, large emerging economies were not to be relieved of their responsibility of removing industrial tariffs.

### 2.3 Dossiers: bilateral free trade agreements

On 4th October 2006, EU Commissioner Mandelson published the communication "Global Europe: Competing in the World," thereby setting a new direction for trade policy. The strategy is as follows: if the EU wants to succeed *vis-à-vis* global competition, it must improve the opportunities for European companies to do business abroad. As this could not be guaranteed by multilateral negotiations alone, the EU aimed to conclude PTAs, particularly in Asia.

Since the Commission had already launched the initiative under the Finnish Presidency, there was hardly any demand for *initiatives and impulses* from the German Council Chair for this dossier. The task of the Federal Government regarding the targets of the new free trade agreements consisted mainly of acting as a *broker* between member states. The contentious issue was not the question of whether or not the EU should in future conclude more bilateral trade agreements—the EU members were, for the most part, in agreement on this. What was contentious was the scope of the Commission's negotiation mandate, the possible substance of the trade agreements and the choice of countries with which negotiations were to be conducted.

Additionally, the German Council Presidency had an important role providing strategic guidance. This was because an increase in the number of PTAs concluded implies not only opportunities, but also serious risks. Selectively removing customs duties may certainly eliminate discrimination and distortions between the member states of a PTA and can have the effect of promoting trade and increasing prosperity; however, this often results in discrimination against third countries and global welfare losses. In addition, there is already a jumble of trade agreements whose rules of origin often overlap and are incompatible with each other. This has resulted in a worldwide increase in trade- and transaction-costs. Finally, consequences for the WTO should not be underestimated,

as bilateral negotiations tie up capacities which would be better directed to the multilateral level in view of the far more significant welfare gains which are promised there. On the one hand, the Federal Government had to push for rules of origin which were as simple and open as possible, as well as for agreements which were transparent and compatible with the WTO, in order to avoid trade distortions. On the other hand, it needed to counteract a shift in priorities in EU trade policy away from the WTO in favour of PTAs.

## 3. The Degree of Task Accomplishment

There were high hopes placed on the capabilities of the German Council Presidency. As a global leader in exports, still the strongest economic power in the EU and the driving force in global trade liberalisation, Germany seemed to be predestined like hardly any other European country to give the Doha Round new impetus and drive transatlantic economic integration forward. In addition, the dual Presidency—EU Council Presidency and Chair of the G8—appeared to provide a historic opportunity to break the existing deadlocks in negotiations.

### 3.1 Dossier: transatlantic economic integration

In the past, Germany has often been regarded as an inexperienced actor in EU trade policy-making, meekly accepting rather than actively influencing it. The German Council Presidency, however, succeeded in taking on the role of *impulse-giver* for the dossier on transatlantic integration. The German Presidency also fulfilled the task of providing *strategic guidance*. After some initial difficulties, it even managed to exceed expectations in terms of its role in *internally representing* the EU to the public and the media, as well as in *externally representing* the EU to its negotiating partner, the USA.

The initiative for a transatlantic economic area came directly from the Chancellery and was driven at the highest political level from autumn 2006. In September, the Chancellor announced her idea of creating a transatlantic free-trade area (TAFTA), which was at the time still quite vaguely outlined. At a meeting of the US Board of the Federation of German Industries (BDI) in October, the Chancellor declared that she intended to use the upcoming EU Council Presidency to place transatlantic economic integration

at the top of the agenda for the next EU–USA summit. At first, Merkel’s initiative caused reactions in Berlin and Brussels ranging from the reserved to the outright critical. It was not clear what she had in mind, a TAFTA along the lines of previous initiatives or deeper internal market-like integration. The idea of using a European-American free-trade area as a bulwark against the leading emerging economies was strongly criticised. Bernd Pfaffenbach, State Secretary in the Federal Ministry of Economics and Technology (BMW<sub>i</sub>), described the initiative as the “deathblow” for the Doha Round. And EU-Commissioner Mandelson warned that the rest of the world would react with dismay if the two largest economic powers agreed exclusive trade preferences.<sup>3</sup> The Directorate General for External Trade also criticised that the initiative had not been sufficiently discussed in the run up to the Council Presidency and that consequences for other areas (Doha Round) had not been given enough consideration.

During the course of the Presidency, the Federal Government did, however, gradually formulate its initiative in more concise terms. Speaking to the European Parliament’s trade committee in January, Joachim Wuermeling, State Secretary in the BMW<sub>i</sub>, said: “What we are striving for [...] are improvements in non-tariff barriers. Closer economic co-operation would, for example, be more than worthwhile in regard to the protection of intellectual property, energy and the environment, as well as financial markets, regulations and standards.”<sup>4</sup> At the World Economic Forum in Davos, the Chancellor called for a transatlantic economic area, which “[...] isn’t intended to be contrary to, but rather to supplement and support, the multilateral approach.”<sup>5</sup> The media campaign behind Merkel’s initiative reached its climax in the form of a conference organised by the Christian Democratic Union (CDU) and the Christian Social Union (CSU), entitled “Globalisation and Transatlantic Partnership” on 19th March in Berlin.

The German Presidency also proved to be very skilful in preparing the Summit (*management and inter-*

*institutional co-ordination*): in Berlin, the Chancellery, and specifically Department IV headed by Jens Weidmann, was in charge with the groundwork being carried out by the BMW<sub>i</sub> and the Federal Foreign Ministry through their respective country departments. In Brussels, the initiative was carried out in close co-operation with the Commission President, the Council of Ministers (particularly COTRA, *Transatlantic Relations Working Party*) and Germany’s Permanent Representation to the EU. In this way, Chancellor Merkel succeeded in overcoming objections at the European level. EU-Commissioner Mandelson, for example, revised his harsh criticism and declared that the existing EU-US economic initiative could be the basis for further, long-term economic integration. Merkel also received the backing of the European Parliament, which broadly supported a new transatlantic partnership agreement in its resolution on transatlantic relations on 25th April 2007.

Germany’s Council Presidency was also successful in its role as *external representative*: Merkel discussed her initiative with Bush in January. Jens Weidmann travelled to Washington on a number of occasions in the following months to gain support for the project. Once it became clear that Merkel was merely aiming for the long-term bilateral removal of NTBs as a supplement to multilateral liberalisation, criticism from developing countries and emerging economies died down. So far, fears that an EU-US framework agreement could further harm the Doha Round have proven unfounded.

The new *Framework for Advancing Transatlantic Economic Integration*,<sup>6</sup> signed at the EU–USA Summit on 30th April 2007, can certainly be regarded as a success. This is because the process has a more binding character, through the creation of the Transatlantic Economic Council which is to evaluate efforts to implement and continue the framework agreement on an annual basis. However, it will only become clear in the coming months how serious both sides are about this new economic partnership, as the agreement is not actually legally binding.

All in all, the fact that a new framework agreement was signed at the EU–USA Summit can be attributed mainly to the personal commitment of the German Chancellor. Germany’s political and economic weight,

3 cf. Peter Mandelson cited in: “EU-Handelskommissar lehnt Freihandelszone ab” [EU Trade Commissioner Rejects Free Trade Area], in: *Manager-Magazin*, October 3, 2006.

4 Joachim Wuermeling, *Trade Policy Under Germany’s Council Presidency*, 1st Meeting of the INTA (Trade) Committee of the European Parliament, January 23, 2007.

5 Opening address by Angela Merkel at the World Economic Forum in Davos, January 24, 2007, [www.weforum.org/pdf/AM\\_2007/merkel.pdf](http://www.weforum.org/pdf/AM_2007/merkel.pdf).

6 *Framework for Advancing Transatlantic Economic Integration between the European Union and the United States of America*, April 2007, [http://ec.europa.eu/external\\_relations/us/sum04\\_07/framework\\_transatlantic\\_economic\\_integration.pdf](http://ec.europa.eu/external_relations/us/sum04_07/framework_transatlantic_economic_integration.pdf) (retrieved July 10, 2007).

its close commercial ties with the USA and Merkel's good personal relationship with President Bush were doubtless of benefit. A similar project would hardly have had the same prospect of success under a Portuguese or Slovenian Council Presidency. What was also beneficial for the swift successes was that other member states merely had to be consulted. A mandate to negotiate did not have to be granted and ratification by the Council of Ministers was not necessary, as the framework agreement is not an international treaty.

### 3.2 Dossier: Doha Round

An assessment of Germany's Council Presidency in relation to the Doha dossier is quite mixed. Its support for the Commission can certainly be seen as positive (*inter-institutional co-ordination*). However, it had only limited success in its role as broker between the member states due to external restrictions. The "dual Presidency" of the EU and G8 was hardly exploited to create positive dynamics for negotiations (*external representation*). One of the main differences between this dossier and the one on transatlantic economic integration was that the Doha Round was not declared a top priority of the Chancellery: the BMWi and not the Chancellery was mainly in charge. This choice of priorities was a conscious one: the deadlock in the WTO negotiations was due to so many factors that it could not be overcome solely by the Council Presidency intervening. In this respect, the prospects for success and the positive result associated with it for the German Presidency were low.

The fact that concrete results were not attained in this dossier is not, however, due to a lack of effort on the part of the BMWi. Even if there was no wide-ranging publicity campaign equivalent to that undertaken for the dossier on a transatlantic economic area, the BMWi always emphasised the importance of the Doha Round. In addition, the BMWi's heads of department and sub-department responsible for trade policy met informally with representatives from other EU member states, and the German Presidency was credited by different sides for its considerable sensitivity whilst exploring the national limits *vis-à-vis* an improved offer on agriculture liberalization. All in all, however, the Federal Government remained cautious in its role as *broker* in the meetings of the General Affairs and External Relations Council, the informal meetings between ministers for economics and trade, as well as in the meetings of the 133 Com-

mittee, in order to avoid the impression that it was using its position to pursue its own interests. At the same time, it was, as expected, conscious of avoiding an open conflict with France on the sensitive issue of trade in the agricultural sector. Lately, German trade policy has become more independent from French trade policy. For example, Germany successfully contested France's attempt to restrict Mandelson's negotiation mandate at the end of 2005. At the same time, the Federal Government did not want to affront French presidential candidates during the election campaign, as it was dependant on French support for the EU Summit in June when the timetable for constitutional reform was to be discussed.<sup>7</sup> As had often been the case in the past, Germany was once again trying to avoid an open conflict on trade issues in the interests of the project of European integration and its French partner. Germany's Council Presidency did not, therefore, achieve a breakthrough in the agriculture question in its role as broker. Nor did it succeed in agreeing on a deadline for concluding the Doha talks: at an informal meeting of trade ministers in February, the EU member states merely agreed to concluding the Doha Round as quickly as possible—the year 2007 was, at the request of France, not explicitly mentioned—and the member states called in very general terms for an ambitious and balanced outcome.

The fact that the Federal Government did not use its G8-Presidency or the EU–USA Summit more strongly to give the Doha Round new impetus (*external representation*) is due mainly to two reasons: Firstly, there was concern that a mini-ministerial meeting within the context of Heiligendamm could send a false message to the emerging economies and therefore harm the Round even further. Secondly, the Federal Government did not try more strongly to win US support for an improved offer on reducing agricultural subsidies because priorities as well as points of conflict have to be restricted to a few selected areas in order to promise success: The Federal Government had made the transatlantic economic area its priority for the EU–USA Summit; climate policy was the priority for the G8 Summit.<sup>8</sup>

Finally, at the G4 Summit in Potsdam, bringing together the main negotiators—the EU, USA, Brazil and India—at the end of June, an interim solution was to be found on reducing agricultural subsidies and

<sup>7</sup> See contribution by Andreas Maurer in this paper (pp. 25).

<sup>8</sup> See contribution by Susanne Dröge and Oliver Geden in this paper (pp. 44).

tariffs, as well as liberalising trade in industrial goods. The fact that negotiations broke down at an early stage could have been expected, given that none of the negotiators had shown a willingness to compromise beforehand. At the end of May, the new French President, Nicolas Sarkozy, had announced that he would reject any WTO agreement which went against the interests of France's farming sector.<sup>9</sup> And Mandelson had threatened to withdraw the EU offer on agricultural subsidies if the emerging economies did not submit a new proposal on tariffs for industrial goods. In view of this constellation of negotiations, it is hardly surprising that Germany's Council Presidency was unable to achieve a breakthrough. All the same, the Federal Government was not completely unsuccessful in this dossier: it did succeed in supporting the Commission and in preventing France from restricting Mandelson's negotiation mandate.

### 3.3 Dossiers: bilateral free trade agreements

Right from the start of its Council Presidency, the Federal Government emphasised that *Doha first* did not mean *Doha alone*: "Bilateral or regional trade agreements can represent a useful supplement, in order to secure equal treatment of European exporters with competitors from third countries which have already concluded free trade agreements among each other," State Secretary Wuermeling explained in Brussels on 20th November.<sup>10</sup> The goal of the German Council Presidency was therefore to reach a decision on the mandate as quickly as possible, in order to then enter into negotiations with the respective partners.

As in the dossier on the Doha Round, Germany played the role of *broker* in the negotiations. These were, at times, relatively difficult. Nonetheless, it played a much more active role than in the Doha dossier. It vigorously supported a wide negotiation mandate for the Commission, the granting of the mandates as a package, as well as a text of the mandate that was consistent with WTO provisions. Even if some accused the Federal Government of using its

position to pursue its own national interests, its offensive strategy did pay off in the end: on 23rd April 2007, the Council of Ministers granted the Commission a mandate to negotiate a free trade agreement with India, the Asean countries and South Korea. That the Federal Government was considerably more successful here than in the dossier on the Doha Round was, for one, due to the fact that this dossier was less contentious among the member states. At the same time, the fact that there were fewer external restrictions proved helpful. After all, the aim was merely to achieve a negotiation mandate for the Commission and not about concluding difficult negotiations with third countries.

However, the Federal Government hardly used the Council Presidency to direct the Commission's current focus away from PTAs back to the WTO (*strategic guidance*). Had the Presidency adopted a more consistent stance in favour of multilateralism—and thereby abandoned the conclusion of new preferential trade agreements—, this would certainly have been desirable from a normative economic perspective. Yet this would also have contradicted the equally legitimate goal of avoiding potential competitive disadvantages for EU companies. Since the vast majority of EU members were in favour of concluding new PTAs, the position of the German Council Presidency was quite plausible from a political perspective.

## 4. Conclusion

All in all, the German Council Presidency succeeded in dealing efficiently with the tasks put to it, in the face of serious internal and external opposition. It managed to guide political processes in the trade dossiers on transatlantic integration and bilateral free trade agreements in such a way that progress was made in implementing the European policy agenda. Particularly in relation to the more mixed outcome of the dossier on the Doha Round, it should be borne in mind that Council Presidencies are subject to significant time constraints, as well as structural, internal and external restrictions. Many of the expectations placed on the Federal Government for this dossier—e.g., to take on the role of impulse-giver in order to overcome the deadlock in negotiations or even to bring them to a successful conclusion—were far too high.

<sup>9</sup> cf. EurActiv, *Sarkozy Threatens to Veto Global Trade Talks*, May, 30, 2007, [www.euractiv.com/en/trade/sarkozy-threatens-veto-global-trade-talks/article-164099](http://www.euractiv.com/en/trade/sarkozy-threatens-veto-global-trade-talks/article-164099).

<sup>10</sup> Joachim Wuermeling, *Die wirtschaftspolitischen Ziele der deutschen EU-Ratspräsidentschaft* [The Economic Policy Targets of Germany's Council Presidency], Speech at a dinner roundtable organised by the Konrad-Adenauer- and Hanns-Seidel Foundation, Brussels, November 20, 2006.

## Far-reaching Decisions in Favour of an Integrated Energy and Climate Policy

Susanne Dröge / Oliver Geden

Energy and climate policy formed one of the principal issues of the German Council Presidency: it was at the centre of the EU political process as well as of the Presidency's broader public communication role. It was already clear at the beginning of the Presidency that climate and energy policy would rank high on the EU's agenda. However, the fact that this policy area dominated the first half of 2007 is due to the Presidency's special efforts.

The EU does not have an explicit legal foundation for common action on energy policy (unlike in climate policy).<sup>1</sup> Since the EU's Hampton Court Summit in autumn 2005, there has been a consensus that it is necessary to increase activity in both policy areas. After the Commission presented the *Green Book* on energy policy in March 2006 it became clear that a whole series of projects would come onto the agenda in the first half of 2007: the presentation of the Commission's revised energy strategy at the beginning of the year; the adoption of the energy strategy and the decision on an energy action plan at the spring meeting of the European Council; the G8 meeting in Heiligendamm as part of the preparations for the negotiations on the follow-up to the Kyoto Protocol; the discussion on the completion of the internal market in the electricity and gas sectors, planned for mid-2007.

The German Presidency did not consider it necessary to propose any further initiatives (given the abundance of major projects in the area of energy and climate policy). The policy field became a key area of EU politics in the first half of 2007 as the Presidency not only showed great engagement in the implemen-

tation of the existing agenda but also emphatically tried to oblige other members states (and, as part of its concurrent presidency of that body, the G8 members too) to commit to ambitious binding targets.

### 1. Demands on the German Council Presidency: Improving the Prospects for Energy and Climate Policy

Energy and climate policy has some issue-specific features. No legislative proposals were near completion at the outset of the Presidency. There were just two measures in the legislative process in energy and climate policy, and these had only been initiated by the Commission in December 2006 and January 2007. They were still in the early phase of consultation in the Council working groups and the EP committees.<sup>2</sup> Comparatively little was therefore expected of the German Presidency in terms of intra-Council and inter-institutional *management*. As a result, the Council Presidency aimed mainly to achieve the adoption of ambitious fundamental policy guidelines at the spring meeting of the European Council. These are meant to form the basis for the elaboration of concrete legislative proposals that the Commission was planning to present from autumn 2007.

The EU's attempt to develop an integrated energy and climate policy is part of a highly complex field of activity. The fundamental issues linked to this policy area had been discussed in the member states. Yet, there was no consensus on which parts of energy policy should be regulated at the European level. Confronted with this state of affairs, the Presidency was faced from the start with the joint tasks of speeding up the decision process and sounding out the member states' positions, which in some cases were still very preliminary. A key component of this process were the deliberations in the Energy Council on 15th February

<sup>1</sup> Climate policy is treated as part of environmental policy within primary law (Preamble of the TEU, article 174–176 TEC). Initiatives in energy policy are usually based on TEC article 95 (Internal Market) or 175 (Environment). In general, energy and climate policy issues are decided in the Council by qualified majority voting. The agreement of the European Parliament (EP) is also required. However, in questions "significantly affecting a member state's choice between different energy sources and the general structure of its energy supply" (TEC, article 174, paragraph 2) unanimity in the Council is required, with the EP merely consulted.

<sup>2</sup> The relevant proposals are the planned inclusion of aviation in the European emissions trading system from 2011 (COD/2006/304) and the reduction of greenhouse gases from fuels (COD/2007/19).

as well as in the Environment Council on 20th February 2007. At these meetings it became apparent that central features of the energy strategy presented by the Commission would receive half-hearted—or indeed no—support from the member states. Commitment to increase the proportion of renewable energy as part of primary energy consumption to 20 per cent by 2020 was lacking. So too were concrete measures to complete the internal energy market. However, finding a common stance in these two Council meetings was not of primary importance.

German management of negotiations was concentrated more on the Spring Summit of the European Council on 8th–9th March 2007. It was clear long before the German Council Presidency that this Summit would have to reach a fundamental policy decision, which in turn would only be seen as a political success if it largely confirmed the Commission's far-reaching proposals on climate and energy policy. Otherwise, public opinion may well have come round to the idea that the EU was not capable of acting in this central area of future Union policy. The aim of bringing the Summit to an ambitious conclusion therefore stood at the centre of German efforts.

After the successful completion of the Spring Summit, the Presidency had to invest relatively little energy in this policy area. It restricted itself mainly to a particularly controversial sub-dossier, the completion of the internal energy market, attempting to focus on specific questions and to sound out member state preferences. At the Spring Summit the heads of state and government had only been able to agree to abstractly worded targets, while opinions diverged strongly on the measures suitable for their realisation. The meeting of the Energy Council on 6th June thus devoted itself exclusively to this topic.

To a limited extent, the Council Presidency also acted as *broker* in the completion of the internal market for electricity and gas by sounding out the positions of member states. The aim was to speed up the legislative process that was to begin in autumn 2007 by clarifying the standpoints of individual member states. However, the role of the Council Presidency as broker was far more prominent in the preparation of the Spring Summit. This process began with the presentation by the Commission of the revised energy strategy on 10th January and ended in the early hours of 9th March. The mediation activities were not limited to finding common ground among member state preferences, with the Presidency itself neutral as to the outcome of negotiations. Instead, the Presi-

dency tried to restrict the extent to which changes were made to the Commission strategy. The brokering process itself took place at various levels. The summit conclusions were prepared not only in the deliberations of the Energy and Environment Councils but also in bilateral talks with individual member states. Due to the complexity and sensitivity of the subject matter, fluid coalitions were formed during the early and middle stages of the negotiations. At the beginning of the European Council Summit, many questions were still open. Prime amongst these was the issue of the legal nature of the target regarding renewables (namely that these should form 20 per cent of the national energy mix). France and some eastern European member states were particularly sceptical on this matter.

As the EU's goals in climate and energy policy are markedly long-term, the German Presidency also had to place the interests of individual member states within a broader context (*strategic guidance*). Building on the Commission's energy strategy, the Presidency did not have to formulate its own, or suggest new, goals. As a result, the Council Presidency did not have to provide *impulses*, but could instead support substantial parts of the Commission proposal. Beyond that, the German Council Presidency had to translate the EU's climate and energy policy goals into an equivalent extension of primary law during the negotiations on the successor to the Constitutional Treaty.

The *external representation* of the EU's climate and energy policy featured less prominently than other objectives of the Presidency. Federal Environment Minister Sigmar Gabriel represented the EU during negotiations at the UN Commission for Sustainable Development. However, much more effort was put into the preparations for the G8 Summit at Heiligendamm. Although Germany did not participate in the negotiations in its role as EU Council President, it used its climate policy ambitions to pursue its publicly declared aim of bringing international prominence to the EU's position and facilitating the negotiations on a successor treaty to the Kyoto Protocol.<sup>3</sup>

As climate change and energy security were viewed by the public as key issues, they were especially suited for the *internal representation* of the EU: the Union could thereby demonstrate its ability to deal with future

<sup>3</sup> The conclusions of the European Council's Spring Summit contained not only the unilateral undertaking to reduce greenhouse gases by 20% but also the offer to raise this figure to 30% should the other major emissions producers (above all the USA, Japan, China and India) engage in large-scale reductions.

challenges, not least as a replacement for the stalling (at least in communication terms) Lisbon Process. This role required a certain facility in stage-management. The Presidency had to reduce to a couple of decisive situations the intensified co-operation in the area of energy and climate policy, which it had been pursuing for an extended period of time so that the media could concentrate on a few dramatised negotiations at the Summits.

## 2. Use of National Competences in Climate Policy

The level of resources available to the German government had a positive influence across all EU policy areas. In energy and climate policy, in particular, Germany has a large amount of administrative and regulatory expertise and political credibility. This is particularly true for the issues which were the subject of the decisions of the March Summit: the fight against climate change and the promotion of renewable energy. In addition, Chancellor Angela Merkel was highly qualified as former Federal Minister for the Environment to persuade the heads of state and government of the advantages of an ambitious energy and climate policy.

The particular importance which the German Presidency accorded this political area is also reflected in its efforts to prevent domestic considerations prejudicing the chances of success at the European level. All parties in the 'Grand Coalition' supported the quantitative targets for greenhouse gas emissions and the makeup of the national energy market. Although the coalition partners stood behind the plan to complete the energy common market, they did not agree with all the specific proposals of the Commission. This dissonance did not have any further implications for the European level, as the member states had only been able to agree on general objectives because of widely diverging positions.

The separation of energy networks from energy supply ("unbundling") was regarded by the Federal Economics Minister, Michael Glos in a critical manner. He took the view that a complete legal unbundling of energy companies was not necessary in order to create a competitive and non-discriminatory energy market. Germany therefore holds a position which is contrary to that of the Commission but is shared by many member states.

The German government's position was ambivalent on the more detailed questions of EU climate policy, which in the first two months of the Council Presidency were discussed independently of other issues in the European Council. In the light of its ambitious climate policy aims, the German government repeated its threat ahead of the March Summit to challenge before the European Court of Justice the European Commission's decision to lower the cap on carbon dioxide emissions for the period 2008–2012. The special regulations for German industry in the National Allocation Plan (NAPII) were also withdrawn. Moreover, the German government held back with its criticism in the short but intense public discussion about a legislative proposal of the Commission regarding the introduction of CO<sub>2</sub> targets for car emissions, which would have brought with it competitive disadvantages for the German automotive industry. Despite the government's self-restraint, politicians of the coalition parties and, above all, the German Commissioner for Enterprise and Industry, Günter Verheugen, did step in to defend national economic interests. Despite the best efforts of the government, the discussion on the disadvantages to German automotive manufacturers thus created the impression that Germany's place at the forefront of environmentalism would give way to national economic interests in case of conflict. Ultimately the Chancellor's interventions contributed to the softening of the originally proposed targets.

Because of disagreement within Germany's governing coalition, the German government was not in a position to negotiate or demand a clear European line about the future role of nuclear energy in climate policy. Nuclear energy is still seen as a climate-friendly technology, particularly by France. Despite the threat it poses to the environment, German advocates of nuclear energy saw in the French position an opportunity to challenge Germany's decision to phase out nuclear energy. The participants of the March Summit finally decided—with reference to the national sovereignty in defining the national energy mix—on a formula which did not require any of the member states to take a specific position.

### 3. Success Factors for the Creation of the Energy and Climate Policy Conclusions

The main focus of the German Presidency was to adopt ambitious energy and climate policy decisions at the European Council Summit on 8th–9th March 2007. Germany's active political commitment helped attain this objective.

Many national delegations have retrospectively praised German *management* of the Council's business. As this is a little-advanced policy area in terms of European legislation, the main task of the Presidency was to gauge national positions so that it could act as a successful broker.

The far-reaching conclusions of the March Summit show that the German Presidency exercised its role as broker efficiently. However, at this stage of the political process legally binding agreements were not yet on the agenda—and indeed would not have been possible in view of the limited legal competence of the European Council. At summits, issues with conflict potential (such as the future role of nuclear energy in climate policy, a decision on the specific contributions to be made by each member state to EU targets for the reduction of greenhouse emissions and the proportion of renewables to be included in the energy mix) were also excluded. This considerably facilitated consensus-building. Discussions on upcoming measures to complete the energy internal market demonstrated that agreement on specific legislation will be difficult. The consultations led by the German Presidency—before even a legislative draft had been tabled—point towards large conflict potential and protracted negotiations.

The German Presidency fulfilled its *strategic guidance function* in energy and climate policy, for example by persisting with the relatively far-reaching proposals contained in the relevant Commission drafts.

Germany insisted on setting targets for the reduction of greenhouse gases and for the extension of renewable energy not only because it wanted to see Germany's positions confirmed at a European level: the German government also saw business opportunities for German companies, which have particular expertise and are highly competitive in environmental technologies.

In the *external representation* of the EU and its energy and climate policy proposals the German government also tried to bring prominence to the strategic vision of the EU. The dual presidency of the EU and G8 created a positive dynamic in this respect. *Ex post*, however, the climate policy results of Heiligendamm cast a

different light on the targets which the Council Summit set itself in terms of the reduction of greenhouse gases. Whereas in March 2007 the EU was still an isolated voice calling for a thirty percent reduction of greenhouse gases, dependent on other industrial countries committing themselves to similar reduction rates, the global vision created by the concessions of the large emitting G8 countries have now rendered the idea of binding targets less unthinkable. This global vision has been strengthened by the fact that the UN has been explicitly agreed upon as the most important international forum for climate negotiations.

This success was due to excellent communication management, which characterised the stage-management of the negotiations throughout and facilitated the portrayal of the negotiation results as a breakthrough, made possible not least because of the exceptionally committed Council President. The German Presidency therefore exceeded the role expectations for the internal representation of the EU towards the public and media. If media reports are anything to go by, the summit conclusions will have communicated to citizens a very positive image of the actions and the future prospects of the EU.

The interaction between EU politics and the public also became apparent. In the first half of 2007, energy and climate policy did not just take on a higher significance with the public and the media: it was also thought that a common EU course could offer each individual member state a large amount of value added. Unlike the Lisbon Process, a common energy and climate policy of the EU carried with it the potential to create a common identity. Especially in Western Europe, public awareness of climate change was increasing steadily in the second half of 2006—influenced by studies such as the Stern Review and the reports of the Intergovernmental Panel on Climate Change of the United Nations which appeared in quick succession, but also because of the comparatively mild winter. At the same time, the gas and oil conflicts between Russia and Belarus in 2006/2007 also influenced the debate on energy security—especially in Eastern Europe. A unique window of opportunity opened for the development of a common EU energy and climate policy. The German Presidency made a decisive contribution to the fact that this constellation was actually exploited, and the first serious steps towards a common European energy and climate policy were made.

#### **4. Evaluation of the Energy and Climate Policy Results**

In European climate and energy policy, the German Presidency set itself the task of speeding up the political process and bringing about fundamental decisions. The Commission had put forward an ambitious direction for both policy areas with its draft for an integrated strategic approach. However, the debates on the detailed measures—such as the introduction of emissions caps for cars—as well as on the internal energy market and, particularly, the discussions on the role of nuclear energy in the individual EU member states, did not augur well for an agreement.

The results of the March Summit are positive, not least because the summit participants agreed that the main climate and energy policy aims should be made binding commitments. However, the corresponding legislative procedure is still to be agreed. The question how the costs are distributed between member states and how the objectives are to be implemented at a national level will require a high degree of commitment from the successor presidencies. The German Presidency took the EU a large step forwards in the time that was available to it. However, contrary to public proclamations, the EU did not create a “common energy and climate policy” in the first half of 2007. The member states, aided by the German government, were only able to commit themselves to a promise to work quickly towards the goal of a common policy.

# Asylum and Immigration Policy: Efficient Realisation of a Modest Agenda

Roderick Parkes

The German government took on the Presidency at a key point for the further development of EU migration policy: European-level efforts to create a coherent and balanced policy were in need of political impetus. These efforts were supposed not only to co-ordinate issues of asylum, legal and illegal immigration, but also to forge ahead with their constituent—and long-neglected—social, economic and foreign policy dimensions. At the same time, the internal security measures dealing with illegal immigration that currently form the bulk of EU migration policy were very publicly stretched thanks to the high-profile illegal immigration flows over the EU's southern border in the first semester of 2007. These measures warranted adjustment.

Under the German aegis, this second, and more immediate, pressure for action was given precedence over the longer-term imperatives of ensuring coherence and balance in policy. Certainly the Presidency brought a little more zest to the debate about the foreign policy dimension of migration, and even to the existing co-operation on the socioeconomic integration of immigrants. However, the Federal Government concentrated its resources above all upon a relatively narrow, security-oriented agenda against illegal immigration, befitting its established preoccupations in this area.

## 1. The Idiosyncrasies of Migration Policy

Migration policy is unlike other EU policy areas. Few other policy areas have developed so fast. In 1999, the heads of state and government adopted their Tampere Programme on the further development of the area of freedom, security and justice for the next five years. This Programme prescribed an ambitious range of migration policy measures, in comparison to which its successor, the Hague Programme (2005–2010), was somewhat more modest. The Hague Programme nevertheless picks up on three previously neglected priorities: the integration of immigrants, co-operation on economic immigration, and the necessity of a strategy in the foreign policy dimension. It also sets the optimistic deadline of 2010 for the development of the

next phase of the putative Common European Asylum System. This optimism borders on the delusional given the way that the European Commission has been stretched to its administrative limits by developments in this sphere. Since 2004, when the Commission gained sole right of initiative, there have been delays in the presentation of migration policy initiatives.

For their part, decision-makers in Council have proved increasingly lethargic. Most treat with a marked reticence the Tampere and Hague Programmes' prescriptions. The unusually high salience of migration issues makes agreement very difficult. Three conflict lines have characterised EU migration policy-making, and were apparent throughout the German Presidency:

- ▶ **restrictive** internal security imperatives vs. more **open** social, economic and foreign policy priorities;
- ▶ **burden-sharing** between member states towards “unwanted” immigration vs. **burden-shifting** onto the eastern and southern member states as a result of enlargement;
- ▶ direct **control** of migration vs. **liberalism**.

These lines have hardened thanks to the institutional reforms of recent years: The European Parliament (EP) has enjoyed co-decision rights over matters of asylum and illegal immigration for the last two years, and a dominant, if informal, coalition has promoted liberal positions for which the control-oriented actors in Council have little truck. Meanwhile, the recent shift to qualified majority in Council for almost all matters of migration policy may well have relieved *de jure* the need for consensus. However, 2004 and 2006 saw the accession of peripheral member states with a relatively poor infrastructure for controlling immigration; the tensions between member states on the question of burden-sharing have increased *de facto*. The growing influence of the European Council in the programming of migration policy co-operation has, for its part, led to a strengthening of previously neglected economic, social and foreign policy priorities. This thematic shift has placed issues on the agenda far more divisive than was previously the case, when restrictive questions of internal security dominated.

For the German government, constructive participation in EU migration policy is inhibited for two

further, “internal” reasons: the intensity of German migration preferences, and co-ordination problems within the government.

To take this first trait first: successive German governments have proved attached to control-oriented positions. German governments have also placed an overweening focus on restrictive security issues, displaying marked scepticism towards European co-operation on those social, economic and foreign policy considerations which might lead to an opening up of migration channels. They have, however, been less consistent in their attitude towards burden-sharing: although they neglected their intense burden-sharing agenda from the late 1990s, federal governments have nevertheless begun to show increasing solidarity with the peripheral member states. This shows an awareness that Germany will be adversely affected by any immigration control failure on the part of these countries, and particularly those to its east. All the same, this limited burden-sharing agenda does *not* stretch to include Germany raising its asylum standards out of solidarity with member states with higher provisions or accepting asylum-seekers who have made applications in other member states.

The second of the abovementioned, internal inhibitions for the German government is the difficulty of intragovernmental co-ordination in this fast developing European policy field. Although German preferences in this area appear stable, the issues of European burden-sharing, the desired extent of state control in migration policy and the weighting of restrictive internal security priorities typically excite tensions between pro-integrationists and eurosceptics, between the executive and legislature and between different ministries. In the current German political configuration, which comprises a “grand coalition” as well as a comparatively large degree of autonomy for individual ministries, the divisiveness of these issues is particularly problematic.

That said, as an EU Council President, the German government possesses a number of potential advantages over its partners. Besides its considerable administrative resources, the Federal Government can exploit its ideational expertise in these matters, hard-won through years of experience with immigration. One might also mention the Grand Coalition’s possible influence over a large number of MEPs, and the German membership of the G6 Group comprising the interior ministers of the EU’s six largest states. Although ostensibly a hindrance to its exercise of the office of the President, the strength of Germany’s migration

policy preferences too may potentially prove a boon: states like Finland, which held the Presidency before Germany, have struggled to promote their migration agenda because they are not deemed by their EU-partners to be sufficiently affected by the problems associated with immigration and asylum. The strength of Germany’s preferences bear witness to the way that it has been buffeted by these problems, and lend the government’s subsequent suggestions credibility and even an aura of neutrality.

## 2. The Demands on the German Presidency

In line with the Hague Programme and subsequent policy documents, the following migration policy issues were on the agenda at the start of the German Presidency:

- ▶ the Commission was to present a green paper on the future of the putative Common European Asylum System. Administrative co-operation in asylum affairs between member states authorities was also to be intensified. Various hangovers from the Tampere Programme, notably the question of residence rights for refugees, were finally to be tackled.
- ▶ the 2005 “Global Approach to Migration”—the first real step towards a foreign policy strategy for immigration policy—was to be refined throughout 2007. It had been criticised as simultaneously too broad in terms of the array of tools it suggests and too narrow in terms of its geographic scope, and specifically its focus on states to the south rather than to the east of the EU.
- ▶ new impetus was to be given to the previously neglected economic dimension of immigration to the EU. In the course of 2007, the European Commission was to present proposals regulating channels for legal immigration, with a particular focus on highly qualified workers.
- ▶ efforts to regulate the social element of immigration had largely stalled after a brief flurry of activity in 2004. Co-operation on the sensitive question of the “integration” of immigrants was to be carried forward.
- ▶ security concerns arising from illegal immigration across the EU’s common southern border were to be dealt with via joint operations in the Mediterranean. In the same vein, a regulation on the creation of Rapid Border Intervention Teams (RABIT) was to be elaborated.

- ▶ progress was to be achieved in the long drawn out negotiations on the proposed Directive for the return (expulsion) of illegal immigrants. These negotiations had come unstuck under the previous Finnish Presidency largely thanks to disagreement between Parliament and Council about the human rights content and very utility of the measure.

In order to achieve progress, the German government needed to use the office of President to overcome the three conflict-lines described above. This placed specific demands upon the fulfilment of the functions associated with the Council Chair.

### 2.1 Management and “internal representation”

Given the Commission’s administrative limits, the task of ensuring that the deadlines of the Hague Programme are respected falls in no little part to the Council Presidency. In order to create an amenable environment in which to deal with the three conflict-lines described above, the German Presidency had to engage in effective time management, making sure that its agenda was not unrealistic, and so helping to speed well-advanced dossiers like the proposed Returns (expulsion) Directive through the decision-making process. With less developed proposals, e.g., those programmed for presentation, it was important that the President map out member states’ preferences and push the Commission to make its proposals expeditiously. This was, for example, the case with the presentation of measures on legal economic immigration, and the development of the European Asylum System.

It is, however, also the case that for some dossiers the Hague Programme and the associated Commission plans envisage few deadlines. An approach to the integration of immigrants and a strategy for the external dimension are to be forged from a wide-ranging debate within an open-ended time frame. Yet, by the beginning of 2007, these dossiers had either been neglected or had been allowed to descend into nebulosity. Here the Presidency needed to perform another of its management functions, namely clarifying the debate and identifying the available options.

Of course, not all those issues to find their way onto the agenda in 2007 were likely to have been pre-programmed at the Hague. A good manager should also allow for the possibility that unforeseen events will demand attention. During the German Presidency, just such a situation arose thanks to the refugee situation caused by developments in Iraq. Sweden felt that

it had been particularly badly affected by this turn of events, and called for a European response based on solidarity and a recognition of shared responsibility.

The “internal representation” role of the Presidency, by contrast, involves not only ensuring that the EU acts in a timely manner in response to such developments but also communicating this capacity for action to a broad range of actors in the member states. Each year, the member states’ ability to control immigration is thrown into doubt by the migration flows from North and West Africa over the southern EU border. To perform its representative function, the Presidency did not merely have to ensure the speedy adoption of the RABIT Regulation and the organisation of a joint patrol at the EU’s southern flank, it also had to communicate to a broader European public the utility of this response.

### 2.2 Impulse-giving and strategic guidance

As noted above, even at the beginning of 2007, the ambitious date of 2010 for the further development of the EU Asylum System appeared unrealistic. To meet it, fundamental asylum policy questions would require immediate attention. The need for impulses was, however, clearest in the previously neglected social, economic and foreign policy dimensions of migration policy—questions like the integration of immigrants or the opening of channels for legal immigration likely to trigger disagreement amongst the member states along the first of the abovementioned conflict-lines. Without such impulses, there was a risk that security-centric goals (the RABIT dossier, for example) would be privileged *de facto* by their salience and the immediate pressure to act.

Whilst the question of the protection of the external borders was lent urgency by current events in the Mediterranean, this does not infer that there was consensus in Council about the EU’s response to them. The question of burden-sharing—the second of the aforementioned conflict-lines—could be found threaded through this whole issue. In order to overcome tensions in Council between those member states most directly affected by events and those only indirectly affected, the German needed to show strategic guidance, setting the issue in a long-term, EU-wide context and pointing to a common European interest and responsibility.

It was not merely conflicts internal to the Council which required the Presidency to fulfil its strategic-

guidance function: the third conflict-line—liberalism vs. direct control—has long characterised relations between Council and Parliament. The Returns Directive is the first major proposal to be dealt with under the new co-decision rules for this area. Many actors in Council—and at their head, France and Germany—had been relatively clear that they would prefer to see this initiative quietly dropped. Indeed, under the previous decision-making rules, in which the EP was marginalised, this would in likelihood already have occurred. The newly empowered EP has, however, proved keen not only to see EU intervention in this area but also to maintain many of the liberal elements of the proposal which some actors in Council find so objectionable. In order to achieve progress in this area, the German Presidency would again have to present this issue to the member states in its broader, European context.

### 2.3 Neutral brokerage

In Council, it was above all the disputes surrounding the issue of burden-sharing which placed demands upon the Presidency as a neutral broker. Different notions of where the burden lay, and questions whether “solidarity” should be shown without its beneficiaries themselves meeting certain reciprocal duties, plagued the negotiations on the organisation of the joint patrol on the southern border and the question of RABIT. Similar concerns have characterised the question of the geographical focus of the external dimension and specifically the “Global Approach:” even if the immigration flows over the EU’s southern border have garnered most public attention, the *eastern* border has long provided a channel for illegal immigrants into the EU—a channel neglected by the Global Approach. All the same, for many member states the proposed extension of focus for the Global Approach was a specifically German preoccupation that reflects its own particular interest in the matter.

Between Council and Parliament, it is disagreement over the question of liberalism and the desired limits of executive power that requires neutral brokerage. This was not only true of the proposed Returns Directive: in the case of the RABIT Regulation too, the Parliament had signalled that it was committed to the speedy adoption of the measure. The question of the lassitude and powers to be afforded officials looked set, though, to be a sticking point.

It is not only within the decision-making apparatus of the EU that the President must act as broker. In par-

ticular the first major conflict-line—the question of the weighting of restrictive internal security issues *vis-à-vis* foreign policy priorities—requires interaction with third countries in which the Presidency too may be involved. Since the adoption of the Global Approach, a series of high-level meetings between the EU and African states have been held in an effort to ensure the latter’s constructive input into European migration policy.

## 3. Efficient Realisation of Modest Goals: A Stocktaking of the Presidency

### 3.1 Management and internal representation

The German government’s performance of the basic management tasks was handsomely praised, and it created a suitable environment for dealing constructively with conflicts. Documents were prepared and distributed in a timely manner; the organisation of meetings at all working and political levels of the Council was efficient. In these efforts, the Presidency could usefully draw on additional resources from UNHCR and the Washington think-tank Migration Policy Institute which functioned as sources of expertise.

The Presidency’s time management also proved measured. The generally accomplished time management allowed the Chair to allot much time to the abovementioned problem of Iraqi refugees. Only the high pace of negotiations on the RABIT Regulation proved a source of concern. In all likelihood, this pace aided agreement, as smaller states with limited administrative resources struggled to formulate their position on facets of the measure in good time. Even if some of the expected conflict-lines did not fully materialise, this progress therefore came at a cost.

Yet this activity also needed to be communicated to the public. Although the German personnel remained accessible for the press and other actors, the Presidency did not employ a particular communications strategy—just the opposite in fact: exciting public interest in the putative measures was deemed a potential disruption to the management of the political process, likely forcing negotiators to tie themselves publicly to certain positions. Thus, although the Presidency successfully achieved one of its key priorities with the speedy adoption of the RABIT Regulation thanks to the government’s successful performance of the management function, this same management

strategy reduced its capacity to perform its representative role.

### 3.2 Impulse giving

To the surprise of many actors in Council, Germany focussed a large part of its resources upon a slow-burning issue which had all but disappeared from view under the preceding Finnish Presidency: the question of the rights which immigrants enjoy under Association Agreements between the EU and their countries of origin. Immigrants from these states enjoy privileges to work in the EU which are deemed to disrupt broader immigration control efforts. A number of member states have drawn attention to this problem in recent times, but it is Germany, with its idiosyncratic national regulations, which seems most adversely affected by the European rules.

This indicates that Germany allowed itself to be guided in large part by its own national interests in this function. Indeed, besides the question of rights afforded under Association Agreements, it was the traditional German preoccupation with internal security problems that was privileged by the Presidency. The RABIT dossier and the joint patrol on the southern border stand out in this regard.

That said, the German Presidency did, admittedly treat certain questions outside this narrow spectrum. The integration of immigrants was the subject of an interministerial meeting. The question of the external dimension too received attention. The government entered the debate on the tools employed in the Global Approach by gauging reactions to the twin ideas of “circular migration” and of member-state quotas of economic immigrants from states that signed returns agreements with the bloc.

Nevertheless, it remains questionable whether these suggestions for the further development of the Global Approach were really given serious political treatment by the German government. The Presidency did not initially explain what it understood by the term “circular migration,” further blurring an already nebulous debate. The discussion about the possible introduction of national quotas was, by contrast, already far advanced; it had met with extreme reticence from all the larger member states except Italy. Indeed, elements within the German government were amongst the strongest opponents. The government’s commitment to these proposals was thus questionable.

In hindsight, most member states welcomed the fact that the German government had dealt with the external dimension—a topic which was obviously not close to its heart. This scarcely alters the impression that the German agenda and its setting of accents were modest, with a predominant focus on its traditional control-oriented and security centric preoccupations. Indeed, when the German government finally got around to elaborating its proposals on circular migration, this had mutated into a tool for co-opting third countries into the EU’s internal security efforts.

### 3.3 Strategic guidance

In dossiers which were core to its agenda—i.e., those control-oriented, internal security proposals which accorded with its readiness for *limited* burden-sharing—the German government performed its strategic guidance function well, overcoming the abovementioned conflict-lines with alacrity. Divisions over the question of burden-sharing, for example, plagued the progress of the RABIT Regulation. Here the Presidency was able to place the proposal in a “European perspective” with reference to two arguments: it pointed, firstly, to the positive experience of operational co-operation between member state authorities during the football World Cup and, secondly, the fact that it counts amongst the most committed member states in efforts to protect the common external borders. In the case of the joint patrol on the EU’s southern flank, the German government signalled its willingness to participate in an operation not in its own narrow interests.

In a number of dossiers outside its core agenda, the German government performed this guidance function with markedly less élan. A compromise proposal for the Returns Directive put forward by the preceding Finnish Presidency was abandoned in Council for the apparent reason that the liberal elements it contained would undermine the control necessary for the effectiveness of expulsion efforts. Yet, the Presidency made little effort to present such standards to its national counterparts in a broader context so as to narrow the difference of opinion between Council and Parliament. Instead, a “Portuguese” compromise proposal was made towards the end of the German Presidency on the basis of consultations carried out during the first semester of 2007. Its minimalist and control-oriented bent seemed likely to meet a frosty reception in Parliament.

### 3.4 Neutral brokerage

In the runup to its Presidency, the German government facilitated the eastward extension of the Global Approach by depoliticising its own interest in the matter—i.e., its desire to spread its burden in the control of eastern migration. Germany and its allies placed the issue on the agenda of the European Council in December 2006. It was not Germany, nor the German Presidency which called on the Commission to report on the possibilities for the extension of the Global Approach but the European Council as a whole. The report was presented at the end of the Presidency.

Moreover, thanks to its brokerage efforts, the Presidency prepared the way for decisions not only in Council, but also between Council and Parliament. In some cases, the Presidency delayed decisions in Council until the Parliament had formulated its position in order to allay concerns that it was being marginalised in the legislative process. In the case of the RABIT Regulation, the Presidency worked hard to ensure that the German groups in Parliament and the rapporteur were closely informed about progress in Council in order to head off potential disagreements about the apparently illiberal content of the measure—a sensible use of the resources accrued through the Grand Coalition's relations to MEPs. All this does not infer that the German performance here was in any way flawless, and the Presidency was criticised for recognising the importance of the Parliament at a late date, and then for focussing its attentions predominantly on the larger party groups rather than the Committees—as if it were dealing with the Bundestag rather than the European Parliament.

There was little need for the Presidency to broker directly with third countries. Its agenda-setting efforts in the question of the external dimension may, however, prejudice future efforts in this direction. Instead of using inclusive channels bringing together all the member states, and perhaps even the relevant third countries, Germany introduced this part of its agenda via the exclusive G6 meetings. This points to an inherent tension between the agenda-setting function, in which the Presidency's G6 resources were key, and the brokerage role; this tension could, though, have been handled with more foresight.

More generally, the Presidency's brokerage efforts were confined to those dossiers in which the German government wanted to achieve progress. In cases where dossiers deviated from the German agenda, it desisted from providing the political impetus necessary to

bring negotiations to a positive conclusion. The question of the treatment of asylum applicants from Iraq was, for example, extensively examined by member states. Yet the Presidency proved reluctant to deal with the question at the only level actually in a position to take the necessary political decisions—the political. Not only did the Swedish demands diverge from the Presidency's limited notion of burden-sharing, the German government had recently taken related domestic decisions concerning Iraqi asylum-seekers and had few incentives to reopen the issue.

## 4. Conclusions

It is presently impossible to reach a conclusive verdict on the German Presidency: within the framework of the Team-Presidency system, a government can legitimately extend aspects of its Presidency role—and the attendant duties—beyond the six-month period during which it holds the Chair. If the German government wishes, for example, to safeguard the progress made on issues like the eastern dimension of the Global Approach, it will have to offer support to the future Slovenian Presidency: the Portuguese Chair in the second semester of 2007 will likely shift the focus of the Global Approach back in a southerly direction. In fact, though, the Federal Government does not appear to hold any such plans to support the Slovenians: the German government is wary of giving the impression that it is behaving like a large, domineering state (thus indicating a possible fault line in the Team-Presidency system in general).

*Preliminary* verdicts on the Presidency can be drawn now. From central actors in the Council and Commission, these verdicts are overwhelmingly positive. Above all, the German Presidency's efficiency in managing EU agendas, its brokerage efforts, and its impulse-giving in the inception of the joint patrol and the Rapid Intervention Teams, as well as its work on the external dimension, have been praised. In some dossiers the Federal Government was also successful in overcoming "internal constraints" on its capacity to perform Presidency roles. This appeared the case in its more solidarity-based approach towards the protection of the common external border and perhaps even its ideas on the introduction of national quotas for legal immigrants.

It is necessary, though, to set these impressions in a broader context: in the Hague Programme, ambitious Justice and Home Affairs deadlines and goals are laid

down, but the member states are lethargic. The Commission too is under strain, and the European Parliament struggles to give proper attention to the plethora of proposals before it. Against this background, it is hardly surprising that a Presidency which performs its core functions in migration policy with efficiency, but does little beyond this to add impetus to the policy process, should receive a positive—even relieved—reception from other European-level actors. Rather than seeking to overcome such “external constraints” on the performance of its Presidency roles, the German government often merely tailored its Chairmanship to them, focussing its considerable resources on a modest, security-centric agenda. The same approach was adopted towards many of the “internal constraints” on the Presidency, with the Federal Government exploiting the well-known sensibility of certain of its federal ministries and cabinet members towards migration questions in order to justify their non-treatment under the German Chair.

To give one example: the Federal Government informed the Commission in 2006 that it would not be a *demandeur* for measures on legal economic immigration. Its decision was treated sympathetically by most other actors in Council given the strong German preferences and intragovernmental disagreements on the subject, not to mention the other member states’ own misgivings on the subject. The move also suited the Commission given that Institution’s administrative overstretch.

# Holding all the Cards. Strong German Impulses for Police Co-operation

*Daniela Kietz*

In light of the difficult decision-making process in police co-operation matters, the German Presidency's targets were quite ambitious. On the one hand, the development of a European information network was to be accelerated considerably through new impulses (integration of the Prüm Convention into the EU legal framework, decision on access of law enforcement authorities to the Eurodac database) and moribund projects were to be brought to a close (decision on access of law enforcement authorities to the Visa Information System; Framework Decision on data protection in police and judicial co-operation). On the other hand, there was a complex, large-scale project on the agenda: reforming and strengthening the European Police Office, Europol. Despite these considerable demands on its performance as President, the German government may be seen to have a number of advantages in this area: It was able to draw not only rely on extensive administrative, but also political, resources. For many years, the Federal Republic has distinguished itself as an agenda-setter for European police co-operation. Over the course of time, it has therefore developed a special expertise as well as long-term relations with the relevant actors in many EU member states. In this sense, the German government held all the cards. The question is, did it make full use of them?

## 1. Institutional Framework

Police and judicial co-operation in criminal matters is, as an aspect of European justice and home affairs policy, part of the so-called third pillar of the EU. Co-operation in this area has been difficult, due to the existence of 27 separate criminal justice systems as well as the diverse national police traditions which have developed over the years, not to mention the significant implications of security co-operation for fundamental and civil rights.<sup>1</sup>

<sup>1</sup> Co-operation in criminal justice matters will not be discussed in this contribution.

The political negotiation and decision-making process in police co-operation is marked by efforts to retain sovereignty: the main actors are, after all, the member states in the Council. Since unanimity is required for decisions to be taken, these are usually preceded by lengthy decision-making processes in the Justice and Home Affairs (JHA) Council. The European Commission shares the right of initiative with the member states. It is only in recent years that member states have begun to grant the Commission a larger role in drafting European legislative proposals and in policy planning. The European Parliament (EP) has also gained a more significant role, albeit against the express will of the actors within the Council: formally the EP is merely consulted on legislation in the third pillar. The Council can make consultation subject to tight deadlines and it is not bound by the EP's position. However, since January 2005, the EP has been a co-legislator on an equal footing with the Council for areas of Justice and Home Affairs policy dealt with under the first pillar.<sup>2</sup> Some current legislative projects consist of several separate proposals which have their legal basis partially in the first and partially in the third pillar. In terms of substance, however, they do belong together and so they have to be adopted in rapid succession. The EP debates these legislative proposals as a package. It links its approbation for the legislative proposals adopted within the co-decision procedure to that of legislative acts which are "only" adopted through the consultation procedure, in order to extend some of its co-decision powers to the third pillar. For the Council Presidency, in its role as broker, this means that political mediation processes no longer focus exclusively on the Council, and that the EP has, in the cases mentioned above, established itself as an additional actor in negotiations.

<sup>2</sup> Migration, asylum, visa and border control policies, as well as co-operation in civil law matters have their legal basis in the so-called first pillar of the EU (EC Treaty) and decision making is now largely communitarised, i.e., the EP enjoys co-decision rights, the Council decides by qualified majority voting and the Commission has the sole right of initiative. On this subject, see the contribution by Roderick Parkes in this paper (pp. 49).

In the third pillar, much more so than in the first, the impulse-giving and strategic-guidance roles fall particularly to the Council Presidency. At the same time, however, the Presidency's scope for setting its own priorities is limited by the work programmes which are adopted by the European Council and are valid for five years. During its six-month tenure, the Presidency mainly continues the work of its predecessor and focuses on implementing the Hague Programme (2005–2010).

## 2. Resources Available to the German Presidency

The German Presidency has particularly significant personnel and administrative resources at its disposal. Germany also had a considerable interest in security authorities co-operating to combat crime. For many years, the Federal Republic has distinguished itself as an agenda-setter for European police co-operation: in the seventies, Germany played a central role in developing transnational co-operation in counterterrorism, it was a driving force behind the foundations for the Schengen co-operation during the eighties, as well as the establishment of the European Police Office, Euro-pol. At the bilateral level, Germany has concluded agreements on police co-operation with all its neighbouring states. Over the course of time, it has therefore developed a special expertise as well as long-term relations with the relevant actors in many EU member states.

## 3. Demands on the German Presidency

### 3.1 Access of law enforcement authorities to VIS and Eurodac

In future, all visa applications for EU states are to be stored in the Visa Information System (VIS). This system is aimed at improving the implementation of the common visa policy by facilitating the exchange of data on applications and decisions on applications between member states. At the heart of the package of measures to create VIS is a regulation which had been debated by the Council and Parliament within the co-decision procedure since spring 2004. The VIS was also to be used for law enforcement purposes to improve the EU's internal security. A proposal for a Council

Decision to facilitate this was submitted by the Commission at the end of 2005.

In the existing negotiation situation, the Council Presidency was mainly required to be an impartial broker in the Council and between the Council and the EP. The decision to grant national law enforcement authorities access to VIS was politically highly sensitive: neither Eurodac nor VIS are police databases. Allowing law enforcement authorities access therefore has significant implications for data protection. The potential for conflicts was high, particularly with regard to the EP. Although the EP was formally only consulted on the access decision, it linked the debates on both VIS legislative acts and aimed to have them adopted as a package. In the recent past there have been repeated delays in the adoption of legislative acts when the EP bundled measures into cross-pillar packages. According to the majority of actors in the Council, the EP is acting beyond its competence in the third pillar by adopting this practice. In light of this situation, the Council Presidency needed to take a cautious approach with regard to the EP, in order to break the deadlock and avoid further delays. There was strong political pressure to reach agreement: despite the fact that the package of measures was regularly accorded high priority by all actors involved, previous Council Presidencies had not succeeded in brokering an agreement. The Hague Programme had required VIS to be operational in 2006.

The difficult negotiations with the EP also called for special efforts in terms of the Presidency's management role. Contacts to actors in the EP had to be made at an early stage, interinstitutional discussions needed to be co-ordinated with the Council's internal debate on the dossier and a negotiation strategy which would be conducive to finding a compromise had to be prepared. At the same time, the Presidency could not afford to lose sight of the constellation of interests within the Council.

Unlike the VIS dossier, the Hague Programme did not set out any specific timetable for law-enforcement authorities to be granted access to the Eurodac database, in which all asylum applications for EU states are stored. As in the case of the VIS, the legal basis for Eurodac is a regulation in the first pillar. There were therefore no provisions for using the data for the purposes of fighting crime. Many actors considered the negotiations on the VIS access decision as a precedent for the opening of Eurodac. The early timing of the German initiative, which came even before negotiations on VIS were concluded, may therefore have

surprised some observers, particularly in light of the fact that, unlike the VIS dossier, the German Government and not the Commission had intended to present a draft proposal for a Council decision during the German Presidency. As Council Presidency, the German Government therefore had to convince the member states, as well as the Commission, of the necessity of bringing forward this dossier at that point in time. Germany had to dispel concerns that it wanted to use its advantageous position as Chair to pursue its own vested interests in this dossier.

The negotiations on a framework decision on data protection in the third pillar were closely linked to both of these dossiers. The decision had been discussed since 2005 within the EU institutions. However, due to the strongly divergent interests of the member states, a consensus had not been reached. Here, again, there was a need for brokering not only within the Council, but also in relation to the EP. In the past, the Parliament had threatened on a number of occasions to allow legislative measures which were substantially linked to the data protection decision to fail if an agreement was not reached on the decision. The EP accordingly made its approbation to the VIS-access decision conditional on the adoption of the data-protection decision. From the EP's point of view, an increasingly intense exchange of data between European law enforcement authorities should be accompanied by an increase in the level of data protection.

### 3.2 Strengthening Europol

The proposal for a Council Decision on the reform of Europol was issued by the Commission in December 2006. This had been preceded by a lengthy discussion process within the Council on the aims and substance of this reform which had begun under the Austrian Presidency. Negotiations on an actual text only began under the German Presidency, which faced the organisational challenge of sounding out member states' precise positions. The German Presidency had the mandate to reach political agreement on the main elements of the legislative draft before the end of its tenure.<sup>3</sup> In terms of substance, the mandate focused the negotiations on sensitive issues, such as whether Europol was to be financed from the EU budget and thus rendered subject to the EP's budgetary control.

<sup>3</sup> Press Release, 2768. Meeting of the Council for Justice and Home Affairs, Brussels, December 4–5, 2006, p. 21.

Due to the long preliminary discussions, the Presidency was able to rapidly enter into negotiations, in which the European Parliament, which is merely consulted in this matter, is not a decisive actor.

### 3.3 Integration of the Prüm Convention into EU legislation

The goals of the Hague Programme included, on the one hand, the improvement of information exchange between national law enforcement authorities (exchanging data from DNA, fingerprints etc.) and on the other hand, the improvement of police co-operation at national borders (joint patrols etc.). Although the rationale behind these plans was uncontroversial among the member states, there was no consensus about the best mode of realising them, in view of their implications for fundamental rights, as well as the vastly different national legal frameworks. This triggered a lengthy discussion on solutions which were technically and legally feasible, as well as politically desirable at the European level.<sup>4</sup> The discussion process culminated in October 2005 in the tabling of a Council framework decision on the exchange of information<sup>5</sup> which, according to the Hague Programme, was to enter into force by 2008. In July 2005, the Commission had already tabled a proposal concerning police co-operation at the internal borders.<sup>6</sup> Progress on both proposals in the Council working groups was slow. The outcome of a co-operation project between the Benelux states, Germany, France, Austria and Spain influenced these negotiations: the so called Prüm Convention,<sup>7</sup> concluded outside the EU legislative framework in May 2005, contained substantial overlaps with the proposals negotiated in the Council.

<sup>4</sup> See, for example: Council of the EU, *Friends of the Presidency Report on the Principle of Availability*, Doc. 5595/06, Brussels, January 25, 2006.

<sup>5</sup> European Commission, *Proposal for a Council framework decision on the exchange of information under the principle of availability*, COM (2005) 490 final, October 12, 2005.

<sup>6</sup> European Commission, *Proposal for a Council Decision on the improvement of police co-operation between the Member States of the European Union, especially at the internal borders*, COM (2005) 317 final, July 18, 2005.

<sup>7</sup> "Convention on the stepping up of cross-border co-operation, particularly in combating terrorism, cross-border crime and illegal migration." <http://register.consilium.europa.eu/pdf/en/05/st10/st10900.en05.pdf>.

The German Presidency had two options to provide the prolonged negotiations in Council with renewed impetus: it could try to drive both Commission proposals forward in the decision-making process, or it could transpose the relevant parts of the Prüm Convention into EU legislation. In view of the high level of interest on the part of several member states in acceding to the Prüm Convention, the German Federal Minister for the Interior, Wolfgang Schäuble, had, at the informal Council meeting in Tampere in September 2006, already expressed the intention of incorporating parts of the Convention into EU legislation during the German Presidency.

Accordingly, the timetable was extremely tight, and placed high demands on the Presidency's role as a manager and broker. A unanimous decision could only be achieved if a proposal for a Council decision based on the Prüm Convention was tabled as quickly as possible and rushed through the Council bodies. Negotiations would have to take place on the basis of the member states' relatively unclear positions. The Council Presidency was also required to perform a strategic guiding function since member states needed to be persuaded to relinquish their national reservations, bearing in mind the overriding European objective of the Hague Programme—namely to improve the exchange of information by 2008. Given that the Prüm Convention had largely been negotiated at the Germans' initiative and Germany had taken the lead in its drafting, the Presidency had to avoid the impression that this dossier was solely in Germany's interest. The Council Presidency could hope to receive support within the Council particularly from the other Prüm signatories. However, intense consultation was also necessary with the Commission whose original proposals would have been rendered obsolete by the realisation of the Presidency's decision to incorporate the Prüm treaty. At the same, the Commission plays an important role in the technical implementation of the Prüm Convention and tensions between Council and Commission therefore had to be avoided. The EP was merely consulted on the Prüm decision. Formally speaking there was therefore only a small need for the Council to try and find a mutually acceptable arrangement with the EP. However the Parliament's criticism that the Convention had been negotiated under conditions which lacked democratic legitimacy was so fundamental and comprehensive that the Presidency would have been wiser to seek an

agreement with the EP, in the interests of the success of more long-term inter-institutional relations.<sup>8</sup>

## 4. The Fulfilment of the Presidency's Roles: A Stocktaking

### 4.1 Efficient management

The German Ministry of the Interior had already published an eighteen-month programme—agreed upon with Slovenia and Portugal, but formulated mainly in Berlin—at the beginning of October 2006. It also presented its own six-month work programme at an early stage. The German priorities were outlined and specified in January 2007 at an informal Council meeting at the beginning of the Presidency, in Dresden: at the top of the agenda were the transposition of the Prüm Convention into the EU legal framework, as well as the conclusion of the VIS dossier, followed by the continuation of the Europol reform.

The Council Presidency's management performance was sound. The meetings of Council working groups and committees were well-prepared in advance. Only minor changes were made to the agenda and timetables in the course of the Presidency. Significant problems did not occur, even in relation to management-intensive dossiers, such as the Council Decision on the Prüm Convention. As in many other policy areas, work was planned and co-ordinated centrally within the Federal Ministry of the Interior and not through the Permanent Representation in Brussels.

The Presidency's resolute and determined style of leadership proved successful in its chairing of Council working bodies: it did not let discussions get of hand and exerted considerable pressure on national delegations to reach agreement. This seemed to be necessary given that the member states in Council had to reach unanimous decisions on extremely sensitive issues in a short period of time. This style of leadership may have caused ill-humour among some delegations; however, even they admitted that the Council's efficiency in reaching agreements was enhanced

<sup>8</sup> For a more detailed discussion, see: Daniela Kietz and Andreas Maurer, "Fragmentierung und Entdemokratisierung der europäischen Innen- und Justizpolitik? Folgen der Prümer Vertragsavantgarde" [Fragmentation and de-democratisation of European Justice and Home Affairs policy? Consequences of the Prüm Convention avant-garde], in: *Jahrbuch Öffentliche Sicherheit* (Verlag für Polizeiwissenschaft), (2007), pp. 439–452.

by the Presidency's resolute action. Apart from that, they also recognised that, with 27 member states, decisions could hardly be reached otherwise.<sup>9</sup>

The Presidency's management performance in co-ordinating negotiations between the Council and EP on the VIS access decision was not quite as satisfactory. Parliamentary actors criticised delays and the Council Presidency's initial stonewalling, which increased tensions in already difficult relations. The German Presidency did not effect a smooth transition from the Finnish Presidency's negotiation efforts. Instead, it did not address several questions raised by the EP's VIS *rapporteur* until the second half of its tenure.

#### 4.2 Successful brokering through bilateralism, informality and expertise

In line with the high priority with which the Presidency accorded progress in this policy area, it put considerable effort into brokering in the core dossiers. Any concern harboured by other member states that the Chair's own vested interests would prevent it from displaying the impartiality necessary to act as a broker of compromises, proved unfounded. In general, the German Presidency was able to introduce proposals for compromises which reflected the view of the majority.

A significant part of the German Presidency's success in brokering can be traced to the frequent use of bilateral consultations, informal discussions, expert seminars and workshops.<sup>10</sup> German actors brokered compromises in this informal manner, not only at the lower working levels of the Council, but also at the level of ministers and state secretaries.<sup>11</sup> This practice of conducting negotiations outside the Council's formal decision-making framework is a reaction to the requirement to reach decisions unanimously in this part of Justice and Home Affairs policy—something rendered ever more difficult by the presence of no less than 27 member states. The fact that the use of

less formal decision-making channels was successful emphasises the need to reform the Council's decision-making procedures and allow for majority voting.

The influence on the course and success of negotiations exercised by Presidency actors thanks to their personal relations and the expertise enjoyed—and backed by a real determination to bring forward European co-operation in this area—should not be underestimated. On the German side, the most important posts in the paraphernalia of the Presidency were given to those who had already served under the country's last presidency and who therefore had the relevant experience. The extensive expertise of high-level civil servants, the German Minister of the Interior and state secretaries in their field strengthened their clout and had a confidence-building effect on national delegations in the Council. In particular, the expertise and personal commitment at the level of the minister and state secretaries proved to be an important factor for success in negotiations within the Council and in relation to the EP.<sup>12</sup>

In the first half of the presidency-term, there were considerable problems in acting as a broker in the negotiations with the EP on the VIS dossier. The Presidency focused initially on brokering within the Council, in order to achieve a clear mandate for negotiations with the EP. During this phase, the EP's *rapporteur* asked the Presidency on several occasions to clarify when and how it intended to continue inter-institutional negotiations. The Presidency's decision to ignore these inquiries caused unnecessary ill-feeling and put the success of the negotiations at risk. In the end, it was only through significant efforts in brokering and the personal commitment of the German Minister of the Interior during the second half of the Presidency that a compromise was found which largely responded to the demands of the EP. Parliamentary actors were subsequently appreciative and assessed the Presidency's efforts to broker positively. Finally, the Presidency managed to persuade the Council to accept the compromise.

However, one demand which was important to the majority of the EP was not met: despite demonstratively intense efforts to mediate and regardless of several compromise proposals, the Council did not reach an agreement on the data protection framework

<sup>9</sup> Occasionally the rapid pace of negotiations, which the German Presidency was able to set thanks to its resources, left small member states hardly any time to formulate their own position.

<sup>10</sup> An example of this were the informal meetings of representatives from the Commission, the Presidency, the Council Secretariat and some member states, known as the "Berlin circle," to reach a consensus on the Europol dossier.

<sup>11</sup> In this way, critical issues were put on the agenda of informal dinners at Council summits, at which only ministers were present, without their advisors and translators.

<sup>12</sup> Among other measures, the Federal Minister of the Interior and the Parliamentary State Secretary in the Federal Ministry of the Interior visited their counterparts in all 26 capital cities before the German Presidency began.

decision. In a compromise aimed at the EP, the Presidency proposed a formal Council declaration in which it reaffirms its intention to adopt the framework decision by the end of 2007. In this regard, the Germans support the incoming Portuguese Presidency in the relevant negotiations. From the Presidency's point of view, this de-linking of the negotiations on the data protection dossier from the VIS dossier must be regarded as a major brokering success. For more than a year the EP had insisted on linking the two and had not caved in to the Council's pressure to adopt the VIS without the new data protection regime in place.

Negotiations on the Council decision reforming Europol proved to be more difficult than had been expected and did not progress as far as had been planned. This was not so much due to the Presidency's lack of effort, but had more to do with the strongly divergent interests of the delegations in the Council. A compromise was achieved on the first chapter. However, only a preliminary agreement was reached on the central issue of the financing of Europol. Co-operation with the Commission on the Europol dossier was not as successful, mainly due to changes in personnel within the Commission and the increased effort in co-ordination associated with this.

Co-ordination with the Commission in relation to the Eurodac dossier was less than satisfactory, which in the end hampered progress (see below). As far as the Prüm Convention was concerned, co-ordination had been working well even before Germany's tenure. The Commission had initially been irritated by the fact that in the Prüm Convention, deeper co-operation steps had been negotiated outside the EU Treaty, only then to be incorporated "ready-made" into EU law. However, in view of the ongoing lack of progress on its own legislative initiatives in Council negotiations, the Commission had no alternative but to support the Presidency in transposing the Convention into European law and to abandon its own proposals which would have overlapped with the Prüm provisions. This co-ordination with the Commission before the beginning of the Presidency proved to be a decisive factor for success in this dossier. In relation to the EP, the Presidency tried to take at least some of the demands to improve data protection in the Council decision integrating Prüm into EU law into consideration. However, in the end, it did not address the Parliament's more fundamental criticism—the longer-term effects of this *modus operandi* on inter-institutional co-operation remain to be seen.

### 4.3 Mixed Results in Terms of Guidance and Giving Impulse

The success of the German Presidency in the Prüm dossier was not only due to its intense efforts as broker, but also its skilful negotiating, whereby the strategic course had been set long before the beginning of its six-month term. The fact that Austria and Finland<sup>13</sup>, two Prüm signatories, held the EU Council Presidency in 2006 was of no little benefit to the German Presidency. After the German Minister of the Interior's announcement in early autumn 2006 of the intention to integrate parts of the Convention into European law, the Finnish Presidency ensured that negotiations on the Commission proposal were suspended.<sup>14</sup> Germany and Austria, in particular, used this year to promote the Convention as a model for EU-wide data exchange.

The German Presidency skilfully avoided neutrality conflicts by introducing the draft decision for incorporating the Convention into EU law not as an initiative of Germany, but as one of 15 member states who had already signed the Convention. The seven founding Prüm states, including small states such as the Benelux states and Austria, repeatedly underlined that the Convention was a joint project, albeit one which had largely been negotiated by Germany. This counteracted the impression from the outset that Germany, as the largest member state, was trying to push through its own project.

In order to broker a compromise in the relatively short period of time, the Presidency turned the usual procedure for negotiations upside down: the draft decision was discussed directly at the level of ministers and was therefore put on the agenda of January's informal Justice and Home Affairs Council in Dresden and the formal Council Summit in mid-February 2007. The Presidency achieved political agreement between all states on transposing the Convention into the EU legal framework as early as the February summit. This early political decision at the level of ministers avoided lengthy technical debates at the lower working levels. It was only on the basis of this clear mandate from the ministers that officials dealt with

<sup>13</sup> Finland was the first state to sign the Prüm Convention after the founding states.

<sup>14</sup> Council of the EU, *Note from Presidency to Article 36 Committee*, doc.13493/06, October 31, 2006.

open questions in the “Article 36” Committee<sup>15</sup>—the working group level was left out completely. In taking this action, the Council Presidency repeatedly referred to the overriding objective set out in the Hague Programme of making significant progress on information exchange between national police authorities by 2008. Although the Presidency had been aiming to incorporate the Convention word-for-word, it did address the concerns of some states. For example, some individual articles were removed which were not part of the legislative act’s core provisions, but which had caused considerable conflict in negotiations within the Council and jeopardised the achievement of a swift agreement. These articles pertained to issues which could alternatively also be dealt with in bilateral agreements between member states.<sup>16</sup>

As the Prüm Convention had already entered into force in some states shortly before the German Presidency, the German chair could point to its successful technical implementation and initial results. In that respect, the timing of the entry into force of the Prüm treaty and the German initiative at EU-level had been cleverly chosen. In addition, the Presidency had some leverage in reserve: it was difficult to imagine how the alternative Commission proposal for a Council decision on data exchange could now have been agreed to by the Prüm states within the Council, since it not only encroached more significantly into national law, but would also have introduced changes to the Prüm co-operation in whose implementation they had just invested considerable resources. Failure to agree on the incorporation of the relevant aspects of the Prüm decision into EU law would therefore have meant, at least in the medium-term, the failure of EU-wide co-operation in exchanging information.

In relation to the Eurodac dossier, too, the Presidency proved very—perhaps even *too*—ambitious. Towards the end of the Finnish Presidency, the German government had presented a paper to the relevant Council working groups outlining the major

aspects of the proposal for a Council decision permitting national police authorities access to the Eurodac database which it intended to table during its term. Subsequently it tabled the issue for every meeting of the relevant working bodies.

Yet, the skilful strategic action shown by the German Chair in regard to the Prüm dossier was here lacking, and the Presidency had only limited success with its course of action in the Eurodac dossier. There appear to be two main reasons for this. First, the timing on the part of the German Presidency seemed unhappy. The initiative came very early as it did not await the results of the ongoing and extremely contentious—both within the Council and between Council and EP—negotiations on the decision allowing law enforcement authorities’ access to the VIS database. The agreement on VIS was supposed to be a model for the Eurodac decision and allow for much smoother negotiations.

Secondly, co-ordination with the Commission was insufficient, given that that Institution had its own plans on how to proceed with the reform of the Eurodac system. It can safely be assumed that the Commission itself had hoped to introduce the proposal as it had done in the case of the VIS decision. However, in formal terms the Commission welcomed the German initiative since the Commission and member states share the right of initiative in the third pillar. At the same time, the Commission pointed out that such a legislative act would require an amendment to the Eurodac regulation, which stipulates how the database be set up. The regulation currently in force does not allow national law enforcement authorities access to the database. According to the position of the Commission and the Council’s legal services, a new stated-purpose and bridging clause would have to be inserted into the text of the regulation to make this possible. The right of initiative for the Eurodac regulation lies, however, with the Commission, which only intended to table an amendment proposal after an ongoing evaluation of the Eurodac system had been concluded later in 2007. The German Presidency meanwhile wanted to submit its proposal during its tenure.

In addition, the Commission wanted to wait for the outcome of the negotiations on the VIS decision, as this could create a precedent for law enforcement authorities being granted access to European databases. The Commission was supported in its position by a number of member states. In the end, the national delegations in the Council requested the Presidency to proceed with more caution, in light of the dossier’s

<sup>15</sup> This body is composed of high-ranking officials from national interior ministries and is responsible for co-ordinating the activities of the working groups.

<sup>16</sup> This mainly concerned Article 18 of the draft decision on “measures in the event of imminent danger.” Its provisions would have allowed the authorities of a contracting party to cross a common border—without the prior consent of the other contracting party—in order to take preliminary measures to avert acute danger to life and limb on the latter’s territory close to the border. Great Britain and Ireland, in particular, were strictly opposed to this provision on constitutional grounds.

far-reaching implications for data protection, which receive particular attention in national parliaments. The German Presidency proved to be reasonable in that it did not insist on tabling an access-proposal during its tenure. Instead, it reached an agreement with the Commission and the national delegations on Council conclusions which called on the Commission to take swift action and welcomed the future access decision, while at the same time making this conditional on the prior introduction of a bridging clause in the Eurodac regulation.

## 5. Limited Scope for Transferability

The evaluation of the German Presidency's efficiency in fulfilling its different functions in the area of police co-operation is positive for the majority of the dossiers and reflects the high priority the German Chair accorded to this policy field as well as its commitment to drive the European policy process forward. The negotiation successes achieved are even more outstanding within the context of the difficult decision-making procedures regarding co-operation in the field of JHA, where there is often a considerable discrepancy between declared policy objectives and the actual measures implemented.

Fulfilling the Presidency's functions successfully was made easier thanks to the German government's considerable levels of personnel and administrative resources. These resources allowed the Presidency to opt for more independent and elaborate procedures, such as conducting a high number of informal consultations outside the formal Council bodies in order to speed up cumbersome decision-making in the EU's third pillar. Using these methods, the Presidency was able successfully to continue complex ongoing negotiations requiring a high degree of management and brokering skills. In some cases, it even concluded them (e.g., the VIS dossier). It was also able to perform a strong role as an impulse-giver, as was the case in the Prüm dossier.

This is not to say that resources are *per se* a sufficient basis for successfully fulfilling the different tasks of a presidency. Quite the reverse: experience has shown that small member states with less extensive resources often find it easier to maintain the neutrality which is so urgently needed as President of the Council. A member state with a large amount of resources which fails to overcome limitations imposed by domestic factors or which lacks the necessary com-

mitment to drive the European policy process forward is likely to have a poor result to show for in the end. Extensive resources are therefore not enough to guarantee successful role fulfilment but they can facilitate the work of a Presidency which shows the appropriate commitment.

The success of the resource-intensive German approach indicates, paradoxically, that cumbersome unanimous decision-making in a Council composed of 27 member states is hardly feasible anymore from the point of view of the successful functioning of the Presidency in the Council system. Small EU states will have to focus their resources more strongly on a small number of selected dossiers as they will hardly be in a position to deal with a comparatively wide array of dossiers and conflicts with the same intensity.

# The Profile of the German Presidency in the ENP: Regulated Stimulation and Complex Bargaining

Kai-Olaf Lang

## 1. The German Presidency and the ENP: Strengthening and Vitalization

Early on in the run-up to its Council Presidency, the German government declared the revitalization of the European Neighbourhood Policy (ENP) as one of the main priorities for its Chairmanship. Preliminary considerations, which were mainly conducted by the Planning Staff of the Federal Foreign Office, had already reached the public during the Finnish Presidency in the second half of 2006. In this context, two strategic components in particular were supposed to give new momentum to the co-operation with the countries beyond the Eastern borders of the EU: the proposal to enhance and generally pep up the Neighbourhood Policy in terms of an “ENP plus”; and the aim of launching a new European Eastern policy. The rationale behind the broad approach of an Eastern neighbourhood was to combine three existing elements of the EU’s co-operative relations (i.e., its relations with its ‘strategic partner’, Russia, those with the ENP-partners in Eastern Europe and the Southern Caucasus and those with the countries of Central Asia), while at the same time creating a basis for an integrated EU policy towards the post-Soviet space.<sup>1</sup>

The distinctive and early German engagement was received quite positively by most of the Federal Republic’s partners in the Union following the ENP’s uneven development up to that point. After a conceptual phase (during which Strategy Papers as well as key instruments such as Action Plans and the financial instrument, ENPI, were drafted) and an initialising phase (during which most notably the Action Plans were negotiated and activated) the ENP had, by the outset of the German Presidency, entered a phase of implementation. This requires the permanent adaptation and refinement of instruments, mechanisms and incentive structures in addition to their operative implementation. It is worth recalling that the main rationale behind the ENP was laid down in the first comprehensive Strategy Paper of May 2004.

<sup>1</sup> See also the articles by Rainer Lindner (pp. 76ff) and Andrea Schmitz (pp. 71ff) in this Research Paper.

Therein the Union offers its neighbours specific co-operative relations below the threshold of full membership, such as access to the internal market, financial assistance or integration in certain policy areas.<sup>2</sup> Six countries in Eastern Europe and the Southern Caucasus<sup>3</sup>, as well as ten countries in the southern Mediterranean, are addressees of the ENP.<sup>4</sup> Since the beginning of 2007, financial support for the ENP has been provided for through a European Neighbourhood and Partnership Instrument (ENPI), which covers approximately 12bn. Euro and replaces the former programmes (TACIS and MEDA). So-called Action Plans constitute the main instrument of the ENP and are designed for the medium-term. These lay down priorities for co-operation and reform.

Although important impulses for the initiation of the ENP as a new framework for the intensification of contacts with the EU’s neighbouring states had certainly originated from the member states in the past, the Commission and in particular the Commissioner for External Relations soon assumed a role as a central actor. The Commission’s leading role covers the formulation of basic ENP documents and the concretisation of instruments as well as the negotiations with partner countries. The occasional involvement of the High Representative and the activities of the European Parliament did not challenge the centrality of the Commission: both fulfil—with a few exceptions—a mere supporting function, and neither has organisational or pooling tasks. It was therefore of no surprise that it fell to the Commission to renew attempts at improving the effectiveness of the ENP. The publication of a new Strategy Paper at the end of 2006 marked an effort to put an ‘attractive offer’ to the partner countries and strengthen support for their reform projects.<sup>5</sup>

<sup>2</sup> Communication from the Commission, European Neighbourhood Policy, Strategy Paper, May 12, 2004.

<sup>3</sup> Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine.

<sup>4</sup> Algeria, Israel, Egypt, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria, Tunisia.

<sup>5</sup> Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament*

Despite the continuous development of the ENP as a Commission-driven process, it became obvious that the Neighbourhood Policy was in danger of losing momentum thanks to its perception as the ‘poor relative’ of enlargement policy<sup>6</sup> or indeed of being relegated down the CFSP agenda in the face of various pressing crises. The solid political back-up or revitalisation of the ENP—preferably by a large group of member states—has increasingly become a condition for the future functioning and dynamic of the Neighbourhood Policy. For this reason, a Council Presidency dedicated to the strengthening of the Neighbourhood Policy has to calibrate its proposals with Commission activities whilst at the same time harmonizing the conflicting interests of the member states.

Whilst the Austrian and Finnish Presidencies had emphasized certain geographical foci in EU co-operation with its immediate periphery (Western Balkans in the case of Austria, the Northern Dimension for Finland), the time was ripe to shift the focus onto the ENP proper when the German government acceded to the Presidency. This state of affairs was due to the entry into force of the ENPI at the beginning of 2007 as well as to the necessity of opening up new perspectives for co-operation that range beyond the Action Plan’s three to five year span.

Thus, the General Affairs and Foreign Relations Council entrusted the German Presidency in its Conclusions of 11th December 2006<sup>7</sup> with two main tasks in the Neighbourhood Policy which were later endorsed by the European Council<sup>8</sup>: Germany firstly received a mandate to work towards a further strengthening of the European Neighbourhood Policy, and was secondly invited to prepare a report on the ENP to be presented at the end of its term in June 2007. Implicitly, of course, the future Presidency was also tasked with continuing existing processes and launching new proposals. For instance, negotiations on a new Enhanced Agreement with the Ukraine were due to be initiated during the German Chairmanship

*on Strengthening the European Neighbourhood Policy*, December 4, 2006.

<sup>6</sup> See Michael Emerson, Gergana Noutcheva, and Nicu Popescu, *European Neighbourhood Policy Two Years On: Time Indeed for an ‘ENP plus’*, Brussels: Centre for European Policy Studies (CEPS), March 21, 2007 (CEPS Policy Brief, No. 126), p. 1.

<sup>7</sup> Council of the European Union, *European Neighbourhood Policy—Council Conclusions*, Press Release, 2770th Council Meeting General Affairs and External Relations Council, General Affairs, Brussels, December 11, 2006.

<sup>8</sup> European Council (Brussels), December 14 and 15, 2006, *Conclusions by the Presidency*.

as was the development of a regional dimension for ENP in the Black Sea region. These and other measures were supposed to tie in with the Communication on Strengthening the ENP issued shortly before the German Presidency by the Commission.

## 2. Challenges for the German Presidency: Neighbourhood Policy as Long-term Harmonisation

The first hints at the German Presidency’s position and strategic aim were greeted with great interest both in the EU and the ENP partner countries. However, the focus on the Eastern Dimension of the Neighbourhood Policy and the putative ‘Eastern Policy’ was a source of concern for the southern EU member states and the external Mediterranean partner countries of the EU. They worried that the activities of the German Presidency in the east would be detrimental to relations with the states bordering the Mediterranean Sea.

It quickly became apparent that the various internal ‘ENP-camps’ and, specifically, the harmonization of their various political priorities would pose the central challenge for the ENP project. The German Chairmanship would have to conduct a good deal of co-ordination work and conciliate between the differing interests. There would thus be a great demand for the Presidency to fulfil a broker function.

The balancing act to be performed between ‘eastern’ and ‘southern interests’ represents a permanent hurdle for the internal formulation and development of the ENP and therefore also for the German Presidency. A strengthening of the Neighbourhood Policy’s eastern vector—as envisaged by Berlin—is bound to be accompanied by a corresponding material and/or symbolic enhancement of co-operation with states at the southern periphery of the Union. The resulting management of diverging interests was also confronted with a series of secondary, ENP-specific challenges in addition to the differences between the south and the east. There were thus at least two further fundamental differences to be reckoned with:

Firstly, there was some degree of uncertainty over the term ‘Eastern Policy’. The German plans were followed by the Central Eastern European member states with great attention and also plenty of goodwill. However some of those countries were suspicious, thinking they could observe a tendency to focus disproportionately on Russia within the German plans. Such worries

emerged especially as the German side emphasized the need for greater consistency on the part of the EU in its relations with different regions and partners in the post-Soviet space.

Secondly, the Presidency was forced to manoeuvre between two opposing groups of influential member states in a well-known, but nevertheless highly controversial debate: there are those that see the ENP as a preliminary stage and training exercise for states with a long-term perspective of full membership, and those that regard the neighbourhood co-operation arrangements as a permanent substitute for enlargement.

Finally, it is worth noting that the emphasis placed by the German Presidency on its mediation and harmonization roles can also be traced to the political sensitivity of this dossier in two further, distinct aspects<sup>9</sup>:

First of all, the contours of the dossier were well-known. In several factual issues, the member states' principles and even their detailed positions (as well as the resulting differences of opinion) were known early on or could be deduced from previous negotiations. The dossiers to be treated within the frame of the ENP are not completely new, but rather part of a longer process and continuing discussions. This fact makes it more likely that the acting Presidency will be faced primarily with mediation and long-term guidance efforts. Such guidance efforts are only possible if a broad range of topics can be put in a new context (a process inevitably consuming a good deal of political energy). Such a *tour de force* was not planned by the German Presidency, with the main focus placed on strengthening the ENP without attempting a complete redefinition which might endanger its efforts.

Secondly, in the situation of rivalry between different neighbourhood areas there was no alternative to the Presidency as mediator, either in the form of individual states or a group of states. Indeed, while the Commission traditionally embodies the functions of integrating the different ENP vectors, that Institution is actually dependent on the assistance of the Presidency due to the politicisation and sensitivity of the subject.

<sup>9</sup> See the introductory contribution by Daniela Kietz in this study (pp. 7ff).

## 2.1 Resources and favourable background factors

The engagement of the German Presidency in the Neighbourhood Policy was bolstered by significant politico-administrative resources as well as a favourable constellation of distinctive contextual factors:

- ▶ **Good relations with Russia:** Germany's traditionally good bilateral relations with Russia constituted a potential asset in its effort to strengthen the ENP. Of course, the aversion discernible in Russia towards the European Union's growing presence in post-Soviet Eastern Europe and the Southern Caucasus could not be dispelled by German assurances. Yet the German government, which has continuously pointed towards the necessity and relevance of close relations between the EU and Russia, was not under general suspicion of promoting a policy of containment and repression against Russia under the cover of the ENP.
- ▶ **Past co-operation with ENP partners:** Germany's activities towards an eastern dimension of the ENP further benefited from its past efforts in this policy area and the particular regional focus of these efforts. The Federal Republic was not entering uncharted territory, but rather based its initiatives on an expertise drawn from long and intensive co-operation with eastern ENP partner countries as well as from the persistent engagement and co-formulation of the Neighbourhood Policy itself.
- ▶ **Allies and supporters:** From the beginning, the German plan of enhancing the eastern flank of the ENP met with praise and support from those member states with a particular interest in the east. Germany maintains extensive contacts with the driving forces behind ENP-co-operation in Central Eastern Europe. It placed the dialogue on the ENP at the centre of its bilateral exchanges on European policy with these countries. For instance, during the Orange Revolution Germany and Poland jointly encouraged intensive co-operation in EU policy towards Ukraine. This resulted, *inter alia*, in a joint initiative in the Council and an active effort to co-design the updated Action Plan with Ukraine. Despite the scepticism of those member states oriented towards the south, the Presidency therefore enjoyed the option of building upon the political support of a critical mass of partners that expected Germany to play a leading role in this policy area.
- ▶ **Energy by way of energy crises:** Due to the recent conflicts over the conditions of the supply and

transit of gas and crude oil, the theme of energy security and the intensifying debate on the European Energy Policy worked as a factor supporting the Presidency's work. Both the debate on Russia's reliability as an energy provider and the disputes between Russia and Ukraine and between Russia and Belarus over energy supplies resulted in a stronger focus on the EU's eastern neighbourhood. The countries of this region were no longer simply regarded as objects of stabilisation, but were also viewed through the prism of external energy policy as partners/subjects with the ability to positively contribute to the Union's security of supplies and diversification projects.

## 2.2 External restrictions

An extensive use of these resources was restrained by manifold, mostly external, restrictions. Although they did not foil the project of vitalising the ENP, in parts they severely limited the range of action available to the Presidency.

- ▶ Germany was forced into the role of crisis manager and trustee of European solidarity *vis-à-vis* Russia, in particular due to the Polish-Russian conflict over the embargo on Polish meat exports and Warsaw's veto on the adoption of a negotiation mandate for a new Partnership and Co-operation Agreement with Russia. Other disagreements (such as the Estonian-Russian dispute over the Soviet War Memorial) also played a role.<sup>10</sup> Against this background, a matter-of-fact dialogue with Russia over the intentions and implications of the ENP was hardly possible.
- ▶ The admittedly mixed results of the reform and transformation policy in several of the ENP's eastern partner-countries may not have been a direct handicap but it had the potential to produce a delaying and dampening effect. This applied in particular to the Ukraine, with whom an enhanced agreement was planned which was to function as a model for future agreements with other states. However, uncertainty concerning developments in Ukraine by itself provided sufficient argument for procrastinators against deeper co-operation with this particular partner.

<sup>10</sup> For all cases, see the contribution of Rainer Lindner in this research paper (pp. 76ff).

## 3. The Profile of the German Presidency in the ENP

With the early announcement of the focus to be placed upon the Neighbourhood Policy, the German Presidency risked being caught in a crossfire of great expectations and severe defensive actions: the great hopes expressed by eastern-oriented member states and the eastern ENP-partners were fundamentally at odds with the reluctance of the group of Mediterranean states. It was deemed appropriate to scale down demands and the urge for immediate results in order to alleviate some of the political tensions surrounding the contentious project of an Eastern Policy.

On the one hand, this was achieved due to a change of policy by the German Federal Government, which no longer adhered to the ambitious project of an "ENP plus." This project had been interpreted as an attempt by Germany to completely overhaul this relatively young policy area at a moment when it had just barely become operational. In light of the opposition expressed above all by the Commission, the Federal Republic opted early on (even before the beginning of its Presidency) for a softer approach by building upon the current co-operation framework of the Neighbourhood Policy and aiming at an increase in the efficiency of the ENP and its instruments. This opened the way for a close consultation with the Commission. Several Commission documents were subsequently formulated with recourse to German input. This way, German initiatives (with a clear national flavour) were disguised and could be "neutrally" pursued by the Presidency in the course of its support for the Commission's papers. The proposal to establish multilateral sectoral agreements with neighbouring states, which was incorporated into the Commission Communication of December 2006 in the form of so-called thematic dimensions, is a case in point; this proposal was unanimously accepted as an innovative advance. The opening of the South-Eastern European energy community was moved forward in this way (with the aim of a full inclusion of the Ukraine and Moldova) and the Council's support for the extension of the trans-European networks to neighbouring states was secured. In this respect, the German Presidency acted less as energetic agenda-setter and more as a discreet

initiator of well-dosed stimuli that offered high chances of success.<sup>11</sup>

That is also why—at an early stage—the rhetoric of the German Presidency moved away from the (historically connoted) category of an Eastern Policy, thereby attenuating the resentments of the southern flank. As regards content, the Presidency also sought to convey a holistic approach with recourse to the trio-Presidency: Germany's commitment to the Eastern Dimension was to be seen in connection with Portugal's heralded engagement for the southern neighbourhood; the Slovenian Presidency would have to bring the two strands together. While this could fully avoid neither collisions of interest nor the necessity for side deals between the east and the south, it nevertheless enabled the Presidency to dissolve tensions in central questions. Such tensions covered: questions of financing and, specifically, the dedication of large parts of the budget to southern partners (so-called *ring fencing*) pushed through by the Mediterranean member states; the establishment of a partnership investment fund (with reservations from the Mediterranean countries, which were worried about its compatibility with the already existing FEMIP fund); and finally offers for extensive co-operation agreements. The commitment to a new enhanced agreement with Ukraine was subsequently accompanied by the approval of an "advanced statute" for Morocco—thus effectively advancing Morocco to the role of the EU's second key partner within the ENP. Accordingly, Ukraine was upgraded to a "flagship project" of the Neighbourhood Policy with the new agreement.

Even if Germany's relations with Eastern Central European states were supposed to somehow counter-balance the strong focus on the southern countries, the decisive, sometimes even overzealous action of some Eastern Central countries had rather counter-productive effects. Due to its headstrong actions in other policy areas and its troubled relations with Germany, Poland, the largest actor in this group, did not make use of its potential to co-contribute to the ENP. However, all in all the German Presidency succeeded with multiple mediation procedures in bringing about a "ceasefire" between east and south. It thus avoided a deadlock in the ENP process despite

<sup>11</sup> In how far the numerous non-papers from other member states contributed to the placing of the emphasis of the German Presidency is disputed. While some practitioners see these papers as "valuable and useful initiatives," others devalue them as "not really new proposals" and complain about their lack of profundness.

its eastern accentuation. This integrative role of a broker was one of the strengths of the German Presidency until the end, when it needed to show negotiation skill in the final phase of its Chairmanship in order to draw Poland into the process. Poland had namely threatened to block the adoption of the Council conclusions on the ENP aiming instead to push through a specific Eastern Dimension.<sup>12</sup>

The Presidency's initiation and brokering roles were combined not least in the so-called Black Sea synergy. The project of fostering a sustainable initiative for regional economic and political integration at the eastern flank of the Union was not only in need of political back-up in form and content: it also had to walk that tightrope between supporters of the 'Eastern Dimension' and those member states with a southern focus described above. Both succeeded not only because, with Greece, a Mediterranean member state was also interested in the project. What was more important was that the initiative was constructed and presented as a regional expression of EU-Russian and EU-ENP-Russia co-operation. This circumstance merits special attention insofar as the search for an integrated policy approach towards Russia and the ENP was part of the original plans for an Eastern policy. However, later on, any integration of the EU-Russian and the ENP co-operation was abandoned. This occurred for good reason, since—thanks to the blockade of EU-Russian co-operation—any effort to link up ENP and EU-Russian relations would have had severe negative consequences for the ENP. Notwithstanding, with the Black Sea initiative the EU managed to find a form of regional integration during the German Presidency of the EU, in which both ENP neighbours and Russia are to participate—naturally, this form of integration had to do without strategic emphasis and concentrate on concrete aspects of economic, sub-regional or policy-specific co-operation.

Even in the difficult balancing act between proponents and opponents of enlargement, a preliminary *modus vivendi* was found, which for all intents and purposes accommodates the former group. At first, the pressure of the expansionists and the reservation of the consolidators was supposed to be overcome through the semantic differentiation between "partner of Europe" and "European partner." Even if this categorisation was not adopted as a new consensus in

<sup>12</sup> The conflict was solved through a declaration in a protocol on a regional format of the ENP co-operation towards the East.

the end, it unmistakably contributed as a step towards a clearer acknowledgement that the aim of the neighbourhood process is uncertain—a step that was also accepted by those countries with reservations towards further enlargement. Thus, the report of the Presidency clearly makes note of the fact that ENP co-operation does not prejudice any form of future co-operation, including that of an eventual accession.

Without doubt, in these circumstances the management function had a stabilisation dimension. This state of affairs was certainly fostered by the procedural character of the Neighbourhood Policy's development, as several projects that started before the Presidency were to be continued or concluded. This applies, for instance, to the opening of negotiations with Ukraine on a new agreement in the beginning of March, which ultimately was a follow-up order of a mandate given in autumn. This manifests itself too in the agenda on Justice and Home Affairs co-operation with Ukraine, which links Ukraine's gaining favourable visa-facilitation rules with its signature of a readmission agreement with the EU, and was concluded by the EU-Ukraine Co-operation Council after long and hard negotiations on 18th June.

#### 4. Conclusion

The German engagement during its Presidency may be characterised as consisting of regulated stimulation and complex bargaining. Its prime responsibilities—the continuing operationalisation of the ENP and its instruments, the opening of negotiations for an enhanced agreement with the Ukraine, the communication on Black Sea Synergy—were all elements of the “compulsory” programme for the ENP, which, in the face of internal differences in the EU, was completed with surprising ease. It is to be noted that the basis for ENP-co-operation in important policy areas (economic co-operation; discussion on free trade agreements; the enlargement of the energy community with south-eastern Europe; further steps towards the integration of neighbouring countries in trans-European networks; application of the Global Approach to Migration to the Eastern and South-Eastern neighbourhood regions) as well as the basis for institutional forms of closer co-operation (in agencies and programmes) and new possibilities for support in reform and adaptation processes (twinning, TAIEX, governance facility) were

created during the Presidency.<sup>13</sup> These partial successes were made possible by the Presidency's withdrawal of its original regional focus (the move away from the offensive “Eastern Policy”), by the co-operation of various interested partners (the Eastern Central European countries, the Scandinavian member states and the UK, not to forget Greece when it came to the Black Sea) as well as (at least on selected points) by the agenda-setting of the Presidency (for instance the ENP was a topic at the informal Gymnich meeting of foreign ministers that took place at the end of March in Bremen).

Yet one of the motives for the discussion on a new Eastern Policy, namely the questions whether and how a deepening of co-operation relations with Eastern European ENP partners could be harmonized with a revitalisation and intensification of the EU-Russia partnership, faded into the background. This was politically justified, as an unperturbed search for a monolithic Eastern Policy would not only have created new rifts in the Union, but in view of the stagnating EU-Russia relations would also have led to a partial blocking of the ENP process. Thus the original tripartite Eastern political package of the German Presidency—EU-Russia relations, upgrading ENP, strengthening links with Central Asia—was converted into three individual parts. The regional linkage in the Black Sea between EU-Russia relations and the ENP is, as mentioned, an exception.

A definitive evaluation on how sustainable the ENP activities of the German Presidency really were will only be possible after the end of the Slovenian Presidency, at the earliest. Until then, the question arises whether and how the initiatives that were brought forward by Germany may be effectively pursued or reinforced. This is true for several tasks for the future which were mentioned in the progress report of the German Chair. For instance, a main element of the flagship project with Ukraine is envisioned to be a “deep and comprehensive free-trade agreement,” which is subject to Ukraine's accession to the WTO. If this new agreement really is to be negotiated with Ukraine by the middle of 2008, as planned in the 18-month programme of the Team Presidency<sup>14</sup>, the trio have to give the agreement continuous priority. In view of the upcoming opening of Community agencies

<sup>13</sup> *Strengthening of the European Neighbourhood Policy*, Progress Report by the Presidency, Council Meeting, General Affairs and Foreign Relations Council, June 18 and 19, 2007.

<sup>14</sup> *18-month programme of the German, Portuguese and Slovenian Presidencies*, Brussels, December 21, 2006.

and programmes for ENP partner countries, a close dialogue with the Commission will be necessary. While it will indeed be the Commission that conducts negotiations with the ENP partner countries, it will be up to the Presidency to guide this inclusion process, in particular as this form of approximation may enact the basis for new, multilayered thematic dimensions. However, in general, these dimensions will be politically loaded and will thus require early interaction with the member states. In addition, an eventual concretisation of French plans for the Mediterranean (Mediterranean Union) may have consequences for the ENP and it may in turn be necessary to synchronise such an initiative with the Neighbourhood Policy. This also calls for timely political action by subsequent Presidencies. Finally, the new Neighbourhood Investment Fund has to be made operational. Conflicts with southern countries are just waiting to happen, since these countries will be in fear of losing their vested rights in the framework of the FEMIP fund.<sup>15</sup>

<sup>15</sup> Even despite a regulation in the progress report that both funds should be complementary.

## Efficiency and Its Costs: The “Strategy for a New Partnership” with Central Asia

Andrea Schmitz

The Central Asia Strategy<sup>1</sup> was presented by the German Council Presidency on 22nd June in Brussels and subsequently adopted by the European Council. It is the third building block in a general reformulation of the development of the EU’s relationship with its post-Soviet neighbours, alongside the intensification of the European Neighbourhood Policy (ENP) and the extension of the strategic partnership with Russia. Although its importance was initially played down by foreign-policy experts, it was already clear at the midpoint of the Council Presidency that the Central Asia Strategy would prove to be the most solid building block in the EU’s reformulated policy towards its east. The new strategy paper is thus seen by the German government as one of the “greatest shared successes”<sup>2</sup> of the Council Presidency. This is mainly due to the combination of three factors: a propitious starting position, the efficient co-operation of the main players (Chair, High Representative, Council Secretariat and Commission) and the absence of serious differences of opinion.

The strategy paper developed under the German Presidency now forms the general framework for the EU’s relationship with Central Asia and thus also represents the extension and political superstructure of the Commission’s Assistance Strategy, which was passed in April 2007 together with the Indicative Programme for 2007–2010. As a result, the goals, priorities and instruments of co-operation as described in the new strategy paper refer directly to the Commission’s strategy in development policy. The core aim of this common endeavour is to improve the presence and visibility of the EU in Central Asia by increasing both the funds available and the coherence of their use.

The Europeans’ interest in Central Asia is primarily motivated by economic and security concerns. Energy

and security are particularly closely intertwined. Some of the Central Asian states possess considerable oil and gas reserves that could, it is hoped, contribute in future to a stronger diversification of European energy imports. This interest is shared by Russia and China, and increasingly also by India and Iran, for whom Central Asia is of outstanding importance in terms of energy policy and as an export market for consumer goods. At the same time, this region, which borders on Afghanistan, is particularly prone to crises due to a series of unfavourable structural conditions.

Due to this state of affairs the maintenance of stability in Central Asia forms the common goal of all actors under analysis. The EU’s Central Asia Strategy attempts to react to the challenge of realising this aim by focussing on economic and political modernization and the extension of regional co-operation. It thus trusts in the “transformational power of the EU”<sup>3</sup>. The strategy paper is above all a political declaration of intent of high symbolic importance and no less—but also no more—than that.

### 1. Demands on the German Presidency

It took many foreign-policy observers by surprise when, in the second half of 2006, the Central Asia Strategy was placed onto the agenda of the Council Presidency as part of the programme setting out its own priorities. However, a closer look reveals that this decision was forced upon the Presidency in rather fortuitous circumstances, and its main aim was then to take advantage of this development as efficiently as possible. A coincidental confluence of a number of factors was responsible for this situation. First, the EU had named a Special Representative for Central Asia in July 2005 and had thus underlined its intention to play a more active role in the region, to deepen political dialogue with relevant actors and to co-ordinate its

<sup>1</sup> See Council of the European Union, *The EU and Central Asia: Strategy for a New Partnership*, May 31, 2007, <http://register.consilium.europa.eu/pdf/en/07/st10/st101113.en07.pdf>, and [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/de/ec/94935.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/de/ec/94935.pdf).

<sup>2</sup> Frank Walter Steinmeier, “Die Seidenstraße neu beleben,” in: *Frankfurter Allgemeine Zeitung*, June 30, 2007, p. 10.

<sup>3</sup> See Frank Walter Steinmeier, “Verflechtung und Integration. Eine neue Ostpolitik der EU,” in: *Internationale Politik*, Vol. 62, No. 3, March 2007, p. 6–11 (11).

engagement more strongly at a political level.<sup>4</sup> In autumn 2005, then, Berlin and Brussels had begun planning and preparing the Central Asia Strategy.

Second, the Commission’s Assistance Strategy for Central Asia, issued in October 2002, expired at the end of 2006, so that the Council Presidency could also make use of relevant ideas and suggestions from the Commission. As a result, the strategy paper should be seen a political extension of the new Assistance Strategy, adopted by Commission on 27th April 2007. The Assistance Strategy defines in detail the aims and priorities of the support for Central Asia in 2007–2013. It also explains the structure of the portfolio in the Indicative Programme which breaks down the funds designated for the realisation of programmes and projects until 2010.<sup>5</sup>

A third factor that influenced the decision to address Central Asia was the concern for Europe’s energy security, which has increasingly become part of the European political agenda since the Russian-Ukrainian gas conflict in January 2006. The idea of placing resource-rich Central Asia on the agenda during the Council Presidency was launched at the national level in spring 2006—at a time when energy security was a matter of broad public concern. Energy security is also the bridge to the two other “Eastern components” of the more general aims of EU Enlargement and the extension of the European area of security and stability: the deepening of relations with Russia and the vitalization of the ENP. In this context it becomes clear that there is an obvious connection between the Central Asia Strategy and the strategy paper on “Black Sea Synergy,” presented by the Commission in April 2007.<sup>6</sup> This initiative aims to create a partnership programme similar to the Euro-Mediterranean Partnership and the Northern Dimen-

sion and forms the conceptual link to the Central Asia Strategy; both papers refer to each other explicitly.

The Central Asia Strategy was therefore well-primed thanks to advances in relevant dossiers. This greatly relieved the Presidency of some of the burden of its managerial tasks. In order to adopt the strategy during its short six-month term in the chair, the German government focussed on early co-ordination with the Commission and the Special Representative for the Central Asian region. The central challenge for the German Presidency was, however, to broker between the interests of EU member states and to manage the voting procedures in Council. There was little scope for the Presidency to shape the strategy in substantive terms. Instead, the Commission’s programmes and projects in Central Asia, which are often criticised as fragmented, incoherent and ineffective, needed to be tied together conceptually while taking into account the current and planned activities of other relevant EU actors and member states. The Presidency was also challenged in its role as broker insofar as the discussion of the Central Asia Strategy brought a perennially sensitive topic to the table: the question of the normative basis of EU foreign relations (see below).

A circumstance that helped the Presidency in its brokering and guidance responsibilities was the indifference of EU member states towards the Central Asia Strategy, generally seen as an agenda item of secondary importance. In addition, the member states do not consider the Central Asian states primarily as the object of joint European co-operation, but rather as bilateral partners. This is not least due to the fact that Central Asia is not a direct neighbour of the EU: no member state has a common border with a Central Asian state. In contrast to the Russian case, no fundamental reservations on the part of EU member states were to be expected, easing internal co-ordination and allowing the Presidency to use optimally its political resources in the region<sup>7</sup>. This propitious starting point made it possible for the Presidency to demonstrate leadership during the development of the strategy paper without coming up against significant opposition.

<sup>4</sup> See Andrea Schmitz, “A Political Strategy for Central Asia,” in: Volker Perthes and Stefan Mair (eds.), *European Foreign and Security Policy. Challenges and Opportunities to the German EU Presidency*, Berlin: Stiftung Wissenschaft und Politik, October 2006 (SWP-Research Paper RP 10/06), pp. 41–44 (41).

<sup>5</sup> See European Community, *Regional Strategy Paper for Assistance to Central Asia for the Period 2007–2013*, [http://ec.europa.eu/external\\_relations/ceeca/c\\_asia/07\\_13\\_en.pdf](http://ec.europa.eu/external_relations/ceeca/c_asia/07_13_en.pdf); European Community, *Central Asia Indicative Programme (2007–2010)*, [http://ec.europa.eu/external\\_relations/ceeca/c\\_asia/nip\\_07\\_10\\_en.pdf](http://ec.europa.eu/external_relations/ceeca/c_asia/nip_07_10_en.pdf).

<sup>6</sup> See European Commission, *Black Sea Synergy—A New Regional Co-operation Initiative*, Commission Communication to the European Council and the European Parliament, April 11, 2007 (KOM (2007) 160), [http://ec.europa.eu/world/enp/pdf/com07\\_160\\_de.pdf](http://ec.europa.eu/world/enp/pdf/com07_160_de.pdf).

<sup>7</sup> See Schmitz, “A Political Strategy for Central Asia” [see fn. 4], p. 44.

## 2. Interests and Values

This starting point also led to the perception on the part of some member states that the Central Asia Strategy was primarily a German concern, motivated by the interests of national actors. One Brussels diplomat described the endeavour as an “exercise in the appeasement of national interests.” As national positions were sounded out and a consensus formed within member states, it was in particular the representatives of German business that asserted their influence. There is no evidence of any noteworthy differences between the coalition partners or between the different departments involved in the preparations.<sup>8</sup> The political opposition did not present any critical views either.

However, a divergence of opinion emerged in relation to a structural and therefore recurring question within EU foreign policy: what role should values play in the EU’s relationship with states that lack the political will for substantive reforms and exhibit grave deficits in their respect of rule of law and human rights?

In the discussion on the Central Asia Strategy this controversy permeated all political levels of the EU. The matter was particularly heated as the decision on the extension of sanctions on Uzbekistan<sup>9</sup> took place during the German Presidency. Germany, which operates an air-force base in Uzbekistan that provides logistical support for the Bundeswehr contingents stationed in Afghanistan, had come out in favour of a significant weakening of sanctions. For this, it had been heavily criticised by members of the German opposition, human rights organisations and Members of the European Parliament, but also by representatives of other member states in the Council.<sup>10</sup> After

<sup>8</sup> These departments were primarily the foreign ministry, the Federal Foreign Office, the Federal Chancellery, the Federal Ministry of Economy and Technology and the Federal Ministry for Economic Co-operation and Development.

<sup>9</sup> After the massacre of Andijan in May 2005 and the refusal of the Uzbek government to allow an independent inquiry, the European Council had decided in October 2005 to implement a weapons embargo on Uzbekistan and a travel ban for some of those responsible. The sanctions had been extended in May and November 2006; in October 2007 the travel bans were lifted.

<sup>10</sup> See, for example, Andrew Rettman, “Germany Keen to Relax Uzbek Sanctions Despite Crackdown,” in: *EU Observer*, May 3, 2007.

tough negotiations a compromise was ultimately reached.<sup>11</sup>

In the context of this debate it is understandable why the initially strong emphasis on the energy and security aspects of the EU’s relationship with the Central Asian states increasingly fell into the background as the Presidency progressed. As a result, the central role given by the Central Asia Strategy to the “results-oriented human rights dialogue” (a notion whose form and modalities remain unspecified) should also be seen as a Presidency concession to the defenders of a more strongly value-led EU foreign policy. The Presidency did therefore manage to fulfil its role as a neutral broker and the representative of the European (and not national) interests. The controversial passage in the strategy paper which introduces the possibility of the Central Asian states joining the Rome Statute of the International Criminal Court can also be seen as a reaction to the criticism of the German position on Uzbekistan and thus as a sign of a willingness to compromise. The passage offers the Central Asian states support for the necessary legal adjustments within the framework of the Rule of Law Initiative, which forms a main focus of the strategy.<sup>12</sup>

## 3. The Primacy of Efficiency

The generally advantageous conditions in relation to the approach to Central Asia allowed the German Presidency not only to take on an agenda-setting role but also to reach a satisfactory negotiation outcome. At the same time, the Presidency was able to make use of the favourable conditions for efficient planning, co-ordination and mediation between Berlin and Brussels. Its agenda management proved so efficient for the reason that the majority of the drafts were developed by the Presidency itself, with the Council Secretariat playing only a secondary role. During Council sessions, for example, the topic was introduced in such a way that made it possible to largely avoid substantive debate and thus delegate the process to the working group level. Some drafts were introduced at such short notice that it was not possible to

<sup>11</sup> See *Council Conclusions on Uzbekistan*, May 14, 2007, [www.consilium.europa.eu/ueDocs/newsWord/en/gena/94095.doc](http://www.consilium.europa.eu/ueDocs/newsWord/en/gena/94095.doc), and the commentary by Werner A. Perger, “Balance oder Blamage?,” in: *Die Zeit online*, May 14, 2007.

<sup>12</sup> Human rights groups doubt that this passage is useful, as accession to the Rome Statute cannot be desirable for the elites in countries such as Uzbekistan.

involve all the participating institutions. While this led to occasional expressions of displeasure by some member states and provoked accusations of intransparency, the process as a whole was not compromised. Efficiency was also Germany’s main concern in dealing with the relevant EU institutions, a task that is an elementary part of each Presidency. The Presidency was said to operate a minimalist communication policy particularly in relation to the Parliament. This, however, helped to avoid conflicts.

The smooth co-operation between the national-level ministries helped make the process largely trouble-free, as did the efforts of Pierre Morel, the EU Special Representative for Central Asia. The French diplomat had taken over the office of Jan Kubiš—now the Slovak Foreign Minister—in October 2006. He played a central and highly active role in relaying the agenda both to the Council and the Parliament as well as in communicating it externally.

The co-operation between the German Presidency and the Commission’s Directorate General for External Relations was also described as effective and constructive. The occasional differences of opinion between the Commission and the Council<sup>13</sup> are mainly due to the institutional structure of the EU itself. In matters concerning the Central Asia Strategy, the Commission, which is not only responsible for the implementation of funds but also represents the EU in its external relations with third states, naturally had to transfer this task to the EU Special Representative in his role as envoy of the High Representative.

Overall, the co-operation between the Presidency, the Special Representative and the Commission is described in interviews as harmonious. This is also due to the fact that there was a large degree of consensus on the main substantive issues, so that serious differences of interests did not emerge, making it possible to present a picture of unity externally as well. This agreement on fundamental questions relieved some of the burden that the brokering role can present to a Presidency.

As is usual within the framework of the Common Foreign and Security Policy (CFSP) the German Presidency was part of the EU Troika in relations with third states. This was formed by the German Foreign Minister, the EU Special Representative and the EU Commissioner for External Relations and the ENP. The

Troika was particularly important in the case of relations with the Central Asian states that were consulted in the development of the strategy paper. In particular, the Troika’s meeting with the foreign ministers of the Central Asian states on 27th March 2007 in the Kazak capital Astana created the opportunity for these states to present their own priorities. After the meeting Kazakhstan, Kyrgyzstan and Uzbekistan submitted position papers, which were taken into account in the development of the Strategy. In addition, the German Foreign Minister had in autumn 2006 travelled to the region as part of the preparations for the Presidency.

#### 4. Conclusion

The implementation of the agenda item “Central Asia Strategy” by the German Presidency shows that it is useful to give highest priority to the criterion of efficiency in managing a political process under favourable conditions. However, there may be substantial side effects that may have a negative impact on the quality of the outcome. Thus, it became clear that efficiency and transparency are difficult to bring into harmony in the management of political processes at the EU-level. Yet this cannot be criticised as a failing of the German Presidency in particular: the EU’s poly-archic multilevel- and multiactor-system creates incentives and pressures for the actors to develop strategies that allow them to circumvent the system in order to simplify and speed up decision-making.

However, an additional consequence of the primacy of efficiency is more serious—the lack of strategic vision and substantive weight apparent in the strategy paper. To offset this, the substantive debate would have needed more room and greater strategic (and not bureaucratic) guidance. This deficit was not just due to the German Presidency or the fact that the EU Troika prioritised efficiency: the EU member states were also largely indifferent towards the project.

As a result, the outcome is more of a declaration of intent instead of a strategy in the strict sense of the word. Thus, common global goals (stability, prosperity, freedom) and interests (security and regional economic development as well as regional integration into the world economy) are stated and the instruments for their realisation listed. However, the two constitutive elements of a strategy are missing: first, a focus on the long-term strategic goals that the EU is pursuing in Central Asia, and second, a coherent and

<sup>13</sup> See Andrew Rettman, “EU Keen to Bring International Criminal Court to Central Asia,” in: *European Voice*, June 14, 2007.

realistic framework for the realisation of these goals. In part, these faults are the result of the prior history of the paper, with its genesis strongly reflecting the spirit of the EU Commission and with the limited room for manoeuvre this entailed (see above, p. 72). It nevertheless appears that the existing scope for action was not used to its full extent.

It is thus unclear why the seven areas of co-operation described in the paper are neither assigned relative importance nor related to one another. It is also incomprehensible why the security dimension is not emphasised more strongly, not least because of the importance of the region for Nato's role in Afghanistan. This raises the obvious question why the Central Asia Strategy does not make the link to the EU's Security Strategy.<sup>14</sup>

"Human rights, rule of law, good governance and democratization," the first of the seven areas of co-operation, also seems ill-conceived. No clarity is created as to the meaning of the "structured, regular and results-oriented" human rights dialogue that the EU wants to offer every Central Asian state: with respect to the goals of this dialogue the paper is vague, while the form and modalities are not covered at all. It says that these issues will be tackled "at a future stage". The paper then becomes entirely nebulous in the passages relating to "exchanges in civil society".

The absence of the strategic component of this framework is evident above all in the fact that the aims and the modalities of co-operation with Russia (i.e., the actor which in Central Asia is simultaneously the EU's opponent and its most important strategic partner) are not mentioned once. This is even less comprehensible as the Central Asia Strategy is itself part of the general framework of the EU's relations with the post-Soviet space, or at least was intended as such. Here, if not before, it becomes clear that strategic planning almost entirely fell victim to the dictates of efficiency.

However, we can also measure the success of the Council Presidency by its ability to guide a political process without great friction and within a clear timeframe and by its skill in bringing the interests of relevant actors into harmony in order to realise the European political agenda while achieving some influence

of its own.<sup>15</sup> Using this yardstick, the German Presidency was thoroughly successful: due to early planning, efficient co-operation with the Commission and a well-managed presentation of the dossier in the Council, the German Presidency managed in just six months to present a strategy paper that summarizes the priorities of EU policy in Central Asia and combines the interests of the relevant actors.

<sup>14</sup> See Council of the European Union, *A Secure Europe in a Better World—The European Security Strategy*, December 12, 2003, <http://ue.eu.int/uedocs/cmsUpload/031208ESSIIDE.pdf>.

<sup>15</sup> See Andreas Maurer, "Die Zukunft der Präsidentschaft im Ratssystem der Europäischen Union," in: *Österreichische Zeitschrift für Politikwissenschaft*, Vol. 36, No. 2, 2007, pp. 139–156.

# The German EU-Presidency's Russia Dossier: between Rational Interests and Neighbourhood Conflicts

Rainer Lindner

## 1. Introduction: Russia in the German Council Presidency

The “strategic partnership” between the European Union and Russia was meant to be deepened during the German Council Presidency.<sup>1</sup> By autumn 2005 the German Foreign Office had already set out the main contours of EU foreign policy towards Russia and Eastern Europe to be pursued under the German EU-Presidency. In September 2006, the key emphases of the Russian agenda were presented in a paper entitled “The German EU Council Presidency: Russia, the European Neighbourhood Policy and Central Asia,” prepared by the policy planning staff (Planungsstab) of the Foreign Office.<sup>2</sup>

Concerning Russia, the Presidency had set itself the aim of initiating the elaboration of a new Partnership and Co-operation Agreement (PCA) before July 2007. To achieve this, an EU–Russia Summit was held in Samara, Russia, on 17th and 18th May 2007, in addition to numerous preparatory meetings between foreign and other ministers in Berlin, Brussels and other locations.<sup>3</sup> The goal was not achieved, however. The reasons for this do *not* lie with the German government, or more precisely in any insufficient groundwork on the part of the Presidency: after all, Berlin had put special emphasis on the EU's relationship with Russia and Eastern Europe.

Instead, Germany was not fully able to perform its role as broker between the EU, individual member states and Russia during the Presidency. During Germany's Chairmanship it became evident that the EU's Neighbourhood Policy was inadequately attuned

to Russia's new behaviour in foreign relations. On the one hand, the EU still bases its actions on an image of Russia stemming from the 1990s, leading Brussels to see its mission as one of democratisation. On the other hand, the EU is exploited by its new members, which are trying to transfer their specific—often historically charged—image of Russia to the EU.

## 2. Develop the Partnership, Consolidate the EU! Demands on the Presidency

The German Presidency had to take on three roles in its work on Russia: those of organiser of European domestic and foreign policy, EU representative in Common Foreign and Security Policy (CFSP) and broker between Russia and individual EU states as well as between the EU member states in the Council. Germany's strategic guidance was needed not least in order to place the deadlocked negotiations on the mandate within the broader context of European challenges. The Russian import ban on Polish meat and on meat transported through Poland acted as catalyst for the onset of difficulties in the negotiations. As a result, some member states became focused on the single-minded pursuit of short-term national interests.

### 2.1 Resources and limits on action

Germany had considerable resources at its disposal for the realisation of its aims concerning Russia. Much was expected from the German Chair due to the Federal Republic's weight within the EU, its status as Russia's most important trading partner and its most significant energy customer, not to mention German business's special relationship with Russia and the varied format of the German-Russian dialogue. At the same time, limits resulted from the political situation in Germany. Debate in Germany was characterised by disapproval for the Putin regime caused by the Litvinenko affair, the murder of the journalist Anna Politkovskaya, restrictions on the freedom of the press and the oligarchs' billion-Euro investments in the EU.

1 A short summary is in: Barbara Lippert, Andreas Maurer, and Michael Dauderstädt, *Die deutsche EU-Ratspräsidentschaft 2007*, Bonn: Friedrich-Ebert-Stiftung, 2006 (Internationale Politikanalyse), pp. 7–12.

2 “Berlin schlägt in der Russland-Politik ‘Annäherung durch Verflechtung’ vor,” in: *Frankfurter Allgemeine Zeitung*, September 4, 2006, p. 1.

3 On the preconditions see Sabine Fischer, *Die EU und Russland. Konflikte und Potentiale einer schwierigen Partnerschaft*, Berlin: Stiftung Wissenschaft und Politik, Dezember 2006 (SWP-Studie 34/06).

The fact that Gerhard Schröder became chairman of the supervisory board of the North European Gas Pipeline Company (NEGPC), the German-Russian Baltic Sea pipeline consortium, also led to differences of opinion within the Grand Coalition. Initial disagreement between the Foreign Office and the Federal Chancellery on the strategic management of policy towards Russia and Eastern Europe and on strategic terminology were cleared up in advance of the Presidency. As a result, the German Foreign Minister abstained from using a maxim (“rapprochement through interlinkage,” “Annäherung durch Verflechtung”) that had been circulated widely in the press from November 2006. He argued that “we have to free ourselves from the catchwords that have characterised this discussion.” The maxim, which alluded to the themes of 1970s *Ostpolitik*, was thus explicitly not a guiding principle for the Presidency’s Russian agenda.<sup>4</sup>

Germany was meant to be the defender of European interests and had at the same time to prevent any impression that EU policy towards Russia was becoming bilateralised. For a few member states, Germany had not been an independent and neutral broker in EU relations with Russia already before the Presidency. The reservations on the part of the Baltic states, Poland and the Czech Republic concerning German-Russian relations had increased after the Baltic Sea pipeline project. The public communication of the project was poor, and it is now frequently called the “Schröder pipeline” in East Central Europe. These reservations undoubtedly had an effect on the Council Presidency and on the perception of German efforts to move forward with PCA negotiations. The German government was especially confronted with the Europe-wide impression that it had been cultivating its relations with Russia in order to reap national (economic) benefits. During its Presidency, Germany, in its tightrope walk between European leadership and national interests<sup>5</sup>, was constantly being monitored by EU member states like Poland as well as by non-members including Ukraine.

<sup>4</sup> “Wir müssen uns von den Schlagworten befreien, mit denen diese Diskussion belegt worden ist.” See “Außenminister Steinmeier über die Türkeiipolitik, über Amerika und die deutsche Innenpolitik. Eine Eskalation im Türkei-Streit vermeiden,” in: *Frankfurter Allgemeine Zeitung*, November 10, 2006, p. 5.

<sup>5</sup> See also Daniela Kietz’s introductory remarks in this study (pp. 7ff).

### 3. Demands on the Presidency

The demands placed on the Presidency in terms of the strategic guidance of EU-Russia relations and above all in terms of the brokering of positions within the EU and *vis-à-vis* Russia were immense. Russia was a key dossier, and a sensitive one at that. This sensitivity is in part due to the nature of the mandate itself. Yet the negotiations towards a new Partnership and Co-operation Agreement were also complicated by a whole series of external conflicts in secondary arenas. This increased the demands made on the Presidency’s mediation and management capacities substantially. It quickly became clear that Russia and the EU had different expectations concerning “strategic” co-operation and that within the EU no coherent agenda for the bloc’s Russia policy would be formed.

**Sensitivity of the mandate.** The paper on the “four common spaces”<sup>6</sup>, adopted in May 2005, contained the premises that would be used as the basis of the new foundational document. However, Russia will only accept the document if its normative and conditional content is reduced and if it follows more closely the interests of the EU and Russia. In any case, democratisation is not a primary political aim in Putin’s Russia.<sup>7</sup> The Kremlin largely rejects any debate on democratic values. Russia sets great store by the fact that it should be treated as the EU’s equal in the negotiations on a new Partnership and Co-operation Agreement. Moscow has a primary interest in selling Russian energy resources and would thus like the EU to guarantee purchase. Second, Russia would in the long term like to achieve visa-free travel for its citizens within Europe. Third, it aims to co-operate with the EU as a partner on technology and modernisation.

For the EU, the following interests are paramount: First, secure delivery of energy, regulated as part of an energy charter or of an agreement anchored in the PCA; second, a regulated border regime that prevents uncontrolled immigration to the EU and above all to the Schengen area (irrespective of this the EU continues to work towards the reduction of travel restrictions); third, a willingness to co-operate on the part of

<sup>6</sup> For an extensive analysis see: Hannes Adomeit and Rainer Lindner, *Die “Gemeinsamen Räume” Russlands und der EU. Wunschbild oder Wirklichkeit?*, Berlin: Stiftung Wissenschaft und Politik, November 2005 (SWP-Studie 34/05).

<sup>7</sup> Fischer, *Die EU und Russland* [see fn. 3].

Moscow in matters concerning the EU's neighbourhood policy in the post-Soviet space.<sup>8</sup>

**Brokering and conflict management.** Numerous events and trends influenced Russian-European relations and thus the agenda of the German Presidency. This only served to increase the demands on the Presidency's activity as a broker. The conflicts, which were partly new and unexpected, also increased demands on the Presidency's management capacity.

In the course of the Russian-Estonian memorial dispute the EU was for the first time implicated in the post-Soviet discourse on the past. Within a matter of weeks, the "divided memories," the history of occupation in the Twentieth Century and the relations of the East Central European states to Russia began to influence the EU-Russia dossier. The catalogue of requirements for the Presidency was extended by a complex topic that will in future place a frequent burden on reciprocal perceptions—history. So far, the EU has only been inadequately prepared for historical-cultural areas of conflict. In the coming years, the EU will have to show again and again that it can act as a broker between the historical cultures and memories of individual member states and Russia.

Added to this were recent tensions caused by the Russian import ban on Polish meat, in place since 2005. The Polish veto, placed in November 2006 against a new PCA, was thus a reaction to the particular relationship between these two states. It was also motivated by a threat perception that continues to characterise the Polish image of Russia. In this case, the EU Commission and the responsible Directorate General neglected to respond early to Russia's supposed hygiene concerns in order to prevent this topic becoming a political matter. Consequently, brokering efforts were strongly and quickly focussed on Poland and Russia, which severely impaired the efficiency with which the mandate was carried out. The intersection of acceptable positions—necessary for a compromise solution—was small in the cases both of Poland and of the memorial dispute between Russia and Estonia.

The setting of EU-Russia relations was also lastingly affected by other events and developments in the post-

Soviet space, among them the espionage affair in Georgia, the Litvinenko affair in the UK, but also the progress of the EU Constitutional Treaty and the situation in the Middle East (atomic programme in Iran).

The German Council Presidency was meanwhile marked by the current Kosovo crisis, which was evaluated differently within and outside the EU. For Russia, Kosovo is to be seen as part of the series of 'frozen' conflicts and is thus comparable with the situation in Georgia (South Ossetia, Abkhazia) and Moldova (Transnistria). Kosovo's independence would strengthen Russia's support for secessionist movements in the Southern Caucasus. This series of events lengthened the Presidency's to-do-list, making a comprehensive implementation of the mandate appear almost impossible. The Russian dossier was strongly influenced by external matters and placed high demands on the Presidency, as it needed to mediate intensively and perform efficient management in the context of a large number of overlapping conflicts.

**Demands on brokering.** In brokering between the various conflicts, the Presidency could make use of the Commission, which acts as the manager of day-to-day relations with Russia across successive Presidencies. A portion of the demands could also be transferred to the Team Presidency, consisting of Slovenia, Germany and Portugal. In some neighbourhood conflicts (Russia-Poland, Russia-Estonia), the mediation efforts of the High Representative for Foreign and Security Policy and above all of Germany and the German government were also needed.

**The meaning of time limits.** The PCA, negotiated in 1997 between the EU and Boris Yeltsin's Russia, was to be renewed automatically after ten years unless one side cancelled the agreement. This alleviated the pressure on the Council of Ministers to find a new consensus. Moreover, Russia will be facing parliamentary and presidential elections in 2007 and 2008 respectively, which will bring with them a temporary destabilisation of the Putin system and make a fundamental reorientation of foreign policy appear unlikely. As the PCA, which will expire on 1st December 2007, will at first be renewed, it is reasonable to assume that only the newly-elected Duma and a freshly-elected President with a new government will endorse a new treaty. The energy crises between Ukraine and Russia in 2006 and between Belarus and Russia in 2007 increased within the EU the collective pressure to reach an agreement with Russia to place energy

<sup>8</sup> Rainer Lindner, "ENP für Osteuropa. Die Nachbarschaftspolitik der EU während der deutschen EU Ratspräsidentschaft," in: Jule Böhmer and Marcel Viëtor (eds.), *Osteuropa heute. Entwicklungen—Gemeinsamkeiten—Unterschiede*, Hamburg 2007 (Osteuropa: Geschichte, Wirtschaft, Politik, Vol. 43), pp. 245–258.

relations on a legal footing.<sup>9</sup> After Russia had repeatedly rejected the ratification of the energy charta and the transit agreement, all hopes lay in the PCA and its energy-related paragraphs. Russia's awareness of the significance of this document encouraged it to reduce its efforts to begin negotiations on a new PCA. The, in principle, unlimited duration of the old PCA delayed the development of a new document.

#### 4. A More Objective Relationship— Extent of Task Fulfilment

The preparation for the EU Council Presidency was protracted and goal-oriented. The influence of the changing environmental factors was substantial, while the administrative capacity of the Federal Government was limited by the simultaneous G8-Presidency. The parallel Chairmanship was reliant upon joint resources especially during the preparation and execution of the Summits in Berlin and Brussels (EU) and Heiligendamm (G8). The Foreign Office, which had created additional staff capacity in the departments concerned, asserts that the resources were limited but nevertheless sufficient for the fulfilment of all tasks. In the Foreign Office, the sections on EU-Eastern Europe relations, on the Southern Caucasus and on Eastern Europe were in the main responsible for the preparation and implementation of the Russia strategy. The most intensive phase in the preparation for the Presidency was September to December 2006. In the Federal Chancellery strategic authority for EU relations with Russia and the Community of Independent States (CIS) lay with the sections responsible for Europe and for foreign and security policy, respectively. The operational communication within the EU-27 took place in Brussels via the Council working group on Eastern Europe and Central Asia (COEST, biweekly meetings), via the Committee of Permanent Representatives (weekly meetings) and via the General Affairs and External Relations Council (GAERC, monthly meetings). In addition, the COEST configuration in national capitals met every month at the ambassador

level, with the responsible Foreign Office officials also taking part. In the Presidency's early stages, it was above all the technical aspects (preparation of co-operation councils and summits) that needed to be rehearsed (both with the Foreign Office as well as with the Council Secretariat, Commission, the following Presidency and the respective partner country).

The effort to build a European consensus was characteristic of the German Presidency. Here, the substantive knowledge and experience of national officials was of decisive importance, especially within the Brussels Council working group COEST. At the GAERC level the Russia strategy was co-ordinated with other EU member states, the High Representative for Foreign and Security Policy and the Commission. In this respect, the Russia dossier was institutionally quite well-founded and, importantly, endowed with mechanisms of reciprocal control.

The European environment and the priorities of the Presidency had a lasting effect on policy towards Russia, as evidenced by the meeting of the German Presidency with the Slovenian and Portuguese governments, Commission President Barroso and EP President Pötering in March 2007 in Sintra, Portugal. At this meeting it was decided to have each Presidency focus on different topics. The Portuguese Presidency wanted to advance in particular the Southern Dimension of the Neighbourhood Policy, while the German Presidency declared that its highest priority was the "rescue" of the European constitutional process. The EU-Russia summit on 17th and 18th May 2007, originally planned as a highlight of the Presidency's policy towards Russia, was shaped by an external factor—Poland. Via Samara, the Chancellor had to convince Poland, which had vetoed negotiations with Russia in November 2006, to cease blocking the EU's constitutional process. An overtly friendly policy towards Russia would, if anything, have reduced Poland's willingness to compromise on the matter of the Constitutional Treaty. By making the treaty negotiations its top priority, the German government took a big risk, but one justified by the outcome achieved. Of course, if the treaty negotiations in Brussels had failed, this would have tainted the entire Presidency.

Right after the beginning of the Presidency, direct contact to the Russian governmental and parliamentary leadership was intensified. During the six-month Presidency, the President of the Duma, Russian members of parliament, ministers and politicians from the

<sup>9</sup> For an extensive analysis see: Rainer Lindner, *Das Ende von Orange. Die Ukraine in der Transformationskrise*, Berlin: Stiftung Wissenschaft und Politik, August 2006 (SWP-Studie 10/06); Rainer Lindner, *Blockaden der "Freundschaft."* *Der Russland-Belarus-Konflikt als Zeitenwende im postsowjetischen Raum*, Berlin: Stiftung Wissenschaft und Politik, Januar 2007 (SWP-Aktuell 3/07).

Opposition visited Germany.<sup>10</sup> At the European level, numerous bilateral talks, summits and background meetings were organised. In April 2007, the Russian Foreign Minister Lavrov met the EU Troika and the EU-Russian Permanent Partnership Council in Luxembourg. At this and other occasions, the Permanent Partnership Council increasingly discussed questions of security policy: missile defence, Kosovo, Iran, Iraq and Afghanistan.<sup>11</sup>

The Samara Summit was attended *inter alia* by the Federal Foreign Minister Steinmeier, German Economics Minister Glos, Commission President Barroso and External Relations Commissioner Ferrero-Waldner. Its main effect was a sharpening of each side's interests: both sides let it be known that they more interested in a thin document. Russia saw the Samara Summit as a success to the extent that relations with the EU could now be moved from a values-based rhetoric to a realistic, interest-based level. Until just before the start of the Summit it was unclear whether the EU and Russia could reach a fundamental agreement to begin talks on the PCA. In the COEST working group, the Summit's key topics had been debated and finalised three months before. Even Poland had initially voted in favour of the detailed PCA negotiation mandate, but had then vetoed the overall endorsement. Russia announced that it would lift its meat embargo only after the veto had been removed. With this, the Summit was blocked. For Europe, the only success was to have been able to present a united position in Samara.<sup>12</sup>

During the Summit, Germany acted as a European hegemonic power. Despite Germany's special relationship with Russia, the Chancellor strongly criticised

10 "Spiker Gosdumy obsudit v Germanii otnosheniya Rossii i ES" [The Leader of the Duma discusses EU-Russia relations in Germany], April 23, 2007, [http://rian.ru/world/foreign\\_russia/20070423/64148667.html](http://rian.ru/world/foreign_russia/20070423/64148667.html).

11 "Lavrov obsudit s predstavatelyami ES podgotovku k samitu v Samare" [Lavrov discusses the preparation of the Samara summit with EU representatives], April 23, 2007, [http://rian.ru/world/foreign\\_russia/20070423/64148571.html](http://rian.ru/world/foreign_russia/20070423/64148571.html).

12 Joint press conference of Chancellor Angela Merkel, Commission President José Manuel Barroso and the President of the Russian Federation Vladimir Putin in Samara, May 18, 2007, [www.eu2007.de/de/News/download\\_docs/Mai/0518-RAA/PKSamara.pdf](http://www.eu2007.de/de/News/download_docs/Mai/0518-RAA/PKSamara.pdf). Substantive results of the summit were declarations of intent concerning: (1) education and research projects, (2) a co-operation between the space-based satellite systems Galileo (EU) and Glonass (Russland), (3) a reinforced dialogue on furthering investments, (4) agreements on climate change, (5) an early-warning system in the area of energy security.

Moscow's behaviour in the run-up to the Summit and the restrictions on the freedom of assembly and the media in Russia. At the same time, it became clear that the German Presidency primarily was taking on the role of broker and manager in the process of European integration: the EU's united position in Samara was more important to Germany than a successful summit achieved at any cost. At the head of the EU, Germany confronted the Russian leadership's interest-based realism with an, albeit brief, values-based EU consensus. This consensus was the necessary condition for the success of the later EU Summit in Brussels.

## 5. Interests before Values— Evaluation of the Political Results

**Russia is not looking for an EU perspective.** During the German Presidency, Russia repeatedly ruled out the possibility of future accession to the EU. The Russian Foreign Minister Lavrov stated in early 2007 that this is because Russia is a self-sufficient state. The new foreign policy doctrine of the Russian Federation, laid out in a Foreign Office paper published in spring 2007, gives Russian foreign policy a new orientation, not just *vis-à-vis* the EU but also *vis-à-vis* the states in its immediate vicinity.<sup>13</sup> Unique alliances with states in the "fraternal neighbourhood," such as Ukraine and Belarus, are history. Since 2007, the Russian government has increasingly prioritised its national interests, broadly characterised as these are by energy-related and economic aims, they remain simultaneously based in geo-strategic thinking. Russia is undergoing a change from an empire to a nation that sees itself as an energy power; yet demographic, social and political risks threaten to darken Russia's future and temper its ambitions to be a great power.<sup>14</sup>

**Competition for integration within the post-Soviet sphere.** During the German Presidency, the contradictions between the two competing spheres of integration stood out clearly. For now, we can expect cyclical tensions in the post-Soviet world and the East Central European neighbourhood: Russia with its new

13 The current Russian foreign policy strategy can be found in: *Obzor vneshney politiki Rossiyskoy Federatsii* [Outline of the foreign policy of the Russian Federation], [www.mid.ru](http://www.mid.ru) (March 15, 2007).

14 Rainer Lindner, *Russlands defekte Demographie. Zukunftsrisiken, Perception und Kooperationschancen*, SWP Berlin: Stiftung Wissenschaft und Politik, (SWP-Studie forthcoming).

foreign policy demands and interior weaknesses is confronted by an EU that, as a successful federation of states and internal market, is attractive even to non-members. Russia sees the EU less as a partner and more as a competitor in the post-Soviet space. The idiosyncratic relations between the two spheres of integration are characterised by economic proximity and growing political distance.

**Interests before values, so far.** Russian politics and EU policy towards Russia are ever more interest-based. Russian interests are guided by the country's energy potential (which at the same time touches on its national interests) and by its desire for primacy in the EU's neighbourhood. The policy of neighbourliness with the other states in the post-Soviet space has long given way to a policy based on national interest. This circumstance will, in future, affect the EU's relations with Russia ever more strongly. At the same time, Russia's dependence will become more evident: for the foreseeable future, the EU is Russia's primary partner in modernisation. The Baltic Sea pipeline project, which is economically undoubtedly interesting but was initially marked by problems of internal public communication, demonstrates that there are diverging interests within the EU. In the transit and Baltic Sea states, the concerns are primarily political, economic and environmental.

## 6. Conclusions and Recommendations

One yardstick for successful Presidencies might be that they have to take responsibility for specific tasks in concrete negotiations and conclude or at least advance these negotiations. In this light, the German Presidency's Russia policy can be seen as a partial success. First, Germany placed its European leadership role above its bilateral interests in a key phase in EU-Russia relations. Second, with its determined stance in Samara (in the eyes of Poland, the Czech Republic and the Baltic States) the German government created an important foundation for the later EU treaty negotiations. Third, the Presidency made clear that the EU may be Russia's partner in modernisation, but not in democratisation. The PCA as well as every future Presidency will make this new realism its own and will need to avoid the overblown values-based rhetoric of previous documents.

A "strategic partnership" with Russia will only be successful if Europe's image of Russia is corrected and

the interests of the EU and of Russia are considered. This correction will be necessary not least because of the frozen conflicts in the Black Sea region, which is the future area of competition and borders on both the EU and Russia. Russia has clear ambitions to realise its own political and resource-led interests in this region, in which especially conflict-laden cultural factors such as religion, history, ethnic-territorial interests etc. are present.

The following recommendations can be derived from the above:

- ▶ A united position among EU members in current political and economic matters is a precondition for a successful EU policy towards Russia. To create this unity, co-ordination procedures with member states neighbouring Russia or the post-Soviet space need to be intensified.
- ▶ The EU should communicate its policies more broadly in Russia in order to prevent harsh reactions on the part of Moscow. Background talks might be conducive to this (for example with the council on foreign and defence policy in Moscow).
- ▶ A reserved announcement of its political aims protects Presidencies from a pressure to succeed posed by politics and the media. This pressure is derived from ideas about the *desirable*, and not the *likely*, outcome. Assessments of the likely outcome would have to take into account that Russia has new self-confidence as an energy power.
- ▶ In developing a Russia strategy it seems necessary to keep goals realistic. The influence and power of changing factors, such as the fragility of the energy architecture and historical-cultural conflicts in the EU's vicinity, are likely to increase in future.
- ▶ The combination of EU- and G8-Presidencies allowed for the bundling of joint strategic and operative resources. Here, it would be possible to exploit thematic synergies and political leverage more strongly. Russia is a member of the G8, but not of the G7. It would also like to be a WTO member. Both the EU and the G8 institutions can promote the idea of a legal foundation for energy relations with Russia. Such contractual ties are of course in Moscow's long-term interest as well, since it is keen to foster stable and secure energy-purchasing relationships.

# The Council Presidency and the Middle East Peace Process: Limited Scope for Action, Primacy of Diplomacy

Muriel Asseburg

In the early agenda-planning stages of the Presidency, the Middle East peace process was not intended to be amongst the main emphases of the German Chairmanship. Initially, the issue was only included as part of the larger aim of strengthening transatlantic relations and in connection with the extension of the EU Border Assistance Mission (BAM) in Rafah (a decision that was to be taken in the first six months of 2007). Nevertheless, due to the Lebanon War in the summer of 2006 and the subsequent “UNIFIL-plus” mission, the Middle East peace process became one of the Presidency’s priorities in Common Foreign and Security Policy (CFSP). After all, the War had caused a lasting shock in the region. At the start of the Presidency, compliance with the ceasefire had been ensured, at least to a large extent, through the presence of international troops; yet, beyond this, no progress towards a long-term and sustainable peace had been achieved and no negotiations had been initiated between the parties to the conflict (Israel, the Palestinian Authority (PA)/PLO, Lebanon, Syria).

Indeed, the dispute in Lebanon between the pro-Western government on the one side and Hezbollah and its allies (which had left the government) on the other had escalated to such an extent that domestic politics was paralysed. In Israel, the government had been heavily criticised for its handling of the war. Syria was the target of a policy of isolation on the part of the USA and some European states, above all France. In the Palestinian territories a Hamas-led government was installed after parliamentary elections in January 2006, a government that was subsequently isolated by Israel, the USA and the EU.<sup>1</sup> At the same time, the economic situation in the Palestinian territories was massively affected by Israeli military operations and a constant cordoning-off of, above all, the Gaza Strip. Moreover, violent clashes between parts of the Fatah-dominated security apparatus and Fatah militias, on

the one hand, and Hamas militias, on the other, were becoming ever more frequent.

As a result, at the start of 2007 the situation in the Middle East was extremely tense and could have escalated again on one of the fronts at any time. Both Germany and the EU had a strong interest in political stabilisation: after all, 7,000 European troops formed a majority of the 13,000-strong “UNIFIL-plus” contingent. With its 800 soldiers, Germany was not just participating for the first time in a mission in the Middle East, it had also assumed the leadership of the Maritime Task Force off the coast of Lebanon.

## 1. Demands on the German Presidency

The German Presidency was confronted by multiple challenges in dealing with the Middle East peace process: first, its interest in preventing renewed escalation of the conflicts was set in sharp relief by the rapidly deteriorating situation in the Palestinian territories and in Lebanon and by the fragile regional conditions; second, the Presidency was confronted by a multitude of actors—the EU member states, the parties to the conflict, other regional actors and the partners in the Middle East Quartet—which rendered developments unpredictable but needed to come together in order to achieve progress; third, the history-laden topic was seen as especially sensitive. Individual EU member states hold entrenched positions—broadly either pro-Israeli, pro-Arab or pro-American—that have formed over years or even decades.

At the start of the EU-Presidency, the specific area of contention was the issue of how to deal with the Palestinian Hamas (and later with the Palestinian government of national unity, formed in March 2007), with the Lebanese opposition and with Syria. Ultimately, the fundamental question was whether stabilisation would be achieved by isolating or by engaging the veto players (Syria, Hamas, Hezbollah). Here, the member states’ answers differed depending on the actor in question. Opinion was also divided on the question how the EU should deal with Israel: should it show a conciliatory and co-operative approach or

<sup>1</sup> The policy of isolation had several components: the absence of dialogue and co-operation with the government, the stopping of transfers of VAT and customs duties through Israel, the suspension of European budgetary assistance to the PA and the imposition of US financial sanctions.

rather take a confrontational and declaratory stance? Should the EU emphasise more strongly the goals of the process or initiate pragmatic steps in order to achieve progress? Some member states signalled clearly that they were not willing to compromise in certain policy areas and/or indicated that they saw these as their business in which they did not want others to interfere (for example, France in relation to Lebanon and Syria).

These diverging opinions made it especially difficult to find a common European position. While a “Common Strategy for the Mediterranean” had been adopted in June 2000 at a Summit in Feira, as far as common actions, positions or other decisions related to the Middle East peace process were concerned, decisions were not to be taken by majority vote until after a peace settlement had been reached.<sup>2</sup> In addition, the Strategy was not extended after January 2006. Thus, the German Presidency was required above all to co-ordinate intensively with the other member states and the Special Representative for the Middle East Peace Process. At the same time, the Presidency’s freedom of action was relatively large compared to, say, trade policy, as neither the European Parliament nor the Commission have (co-)decision rights in CFSP. The Presidency does however need to explain and justify its policy before both institutions. As a result, the Presidency had to prove primarily that it was a good manager and broker—not just in order to establish a unified European policy but also to further the process at the international level in its role as the EU’s external representative.

At the same time, the Presidency had to work towards ensuring that the diplomatic process was supported by the societies in the region, especially due to the weakened leaderships of Israel, Lebanon and the Palestinians and the escalation of violent conflicts in Lebanon and Palestine. In order to achieve this, the following was necessary: first, to contribute substantively to a two-state solution by supporting Palestinian state- and institution-building (a long-term goal of European policy); second, to facilitate political reconciliation in Lebanon; and third, to take into account the interconnections between the various conflicts in the Middle East, which endanger progress on all tracks once one of them is neglected.

<sup>2</sup> See *Conclusions of the Presidency*, Santa Maria da Feira, European Council, June 19 and 20, 2000, B. *Common Strategy on the Mediterranean*, as well as *Common Strategy of the European Council of 19 June 2000 on the Mediterranean Region*, Doc. 2000/458/CFSP.

## 2. Primacy of Diplomacy

The German Presidency had three main goals for its Middle East policy. It wanted, first, to revive the so-called Middle East Quartet<sup>3</sup>; second, to stabilise Lebanon and, third, to achieve progress towards a comprehensive peace settlement.<sup>4</sup> The Israeli-Palestinian conflict, seen as the core of the complex web of conflicts in the Middle East, was to be at the centre of the Presidency’s efforts. Here, the Presidency aimed to revive the diplomatic process and achieve progress towards a conflict settlement by negotiating with—and attempting to link—three groups of actors: the EU, the Middle East Quartet and the Arab states. The Presidency consciously avoided fundamental declarations or visionary blueprints in favour of an approach concentrating on the feasible—and a policy which was meant to be open enough to react flexibly to the region’s unpredictable developments and to the policy of the main actor in the Middle East, the USA, in order to make use of upcoming opportunities.

## 3. Internal Co-ordination in the EU

According to representatives of the large EU member states, the German Presidency fulfilled its role as manager of Council business and broker between the various national standpoints on matters concerning the Middle East peace process in exemplary fashion. In particular, it placed its own national views last (for example its rather pro-Israeli stance and support for an active engagement of Syria), and from the start presented drafts (for example of Council conclusions) that reflected consensus opinion or the view of the majority. It informed and consulted the member states (the capitals as well as the Permanent Representations and the Committee of Permanent Representatives

<sup>3</sup> The Middle East Quartet was formed in 2002 and presented a peace plan, the so-called Road Map, in 2003. It consists of the EU, the USA, the Russian Federation and the UN.

<sup>4</sup> German Federal Government, “*Europa gelingt gemeinsam.*” *Präsidentschaftsprogramm 1. Januar–30. Juni 2007*, Berlin 2007, [www.eu2007.de/includes/Downloads/Praesidentschaftsprogramm/EU-P-AProgr-d-2911.pdf](http://www.eu2007.de/includes/Downloads/Praesidentschaftsprogramm/EU-P-AProgr-d-2911.pdf), p. 23; see also Chancellor Angela Merkel’s speeches on the Presidency’s priorities and goals in the European Parliament on 17 January 2007, [www.bundesregierung.de/nm\\_1498/Content/DE/Rede/2007/01/2007-01-17-bkin-rede-ep.html](http://www.bundesregierung.de/nm_1498/Content/DE/Rede/2007/01/2007-01-17-bkin-rede-ep.html), and in the Bundesrat on 16th February 2007 in Berlin, [www.bundesregierung.de/Content/DE/Bulletin/2007/02/19-3-bk-bundesrat.layoutVariant=Druckansicht.html](http://www.bundesregierung.de/Content/DE/Bulletin/2007/02/19-3-bk-bundesrat.layoutVariant=Druckansicht.html).

[Coreper]) at an early stage. Meetings of the Maghreb-Mashreq working group, the Political and Security Committee (PSC) as well as those at ministerial level are said to have been well-prepared, efficiently led and to have been aimed at forging a consensus.

The Presidency attached great importance to avoiding surprises. Therefore, positions were co-ordinated at an early stage with the Council Secretariat, the EU Special Representative for the Middle East Peace Process (Marc Otte), the EU Commission and selected member states (in particular France and the UK). This approach enabled Germany to achieve unified European positions on the Middle East peace process and prevent individual member states from diverging from the agreed line or presenting initiatives outside the EU framework.<sup>5</sup> Thus, the EU was able to present itself as a cohesive actor and, due to close co-operation with the Special Representative, also to put forward a unified European position in the Quartet.<sup>6</sup>

While the German, Portuguese and Slovenian Presidencies did formulate common objectives in their eighteen-month programme,<sup>7</sup> it cannot be said that the three states operated as a Team Presidency in the sense that they developed and implemented a common strategy. This would anyway have been unlikely in a policy area in which EU member states pursue such diverging interests in the region as well as *vis-à-vis* the USA, and in which the political process can hardly be controlled or planned for over the medium-term due to the large number of external actors involved. Moreover, the subsequent Portuguese Presidency showed little interest in co-operation, though the Germans did at least try to inform Lisbon regularly and offered it support for the beginning of the Presidency.

The German Presidency concentrated its efforts on the Israeli-Palestinian conflict. Given the fact that

there remained differences of opinion in the Council concerning how to tackle the other dimensions of the Middle East conflict, this approach made sense. A unified position concerning Syria or Lebanon seemed out of reach and further attempts at mediating futile. Thus, the Presidency abstained from further efforts to convince Syria through talks to take up a more constructive attitude. This had still been tried when the German Foreign Minister Steinmeier visited Damascus on 4th December 2006. Lebanon's stabilisation was supposed to be achieved primarily by the military component, which would help maintain the ceasefire and prevent smuggling of arms, as well as by financial and technical support for reconstruction and measures to support border security. But there were no European initiatives for conflict resolution. The EU neither offered mediation to the various Lebanese actors, nor did it attempt to solve the outstanding issues on the Israeli-Lebanese-Syrian track.<sup>8</sup>

Germany concentrated on the Presidency's management and brokering role at the expense of a strategic, goal-oriented Middle East policy. Instead of concentrating on the long-term perspectives, the Presidency emphasised—for example in Council conclusions—the next concrete, operative and at that point realistically achievable steps that would reinvigorate the diplomatic process. By carrying out a maximum of consultations it was possible for the Presidency to win the support of the other member states for this approach. As a result, however, European policy remained mainly supportive and reactive—since it depended on the behaviour of the parties to the conflict and other actors.

At the same time, the European position was problematic to the extent that its policy of isolating Hamas contributed to the following developments: a drastic deterioration of the socioeconomic situation in the Palestinian territories; an additional weakening of Palestinian government and security institutions; the rolling back of reforms that had aimed to bolster transparency as well as the checks and balances in the Palestinian political system; and the escalation of intra-Palestinian violence, ultimately leading to the

<sup>5</sup> Other Presidencies did not succeed in this. See, for example, the French-Spanish-Italian Middle East initiative in November 2006 during the Finnish Presidency ([www.elysee.fr/elysee/root/bank/print/66069.htm](http://www.elysee.fr/elysee/root/bank/print/66069.htm)) or the ten foreign ministers' letter to the Quartet's new Special Envoy Tony Blair in July 2007 during the Portuguese Presidency ([www.lemonde.fr/web/article/0,1-0@2-3232,36-933344,0.html](http://www.lemonde.fr/web/article/0,1-0@2-3232,36-933344,0.html)).

<sup>6</sup> In the Quartet, the EU is represented at the level of the *principals* by the Troika, i.e. the Presidency's foreign minister, the CFSP High Representative and the Commissioner for External Relations, and at the level of *envoys* by the Special Representative for the Middle East Peace Process.

<sup>7</sup> Council of the European Union (ed.), *Achtzehnmonatsprogramm des deutschen, des portugiesischen und des slowenischen Vorsitzes*, date: July 31, 2007, [www.eu2007.de/includes/Download\\_Dokumente/Trio-Programm/triodeutsch.pdf](http://www.eu2007.de/includes/Download_Dokumente/Trio-Programm/triodeutsch.pdf), p. 63.

<sup>8</sup> It should be mentioned that the High Representative Javier Solana travelled to Damascus for exploratory talks in March 2007. Individual European states tried to revive the national dialogue in Lebanon—Switzerland at the NGO level, France at a high level after the change in government, without any tangible success during the German Presidency.

split of the PA.<sup>9</sup> The European approach thus contradicted one of the EU's established policy goals, namely contributing to a two-state solution by supporting Palestinian state- and institution-building.<sup>10</sup> While the mandate of the EU BAM in Rafah was extended by two years in May 2007, it has not become effective. Since the violent assumption of power by Hamas in the Gaza Strip in mid-June 2007, the mission has no longer been operational.

#### 4. Resources and External Limits to Action

A significant advantage for the German Presidency was the fact that it had access to a highly capable and experienced civil service, allowing the Presidency to manage the political process professionally and, despite the considerable time pressure, consult widely with all key actors. It was also able to exploit its good relations with third states, in particular Israel and the USA, in order to advance the process at the international level. Here, the Chancellor brought her political weight to bear and credibly referred to her solidarity with Israel and to her interest in substantially improving transatlantic relations. Thus, she was able to convince the American leadership at the start of the year to increase its engagement in the peace process and let the Quartet recommence regular meetings. Indeed, it is down to the German government that the US government was brought back on board and that the Middle East Quartet was reactivated. While the Quartet had only met once since the beginning of the Lebanese War, its representatives came together at the level of the so-called Principals four times in the first half of 2007, not to speak of the meetings at envoy level. They maintained close contact by telephone and released seven joint statements.<sup>11</sup> Germany also managed to give the Quartet's statements a more European tone by putting forward statements which it had drafted itself: up to that point, the USA had reserved the drafting of statements

for itself. In these drafts, the Presidency referred to Israel's settlement policy and demanded that Israel pay withheld customs and VAT funds to the PA.<sup>12</sup>

In the end, however, the Quartet was neither transformed into an efficient co-ordination and co-operation body nor was it endowed with a progressive agenda.<sup>13</sup> However, this would never have been within the realm of the possible for the Presidency as the Bush administration showed little interest in sharing information or in co-operation. American initiatives were generally launched without co-ordinating with the Quartet partners. For example, the Presidency only learned from the media that Condoleezza Rice had presented a benchmark plan in April and that the USA had nominated Tony Blair as the Quartet Representative. In the end, the Europeans accepted these initiatives *volens volens*.<sup>14</sup> While the Russian Federation supported the policy only to continue co-operation with the PA if it fulfilled the conditions that the Quartet had set out after Hamas' electoral victory, it did not join the USA, the EU and the UN in breaking off all contacts with the Islamists. Instead, it tried in direct talks to convince the Hamas leadership to take a more moderate stance. Moreover, the Quartet's mandate was not extended to cover more than the Israeli-Palestinian track. This last failure was not only due to the EU's aforementioned internal divisions. The same cleavage was also present within the Quartet: while, for example, Russia advocated the engagement of Syria and cultivated close contacts with it, the USA maintained a strict policy of isolation. The fact that similar differences of opinion existed between the German Chancellery and the Federal Foreign Office might potentially also have blocked progress on this track but in the end did not even come to bear effect.

<sup>9</sup> See an extensive analysis in Muriel Asseburg, "Hamastan vs. Fatahland". *A Chance for Progress in the Middle East?*, Berlin: Stiftung Wissenschaft und Politik, July 2007 (SWP Comments 14/07).

<sup>10</sup> Only with the failure of the Palestinian unity government in mid-June 2007 did the EU seize the opportunity to restart co-operation with the PA (as represented by the emergency government in Ramallah).

<sup>11</sup> All Quartet statements can be found on the web site of the US State Department: [www.state.gov/p/nea/](http://www.state.gov/p/nea/).

<sup>12</sup> See the Quartet's statement on May 30, 2007, [www.state.gov/r/pa/prs/ps/2007/may/85784.htm](http://www.state.gov/r/pa/prs/ps/2007/may/85784.htm).

<sup>13</sup> See Alvaro de Soto's tough criticism in: *End of Mission Report*, May 2007, published on the website of *The Guardian* on June 13, 2007, <http://image.guardian.co.uk/sys-files/Guardian/documents/2007/06/12/DeSotoReport.pdf>. Alvaro de Soto served, from May 2005 to May 2007, amongst other positions as UN Special Co-ordinator for the Middle East Peace Process.

<sup>14</sup> *Acceleration Benchmarks for Agreement on Movement and Access as well as on the Gaza Security Situation*, April 2007, [www.jmcc.org/documents/ama.htm](http://www.jmcc.org/documents/ama.htm). The American approach also became clear when the US President proposed an autumn peace conference on 16th July 2007 in which he did not foresee any role for the Quartet. See *President Bush Discusses the Middle East*, July 16, 2007, [www.whitehouse.gov/news/releases/2007/07/20070716-7.html](http://www.whitehouse.gov/news/releases/2007/07/20070716-7.html).

Germany put much effort into close co-ordination with the representatives of the Arab League (AL) and with those Middle Eastern states that were seen as conducting a constructive policy—in particular, Saudi Arabia, Egypt, Jordan and the United Arab Emirates. Here, the goal was to support and enhance the AL's 2002 peace initiative and to induce the Arab states to support actively an attempt to restart the peace process. Generally, it was the German Presidency's aim to uncover and exploit available opportunities instead of defining new aims or launching new initiatives on its own. The Presidency held the view that the European positions and objectives were sufficiently clear since the European Councils of Berlin (1999) and Seville (2002) and that they required no further specification or reiteration.<sup>15</sup> In addition, the Presidency considered the future path of the peace process to have been well-defined by the US President's 2002 statement on the two-state solution and by the 2003 Road Map. In any case, an EU-Presidency has little freedom to raise substantive issues due to the enormous time pressure, the complexity of the co-ordination process and the expectation that the Presidency should act as a neutral broker. The Presidency nevertheless managed to leave its mark by including Arab states in the process. Thus, in spring 2007 the AL renewed its peace offer to Israel and appointed two committees to advance the initiative with Israel and with the international community. In this context, the German Presidency also successfully suggested an informal meeting between Quartet representatives and Arab states at the margins of the Iraq Conference in Sharm-El-Sheikh in early May 2007. It invited AL representatives to come to Brussels for the May 2007 meeting of the General Affairs and External Relations Council, and the Israeli Foreign Minister, Livni, for the June 2007 meeting. The Presidency hereby pursued a policy that attempted to avoid surprises. Israel in particular was notified in advance of any EU activities and positions. This surely contributed to Israel's willingness to accept a resumption of the Quartet process and to the fact that it did not reject the AL's initiative outright, as it had in 2002.

In the end, the Presidency contributed to the involvement of all important partners and to the laying of the foundations for a renewal of the Israeli-Pales-

tinian peace process. In this, it skilfully managed to make use of different interests and motivations and, by scheduling meetings in close succession, to create a new dynamism and raise expectations. The Americans had found a new interest in co-operating with the so-called "moderate" Arab states in order to stabilise the region in general and Iraq in particular as well as to isolate Iran; Arab states were united by their common interest in preventing a success of the Islamist Hamas and in containing Iranian influence in the region; the Israeli government was interested in increasing its own legitimacy, in influencing the process so that it matched Israeli aims and in pushing back Iranian influence on its periphery.

## 5. Evaluation and Conclusions

Analysis of the German Presidency's performance on the dossier of the Middle East peace process reveals that effective management of the policy process and successful international negotiation in the role of CFSP representative are by no means coterminous with successful policy outcomes. Without a doubt, in the first half of 2007 the Presidency significantly contributed to the renewed diplomatic vigour in the Israeli-Palestinian peace process and to the inclusion of a larger circle of actors in these efforts. Consequently, the diplomatic process took off dynamically in summer 2007. After the resumption of meetings between President Mahmoud Abbas and Prime Minister Ehud Olmert, the presentation of the Arab peace initiative in Jerusalem by the foreign ministers of Egypt and Jordan and the Annapolis meeting of November 2007, it is now vital that diplomacy is substantiated by qualitative steps towards a peaceful solution of the conflict. This will hardly be possible without massive engagement by the Quartet. Its members will have to be willing to provide intensive support for negotiations on the details of a final status agreement (in the form of mediation, dispute settlement and a potential military presence).

Further, it is a serious problem that the diplomatic process was not grounded in the realities of the Middle East. Following the division of the PA and the revocation in June 2007 of the power-sharing agreement between Fatah and Hamas there has been no consensus among Palestinians that would give sufficient backing to the Palestinian President to conduct peace negotiations and implement a final-status agreement. Lebanon has not been stable either, and the blockade

<sup>15</sup> Declaration of the European Council on the Middle East Peace Process, Berlin, March 24 and 25, 1999, [www.europarl.eu.int/summits/ber2\\_de.htm#partIV](http://www.europarl.eu.int/summits/ber2_de.htm#partIV); Declaration of the European Council on the Middle East, Seville, June 21 and 22, 2002, [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/de/ec/72655.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/de/ec/72655.pdf).

of its political institutions has continued. Politically motivated murders and Lebanese army confrontations with terrorist groups in spring 2007 have once again underlined the fragile nature of the Lebanese state and the high degree of external interference.

Last but not least, the German Presidency did not pursue a policy that would have encompassed the other dimensions of the Arab-Israeli conflict beyond the Israeli-Palestinian core. In this respect, Germany, the EU and the Quartet representatives have not sufficiently taken into account how closely the sub-conflicts in the Middle East are intertwined even though the stabilisation of only one of these conflicts seems just as unlikely to produce lasting success as does the exclusion of influential veto-players.

# The Council Presidency and EU Relations with Latin America: Competent Management, Little Lasting Impact

Jörg Husar / Günther Maihold

## 1. The German Presidency's Agenda and Scope for Action

In the area of Latin America policy, the six months in which Germany held the EU Council Presidency were marked by three main topics: (1) the ongoing or incipient association negotiations with Mercosur, the Andean Community and Central America, (2) the imminent implementation of a deeper partnership with Brazil, and (3) relations with Cuba. The Presidency's programme envisaged the conclusion of negotiations with Mercosur and the initiation of association negotiations with the Andean Community (CAN) and the Central American states.<sup>1</sup> As far as the deepened relationship with Brazil was concerned, a strategic partnership was seen as a possible goal, though this was not explicitly mentioned as such in the Presidency programme. At the same time, Portugal, which followed Germany in the Chair, had just made the Brazil dossier one of its priorities.<sup>2</sup> While there were few differences of opinion on these first two dossiers among member states and between the Council and the Commission, the management of relations with Cuba was far more contentious.

However, the power and responsibilities of the Council and its Chair in the aforementioned dossiers need first to be clearly laid out. As far as association agreements are concerned, the Commission adopts recommendations for a negotiation mandate that is presented to the Council for further discussion and final adoption. The Council then endows the Commission with the leadership of the negotiations. However, the Commission is required to report to, and consult with, the relevant Council working groups (TEC article 300): in this case, the regional working groups AMLAT (first pillar) and COLAT (second pillar). In trade matters, they are joined by the 133 committees in their "Members," "Deputies" and "Services" formations. In ongoing association negotiations it is expected that

<sup>1</sup> German Federal Government, "Europa gelingt gemeinsam." *Präsidentschaftsprogramm 1. Januar–30. Juni 2007*, Berlin 2007, p. 24.

<sup>2</sup> See *Prioridades da Presidência Portuguesa, Julho a Dezembro 2007*, [www.eu2007.pt/UE/vPT/Presidencia\\_Conselho/PriorPPUE](http://www.eu2007.pt/UE/vPT/Presidencia_Conselho/PriorPPUE).

Presidencies observe the negotiation process and, in cases of deadlock, give fresh impulses. When new negotiation mandates are developed, the Presidency is primarily needed as a broker, both between member states and between Council and Commission. After the negotiations have been concluded, the association agreements need to be ratified by the European Parliament.

Meanwhile, no formal procedure is required for the elaboration of strategic partnerships, which initially only consists of a joint statement by both partners. While the aforementioned Council working groups are included in the consultations, no Council decision is required. Only the Political and Security Committee (PSC) needs to approve a strategic partnership. As a result, the opportunities for the Council and its Presidency to influence the process are limited. However, the Council Presidency can take part in the organisation and content of bilateral political dialogues as part of the bilateral Troika meetings together with the High Representative and the Commission (TEU article 18).

In the case of policy towards Cuba, the Council had to reach two decisions as part of its direct responsibility for CFSP (TEU article 13ff.): first, the evaluation of the 1996 common position and, second, the development of a medium- and long-term Cuba strategy for the EU. The German Presidency had several opportunities to directly represent the EU externally, namely as part of the EU Troika meeting with representatives of Mercosur, the Rio Group, the San José Process, the Andean Community and Mexico in Santo Domingo in April 2007 as well as with Brazil in Brasilia in May 2007.

## 2. Demands on the German Presidency

Since the 1980s, Latin America and the Caribbean have played a key role for the EU in its efforts to establish itself as a global actor. For a long time, the region acted as the prime example of the strategy of interregionalism, through which the EU developed partnerships with similar areas of integration. With the slow-down in Latin American integration and the increasing importance of Asian economies, the

region's significance for the development of European foreign policy has been remarkably reduced. Europe's interest in the area has only increased anew because of the (potential) disadvantages for the European economy that a free-trade agreement of individual states or regions with the USA would entail. Moreover, on both sides of the Atlantic no opportunity is lost to point to historic connections and existing communities of values, seen as stable foundations for joint initiatives in international forums.

**Association agreements with the Andean Community, Central American and Mercosur.** There has been a political dialogue with the Rio Group<sup>3</sup> since 1990, and in 1999 a "bi-regional strategic partnership" was agreed, leading to biennial EU-Latin America-Caribbean summits.<sup>4</sup> The 'bi-regional' approach is supplemented by specific dialogues with sub-regional blocs. This aims to support, through the EU's association agreements,<sup>5</sup> not only market opening but also the consolidation of Latin American efforts at integration.<sup>6</sup> Here, the EU's main partners are Mercosur,<sup>7</sup> the Central American Integration System (SICA)<sup>8</sup> and the Andean Community (CAN).<sup>9</sup> In a departure from the general (sub-)regional approach bilateral agreements have in the past been signed with Mexico and Chile, since neither are full members of any of these blocs.

At the 4th EU-Latin America-Caribbean Summit in Vienna in May 2006 the EU had decided to begin talks with Central America on an Association Agreement and to initiate with the Andean Community "a process leading to the negotiation of an Association Agree-

ment."<sup>10</sup> Until recently, the EU had been sceptical regarding the ability of the Andean bloc to consolidate itself politically and economically, especially since Venezuela had announced its withdrawal in April 2006. On the other hand, it was precisely this instability that meant that supportive measures on the part of the EU were in demand.

In December 2006 the Commission had presented recommendations concerning the negotiation mandates for Central America and the Andean Community. Since the start of negotiations had been on the agenda for a while, member state positions were well-explored, and there was generally a broad consensus. The demands on Presidency management were thus reduced to a minimum. In addition, among the delegations, the Council and the Commission, there were only a small number of subsidiary questions that remained unanswered: for both Central America and the Andean Community these concerned services, good governance in tax policy and the insertion of revision and anti-terrorist provisos. Their insertion was resolved directly by the legal services of the Commission and the Council. A further need for clarification existed in the relationship with the Commission (Directorate General Trade), which aimed, in contrast to the Council, to deal with the Association Agreements with Asia and Latin America *en bloc*. This was due to the goal to announce the (as far as possible) simultaneous start of association negotiations with a number of partners in Asia and Latin America. This was meant to demonstrate publicly the EU's unity on trade policy. Moreover, the Commission insisted that the SICA adhere to its self-imposed commitment to complete its customs union before negotiations with Central America began. In contrast, the member states were willing to enter into negotiations even if this precondition was not met.

The decision to start negotiations on new Association Agreements brought with it demands in terms of strategic guidance. WTO compatibility needed to be the maxim of EU trade policy. Otherwise, the EU would be in danger of further overfilling the global "spaghetti bowl" of bilateral and bi-regional trade agreements, whose inflationary increase is seen as a potential hurdle for multilateral trade liberalisation.<sup>11</sup>

<sup>3</sup> All Latin American states, the Dominican Republic and a representative of the Caribbean Community (CARICOM).

<sup>4</sup> The participants of the so-called EU-LAC meetings are the foreign ministers and heads of state and government of the EU and the Rio Group.

<sup>5</sup> See Wulfdiether Zippel, "Die Politik der Assoziationsabkommen—materielle Grundlagen und globale Struktur," in: Peter-Christian Müller-Graff (ed.), *Die Rolle der erweiterten Europäischen Union in der Welt*, Baden-Baden 2006, pp. 205–223.

<sup>6</sup> See Jean B. Grugel, "New Regionalism and Modes of Governance—Comparing US and EU Strategies in Latin America," in: *European Journal of International Relations*, Vol. 10, No. 4, 2004, pp. 603–626 (617).

<sup>7</sup> Argentina, Brazil, Paraguay, Uruguay and Venezuela (Full membership not yet ratified). A framework agreement with the EU was agreed in 1995.

<sup>8</sup> Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Belize and Panama. Panama has not yet joined the economic integration process (SIECA).

<sup>9</sup> Bolivia, Ecuador, Columbia, Peru.

<sup>10</sup> [www.eu2006.at/includes/images/EULAC/EU-LACViennaDeclarationEN.pdf](http://www.eu2006.at/includes/images/EULAC/EU-LACViennaDeclarationEN.pdf), p. 14.

<sup>11</sup> See EU Commission, *Global Europe. Competing in the World*, Brussels, October 4, 2006, [http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130376.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130376.pdf) (accessed: August 12, 2007).

The negotiations with Mercosur, interrupted since 2004, placed demands on the Presidency in its initiative and impulse function. However, the Commission and the Brazilian President Lula agree that the core modalities of the agricultural sector at the very least need to be decided upon in the Doha Round before it would make sense to resume these negotiations. The Commission hoped that the deepened relationship with Brazil (see below) would give a clear impulse to the Mercosur negotiations as well. Thus, Germany as the representative of the Council *vis-à-vis* the Commission was at first needed to push for the immediate resumption of EU-Mercosur negotiations in order to get closer to the goal of concluding these negotiations, an aim listed in the Presidency programme.

**Strategic Partnership with Brazil.** Over the past two years, the EU's relationship with Brazil has—almost systematically—been upgraded by high-ranking visits. In July 2005, the External Relations Commissioner Benita Ferrero-Waldner travelled to Brazil. In its December 2005 Communication “A Stronger Partnership between the European Union and Latin America,” the Commission had called for the “special treatment” of the “major players” Brazil and Mexico, an idea welcomed by the Council in February 2006.<sup>12</sup> In May 2006, the Commission President Barroso went to Brazil on an official visit for the first time. During that visit, Brazil had proposed setting up a strategic partnership. The Council Secretariat and the Commission developed an internal analysis on this topic, which was first discussed in October/November 2006 in the Latin America working group COLAT. The PSC agreed to the proposal in November 2006.

Until then, the EU had always given preference to biregional relations with Mercosur over bilateral relations. Thus, only Mercosur was mentioned as a partner in Latin America in the 2003 European Security Strategy. The special emphasis on Brazil, prepared during the German Presidency and declared early July at the beginning of the Portuguese Presidency, represents a departure in European foreign policy strategy. This is why the Chair's strategic guidance was especially

<sup>12</sup> See EU Commission, *A Stronger Partnership between the European Union and Latin America*, COM (2005) 636 final, December 8, 2005, p. 7, [http://ec.europa.eu/external\\_relations/la/doc/com05\\_636\\_en.pdf](http://ec.europa.eu/external_relations/la/doc/com05_636_en.pdf) (accessed: August 3, 2007); *Council Conclusions on EU-Latin America Relations*, 2711st General Affairs Council Meeting, Brussels, February 27, 2006, [www.consilium.europa.eu/uedocs/cmsUpload/Final\\_Latin\\_America.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/Final_Latin_America.pdf).

required on this topic, as this step had been decided upon without a broad debate on its medium- and long-term implications for the bi-regional relationship. There was internal pressure on Portugal to produce results in the area of relations with Brazil, and this pressure resonated at the top of the Commission via the Portuguese Commission President Barroso. Given this context, it seems reasonable to doubt that the special emphasis on Brazil was agreed without critical evaluation. It was the responsibility of the Presidency to place Portuguese ambitions and the European strategy of bi-regionalism within a medium-term CFSP perspective. First, the Presidency should thus have asked why the EU should enter into a bilateral partnership with the actor which had proved to be a major stumbling block in the negotiations with Mercosur and in the Doha Round.<sup>13</sup> Second, the special emphasis on Brazil could reduce its interest in the political dialogue with Mercosur and the EU-Mercosur Association negotiations. Third, it was not clear whether this implied an implicit downgrading of proven partners on the subcontinent—Chile and in particular Mexico, with which there already is a bilateral global agreement, one of the EU's broadest such agreements with a country outside Europe.<sup>14</sup> While some of these reservations were addressed during the discussions in the Latin America working group COLAT, in the end none of the member states opposed setting up the partnership. Germany did not have to play the role of a broker since the member states seemed to hope that the aforementioned problems could be avoided through a balanced design of the strategic partnership. Due to the pressures of time, the German Presidency did however need to increase its co-operation with the subsequent Portuguese Presidency in order to co-ordinate a road map for the strategic partnership.

**Debates concerning Cuba policy.** European policy towards Cuba is based on a Common Position adopted in 1996<sup>15</sup> which offered intensified co-operation as

<sup>13</sup> On this, see Günther Maihold, *Brasiliens Aufstieg in die 1. Liga der EU-Außenbeziehungen. Potential und Grenzen einer strategischen Partnerschaft*, Berlin: Stiftung Wissenschaft und Politik, July 2007 (SWP-Aktuell 40/07).

<sup>14</sup> See Marcela Szymanski and Michael E. Smith, “Coherence and Conditionality in European Foreign Policy: Negotiating the EU-Mexico Global Agreement,” in: *Journal of Common Market Studies*, Vol. 43, No. 1, 2005, pp. 171–192 (171).

<sup>15</sup> Common Position of 2 December 1996 defined by the Council (96/697/CFSP), in: *Official Journal L 322*, December 12,

soon as Cuba began to show progress towards democratisation. In reaction to a wave of arrests of opposition activists in Cuba, the EU had in July 2003 implemented sanctions, which *inter alia* limited high-ranking visits.<sup>16</sup> These sanctions had been suspended in January 2005.

The evaluation of the Common Position and thus the review of the situation after the suspension of sanctions were on the agenda of the German Presidency. It was hotly contested among member states whether the human rights situation had improved enough for sanctions to be removed completely. While a group of member states followed the Spanish position and argued for the immediate removal of sanctions, a group led by the Czech Republic spoke out in favour of tying the removal to certain conditions. The visit of the Spanish Foreign Minister to Cuba, which was not co-ordinated with the Presidency, shows how heedlessly the interests of individual states were placed above the common interest in a coherent European foreign policy. Here, the Presidency was needed as a neutral broker if the member states were to agree on a common stance. Due to the time limit imposed by the June 2007 deadline, a certain amount of management ability was also required.

At the same time, the European policy towards Cuba needed to be realigned: in mid-June 2006, the Council of Ministers had issued a mandate to develop a new medium- to long-term Cuba strategy. In a surprise move one-and-a-half months later, Fidel Castro transferred his official functions to his brother Raúl, making the issue of the mandate more topical and urgent. When the dossier was handed to the German Presidency, the great differences of opinion between the member states were already well-known. The Finnish Presidency had presented a Common Denominator Paper on the matter in December 2006. The German Presidency could thus concentrate on its role as broker, but also needed to provide a measure of strategic guidance in order to move member states towards a coherent European stance. Policy towards Cuba presented the most challenges for the German Presidency of all the Latin America-related dossiers.

#### **Troika meetings in Santo Domingo and Brasilia.**

Germany had to represent the EU in its dialogues with the various regional organisations as well as with Mexico and Brazil. Joint statements needed to be

prepared and co-ordinated with the Latin American side. The German Presidency also had to chair the meetings in Santo Domingo. A coherent dialogue is only guaranteed if the Presidencies, which change every half year, plan ahead carefully and engage in close co-operation.

### **3. Available Resources**

Within the EU, Germany is one of the countries that have a fundamental interest in a European policy towards Latin America. This is why Germany is seen as one of the Subcontinent's most important partners in the EU after Spain (and, in the case of Brazil, Portugal). The German Presidency could profit from this in framing EU relations to Latin America.

Due to its foreign office staff, Germany is certainly one of the EU states best equipped in terms of resources. Because of these advantages, the German Presidency could sound out member state positions on the various Latin America dossiers largely single-handedly, without needing to make use of the Council Secretariat's resources. This is an expression not just of administrative capacity but also of a certain scepticism regarding the Secretariat.

The simultaneous German G8-Presidency did not make tackling the challenges in EU policy towards Latin America easier in any meaningful way. At the most, the increased frequency of contact with Brazil due to its participation in the G8's outreach process<sup>17</sup> may have been an advantage for the goal of deepening the EU's relationship with it. However, this advantage is a limited one, as dissatisfaction with the results of the outreach process could have an effect on the relationship with the EU.

<sup>17</sup> Within the framework of the outreach process the G8 invites non-members and international organisations to an extended dialogue which takes place at every G8 meeting. The list of invitees to the outreach process is the responsibility of each host country. It is planned that the dialogue with Brazil, China, India, Mexico and South Africa will be continued on a permanent basis. Since the 2007 G8 summit it is called the Heiligendamm process.

1996.

<sup>16</sup> <http://europa.eu/bulletin/en/200306/p106025.htm>.

#### 4. The European Policy towards Latin America between Management and Substantive Influence

Generally speaking, the European policy towards Latin America offered the German Presidency few opportunities to leave its mark. The adoption of negotiation mandates for Central America and the Andean Community were a compulsory exercise which demanded management, brokering and the representation of the Council *vis-à-vis* other EU institutions. Considering the extent of German resources, it was to be expected that the Presidency would master these challenges. The fact that the final differences of opinion on technical matters could be cleared up is indeed down to the compromises proposed by the German Chair, and these compromises were praised by various member states for their balanced formulation. In the disagreement with the Directorate General Trade, the Council managed to push through its opinion that Latin America and Asia do not necessarily have to be dealt with *en bloc*. This result was partly due to the personal intervention of the German Foreign Minister. With this, the main preconditions for the adoption of negotiation mandates during the German Presidency were present. As far as strategic guidance is concerned, it is significant that the new negotiations with Central America and the Andean Community are mainly of political importance. In the case of the Andean Community the political aim of supporting Latin America's weak integration in particular was heavily emphasised.

The EU-Mercosur negotiations were repeatedly placed on the agenda by the German Presidency, but the stagnation reached in the negotiation could not be overcome. The reason for the failed resumption of talks lay in the absence of even minimal advances in the Doha Round: both sides are still waiting for achievements on that front. Thus, it should not come as a surprise to anyone that no progress was made in this matter during the German Presidency. More surprising is the fact that the German Presidency even lent the Mercosur dossier such prevalence in its programme—this could be understood as an expression of its priorities, at odds with the priorities of Portugal, Germany's partner in the trio of Presidencies: it was well-known that Portugal was strongly focused on the bilateral relationship with Brazil.

The announcement of the only sensational result—the strategic partnership with Brazil—was left to Portugal, historically closely tied to Brazil. It is

particularly on this matter that one can ask whether Germany should not have exhibited stronger strategic guidance in order to weaken the strong Portuguese interests on the one hand and strengthen the fundamental aim of bi-regional ties between Europe and Latin America on the other. Germany would certainly have had the necessary resources. However, neither before nor during its term in office was it able to make sure that its arguments in favour of a restrictive use of strategic partnerships were taken up adequately in the context of the Council. The decision for a strategic partnership with Brazil was finally made due to fundamental considerations in the context of global power politics:<sup>18</sup> so far, the EU lacked a strategic partner in South America, and only Brazil was a candidate for that role, despite all the differences of opinion regarding trade policy. In addition, the EU felt a growing need for action as Brazil was increasingly aligning itself not only with the USA, but also with Russia and China, with all of whom it had reached strategic partnerships in the past years. Considering the advanced stage of the decision, it could not be expected that the German Presidency would manage to induce a re-evaluation of this matter. However, the German Presidency could ensure that a balanced joint statement by the Commission and Brazil. The statement does emphasise that the partners still attach great importance to Mercosur.<sup>19</sup> Apart from the fact that this sentiment can in practice be interpreted in different ways, the aforementioned concerns regarding a strategic partnership persist, especially since the following Presidencies were not given a clear road map for the implementation of the partnership.

The handling of the two Cuba dossiers (the evaluation of the Common Position and the medium-term Cuba strategy) required all of Germany's resources. The policy towards Cuba was not just highly demanding in diplomatic terms but was also a matter of internal debate among the coalition's parliamentary groups. Thus, it was inevitable that the dossier would be closely tied to the German Parliament. Considering the sensitivity of the topic, a seamless handover by the Finnish Presidency took on particular importance. In

<sup>18</sup> See the Commission's Communication to the Council, *Towards an EU-Brazil Strategic Partnership*, Brussels, May, 30, 2007, [http://ec.europa.eu/external\\_relations/brazil/docs/com07\\_281\\_en.pdf](http://ec.europa.eu/external_relations/brazil/docs/com07_281_en.pdf), p. 1.

<sup>19</sup> See European Council, *EU-Brazil Summit Lisbon, 4 July 2007. Joint Statement*, [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/er/95167.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/95167.pdf), p. 2 (accessed: August 12, 2007).

the last two months before the start of the Presidency, Germany was included in the preparatory meetings of the Council working groups and also had a certain influence on the agenda. This comprehensive co-operation between Presidencies nevertheless only occurred on a sporadic and limited basis: after the Finnish Presidency had handed over the problematic Cuba dossier to Germany, Finland no longer took a prominent role in the matter.

The German Presidency decided to deal separately with the Common Position and the Strategy. It originally planned to present a Cuba strategy by mid-March. A first attempt by the German Presidency to co-ordinate a strategy among European ambassadors in Cuba failed due to the differences in member state positions: while the Czech Republic and Poland in particular voted for working towards regime change, Italy and Spain were in favour of restraint as they feared that the Cuban regime would use a European “transition strategy” for propaganda purposes. Since these approaches could not be reconciled, the German Presidency finally gave up on the dossier and put its energy into the evaluation of the Common Position. However, this plan also failed in Council due to individual member states’ bilateral agendas and their obstinate refusal to negotiate. This was in spite of Germany’s special efforts in this matter: after intensive negotiations with all 27 member states, several compromise proposals were circulated, each of which tried to get closer to the common denominator. In addition, the German Presidency tried to win over states that were said to be relatively neutral on this question, for example Great Britain. In the end, neither a new strategy was launched nor an evaluation of the Common Position adopted.

In these circumstances it can however be seen as a success that, on the basis of a compromise proposal by the German Presidency, a Cuban delegation was invited to Brussels to discuss further steps.<sup>20</sup> The 1996 Common Position and the 2003 sanctions are not mentioned in the public Council conclusions, but the EU could at least signal its willingness to talk. However, this decision was not only reached because the Presidency provided strategic guidance and acted as a broker. Instead, it was equally important that Spain and the Czech Republic completely unexpectedly

jointly pushed for some action on the part of the EU despite all the differences in opinion.

The EU Troika’s dialogues in Santo Domingo were very constructive. The acting Council President Steinmeier was praised by the participants for his management of the meetings. Highly disappointing however were the public results of the dialogue with the Rio Group: only a very short declaration was released, and this restricted itself very noticeably to the restatement of some very commonplace principles.<sup>21</sup> The Dominican Chair had not prepared the declaration adequately, so that a minimal declaration had to be formulated in a very short space of time, with the actual discussion results hardly finding a mention. The disappointing results were also due to Germany’s unaccommodating stance: it was not willing to allow more time for the “spontaneous” formulation of a joint statement. This is the only event where the German Presidency’s management, otherwise generally highly praised for its professionalism, was sharply criticised by some member states.

## 5. Conclusions

Since its inception in the 1980s, European policy towards Latin America has been characterised by an “interplay of accident and design.”<sup>22</sup> This also applies to the elaboration of a strategic partnership with Brazil, since the somewhat hasty announcement of the partnership now needs to be followed by a period of conscious development. Its actual usefulness for the EU in terms of global politics—and especially in Latin America—will depend in the main on the careful tactical ability that the EU exhibits in the further development of the partnership. In future, it may be problematic that the EU’s bi-regional and multilateral approach has been watered down and that Brazil’s prominent position both in Latin America and within the “Global South” is contentious. Despite its own restraint, the German Presidency inadvertently contributed to the upgrading of Brazil’s position. How-

<sup>21</sup> European Council, XIIIth Ministerial Meeting of the Rio Group and the European Union, Santo Domingo, Dominican Republic, April 20, 2007, *Joint Communiqué*, [www.consilium.europa.eu/ueDocs/newsWord/en/er/93759.doc](http://www.consilium.europa.eu/ueDocs/newsWord/en/er/93759.doc).

<sup>22</sup> Andrew Crawley, “Europe-Latin American (EU-LAC) Relations. Toward Interregional Coalition Building?,” in: Heiner Hänggi, Ralf Roloff, and Jürgen Rüländ (eds.), *Interregionalism and International Relations*, London and New York 2006, pp. 168–181 (180).

<sup>20</sup> European Council, *CUBA—Council conclusions*, Luxembourg, June 18, 2007, [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/gena/94804.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/94804.pdf), p. 7.

ever, it had neither the necessary political will nor the means to prevent this.

The joint declaration with the Rio Group has to be seen as a further accident in Europe-Latin America relations. After 20 years of dialogue, the 13th ministerial meeting adopted an apparently uninspired five-point statement, in which *inter alia* the “the full validity of the principles and aims enshrined in the United Nations Charter” are reaffirmed and the topics discussed are merely listed. Ignoring the question whether such a statement accurately summarises the nature of the dialogue, the German Presidency should have prevented such a failure either before or during the meeting through consultation with the Dominican Chair.

Apart from this exception, Germany managed the daily business of relations to Latin America in a highly competent manner, but without providing new impulses. Relations with Latin America were of secondary importance to the Presidency, and it devoted little extra energy to the matter. If the Presidency had wanted to recognise the much-mentioned community of values, it would have been appropriate for the Chancellor to visit the region during the Presidency and thus leave a stronger substantive mark. As the German Presidency restricted itself to routine dialogues and statements, it left behind the image of a competent broker and manager. The emphasis on other areas reflects the relatively low level of importance Germany and Europe place on Latin America. The orientation towards Brazil is probably no more than a courtesy towards Portugal and the Portuguese Commission President, for whom relations with the new strategic partner are of far higher priority.

## Scope and Limitations of the Council Presidency.

### An Evaluation of the German Presidency in Light of the Reform Treaty

Daniela Kietz / Andreas Maurer

Germany acceded to the Presidency of the EU in the first semester of 2007 at a difficult time in the history of European integration. The proposed European Constitutional Treaty had been scuppered by two referendums; indeed, nine member states refused to ratify this Treaty which had already been signed. In such a situation, the German Presidency had to operate on the assumption of a considerable growth in reservations against the further European integration planned in the Constitutional Treaty, as well as against the European Institutions and their policies. At the same time several member states had high expectations for the Presidency: The Presidency was to demonstrate the EU's ability to act in particular by reviving the negotiations on the Constitutional Treaty.

The Federal Government perceived this crisis as a task—namely, to recalibrate the European project in order to meet the challenges of the age. The risk that efforts to revive the Constitutional Treaty would fail was thought to be considerable. The German Presidency was regarded as the final opportunity in the medium-term to resume the negotiations on the Constitutional Treaty and pave the way to institutional reforms. A failure in this area would also have had a negative effect on the German Presidency's chances of successfully negotiating other policy areas.

The German Presidency—like the UK Presidency in the second half of 2005—therefore decided to emphasise key issues such as climate policy and the fight against terrorism and organised crime instead of launching a broad discussion on the future and the objectives of the EU. The German Presidency prioritised four main themes: the economic and social modernisation of Europe, the strengthening of the European area of justice, international peace initiatives in particular in the neighbouring regions of the EU and deciding on how to proceed with regard to the Constitutional Treaty.

The case studies in the preceding chapters have examined these four themes using a common analytical approach set out in the introductory chapter to this study (pp. 7). This approach distinguishes our study from the usual analyses of EU-Presidencies that simply tally a presidency's goals against its achieve-

ments. The authors start from the premise that the Presidency has to fulfil a number of different functions in the EU political system: to organise the political process at the European level, to act as broker on all levels of negotiation as well as to place short-term negotiations in the long-term perspective of European integration. In addition, the Presidency represents the EU both internationally and internally and serves as a contact point for all EU institutions at the Council.

The individual contributions concentrate on the twin questions what kind of demands particular situations placed on the German Presidency in terms of management, brokerage etc., and whether the Presidency efficiently and effectively matched its various functions to these demands. The processes and strategies by which the Chair sought to fulfil these functions are prominent in this study. The individual contributions examine the particular resources the Chair had at its disposal, how it used them, the particular *modi operandi* for which it plumped, which national contextual factors defined its scope for action and which 'external' factors affected its capacity to meet these demands. The analysis of the tasks performed by the Presidency are thus judged against a more nuanced background taking account of divergent situations and the different scope for action which these situations offered up.

Yet this study has deliberately avoided two tasks: firstly, we refrain from a normative evaluation of the negotiation results but instead analyse the Presidency's functions and the success factors and limitations identified in that context. As such, it allows for the fact that, as only one of 27 member states in the Council, the government holding the Presidency bears only limited responsibility for the contents of negotiation results. The results are always a compromise between the preferences of the member states (and those of the European Parliament as well as, on occasions, of third states) and as such do not simply reflect the interests of the Presidency. The evaluation of the Council Presidency therefore focuses on the question to what extent the Presidency made possible a workable compromise by fulfilling its functions. Secondly, we do not question the general priorities of

the German Presidency; our study aims at analysing the fulfilment of the various functions of the Presidency in those policy areas in which the German Presidency declared that it wanted to achieve progress.

## 1. The Bottom Line

The stocktaking of the German Presidency made here is broadly positive—in line with the impression given elsewhere. Almost all the contributions to this study credit the German Presidency with a solid management performance, which paved the way for numerous breakthroughs in negotiations. Contrary to the expectations of many observers, the German Presidency proved itself a determined, but open and mostly neutral broker facilitating what were in part difficult compromises. Important factors for negotiation successes included the use of expertise in all federal and state (*Länder*) ministries, efficient management and clear prioritisation, an array of resource-intensive bilateral consultations and informal discussion rounds as well as the determined personal commitment of Chancellor Angela Merkel and Foreign Minister Franz-Walter Steinmeier to particularly sensitive issues. This was especially true where there were a lot of external limitations (such as in foreign policy) or the body of opinion was very diffuse (such as in negotiations on the Constitutional Treaty). Exercising its role of providing new impetus to the EU political agenda and process, the Presidency launched a remarkably high number of new projects such as the initiative for a transatlantic economic area or the incorporation of the provisions of the Prüm Convention into EU law which deal with cross border police co-operation in the fight against crime. The review is more mixed in relation to the long-term strategic co-ordination of conflict-laden negotiations. Detractors pointed out that the national interests of the German Presidency inhibited the efficient performance of this function—not least in migration policy.

The analysis in terms of the Presidency's functions brings us to the far-reaching question whether the German Presidency—crowned as it was with success in the short term and bolstered by wide-ranging political and personnel resources, can serve as a sustainable model for future presidencies.

Particularly with regard to the Common Foreign and Security Policy (CFSP) and police and criminal judicial co-operation it became clear that, with the two recent enlargement rounds and the increase to

27 member states in the Council, unanimous decision making had reached its limits. Germany could only achieve the necessary consensus through a range of bilateral consultations and informal talks within the framework of a slick, resolute and goal-oriented organisation of the proceedings in the Council working bodies. Small and medium-sized EU states, bereft of comparable resources, would have difficulties handling a similarly broad range of dossiers in as energetic manner. Furthermore, the new member states do not have the same amount of experience in leading negotiations and finding compromises. These findings point to the limits of the current rotational system in the Council under current decision making rules involving all 27 member states.

Similar reservations apply to the *modus operandi* of the German Chair during the negotiations over the Berlin Declaration and the Constitutional Treaty—two issues which threw up exceptional challenges for the German Presidency, and which it approached in a manner which was intensive in terms of organisation and negotiation. The analysis of these issues also queries whether the procedures chosen by the Presidency *should* serve as a model for other presidencies because they took place at the extent of the transparency of political processes and results and therefore cast into doubt the sustainability of the achieved compromises.

This final chapter will firstly provide an overview of the fulfilment of the functions of the Council Presidency presented in the introductory chapter of the study. Then the functioning of the “trio presidency” will be evaluated as far as possible after one of three terms. The study closes with a glance at the changes to the Council system proposed in the draft Reform Treaty. If the Reform Treaty is signed and ratified, the framework conditions for all Council presidencies will change from 2009. The results of this study raise doubts about the coherence of the future institutional design, in particular the election of a President of the European Council and the strengthening of the Council in the EU institutional order.

## 2. The Performance of the German EU-Presidency: A Stocktaking

### 2.1 Efficient Management: Conditions for successful brokerage

The main purpose of the rotating presidency is to organise the work of the Council. This work consists

mainly of planning, co-ordinating and implementing up to (in early 2007) 4,000 meetings of the Council on all levels (working groups, committees and ministerial meetings). The work of these meetings has to be co-ordinated with the inter-institutional negotiations between the Council and the European Parliament as well as, when the need arises, with third states. More than with any of its other roles the Presidency can only effectively fulfil these tasks if it co-operates closely with the Council Secretariat.

The German Presidency was roundly praised for its management performance both by the other member states and the EU institutions. The efficient management of the proceedings of the Council was an important condition for activating and fulfilling the other functions of the Council, in particular its broker function, and as such was crucial for the success it achieved in negotiations. At the same time, the individual analyses show that the extensive administrative and human resources of the largest member state greatly facilitated this task.

The meetings of the Council working groups were prepared in a timely and professional manner. The contributions to this study show that the challenges in preparing the meetings were greatest when the negotiations had reached an advanced stage and policy issues were being negotiated that were very sensitive for some of the member states. In this respect the management and brokerage functions of the Presidency were closely linked. The requirement for efficient management was increased when compromise packages were being finalised under pressing deadlines.

The management demands on the Presidency further increased when the negotiations in the Council of Ministers involved the European Parliament under the co-decision procedure (see the chapters on migration policy [pp. 49] and police co-operation [pp. 56]) and third countries in foreign policy. The chapter on the Middle East conflict [pp. 82] demonstrates that the capacity of the Presidency to negotiate within the EU was weakened when the positions of a number of additional international actors had to be considered which the Presidency could neither co-ordinate nor control.

In policy areas in which the Commission has a strong role in implementing policy due to treaty provisions or relevant authorisation from the legislative organs, the Presidency's work was made easier because the Commission took over the role of formulating basic documents and managing negotiations (see the chapters on European Neighbourhood Policy

[pp. 64], Central Asia policy [pp. 71] and Latin America policy [pp. 88] and compare the chapter on the Middle East conflict [pp. 82]). In these policy areas the Presidency thus had the task of energising the negotiations and communicating them within the system of working groups and implementation committees subordinated to the Commission.

### **2.1.1 Conditions for the management and brokerage success of the German Presidency**

Clearly setting out the priorities of the Presidency in both the overall work programme of the Chair and the programmes of the individual ministries proved a key condition for the proper focussing of the management and broker functions. On a national level the preparations for the German Presidency began after the change of German government in autumn 2005. Before the Presidency began, the relevant German actors also co-ordinated with their Finnish predecessors. There were therefore few discontinuities with regard to the work of the Finnish programme (see the chapters on Latin America [pp. 88] and police co-operation [pp. 56]).

A further key condition for the management and brokerage success was the early communication of a largely realistic timetable, e.g., dates, deadlines for initiatives and/or reactions to tabled policy drafts and draft agendas. The delegations of smaller member states in particular expect sufficient time to elaborate their negotiating positions. The comprehensive resources which were made available by German governmental departments, meanwhile, permitted the Presidency to set a fast pace and an ambitious workload in the various Council working groups. However, in some cases this led to a situation where the smaller member states were close to the limits of their ability to act. As the case study on migration policy shows, the pace of the Council Presidency overwhelmed delegations that needed more time to formulate their own positions or indeed to consult with their respective national parliaments and other institutions.

A third success factor was the self confident leadership style in the Council working groups which did not allow discussions to get out of hand and exerted pressure to agree on the national delegations in particular in situations where the Council had to make unanimous decisions on sensitive issues. This practice led to discontent amongst some delegations, particularly with regard to police co-operation, but even these delegations had to admit that this style prevented extensive debates and encouraged good

performance. Many member states seemed to recognise that decision-making in sensitive policy areas is almost impossible when it requires 27 national delegations to make a unanimous decision. The resolute leadership of Council working groups was therefore welcomed rather than criticised and given legitimacy through the recognition by other states of the Presidency's expertise and powers of persuasion.

## 2.2 The challenge of neutral brokering

Brokering a consensus (whether this be within the Council, between the Council and the European Parliament, between the Council and the Commission or between the EU and third countries) is a key challenge for every Presidency.

Formulating a consensus-based compromise requires the broad perception of fairness and neutrality on the part of the EU Council President as a credible negotiation leader. The balance between brokerage and the representation of national interests was a sensitive issue for Germany because of its political and administrative resources. Many actors and observers were concerned that Germany as the largest member state would strongly accentuate its national interests (see the contributions on trade policy [pp. 38], climate policy [pp. 44], migration policy [pp. 49], the Constitutional Treaty [pp. 25], police co-operation [pp. 56] as well as EU-Russia relations [pp. 76]). Empirical research shows that small member states are often better mediators than larger member states which find it difficult to be neutral because of the existence of more deep-seated special interests, more domestic veto-players and the resulting co-ordination demands.

The brokerage abilities of the Presidency are particularly in demand when negotiations in Council have to be co-ordinated with the European Parliament or third countries and when a sensitive dossier is being discussed under time pressure and to a legally binding or politically negotiated deadline. Letting these deadlines slip would have resulted in high costs in terms of political frustration.

When the time frame for dealing with new issues was very tight, the negotiations subsequently took place on the basis of unclear positions or positions that had been deliberately muddled by individual states (e.g., the negotiations on the 'Berlin Declaration' and partly also the revision of the Constitutional Treaty). In these cases the Presidency, and in particular the Chancellor and her closest advisors, had to exhibit

especially intensive management and a sure instinct in their brokering efforts.

### 2.2.1 Brokerage despite national interest

Despite vital national interests, the German EU-Presidency was usually able to put forward acceptable compromise proposals which reflected the opinions of a large majority of delegations or a consensus position. In some cases potential neutrality conflicts which were due to distinct national preferences were cleverly skirted via the EU institutions or coalitions of like-minded member states. The German government thus used its influence to have the European Council instruct the Commission under the Finnish EU-Presidency to put forward a report on migration from the former Soviet Union which was in line with its own ideas. With regard to EU policy towards neighbouring countries, Berlin also ensured that its ideas on the development of the European Neighbourhood Policy (ENP) were included in Commission papers which were authorised by the Finnish EU-Presidency and as such could not be directly linked to Germany. In the negotiations over the draft constitutional treaty, Germany's favourable position was indirectly represented and supported by activities of like-minded member states in the so-called "friends of the constitution" group, in which Germany did not officially partake in order to remain neutral. These examples show that a presiding government which wants to reconcile its own national interests with the role of a neutral broker must start work long before its official tenure.

Where national interests openly pursued by the Presidency were met with resentment in the Council (see for example the German position towards lifting the sanctions against Uzbekistan), the German government reacted swiftly and showed itself willing to compromise in order to prevent any loss of credibility which would have limited its ability to mediate not only in this single case but also in other policy areas (see the chapters on Central Asia [pp. 71] and migration policy [pp. 49]).

### 2.2.2 Domestic limitations

On occasions, domestic arguments weakened the Presidency's ability to act as broker (see the comments in the chapter on methodology [pp. 7]). These arguments consisted mostly of inter-ministerial and party political disputes within the governing coalition. One example was the disagreement between the Federal Minister for Economy and Technology (CSU) and the Federal Minister for Environment, Nature Conserva-

tion and Nuclear Safety (SPD) about capping vehicle emissions (see the chapter on Energy and Climate Policy [pp. 44]). However, these disputes over competences which in Germany stem from the principle of ministerial autonomy only rarely reached the point where they were fought out in the public and could have been exploited by other actors. The federal ministries in Berlin were obviously anxious to suppress these disputes during the EU-Presidency in favour of maintaining Germany's credibility and ability to act.

### 2.2.3 Initial difficulties with the Parliament

Council presidencies are increasingly required to act as inter-institutional mediators between the Council and the European Parliament. However, the European Parliament only has a limited role with regard to most of the issues examined in this study, in particular with regard to the CFSP.<sup>1</sup> It was only in relation to justice and home affairs that the negotiations with the European Parliament presented a challenge to Germany's brokerage abilities. Council officials are currently adjusting to the co-decision powers of Parliament which it acquired in 2005. At times the Council's intransigence can lead to highly antagonistic negotiations with the parliamentary actors. The German Presidency initially also had real difficulties in negotiating with the European Parliament over such highly sensitive proposals as the Visa Information System and the Immigrant Returns Directive. However, it finally recognised the necessity of intensive and compromise-oriented efforts to mediate with regard to the European Parliament and, on the whole, the co-operation was successful (see the chapters on migration policy [pp. 49] and police co-operation [pp. 56]).

### 2.2.4 Limited assistance from alternative brokers

The Council Presidency received some assistance in its negotiation efforts from third actors such as the Commission, the EU Special Representatives and the High Representative for the CFSP. In general, however, the Presidency made only limited use of these institutions. In the absence of a clear policy, the Commission assumed the role of a delegation during the negotiations on the 'Berlin Declaration' and the reform of the

Constitutional Treaty rather than acting as an additional broker supporting the Presidency. In foreign policy (for example, trade, development or aspects of migration policy) the Commission generally has an important role in the negotiations between the third country in question and the Council. This is because everyday, treaty-based relations are governed by the Commission (which is thus able to closely evaluate a third country's preferences and position); the Commission also leads the negotiations on association and co-operation agreements (see the chapters on Central Asia [pp. 71], Russia [pp. 76], and Latin America [pp. 88]). However, in the negotiations with Russia, the German government was less dependent on the Commission's services because of its close bilateral relations with its Russian counterpart. Similarly, the German government did not rely on the support of the Commission in the Middle East conflict due to its good relations to Russia and the United States. In any case, the Commission plays only a minor role in the CFSP when issues are security-related.

However, it became apparent under the German Presidency that in normal legislative procedures the Commission has a key role as mediator between the European Parliament and the Council. Under the co-decision procedure, this role is formally reduced to that of moderator, and following the reform of the co-decision procedure in the 1999 Treaty of Amsterdam there has been a trend towards direct relations between the Parliament and the Council Presidency. The Commission does however take part in all so-called trilogue meetings with the parliamentary rapporteur and the representative of the Presidency. Because the Commission has the right of initiative in normal legislative procedures and because it is represented in the private working group meetings of the Council as well as the public meetings of Committee of the European Parliament, it can exert an explanatory and conciliatory influence (see the chapters on migration policy [pp. 49] and police co-operation [pp. 56]).

### 2.2.5 Limitations on the Presidency's ability to act in the foreign policy

The Presidency's ability to act was confined in foreign policy dossiers because of various external factors which made compromise difficult. The Presidency has greater scope to set priorities in the CFSP (see the chapter on the Middle East conflict [pp. 82]) because neither the Commission nor the European Parliament has a right of say in these issues. However, the scope

<sup>1</sup> The European Parliament has a right of approval in relation to EU climate policy and association and co-operation agreements with third countries. However, negotiations on legislative measures and agreements under these policies had only reached an early stage in the decision-making process and so there was limited need for co-ordination with the European Parliament.

for the implementation of common foreign policies is limited by the number of participating outside actors. It is not sufficient to find a common European position towards a third country, a region or a conflict. European foreign policy must also be co-ordinated with the interests of other actors. When there are as many actors as in the Middle East conflict (United States, Russia, Arabic states, United Nations etc.) the Presidency's management and mediation abilities are presented with huge challenges. Such complex issues require each EU-Presidency to mediate intensively and in parallel at a number of negotiation tables. More than any other policy area the CFSP relies on the political weight and the administrative resources and the international prestige of the Presidency. This recognition demonstrates the limits of the rotational system in CFSP because countries such as Portugal or Slovenia may find it much more difficult, or even impossible, to mediate as intensively as Germany on so many fronts (see sections 3, 4 and 5 of this chapter).

The foreign policy issues dealt with under the German Presidency also show the extent to which the search for a common European position is influenced by the bilateral relations between individual EU countries and certain regions. This is particularly true when bilateral conflicts spill over into other issues. One example is the way in which the Baltic-Russian and Polish-Russian conflicts influenced the negotiations between the EU and Moscow about a new partnership and co-operation agreement. The complex constellation in the Russia dossier in turn hindered the intensification of EU relations with its neighbours in Eastern Europe and the southern Caucasus originally sought by the German Presidency. These experiences show that those policy issues prioritised by a Presidency and linked to other topics must be safeguarded from possible blockades. The Presidency must also retain the capacity to uncouple them from related issues.

#### **2.2.6 Prioritisation, consultation and firm commitment as success factors**

In addition to maintaining neutrality and credibility as a broker a further success factor was the strategic concentration of negotiation resources on Presidency priorities. Reviving the negotiations on the Constitutional Treaty was the main priority of the German Presidency and one to which goals in other policy areas were subordinated. In order to secure the success of the reform of the Constitutional Treaty, the German Presidency therefore entered far-reaching

compromises in policy areas unrelated to the Treaty in favour of countries such as Poland and France, whose approval in the dispute over the Constitutional Treaty was of vital importance. (see for example the chapters on trade policy [pp. 38], in particular the sections on the Doha negotiations, as well as the chapters on Russia [pp. 76] and the ENP [pp. 64]). This weighting of priorities was only possible because the ministries leading the negotiations had co-ordinated themselves strategically and tactically from a very early stage and these ministries were co-ordinated (or allowed themselves to be co-ordinated) by the Chancellery during the actual negotiations.

The unusually extensive use of bilateral consultations and informal discussions on all working levels and in expert seminars also contributed to the success of the Presidency (see for example the chapters on police co-operation [pp. 56], migration policy [pp. 49], Middle East conflict [pp. 82] and the Constitutional Treaty [pp. 25]). Following the most recent enlargement rounds, delegations in Council regularly complain that decision-making has become exceedingly difficult because of the numbers of potential veto-players. This has drastically changed the negotiation atmosphere in the Council's working bodies. At least with regard to the formal meetings in which all 27 member states participate, the days of full and open discussions within a small group of acquaintances are over. Taking negotiations and compromise-finding procedures out of this rigid formal framework is not necessarily an expression of disregard towards the Council system but a reaction to a changed negotiation situation in the Council. This is especially true for those policy areas which are decided unanimously such as the CFSP or police and criminal justice co-operation. In police and criminal justice co-operation there were many highly sensitive measures which had to be decided under a lot of time pressure. German officials achieved compromises through intensive consultations on the lower working-group level in the Council as well as between ministers and state secretaries.

The success of the observed bilateralisation of the negotiations and the consultations in small, informal groups and the transfer of decision-making to the highest political levels is a measure of the bankruptcy of the formal means of decision making in the Council (see the chapter on police co-operation [pp. 56]). At the same time it demonstrates the limits of the current rotational system in the Council: smaller member states with less ample resources will find it impossible to organise the same amount of consultations as the

German Presidency did in a range of policy dossiers in order to accelerate the cumbersome decision making processes. The same applies to the comprehensive brokerage efforts of the German Presidency in the CFSP (see the chapter on the Middle East policy [pp. 82] as well as sections 3, 4 and 5 of this chapter) and the management and mediation intensive procedure of the Presidency in the negotiations for the 'Berlin Declaration' and the Constitutional Treaty.

The abovementioned influence on the course and success of negotiations exercised thanks to the personal relations and the expertise enjoyed by Presidency actors should not be underestimated. The German officials working in the bodies preparing, planning and implementing the Presidency had extensive EU expertise and could draw, for a large part, on 50 years of German experience in organising presidencies. The Presidency profited from this in exercising its management, mediation and steering activities. The expertise and strong personal commitment of the ministers was an important success factor particularly in the mediations in the Council and with the European Parliament (see the chapters on migration policy [pp. 49] and police co-operation [pp. 56]). The positive negotiation results in the Constitutional Treaty, climate policy and trade policy dossiers could to a considerable extent be traced back to the firm personal commitment of the Chancellor which lent these policy areas additional political weight and which cannot be taken for granted as former presidencies of other large EU member states have shown. In climate policy in particular, the Chancellor's personal involvement appeared to be necessary in order to make optimal use of the link between the G8 and the internal EU negotiations.

## 2.3 Limited guidance, strong impulses

### 2.3.1 Mixed review of the impulse-giver function

Strategic guidance is the term used for the responsibility of the Presidency to place conflict-laden, stalled or blocked negotiations into the long-term perspective of EU integration. Referring to these aims is supposed to make the member states more willing to compromise and urge them to defer their short-term interests. It is irrelevant whether relatively new disputes or older legislative measures are at issue: the Presidency was asked to provide strategic guidance in both situations (see in particular the chapters on migration policy [pp. 49], police co-operation [pp. 56], trade policy [pp. 38] and energy and climate policy [pp. 44]).

In migration policy it was necessary to implement the emphasis on social, foreign and economic policy aspects of the European asylum and migration policy which had been called for by the 2004 Hague Programme. The heavily polarised and therefore stalled debate on legal economic migration was to be reinvigorated ahead of impending legislative drafts of the Commission. It also had to drive forward the measures to extend the exchange of personal data between national law enforcement bodies and simultaneous strengthening of data protection which had been called for in the Hague Programme but which had in practice been inadequately implemented. In negotiations on energy and climate policy the Presidency had to facilitate the finding of compromises by referring to a number of declared long-term objectives of European energy and climate policy contained in Commission drafts.

The review of the way the strategic guidance role of the Presidency was exercised is mixed. In energy and climate policy the contents of the Presidency's goals coincided with the measures contained in Commission drafts (reduction of greenhouse gases and support of renewable energy) which made the task of strategic guidance easier for the Presidency. In other cases there was loud criticism that Germany's national interests stood in the way of a successful and timely discussion of important issues. In migration policy the Presidency allowed the impression to create that it did not want to deal with various aspects of legal economic migration—a highly sensitive issue in Germany—and that it consciously delayed dealing with this issue and left nebulous conceptual debates because it was not able to concede its own position.

### 2.3.2 Own initiatives despite limited room for manoeuvre

In providing impulses for the development of the EU, the Presidency launches new projects and initiatives to solve virulent problems within the frame of on-going programmes, formulates new aims which go beyond current political planning and establishes new approaches to current programmes. Most academic research maintains that there is little margin for new projects within existing programming. Despite this basic assumption from 2006 German officials actively paved the way for its own initiatives behind the scenes of the Council and in co-operation with the Commission and were able to place several of their initiatives on the European agenda.

The initiative for a transatlantic economic area showed that a government head is able to win the member states for a new project through strategically planned and tactically calculated personal commitment. This is even more the case as the initiative co-ordinated by the Chancellery was resisted not just on a European level but also in the German Economic Ministry. Germany was able to persuade member states before its Presidency even started of the benefits of a European project to transpose large parts of the Prüm Treaty into EU primary law—a significant German initiative to improve data exchange between national police forces.

One should also highlight the initiatives introduced as part of the Lisbon Strategy which were prepared long in advance as the Lisbon Strategy involved a procedural area in which the management and co-ordination activities of the Presidency were particularly important. In foreign policy there was more room for own impetuses. However, as is demonstrated by the Central Asia strategy impetuses only have a chance when the Presidency is able to communicate their European added value.

The most important condition for successful fulfilment of the Presidency's function to provide the EU with its impetus is that an initiative is viewed by the other actors as an effective response to an existing problem or a European problem identified by the Presidency. The Presidency has to persuade the member states in the Council before the start of its tenure and via third parties that the envisaged project is in the European interest and not just in the interests of the presiding country.

### **3. Limited Transferability**

The analysis of the German government's performance in fulfilling its roles as the Council presidency leads to the broader question whether the German Presidency—crowned as it was with success in the short term and bolstered by wide-ranging political and personnel resources—can provide a sustainable model for future presidencies.

#### **3.1 Leadership from the ministries in Berlin**

During the Presidency the substantive planning, preparation and co-ordination of all activities took place in the federal ministries in Berlin. The practice of using

the Permanent Representations located in Brussels, which is typical for presidencies of “smaller” member states, was not visible in the first half of 2007. The use by the Presidency of the services of the Commission and the oft-mentioned substantive support of the Council Secretariat in drafting the Presidency papers and negotiation strategies was not very marked in most of the policy areas analysed in this study (see the chapters on migration policy [pp. 49], police co-operation [pp. 56], Latin America [pp. 88], Central Asia [pp. 71] and the ‘Berlin Declaration’ [pp. 19]. This does not mean that these institutions were completely excluded from the decision-making process. Although much was planned and co-ordinated in Berlin, the German government sought at the same time to closely co-ordinate itself with the Commission and the Council Secretariat from the beginning. These institutions have acknowledged the good co-operation of the Presidency. Because of its resources and its institutional memory, the Commission predictably played a key role in all integration and co-operation issues supporting the Presidency as co-manager, mediator and institution with the right of legislative initiative. It is the Commission that maintains continuity and coherence of political processes beyond the short tenures of the Council presidencies. As a rule future presidencies will be well advised to seek the support of the Commission for its strategies and arguments and not to work against the Commission. A Presidency which has distanced itself from the Council Secretariat can bring about discontinuities in the work of the Council and cause resentment amongst the member states which will allege that the Presidency is pushing forward a national agenda despite the rhetoric of its programme.

The occasional insistence on independent preparation can partly be explained by the scepticism of many Council delegations towards the institutional self-interest of the Commission and—to a lesser extent—the Council Secretariat. However, in the medium-term the reluctance to include these institutions could have a rather negative effect on the co-operation between the individual EU-Institutions, making negotiation successes more strongly dependent on the skill and the persuasive powers of the EU-Presidency.

#### **3.2 Extensive resources and consultations: limitations of the rotational system**

The role fulfilment of the German Presidency was facilitated by the extensive personal and administra-

tive resources of the German Federal Government and the state governments. This does not mean that smaller member states will perform worse or that larger member states will always perform better. On the contrary, experience shows that smaller member states often find it easier to display the necessary neutrality as Presidency: their national interests are less pronounced and they face less co-ordination problems on the national level.<sup>2</sup> A larger member state that is not able to overcome the national limitations on its ability to act or lacks the necessary commitment to push forward the European political process will not augur well for its Presidency. Extensive resources are therefore not enough to guarantee successful role fulfilment but they do facilitate the work of a Presidency which shows the appropriate commitment. Smaller member states must rely more heavily on the support of the Commission and the Council Secretariat. For them the success factors of timeliness, selectivity and prioritisation of negotiation issues and procedures are even more relevant than for the German Presidency. Because of its resources, the German Presidency could choose to employ more independent and laborious procedures such as the frequent bilateral consultations outside the formal negotiation venues. A smaller member state could have organised the negotiations on the Constitutional Treaty but would have had difficulties handling a similarly broad range of dossiers as the German Presidency—climate policy, Middle East policy and justice and home affairs to name but few—in an as energetic manner.

With regard to the CFSP and the police and criminal justice co-operation it became clear that unanimous decision-making in the Council has reached its limits with 27 member states. Germany was able to broker a consensus in a high number of dossiers only by resorting to a high number of bilateral consultations and informal talks as well as through a slick, focussed and very resolute organisation of the proceedings in the Council working bodies. Small and medium-sized member states would struggle to find the necessary resources for this type of procedure. The new member states also lack the relevant experience in leading negotiations and working out a compromise. These various conditions demonstrated the limitations of the rotation system of the Council chair under current decision-making rules now that the

number of member states has reached 27. The same is true with regard to the organisation and brokerage intensive procedure of the Presidency in the negotiations on the 'Berlin Declaration' and the Constitutional Treaty which is denied other member states due to lack of resources.

### 3.3 Departure from political aims despite the effective exercise of the Presidency's functions

The analysis of the negotiation on the Berlin Declaration and the Constitutional Treaty also raises the question whether the modus operandi chosen by the German Presidency -discretionary negotiations on the basis of informational asymmetries—should become the rule and be a model for other presidencies. As practiced by the Germans, such negotiations proved effective: thanks to the high degree of confidentiality associated with it, the use of "focal points" proved suitable for achieving consensus in a very short time-frame in a highly sensitive area between 27 member states. At the same time, this success negated the original goal contained in the Treaty of Nice of bringing the basic questions of integration out from behind closed doors and discussing fundamental integration issues in a larger inclusive framework such as the European Convention. Confidentiality becomes problematic when integration steps are agreed which in the long term must rely on a broad social consensus. The broader the consensus the less member state governments are tempted to ignore the compromises at a later date. Instead of including broader civil society and parliaments in the decision-making process or using the input from the EU-wide debates on the future of Europe in an effort to create a deep-rooted consensus within society, the German government prioritised the brokering of compromises between democratically legitimated governments. This strategic decision is inherently risky: in repeated referendums on the Reform Treaty, the population of one or more countries could block the implementation of the Treaty by recourse to a veto. And irrespective of whether referendums brake the integration process, there is the danger that growing discontent will be articulated in other elections (such as voting for eurosceptic or populist parties at European Parliament elections) with the result that the core European Institutions are irreparably damaged. At the end of the German Presidency it is valid to ask whether a new and lasting European political consensus was created

<sup>2</sup> One example is the negative performance of the French Presidency 2000 in comparison with the positive results of the Presidencies of Ireland in 2004 and Luxemburg in 2005.

between the governments and their citizens: the political conjuncture lent itself to such efforts, even if the German government did not take the opportunity.

A rare and remarkable success was achieved by the German Presidency in the Middle East peace process: A common position was developed through intensive consultations, a new diplomatic dynamism was brought to the Israeli-Palestinian peace process and a large group of actors was involved in the new initiatives. At the same time, however, the European position was problematic because its policy of isolating Hamas contributed to the worsening of the socio-economic situation in the Palestinian areas, the weakening of the Palestinian government and authority structures and the escalation of rival Palestinian groups. This was the opposite to the express aims of European foreign policy related to the Middle East, namely to make a concrete contribution to the two-state solution by supporting Palestinian state- and institution-building.

This last example demonstrates a key difficulty of analysing the performance of presidencies and demonstrates the advantages and limitations of a procedure and function-oriented analytical approach. An efficient fulfilment of all functions does not guarantee a result that is in line with the long-term aims of the EU. The core contents of the common position of the EU to the Middle East are the result of a complex decision-making process in which the Presidency is but one actor. However, the analytical approach used in this study at least makes it possible to reveal the many factors and limitations with which the Presidency is confronted in such a complex situation and which are partly responsible for the negotiation result.

#### 4. Limitations of the New Team Presidencies

In January 2007 so-called team, or trio, presidencies were introduced in the interests of the long-term strategic planning of the EU, a tighter interlocking of the presidencies and the improved planning of Council agendas.<sup>3</sup>

In fact the trio presidencies offer little that is new. The six-month rotation of the presidency and the detailed six-month work programme has been re-

tained. Until December 2006 the European Council adopted three year strategy programmes. In order to rationalise the programming of its activities the Council agreed in June 2006 to shorten this three-year span to eighteen months, encompassing three successive presidencies. The first such programme has been the German-Portuguese-Slovenian programme adopted in January 2007.<sup>4</sup> The only real innovation is the closer co-ordination of three instead of two immediately succeeding presidencies.

##### 4.1 Limits of common policy making, planning, and implementation

German officials and their Portuguese and Slovenian counterparts claimed that they co-ordinated with each other on the eighteen month-programme. However, as the first and most ambitious member of the trio Germany exerted the most influence on the long term programming. There is little evidence that the other governments were involved in the substantive prioritisation of the German Presidency. During the German tenure the co-operation did not go beyond keeping the successor presidencies regularly informed.

Since 2002, closer co-operation between successive presidencies has been made possible with regard to issues that are not going to be on the agenda until the following six months. Representatives of the successor presidency can lead working-group meetings (except for the meetings of the Committee of Permanent Representatives) six months before their member state takes over the Presidency. So far, however, the current Trio Presidency has not made use of the option of shared Chairmanship. Such a move would certainly be a first step towards a functional sharing of individual dossiers across the presidencies. At the same time there would certainly be objections among the member states to a situation in which the German Presidency extended its leadership, for example, of the ENP to eighteen months.

In some cases, however, close co-operation between the three member states beyond the drawing up of a common programme became necessary. The German timetable for the negotiation of the Reform Treaty by the intergovernmental conference had to be co-ordinated with Portugal. Lisbon signalled early on that it

<sup>3</sup> Article 2(4) of the Rules of the Procedure of the Council. Cf. European Council, Council Decision of 15 September 2006 adopting the Council's Rules of Procedure (2006/683/EC, Euratom), printed in: OJ L 285/47, October 16, 2006.

<sup>4</sup> European Council, *18 Month Programme of the German, Portuguese and Slovenian Presidencies*, Brussels, October 21, 2006, 17079/06.

would only organise said conference during its term under certain conditions: the German Presidency would have to adopt a clear mandate limited to a few negotiation issues and would have to reach agreement on the most contentious points. In other words, from Lisbon's point of view an intergovernmental conference was to be a formality.

In other policy areas there were only occasional examples of closer co-ordination in the implementation of the common programme. Under the aegis of the relevant German ministries, trio-programmes were put together for development, home affairs and justice policy in co-ordination with the relevant ministries of the other member states. Again the German influence appears to have been significant.<sup>5</sup> In home affairs and justice policy there was also some evidence of an ad-hoc sharing of responsibilities during the German Presidency. Preparations for the extension of the Schengen area to the new member states were carried out largely by Portugal as this dossier was to be finalised during the Portuguese presidency. German delegates also appeared to support Portugal in the drafting of compromise papers even after Germany's Presidency had ended (e.g., the proposal for a Council framework decision on the protection of personal data). In justice and home affairs, the advantages of close co-operation between presidencies are more obvious as the work of all presidencies in this area is to a large extent confined to implementing the detailed provisions of the five year legislative and work programme, the so called Hague Programme.

Because of its experience and personnel resources Germany is almost predestined to support the smaller and less experienced member states. However, Germany also has pronounced national interests in nearly all EU policy areas and significantly larger political weight in the EU. If Germany became strongly involved in the work of its successor presidencies, it might be open to the reproach that it was trying to prolong its own Presidency. This would damage the negotiation atmosphere in the Council.

5 [www.bmz.de/de/presse/Downloads/broschuere\\_trio-praesidentschaft\\_englisch.pdf](http://www.bmz.de/de/presse/Downloads/broschuere_trio-praesidentschaft_englisch.pdf); [www.eu2007.bmi.bund.de/cln\\_012/nn\\_1049448/sid\\_D6D7FF82F46B0FA37BE2C1BBDE63FA86/EU2007/DE/ServiceNavigation/Pressemitteilungen/content\\_Pressemitteilungen/Dresden\\_JI\\_Rat\\_1Tag\\_de.html](http://www.eu2007.bmi.bund.de/cln_012/nn_1049448/sid_D6D7FF82F46B0FA37BE2C1BBDE63FA86/EU2007/DE/ServiceNavigation/Pressemitteilungen/content_Pressemitteilungen/Dresden_JI_Rat_1Tag_de.html) (last visited August 20, 2007).

## 4.2 Risky foreign-policy games

In recent years, criticism of the six-month rotation has not been directed at all Council formations and policy areas equally: the CFSP, the European Security and Defence Policy (ESDP) and the performance of the General Affairs and External Relations Council (GAERC) have been particular targets for criticism. Whether the capacity for political leadership and the consistency and visibility of the Council which is necessary for the external image of the EU (and which is seen as lacking) can be met, is not just a question of a closer co-operation of several presidencies. Although the first trio programme set objectives for the Middle East policy, common strategies were neither drafted nor implemented. The unequal spread of interests and resources across the trio and the difficult co-ordination of policies towards such unstable regions as the Middle East made efforts to achieve coherence difficult. Now, with new momentum in the diplomatic efforts to bring peace to the region, it will be necessary to reinforce EU commitment for the policy if it is to have lasting effect. However, Portugal has already announced that it will concentrate all its efforts in foreign policy on EU relations with Africa and Brazil.

By the same token, the work of the trio with regard to Central Asia and neighbourhood policies does not appear to have been very co-ordinated between the three governments, although it was initially presented as the flagship project of the first trio presidency. The trio presidency initially agreed that the German Presidency would focus its energies on the EU's eastern borders and the Portuguese Presidency would focus on the southern ENP countries. However, Portugal and Slovenia quickly stopped showing any inclination even to declare their interest in these countries. However, even if Portugal focused on the southern ENP countries this would not be far reaching enough to ensure continuity: The initiative of the German Presidency to intensify co-operation in the Black Sea region must also be continued and implemented; likewise the Central Asia strategy elaborated by the German Presidency. To what extent the lack of commitment of the respective presidency can be compensated by the Commission is doubtful (see the chapters on the ENP [pp. 64] and Central Asia policy [pp. 71]).

Both examples show that a strong continuity in foreign policy cannot be guaranteed by the co-operation of the three successive presidencies: only a permanent presidency of the External Relations Council as provided for in the Reform Treaty will suffice.

## 5. The Presidency and the Reform Treaty

Our analysis would be incomplete and, indeed, of little use for future political practice if it did not relate its conclusions to the reforms of the Council which are provided for in the Reform Treaty. It is likely that with the entry into force of the Reform Treaty in mid-2009 there will be a change to the rotational system in the Council: An EU-President, elected for a term of two and a half years, will in future chair the European Council. A High Representative of the Union for Foreign Affairs and Security Policy (HR-FASP), elected for a five year term, will take over the permanent chair of the External Relations Council and act as one of the Vice-Presidents of the European Commission. The current rotational principle will remain in place only in relation to the eight ministerial, or functional, Councils; however, the team presidencies are to be made a permanent feature of these Councils.

### 5.1 A permanent chair for EU foreign policy

A fundamental reform of the European Council and Council of Ministers has been in preparation since the 1990s. The reform is meant to help manage the organisational challenges presented by the 2004 and 2007 enlargement rounds. The main aim is to improve the Council's ability to act both internally (improving the co-ordination of functional councils and the co-operation with the European Parliament and the Commission) and externally (improving the coherence, identifiability and assertiveness of the EU's foreign and security policy).<sup>6</sup>

The contributions to this study emphasise the necessity of more continuity and coherence in foreign policy and at the same time demonstrate the inability of the new trio presidencies to resolve the existing deficits. The new EU foreign minister created by the Constitutional Treaty whose *responsibilities* are confirmed in the Reform Treaty is to remedy the situation. Wearing a double hat, the HR-FASP will take the permanent chair of the External Relations Council and will from 2009 also serve as Vice-President of the Commission. The co-ordination and implementation of EU foreign policy including the civil and military

aspects of European missions will (in consultation with the national foreign ministers in the Council) for the first time be concentrated in one and the same office and person. The formulation of a common European foreign policy is as much the responsibility of the High Representative as its international representation. The High Representative has acquired unusually broad competences as well as special responsibility in the EU's complex institutional order in efforts to co-ordinate foreign policy in the Commission as well as in Council. S/he will not only be confronted with two sets of procedures and sources of competence and legitimacy but will also be subject to structural tensions as national foreign ministers, the President of the Commission and the President of the European Council will all want to be involved in the making of foreign policy.

The personal union between the High Representative of the Council and the External Affairs Commissioner appears to be a promising option for reform in order to make permanent a uniform, consistent and coherent representation of the EU towards third countries and international organisations. The future evolution of this position is open, and could go in the direction of a complete communitarisation of the CFSP as well as in the direction of the consolidation of the intergovernmental character of the CFSP demanded by the British government in the mandate for the intergovernmental conference agreed at the June Summit of the European Council.

However, the creation of this new position runs contrary to the changes undertaken following the agreement reached at the Seville European Council in June 2002 to reduce the Council formations. This reform merged the Development Council with the then General Affairs Council, forming the current General Affairs and External Relations Council. The new External Relations Council foreseen in the Reform Treaty will, in turn, cover CFSP, ESDP, trade and development issues, with "General Affairs" being dealt with by a separate Council.

The double role attached to the new post of HR-FASP, as both Chair of the External Relations Council and Vice-President of the Commission responsible for external relations, only appears sensible for the foreign and security policy aspects dealt with by the External Relations Council. The establishment of a "double-hatted" post with competences over international trade policy and development policy issues calls into question the historic independence and independent trade policy profile of the Commission as well as the

<sup>6</sup> For more detail see Andreas Maurer, *Auf dem Weg zur Staatenkammer. Die Reform des Entscheidungs- und Koordinationssystems im Ministerrat der EU*, Berlin: Stiftung Wissenschaft und Politik, February 2003 (SWP Research Paper 6/03).

election of the commissioners for trade and for development. This is in part because, on an organisational level, the creation of the new High Representative could mean the interlinking and long-term merging of at least five Directorates General in the Commission with two Directorates in the Council Secretariat as well as the abolition of important Commission portfolios and, as such, the availability of fewer prominent posts in the EU-Institutions to which the member states can appoint their staff. Smaller member states, the Commission and the European Parliament see the consolidation of all of the bodies dealing with EU foreign policy as a weakening of the role of the Commission rather than an effort to bring consistence and coherence to the EU's foreign relations. In the medium-term it would therefore be appropriate to examine the role of the new High Representative in view of the resulting restructuring of the Council formations and chairs on all working levels. Should the High Representative concentrate on the narrow field of the CFSP and the ESDP, to the option of reconstituting the Development Council and establishing an International Trade Council would have to be considered if the roles of the Commission and its accountability to the European Parliament were to be maintained.

## 5.2 The proposed President of the European Council—broker or puppet of the heads of government?

The most far-reaching reform of the Council of the EU is the election by the members of the European Council of a European Council President for a term of two and a half years.<sup>7</sup> From 2009 the President will chair the European Council and lead its negotiations. He will also be responsible for preparing summits and for ensuring their continuity, co-operating in this task with the President of the European Commission and drawing on the preparatory works of the General Affairs Council. Moreover, the President shall “ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union of Foreign Affairs and Security

Policy” (Article I-22 Constitutional Treaty (CT) = new Article 9b.6 TEU).

The mystery surrounding this obscure job description is lifted only when it is analysed in the context of the powers of the European Council contained in the Constitutional Treaty and Reform Treaty. These powers point to the breadth of responsibilities of the new EU-President.

Under Article I-21 CT (= new Article 9.b.1 TEU) the European Council “shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof.” This definition of the role of the Council is based on the one contained in the Treaty of Nice. At the same time, the responsibilities of the European Council elaborated one-by-one in different parts of the Reform Treaty far exceed the general role defined in Article I-21 CT (= new Article 9.b.1 TEU). The European Council will in future have the following decision-making and appointment powers:

1. Powers over institutional issues: to approve the proposal on the composition of the European Parliament; to decide on the composition of the Council formations and the rules of rotation of the Presidency of Council formations; the extension of the transitional provisions contained in the Protocol on the representation of citizens in the European Parliament and the weighting of votes in the Council; the transfer of special legislative procedures into the ordinary legislative procedure after consultation of the European Parliament; the shift from unanimous decision-making in the Council of Ministers to qualified-majority-voting; the system of equal rotation within the Commission; the examination of any proposals for the amendment of the EU Treaties; the decision not to convene a Convention but to instead agree on a mandate for a conference of representatives of the governments of the member states.
2. Powers in individual policy areas: to adopt decisions of a general nature in relation to the CFSP; to decide on the change from unanimous, to qualified-majority-voting in the Council of Ministers on CFSP matters; to declare that the ESDP shall lead to a common defence; to develop guidelines for negotiating and concluding an agreement with a state that has decided to withdraw from the European Union and to extend—or not—the date from which the EU Treaties cease to apply in the withdrawing member state; to adopt conclusions on the basic features of the economic policies of the member states and the

<sup>7</sup> Compare—with critical comments on the views of the Commission of the smaller member states—Christian Franck, “La question du Président de l’Union,” in: *Annales d’études européennes de l’Université catholique de Louvain*, Vol. 6: La déclaration de Laeken ... et après?, Löwen: Université Catholique de Louvain-la-Neuve, 2002, pp. 3–25.

Union; to adopt conclusions on the employment situation in the Union; to define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice; to identify the strategic interests and objectives of the European Union for all areas of external action of the EU by means of European decisions (such decision can relate to the EU's relations with a specific country or region or be thematic in approach); to define the general guidelines for the CFSP including for matters with defence implications and assess the threats facing the Union.

3. Powers of appointment and dismissal: to elect a president for a term of two and a half years; the power to end his mandate; to nominate the President of the European Commission; the appointment of the HR-FASP with the approval of the President of the European Commission and the European Parliament as well as the power to end his/her tenure.
4. Decision-making and instruction powers towards the Council of Ministers (the effects of which are unclear): to determine the general guidelines, objectives and strategic lines of the Union in the CFSP. Moreover, the European Council from 2009 has the right to consult member states on their action on the international scene or any commitment which could affect the Union interests.

The European Council's new powers reflect the range of responsibilities of the new President of the European Council. It is doubtful, however, whether the President will have sufficient human, administrative and financial resources to fulfil the mandate which includes roles as diverse as leadership, preparation, securing the continuity, promoting the consensus and representation—i.e., the roles which are currently undertaken by the heads of state and government of the respective Presidency.

It is also doubtful whether the President will be accepted by heads of state and government and will have the necessary legitimacy in light of the considerable range of responsibilities. Whilst Angela Merkel was accountable to the German Bundestag the future elected President will not be subject to a corresponding, democratic arrangement. Neither the national parliaments nor the European Parliament have any means of censoring any actions of the Presidency which contravene the rules.

### 5.3 Opportunities for development for the European Council in the legislative procedure

Given the developments in the relations between the European Council and the GAERC as well as the other functional councils, which have been observed in recent years, it is likely that the European Council will strengthen its profile as highest mediating and decision-making authority in cases where different Council formations hold opposing views and the GAERC is not able to reach agreement and not empowered with arbitrating functions. In these cases the European Council will develop into a type of “superior council,” which as final decision making authority will make political decisions and hand these down as instructions to the functional councils. This development will have an effect on the national co-ordination of European policy and the preparation and implementation of future presidencies in the functional councils.

The pressure on heads of state and government and their administrative apparatuses to build and develop corresponding co-ordination and instruction structures is likely to intensify. In the medium-term, this will have implications for the relationship between the foreign ministers (as representatives in the General Affairs Council) and the ministers (as representatives in the General Affairs Council in its legislative role as well as in the functional councils) and will require the creation of specific mechanisms for the consultation and co-ordination between the presidents of the functional Councils (which are led by national ministers) and the European summits.

It is unclear who will be pulling together the strings in long-term projects such as energy and climate policy between the functional Council meetings and European Council summits and who will formally authorise the Council conclusions and convincingly represent these towards third parties. Will heads of state and government stand behind “their” European Council President and resist the temptation to create shadow presidencies in foreign policy or other policy areas of national significance? Or will they fall back on the currently available option which is for the heads of state of government to participate in normal functional Council meetings in order to bestow prestige on the presidents of these functional councils and in effect to undermine the EU Council President? Will the President have its own civil service or will it be able to make use of all existing Directorates General of the Council Secretariat? Whilst in the former case measures would have to be set in train now in order to

decide on the staff structure and its recruitment, in the latter case a mechanism would have to be created to deal with clashes with the Secretary-General of the Council and the High Representative about use of the Council Secretariat's staff and budget.

These developments will also affect the structure of relations between national parliaments and their governments. Domestic structures of co-operation, control and conflict structures will adjust according to the organisation of this relationship in relation to EU matters.

A third line of developments concerns the relations between the European Council and the European Parliament. The co-decision procedure operates under strict deadlines. As the European Councils are to take place on a quarterly basis, there would have to be structures in the General Secretariat or the EU-Presidency for controversial policy areas so that the European Council can live up to its mediation role and its function as an institution with an informal role in the legislative procedure.

#### **5.4 Rotating and permanent presidencies—organisational problems in the near future**

The strengthening of the European Council in the inter-institutional order of the EU was actively and, ultimately successfully, advocated by a number of EU member states. Joint initiatives by France and Germany as well as Italy and Spain and various British initiatives contributed to this result. The concerns of some of the smaller member states regarding too strong a role of the European Council and its President are partly met in the yet to be finalised Reform Treaty. At least some of the changed articles of the Reform Treaty create the impression that the European Council and its President's tasks fall into a narrow sphere and will not conflict with the areas of responsibility of other EU institutions. A closer examination however reveals that the allocation of responsibilities contained in the Treaty on the Functioning of the European Union which will in future replace the Treaty establishing the European Community will create an institution whose role and responsibilities will not be limited to providing impetuses. The institutional balance between the European Parliament, the Council and the Commission will change at the expense of the Commission and the Parliament. This change contradicts the stated intention of the last inter-governmental conferences to refrain from changing the institutional balance.

The far-reaching powers of the European Council and its President should therefore be reviewed at an early stage and limited if necessary:

- ▶ By introducing a right to a hearing or more far-reaching rights of control and participation of the European Parliament in those cases where the European Council has treaty-based decision-making powers which will affect EU legislation in the medium-term; and
- ▶ By giving the European Parliament an independent right to a hearing, right to questioning and right of interpellation towards the Presidency that is reinforced by sanctions.

Finally, the obligation contained in the Reform Treaty to hold European Councils quarterly is also to be regarded as an expression of the strengthened role of the European Council and the particular profile of the Presidency. The strengthening of the European Council could lead under (less likely) positive circumstances to the strengthening of the EU as a whole as when the heads of state and government take a common position towards third countries. The danger of a blockade of the European Council as a politically significant decision-making body is however much greater. A blockade could lead to a falling back on "enhanced co-operation" and so, in effect, carry the danger of undermining the Union and reducing it to its economic context. The influence of the newly-constituted General Affairs Council will be limited in this context because its work serves only as the basis for the President's activities.

A crucial condition for the functioning of the new systems in the European Council will be the role which the (qualified majority of the) member states of the European Council accord the President in ordinary Council business. As the President cannot hold national office and will unlikely enjoy his own power-base he can become—and the Reform Treaty and the Treaty on the Functioning of the European Union are vague in this respect—a plaything at the hands of the heads of state and government. However, his personality may enable him to play a strong role towards the EU institutions or enable him to draw his strength from the co-operation with other European institutions.

The question whether the new President will have a similar power to give impulses to the EU and an ability to represent in the same way as some of the current heads of state and government is open for debate. The strategic actions of the German Council President Angela Merkel coupled with the stage management of the Council Presidency and its

administrative apparatus (i.e., the dramatisation of problems and their solutions at both Summits) had, for example, considerable influence on the decisions of the EU and G8 in relation to climate policy and the development of a transatlantic economic area. However, this was only possible due to the use of various national resources open to the German Presidency and its good relations to the United States. The role of Council President, Angela Merkel, in the negotiations on the changes to the European treaties was also crucial. The current singling out of heads of government as Council Presidents will disappear from 2009. This makes it likely that hostilities will arise between the heads of government demoted to normal members of the European Council during their own Presidency and the new President.

Equipped with its freshly-acquired knowledge regarding the scope and limitations of its Presidency, the German government's EU policy should focus on eliminating these open issues of the new Reform Treaty.

# Abbreviations

AL	Arab League	TACIS	Technical Aid to the Commonwealth of Independent States
AMLAT	Council Working Group on Latin America (first pillar)	TAFTA	Transatlantic Free Trade Agreement
Asean	Association of South-East Asian Nations	TEU	Treaty on European Union
BAM	EU Border Assistance Mission	TEC	Treaty of the European Community
BMWi	Federal Ministry for the Economy	UN	United Nations
CAN	Comunidad Andina (Andean Community)	UNIFIL	United Nations Interim Force In Lebanon
CARICOM	Caribbean Community	USA	United States of America
CEPS	Centre for European Policy Studies	WTO	World Trade Organisation
CFSP	Common Foreign and Security Policy		
CIS	Community of Independent States		
COEST	Council Working Group on Eastern Europe and Central Asia		
COLAT	Council Working Group on Latin America (second pillar)		
COREPER	Committee of Permanent Representatives		
COTRA	Transatlantic Relations Working Party		
ECOFIN	(Council of) Economic and Finance Ministers		
ENP	European Neighbourhood Policy		
ENPI	European Neighbourhood Policy Instrument		
EP	European Parliament		
EPP-ED	European People's Party-European Democrats		
EU	European Union		
EU-LAC	EU-Latin America/Caribbean		
Eupol	European Police Office		
FEMIP	Facility for Euro-Mediterranean Investment and Partnership		
Frontex	European Agency for the Management of Operational Co-operation at the External Borders		
G6	Group of Six		
G7	Group of Seven		
G8	Group of Eight		
GAERC	General Affairs and External Relations Council		
Glionass	Global Navigation Satellite System		
HR-FASP	High Representative of the Union for Foreign Affairs and Security Policy		
JHA	Justice and Home Affairs		
MEDA	Financial Instrument for the Euro-Mediterranean Partnership		
Mercosur	Mercado Común del Sur (Southern Common Market)		
NATO	North-Atlantic Treaty Organisation		
NEGPC	North European Gas Pipeline Company		
NTB	Non-Tariff Barrier		
PA	Palestine National Authority		
PCA	Partnership and Co-operation Agreement		
PLO	Palestine Liberation Organization		
PSC	Political and Security Committee		
PTA	Preferential Trade Agreement		
RABIT	Rapid Border Intervention Team		
SICA	Sistema de la Integración Centroamericana (Central American Integration System)		

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