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State of Play in European Integration

Challenges and Opportunities for
German Policy

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Introduction

Europe after Lisbon – State of Play

Annegret Bendiek

The European Union (EU) has found itself within a phase of constitutional self-assertion at least since the Treaty of Maastricht (1993). When the Treaty of Lisbon took effect in December 2009, the EU's constitutionalisation process was supposed to be raised to a new level. At the same time, the old custom of proceeding with incremental developments on the basis of a permissive consensus has met with criticism. Since then, two substantial demands have been intimated to the Union.

On the one hand, the continued development of the Union's institutional and material competences has been called for by those who deem that their political scope of action is insufficient. The Common Foreign and Security Policy (CFSP) established with the Treaty of Maastricht as well as the inclusion of domestic and judicial policy in the European Union Treaty were seen as being just the first required steps. Since then, there have been the (old) demands for a competence to levy taxes and for more competences in shaping economic policy, for stronger co-ordination on financial policy, and much more. According to widespread convictions, the Union must assert itself in a complex and global political environment that is becoming more demanding overall, and it must therefore take an ambitious step forward towards integration. Demands for a greater expansion of material competences, however, meet with resistance from sceptics of integration, a group which has increased substantially in size over the past twenty years. Even today, the EU is seen in many member states as too powerful and a threat to social patrimony. In terms of foreign policy, there is a broad refusal to subordinate national policies to those of the EU, and a pronounced insistence on independent authority over shaping political action.

On the other hand, the EU is called upon to break down its executive dominance, designate more competences to the European Parliament, promote transparency and public participation, and become more citizen-friendly overall. The debate following from this

over the democratic qualities of the Union is closely linked with the debate over the EU's capacity to act; it lacks, however, a uniform tone. Democracy in Europe is understood in a variety of different ways. While some call for a long-term transformation of the EU into a federal system, others want to see a greater degree of nation-state democracy or transnational co-operation. Both debates provide the background music, as it were, which has accompanied the negotiations over the Treaty of Lisbon. Following the failure of the referendums in France and the Netherlands (2005), the EU prescribed itself a so-called "reflection period", which was to be primarily used to consider the fundamental constitutional orientation of the EU across Europe. There was a high degree of consensus that the incrementalism of the integration process should be eliminated and replaced by a deliberate orientation towards a telos of integration.

A question that continues to persist on the agenda is which measures are needed to increase the Union's capacity to act and diminish its democratic deficits. Currently, however, the focus has not been on the fundamental questions of the EU's constitutional orientation in the face of growing resistance from the nation states. Instead, the elite European policy discourse has been dominated by the alignment of the governance dimension of European policy.

In the Treaty of Lisbon, the ambivalence resulting from this is clearly expressed. While it states that the EU should feel committed to the values of "representative democracy" (Article 10 TEU); at the same time a more precise definition of how this should be understood is missing. With the Treaty, the EU has increased not only the competences of the European Council, but also those of the European Parliament and the national parliaments. The newly established European External Action Service is of a hybrid character just like the Office of the High Representative, and cannot be deemed to result from a decision for the intergovernmental or the supranational principle. The increased role of national parliaments and the upgrading of the convention method seem to have made the EU more participative and open to legislative participation; the European Parliament, however, continues to lack the right to initiative. In this respect, the Treaty reflects structural indecision regarding the larger issue of European integration.

The contributions to this study, however, show very clearly that this constitutional indecision is not to be confused with stagnation in the European integration process. Among almost all of the policy areas analysed

here, there is a multitude of new institutional developments to be observed. The member states don't passively accept the constitutional indecision or allow it to hobble them. Instead, they continue to establish an increasingly dense network of governance mechanisms. Under the current conditions of a contradictory simultaneity in supranational expectations, demands on the qualities of global actors, and expectations of national provisioning, it doesn't seem like anything else is possible at this time.

Two years following the Treaty of Lisbon taking effect, eleven of the EU's policy areas have been subjected to analysis within the German forerunner version of this study (Annegret Bendiek, Barbara Lippert and Daniela Schwarzer [eds.], *Entwicklungsperspektiven der EU – Herausforderungen für die deutsche Europapolitik*, SWP-Studie 18/2011 [Berlin: SWP, July 2011]; cf. Table of Contents of the German version on p. 38). However, only a selection of chapters are presented here in an English translation. Focus is directed in particular towards the respective needs for adaptation and reform, possible strategies and options for action, as well as the interests and role played by Germany's European policy. Taken collectively, these contributions provide a detailed picture of the EU's overall development in its internal and external dimension. All of the contributions seek answers to the following questions: What development prospects are appropriate to the EU as regards content and in a procedural sense, and how can these be translated into opportunities for concrete action in the specific policy areas? Which development necessities and options can be identified?

The findings of these analyses speak quite clearly for themselves and can be summarised into four general insights:

1. The issue of the appropriate steps to take for the EU's further development evades a one size fits all logic and must be answered differently for each policy area. In this respect, this study can be read as an appeal for taking the specifics of individual policy areas seriously and envisaging a constitutional development path for the EU, which offers different solutions for each respective divergent problem. Many policy fields exhibit forms of a differentiated integration in which important decisions for the continuing constitutional process are laid out.

2. Nevertheless, the trend that generally runs throughout the contributions is that further steps towards integration and additional transfer of responsibilities to the European level are functionally sen-

sible. The general meaningfulness of further steps towards integration found in these studies, however, may be largely connected with the fact that the authors concentrated to a high degree on functional aspects, while reflections on the implication for the safeguard of democratic principles fall short and were not the main focus in all of the individual analyses. In policy areas in which sensitive questions related to practical democracy are highly relevant (e.g. in agricultural and foreign policy, but also accession policy), one is more likely to find strong arguments for the legitimacy of inter-governmental forms of co-operation and national autonomy, which thereby continue to hold to their positions within the larger European architecture.

3. In the EU, questions of the democratic legitimacy of policy continue to gain importance. Since the Treaty of Maastricht, at the latest, the debate over the EU's "democratic deficit" has been over the political agenda. Europe has grown up politically and can no longer justify its legitimacy with technocratic rhetoric. Europe's societies seek new substantiations, which correspond to the EU's high degree of relevance in their people's daily lives. The old equality of "more" Europe with a more democratic and effective Europe has become historically obsolete and is no longer reflected in the Treaty of Lisbon. The Treaty only foresees a marginal broadening of authority. At the same time, efforts to find a new and convincing concept for a reorganisation of the EU have also failed. The expansion of authorities for national parliaments and the broadening of codecision procedures are steps in the right direction. By themselves, however, they do not provide final answer to the question of the place and shape of democracy in Europe.

4. In most of the individual studies, Germany is attributed a key role, when it comes to pointing the way for the EU's development options and the practical implementation of strategies. The contributions analyse the extent to which Germany policy concepts and strategies for the implementation of its interests have actually been developed, and the extent to which the identified strategies and approaches correspond to Germany's objectives. As the largest economic power in the EU and due to its export-oriented economy, Germany has a vested interest in preventing trade restrictions and distortions of competition. As a result, it swings between defensive regulations, process improvements, and increased efficiency in the cohesion and agricultural policies on the one hand, and a return to the legislative Community method in the

internal market on the other. During financial negotiations, Germany hesitates to take on the role of a facilitator between the opposing interests of net payers and net recipients, the Commission, and the European Parliament. The contributions also provide a sharpened perspective of German interests in European policy, beyond current topics such as the crisis in Greece and the unilateral phasing out of nuclear energy. The Arab Spring rises high on the political agenda of the Expansion and Neighbourhood policy as well as development co-operation (DC), while offering the opportunity to tackle necessary reforms in Brussels. Measured in absolute terms, Germany is among the largest donors to European DC, along with France and Great Britain. For these three large economies, this generates options for action in or outside Europe's Common Foreign and Security Policy, which could extend beyond the checkbook diplomacy of the past. The final contribution deals with this issue by bringing together general EU development trends and courses of action, as well as conclusions for Germany's European policy – always with a view towards the challenges and opportunities that are linked or could be linked to the reopening of the large constitutional questions.

The Development of the EU System between Pressure for Reform and Integration Fatigue. Opportunities and Limits of Pragmatism

Lars Brozus / Daniela Kietz / Nicolai von Ondarza

The European Union (EU) finds itself confronted with a fundamental dilemma. On the one hand, it is becoming increasingly evident that the Lisbon reforms have increased the EU's ability to act only to a certain degree. Despite the hopes of many decision makers, the Union has not entered into a consolidation phase – on the contrary, the pressures of the economic and financial crisis have caused the agenda to once again contain comprehensive reforms, which could affect the fundamentals of economic policy management and the Eurozone. The EU's reaction to the revolutions in the Arab world has once more underlined the lack of capacity for action even with the new foreign policy structures now being in place. There continues to be a lack of viable concepts for dealing with neighbouring states and future expansion policy. As a result, external pressure for the EU to undergo further reforms continues unabated.

On the other hand, Europe's political elites view reforms that deepen European integration with a pronounced scepticism. The shock created by the negative votes in France and the Netherlands on the constitutional referendum continues to have an effect. No convincing answer has yet been found to the rejection of additional integration steps by wide segments of the population that was apparent in both of these cases. Instead, EU policy makers aim to avoid new referendums at all costs in the face of increasing scepticism towards the EU in the current reform discussion. At the same time, there are a growing number of national governments that categorically reject additional integration steps and transfer of competences to the EU, or even call for re-nationalisation in specific areas.

Within the current situation characterised by both pressure for reform and integration fatigue, Germany's European policy is confronted with particular challenges. Traditionally, a leadership role is expected of the German government in further developing the EU constitution. Domestically, however, serious limitations have been imposed on its capacity

for action: in its June 2009 ruling on the Treaty of Lisbon, the Federal Constitutional Court very clearly stated that the limit for integration on the current base of democratic legitimacy is reached. Before further significant parts of national sovereignty could be transferred to the European level, the Court therefore demands a significant increase in democratic legitimacy in the EU system.¹ Conflicts over European bailouts meant to save member states from bankruptcy also went hand-in-hand with a particularly pronounced drop in approval levels for Germany's EU membership.²

Within this context, there are basically three options for additional reforms to improve the Union's ability for action. These options vary in terms of scope, political viability and democratic legitimacy: the bold, but legally and politically risky option of comprehensive treaty reform; the pragmatic option of reforms below major treaty revisions; and the third option of a path of differentiated integration. In the face of current challenges, particularly in terms of economic policy, Germany has pursued inter-governmental coordination and differentiated integration, thereby contributing to Europe taking the path with apparently the least resistance. However, if the EU is to avoid fraying and a further loss of legitimacy over the long term, political debate needs to focus beyond this pragmatic approach. What is needed is an open and self-conscious discussion about the added value of European integration. Over the long term, this could generate fertile ground for the Union's continuing institutional and constitutional development on a sufficiently legitimate foundation.

1 Federal Constitutional Court, Judgment of the Second Senate from 30 June 2009, 2 BvE 2/08 from 30 June 2009.

2 The total number of respondents in the Federal Republic, which rated Germany's membership in the EU as positive sank between the Fall 2009 and Spring 2010 from 60 to 50 percent. See European Commission, *Eurobarometer 73, Public Opinion in the European Union* (Brussels 2010), 14.

Only for the Bold: Comprehensive Treaty Reform

In the face of high political risks that are largely incalculable, an additional major reform of the European treaties is currently soundly rejected by the majority of the European governments. Based on the provisions of the Treaty of Lisbon, the legal position is clear: whenever EU competences are to be expanded or limited, as with the debate over economic governance in the EU, a convention is required in accordance with Article 48 TEU as well as the approval and subsequent ratification of the member states.

All three phases of the legal procedure for changing the EU's primary law contain a considerable degree of potential to be politically explosive. Firstly, the open nature of a convention would provide participants with the opportunity to once again introduce into the agenda all of the questions over European integration. The compromises that were laboriously negotiated in the run-up to the Treaty of Lisbon could be opened up and the entire existing structure of the EU could be back up for negotiation.

Secondly, an agreement of all national governments on the extent and the content of such reforms is by no means guaranteed. Due to internal pressures, the governments of the United Kingdom and the Czech Republic for instance can be expected to call for a re-nationalisation of specific competences rather than additional integration steps. The difficult negotiating process associated with the Treaty of Lisbon demonstrated that differences among national governments can only be bridged with a series of special clauses. Therefore not even a consensus on the current integration status can be guaranteed, and the door would be wide open for taking steps away from integration.

Thirdly, the different national requirements for ratification may not only prolong the treaty reforms for years, but also put the implementation of any reforms into question. The judgment of the Federal Constitutional Court on the Treaty of Lisbon underscored just how high the hurdles are to successfully changing the treaty on a national level, even if there is agreement among all national governments. The Court clearly stated that any further transfer of competences in fundamental areas of national sovereignty requires both a complete implementation of democratic principles on the European level as well as a

referendum in Germany.³ Referendums would likewise be necessary in other EU member states like Ireland, Great Britain and Denmark in order to legitimise far-reaching changes to the Treaty.

Europe's elites are in agreement that such referendums carry great political risks. After all, considering the increasing Euro-scepticism in many member states, it will be very difficult in many member states to convince the public of any new EU treaties. Right-wing populist parties are currently seeing large increases in support in national elections by openly criticising the EU. Recently this jump in support granted them an important role in negotiations over the forming of governments in the Netherlands and Finland. Alternatively, political decision makers are therefore attempting to ensure the EU's capacity for action by combining reforms below the threshold of an ordinary treaty change with various forms of differentiated integration. It is, however, precisely this strategy of avoiding fundamental reforms that creates space for currents of Euro-scepticism to gain in strength, because it leaves the mainstream debate to those sceptical of the European Union. The shock of the failed constitutional referendums, the difficulties in the Irish ratification of the Treaty of Lisbon, and the plummeting approval rates for the EU during the Euro-crisis have all failed to spur EU member states' governments to offer better explanations or arguments in support of EU policy. During the current crisis, however, it will be impossible to create acceptance for the necessary reforms without initiating a more intensive discussion of the challenges facing European policy. It can therefore not be excluded that there will be a further erosion of approval for the European integration process.

Pragmatic Reforms below Major Treaty Revisions

Faced with these difficulties, various procedures for partial treaty revisions seem to be easier to implement in a political sense and therefore more attractive to

³ The Federal Constitutional Court sees these fundamental areas as including criminal law, education and family policy, decision power over deploying armed forces, taxation and social policy. Cf. also Peter Becker and Andreas Maurer, *German Brakes on Integration: Consequences and Dangers on the Federal Constitutional Court Judgment for Germany and the EU*, SWP Comments 15/2009 (Berlin: German Institute for International and Security Affairs, August 2009).

policy makers in the current situation.⁴ These procedures were introduced with the Lisbon Treaty to enable the EU to selectively change the primary law without going through the laborious process associated with ordinary large scale treaty changes. The requirements for these are generally a decision from the European Council or the Council of the EU, and – depending on the case – the approval of national parliaments and the European Parliament.

One drawback is that there are tight limits on the scope of reforms that can be achieved through this process. The greatest latitude is provided by the simplified procedure for amendment of the treaties according to Article 48 (6) TEU and the general bridging clause of Article 48 (7) TEU. The former provides for the possibility of adjusting the legal basis for internal EU politics for the entire third part of the TFEU, although an expansion of EU competences through the use of this clause is expressly forbidden. The clause was applied for the first time to safeguard primary legislation for a permanent European stability mechanism in the Euro-zone. For decisions and legislative acts based on the TFEU and Title V of the TEU on external action of the EU and the CFSP (excluding the security and defence issues), the European Council can use the bridging clause to decide that there will be a move from special legislative procedures to ordinary ones and from unanimous decision-making to qualified majority.⁵ This excludes, however, comprehensive reforms on the establishment of an actual European economic government or one for foreign and security policy.

If not already evident, a second glance reveals not only considerable limitations in terms of the scope of pragmatic reforms, but also their viability. Within the context of the ratification and implementation of the Treaty of Lisbon, many member states introduced additional roles and competences for national par-

liaments to play a role in changes to the primary law. These provide for additional participatory rights for national legislatures beyond the Treaty guidelines.⁶ In some countries like Ireland, the Netherlands and Great Britain, it is possible that referendums may even be required for such treaty revisions. Since 2011, in Great Britain a referendum is absolutely required as soon as there is any transfer of sovereignty from the national to the European level. Whether or not this is the case is often a thorny issue requiring legal interpretation and is therefore prone to political instrumentalisation. In Germany as well as states like the Czech Republic, it is a foregone conclusion that suits will be filed with the national constitutional courts, because the provisions are open to different interpretations. Ultimately this presents the same problems as would face a major change to the treaty. The flexibility to further develop the EU intended by the Treaty of Lisbon is thereby curtailed to a considerable extent.

Flexible, but Fragmented? Differentiated Integration

Faced by these difficulties, a third path to reform becomes increasingly attractive: differentiated integration. A time-limited or permanently deepened co-operation in specific policy areas among interested member states considerably simplifies the reform process within a union of 27+ member states. Models of a “multi-speed Europe”, a “variable geometry” or a “Europe à la carte” envision the EU as a framework within which interested member states can embark on further steps towards integration in small groups.⁷ In principle, there is a broad palette of instruments available to them – enhanced co-operation using EU treaties, inter-governmental co-ordination using EU structures, and international co-operation outside the EU. For individual member states, there are also the safeguarded opt-outs from specific policy areas,

⁴ In addition, it is possible to address decision-making issues between the European Parliament, European Council, Council and Commission over bilateral and trilateral inter-institutional agreements. A common criticism is, however, that these informally change European primary law and thereby contribute to creeping constitutional change. Since the 1950s, more than 130 such agreements have been approved. See Daniela Kietz et al., *Interinstitutionelle Vereinbarungen in der Europäischen Union. Wegbereiter der Verfassungsentwicklung*, Internationale Politik und Sicherheit; Vol. 64 (Baden-Baden, 2010).

⁵ In addition, there is a series of clauses to expand competence or decision-making procedures specifically tailored to special individual cases. These enable, for example, a transition to ordinary legislative procedures in terms of family law; Article 81 (3) TFEU.

⁶ In its Lisbon ruling, the Federal Constitutional Court clearly stated that changes to the treaties through such procedures are not allowed if they do not explicitly carry the approval of the Bundestag, and depending on the policy area, the Bundesrat.

⁷ For the classification of various forms of differentiated integration, see Alexander Stubb, *Negotiating Flexibility in the European Union. Amsterdam, Nice and Beyond* (Basingstoke: Palgrave Macmillan, 2002), 30–57.

including withdrawal from areas that had already been integrated.⁸

At least since the Treaty of Maastricht, this type of internal differentiation has been among the characteristic features of European integration. Accordingly, only 17 of the 27 EU member states participate in the monetary union; the treaties of accession passed within the context of the major expansion stages of 2004/2007 include numerous time-limited exceptions for the new member states; three EU states are not party to the Schengen Agreement for the free movement of people; the Treaty of Lisbon provided many member states with additional opt-outs from specific policy areas and/or provisions.⁹

On the one hand, differentiated integration offers a way out of the dilemma between the pressure for reform and integration fatigue. By allowing all member states to choose whether or not to participate in a project of closer co-operation, the respective political will for integration determines the composition of the circle of participants. States that do not wish to participate can abstain from joining the respective project without blocking it.

There is considerable variation in the scope of the reforms generated by differentiated integration. The formal means of “enhanced co-operation” (Article 20 TEU) is subject to tight limitations, since its use cannot overstep the competences of the EU. By using international treaties or inter-governmental co-operation, member states, however, can clearly go beyond the current rules. In the past, individual groups of member states have used international treaties, for example, to come to agreement over closer co-operation not foreseen in the Treaty and which would fail to find consensus within the EU. In this way, Germany proceeded with key integration programmes such as free movement of people with the Schengen Agreement (1985, 1990) and European co-operation on combating terrorism and cross-border criminality with the Prüm Convention (2005). In both cases, parties to the

treaties were able to achieve their original stated goal of transferring the agreements into the EU framework over the long term.

On the other hand, the EU’s long term cohesion could be jeopardised and centrifugal forces could intensify if there is too great a degree of differentiated integration in which different groups of member states each participate inside and outside of EU structures. In this respect, three aspects can be seen as particularly problematic:

Firstly, differentiated integration can undermine the institutional balance in the political system of the EU and weaken supra-national institutions in particular. Full usage of EU structures is only possible through the formal instrument of enhanced co-operation, which is subject to a series of limitations and insofar solely an option for limited reforms.¹⁰ It is not to make use of EU structures for international agreements that are formed outside the framework of the EU. This contains the danger of such agreements resulting in the creation of parallel structures. For the Schengen Agreement, for example, before it was incorporated into the EU framework an Executive Committee had to be established while the EU Commission, European Parliament and European Court of Justice were left out. A future incorporation into the EU framework, as with the Schengen Agreements and Prüm Convention, is by no means guaranteed and can be further hampered by the existence of such special bodies. In light of the hurdles to new primary law revisions presented here, it is also improbable over the medium term that it will be possible for additional inter-governmental co-operation to be subsequently transferred into the EU treaties.

Increased use of inter-governmental co-ordination is faced with similar problems. This was evident, for example, in the “Euro Plus Pact” on economic policy co-ordination between EU member states and additional interested EU states, which was proposed by Germany and France in March 2011. While the co-ordination is linked to the structures of the EU and the Eurozone, it entirely excludes the European Parliament, which had been comprehensively strengthened by the Treaty of Lisbon. This development is no less problematic for national parliaments. While they can

⁸ Janis A. Emmanouilidis, “Das differenzierte Europa. Königsweg oder Sackgasse der Integration?”, in Franz Decker and Markus Höreth (eds.), *Die Verfassung Europas – Perspektiven des Integrationsprojekts* (Wiesbaden 2008), 344–366.

⁹ The new opt-outs include, for example, new special rules for Great Britain and Ireland in terms of justice and home affairs policy, or the fact that the Charter of Human Rights is not legally binding for Great Britain, Poland and the Czech Republic. For more, see Franz Cromme, “Die primärrechtliche Absicherung der Einheit der EU bei der differenzierten Integration: Die Entwicklung bis zum Brüsseler Mandat 2007”, *Europarecht* 42, no. 6 (2007): 821–828.

¹⁰ Accordingly, enhanced cooperation must serve the objectives and interests of the Union and must not exceed existing competences. It also must not endanger the internal market or the economic, social and territorial cohesion of the Union. Enhanced co-operation dealing with exclusive competences is also ruled out. (Article 20 TEU, Article 326ff TFEU.)

formally control inter-governmental co-operation, their practical room to influence these decisions was reduced to a minimum after the governments arrived at preliminary decisions on a European level. This was demonstrated not least by the intense debate held over the role of the Bundestag in decisions over bailouts and the reform of economic governance in the Eurozone.

Remarkably, Germany has supported this inter-governmental strategy solution in recent reform discussions, although it traditionally advocated a strengthening of the community method for further developing the EU. In the past, the EU has only had limited success with these sorts of sovereignty-preserving co-ordination measures. The Lisbon Strategy, for example, which sought to raise the EU to the status of the world's most competitive economic region, suffered from inadequate implementation of the reform package. Since this package was based solely on inter-governmental arrangements, implementation was based on the will of the member states. If there is a change in government and/or policy within these states or strong internal pressures, there can be a departure from these agreements at any time.

Secondly, the question arises in regard to the core area of European integration, the internal market, to what extent differentiated forms of co-operation increase tendencies for a widening gulf between European member states on (economic) policy. In addition to the Euro Plus Pact aimed at economic policy co-ordination, the member states in 2010 for the first time made use of the instrument of enhanced co-operation. This instrument was conceived of as a "last resort" in case other consensus-building processes failed (Article 20 [2] TEU), and has been available since the mid-1990s for organising differentiated integration within the EU framework.¹¹ Until 2009, the threat of resorting to enhanced co-operation worked more as a disciplinary measure with the objective of actually bringing about an agreement among all the member states.¹² At this point, member states seem to

no longer see this instrument as a threat, but instead apply it in an entirely pragmatic manner. In this way, 14 EU member states used enhanced co-operation for the first time in late 2010 to establish regulations on transnational divorces. Furthermore, in 2011 the negotiations that have gone on for more than thirty years about the creation of a joint EU patent were concluded with the help of enhanced co-operation among 25 member states. The two states that did not participate, Italy and Spain, have already filed a suit at the Court of Justice and have emphasised that they unequivocally reject this step by the other 25 member states. Thus, differentiated integration could create considerable uncertainty for companies in the internal market which would run counter to the objectives of the common market.

Thirdly, a high degree of differentiated integration further reduces the transparency of the European decision-making process, when it is unclear for both the public and the participating decision makers to what extent European decisions are applicable to individual states or legal entities. The Treaty of Lisbon considerably increased the scope and number of opt-outs and opt-ins for individual member states. These exceptions even affect regulations establishing EU norms and identity such as the applicability of the Charter of Fundamental Rights in Great Britain, Poland and the Czech Republic. In terms of justice and home affairs policy, Denmark, Great Britain and Ireland are all excluded in various ways from specific areas, but have nevertheless kept the option open of taking part in individual decisions via opt-in. Uniformity of laws is one of the key characteristics establishing the identity of the EU as a legal community. The proliferation of special exceptions will not only make the European Union as a political entity more and more complex for its citizens, but opt-outs from the Charter of Fundamental Rights, only partial implementation of a divorce law for transnational marriages, and decisions over justice and home affairs policy that only affect some portions of the EU citizenry, all serve to undermine the already shaky foundation of shared European identity and Union citizenship.

Overall the turning away from principles of unified integration has reduced the dependency on consent from all the member states. In a union of 27 member states with additional candidates for accession, the possibility thus exists of overcoming stalemates due to special interests of individual member states. Further co-operation or steps towards integration can be realised through the means of enhanced co-

¹¹ The instrument was introduced for the first time with the Treaty of Amsterdam, but initially with considerably more limitations than listed in note 10. It was expanded to all EU areas with the Treaty of Nice and the Treaty of Lisbon. Daniel Thym, "Supranationale Ungleichzeitigkeit im Recht der europäischen Integration", *Europarecht* 41, no. 5 (September–October 2006): 637–655.

¹² Enhanced co-operation was used, for example, to gain Italy's support during negotiations over the introduction of the European Arrest Warrant. See Eric Philipart, *Un nouveau mécanisme de coopération renforcée pour L'UE élargie*, Etudes et Recherches; 22 (Paris: Notre Europe, 2003).

operation or international agreements. As long as these projects are open to all member states, they could even have a unifying effect over the long term. Within the EU structures, however, the possible reach of reforms using enhanced co-operation is clearly limited. Differentiated integration beyond EU competences is thereby only possible through international agreements which cannot be guaranteed to be integrated into the EU treaties in the future, particularly if the non-participating countries unequivocally reject them from the very beginning.¹³ Over the long term, if only some of the member states co-operate more closely on core issues such as economic policy or justice and home affairs policy, then differences will grow with those states that did not participate or do not want to participate. The states that did not participate in the differentiated integration could lose political influence, which could cause new centrifugal forces to spring up in the periphery.

Conclusions: Controlled Differentiation and Politicisation of the Integration

The aversion among Europe's political elite towards additional integration steps has seldom been more pronounced than it is today. Under pressure from the growing success of currents of Euro-scepticism in the member states and in light of the difficult reform process in the 2000s, many governments categorically reject the transfer of additional competences to Brussels. Instead of going on the offensive and publicly advocating for a reform of economic governance, the EU member states have relied on a mix of pragmatic reforms below the threshold of a major treaty revision, and differentiated integration. Over the short term, this approach promises success insofar as the measures being striven for are easier to implement from a political viewpoint. But this appearance is deceiving. In many member states, including Germany, additional hurdles to ratification were established for various forms of simple treaty revisions, which will make small treaty reforms just as challenging as large ones. The decisions passed within the context of inter-governmental co-ordination, such as the improvements to economic policy co-ordination in the Eurozone through the Euro Plus Pact, are not

enforceable due to the lack of a transfer of competences. They can therefore be ignored by national governments at any time.

Furthermore, the strategy of mixing pragmatic reforms and differentiated integration could strengthen centrifugal forces over the long term, undermining the European project. The Union is dissolving in more and more policy areas into different groups of member states with varying participatory rights. The effects of the individual EU policies on the member states and their citizens also differ, which further weakens cohesion. The effectiveness of this strategy is debatable in any case, in light of growing scepticism over integration in certain member states. These states hold strong positions as veto players by threatening to hold national referendums even in the case of minor reforms. A high level of risk is therefore linked with pragmatic reforms and differentiated integration, which may possibly not have a corresponding return.

Faced by this problem, European and German policy must succeed in carrying out a balancing act. In order to implement reforms over the short to medium term that increase the Union's ability for action, the only politically viable option is the combination of differentiated integration and reforms below the threshold of a major treaty revision. The most attractive option, from a pragmatic viewpoint, is that of differentiated integration which should only be used in individual cases and with reservation. This is insufficient, however, to establish the democratic support and legitimacy needed for the EU in the long run. Instead, the short and medium-term reforms must finally be joined into a strategy that demonstrates the added value of these reforms in the political debate. This is the only way to prepare a path towards a democratically legitimate further development of the EU and to establish an opposite pole to the currents of Euro-scepticism that now dominate public perceptions. As a driving force behind the economic policy reforms and a traditional proponent of supra-national integration, Germany is faced with the challenge of increasing the EU's effectiveness and legitimacy, while at the same time promoting cohesion within the Union. This two-sided approach to further constitutional development of the EU, however, requires a much greater level of commitment from national political elites to European policy issues in both the parliament and the general public.

¹³ Jan-Emmanuel De Neve, "The European Union? How Differentiated Integration Is Reshaping the EU", *Journal of European Integration* 29, no. 4 (2007): 503–521.

High Expenditures Require New Legitimation: Common Agricultural Policy and Cohesion Policy

Peter Becker / Bettina Rudloff

The European Union has already started to negotiate its fifth Financial Perspective, now named the Multi-annual Financial Framework (MFF). On 29 June 2011, the European Commission presented a proposal detailing how much money the EU shall spend in the seven years from 2013 to 2020, from whom it will receive that money and where it will go.¹ The MFF is the centrepiece of the European Union's budget policy and financial programming. It sets the maximum volume for the annual budgets and the main spending policies and thus defines Europe's policy priorities.

Currently the Common Agricultural Policy (CAP) and the European cohesion policy continue to be the EU's largest expenditure block totalling 80 per cent of the EU budget. In the face of the financial and economic crisis, these have therefore come under greater focus than ever before in negotiations over the future MFF.

Cohesion policy was last reformed in 2006. At that time, the orientation towards the European Growth and Job Strategy (the so-called Lisbon Strategy) and its economic and employment policy responsibilities served as the justification for structural support funds. Especially in the old, Western European member states these funds had been refocused at the new Lisbon Strategy-accordant objectives, especially to enhance European competitiveness, employability and economic growth. The last reforms of the CAP in 2003 and 2008 were initiated externally by specifications of the World Trade Organization (WTO) and internally by the Eastern expansion. They led to new substantiations and restructuring of the EU's agricultural expenditures. Within the traditionally dominant first pillar, the money was no longer used for production control, but instead rededicated for direct income transfers to European farmers. In addition, the second pillar for rural areas was expanded with a heterogeneous catalogue of environmental and regional policy responsi-

bilities; the priorities and instruments were adjusted to match the cohesion policy.²

While many previous reforms only adjusted existing structures, today both policy areas must be fundamentally newly justified: But what arguments can be found for huge quantities of public funds going to the Common Agricultural Policy and European cohesion policy? Welfare benefits only emerge when these expensive policies are addressing public goods. But which public goods are being produced and which market mechanism interference is needed in order to guarantee greater distributive justice and stable market conditions? Ultimately, only a sound explanation can justify the high levels of expense and legitimise the continuation of both policies.

The Players and Their Interests

Particularly since the budgets of the Common Agricultural Policy and the cohesion policy cover such immense volumes, distribution conflicts among the member states, EU bodies and interests groups arise. A major battle now looms not only between the old and new EU member states, that is, mainly between the West and East, but also for CAP between old member states with strong agricultural sectors and those with weaker ones.

CAP: Old Members as Major Beneficiaries

Farmers from the old EU-15 member states currently receive 82 per cent of the annual direct payments from the first pillar of the CAP, while the new member states of the EU-12 receive just 17 per cent.³ After

² Council Regulation (EC) No. 1698/2005 from 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

³ Jean-Christophe Bureau and Heinz-Peter Witzke (Project coordinators), *The Single Payment Scheme after 2013: New Approach – New Targets*, Study for the European Parliament (Brussels, 2010), 156.

¹ European Commission, *A Budget for Europe 2020*.

France, Germany is now the next largest recipient of payments from the CAP's first pillar, followed by Spain, Italy and Great Britain. This ranking is based on historical payments, which were generally particularly high for those products that were relevant to the founding states of the EU-6. A minor redistribution benefiting the new member states is already inherently underway through the phasing in of direct payments within the context of the current financial framework. In 2013, the new member states will be able to make direct payments to farmers at the same levels as the old member states – Bulgaria and Romania will follow suit in 2016.

A different paradigm is evident for the CAP's second pillar, which is meant to address structural measures and still has limited funding. This pillar also takes into account activities that are specially tailored to the new members: Poland is already the largest recipient, followed by Italy and Spain. Overall, compared with the first pillar, there is a considerably smaller disparity in payments to the EU 12 states and to the old members.

Cohesion Policy: Equal Distribution between East and West

Cohesion policy is also marked by intense conflicts over distribution. Within the current funding period, the available EUR 347 billion is roughly split in half between the old member states and the new. In total, 81 per cent of the funds are reserved for activities aimed at achieving convergence within the poorest regions, while 16 per cent is reserved for growth-oriented funding following the “regional competitiveness and employment” objective. Poland is currently the largest recipient in the ongoing funding period, with approximately EUR 60 billion. Germany is in fifth place, because the East German federal states are still classified within the highest funding category. This will no longer be the case for the next funding period 2014–2020. If the funding criteria remain unchanged, Germany would then be among the biggest losers.

The maximum funding for a single member state is currently capped with an absorption capacity, which now corresponds to four per cent of the respective gross domestic product (GDP). This means that GDP growth together with unchanged distribution rules will automatically result in an increase in the

maximum funding available to a member state.⁴ Beneficiaries within Central and Eastern Europe therefore reject a reform to these funding calculations (or consider, at most, adjustments in their favour), while net contributors like Germany point to the explosive increase foreseeable in terms of funding requirements from the Structural Funds.

Reform Objective: Providing Public Goods at the Appropriate Level

Long-term objectives for reform should be based on the answer to the fundamental question of whether CAP and cohesion policy provide a public function and if both policies can prevent market failure. These are the only two cases in which welfare benefits can be generated through public policy and payments – political legitimacy is derived in this way from economic gains. At the same time, there is tremendous pressure for higher efficiency even in the case of justifiable public-sector functions, which can result in shiftings among existing spending categories.

Providing public-sector functions does not necessarily directly result in higher expenditures. Aside from financial incentives, other forms of public intervention are also thinkable and possible, for example, additional regulation, information activities or fines and financial sanctions. Furthermore, the EU is not necessarily the best decision-making level for assuming these responsibilities. The member states or the regions might also be potential levels.

Any sort of reform – even an adjustment towards more public goods – will alter the current contributions model. It is inevitable that this will also carry consequences in terms of the awareness and readiness of individual actors for reform.

CAP: From Distribution towards Public Goods

Within the agricultural sector, foodstuffs are to be provided as private goods, unless inhibited by an obvious market failure. In such cases, regulatory measures such as promoting competition or market information systems should be used to provide mar-

⁴ Cf. Centre for European Economic Research (ZEW), *Zukunft der EU-Strukturpolitik*, Report (Mannheim, 13 February 2009), 131ff. According to this report, absorption capacities were exceeded during the ongoing support period 2007–2013 in nine of the ten Central and Eastern European states.

ket participants with incentives to make the correct production decisions and therefore restart the market management mechanisms. The public-sector functions under the purview of the agricultural sector could encompass climate protection, soil and groundwater protection. Compensating farmers for providing public environmental goods is justified if their services exceed certain levels to be defined as standard.

In addition to providing public goods, government policy classically is in charge of the public task of distribution. This refers to the distribution of welfare – and therefore revenue – among the different types of agricultural producers, between the agricultural sector and other sectors, among member states, and even globally. This task always served either as an incentive or as an obstacle for reforming the CAP. Redistribution in favour of the agricultural sector is still a decisive objective of CAP as called for in Article 39 of the TFEU “to ensure a fair standard of living for farmers”. The current system of direct payments was originally based on the concept of compensating the negative income effects of previous reforms. In terms of inter-regional distribution among member states, the CAP has functioned as a mechanism for hidden redistribution, benefiting member states with a large agricultural sector. For global distribution, the CAP has thus far had more of a negative impact insofar as it displaced less competitive states from the global market.

With the Treaty of Lisbon, the existing output legitimation for the CAP, which had continually improved through increases in economic efficiency, was supplemented by input legitimisation. With the European Parliament (EP) exercising codecision for the first time in the legislative procedure, a step had been taken towards increased people’s participation.

Due to considerable market volatility for agricultural products, the public good of stabilising the agricultural markets recently came to the fore. Over the course of the global drawdown in protectionist measures, there has been increased action by market forces that, for their part, follow the production cycles. The resulting price fluctuations often provide false incentives to increase production and carry the consequence of a loss of welfare for the whole economy.

In principle, agricultural policy interventions can therefore be legitimised through public goods. But is the EU the correct decision-making level for this? Asking this question takes on increasing urgency as the old logic for this centrepiece of income support

rapidly loses its applicability. In accordance with EU internal market logic – namely the avoidance of market distortions through uniform pricing – the old intervention prices could clearly be classified within the EU’s areas of responsibility. Since the new direct payments, however, no longer serve the purpose of price support, but are instead politically marketed in the sense of pure transfers of revenue, they can consequently also be interpreted as socio-political transfers to farmers. Following the public goods approach though, the question still remains of whether such social transfers are paid under the EU’s responsibility or under member states’ instead.

Cohesion Policy: Between Redistribution and Public Goods

The redistribution responsibilities of the EU’s cohesion policy and the objective of cohesion as formulated in Article 174 of the TFEU are the most important starting points for efforts towards intra-Community solidarity. The increased orientation towards the EU growth strategy “Europe 2020”, however, throws into doubt this classic redistribution function. Basically there are doubts over whether the EU is the appropriate decision-making level for deciding on public-sector functions like funding for growth and employment-oriented public goods within the educational policy sector, funding for research, or employment and social policy. Doubts also exist as to whether the EU budget is the best instrument for disputing these responsibilities. The division of powers within the Treaty of Lisbon classifies the policy fields of education, research, social affairs and employment as shared competences – in accordance with the subsidiarity principle, member states are first called on to take appropriate measures in these policy fields. The question has hardly been raised in connection with inter-regional co-operation for building up infrastructure across Europe – but since the EU has also taken on and financed national and, in federal states, regional responsibilities, voices raising this question have become correspondingly louder. Furthermore, the joint management of a European economic modernisation process is not necessarily dependent on large European subsidy funds as an instrument. Consideration also needs to be given to the competition policy guidelines. Without a doubt, the orientation towards the “Europe 2020” strategy requires better co-ordination of funding priorities among the various funds

and close co-ordination with the instruments of the “Europe 2020” strategy⁵ as well as the participating levels. While the European Commission and the EP aspire to a more binding strategic management of the funding programmes within the framework of EU cohesion policy, the member states and their regions wish to minimise the influence and input of the EU Commission in order to expand the limits on their own scope for action and funding.

The same argument is true for the new approach of enhanced conditionality. In times of scarce funds the European Commission tries to introduce a more result-oriented approach looking for more efficiency in European cohesion policy measures. However, this approach means that the policy outcome will have to be measured against agreed targets and fixed objectives. This, however, will lead to additional monitoring and evaluation measures and thus conditionality of European cohesion policy might lead a more important supervising role of the European Commission. Thus, this new approach will not correspond to the traditional instrument of strengthening the legitimacy of cohesion policy by handing over the responsibility for good policy formation and efficient implementation to national and regional representatives.

Options for Action: Which Public Goods?

The European Commission just presented its recommended initiatives for reform within the two policy fields in October 2011 shortly after having issued its recommendation for the next multi-annual financial framework in July 2011. These legislation proposals will determine the negotiations on the substance of the future design of CAP and cohesion policy which have to be finished by the autumn of 2012 at the latest. For the first time, the EP will exercise its codecision procedure as described in the Treaty of Lisbon.

CAP: Current Reform Proposals with More Public Goods

The proposals on the future design of the CAP started already in November 2010. The Commission introduced three reform options, which follow the logic of

⁵ The European Commission speaks of a “strategic programme planning approach” and of “development and innovation partnerships” with the regions.

public-sector functions. It stressed to varying degrees that the payments should be limited only to public goods provided by the agricultural sector.⁶ In general, Option 1 emphasises the distribution function by seeking to equalise direct payments among the member states. Option 2 recommends a shift in the distribution to more public goods, especially ecological goods, thus a “greening” of the CAP. Accordingly a basic direct payment similar to the current model should be supplemented with regional payments and payments for particular environmental services. The third and most radical option proposes that exclusively public goods should be paid. In this case, what is currently the first pillar would be entirely removed and replaced with remuneration exclusively for environmental services. What is currently the second pillar of the CAP would focus on aspects related to climate and environment.

The Commission, however, opted in its legislative proposal from October 2011 for a defensive combination of Option 1 and 2, i.e. a bit of greening and a bit of harmonisation. Already the proposal on the MFF from June 2011 included cuts to the budgets of both the first and second pillars. The instrument of direct payments was proposed to be ecologically conditioned, as automatic compensation instruments may lead to harmonisation of direct payments across member states and a degressive reduction was foreseen for farms receiving huge payments.

The public good-orientation as such may not lead to large redistributive effects, but a cut to the budget will. The new members, in particular, will try to minimise their current disadvantage within the first pillar. The cornerstone for the negotiations is provided by the status quo: the final year of the current financial framework, 2013. The funds for the first pillar are also safeguarded if there is a failure to arrive at a budget compromise. In that case, this budget would continue for the time being until 2016, in contrast to the second pillar or the cohesion policy.⁷ Just as the national ceiling on direct payments has been oriented towards

⁶ European Commission, *Die GAP bis 2020: Nahrungsmittel, natürliche Ressourcen und ländliche Gebiete – die künftigen Herausforderungen*, KOM(2010) 672, 18 November 2010.

⁷ Annex VIII of the Council Regulation (EC) No. 73/2009 from 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No. 1290/2005, (EC) No. 247/2006, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003.

historical production levels, it is conceivable that the respective member state contributions could be bound to producing public goods. If one uses the proportion of ecological farming as an allocation criterion, estimates point to France and Germany losing about three percentage points compared with the current allocation of funds.⁸ Overall, the budget share for the old member states would still increase, while the new member states would lose up to two percentage points. By also taking into account the budget proposals from June, then new member states may gain especially through the automatic harmonisation while recent beneficiaries like Germany may lose.⁹

What sort of reallocation, however, would involve a long-term concentration of payments towards public environmental goods? A consistent implementation of the public goods-approach would have constituted a reform even extending beyond the most radical reform options – namely a complete dissolution of the existing sector policy. If the focus is really solely on paying for providing public goods, the option would have meant opening up the agricultural sector to any market player able to fulfil these public functions. If the agricultural sector is better at providing public-sector functions than its competitors, or if it can provide a greater range of such functions, it will rise above the competition. This would also correspond with the WTO maxim of not allowing sector subsidies, which are currently possible due to an exception for agricultural subsidies. Subsequently, the second pillar would likewise need to be entirely opened up and could ultimately be transferred into the cohesion policy. An argument against this radical breaking up of the specific sectoral policy is that it would cause a total loss of hitherto known returns to the member states, or as the case may be, payoffs to their farmers. Keeping in mind that all European budget negotiations are still dominated by net-payments, it therefore seems unlikely that the Union and its member states will opt for this radical reform. Furthermore, this solution could lead to negative effects for public goods by potentially rendering agriculture across entire regions

unprofitable – with negative environmental effects for sensitive natural regions, which require extensive management and landscape conservation. It therefore makes sense to focus on by-products that are generated only by farmers and their agricultural activities. Synergies can also be created since the agricultural sector directly influences a multitude of environmental resources and lessons can be shared drawn from what farmers have learned from past environmental activities.

Cohesion Policy: Today's Beneficiaries Gain through Public Goods

In the current debate to reform European cohesion policy the European Commission emphasised its objective to closely link cohesion policy measures to the EU growth strategy “Europe 2020” and thus to promote a dependable and sufficient provisioning of public goods.¹⁰ The concentration exclusively on European public-sector functions, however, carries radical consequences for cohesion policy. The relativisation of the traditional distribution function of the policy weakens the principle of solidarity with the poorest regions and member states in the EU and that support with European structural funds is reserved for them. This traditional meaning of cohesion policy, the focus on helping and providing European solidarity, would mean a huge shift of funds to the Central and Eastern European countries (CEECs). But this clashes with the interests of the old EU member states. This is particularly true since it is apparent in the new member states that there are difficulties in absorbing these huge funds and developing suitable spending projects. Simply increasing funding is therefore not an option. Instead the cohesion policy needs to be adapted to the new framework conditions of the expanded EU, which moreover is stuck in a deep economic, unemployment and debt crisis.

Furthermore, the EU institutions are also striving for a greater degree of visibility within all member states and regions by using their leading role in the funding programmes and measures. By focusing on strategic guidance and the specification of objectives for all of Europe, the European Commission has tried to balance out the conflicting objectives in the co-

⁸ Bureau and Witzke (Project coordinators), *The Single Payment Scheme after 2013* (see note 3), 156; Felice Adinolfi, Jonathan Little and Albert Massot, *The CAP towards 2020: Possible Scenarios for the Reallocation of the Budget for Direct Payments*, Note for the European Parliament (Brussels, 2011).

⁹ EU Kommission, *Ein Haushalt für Europa 2020*, Mitteilung der Kommission an das Europäische Parlament, den Rat, den Europäischen Wirtschafts- und Sozialausschuss und den Ausschuss der Regionen (Brussels, June 2011), 15ff.

¹⁰ European Commission, *In Europas Zukunft investieren, Fünfter Bericht über den wirtschaftlichen, sozialen und territorialen Zusammenhalt* (Luxembourg, November 2010).

hesion policy, which are attributable to the subsidiarity principle. In doing so, it relies on the greatest possible amount of freedom in implementation on the regional level. At the same time, however, the new attempts to introduce tighter controls and evaluations in order to increase efficiency will hamper this freedom of implementation. In times of budget austerity the best way to convince all actors that European cohesion policy is able to generate European added value will be to strive for more efficient policy-making and to introduce stricter conditionality.

There are still conflicting objectives between strategic management on the EU level and decentralised implementation within the regions and the desire of states and regions for autonomy and flexibility when implementing the multi-annual programmes. On the other hand, the wish to be able to rapidly adapt regional funding programmes entails the danger of politicisation – in the case of regime or leadership change within a member state or a region, different funding priorities could be set, which may be less oriented towards long-term growth objectives and more towards short-term benefit. Conversely, the multi-annual programmes (with their long preparatory phases) require a high level of predictive capacity in order to set the correct funding priorities. This causes a greater adherence to proven programmes and to funding priorities that are as flexible and manageable as possible – the targeted precision in the operational programmes decreases as a consequence.

If a balancing of these contradictory objectives is to be supported by all actors in the regions, member states and EU bodies, a pragmatic reform of the cohesion policy is required, which should be focused for the time being on implementation. An emphasis on conditionality for funding activities, a clear strategic direction for the programmes, binding target agreements and an improved results-based orientation of all measures will be the elements that can contribute in small ways to a reform.

Public Goods as Part of the German Position

The recent reactions of the German federal government to the Commission's budget proposals indicate that rational welfare arguments and the public goods approach are dominated by fiscal calculations and hence budgetary implications for national revenues. Explicit criticism against the CAP reform proposals was declared already by three German State Ministers,

who rejected especially the cut to the budget.¹¹ However, if there is a failure to arrive at a budget compromise, the status quo for the first pillar can still be safely defended – this budget would continue for the time being until 2016, in contrast to the second pillar or the cohesion policy.

Therefore the idea of public goods only seems to be supported under the idea of a constant and not a reduced budget.

CAP: More Public Goods by Germany as Major Beneficiary of CAP

For Germany it makes fiscal sense to avoid a reform and to minimise the associated losses that could be expected. The Federal Government is bolstered in this position by its *de facto* guarantee of payments to the first pillar until 2016. With its position paper from mid-February 2011, it has also followed Option 2 as expressed in the Commission communication. At the same time, Germany has clearly indicated that it intends to achieve a better distribution of funds to the benefit of the old member states. While this cautious Option 2 increases welfare-enhancing remuneration for the provisioning of public goods, at the same time there are many unclear points specifically associated with the concrete arrangements with regard to the legislative proposal table by the European Commission. A precise estimate of implementation costs is still outstanding and therefore necessary and could result in the exclusive orientation towards public goods. In addition, as a major net contributor, Germany can generally assert the argument for public goods in the context of negotiations over other expenditure areas. Last but not least, public acceptance for providing particularly high levels of support to a certain business sector like agriculture may increase if the corresponding public goods are clearly visible.

The German government should back a closer link of the second pillar of CAP to support for rural areas with cohesion policy. In this way, the European Agricultural Fund for Rural Development (EAFRD) could even be transferred into cohesion policy – many of the individual activities are already identical anyway.

¹¹ *Gemeinsame Europäische Agrarpolitik – nachhaltig ausrichten!* 20-Punkte-Programm der Agrarministerin und Agrarminister Baden-Württembergs, Nordrhein-Westfalens und von Rheinland-Pfalz zur Gemeinsamen Agrarpolitik nach 2013, 7 September 2011.

If public environmental goods come increasingly under the focus of the CAP, it should be kept in mind which international impacts such support could carry. Under the current conditions set by the WTO, ecologically-justified payments and tailor-made regional payments to farmers are allowed. Since the EU has more than met the reductions required by the WTO, it can currently even increase its subsidies for ecological purposes. Every form of subsidy – even if justified by public services – does, however, increase the competitiveness of one state to the detriment of other, poorer countries. All the more so, if an increased orientation towards the environment is accompanied by non-tariff measures defining, for example, higher environmental standards as an import condition. Agricultural assistance needs to be adapted for candidate countries in order to bring them in line with these new conditions. Measures also need to be taken for weaker trade partners in order to enable them to fulfil import conditions, which could accompany a reform.

Cohesion Policy: More Efficiency and New Public Responsibilities

With the cohesion policy – in contrast to the CAP – Germany cannot be interested in a continuation of the status quo. For one thing, there will be a considerable drop in EU support if the East German federal states are no longer classified within the highest funding objective. As a result, the German federal government and the East German states are calling for an appropriate transitional arrangement and a “safety net” to protect them from radical cuts and an abrupt termination of support from the EU structural funds. The Commission’s proposal of creating a third aid objective for transitional regions, however, is not supported by the German federal government. Experience shows that creating such objectives results in long-term support and raises the risk of free-rider effects.

Furthermore, the status quo and the current rules for distributing the funds among member states as well as the maximum absorption cap will lead to exploding inflows of funds. Hereby Central and Eastern European states will benefit while old member states face losses. For the countries bordering the East German states, this would sound the bell on a new round of competition with their Western neighbours over business locations, job creation, and the fight against emigration. In addition, misallocations would be mapped out, which have led in the past, for example,

to the construction of EU-financed infrastructural ruins. In order to avoid such situations, there needs to be rigorous monitoring of whether the aid activities have a long-term impact. Those measures which cannot deliver the expected policy outcome should be abolished and the funds should flow back into the EU budget.

In general, a reform of both dominant spending blocks of the European budget will only be possible through a new definition of funding priorities and policy areas that guarantee better returns and a higher European added value, since the Federal Government as well as other net contributors in the EU call for a freeze on the volume of the MFF Germany’s insistence on supporting the entirety of Europe, aligned with the objectives of the “Europe 2020” strategy, is understandable for net contributors interested in high levels of returns. In principle, the Federal Government should therefore also support the EU Commission’s attempts to orient cohesion policy in line with the objectives of the “Europe 2020” strategy, thereby ensuring that the funds are used more efficiently and more effectively with regard to conditionality and quality. Ultimately this can also lead to greater acceptance within society for high expenditures – particularly during an economic and financial crisis.

Overcoming Strategic Ambivalence: Options for the Future Development of the Common Security and Defence Policy

Ronja Kempin / Nicolai von Ondarza / Marco Overhaus

In the European Union's (EU) Common Security and Defence Policy (CSDP), its member states pursue the objective of contributing to peacekeeping, conflict prevention and international security through military and civilian missions. The ultimate goal of creating a common defence anchored within the EU treaty furthermore emphasises the aim to bring about a convergence of national security, defence and armament policies in order to create a basis for common action. Created in 1999, CSDP is a comparatively young EU policy field that was only brought about after the lessons from the Balkan wars demonstrated that an effective foreign policy also requires a capability for autonomous and, if necessary, robust action. Since then CSDP has developed into a dynamic EU policy area as member states agreed step-by-step on catalogues of military and civilian capabilities, adopted a joint European Security Strategy and launched numerous civilian and military – as well as integrated – missions and operations.

These advances were made possible because CSDP has always been characterised by a high degree of strategic ambivalence in terms of security policy issues. This ambivalence allowed all member states – with the exception of Denmark, which has an opt-out from CSDP – to take part in the joint project despite substantial differences in their national security policies. The strategic ambivalence in the security and defence policy was therefore initially a definite “strength” which considerably advanced the development of this policy area. In the meantime, however, it has become a burden – and even a risk – for progress in CSDP because early promises on capability development or international security policy could not be fulfilled due to severe and consistent differences in strategic preferences between groups of member states. In particular the more ambitious member states such as France and the United Kingdom were disappointed over a lack of progress with European co-operation in security and defence. As a consequence they have increasingly turned towards bilateral or regional forms of co-operation that make little reference to CSDP. At the same time, projects that would substantially further

this policy area, such as the establishment of a shared EU operational headquarters, have been blocked for years. This threatens to marginalise CSDP as an effective framework for aligning national security and defence policies and to weaken the EU as an international player.

Strategic Ambivalence as the Key Challenge Facing the CSDP

The strategic ambivalence is reflected in three tightly interwoven dimensions. On the one hand, CSDP is characterised by a lack of agreement on the question of what aims EU member states can and want to achieve jointly in security and defence policy. The other two dimensions in which EU member states display a strong strategic ambivalence are the provision of civilian and military capabilities and the creation of structures for joint operational planning and conduct.

The CSDP's operational spectrum is defined by the “Petersberg Tasks” (Article 43 of the Treaty of the European Union). These tasks range from “joint disarmament operations”, “humanitarian and rescue tasks” over “conflict prevention and peace-keeping” to “tasks of combat forces in crisis management”, including high-level military peace-making operations. In December 2008, the EU member states further specified the CSDP's “level of ambition” with a declaration about strengthening the capabilities of the EU. Formally they agreed that the EU needs to be able to execute one large scale or a multiple number of smaller military operations in parallel as well as up to a dozen civilian operations.¹ In practice, however, national

¹ More specifically, the member states revived the Helsinki Headline Goal described in the following paragraph. In addition, the Union should be able to plan and send a total of 19 missions and operations within the civilian and military spectrum. The spectrum includes stabilisation operations with civilian and military components, civilian police and rule of law missions as well as evacuation operations, cf. Council of the European Union, *Declaration on Strengthening Capa-*

capitals continue to have different interpretations of the spectrum of EU responsibilities, particularly in regard to the question of the extent to which the EU should also execute higher intensity military operations independently of NATO and whether the focus should be on military or civilian operations.²

Based on fears of exposing differences in national security and defence policy priorities, a revision of the European Security Strategy (ESS) which had been proposed by a number of member states was put off for the time being in late 2008. The EU partners continue to have great difficulties in coming to agreement over which crises the Union should take action in, and which objectives it wishes to achieve with its operative commitments. The governments therefore avoid the dispute over strategic priorities on the European level. In consequence, the readiness of member states to become operationally active within the context of CSDP has diminished noticeably. While the initial operational phase of CSDP in the years of 2003–2008 was marked by the launching of three to four new operations on average each year, this tempo has considerably slowed down. In 2009 no new EU operations or missions were started, while the only new engagement in 2010 was the small-scale training mission for Somali security forces. In 2011 the EU made plans public for a military operation in Libya in order to support humanitarian aid. However, due to resistance from member states and a lack of co-ordination with the UN, EUFOR Libya never materialized.

Secondly, the strategic ambivalence is reflected in the lack of credible capability commitments to CSDP. For its military and civilian action, the EU is dependent on voluntary contributions by its member states. These capabilities have been spelled out in a series of non-binding catalogues. The Helsinki Headline Goal from 1999 focuses on enabling the EU to initiate a military deployment on a scale of up to 60,000 soldiers within 60 days across the entire Petersberg spectrum. These guidelines were based on NATO's operations in Bosnia and Kosovo with the goal of enabling the EU to become a credible actor in crisis management in situations where direct American support is not absent. To improve the quality of forces made available to the EU, in 2004 the Headline Goal 2010 was

bilities (Brussels, 11 December 2008), www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/esdp/104676.pdf.

² Cf. Marco Overhaus, "Zwischen Kooperation und Konkurrenz: NATO und EU als sicherheitspolitische Akteure", in Johannes Varwick (ed.), *Sicherheitspolitik – Eine Einführung* (Schwalbach, 2009), 95–122.

passed, which concentrated on three concrete projects: the creation of rapidly deployable combat forces – the so-called EU Battlegroups – improvements to strategic air transport and the establishment of a European Defence Agency. In addition, the EU defined similar quantitative and qualitative objectives for the civilian framework with its Civilian Headline Goals 2008 and 2010.

To date, however, the objectives enshrined in these catalogues have not been achieved. In order to preserve national sovereignty and enable all member states to participate in CSDP, the implementation of the capability catalogues has been based on the principle of voluntary action. Most of the military and civilian forces committed to the EU therefore exist only on paper and are not available for EU operations. Because only a small number of member states have shown readiness to provide additional funds for the necessary investments it has so far been impossible to overcome qualitative deficits. To the contrary, cuts to national defence budgets in the wake of the financial crisis have thus far been hardly co-ordinated among member states within the European framework, and therefore further aggravated these inadequacies. As a result, the formally reported resources are seldom on hand when needed. Disappointed with this lack of progress, the two EU member states with the greatest military capabilities, France and the UK, in November 2010 signed a treaty on bilateral co-operation in security and defence. This was a clear signal that they expect their partners to co-operate more effectively on security and defence within the EU framework, or they will increasingly look towards bilateral co-operation.³

Finally, CSDP's strategic ambivalence also relates to its planning and decision-making structures. There continues to be a lack of consensus among member states about whether the EU should establish a permanent military or civilian-military headquarters. This indecision is tightly linked to the continued ambivalence over the relationship between the EU and NATO. A group of states led by Great Britain insists that duplication of structures must be avoided and that either the existing national or the operational headquarters of NATO, SHAPE, should be used for the planning and conducting of larger military opera-

³ Ronja Kempin and Nicolai von Ondarza, *CSDP on the Brink? The Importance of Bringing France and the United Kingdom Back In*, SWP Comments 13/2011 (Berlin: Stiftung Wissenschaft und Politik, May 2011).

tions. At the same time, France, the Benelux states, Poland and Germany continue to be proponents of the creation of an independent EU headquarters. In consequence, the EU is currently not able to plan and conduct large-scale military operations on its own.

Options for Further Developing the CSDP

Bilateral and multilateral approaches to security and defence policy co-operation – as expressed, for example, in the 2010 French/British defence pact or in the concept of establishing a “Nordic Alliance” – puts the aims of CSDP into question. Will the member states stick to the aims stated in the Lisbon Treaty and make real use of those instruments which the framework of CSDP provides? Or do they abandon the goal of using the EU’s common institutional framework to jointly deal with threats to European and international security?

If the member states decide in favour of a comprehensive and qualitative development of CSDP, far-reaching reforms and considerable efforts towards strategic consolidation will be necessary. First and foremost, such a strategic consolidation requires a tight matching of realistic objectives to actual (i.e. credible and binding) capabilities within the civilian and military sector. Depending on the degree to which the member states are committed to overcoming the ambivalence in the dimensions of strategy, capacity and operations, CSDP can become a framework for joint action – or it will further erode.

Three scenarios are currently plausible for the future development of CSDP. In the first scenario, the member states determinedly put an end to the stagnation within CSDP and reach consensus on further steps towards integration. In this scenario, overcoming the strategic ambivalence takes precedent by first agreeing on a comprehensive strategic white paper, which draws a clear and credible link between security and defence policy objectives on the one hand, and the available resources, on the other. In addition, member states would need to focus on binding measures to jointly increase the EU’s civilian and military capabilities. Finally, the EU states would need to agree on a greater sharing of the costs of joint operations. This ambitious reform agenda is based on the participation of all EU member states. In contrast, the second scenario follows more flexible forms of co-operation among at least some member states on the basis of the instrument of permanent structured co-operation as

introduced by the Treaty of Lisbon. A common strategic understanding would still be a basic prerequisite for this scenario to become reality, even if it would be less comprehensive and detailed than a formal white paper on defence. If these demands are not rigorously addressed, the third scenario will prevail, i.e. adherence to the status quo and presumably a corresponding acceleration in bilateral and multilateral security and defence policy initiatives outside of the CSDP framework. Since France and Great Britain have already established tighter co-operation outside the EU framework, the future positioning of Germany as a third “leading power” will be decisive for the path that CSDP takes. The implications of all three scenarios are presented in the following sections.

Comprehensive Reform Agenda

If security and defence policy co-operation is to be substantially deepened within the context of CSDP, the EU partners must create a European security and defence strategy, dedicate themselves to greater integration within the areas of military and civilian capabilities and commit themselves to expand the joint financing of CSDP missions and operations.

The development of a comprehensive strategic framework for CSDP requires the EU partners to reach consensus on the scope of the civilian and military forces that the EU could collectively provide for crisis management. They would also need to reach agreement on how these forces would work together in specific situations, what sorts of operations they should conduct simultaneously, and which geographic or functional aspects should take priority. The objective of this process would therefore not just be to reformulate the ESS, but rather to achieve real strategic direction, which would be comparable in terms of scope and reach to security and defence policy documents such as France’s *Livre Blanc*. This sort of comprehensive White Paper would address political and military as well as civilian and institutional reforms. These reforms would in turn be directed towards establishing tight and credible linkages between the strategic objectives on the one hand, and the military and civilian capabilities provided by the EU member states, on the other.⁴ The process for drafting such a strategy

⁴ Ronja Kempin, *Modernisierung der französischen Sicherheits- und Verteidigungspolitik: Das Weißbuch “Verteidigung und nationale Sicherheit” und seine Umsetzung*, SWP-Aktuell 68/2008 (Berlin:

document should be closely associated with the EU structures – for example, through a working group chaired by the High Representative and including representatives from the member states and the European Commission.⁵

To be sure, the necessary thorough and open analysis of past CSDP successes and failures would run the risk of revealing the strategic ambivalence which features so strongly in this policy area. It would, however, also provide perspectives for a CSDP that would be more coherent and therefore also more actionable over the long-term.⁶ It would be essential to this process that there be better dovetailing in the development of civilian and military capabilities.

The process of improving, coupling and integrating the military and civilian capabilities of the member states would be organised within the EU structures, whereby the focus of the co-ordination would be located in Brussels and the process would run in a “top-down” manner. Accordingly, the civilian and military capability objectives of EU member states would not only be jointly defined within CSDP structures. Moreover, the process would include detailed milestones assessed on an annual basis. This approach could be further developed into a common defence planning process in a step-by-step fashion. Larger capability gaps would have to be addressed by multi-national programmes. An example of this approach is the planned European Air Transport Fleet, which aims to reduce existing deficits in strategic air transport faced by the majority of the EU member states. A “top-down” process of this sort, with regular evaluations and management by EU structures, would carry a considerably greater degree of political commitment without limiting national sovereignty, particularly on the question of whether and how to actually deploy the capacities in operations.

The CSDP’s operative component would be strengthened if the EU member states could also agree on joint financing for military operations. To date, the

CSDP has followed the principle of “costs lie where they fall” in terms of financing, according to which member states have to cover the costs of their military forces themselves. Only a very limited level of “shared costs” – generally around 10 per cent of the total costs – is defrayed for military operations of all the member states via the so-called Athena mechanism. This, in turn, is based on a metric derived from the Gross National Income (GNI) of the member states. This is equally true for civilian operations, where member states have to provide the necessary forces, though the small share of common costs is financed from the EU budget.⁷ The one-sided burden on commitment-ready member states paves the way for freeloaders and particularly limits the actual operational readiness of bodies like the EU Battlegroups, since resorting to these units would require a small group of member states to carry a disproportionate part of the financial burden.⁸ A substantial expansion of shared financing would be possible without a change to the EU treaties. Then all of the member states would have to fully share the political *and* the financial responsibility for CSDP operations.

Whether or not this scenario is politically feasible depends on the readiness of all 26 EU members which take part in CSDP to purposefully implement the necessary reforms and curtail their independence in one of the core areas of national sovereignty. The more ambitious member states in terms of security policy, including France and Great Britain in particular, will only play their part in the reform efforts if there is a realistic outlook for EU security and defence policy becoming more effective, for the burdens to be more evenly distributed, and if CSDP leads to more influence of member states over international developments. The associated prerequisite is substantial progress in building up common military and civilian capacities. Considerable leadership efforts are required of Germany in this case. Not only would the Federal Republic have to bear the largest portion of the shared costs for operations, approximately 20 per cent according to the current GNI metric. It would also have to make tremendous efforts in terms of mediation and persuasion in acting as a link between the smaller member states on the one hand, and France and Great Britain on the other. In return, the Federal Republic

Stiftung Wissenschaft und Politik, August 2008).

⁵ On the creation of the European Security Strategy, see Alyson J. K. Bailes, *The European Security Strategy. An Evolutionary History*, SIPRI Policy Paper 10 (Solna: SIPRI, February 2005).

⁶ Sven Biscop, “Odd Couple or Dynamic Duo? The EU and Strategy in Times of Crisis” *European Foreign Affairs Review* 14, no. 3 (2009): 367–384; Alexandra Jonas and Nicolai von Ondarza, *Desirable, but not Feasible? An EU White Paper and the Compatibility of British, French and German Security and Defence Policies*, Conference Paper Presented at the ECPR Fifth Pan-European Conference in Porto, 2010.

⁷ David Scannell, “Financing ESDP Military Operations”, *European Foreign Affairs Review* 9, no. 4 (2004): 529–549.

⁸ Gustav Lindstrom, *Enter the EU Battlegroups*, Chaillot Paper 97 (Paris: EU Institute for Security Studies, February 2007).

stands to gain a disproportionate share of the political benefits from a strengthening of CSDP, since Germany's security policy continues to be particularly well incorporated into Europe's multinational context.

More Flexibility

A second scenario is the continuation and intensification of existing initiatives to develop capabilities and strategic priorities within the framework of CSDP with an increased element of flexibility within the EU structures. Meeting in Ghent in September 2010, EU defence ministers discussed specific steps towards closer co-ordination and more flexible co-operation among individual EU members in the area of developing military capabilities. With this purpose in mind, by mid-2011 all of the member states had to conduct analyses on the following topics: How to increase the interoperability of national capabilities, which capabilities can potentially be shared among member states, and in which areas are member states prepared to accept dependencies in the form of a division of duties and pooling of resources. Based on these analyses, the EU's Political and Security Committee, in which the member states are represented at ambassadorial level, shall prepare a progress report in the second half of 2011.

The option of creating a Permanent Structured Co-operation in Defence (PSCD), as laid out in the Treaty of Lisbon, would be particularly well-suited to carry this process forward. PSC makes it possible for those member states which fulfil more ambitious criteria with regard to military capabilities and wish to enter into mutual obligations with a view towards "most demanding missions" to co-operate over the long term. Nearly two years after the Lisbon Treaty entered into force, however, the member states have still not resorted to the PSC instrument, because they have not yet been able to agree on clear qualitative criteria according to which PSCD participation should be decided. Furthermore, it is problematic that the PSCD is solely limited to military capabilities and excludes the civilian side of CSDP.⁹ In regard to the expectations raised by the Ghent process, the PSCD could finally bear up to the task it was originally set up for, by offering the member states a platform for

flexible co-operation within the EU structures. It should now be expanded to include the civilian components of crisis management. In this way, the PSCD would not solely be an instrument of the most militarily potent states, since the capacity to deploy, for example, police forces, constabulary-like units or constitutional experts could compensate for a (intentionally) limited military commitment.¹⁰ This would also counteract the risk of a European military core developing within the PSCD.

This "bottom-up" approach to capability development also needs to be embedded by member states into a process of strategic prioritisation of EU foreign, security and defence policy. Following the great difficulty in reaching agreement over even the very limited Report on the Implementation of the European Security Strategy in 2008, the Union has pursued a step-by-step development of strategies dealing with individual topics. In this manner, for example, the EU set the priorities for dealing with its strategic partners and drafted guidelines for reforming the security sector in non-EU states as well as the disarmament, demobilisation and reintegration of combatants in conflict areas. The next item on the agenda would be the formulation of corresponding guidelines for CSDP, particularly in respect to objectives and capability development. Although the European Council is currently overburdened with the Euro crisis and the debate over the reform of economic governance, the outcomes of the Ghent Initiative provide a good opportunity for also initiating this "small strategy" approach for CSDP.

Such a step would considerably bolster the prospects for success of this second scenario. Because it only requires the co-operation of "willing" member states, it is politically much easier to implement than the more ambitious first scenario, which includes all the EU member states. Nevertheless, in order for the flexible co-operation described here to be successful, a "critical mass" of member states – including France, Great Britain and Germany – needs to be assembled. It also holds true for this option that the shared European framework for action must open up prospects for increased effectiveness, fairer burden-sharing and greater influence within international politics. Within this scenario, Germany could take on a co-ordinating and leadership role, forging links with partners like

⁹ Sven Biscop, *Permanent Structured Cooperation and the Future of ESDP: Transformation and Integration* (Brussels: Egmont – Royal Institute for International Relations, September 2008), 5.

¹⁰ Christian Moelling, *Ständige Strukturierte Zusammenarbeit in der EU-Sicherheitspolitik. Auswirkungen des Lissabon-Vertrags auf die Entwicklung von Fähigkeiten und die Rüstungskoooperation in der EU*, SWP-Aktuell 13/2010 (Berlin: Stiftung Wissenschaft und Politik, February 2010), 4.

Poland and Sweden as well as smaller states in Central and Eastern Europe.

Continuing with the Status Quo

The third scenario constitutes a continuation of the status quo, that is, a largely non-binding process of bundling and developing capabilities in line with the ambivalent catalogue of strategic CSDP objectives existing today. This would likely lead to an increase in bilateral and multilateral security and defence policy co-operation outside the EU framework. For member states like France and Great Britain, which follow similar security policy ambitions and objectives, this sort of development carries the advantage of enabling faster and potentially more effective action in certain situations. As with Libya, they do not need to wait on approval from all 27 member states.

Over the short and medium term, this sort of process would not spell the end of CSDP, as the EU continues to be able to execute smaller and/or time-limited crisis management operations. In the long term, however, without a new political impulse, sight will increasingly be lost of the objectives defined in the EU treaty, and there is a real risk of the CSDP falling apart. The continuation of the status quo will not lead to a successive convergence, but rather to a drifting apart of the EU member states over security and defence policy issues. For Germany, over the short term this development would require the lowest level of political and financial effort. Over the longer term, however, Berlin in particular would experience a considerable loss of influence as France and Great Britain slowly decouple from the CSDP framework. This scenario is especially risky in political terms if a situation arises in which forces of individual member states are deployed on a mission that does not meet with consensus from the EU 27. During the March 2011 military intervention in Libya, French-British co-operation already reached an operative dimension, consequently marginalising the EU, which was split over the issue of military action. If this trend continues unchecked, the EU's CSDP and CFSP structures will be severely damaged as a political bracket for its member states.

Germany's Role in Further Shaping the CSDP

Currently CSDP is moving towards the third scenario. In order to stem the erosion of member state co-oper-

ation on security and defence policy within the EU framework, it is vital that Germany acts in a decisive manner. Due to its basic foreign and European policy orientation in favour of integration as well as its importance in terms of economic and security policy, the German government has played a crucial and constructive role in developing the EU's Common Security and Defence Policy. The Federal Republic's ability to shape policy continues to be much more dependent on multilateral structures than that of Great Britain or France. At the same time, German policy has been focused since 2007 to a large degree on economic and financial policy challenges. The associated financial cuts in the defence budget and the reform of the armed forces also touch on the German contributions to the EU's common foreign, security and defence policy.

Berlin is therefore particularly interested in making sure that CSDP remains functional even in a more difficult political environment and that it achieves an even greater capacity for action and makes more efficient use of limited resources. The scenarios and reform recommendations described in this chapter require a high degree of political leadership. Germany displayed such leadership in 2003 and 2004 when it interacted with France and Great Britain to further the development of CSDP. A revival of this leadership is needed while at the same time incorporating smaller partners, if Germany is to strive for revitalising the Common Security and Defence Policy rather than continuing with the status quo. This can be achieved in the form of an intensification of ongoing initiatives or even in a more comprehensive reform approach.

Germany continues to be of key importance, particularly in developing European civilian and military capabilities. The general public and political establishment within the Federal Republic as well as within the partner countries will only be convinced of the value of investing in CSDP if this institutional framework can credibly provide a greater level of effectiveness, a more equitable sharing of burdens and an increase in international influence of member states. Ultimately, it is according to these criteria that the Common Security and Defence Policy must gain its legitimacy. The uprisings in the Arab world and the Libya crisis in early 2011 have once again tested this legitimacy. The EU and its member states should use this challenge to bring the common policy onto a long-term course of strategic convergence.

The EU between Disintegration and Self-Assertion: Developments and Courses of Action

Barbara Lippert / Daniela Schwarzer

At the time of its signing, the Treaty of Lisbon was tentatively seen as the constitutional settlement of the European Union, although the integration process is far from over when measured against the catalogue of objectives in the EU treaty.¹ But two years later, political actors within the EU are faced with fundamental questions about the Union's overall direction. How they answer these questions will play a substantial role in determining whether European integration erodes or the EU-27 is prepared to make far-reaching decisions on its own development in order to overcome the increasingly obvious deficits in the political system of the EU.

The financial and economic crisis uncovered severe shortcomings in the Eurozone's political and institutional architecture. Moreover, the debt crisis presents the member states with a major challenge in terms of their readiness to offer financial solidarity and undertake structural adaptation. The reintroduction of border controls within the Schengen area also raises the question of just how resilient the inner cohesion of the European Union is today. The delayed reaction of the EU to the uprisings in the Arab world in early 2011 was characterised by unilateral government action and uncovered serious deficits in the EU's foreign and security policy. This came at a time when Catherine Ashton, the first High Representative for Foreign Affairs and Security Policy (HR) and the European External Action Service (EEAS) were supposed to help the EU achieve a stronger and more unified appearance on the world stage. Within an international context, the EU must assert itself *vis-à-vis* emerging

powers and traditional partners – as a trading power, as an arena for growth and innovation, and as a foreign policy actor that acts within bilateral and multi-lateral formats.

While the internal and external challenges facing the Union have recently taken on increasing urgency, it is characteristic of the overall integration policy situation that the member state governments have little space for action or exhibit scant inclination to take action. Symptoms of the political community falling apart can be observed in the growing debate over legitimacy. Despite objective progress in reforming the economic governance mechanisms, which was necessary due to the financial crisis, the EU seems to be demonstrating signs of constitutionalisation and enlargement fatigue, lacking the strength or will-power to tackle major projects. Germany assumes a key role in strengthening the EU's short and medium-term capacity for action and keeping its options open for developing its integration policy.

A Need for Decisions on Overall Direction

After arriving at the definite conclusion of the post-war order, which was one of the key triggers of European integration, the member states and their international partners are deeply uncertain as to the course the EU should follow, and will follow, within the new constellations of global politics. The options for action considered by political decision makers are currently still mostly limited to making repairs and minor corrections to the status quo.

This course of action, however, does nothing to remedy the existing problems or stem erosive tendencies. A disturbing example of this is provided by the measures taken to overcome the financial crisis, which had to be repeatedly improved under intense pressure. European policy – including Germany's – is currently less than convincing, since most decision makers fail to discuss key issues with each other or with their respective electorates. Instead, they opt to

¹ Cf. among others, Frank Decker and Marcus Höreth (ed.), *Die Verfassung Europas. Perspektiven des Integrationsprozesses* (Wiesbaden, 2009); Andreas Hofmann and Wolfgang Wessels, "Der Vertrag von Lissabon – eine tragfähige und abschließende Antwort auf konstitutionelle Grundfragen?", *Integration* 31, no. 1 (2008): 3–20; Andrew Moravcsik, "The European Constitutional Settlement", *The World Economy* 31, no. 1 (January 2008): 158–183; contributions on "Nationalstaat und Europäische Union – Lissabon und die Folgen" in the special volume "Staatswissenschaften und Staatspraxis – Endogene und exogene Herausforderungen tradierter Staatlichkeit", *Zeitschrift für Staats- und Europawissenschaften* 7, no. 3–4 (2009).

put off addressing these key questions. There are tangible reasons for this type of behaviour.

Steps towards integration and constitutionalisation were once dependent on the ability to tie diverse and diverging interests of the governments and the European Parliament into “reform packages”. The citizens of the EU acquiesced in this policy, as they expected the EU to provide them with added value and they were convinced of the usefulness of integration based on the experiences associated with World War II.

Today the conditions for achieving compromise and acceptance have deteriorated considerably. Barring pressure from crises, additional steps towards integration are not to be expected. This holds true not only for far-reaching projects that would require a legal procedure for amending the treaties through the calling of a convention and an intergovernmental conference. The innovations and integration potential of the Treaty of Lisbon are also likely to remain unused. These were supposed to enable flexible and rapid adaptation through simplified treaty amendment procedures or the various bridging clauses for changes in the mode of decision-making.² The financial and political scope of action, including that of the German government, has narrowed. Germany’s willingness to pay is known to have receded following the German reunification. The number and power of European policy actors, on the other hand, has increased as is evident from the participation rights of the federal states and the Bundestag. The judgment of the Federal Constitutional Court (FCC) on the Treaty of Lisbon, which was seen as a brake on integration, contains major hurdles to substantial integration within sensitive core areas of national sovereignty such as criminal law, military and defence policy, monopoly on use of force, taxation, and social policy. In the case of alterations that the FCC deems to represent a leap towards integration, and particularly for the introduction of federal elements, Karlsruhe not only requires a referendum in Germany, but also the pushing through of a reform to the EU bodies in line with the democratic principle so that electoral equality would be ensured.³ In this respect, unlike in the past, Ger-

² An exception is the change to Article 136 TFEU on the introduction of the European Stability Mechanism (ESM).

³ Cf. Peter Becker and Andreas Maurer, *German Brakes on Integration. Consequences and Dangers of the Federal Constitutional Court Judgment for Germany and the EU*, SWP Comments 15/2009 (Berlin: Stiftung Wissenschaft und Politik, July 2009), 3, 7; Ingolf Pernice, *Motor or Brake for European Policies? Germany’s New Role in the EU after the Lisbon-Judgement of Its Federal Constitutional*

many can only act to a limited extent as a motor for integration.

The gap will not be filled by another of the founding states or by one of the new member states. Since the failed referendum on the constitutional treaty, the French government has done little to distinguish itself as a driving force behind integration. Among other things, this can be explained by the prevalence of a persistently critical disposition within the government and the population towards past and future rounds of enlargement, the economic regime of the internal market, and the monetary union. For various domestic policy reasons, other traditional partners of Germany such as Italy, Spain or the Netherlands are likewise out of the question in terms of acting as driving forces behind integration. Great Britain continues to keep its distance from the integration process – now more than ever due to the conservative party leading the government.

There has been growing scepticism towards the EU among citizens in many of the member states, particularly the founding states. As a result, the governments are particularly wary of integration steps, which would need to be ratified by the parliaments or require a referendum.⁴ The strategy of dodging issues of policy direction feeds into the mistrust of the populace towards the EU.⁵

Severe crises requiring serious attention such as those currently affecting the Eurozone, however, require that the entire spectrum of possible developments in the EU be taken into account. At this point, even ECB President Trichet is calling for far-reaching integration steps. For some time now, there have been increasing levels of support within scholarly circles for such steps, ranging from substantial integration on budgetary policy to the creation of an EU Ministry

Court, WHI Paper No. 3/2011 (Berlin: Walter-Hallstein-Institut für Europäisches Verfassungsrecht [WHI], 2011).

⁴ Cf. analyses of the European Parliament elections 2009: Robert Harmsen and Joachim Schild (ed.), *Debating Europe. The 2009 European Parliament Elections and Beyond* (Baden-Baden, 2011); European Commission, *Eurobarometer 74. Die öffentliche Meinung in der Europäischen Union* (Brussels, February 2011), particularly p. 49 on the relative loss of trust among EU citizens; on Germany: Thomas Petersen, “Die öffentliche Meinung”, in Werner Weidenfeld and Wolfgang Wessels (ed.), *Jahrbuch der europäischen Integration 2010* (Baden-Baden, 2011), 317–324, which addresses the blatant lack of reporting on the EU in media, aside from the crisis in Greece.

⁵ Cf. further down as well as in the chapter from Lars Brozus, Daniela Kietz and Nicolai von Ondarza in this volume, pp. 8.

of Finance.⁶ The focus is therefore on creating new political governance competences and instruments, which would require a treaty amendment and considerable relinquishment of sovereignty. These are questions of policy direction whose costs and benefits need to be weighed in a long-term perspective.

Sovereignty Concerns and New Inter-Governmental Reflexes

The traditional tensions between maximisation of shared benefits and reservations over sovereignty are increasing in the face of advances towards integration. Therefore even though the governments of the member states see the EU as the appropriate platform for addressing problems in many areas, at the same time they want to be able to raise objections when it seems opportune, or follow national strategies that counteract joint action. The Treaty of Lisbon is a prime example of the balancing act between joint problem-solving and reservations over national sovereignty. It is becoming increasingly apparent, however, that the current set of regulations is reaching the limits of effectiveness and legitimacy.

The governments therefore created a typical hybrid construct within the foreign and security policy sector, namely the post of the High Representative. She presides over the Council of Foreign Ministers and is both a member as well as a vice-president of the Commission. She commands the EEAS, resting in between the Council and Commission. A corresponding increase in foreign policy coherency, capacity for action or even legitimacy has thus far failed to materialise.⁷ Catherine Ashton and the entire EEAS are not faced simply with start-up problems in carrying out their duties. The conceptual and strategic differences and rivalries among the member states responsible for

setting the tone of foreign policy – namely France, Great Britain, and to some extent Germany – have been much more consequential.⁸ Improvements can therefore only be expected if actions are taken not only with regard to reforming institutions, but also by working on the EU's foreign policy programme.

This fits with the assessment that the European Union has become more inter-governmental. This opinion is fed primarily by the upgrading of the European Council through its full-time president, Herman Van Rompuy, and the special role of the European Council in managing the financial crisis. In addition, the governments prefer inter-governmental co-ordination and other soft methods in many areas over the classic Community method, despite such methods having limited effectiveness. Breakthroughs in integration policy, such as those in economic and employment policy, have thus far not been achieved by these methods.

There are still no examples of community competences being systematically cut back, but in many respects the *acquis* is threatened. This is reflected in the planned adjustments to the Schengen agreements following the arrival of North African refugees in Italy and France in early 2011. Denmark has also re-introduced checkpoints along its internal EU borders, because this is allegedly the only way it can combat increasing transnational organised crime within its borders.⁹

There has certainly been a proportionate increase in inter-governmental forms of co-operation. These actions, however, have not replaced Community method, but rather supplemented them.¹⁰ To date, inter-governmental forms of co-operation have been primarily resorted to in areas in which the EU had no capacity for joint action.

⁶ Cf. Speech from the 2011 recipient of the Charlemagne Prize, Jean-Claude Trichet, on 2 June 2011, www.karlspreis.de/fileadmin/dokumente/reden2011/karlspreis_2011_trichet_dt.pdf (retrieved on 17 June 2011). For contributions from the debate within the research community, see, among others: *Making the European Union Work. Synthesis of Round-Table Discussions of the Expert Group on European Economic Governance* (Gütersloh: Bertelsmann Stiftung, March 2011), www.bertelsmannstiftung.de/bstj/de/media/xcms_bst_dms_33317_33334_2.pdf (retrieved on 17 June 2011).

⁷ Julia Lieb and Martin Kremer, *Empowering EU Diplomacy. The European External Action Service as an Opportunity for EU Foreign Policy*, SWP Comments 2/2010 (Berlin: Stiftung Wissenschaft und Politik, February 2010).

⁸ Cf. Nicolai von Ondarza, *Koordinatoren an der Spitze. Politische Führung in den reformierten Strukturen der Europäischen Union*, SWP-Studie 8/2011 (Berlin: Stiftung Wissenschaft und Politik, April 2011).

⁹ Albrecht Meier, "Dänemark will wieder Grenzkontrollen einführen", *Tagesspiegel*, 12 May 2011, www.tagesspiegel.de/politik/daenemark-will-wieder-grenzkontrollen-einfuehren/4162206.html (retrieved on 17 June 2011); Toby Vogel, "The Vulnerabilities of Schengen", *European Voice*, 19 May 2011, www.europeanvoice.com/article/imported/the-vulnerabilities-of-schengen/71103.aspx (retrieved on 17 June 2011).

¹⁰ See also Daniela Schwarzer, "The European Integration Process in 2010", in CIDOB, *International Yearbook 2011*, Barcelona 2011 [forthcoming].

Increasing Urgency over Questions of Legitimacy

After the Treaty establishing a Constitution for Europe was rejected in referendums in France and the Netherlands in May and June of 2005, respectively, the idea was championed of primarily legitimising European co-operation based on its output. This was first shown in the project agenda passed during the Hampton Court Summit in October 2005 under Great Britain's Council Presidency. The German Council Presidency in 2007, which used the Treaty of Lisbon to largely rescue the core reforms of the constitutional treaty, relied to a limited extent on public debate and participation, for example in the case of the Berlin Declaration. Following the failed exercise in deliberation regarding the Constitutional Convention, there was a return to the Monnet method. The non-public negotiations among experts and between governments led to short-term successes in reaching agreement over treaty changes.¹¹ As EU Council President in 2008, the French President Nicolas Sarkozy proclaimed "*L'Europe des Projets*", the "Europe of Projects", and pushed the Treaty of Lisbon through the parliament without intense public discussion.

The EU's Achilles heel, however, continues to be that the level on which negotiations and decision-making take place (European) and the level on which legitimacy is generated (national) are divergent. Within the EU's system for negotiation, governments generally make decisions through the Council in co-operation with the European Parliament (EP). Related political disagreements, however, take place within the framework of competition among national political parties, if at all. While this competition is becoming increasingly controversial, it still remains symbolic, as this is only a platform for clarification, but not for autonomous decision.¹² Parliaments and political parties can be expected to be increasingly anxious to put pressure on governments to hammer out the details of their positions, for example in their approval of bailouts for highly indebted EU states.

¹¹ Cf. Wolfgang Wessels and Anne Faber, "Vom Verfassungskonvent zurück zur 'Methode Monnet'? Die Entstehung der 'Road map' zum EU-Reformvertrag unter deutscher Ratspräsidentschaft", *Integration*, 30, no. 4 (October 2007): 370–381.

¹² Cf. for this discussion and a number of theoretical assumptions, Timm Beichelt, *Die Europäische Union nach der Osterweiterung* (Wiesbaden, 2004), 216f., and *ibid.*, *Deutschland und Europa. Die Europäisierung des politischen Systems* (Baden-Baden, 2009), particularly p. 299–308.

This leaves the governments with a very thin margin for bargaining in Brussels. There is a growing danger that European decisions or their implementation will be blocked by member states.

It is, however, becoming increasingly difficult to create legitimacy for the EU based on its output. This is also due to the current economic and social conditions, which in some member states have been marked by low growth rates, painful structural change and high levels of unemployment since the debt and banking crisis. In addition, the EU lacks flagship integration projects, which could be taken up by the population for "Europe". The expression of these issues of legitimacy can be found in a number of tendencies. Support for the EU membership of one's own country is evaporating, trust in EU institutions is disappearing, and many national politicians refuse to take into account the intertwined transnational character of the problems or propose appropriate solutions to these problems.¹³ This is compounded by a lack of interest among political decision-makers to expressly address prospects for developing the EU or to advocate co-operation within the European Union. This is nothing new. Even in the past there was insufficient justification for integration steps and their importance was not explained. As such, it was not until May 2005, when the Constitutional Treaty referendum was imminent, that discussion erupted in France over the liberal system underlying the internal market and the Eastern Enlargement.

It can hardly be contested that the EU is reaching the limits of its *modus vivendi*, which it had used for such a long time to reconcile opposing basic orientations over European integration with one another, and to create room for action towards real progress in defined policy areas. Current examples of this include the strategic ambivalence¹⁴ of the CSDP and the similarly ambiguous objective of achieving an "ever closer union among the peoples of Europe" (from the preamble of the EU Treaty). Due solely to the level of integration that has already been achieved, larger steps in the future towards deepening this integration will touch on core elements of national governance and sovereignty such as taxation, social policy and issues of war and peace. Looking towards the political system, the next steps would be issues like a European

¹³ Cf. on public opinion *Eurobarometer 74* (see note 4).

¹⁴ Cf. the chapter from Ronja Kempin, Nicolai von Ondarza and Marco Overhaus and in this volume, pp. 22.

economic government and parliamentarisation of the EU system.

The legitimacy of the EU that has been created through processes and public discussion is suffering not only from the much-discussed democratic deficits of the EU system. These include the inequality among citizens voting in the EU during European Parliament elections and the lack of party-political competition on the EU level as well as the associated transnational political parties and structures. In addition, there is a lack of societal and political communication within Europe. Since the European public is likely to remain nationally and linguistically fragmented, a realistic but ambitious objective of the EU, as a transnational political body, is the “reciprocal opening of the national publics for one another”.¹⁵ This includes the interests as well as the criticisms of the political and societal evolution within the EU partner states.

Within national arenas, there is currently considerable applause for voicing fundamental reservations over sovereignty and insisting on national prerogatives; now also under the new “union method” label.¹⁶ Basically – as insinuated by the judgment of the Federal Constitutional Court – it is questioned whether the dual basis for legitimacy of the “union of the citizens and of states” deserves recognition. One position, however, which is lined up in opposition to Brussels advances three worrying developments. Firstly, it openly undermines the legitimacy of the EU system. Secondly, it masks the complexity of transnational problems so that it will be increasingly difficult to justify common action. Thirdly, governments in EU states can increasingly rely on public approval if they wish to insist on their own state’s sovereignty. It is increasingly rare for there to be critical inquiries during public debates over the short-term and long-term costs of unilateral action *vis-à-vis* common action. If alternative forums and decision-making structures are proposed for solving the problems, the question is usually left unvoiced as to their legitimacy compared with the EU.¹⁷

¹⁵ Jürgen Habermas, “Das Europa der Staatsbürger”, *Handelsblatt*, 17 June 2011, 12f.

¹⁶ Speech from Chancellor Merkel on the occasion of the opening of the academic year at College of Europe in Bruges on 2 November 2010, www.bundesregierung.de/Content/DE/Rede/2010/11/2010-11-02-merkel-bruegge.html (retrieved on 17 June 2011).

¹⁷ On the problem of the legitimacy of global and regional governance structures within the context of the club arrangement, cf. Ulrich Schneckener, *The Opportunities and Limits of*

Large Countries and Club Building in the EU

The relative increase in inter-governmental forms of co-operation can create or exacerbate existing tensions. There is scepticism primarily among small and medium-sized states, which are becoming increasingly vocal in decrying the dominance of the large states. A number of recent decisions have raised their anger. These include the Euro Plus Pact as well as the French-German compromise of Deauville from October 2010 on reforming the Eurozone. Other such decisions include are the agreement with British Prime Minister David Cameron on capping the future financial framework at one per cent of the EU’s GDP and putting a British budget reduction down in writing with the European Council in December 2010. In return, the Prime Minister granted his support for the Treaty reforms proposed by Germany in connection with permanent European Security Mechanisms.

Moreover it is an open secret that the President of the European Council generally co-ordinates ahead of time with Berlin and Paris. Far from being something new, this has long been the practice of successful Commission Presidents. A policy of *fait accompli* by the large member states, however, threatens the acceptance of informal leadership by France and Germany, sometimes together with Great Britain. From the standpoint of the smaller and medium-sized states, leadership by the large member states is only acceptable as long as they do not overturn the principle of equality among the states and supranational counterbalance, as in the case of the Commission.

Scepticism grows whenever governmental co-operation becomes wedded to long-term collaboration within small groups outside the framework of the community structure. This approach is increasingly preferred by a number of member states in regards to security and defence policy. To intensify their security and defence policy co-operation, France and Great Britain, the key states in the CSDP, have decided to strike out on a path beyond the permanent structured co-operation. There are currently scant examples of an *avant-garde* of member states amenable to deepening their ties forging ahead and providing a clear impetus for greater integration. An exception is the Ghent process initiated by Germany and Sweden in September 2010, which proposed pooling and sharing of military resources in light of pressure to cut back national

Global Governance by Clubs, SWP Comments 22/2009 (Berlin: Stiftung Wissenschaft und Politik, August 2009).

defence budgets. The Euro pact is also fundamentally open to all parties and has thus far been signed by 24 member states.

Co-operation in isolated smaller groups within the treaty structure could, however, lead to the fragmentation of the community. It would become a particularly sensitive issue if these types of clubs of states were to form in core areas such as the internal market, the monetary union or the CSDP, which would confer a more politically integrated profile on the union. Furthermore, step-by-step forms of integration could reach the limits of their legitimacy and efficiency if they are based solely on co-operation among the states and make no contribution to consensus-building, implementation or execution.¹⁸

The Treaty provides a number of opportunities for differentiation and flexibilisation within the framework of the EU. These are resorted to only on rare occasions and with hesitation in order to increase efficiency and circumvent blockage by individual member states. This is therefore not the silver bullet for responding to increasing heterogeneity among the EU 27. A dynamisation of EU integration is consequently not to be expected. Adding more states in the form of so-called selective memberships would also be subject to restrictive limits. A “disorderly differentiation”, however, is by no means excluded, for example the unilateral withdrawal of individual states from policy elements even if this constitutes a violation of regulations and disregard for obligations. In addition, they could threaten to make use of the new Treaty article and exit the EU (Article 50 TEU). Overall, the paradigm shift within the EU 27 expected to coincide with the Eastern Expansion – away from the deepening and ‘communitarisation’ applying to all the members towards differentiated integration within the EU framework – has not materialised.

Development Prospects for the European Union

What can be done within this context? Numerous analyses within this volume and its original long version have shown that additional steps towards integration would be desirable in terms of effectivity and efficiency. Many reasons were given for resolutely

¹⁸ Janis A. Emmanouilidis, *Conceptualizing a Differentiated Europe*, ELLAMEP Policy Paper No. 10 (Athens: Hellenic Foundation for European and Foreign Policy [ELLAMEP], June 2008).

applying the Community method and to continue to delegate competences in the future. In addition to improvements as regards content, governance issues remain on the agenda of additional secondary legislation developments and primary legislation reforms. The analyses, however, also point to the limited inclination of most governments to further limit their national capacity for action by providing the EU with new authorities. Despite the deep shock provided by the Euro crisis, objective arguments for more integration have long been met with a cold reception, at least from national actors.

Closer examination of the ongoing academic and political debate reveals reform proposals that cannot be attributed solely to a traditional “integration reflex”. This includes proposals for the establishment of a European Monetary Fund or a Finance Ministry, the overhaul of the EEAS with a European Foreign Minister at the top, or the creation of a European army in a defence union. These individual elements, however, are not yet assembled into a reform package and a corresponding timetable will not emerge without further effort. But the economic and financial crisis could be used as fertile ground by a strategic coalition of political forces to initiate a transnational debate over a new integration programme.

Political Priorities within the EU

The core elements from which EU development prospects can arise include the internal market as a key integration component and the monetary union with its intensified co-ordination of national budgetary and economic policy. The challenges of maintaining the Euro in its current form as well as alleviating internal economic divergence and potential for political tension are all still far from over. Therefore the breakdown scenario needs to be considered along with all further steps towards overcoming the crisis and further developing the governance structures. How large is the risk of the agreed upon activities being insufficient for achieving the intended stability? Which additional steps could follow and which preparations need to be made for their implementation? What would be the cost of a breaking apart of the European Monetary Union and a possible corresponding collapse of the internal market project?

In struggling with sustainable governance structures in the Eurozone and attempting to make the member states more competitive, the key issue is the

EU's economic and political self-assertion in the world. Only to this extent, external demands could become the driving force behind European integration. While polls show that EU citizens regularly vote in favour of greater collective EU action in international politics, this is for climate policy, development co-operation or the CSDP. Despite this public support, however, the EU's foreign action potential remains largely unrealised and therefore also fails to confer the EU with the necessary degree of internal cohesion. For this reason, the economic integration ensuring welfare levels and the four freedoms of the internal market are essential to the EU's existence.

In order to promote economic integration and, where necessary, complement it with social policy, joint legislative processes and harmonisation must once again be prioritised. The open method of co-ordination has long been shown to be ineffectual and should no longer be used as a fig leaf by member states. The increasing economic divergence – also with the accession of relatively poor countries – will increase pressure to create redistribution components within the context of European social policy. The EU budget is currently unable to fulfil this function in light of it being equal to approximately one per cent of the EU's GDP and due to its patterns of expenditure. The two largest expenditure blocks – Cohesion Policy and Common Agricultural Policy (CAP) – are under the greatest pressure to confirm their legitimacy. A long-term reform is urgently recommended, oriented towards provisioning public goods (like landscape or nature conservation). This could lead to a shift of classical agricultural policy back to the national level and a reduction to the *acquis*.

The EU budget is currently not an effective instrument for shaping policy and expectations are that the coming negotiations over the 2014–2020 financial framework will run according to the motto “net contributors against net recipients”. Mistakes can, however, at least be avoided and approaches can be created for changing the direction of the dialogue. Funds should be restructured in a consistent fashion within the existing rubrics. In addition to the CAP and cohesion policy reforms, this could pave the way for trend reversal. Germany should shift from a defensive to an active role and mediate among the different camps. It is short-sighted to speak out in flat opposition against an EU tax. This tax can – not least due to the unflinching push from the EU Parliament and Commission – become an important element in a total package that makes expenditure priorities possible.

If the German government attempts to use the Euro Plus Pact or the debt brake as an element of national constitutions to codify German economic policy and budgetary policy concepts for the entire EU, it is in a certain sense a continuation of the traditional strategy of exporting a model and a milieu¹⁹ to complete the internal market and construct an economic and monetary union. Other EU governments, however, doubt whether this regulatory formula is altogether beneficial and practicable in their own countries and the monetary union.

The European Union and Its Neighbours

The EU enlargement has clearly lost its function as a flywheel for additional steps towards deeper integration. The deepening had failed to keep up even during the Eastern Enlargement. This also contributes to a slowing of the enlargement and limitations on its scope. Furthermore, the greater the EU's level of integration, the more extensive the member states' responsibility for one another. This is evident in the pressure that the Eurozone states are currently under to provide support due to the debt crisis. As a result, the EU is more prone than ever before to only want to open the door to “perfect members”.

Dealing with Turkey is particularly challenging in light of the low support within the EU and the sceptical attitudes within the applicant country itself. In order to regain latitude for political action, the EU should supplement the “*Pacta sunt servanda*” policy with attempts to involve Ankara in a strategic foreign policy dialogue, which is not subject to the pressures of accession negotiations. The EU would address Turkey as a regional power that possesses special connections with the common southern and eastern neighbourhood.

In consideration of integration and foreign policy issues, the EU should make every effort to establish attractive and effective forms of political association and economic sector integration with its neighbour. Using enlargement principally as a foreign policy instrument must be an exceptional case, particularly if states in North Africa apply for membership in the future, thereby blowing the door wide open for a blurring and overstretching of EU boundaries.

¹⁹ For the essentials of this strategy: Simon Bulmer, Charlie Jeffrey and William E. Paterson, *Germany's European Diplomacy: Shaping the Regional Milieu* (Manchester/New York, 2000).

Germany is no longer the driving force behind EU enlargement and now advocates a tighter conditionality policy for candidate countries. Despite all the criticism over this change in role, this position can be particularly convincing if it goes hand-in-hand with energetic action towards a more actionable and legitimate EU and for an effective European Neighbourhood Policy (ENP). An important sphere of action for Germany is its policy towards the eastern and southern neighbours. A realignment of the ENP can provide Germany with political capital – as an exponent of an active EU-Eastern policy and traditional supporter of a common EU policy for the Mediterranean.

First and foremost, the EU should consistently align the ENP according to the principles of differentiation, conditionality, co-operation and awarding performance. By taking progress towards democratisation and modernisation as a measure, it could rank Eastern and Southern neighbours within levels of quality of co-operation, thereby creating a league model. If the EU does not provide neighbouring states with membership options, it must be prepared to bear the costs that arise when market access and mobility of people – particularly employees – become easier, when financial and other types of support become necessary and when intensive bilateral policy dialogues take place. The prospects for free trade and economic areas based on the European Economic Area (EEA) can be conceptualised just as easily as new political inclusion frameworks and arrangements. In this way, Turkey could even constitute a political centre of gravity next to the European Union, linked to Brussels through a customs union and an economic community.

The EU as an International Actor

The EU can counteract the known weaknesses of the CFSP in a variety of ways that are not necessarily mutually exclusive. One course of action consists of establishing greater levels of commonality, loyalty and effectivity with the help of stronger institutional and procedural obligations, i.e. greater bureaucratisation of European foreign policy. Another approach is the targeted expansion of the foreign policy programme in the form of sub-strategies, for example, for regions or groups of countries, or aimed at horizontal challenges such as fighting international terrorism. Similar matters were tackled by the European Security Strategy 2003, but were not rigorously developed. It

is worth considering for the CSDP whether a white paper should be drafted as part of a comprehensive reform programme including an obligation to build up respective capacities. This would mean provisioning the EU as a full-fledged security policy actor, which could at least deal with crises in its neighbourhood and use military force if needed. Aside from military resources, the EU also has to round out its crisis and conflict resolution instruments and make them more effective. Above all, however, it must clarify its strategic goals and defuse the foreseeable conflict over objectives. In this sense, the EU has to draw procedural and contextual lessons from its inadequate response to the uprisings in Northern Africa as to how it should position itself in such conflict situations and which criteria are significant for it and perhaps also for CSDP missions. Strategic review and re-orientation of the ENP provides the opportunity to enhance the foreign and security components in bilateral relations with the neighbours just like the EU's commitment to conflict resolution among its neighbours. The EU must therefore systematically assemble and strengthen its foreign policy *acquis*. This is the main task of the High Representative and the European Council, which according to the Treaty (Article 26 TEU) are charged with determining the strategic interests of the EU.

In the past, the co-operation between and initiatives of member states were already shown to be essential when the focus was on improving the coherence and effectiveness of the CFSP. In this area, which is already predominantly inter-governmental in focus, they are the catalysts and the gatekeepers. At their command, they have flexible or differentiated integration within the framework of the treaties, with the greatest degree provided by the permanent structured co-operation in the defence policy. The behaviour of France, Great Britain and Germany remains of central importance, particularly on issues that exhibit prominent geo-strategic and military components and for which NATO is not the first choice. Such situations provide the greatest temptation for unilateral action by individual states or groups. In the first half of 2011, Berlin relegated itself to the sidelines, among other things by abstaining from the UN Security Council Libya Resolution. It should therefore once again make efforts towards intensive co-operation and co-ordination in addressing foreign and security policy challenges. Of these three states, it was always Germany that, as the third and therefore secondary leading power, relied most clearly on a strengthening of the

CFSP/CSDP and solutions within the EU. It would therefore be an important signal to invest in the CFSP/CSDP both politically and financially. It will only be the preferred framework for action of powerful states like Great Britain and France if it promises to be more effective and influential in an international arena and have a more equitable sharing of burdens among the member states than other arrangements and constellations. A test case could therefore be the EU's policy and Germany's commitment towards Libya after the NATO no-fly zone mission is concluded.

In areas such as foreign policy on climate change or development co-operation, the EU has gradually lost its leading role and function as a model example to others. Nevertheless, it can continue to provide considerable material and political contributions to poverty reduction, to the conceptual orientation of a global structural policy, or towards sustainable climate and resource policies. Not only that, the EU can also influence the pace for a networked and rule-guided global policy, and attract international partners to it. In order to create a greater level of dynamism, at least Paris and Berlin need to once again functionally work in tandem with each other. This entails France and Germany being able to work more productively within the limits of the CFSP/CSDP, rather than outside of it, to address the differing emphasis they place on the military.

Germany's Role in the Integration Process

Within the current phase of moroseness hanging over Europe, focus is directed primarily towards Germany. Seldom has so much criticism been voiced regarding the European policy actions of a German government. Seldom has the question of whether Germany has become more national and less European ignited such heated debate inside, as well as outside, of the EU.²⁰ Today Germany plays a somewhat unwanted key role; it is the most important economy within the Eurozone

and has been the greatest guarantor of the Eurozone partners due to ongoing and future crisis mechanisms. Statements by German politicians influence markets, which see Germany's espousal of the integration process and its perceptions of new governance structures as meaningful indicators of what will become of the EU as a political and economic actor. But a glance to the institutional and constitutional development of the EU indicates that Germany has largely abandoned its role as an opinion leader in European debates and an agenda setter for reform programmes and government conferences. Germany's European policy is characterised by pragmatic positions for short timeframes. Real openness for inter-governmental co-operation and differentiated integration as well as positions tied to specific policy areas are superseded by the traditional preference for maximised integration that is both comprehensive and fundamental. This renders Berlin less predictable for its EU partners.

Germany's European partners expect it to take a leadership role and press ahead with policy decisions. This is essential for shaping economic and financial policy as well as expanding the EU's political system. Partners would view Germany's leadership position as legitimate if they were as sure of Germany's basic European orientation as they were over long periods in the past. The German government had to prove this orientation by following a number of principles: public and contentious communication regarding objectives, sharing of interests and burdens among the member states, co-ordination with partners and orientation towards the common good in Europe. Germany could establish new levels of trust in this way, and could gain influence and the power to shape policy. While it occasionally acts in a dominant fashion, it is not clear that there is long-term reflection, definition of strategic goals or interest in leading based on partnership.

Over the course of the crisis management in the past months, moments arose again and again in which the German government indicated both internally and externally that it would reject certain steps towards common action. A short time later, however, it approved precisely these steps. In this way it has been putting forth an image of dithering and shilling. Domestically, such action comes at the cost of support for the European project. Time and again, critical public opinion has to serve as an explanation for hesitation in European policy and the critical positions of German elites towards integration. This is a flimsy ex-

²⁰ See for example Jürgen Habermas, "Ein Pakt für oder gegen Europa?", *Süddeutsche Zeitung*, 7 April 2011, p. 11; Renaud Dehousse and Elvire Fabry (eds.), *Où va l'Allemagne?* (Paris: Notre Europe, July 2010); José Ignacio Torreblanca, "Five Reasons Why Europe Is Cracking", *El País*, 15 May 2011; Ulrike Guérot and Marc Leonard, *The New German Question, How Europe Can Get the Germany It Needs*, ECFR Policy Brief 30 (April 2011); Simon Bulmer and William E. Paterson, "Germany and the European Union: From 'Tamed Power' to Normalized Power?", *International Affairs* 86, no. 5 (2010): 1051-1073.

cuse as the people's sentiment is no external variable, but rather a clear result of the demonstrated ability to provide European policy direction. The conclusion of the Allensbach Institute in January 2011 that the German people, who continue to have a positive view of Europe, feel themselves abandoned by the political system, signalled a serious lack of interest in discourse among the ranks of the national elite as well as attentiveness on the part of the media.²¹

Germany will continue to pursue its interests primarily within the EU and with its assistance. Eccentric flanking powers like France and Great Britain may have alternatives or at least claim to have them. For Germany, unilateralism and refusal to engage in co-operation and integration are dangerous and expensive decisions. Thus, Germany's interest in effective and legitimate policies within the EU framework is all the greater. This also holds true for the smaller and medium-sized EU partners. Many of these yearn for a Germany that can provide them with a point of orientation. The German government should demonstrate greater ambition in shaping and pressing ahead with European integration to counteract the EU's centrifugal tendencies and to contribute to Europe's self-assertion.

²¹ Cf. Thomas Petersen, "Gemeinsames Interesse an Europa in Gefahr", *Frankfurter Allgemeine Zeitung*, 26 January 2011, p. 5.

Appendix

List of Abbreviations

CAP	Common Agricultural Policy
CEECs	Central and Eastern European countries
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
DC	Development Co-operation
EAFRD	European Agricultural Fund for Rural Development
EC	European Commission
EEA	European Economic Area
EEAS	European External Action Service
ENP	European Neighbourhood Policy
EP	European Parliament
ESM	European Stability Mechanism
ESS	European Security Strategy
EU	European Union
EUFOR	European Union Force
FCC	Federal Constitutional Court
GDP	Gross domestic product
GNI	Gross National Income
HR	High Representative for Foreign Affairs and Security Policy
MFF	Multiannual Financial Framework
PSCD	Permanent Structured Co-operation in Defence
TEU	Treaty on European Union
TFEU	Treaty of the Functioning of the European Union
WTO	World Trade Organization
UN	United Nations

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