

Sebastian Kurpas and Henning Riecke

The 2007 German EU Presidency:

A Midterm Report

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PREFACE

The Swedish Institute for European Policy Studies, SIEPS, conducts and promotes research and analysis of European policy issues within the disciplines of political science, law and economics. SIEPS strives to act as a link between the academic world and policy-makers at various levels.

This occasional paper is devoted to analysing the German Presidency of the European Union. SIEPS bi-annually publishes a report on the incumbent Presidency, focusing on the agenda, the domestic factors and the country's specific relation to European integration.

Stockholm, May 2007

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ABSTRACT

Rarely has an EU Presidency been anticipated with expectations as high as the German one in 2007. By the end of its six-month term, it is supposed to have tabled a roadmap for a way out of the Union's constitutional crisis and have brought fresh impetus to key policy areas. This Midterm Report starts with a general part explaining German motivation for European integration and developments since unification, public opinion on European integration and the positions of important political players in Germany. It also gives a detailed insight into the organisational structures of the Presidency. In its main part the report provides a comprehensive overview of the German Presidency's aims in the various policy areas and makes a preliminary assessment of the achievements at the beginning of May 2007.

The report comes to a rather positive conclusion on internal policies due to many concrete measures, for example on the single market or justice and home affairs. The most visible success was the merging of climate protection and energy policy to a new policy paradigm. The EU achieved this through the agreement on an "Energy Policy for Europe" (EPE) and unilateral commitment of EU leaders to binding targets on CO₂-reduction during the Spring summit. With the "Berlin Declaration" Germany managed to make leaders demonstrate unity on the future of the Union and to provide a good start for the talks on the roadmap for treaty reform. Prospects for an agreement in June are positive, but might come at the price of accepting a low common denominator.

In foreign policy, results have so far been less tangible than on internal policies. Germany's engagement helped along to deepen the economic partnership with the United States, but could not avoid a deterioration of the EU-Russia relations due to factors beyond the Presidency's control. Also in Kosovo and the Middle East, substantial settlements are still far away. The EU is however preparing for an ambitious operation in Kosovo and Germany helped to engage the Middle East Quartet with the peace process, thus putting the conflict higher on the international agenda. In May 2007 the German EU Council Presidency is still anxious to calm down expectations. It might well be, however, that the pragmatic German step-by-step approach will lead to better results than a sober look at the initial conditions would have suggested.

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THE 2007 GERMAN EU PRESIDENCY: A MIDTERM REPORT

1 INTRODUCTION

Already in the run-up to its six-month-term, the German EU Presidency was confronted with high expectations. Angela Merkel's European debut during the 2006 budget negotiations was widely seen as a success, since she contributed actively to finding a compromise between strongly opposed national positions. Since then, many observers have looked to Germany as a provider of fresh political leadership for the EU. However, expectations are also high due to a lack of alternatives in the last year: In the UK, Tony Blair is at the end of his tenure and will hand over power to Gordon Brown, who is reputedly not an EU-enthusiast. In France, President Jacques Chirac has left the political stage with a very mixed record on Europe and the "no-vote" to the Constitutional Treaty has further diminished French influence. The new President Nicholas Sarkozy gives rise to fresh hopes for leadership. However, he did not hesitate to attack the EU on central issues during the election campaign, such as the mandate of the European Central Bank, trade, or Turkish EU-membership. Finally Italy, the fourth largest Member State, does have a very pro-European Government, but domestic quarrels and uncertain majorities have so far hindered Prime Minister (and former Commission President) Romano Prodi to provide leadership at the European level.

In many ways the high expectations on the German Presidency as a "saviour of Europe" appear exaggerated, especially in view of its limited duration. The German Government is well aware of its limitations and has already tried to tone down expectations.¹ Much of a Presidency's agenda is usually inherited from its predecessors or dictated by the legislative process running its usual course. Also, Presidencies of large member states are not necessarily always the most successful ones. The expected role of an "honest broker" is sometimes hindered by the particularly strong interests of large countries. Finally, unforeseen events on the international stage can suddenly dominate the agenda and absorb much of the Presidency's administrative resources and political attention. During its last Presidency in 1999, Germany even had to deal with two such crises: the resignation of the Santer Commission and the Kosovo War.

¹ See for example: "*A preview of Germany's EU Presidency: The Status of the Federal Government's Preparations*", Speech by State Secretary Reinhard Silberberg, 4.10.2006, at <http://www.germany.info/relaunch/politics/speeches/101106.html>

Naturally this does not necessarily mean that a Presidency cannot make significant progress on certain issues. In 1999 Germany managed to secure an agreement on the EU's budgetary perspective for the period 2000–2006, the so-called “Agenda 2000”, after very difficult negotiations.² This time the greatest challenge will certainly be finding an agreement on the way forward for the European Constitutional Treaty. This uncertain prospect looms large over the entire Presidency and the German Government has been eager to put other policy areas in the spotlight during the first half of its term. It successfully avoided the Constitutional Treaty becoming a central issue in the French presidential campaign and also does not want to be measured solely on progress made on the constitutional issue in case things go wrong.

It might be considered fortunate that besides the roadmap for the Constitution, no tricky negotiations or contentious projects need to be finalized during the German Presidency, such as the financial perspective during the British tenure. Despite the limits by every six-month Presidency, this particular situation opens up opportunities to launch initiatives and initiate political developments that will help to avoid the impression of political paralysis.

This “Midterm Report” will first in a more general section present Germany's role within the European Union and explain the country's traditional and present political aims. It will describe the positions of important political actors and developments of public opinion. The decision-making structures of German EU policy in general and the Presidency in particular will also be explained. In the second section the authors will then analyse the Presidency programme including the achievements in the main policy areas to date. The report will thus give a preliminary assessment of the German EU Presidency halfway through its mandate and will provide an outlook of the challenges lying ahead.

² The possibility of having to negotiate the budgetary perspective again in the Presidency seat during the second half of 2006, made the German Government exchange its period with the Finnish one. As the biggest net-payer Germany did not want to be restricted by the Presidency's role of an “honest broker”.

2 GERMANY'S EU POLICY

2.1 German motivation for European integration

Germany's traditional motivation for European integration has been the establishment and promotion of good relations with its Western neighbours. After the Second World War integration offered (West) Germany the perspective of again becoming a respected member of the international community. As opposed to France or later Britain, European integration was not just a tool to serve the national interest when appropriate, but *integration as such* was Germany's national interest. At the same time German Governments tried to keep a balance between European integration on the one side and a strong transatlantic link on the other. Unlike in France, a strong and united Europe was not seen as a counterweight, but as an indispensable complement to the United States. After all, the US remained the guarantee power for West Germany against the communist threat throughout the Cold War. However unlike Britain, Germany did not see a good relationship with the United States as an alternative to deeper European integration. Both aspects were important building blocks for the policy of West Germany's first post-war Chancellor Konrad Adenauer who successfully integrated the country firmly into the community of Western democracies (so-called "Westbindung").

With the establishment of the common market through the treaties of Rome, economic motivations for European integration became increasingly important: Besides political stability, the European Community now also offered an important market for the country's booming export industry. Today the majority of Germany's exports go to EU countries.

German support for European integration was, however, never exclusively utilitarian: the political class in particular also showed strong emotional support for Europe. In post-war West Germany the prospect of a common European community was seen as a means to overcome the nationalist past and few people openly demonstrated pride in the mere fact of being German. Instead they were proud of Germany's economic performance during the 1950s and 60s, the so-called "economic miracle" ("Wirtschaftswunder") and the strong Deutschmark as the symbol of this success. People also identified with the stable democracy based on the country's Constitution (the "Grundgesetz"), which even led to the expression "Verfassungspatriotismus" (constitutional patriotism). Germans saw the embedding of their country's unification into the development of a Political Union in Europe as a logical extension of post-war foreign policy and an appropriate reflection of the FRG's strategic culture. They easily accepted the idea to soothe the neighbours' apprehensions about the new heavy-

weight in Europe through multilateralism and integration. It is only in recent years that the identification with the nation-state has become stronger and more emotional, so that some observers talk about a “normalisation” of Germany in this respect.³

2.2 Developments since reunification

During the last years a certain change of German EU and foreign policy can be observed. Indeed both cornerstones – further EU integration and the strong transatlantic link – have been put to the test:

As regards the EU, Germany has neglected its traditional role as a defender of the smaller member states’ interests and started to behave more like other large countries. Especially under Chancellor Gerhard Schröder (Social Democrat) a shift towards a more assertive formulation of German national interests took place. This change had, however, already started during the last years of Helmut Kohl’s (Christian Democrat) period in office, not least because the costs of reunification and sluggish reform weakened the economic leverage of the country. Subsequently the Government could not allow itself to solve problems by making additional financial commitments towards its European partners anymore, as it had often done in the past.

2.3 Public opinion

As in most other Member States, war among European nations has fortunately become unthinkable for most Germans. Today people are much more concerned with social and economic issues. Unemployment clearly remains the single most important issue that worries Germans, but most do not think that the EU plays a helpful role in this context. The Euro is still not nearly as popular as the Deutschmark was and many Germans see their country as the “paymaster” of the EU, while taking for granted the benefits of the Common Market for the German export industry. There is also a general unease about further enlargement, especially when it comes to Turkey. Eurobarometer surveys show a strange contradiction, which may stem from the emotional bias, that more Germans than the EU average believe that the EU membership of their country is “a good thing” (58% as opposed to an average of 53%), while less than average believe that their

³ An event where this became visible was the 2006 World Cup when national flags were present everywhere in the streets. As in other countries, flags were not meant as a political statement, but simply an expression of enthusiastic support for the national team.

country has benefited from EU membership (49% as opposed to 54%).⁴ Traditionally, West Germans have a slightly more positive attitude towards the EU than East Germans and the gap between the very pro European political elite and the (at best) averagely supportive general population has been particularly wide. In the context of the French and Dutch referenda, there has been strong criticism that the German people have never had a say on any major EU-related decision (e.g. the introduction of the Euro, enlargement or the Constitutional Treaty).

2.4 Positions of different political players on the EU

2.4.1 Political parties

In Germany it is more the parties, and less the Parliament itself, that push the political debate on Europe. The Bundestag is supposed to play an influential role in EU policy through Article 23 of the Basic Law, but has only limited capacities to do so. The EU Committee in the German Bundestag has the task of comprehensively surveying all legislative acts with European implications, but cannot cope with the flood of incoming paper. Only recently, the Bundestag administration has formed a new department on EU affairs and the Parliament has opened a liaison office in Brussels. Also, a new agreement with the Government will improve Parliament's access to information held by the executive.⁵

Among German political parties there is a large pro-European consensus. The two parties that currently form the Government, the centre-left Social Democrats (SPD) and the centre-right Christian Democrats (CDU) are just as pro-European as the Green Party (Bündnis 90/Die Grünen) and the Liberal Party (FDP), both currently in opposition. The only party represented in the Bundestag that takes a sceptical stance is the socialist Left Party (Linkspartei PDS). Extreme right parties like NPD or Republikaner do not have seats in the Bundestag, but also hold strong anti-European positions.

Christian Democrats (CDU/CSU): The CDU ("Christian Democratic Union") has traditionally been a driving force for European integration. This reputation is especially owed to two Chancellors coming from its ranks: Konrad Adenauer and Helmut Kohl. Adenauer was German Chancellor between 1949 and 1963 and during his time in office he successfully pursued the aim of integrating West Germany into the community of Western democracies. Germany became a founding member of the European Community for Coal and Steel in 1951 and of the European

⁴ *Eurobarometer 66* – First Results, December 2006, p.7–10.

⁵ See *Bundestag bekommt mehr Einfluss auf die EU*, *Süddeutsche Zeitung* (SZ), 22.9.2005.

Economic Community (EEC) in 1957. Together with his French counterpart Charles de Gaulle, Adenauer promoted Franco-German reconciliation, leading to the Elysée Treaty in 1963. Helmut Kohl was Chancellor from 1982 to 1998 and saw himself as an heir to Adenauer's legacy. His most significant political achievement was German reunification, for which he gained the support from the French President François Mitterrand, not least because Kohl was also a strong advocate of European integration and close Franco-German cooperation. From the beginning, Kohl very much supported the Single Market programme and European Monetary Union.

Angela Merkel sees herself in the tradition of Helmut Kohl. However, in recent years the pro-integration position of the party has become less pronounced. Interestingly, Wolfgang Schäuble, one of the party's most high profile foreign and EU policy experts, currently holds the position of Interior Minister and is thus not directly involved in most European policy decisions. Over the last few years critical comments on European issues from CDU politicians have become more frequent, notably complaints about overregulation and too great a bureaucratic burden imposed by "Brussels". Recently, the former German President Roman Herzog published an article in which the CDU politician and former President of the German Constitutional Court claimed that German democracy was undermined by the European Union.⁶

The Bavarian sister party of the CDU, the CSU ("Christian Social Union")⁷, has traditionally been more reserved towards European integration, and has even included some eurosceptic voices. In the Bundestag 20 out of the 23 "no" votes to the Constitutional Treaty came from members of the CDU/CSU group (compared to a total of 569 "yes" votes and 2 abstentions). Peter Gauweiler, a CSU member of the Bundestag has subsequently requested the Federal Constitutional Court to challenge the ratification of the Constitutional Treaty. The case is still pending.

Social Democrats (SPD): The SPD ("Social Democratic Party of Germany") is also a widely pro-European party. Although initially critical of Adenauer's policy of the "Westbindung", the Social Democrats have clearly supported European integration. While Adenauer concentrated on reconciliation with France, the Social Democrat Chancellor Willy Brandt (1969-1974) turned to Germany's Eastern neighbours in the 1970s and initiated what became

⁶ See Herzog, Roman, *Europa entmachtet uns und unsere Vertreter*, *Die Welt*, 17.2.2007, at http://www.welt.de/dossiers/eu-macht/article720463/Europa_entmachtet_uns_und_unsere_Vertreter.html

⁷ The CSU can only be elected by Bavarian voters, the CDU runs in all the other "Länder". In the Bundestag both parties form a common group ("Fraktion").

known as Germany's "Ostpolitik". In this framework, treaties with Poland, the Soviet Union and the Czechoslovakia were negotiated. Brandt's successor Helmut Schmidt (Chancellor from 1974 to 1980) worked closely with French President Giscard d'Estaing. Together they developed early plans for a common European currency.

The main dividing line between the SPD and CDU on European issues is Turkish EU membership. While the majority of Christian Democrats are opposed to Turkey joining the Union, most SPD politicians are in favour, probably also because German voters with a Turkish background tend to vote left. The SPD also puts more stress on the idea of a "social Europe" with common social standards and less tax competition among Member States. If progress on these issues fails to materialise, it is fairly likely that the party will over time shift towards a more eurosceptic stance. An example is the critical position of SPD politicians to the initial Commission draft of the Services Directive. The new Left Party (see below) in particular will probably compete with the SPD for a "social profile" in the future and might push the Social Democrats towards more outspoken criticism of the European status quo on social issues.

Liberal Democrats (FDP): The FDP (Free Democratic Party) is traditionally very much in favour of European integration. It is a free market party, which strongly supports Commission efforts to further liberalise markets. Some criticism has been expressed about "bureaucracy" and "overregulation" resulting from EU legislation.

The Green Party (Bündnis 90/Die Grünen): Former Foreign Minister Joschka Fischer (who left the political stage after the elections in 2005) has contributed significantly to the pro-European profile of the German Green Party. Largely due to the fact that issues like environmental protection, consumer rights and equal opportunities have gained in importance at the European level, the Green Party has become very positive towards European integration. A minority criticises the lack of a social dimension in the EU and potential conflicts could arise if the EU were to become more active in the field of defence policy. Equally problematic would be any attempts to promote nuclear energy in the framework of a future European energy policy.

The Left Party (Linkspartei PDS): The Linkspartei is the successor of the former ruling party of East Germany and is the only really eurosceptic party in the German Bundestag. In the near future it will merge with the WASG, a party founded in 2005 mostly by former members of the Social Democrats who disagreed with the labour market reforms of Chancellor

Gerhard Schröder's red-green Government. One of the leading politicians of the merged party will be former SPD politician and Finance Minister Oskar Lafontaine. The criticism of the Linkspartei towards the EU focuses mainly on the lack of a social dimension.

2.4.2 The "Länder"

Germany is a federal state with 16 regions ("Länder") and its governments are represented in the second chamber ("Bundesrat"). In return for their approval to the Maastricht Treaty in 1992, a new Article 23 was introduced to the German Constitution that grants the Länder considerable influence on the country's position in the Council of Ministers. The governments of the Länder must be involved (or at least extensively consulted) in all decisions that regard their own competences. As a consequence, Germany often has an increased need for internal coordination during Council negotiations and it takes a relatively long time to find a common national position. This causes a comparative disadvantage for Germany when it comes to coalition building at the European level. Since the 1990s all of the Länder have offices in Brussels, some of them very representative ones. Their relations with Germany's permanent representation have not always been free of tension. Since foreign policy is the exclusive competence of the federal level, it watches carefully that the Länder do not undermine federal efforts through independent policy at the European level.⁸

2.4.3 The Federal Constitutional Court

The German Constitutional Court enjoys high respect in national public opinion and is a very powerful institution with considerable influence over the basic framework for German EU policy-making. Because of this influence critics sometimes reproach it for functioning almost like an (un-elected) "third chamber" in German law-making. Unsurprisingly, Germany is the only Member State where the ratification of the Constitutional Treaty may ultimately be decided by the Constitutional Court. Concerning EU issues in general, the Court is especially concerned about the ultimate control over competences (so-called "Kompetenz-Kompetenz"), which according to its understanding must always remain at the national level. It is thus very critical of any kind of general "passarelle clauses" in the European treaties that may be used to shift more powers to the European level. Equally, the Court insists that national courts are ultimately respons-

⁸ For example, the federal still insists that the Länder offices should not be called "representations" to avoid creating the impression that the regions have competences in the field of foreign policy.

ible for guaranteeing fundamental rights standards. Only “as long as” a general level of rights protection appears to be secured at the EU level, the Constitutional Court has agreed to refrain from exercising its ultimate right of control.⁹ To some extent, the Constitutional Court represents a counterweight to the pro-European political main stream in Germany.

2.5 Organisation of the German Presidency

Running an EU Council Presidency is a tremendous and multifaceted task, with up to 4000 formal and informal meetings that need to be organized. The political importance is even greater in the face of rising expectations about the impact Berlin could have on European integration. It is worth looking at the way in which Germany has prepared for the Presidency.

2.5.1 The Grand Coalition

The political leader responsible for the Government’s EU policy is Chancellor Angela Merkel, a Christian Democrat, but Foreign Minister Frank Walter Steinmeier, SPD, does play a crucial role as well. Before and after the elections in 2006 there were critical comments about a Grand Coalition running Germany. And indeed such political formations usually have a fragile and transitional character. They can easily lead to paralysing timidity or to open conflict. Furthermore, the political staff in the Federal Ministries no longer represent the political spectrum of the governing coalition, but are posted in accordance with the Minister’s political line. Political conflicts might prevent the inter-ministerial coordination from working.

The Grand Coalition in Berlin, however, has sufficient common ground in foreign policy. It has so far been possible to keep looming conflicts out of the daily business. As regards transatlantic relations both sides have been eager to mend fences after the quarrels over the Iraq War, close partnership between Europe and the United States is a shared objective. The new Government signalled early on that it will take a much greater account of the concerns of smaller member states again. A general return to the “cheque book diplomacy” from earlier years is however unlikely, even if the financial situation of Germany should improve further. The Government’s motto that a strong competitive Europe with an open single market will allow Europe to keep its high standards of social security has integrated the sometimes dichotomous approaches of economic liberalism and social

⁹ See for more detail the so-called “Solange II” ruling of the Constitutional Court (BVerfGE 73) 339, at: <http://www.servat.unibe.ch/dfr/bv073339.html>

democracy that are visible in the coalition. The language in the coalition agreement on the strategic partnership with Russia gives room for interpretation. The coalition has stated that Turkey's accession negotiations will be followed in accordance with the commitment made by the EU – a perfect way to postpone conflicts until after the four years of the government period. The Grand Coalition, with the nagging understanding that new elections would drive away the voters from the political centre, will not break up over foreign policy and has more important domestic problems to solve.

2.5.2 Coordination on five levels

The coordination of EU policy in the German Government is a persistent problem, due to the independence of the ministries, shifting competences and the peculiarities of the federal system, with strong influence of the Bundesländer. One asset in this process is the well-balanced team of Brussels insiders that Merkel brought together as heads of the EU departments for the Council Presidency. Uwe Corsepius is the trusted head of Merkel's EU Department. He has served in this department already under SPD Chancellor Gerhard Schröder. The former head of the planning cell in Solana's General Secretary, Christoph Heusgen, is now heading the Foreign Policy Department in the Chancellery. He is not in charge of the EU Presidency, but has a strong voice in areas related to the external relations of the EU. His yearlong counterpart as former head of the EU department in the Chancellery under Schröder, Reinhard Silberberg, is now State Secretary for European Affairs in the Foreign Office. The head of the EU Division in the Foreign Office is also a Brussels insider, Peter Tempel, the former Chief of Staff of Commissioner Günter Verheugen. The German permanent representative in Brussels, Wilhelm Schönfelder, had his tenure extended so that the Presidency could benefit from his experience. The State Secretary in the Ministry of Economics is Joachim Würmeling, a former Member of the European Parliament and deputy member of the Convention that drafted the Constitutional Treaty. The Parliamentary State Secretary in the Ministry of the Interior is Peter Altmaier, also deputy member of the Convention and a Commission official on leave.

Four levels of external and internal coordination form the organizational backbone of the Presidency.

Inside Government: EU policy is a policy field encompassing numerous ministries and agencies. Added to that, German federal policy has a strong principle of departmental independence ("Ressortprinzip," Art 65.2 of the German Basic Law). The ministries have the right to govern their own area

of operations within the framework the Chancellor has set through policy guidelines. The Head of Government is not supposed to intervene in the ministries affairs, thus good coordination is crucial for a coherent policy. Not surprisingly, political haggling is the rule. Each Chancellor in office has attracted more policy fields into the custody of the Chancellery, and Merkel is no exception. The responsibility for overseeing EU policy lies within the Chancellery. With the extension of European integration into other ministries' portfolios, the Foreign Office has been losing ground on EU affairs.

Internal coordination in German EU policy is traditionally difficult¹⁰. Under the current Government the Chancellery is responsible for overall policy formulation and supervision, as well as for the management of the EU Presidency. The Foreign Office has the micromanagement and most areas of CFSP in its hands while the Ministry of Economy is in charge of all economic issues including the Lisbon Agenda. The Treasury plays a more marginal role than under the red-green Government, so that a "quadriga" of coordination centres could be avoided. Each ministry has special representatives for the Presidency and task forces to facilitate coordination.

Coordination in EU affairs is traditionally organized bottom-up, to keep conflicts away from the political level. High level meetings take place twice a month: State Secretaries meet on a monthly basis, as do – with two weeks delay – the heads of department. The relevant heads of unit from all Ministries meet every Monday (formerly the so-called "Tuesday Round") to prepare the COREPER meetings, alternating between the Foreign Office and the Ministry of Economics. In a *Ressortkreis*, representatives of all ministries involved in a dossier convene in the ministry with lead management, to detect conflicts at an early stage. An example of the bottom-up approach was the way in which the Government negotiated the Presidency agenda. The ministries first negotiated topics internally and issued requests that the Chancellery then put together in a draft agenda. In general, however, the degree of coordination is low, due to the large number of actors involved. The Chancellor has difficulties in centralizing authority and creating an orientation for a comprehensive strategy.¹¹

¹⁰ See Wulf-Mathies, Monika and Hüttemann, Bernd, *Der deutsche Patient im Lazarett Europa: Zur Europa-Koordination und -Kommunikation in Deutschland*. Europäische Bewegung Deutschland (EU-in-Brief Nr. 05/02), 22.09.2005, at www.europaeischebewegung.de/fileadmin/files_ebd/eu-in-brief/EBD_EU-in-BRIEF_05-2.pdf

¹¹ See Große Hüttemann, Martin, Die Koordination der deutschen Europapolitik, in: *Aus Politik und Zeitgeschichte/Beilage zu Das Parlament (ApuZ)* 10/2007, at www.bpb.de/publikationen/10F6L4.0,Die_Koordination_der_deutschen_Europapolitik.html

Much of the daily work has to be done in Brussels. To this end the German Permanent Representation to the EU has received 85 additional posts during the Presidency. The Permanent Representation has – for example – been in charge of negotiating economic dossiers like the Single European Payments Area (SEPA) and the Economic Partnership Agreement between the USA and the EU.

Between Berlin and the Commission: The network of connections between the European Commission and the German Government has been one of the central collaborative structures in the run-up and during the Council Presidency. On the one hand the Commission is an indispensable partner for the German Government in the preparation of EU policies, both as the initiator of legislation and as arbiter of the common EU interest. On the other hand, the Commission is an important independent player, as it has the task of controlling the implementation of EU law and must confront Member States when they do not live up to their obligations. The Commission also has a strong self-interest in view of the renegotiation of the Constitutional Treaty.

The Presidency and the Commission have so far cooperated well on setting the schedule and formulating documents, while being in discord over some specific measures. Quite naturally, the German EU Presidency sought close coordination in areas where the Commission is in charge to push policy forward, such as the Lisbon Agenda, the energy and climate strategy or the partnership agreement with Russia. Especially with regard to climate change and energy issues, however, Germany – with its monopolized domestic energy market and strong automobile industry – has been the target of sharp criticism from the Commission.

The agenda of the German Presidency, as well as the joint agenda with the two subsequent Presidencies, has been coordinated with the Commission, just as Germany has commented extensively on the Commission's Strategy Plan for 2008. In a joint meeting between Commission members and the German Cabinet on 9 January 2007 the Commission President José Manuel Barroso issued strong support for the German work plan, especially with regard to finalising treaty reform until 2009 and the joint energy policy of the EU.¹² Barroso, a Portuguese Christian Democrat, owes his post to some degree to Angela Merkel's support in creating a majority among the conservative governments in Europe. Their excellent working relationship is thus partly due to this political favour. Barroso also found

¹² See *Barroso stärkt Merkel für Ratspräsidentschaft*, Financial Times Deutschland, 10.1.2007.

the support of the Schröder Government in 2004 when he made the Social Democrat Günter Verheugen Vice-President of the Commission.¹³

The communication between the German Government and the EU Commission is decentralized. Ministerial officials deal with their counterparts in the Commission directly, thus avoiding a detour via the Chancellery. However, they seek coordination with their colleagues from other ministries. The Heads of EU Departments travel to Brussels on a weekly basis.

Between Germany, Portugal and Slovenia: The first so-called “Trio Presidency” has been in operation since 1 January 2007, a new structure formed to better coordinate the subsequent EU Presidencies. The idea of the new instrument is to secure continuity and to give political initiatives more time to work.¹⁴ The first Trio Presidency is made up of Germany, Portugal and Slovenia, one large and two small countries. Germany is the first country holding a Presidency in a Trio, having the strongest political weight of the three. There is reason to expect that its influence will stretch into 2008, especially since France, Germany’s traditional ally in Europe, will hold the Presidency in the second half of that year. The cooperation between the three countries will also include cultural projects, training programs and personnel.

Comparing the agenda of the German Presidency¹⁵ to that of the Trio¹⁶ a large overlap can be detected. The geographic spread of the Trio Presidency, as well as the inclusion of a new Member State, has helped to cover a larger spectrum of interests among the EU members. This is illustrated by the example of illegal migration: It has been understood that the Germans will focus more strongly on measures against the migrant routes over Eastern Europe, while Portugal will look at the Mediterranean region. The 18-month agenda makes the EU constitutional reform process a central issue, but it also has a dense work plan to create momentum in the fields where further integration and cooperation is most needed, such as the Lisbon Agenda or the European area of freedom, security and justice. The

¹³ Barroso met with the German Government Cabinet in October 2006 to discuss the Presidency work plan.

¹⁴ It goes back to a Council decision amending its rules of procedure from September 2006.

¹⁵ See Federal Government of Germany, *Europe – succeeding together*, Presidency Programme, 1 January to 30 June 2007, at http://www.eu2007.de/includes/Downloads/Praesidentschaftsprogramm/EU_presidency_Programme_final.pdf

¹⁶ See *18-month Program of the German, Portuguese and Slovenian Presidencies*, Council of the EU, Brussels, 21.12.2006 (17079/06 POLGEN 125) at www.eu2007.de/includes/Download_Dokumente/Trio-Programm/trioenglish.pdf

Justice and Home Affairs Council even managed to set up an individual 18-month agenda at their meeting in January.

Between the Capitals: The most important task during the German Presidency is to produce a roadmap and some initial understanding on how to negotiate a replacement for the EU Constitutional Treaty. The Merkel Government chose to create a new network of so-called “focal points”, group of emissaries (“sherpas”) from the EU capitals. As a first test case, they have contributed to the drafting of the Berlin Declaration commemorating the signing of the Treaties of Rome. Between April and June the sherpas are now supposed to negotiate the roadmap on the Constitutional Treaty.¹⁷

¹⁷ For a list of the Sherpas, see Seifert, Jan, List of Sherpas for EU Constitution negotiations, in: Jan's EUBlog at <http://blog.jan-seifert.de/?p=36>., Seifert is currently President of the NGO Young European Federalists. The German envoys are Corsepis and Silberberg, Sweden is represented by Nicola Clase, State Secretary for Foreign Affairs and Thorbjörn Haak, responsible for EU coordination, both in the Prime Minister's Office. The confidential letter, that Merkel sent to the Swedish Government that caused so much concern for being a symbol for a lack of transparency contained not much more than the request to the Government in Stockholm to name a person with a mandate to act as focal point.

3 MAIN ISSUES FOR THE GERMAN PRESIDENCY

Germany has presented an ambitious work programme for its Presidency that covers all major EU policy areas.¹⁸ The first half of its mandate puts the economy, energy and climate change in the spotlight. These issues also dominated the spring summit at the beginning of March. In the second half the constitutional question, or the treaty reform, will become more prominent. The celebrations on 25 March for the 50th anniversary of the Treaties of Rome included the signing of the ‘Berlin Declaration’, which commits leaders to “placing the European Union on a renewed common basis before the European Parliament elections 2009”. At the European Council on 21/22 June the Presidency is expected to present a roadmap for the constitutional process that needs the approval of all other governments. Besides the constitutional question, justice and home affairs and foreign policy will be of particular importance. This report will give an overview of the main events and developments concerning the internal and external policies of the Union.

In view of the wealth of activities, the overview will inevitably have to remain incomplete. Not all the activities of the European Union bodies will be given attention, but only those areas, which were given priority by the German Presidency. Activities, which gained the attention of some German bodies but did not make it to the summit headlines will not be scrutinized either. Some policy fields saw progress on the operational level, but will not be covered because no specific impulses came from Berlin, such as EU enlargement. On some topics, the EU Presidency’s performance can be analysed by looking at legislative decisions. Other policy fields, mostly in external relations, demand a look at unfinished negotiations and travel diplomacy. The authors were able to include developments up to 6 May 2007, so that the report provides in many cases a stocktaking of “work in progress”.

3.1 Economic policy and the Internal Market

At the Lisbon summit in March 2000 European leaders declared they would turn the EU into “the most dynamic and competitive knowledge-based economy in the world” by 2010. So far they have clearly fallen short of this ambitious aim and key indicators show that especially during the first few years the gap between the EU and other important players (especially the United States) has instead been widened. In November 2004 a report of a high level group chaired by former Dutch Prime Minister Wim Kok was

¹⁸ See “*Europe – succeeding together*”, op. cit.

published.¹⁹ The “Kok Report” blamed the lack of success on several factors: An overloaded agenda, poor coordination, conflicting agendas and not least a lack of determined political action for structural reform in the Member States.²⁰ Acknowledging the shortcomings of the original Lisbon Agenda, it was thoroughly revised in 2005. It now puts a stronger focus on “growth and jobs” and Member States have to elaborate three-year “national reform programmes” (NRPs) which aim at giving them more ownership in the process. However, the Lisbon Agenda continues to build on the soft law approach of the so-called “Open Method of Coordination” (OMC) that uses benchmarking and exchange of best practice among Member States instead of binding legislation. An example agreed by the Council during the German Presidency is the “*Alliance for Families*”. The initiative has been pushed by German Minister of Family Affairs Ursula von der Leyen and aims at the exchange of best practice on family-friendly policies among Member States in view of rapid demographic change.²¹

According to the Presidency’s work programme a key priority is “shaping Europe’s economic, social and environmental future”, thus making reference to all three elements of the Lisbon Agenda. With a closer look, however, a stress on the economic and environmental aspects can be detected. Thus the work programme proposes further steps towards the completion of the Internal Market, listing a whole range of concrete initiatives. The following section will give an overview of the status quo on the different dossiers at the beginning of May 2007:

A concrete success has been the *adoption of the Payment Services Directive* (PSD) by ministers in March, followed by the EP in April. The Directive will make it easier for customers to use payment and credit cards throughout the EU and is thus an important step towards the declared goal of a “Single Euro Payment Area” (SEPA).²² It will now be transposed into national law which is likely to come into force by late 2009.

¹⁹ See *Facing the Challenge – The Lisbon strategy for growth and employment*, Report from the High Level Group chaired by Wim Kok, at: http://ec.europa.eu/growthandjobs/pdf/kok_report_en.pdf

²⁰ Ibid, p. 6.

²¹ See *Council stresses social dimension of EU agenda*, in Euractiv, 12.3.2007, at: <http://www.euractiv.com/en/social/europe/council-stresses-social-dimension-eu-agenda/article-162388>

²² See *Payment Services Directive – Frequently Asked Questions*, at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/152&format=HTML&aged=0&language=EN&guiLanguage=en>

Liberalisation of postal markets will be addressed in the Council on 6–8 June. The issue is supported by a group of “Northern” Member States that have already liberalised their markets, namely the UK, Finland and Sweden. Resistance comes from a “Southern” group. France, Italy, Spain, Greece, Belgium, Hungary and Poland fear that rapid liberalisation could destroy their public operators, resulting in job losses and weaker customer services.²³ Germany is in favour of a European agreement on liberalisation, especially since this issue also has an important impact on the Government coalition: The Social Democrats will only agree to the planned national liberalisation if a European agreement is found, while the Christian Democrats have confirmed their commitment to liberalisation in 2008 regardless of an agreement at the European level.²⁴

Agreement on the *reduction of roaming tariffs* before the summer holiday season was also still uncertain at the beginning of May 2007, because positions of the Council and the EP were still quite far apart. At the end of April the Council had agreed on a maximum 60 cents for outgoing calls and 30 cents for incoming calls, while the EP continues to demand 40 cents and 15 cents respectively. The German Minister of Economics and Technology Michael Glos rejected the EP’s demands as being too low, pointing towards the necessity of competition between providers and incentives for continued investment in the sector.²⁵ The Council position is especially supported by Member States that are popular tourist destinations such as France, the UK and Spain, while other countries such as Estonia, Hungary, the Netherlands, Denmark, Finland and Poland are more open to negotiations.²⁶ There is also still no agreement between the Council and EP on the question of whether the new tariff limits will only be applied automatically to customers with new contracts or also to those with old ones.

Initially the reduction of *the bureaucratic burden* emanating from EU legislation was presented as one of the central aims of the German

²³ See *Postal Services Liberalisation*, in: euractiv, 10.4.2007, at <http://www.euractiv.com/en/transport/postal-services-liberalisation/article-161377>

²⁴ See *Steinbrück unterstützt Zumwinkel – Behält die Post ihr Monopol?*, in: Frankfurter Allgemeine Zeitung (FAZ) 22.3.2007, at: <http://www.faz.net/s/Rub28FC768942F34C5B8297CC6E16FFC8B4/Doc~E7F62CA211A474D018DA5FFF6A3362625~ATpl~Ecommon~Scontent.html>; *Glos will von längerem Briefmonopol nichts wissen*, at: FAZ, 26.3.2007, <http://www.faz.net/s/Rub28FC768942F34C5B8297CC6E16FFC8B4/Doc~E43B31ADC4DB74DBAB9C69C1D200F0378~ATpl~Ecommon~Scontent.html>;

²⁵ See *EU kritisiert Glos – Handykonzerne schrauben an Inlandstarifen*, in: Spiegel-online, 24.04.2007, at: <http://www.spiegel.de/netzwelt/mobil/0,1518,479060,00.html>

²⁶ See *EU roaming charges plan suffers setback*, in: euobserver, 04.05.2007, at: <http://euobserver.com/9/23999>

Presidency. Angela Merkel explicitly mentioned the “cutback of bureaucracy” (“Bürokratieabbau”) as a focal point of the six-month term in her speech before the German Bundestag on 14 December 2006.²⁷ She pledged full support for German EU Commissioner Günter Verheugen on this issue. Verheugen’s efforts on “cutting red tape” has only had limited success over the last years - probably not least because most of the EU’s legal acts actually do serve a purpose. In many cases a European Directive replaces 27 national laws and establishes a level playing field that is crucial for the functioning of the Common Market.

The Presidency’s achievements on this issue are mixed: On the one hand the Presidency has managed to make the European Council agree on a 25% reduction of the administrative burden arising from *EU* legislation by 2012. The main problem will be to actually measure the reduction. The Presidency Conclusions of 8/9 March therefore call on the Commission to launch an “Action Programme” that should define the measurement of administrative costs of Community legislation. On the other hand, however, the Presidency has failed to reach agreement for bureaucracy reduction at the *national* level. Due to strong resistance from a number of countries, the European Council only “invites Member States to set their own targets” by 2008.

3.2 Energy and Climate Change

Already in the early years of European integration Member States cooperated on energy through the Treaty on the European Coal and Steel Community (1952) and the Euratom Treaty (1957), but so far there has not been a common European energy policy. In recent years guaranteeing secure and environmentally friendly energy has become an issue of growing importance, which makes a common approach at the European level highly desirable. When Russia cut off its gas supplies to Ukraine in January 2006, several EU Member States were directly affected, as their own supplies were interrupted. This functioned as a wake-up call to EU leaders. Since then public awareness of Europe’s dependency on foreign energy supplies both from Russia and from the Middle East has grown. Beyond this, a strong motivation for a common energy policy stems from the shared threat of climate change. Since the Kyoto Protocol will expire in 2012 a succession agreement will be needed. In October 2006 a report by the

²⁷ *Government Declaration about the Double Presidency by Angela Merkel* before the German Bundestag on 14.12.2006, retrievable (in German) at: <http://www.bundesregierung.de/Content/DE/Regierungserklaerung/2006/12/2006-12-14-regierungserklaerung-bkin-doppelpraesidentschaft.html>

economist Sir Nicholas Stern was published that highlighted the global danger – also in economic terms – arising from climate change.²⁸

At the EU level, the Commission presented a first general document (a so-called “Green Paper”) on energy in March 2006 putting forward “*A Strategy for Sustainable, Competitive and Secure Energy*”.²⁹ At the following spring summit on 23/24 March 2006, European leaders called for an Energy Policy for Europe (EPE) and invited the Commission and the Council “to prepare a set of actions with a clear timetable enabling the adoption of a prioritized Action Plan by the European Council at its 2007 spring session.”³⁰ On 10 January 2007 the Commission presented its Communication “*An Energy Policy for Europe*”³¹ with concrete proposals for the Action Plan. Among others it included measures for a “real Internal Energy Market”, security of supply, reduction of greenhouse gases, and energy efficiency.

From the outset the German Government had taken into account the plans for the EPE Action Plan and made energy and climate change the most important priority of the first half of its Presidency. The work programme calls for the “*completion of the Internal Market for gas and electricity by 1 July 2007*” and states that the German Presidency will work to obtain “*the complete opening of markets for electricity and gas on the basis of blanket application of European legal provisions in all EU member states*”. However, these ambitious words stood in some contrast to the Presidency’s start which was far from optimal. German commitment was put into question by two conflicts that received wide media attention:

The first of these occurred after the Commission had presented its energy policy proposals on 10 January 2007, which included a proposal for “*full ownership unbundling*”, i.e. the separation of network ownership on the one hand and energy production and sales on the other. The Commission fears discrimination and abuse through combined network ownership and energy production and insists that “economic evidence shows that ownership unbundling is the most effective means to ensure choice for energy

²⁸ See *Stern Review on the economics of climate change*, at: http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm

²⁹ See EU Commission Green Paper, *A European Strategy for Sustainable, Competitive and Secure Energy*, (COM (2006) 105 final), Brussels, 8.3.2006, at: http://ec.europa.eu/energy/green-paper-energy/doc/2006_03_08_gp_document_en.pdf

³⁰ See Presidency Conclusions, Brussels European Council 23/24.3.2006 (7775/1/06 REV 1), at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/89013.pdf

³¹ See Communication from the Commission to the European Council and the European Parliament, *An Energy Policy For Europe*, Brussels, 10.1.2007 (COM (2007) 1 final), at: http://ec.europa.eu/energy/energy_policy/doc/01_energy_policy_for_europe_en.pdf

users and to encourage investment”.³² Alternatively the Commission proposes an “Independent System Operator” that would allow continued network ownership, but the owning company would not be responsible for operations, maintenance or development anymore. The major German energy suppliers immediately voiced their opposition to full ownership unbundling and the Minister for Economics and Technology Michael Glos (CSU) claimed that it would endanger the security of supply and even be in contravention of the German Constitution.

A second conflict that challenged the Presidency’s credibility and demonstrated the powerful interests of German industry came up in January 2007 when Stavros Dimas, the European Commissioner for the Environment, presented ambitious plans for the *reduction of CO2 emissions from cars*. According to his plans the average emissions from new cars should be reduced to 120 gram/km by 2012, after it had become clear that the car industry’s own commitment from 1998 to reach 140 gram/km by 2008 would fail. Dimas’ plan was supported by German Environment Minister Sigmar Gabriel (SPD), but caused uproar among German car manufacturers. They produce mainly large cars that emit on average more CO2 than smaller models from France or Italy. The German industry again received backing from Minister Glos who claimed that the Greek Commissioner did not sufficiently take into account the fact that thousands of jobs in the German car sector were at risk. The Commissioner for Industry, German Günther Verheugen (SPD) also spoke out against Dimas’ plan. He argued in favour of an “integrated approach” that would include other measures for CO2 reduction than just car emissions (e.g. better tires, drivers’ training, more efficient traffic routing).

In the meantime both conflicts have been toned down: Concerning car emissions, the Commission has tabled a preliminary compromise aiming at 130 gram/km due to more efficient cars and 10 gram/km coming from other measures. Concrete legislation will only be proposed next year and it is currently not yet clear whether Verheugen or Dimas will take the lead in elaborating the legislative draft. The conflict over “unbundling” has been eased through signals for compromise, probably aiming at an alternative to “ownership unbundling”, as the Presidency Conclusions of 8/9 March suggest.

Despite the bumpy start the European summit on 8/9 March has widely been judged as a success for the German Presidency. The positive assessment is mainly due to agreement on an *Action Plan for an “Energy Policy*

³² Ibid, p.7.

for Europe” (EPE), based on the Commission Communication from 10 January 2007. The Action Plan includes a sentence stating that the European Council “*agrees on the need for effective separation of supply and production activities from network operations (unbundling)*” without explicitly demanding full ownership unbundling. Leaders also commit Member States to “*a binding target of 20% of renewable energies in overall EU energy consumption by 2020*”, while it remains subject to future negotiations how much each country will have to contribute. Due to a special reference to the “energy mix” it is also not quite clear if and how the use of atomic energy will be taken into account for national contributions. These questions still hold a lot of potential for future conflicts. France will certainly insist that nuclear power counts towards the 20%, since 78% of its energy comes from this source. The question is certain to cause conflict with countries like Austria that do not have atomic power plants at all. In Germany the discussion will lead to divisions between the coalition partners, since the Schröder Government (SPD and Greens) passed a law to phase out nuclear power. The Christian Democrats are likely to seize the European debate about national contributions as an opportunity to re-open the issue, arguing that Germany would otherwise suffer from comparative disadvantages.

The summit’s most widely reported achievement was the agreement on an *unconditional reduction of greenhouse gas emissions* of 20% by 2020 compared to 1990. The Presidency Conclusions still leaves to be clarified how much the respective Member States will have to contribute to reaching the 20% reduction. This issue is likely to prove very contentious, but reaching a binding agreement on the headline goal certainly constitutes a first important step.

Leaders also formulated the objective of 30% by 2020, but only under the condition that other developed countries would also commit themselves to “comparable emission reductions” and more advanced developing countries to “contributing adequately according to their responsibilities and respective capabilities.” Germany is using its present G8 Presidency to push other developed countries – especially the USA – towards similar efforts, but signs have so far been rather negative.

3.3 Justice and Home Affairs

Over the last few years, justice and home affairs have been one of the most dynamic areas of European policy-making and it is mentioned regularly when the argument of European “value-added” is put forward. Common challenges, like global terror or illegal migration, are pushing Member

States towards closer cooperation. A European approach on legal migration will also be necessary, as the populations of most Member States are rapidly ageing and global competition to attract the most talented is growing. With more Europeans travelling, working and living in other Member States there is also an increased need for agreements in the field of civil law, especially family law.

However, while the pressure for common solutions grows, JHA dossiers are often at the core of national sovereignty and touch upon very sensitive issues, such as civil rights or data protection. In many areas Member States insist on keeping their veto and EU treaty provisions vary widely depending on the issue. Following the Treaty of Amsterdam, matters concerning visa, asylum and migration have been moved to the so-called “first pillar” (Title IV of the EC Treaty, art. 61–69 TEC). In many cases this means full ruling powers for the European Court of Justice, a Commission monopoly on legislative proposals and the European Parliament as an equal co-legislator to the Council. In contrast, the provisions for police and justice cooperation on criminal matters are still entirely intergovernmental (so-called “third pillar”, Title VI of the EU Treaty, art. 29–42 TEU). In 2006 calls for a shift of third-pillar issues to the “communitarised” first pillar on the basis of a “passarelle clause” (art 42 TEU) have been rejected by Germany and Ireland to keep up the political pressure for saving the Constitutional Treaty.

For its Presidency Germany has presented an extensive and detailed agenda on justice and home affairs. The responsible ministers are the Minister of Justice, Brigitte Zypries (SPD) and the Minister of the Interior Wolfgang Schäuble (CDU). Ahead of the first Informal Meeting of Justice and Home Affairs Ministers in Dresden on 14/15 January, the three subsequent Presidencies of Germany, Portugal and Slovenia have agreed on a joint work programme for justice and home affairs over the following 18 months.³³ The Ministry of the Interior has also put forward a specific working programme on home affairs for the German Presidency called “Living Europe Safely”.³⁴ According to this programme the following general points are considered priorities:

³³ See *First EU Trio Presidency of Justice and Home Affairs Ministers Gets Under Way*, Press Release, Berlin, 15 January 2007, at http://www.bmj.bund.de/files/2a1759d42a354d4f5f51c2c68649cb3e/1618/150707_First%20EU-Trio.pdf

³⁴ Ministry of the Interior, *Living Europe Safely. Work programme for the German EU presidency*, Berlin, December 2006, at http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2007/Europa_sicher_leben_BMI_Arbeitsprogramm_dreisprachig.templateId=raw,property=publicationFile.pdf/Europa_sicher_leben_BMI_Arbeitsprogramm_dreisprachig.pdf

- fighting international terrorism and cross-border crime more effectively
- managing migration together
- making progress on integration and intercultural dialogue.

The Presidency orients itself on the implementation of the Hague Programme that has defined the goals for home affairs for the period between 2004 and 2009. Over the last few months it has produced some concrete results:

In February the Ministers of the Interior agreed in Brussels on the transposition of the main provisions of the *Treaty of Prüm into the legal framework of the EU*. This treaty (which is named after a small German town not too far from Schengen in Luxembourg) was initially concluded in 2005 between seven Member States outside the EU framework. It allows – among others – automated access to vehicle registration data, DNA analysis and fingerprint data among the participating states. Through integration into the treaty framework the data will become accessible for all 27 Member States and democratic scrutiny through the European Parliament is likely to improve. The Treaty of Prüm has been criticised as an attempt at the creation of a “core Europe” that would weaken EU institutions. If a transposition should be successful, however, it could strengthen the position of those who see “external” agreements as a constructive first step towards further European integration.

At their April Council meeting in Luxembourg the Ministers of the Interior reached an agreement on a regulation that establishes so-called “*Rapid Border Intervention Teams*”. Staff will be taken from a pool of 450 national experts who can be available at short notice to any Member State whose borders are under “urgent and exceptional” strain by illegal immigration.³⁵ The teams will operate under the EU’s external borders agency FRONTEX and officers from other Member States will be able to exercise executive powers in a team led by the member state that hosts the operation.

Germany also wants *Europol’s* mandate and staff to be extended. In recent months it has pushed Member States successfully to implement amending protocols to the Europol Convention, which for example, will allow Europol to participate in joint investigation teams set up by Member States.³⁶ In the longer term, however, Germany aims at changing the legal

³⁵ See Goldirova, Renata *EU agrees rapid reaction anti-immigration units*, in: euobserver, 24.3.2007, at: <http://euobserver.com/22/23914>

³⁶ See *German Council Presidency welcomes the entry into force of the extension of Europol’s operational powers*, Press release, 20.04.2007, at: http://www.eu2007.de/en/News/Press_Releases/April/0420BMIEuropol.html

base for Europol from the present Convention to a Council decision. This would avoid the lengthy ratification procedures that are currently needed for any changes to the Europol Convention. Germany would like to see Europol's mandate extended to cover serious cross-border crime that is not linked to organised crime (e.g. hooliganism).

Also in April Justice Ministers agreed on a *hate-crime law* that had been controversially discussed for almost six years. It was in particular several new Member States that had demanded that statements denying crimes committed under Stalin should be just as punishable as the denial of the Holocaust and Nazi crimes. As a compromise solution, the current agreed text does not make any explicit mention of either one. According to the text public incitement to violence or hatred for reasons of racism and xenophobia will be a crime in all Member States. Equally the dissemination of writings with such content will be punished, and so will "public approval, denial or gross trivialisation of genocide, crimes against humanity and war crimes", if it amounts to racist or xenophobic agitation. Prison sentences will range from one to three years.

No definite agreement has been reached so far on common rules for the application of *divorce law for bi-national couples* (so-called Rome III Regulation). Ministers have made some progress, but have only agreed on guiding principles for further deliberations. The draft text foresees that if a couple cannot come to an agreement, the law of the last residence should automatically apply. Especially Sweden opposes this rule due to fears that its liberal provisions could be undermined by much stricter rules in other Member States. In Malta, for example, divorce is not even foreseen in the legal system.³⁷ Ministers will come back to the issue again in June.

Already at their informal meeting in January, interior ministers decided to set up an informal "*High Level Group*" on home affairs with a view to the future of domestic policy. It will consist of the Commissioner for Justice and Home Affairs Franco Frattini, the six interior ministers of the current and upcoming Trio Presidencies³⁸, one representative of the following Trio Presidency³⁹ and experts from all Member States as needed. The group is supposed to provide input and orientation on the future aims of domestic policy that go beyond the current Hague Programme. By autumn 2008 the group will submit a report that will form a basis for discussions before the

³⁷ See EU Commission., *Divorce – Malta*, at:
http://ec.europa.eu/civiljustice/divorce/divorce_mlt_en.htm#1

³⁸ Germany, Portugal, Slovenia and France, the Czech Republic, Sweden.

³⁹ Spain, Belgium, Hungary.

successor programme to the Hague Programme (ending in 2009) will be formally proposed.

With regard to its declared aims the Presidency's record on Justice and Home Affairs has been positive so far. The coordination with the two following Presidencies is likely to prove especially useful, as JHA suffers from the complicated decision-making structure and national vetoes. Continuity of priorities and long-term trust building are therefore of particular importance in this policy area.

3.4 Roadmap for the constitutional process

The constitutional question certainly represents the greatest challenge for the German Presidency, which is likely to be judged by the progress made in this area. On the one hand it is the most high profile issue on the agenda; on the other hand it is extremely complex and sensitive. At the *European Council on 21/22 June* Germany is supposed to present a "roadmap" with a time plan, concrete procedural steps and suggestions outlining the content of a renegotiated treaty that would be acceptable to all governments. On the basis of the roadmap, the heads of state will then take concrete decisions on the continuation of the process. Germany received the mandate for this roadmap already at the European Summit in June 2006. At that occasion the heads of state and government stressed that "the necessary steps" for the continuation of the reform process must have been taken "during the second semester of 2008 at the latest"⁴⁰ in order to have the new treaty agreed before the next EP elections. In the last few months the German Presidency has consulted the other governments in bi-lateral talks (so-called "confessionals") about their expectations and reservations concerning the future of the Constitutional Treaty. Each government had to nominate two representatives (the so-called "sherpas") to negotiate for their country. The drafting of the "*Berlin Declaration*" – the declaration for the 50th anniversary of the Treaties of Rome – was a first occasion for the Presidency to test the ground.⁴¹ A valuable benefit has been the growing personal trust among the sherpas, although some complained that direct negotiations were too limited and too much of the intercourse was carried out via e-mail.⁴² For the negotiations on the roadmap more direct

⁴⁰ Presidency Conclusions, European Council 15/16 June 2006, p. 18, at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf

⁴¹ See Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome, (Berlin Declaration), Berlin, 25.3.2007, at: http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf

⁴² See Johannes Leithäuser, *Dramatische Diskretion. Wie die „Berliner Erklärung“ entstand*, in: FAZ, 23.03.07.

contacts have been envisaged. Two to three meetings were planned with all sherpas of the EU members, with some presence of Angela Merkel.

Parliamentarians, NGOs and the public were hardly involved in the drafting of the Berlin Declaration and the German Government was criticised for the secrecy of the talks, which stood in some contrast to the wording of the text. The Declaration repeatedly takes the perspective of the citizens (“We, the citizens of the European Union”) while it had actually been negotiated between a handful of government officials behind closed doors. To be fair, however, it must also be mentioned that even the little information leaked to the press already suggested that open talks would have ended in disagreement about the most basic issues.⁴³ Such open controversies would have undermined the very rationale of the Berlin Declaration which was meant to demonstrate unity towards the public and create a positive atmosphere among leaders for the upcoming negotiations on the roadmap.

In this respect the Declaration and the surrounding festivities have been constructive, despite some negative comments from Czech President Vaclav Klaus and his Polish counterpart Lech Kaczynsky. Both complained about having been rushed to an agreement and were especially unhappy about the only sentence of the Declaration that can be understood as a concrete commitment: “(...) we are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.”⁴⁴ The date 2009 implies a very ambitious time schedule for negotiations that is likely to be reflected in the roadmap: The incoming Portuguese Presidency would immediately have to call an Intergovernmental Conference (IGC) that would still have to be concluded by the end of 2007 to leave enough time for ratification. Such a short IGC would simply not allow opening complicated issues again. The Declaration does not have legal value, but it is still interesting to note that the text was only signed by representatives of the three main institutions⁴⁵ and not by all national leaders.

Over the last few weeks several governments have clearly positioned themselves on the future of the Constitutional Treaty, which allows a certain prediction for the roadmap and the steps that are likely to follow. Basically

⁴³ For example, it was reported that initially the British Government was even opposed to mentioning the Euro in the Declaration.

⁴⁴ The Czech President was also unhappy about this date, as his country will hold the EU Presidency during the first half of 2009 and might thus have to “celebrate” a new treaty that he may rather like to treat as “business as usual”.

⁴⁵ Angela Merkel for the current Council Presidency, EP President Hans-Gert Pötering and Commission President José Manuel Barroso.

two camps are emerging: One advocates a “Constitutional Treaty Minus” while the other one would like a “Treaty of Nice Plus”. The first group consists of the seventeen governments that have ratified the Constitution⁴⁶ plus the German⁴⁷, Portuguese and Irish ones. They would actually prefer the Constitutional Treaty as it stands, but have come to accept that the text will not be presented to the French and Dutch people for a second time. They therefore argue in favour of the existing text as the only basis for renegotiations and for preserving as much as possible of it.

The opposing group wants to take the existing treaties as a starting point. Acknowledging the need for institutional reform, these governments clearly favour a simple “amending treaty” in the tradition of the Treaty of Amsterdam or the Treaty of Nice. The group includes the United Kingdom, the Netherlands and – after the victory of Nicolas Sarkozy in the presidential elections – France.⁴⁸ Blair, Balkenende and Sarkozy have clearly spoken out in favour of a solution that will spare them a referendum in their countries. The idea of a “Treaty of Nice Plus” also enjoys support from the Czech and Polish governments and – less outspoken – from the Swedish and Danish one. Tony Blair has proposed to have the slimmed down treaty ratified without the looming referendum in Great Britain. Such a proposal carries hope, as it would make British consent easier, but it has also been referred to as blackmailing.

In the end, an agreement is likely to lie somewhere in between the two positions. At the end of April Merkel sent out a letter with 12 concrete questions for the other leaders that should help to build a new consensus.⁴⁹ Already now the German Presidency has signalled its consent to drop the name “Constitutional Treaty” and other elements that may appear as state-like symbolism. Possibly this could even include the title “Foreign Minister”.⁵⁰ It is also very likely that most of Part III will be dropped. As a

⁴⁶ Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia, Slovenia, Spain.

⁴⁷ Strictly legally speaking, Germany has not ratified the Constitutional Treaty despite high majorities in both the Bundestag and the Bundesrat. Federal President Horst Köhler has not signed the ratification act yet, after the Federal Constitutional Court accepted to rule on a complaint by a member of parliament. The ruling has still not taken place.

⁴⁸ Sarkozy’s own words stand in some contrast to recent statements from his advisor Alain Lamassoure who said that Paris will try to stick as much as possible to the original text, see: Kubosova, Lucia: France wants to save major part of EU constitution. Sarkozy aide says, in: euobserver, 08.05.2007, at <http://euobserver.com/18/24015>

⁴⁹ Mahony, Honor, *Germany sends out letter to salvage EU constitution*, in: euobserver, 23.04.2007, at: <http://euobserver.com/18/23921>.

⁵⁰ See Busse, Nikolas, *Verzicht auf den Außenminister? Die deutsche Ratspräsidentschaft sucht nach einem Konsens für die erneuerte EU-Reform*, in FAZ, 3.5.2007.

consequence, the existing treaties cannot be repealed, as it is currently foreseen in article IV-437 of the Constitutional Treaty. Thus the new treaty would exist next to the old ones and would have to change and amend them. This will raise the question of whether the new text should only be an amending treaty using technical language or whether it could remain a coherent and understandable text. Germany seems to be moving closer to accepting that an amending treaty could be a basis for consensus. Another contentious issue will be the Charter of Fundamental Rights (currently Part II). If the UK and others demand it to be dropped from the treaty text itself, other governments will surely insist on a reference that clearly confirms the Charter's legally binding nature.

Merkel's main aim seems to be ring-fencing the institutional "package deal", which would avoid full renegotiations. Generally this should be acceptable even for the proponents of an amending treaty,⁵¹ as it is illusionary to "cherry pick" only those elements they would prefer. Especially the permanent Council President (wanted by both Britain and France) will be rejected by many smaller Member States, if the Commission and European Parliament will not be strengthened in return. In the end the current institutional compromise might appear to everyone as a viable compromise that avoids restarting from scratch.

The only country that has consistently signalled its opposition to a particular institutional aspect is Poland. The current Government does not feel bound by the signature of its predecessor claiming that the rule "*pacta sunt servanda*" does not apply anymore, since the original text will never enter into force. It refuses to accept the voting powers in the Council as agreed in the Constitutional Treaty. Under the Nice rules Poland has a very favourable position: It has 27 votes with a population of only 38 million people, compared to e.g. Germany with 29 votes but 82 million people. Instead of the double majority system in the Constitutional Treaty (55% of states, 65% of population), the Polish Government proposes a double majority system that would replace the element "population" with "*square-root* of the population".⁵² Re-opening this issue could potentially open "Pandora's box", however, as other countries might also call for amendments and changes to the voting system. France in particular might

⁵¹ Except for co-decision and qualified majority voting becoming the rule ("ordinary legislative procedure", art III-396) there is little that would imply an inevitable loss of national control.

⁵² Concretely this would mean that Poland would have about two thirds of Germany's votes (instead of just half of Germany's votes, as it is proposed in the current Constitutional Treaty).

demand keeping the parity with Germany that it currently enjoys under the Nice rules. Angela Merkel has been very active trying to convince the Polish leadership, namely during her visit to Poland in March. At the same time she seems to have secured that Blair or other supporters of a “mini-treaty” do not side with Poland for tactical reasons. As Blair has confirmed in recent interviews he is in favour of a quick solution that will not reopen the thorny issue of voting weights again.⁵³

The only country in a comparable situation to Poland is Spain. Interestingly, however, the Spanish Prime Minister Zapatero is one of the strongest supporters of the Constitutional Treaty and has even got the text through a referendum. Poland therefore remains isolated on this issue, but could still bring the process to a halt with its veto. The current Government has already demonstrated on other dossiers (e.g. the partnership agreement with Russia) that it will not hesitate to use its veto even under difficult conditions.

In principle, the roadmap could avoid addressing the contentious matter of voting weights, but if the ambitious time schedule for a new treaty is to be observed (i.e. a new treaty in force before the European elections in 2009), the issue will definitely come up in the IGC during the Portuguese Presidency.⁵⁴

External relations play an important but ambivalent role on the German Presidency agenda. They are not prominent on the “to do list”, but attract the greatest public attention. Foreign policy makers in Berlin have been kept busy by important decisions with regard to two key strategic partnerships and by developments in two crisis regions.

3.5 Relations between the EU and the United States of America

Improving transatlantic relations is one foreign policy priority of the Grand Coalition in Berlin. The underlying understanding is that the bilateral relationship has global implications: No challenge in a globalising world can be better tackled without the United States than in cooperation with the

⁵³ See for example: „*Der Westen muss an seine eigenen Werte glauben*“, Interview with Tony Blair, in: SZ, 4.5.2007.

⁵⁴ One compromise solution could be to simply put a cap on the votes, so that even the largest member state (i.e. Germany) cannot have more than a certain number of votes. Whether this is an acceptable solution for either Germany or Poland is still questionable, however.

United States. Also the Social Democrats in the Government do not question that. Even during the quarrel over the war in Iraq, cooperation went on smoothly in other areas like the fight against terrorism.

During the German EU Council Presidency, the transatlantic agenda has focused primarily on the strengthening of the Euro-Atlantic economic space, since the United States and the European Union are each other's most important economic partners. In 2005, both together generated 57 percent of the global economic output and around 40 percent of world trade. Imports and exports of goods of the EU-25 in total amounted to 2.2 trillion Euros in 2005, those of the US worldwide came close to 2.1 trillion Euros. 14 percent of the European imports come from the US, and 24 percent of its exports go to America. Besides trade, it is actually foreign direct investment and foreign affiliate sales, which create the highest turnover.⁵⁵

The transatlantic economic partnership is running much more smoothly than the constant quarrel over trade disputes like the one over subsidies for Airbus and Boeing might reflect. Nevertheless, transatlantic trade could develop more freely if a number of non-tariff barriers separating the two economic spaces from each other could be abolished. For the sake of growth and prosperity, the two economic heavyweights should seek to make their cooperation more efficient. Decision-makers on both sides of the Atlantic have insisted that the bilateral talks are not designed to undermine the Doha trade talks or to confront growing economic powers like China and India.

Yet the hope of creating a framework for deeper political and economic institutionalisation has seen only slow progress through the past decade. The attempts to create bilateral arrangements to ease trade restrictions following "New Transatlantic Agenda" of 1995, with a number of forums like "Transatlantic Business Dialogue", did not suffice to help the partners

⁵⁵ The USA exports 21 percent of its goods to Europe and has delivered close to 19 percent of its imports from the EU. The United States exports a large amount of services (93 bn Euro vs. 109 bn from the whole EU 25). Foreign direct investment and foreign affiliate sales taken together cover an even bigger share of the transatlantic economic activities. See *From free trade to deep integration: Outlook on economic relations between the EU and US* (Deutsche Bank Research, Reports on European integration, EU Monitor 45) April 18, 2007 at http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000209719.pdf; Daniel S. Hamilton, Joseph P. Quinlan, *Partners in Prosperity: The changing Geography of the Transatlantic Economy* (Center for Transatlantic relations, Johns Hopkins University, Paul. H. Nitze School of Advanced International Studies) Washington, DC 2004.

remove a tough core of barriers and went into deadlock in 2002.⁵⁶ The recent policy initiatives build upon the “Initiative to Enhance Transatlantic Economic Integration and Growth”, agreed on at the EU-US summit in June 2005. Its overall goals were among others to promote regulatory cooperation, to facilitate the movement of people and goods, to stimulate a competitive capital market and to foster technological innovation, especially in the area of energy efficiency, and to secure intellectual property rights. The efforts were expanded at the EU-US summit in Vienna in 2006.

The path towards deeper economic partnership was thus laid when Germany took over the EU Presidency, seeking deeper commitments, a broader agenda and a new overall agreement. Merkel’s plans for the Presidency first circled around the idea of a Transatlantic Free Trade Zone (TAFTA), put forward by Christian Democrat colleagues from the European Parliament and the Bundestag. There was not much enthusiasm in Brussels or in Washington. With four per cent, tariffs cover only a very small amount of transatlantic trade. The real need is for harmonization and mutual recognition of standards. A bilateral TAFTA could well be seen as a signal that the EU and USA no longer take the global trade talks in the Doha round seriously. EU Commissioner Peter Mandelson criticized this aspect of the idea.⁵⁷

When Merkel described creating structures similar to the Single Market between the US and the EU at the World Economic Forum in Davos as a long-term objective, the focus shifted away from an FTA towards an integrated market, a larger goal that could be addressed with gradual achievements. On the road to a transatlantic single market, that not too many politicians would endorse at this point in time, harmonized regulation, mutually recognized standards, or common rules for financial transactions would be necessary steps.⁵⁸

In early January, Angela Merkel paid an inaugural visit to Washington as EU Council President. The most prominent topic was the revival of the

⁵⁶ See van Scherpenberg, Jens, *Die Integration des Atlantischen Wirtschaftsraums*, (Stiftung Wissenschaft und Politik, SWP-Studie S 24), September 2006, at http://www.swp-berlin.org/de/common/get_document.php?asset_id=3296, and the 2007 EU-U.S. Summit. Economic Progress Report, Washington, 30.4.2007, at <http://www.bundestkanzlerin.de/Content/DE/Artikel/2007/04/Anlagen/2007-04-30-economic-progress-report.property=publicationFile.pdf>

⁵⁷ See Braml, Joseph, Schmucker, Claudia, *Barrieren im atlantischen Wirtschaftsraum*, in: IP, 62/3 (March 2006), 100-103.

⁵⁸ See Kafsack, Hendrick, *Transatlantischer Wirtschafts(t)raum*, in: FAZ, 28.4.2007; Dunsch, Jürgen/Knop, Carsten, *Merkel für “Binnenmarkt” mit Amerika*, in FAZ, 25.1.2007.

Middle East Quartet, but the economic cooperation and the energy climate nexus had high priority as well. At an important conference convened by the CDU/CSU parliamentary group in the Bundestag, Merkel noted it would be easier to mutually recognize the national certification systems than to negotiate common standards. Joint efforts should concentrate on new technologies, where entrenched regulation does not exist, such as biotechnology or nanotechnology.⁵⁹

President George W. Bush praised the German Chancellor as an important advisor with considerable influence, when Merkel and Barroso travelled to the summit in Washington on 30 April 2007. He referred to the harsh reactions of the Russians and many Europeans to the elements of the US missile system in Europe and the need to better involve Moscow in the project. He and Merkel regularly talk over a secure video line between the White House and the Chancellery.⁶⁰

A core result of the summit was a “Framework Agreement” on transatlantic economic integration. In an annex, special interest is given to five areas as lighthouse projects.

- Both sides agree to cooperate on the exchange of information and personnel, provide technical assistance to curtail trade with goods that affect *intellectual property rights*.
- *Trade security* shall be improved and made more efficient to lower the costs for companies, through the elimination of duplicated controls.
- To enhance *financial markets*, both sides agree to mutually recognize the two competing balancing methods in the US and Europe (Generally Accepted Accounting Principles and International Financial Reporting Standards) until 2009.
- To bring forward innovation and technology, a number of collaborative measures are on the priority list. Such as the development of best practices for Radio Frequency Identification technologies or a work plan transatlantic cooperation on bio-products.
- A regular dialogue will scrutinize the conditions of *financial investment*.⁶¹

⁵⁹ Bovenstein, Nina, *Merkel warnt vor Abschottung*, in: SZ, 20.3.2007.

⁶⁰ Klüber, Reymer, *Lob für die Ratgeberin*, in: SZ, 2.5.2007.

⁶¹ See Framework for advancing transatlantic economic integration between the European Union and the United States of America, Washington DC., 30.4.2007, at <http://www.bundestkanzlerin.de/Content/DE/Artikel/2007/04/Anlagen/2007-04-30-transatlantic-economic-integration,property=publicationFile.pdf>

Harmonization will concentrate on the pharmaceutical and cosmetics industry, including provisions limiting animal testing for the latter. For the automobile industry, mutual recognition of testing standards is another step forward. Different approaches on financial balancing will be harmonized.

The transatlantic commitments on climate and energy policy have fallen behind the hopes of the German EU Presidency. Frictions appeared between the negotiators at an early stage over the idea of agreeing on binding caps for green house gas emissions. The EU states had just accepted these at the spring session of the European Council, and many hoped it would serve as a model for other actors to move on towards better climate protection. During Merkel's January visit Bush made it clear that the US would not rely on renewable energies alone but would seek to improve the energy efficiency of existing technologies. Nuclear energy plays a crucial role in American considerations, but Merkel cannot go along with the US view. She is the head of a coalition that has a feeble consensus to phase out atomic energy in Germany.

No quantifiable commitment was made at the summit, but both sides at least went so far as to acknowledge that climate change is a global challenge and that as much as possible should be done to decrease the man-made irritations of the climate system. This meagre result is yet a progress, taking into account that the US Government until recently failed to accept the fact that human emissions cause global warming. The EU and the USA promised to engage in joint projects to develop low-emission power plants and biofuel.⁶²

One of the visible successes of the summit was the signing of an "Open Skies Agreement" about the opening of the air traffic markets in the US and the EU, which will enter into force on 30 March 2008, after yearlong negotiations.⁶³ Air services on both sides will have a new legal groundwork. European carriers will see fewer regulations when operating in the USA. They can now fly to the US from the EU and from countries inside the European Aviation Area. European investment in American airlines remains strictly limited. A completely liberalized transatlantic market for air services is thus still not in sight.

⁶² 2007 EU-U.S. *Summit statement. Energy Security, Efficiency, and Climate Change*, Washington, 30.4.2007, at <http://www.bundestkanzlerin.de/Content/DE/Artikel/2007/04/Anlagen/2007-04-30-energy-security,property=publicationFile.pdf>

⁶³ EU ministers endorsed the agreement on 25 April 2007, which had been initialled in early March. See Tiefensee: *The air services agreement with the USA is a first step towards a new partnership. EU Transport Council in Brussels agrees on Open Skies*, Press Release, at http://www.eu2007.de/en/News/Press_Releases/March/0322BMVBSUSLuft.html?

In addition, the USA has promised to work for the extension of the USA Visa Waiver Program to all EU states – citizens from twelve EU Member States still need to obtain a visa even for short trips.⁶⁴

All in all, the Merkel-Barroso visit to Washington was rather successful, and even if more binding commitments were missing, the overall process of economic integration received considerable impetus. The amount of economic activities and the level of integration open opportunities to gain benefits through efficiency measures. There is, however, a contrast between the pragmatic and incremental progress made in some economic projects and the solid transatlantic differences in other areas, like the internment at Guantánamo or the building of a US missile defence system with elements in Eastern Europe.

3.6 Relations with the East

Germany has a natural interest in prosperous and stable Eastern neighbours, together with a well-balanced relationship with Russia and its adjacent regions. In close cooperation with the Commission, the German EU Presidency picked up a number of closely related dossiers for developing EU external relations with the East. Germany has embedded its own foreign policy into a European framework for a long time now, especially with a view to Russia, but also to the Eastern partners in the European Neighbourhood Policy (ENP). Berlin sees itself as provider of impulses and interlocutor for the European level, even more so during the Presidency.⁶⁵

Ideally, different policy agendas will become interdependent. The EU needs to keep Russia as a stable ally and seeks a re-negotiated partnership and cooperation agreement. The new contract would strengthen economic ties, secure the mutual dependence based on energy trade and investment, enable both sides to cooperate on many foreign policy areas and help democratise Russia. But even a Russia with a different attitude towards democracy and pluralism could be a partner in a reformed European Neighbourhood Policy (ENP). The new ENP would aim at more individualized work plans and a new focus towards joint problems, not only development. The final piece of the puzzle would be to foster the underdeveloped rela-

⁶⁴ See also EU presidency Statement on Transatlantic Relations to the Plenary of the European Parliament on 25.04.2007 at http://www.eu2007.de/en/News/Speeches_Inter-views/April/0425AAGloserUSA.html?

⁶⁵ See Timmermann, Heinrich, *Die deutsch-russischen Beziehungen im europäischen Kontext*, in: Internationale Politik und Gesellschaft, 1 /2007, 101–122.

tionship the EU has with the countries of Central Asia, a strategy that the Commission is requesting.⁶⁶ Energy plays a huge role in this complex interaction, as well as the hopes of the EU's immediate neighbours that the ENP might be a prequel for membership.

This vision was promoted early on with some vigour under the headline of *Neue Ostpolitik* by the social democratic Foreign office in Berlin – an allusion to the paradigm shift initiated by the Chancellor Willy Brandt in the 1970s. This is not to say that Merkel would not support a more energetic neighbourhood policy, but the CDU-led Chancellery had hesitations regarding the central role of Russia.⁶⁷

3.6.1 Russia

Russia is an important and difficult partner in energy and trade and sometimes a political and economic competitor of the EU in the East. Russia's claim for dominance is the source of many of the problems the EU faces in defining its relations with adjacent regions. The repressive government style of the Government of President Vladimir Putin makes all visions of a value-based relationship questionable, even if some Western observers have regarded it as a way of building stability. Nevertheless, there is no way round a deep and interdependent relationship to secure stability at the EU's Eastern borders. Russia is also an indispensable partner with regard to many challenges the EU has to face

For more than a decade, both sides have been working to develop a strategic partnership. The institutional ties are firm, providing a dense schedule of joint meetings at all levels.⁶⁸ The relationship is based on the Partnership and Cooperation Agreement of 1997, which will expire in November this year and on documents in relation to the EU strategy of the four "Common Spaces" formulated in 2003 (spaces of economy, of freedom and justice, of cooperation towards external security and of research and education).

There is a broad understanding that a new and wider partnership agreement should be negotiated. For the European planners, it could incorporate the provisions achieved in the four spaces and should include new principles

⁶⁶ For an overview over this policy paradigm see Steinmeier, Frank Walter, *Verflechtung und Integration. Eine neue Ostpolitik der EU*, in: *Internationale Politik* 62/3, March 2007, 6–11.

⁶⁷ Gutschker, T., Nüchterne Ostpolitik, *Die politische Meinung*, 51 (Dezember 2006) 445, 9–12, at: http://www.kas.de/db_files/dokumente/die_politische_meinung/7_dokument_dok_pdf_9629_1pdf

⁶⁸ See EU Commission, *EU-Russia relations*, at http://ec.europa.eu/comm/external_relations/russia/intro/index.htm#eu and European Commission, *Country Strategy Paper 2007–2013: Russian Federation*, at http://ec.europa.eu/comm/external_relations/russia/csp/2007–2013_en.pdf

for the mutual energy partnership. This is also laid out in the German Presidency work plan. At the 50th anniversary of the signing of the Rome Treaties, Putin congratulated the EU and said that a new partnership agreement would follow the logic of the developing relationship.⁶⁹

At this important juncture, however, Russia presents itself as a complicated partner. The German Presidency has not been able to work quickly to achieve a new partnership agreement, but has had to cope with a number of disputes and confrontations that have added to the mistrust and made the task even more difficult.⁷⁰

Russia uses its energy resources as a political leverage. On the one hand, Russia's energy companies, like Gazprom, are increasingly being nationalized and follow political objectives rather than economic ones. Foreign investors have insufficient legal security to control their investment. This is all the more important, since Russia needs huge foreign investment to modernize its aged refinery and pipeline system. On the other hand, Gazprom is already a strong player on the European market through investment in the European energy infrastructure and cooperation with other countries that might help Europe to diversify – Algeria, for instance. The threat that Russia might engage in the creation of a gas cartel with partners from the Persian Gulf is taken seriously in Europe.⁷¹ All these problems have suddenly become more acute, because the EU has come to understand the degree of its dependency on Russian oil, and even more on Russian gas.

Although Russia has for years been a reliable energy provider, it has begun to apply some strong-arm tactics against transit countries. After Ukraine and Georgia, the most recent victim of Russian energy policy has been Belarus. The flow of oil coming through the Druschba Pipeline from Russia through Belarus to German refineries stopped for a couple of days without prior announcement.⁷² Merkel and Barroso sharply criticized the closing of the pipeline. After a joint meeting between the Commission and the German Cabinet in January they told Russia that it should have con-

⁶⁹ See *50 Jahre Römische Verträge: Putin schmeichelt Europa*, in: FAZ am Sonntag, 24.3.2007.

⁷⁰ For a more comprehensive overview, see Singhoven, Sven C., *Deutschland und Russland zwischen strategischer Partnerschaft und neuer Konkurrenz. Ein Vorschlag für die Praxis*. (Konrad-Adenauer-Stiftung, Arbeitspapper 169/07), Berlin/Sankt Augustin, February 2007.

⁷¹ See *European Energy Security: A bear at the throat*, in: The Economist, 14.4.2007, 27–29; Ludwig, Martin, *Nur ein Hirngespinnst?*, in: FAZ, 20.4.2007.

⁷² See Fischer, Peter A., *Moskau gibt Minsk den Tarif durch: Weißrussland muss Zolleinnahmen mit Russland teilen*, NZZ, 15.1.2007.

sulted the European Union partners in advance. While the provision of oil inside the EU was not in danger – the EU has stocks for about four months – the confidence in the Russian exports was shattered. A European Union energy strategy became all the more urgent.⁷³

The case overshadowed the first days of the German EU Presidency as a bad omen for the Russia dossier. Angela Merkel openly stated that the disruption caused an “irritation” on the European side, and that the new partnership agreement must enshrine energy security for Europe.⁷⁴ The double strategy of the European Union must be to combine a deeper and more balanced partnership with Russia, based on mutual dependence and a commitment to open market principles with diversification in energy sources and transit lines. The new partnership and cooperation agreement could provide a framework for that.

The EU had expected to start off with the negotiations for a new partnership agreement already under the Finish Presidency at the EU-Russia summit in Lahti in November 2006. However, at that time Poland blocked a mandate for negotiations. It demanded that Russia sign the Energy Charter to make it easier for Warsaw to wrestle control over Polish transit pipelines from Gazprom. Poland is also still frustrated about a planned gas pipeline from Russia through the Baltic Sea that has been given German consent, but would sideline Polish territory. Russia, on the other hand, has set up import restrictions on Polish meat and vegetables, because wrongly labelled meat from Ukraine has reached the Russian market via Poland. Warsaw wants Moscow to abolish the restrictions before a partnership agreement can be renegotiated. The blockade has lasted far into the German term and the situation has not been resolved yet.

Although negotiations about the partnership agreement will be largely in the hands of the Commission, they need to be commissioned first. The scope of this mandate is subject to political negotiations – in which Germany plays a central role. At a meeting in the Black Sea spa Sotchi in January, Merkel and Putin chartered the common ground and discussed institutional solutions for early warning and conflict resolution in energy trade, akin to a court of arbitration. The preparation for the partnership agreement made scant progress and Russia did not drop its food embargo

⁷³ See Bannas, Günter, „Inakzeptabel“: Merkel und Barroso kritisieren Schließung der „Druschba“-Pipeline/Kurzbesuch bei Putin geplant, in: FAZ 10.1.2007.

⁷⁴ See “Wir wollen verlässliche Beziehungen”, Interview Federal Chancellor Angela Merkel, *Wall Street Journal*, 22.01.2007, at http://www.bundestkanzlerin.de/nn_5300/Content/DE/Interview/2007/01/2007-01-22-merkel-wsj.html

against Poland.⁷⁵ The partnership agreement and energy issues were on the agenda at a meeting of the Troika with Russia in January. The Russians were hesitant to consider a substantively expanded partnership agreement, especially with the inclusion of principles from the Energy Charter they have long refused to sign.⁷⁶ Merkel subsequently visited Warsaw in March to win over the EU-sceptic Government for the Berlin Declaration, and talked about the Russia imbroglio as well. Merkel left a very good impression on Warsaw.⁷⁷ At the General Council at the Foreign Minister level in Luxemburg on 23 April, Steinmeier and Ferrero-Waldner were not able, as hoped, to initiate the talks about the partnership agreement, but still expressed some cautious optimism that these may begin at the Samara EU-Russia meeting on 18 May 2007.⁷⁸

The dispute over the plan to set up elements of the US missile defence system in Eastern Europe, though not directly related to the EU was another obstacle for negotiations between Brussels, Berlin and Russia. At the 43rd Munich Security Conference in early February, Vladimir Putin bluntly criticized the American plan to build radar and missile launch pads in Eastern European countries and accused America of defying international law in its foreign policy.⁷⁹ This caused new discussions in Germany with many calling Putin's bluff in his tactical games – ten interceptors in Poland can hardly challenge the Russian nuclear arsenal. Many politicians argued – sometimes from a position critical of US military dominance – that there was a need to take Russian security concerns seriously. This debate caused some frictions between the coalition partners. Steinmeier, stressing the need for partnership, was more hesitant to confront Russia than his CDU colleagues. Merkel later reconciled the positions, demanding that the discussions be transferred to NATO.⁸⁰ Although the missile shield issue is

⁷⁵ Treffen in Sotschi: Merkel verlangt von Putin „bessere Kommunikation“, in: FAZ, 23.1.2007.

⁷⁶ Ludwig, Michael, *EU-Troika trifft Lawrow: Gespräche über Energie, Kosovo und Partnerschaftsabkommen*, FAZ, 6.1.2007.

⁷⁷ Schuller, Konrad, *Merkel in Warschau: „Wir deuten die Geschichte nicht um“*, in: FAZ, 17.3.2007.

⁷⁸ In talks in April, the interlocutors Markos Kyprianou, the EU Health Commissioner, and Alexei Gordeyev, Minister of Agriculture in Russia failed to come to an agreement. The EU had even offered to ease Visa regulations for Russians as a carrot. *EU hofft weiter auf Abkommen mit Russland*, in: NZZ, 24.4.2007; *EU and Russia fail to resolve dispute*, in: IHT, 23.4.2007.

⁷⁹ See Bacia, Horst, „Ein kalter Krieg war wirklich genug“: Gates Antwort auf Putin-Schelte/ Sicherheitskonferenz in München, FAZ, 12.2.2007.

⁸⁰ The latest stage of the escalation over the US missile defence shield was the Russian announcement to freeze the implementation of the Treaty on Conventional Forces in Europe. See Bacia, Horst, *Moskaus neuer rauher Ton*, in: FAZ, 28.4.2007.

no salient point for US-EU relations, it took time off the schedule during the EU-USA summit in April.

The growing concern about the oppressive government style in Russia, violence against the opposition and media unease about the painful political concessions in too close partnership caused harsh reactions from the EU. Under Putin's Presidency, critics and journalists have been killed, the most prominent ones Anna Politkovskaya in October and Alexander V. Litvinenko in November 2006, and the killings have not been resolved. The most recent abuse of protesters and foreign journalists led to harsh criticism from the EU.⁸¹ Merkel has already criticised the arrest and searches of protesters before the EU-Russia-summit in Samara.

Facing these incremental negotiations that meet new obstacles everyday, the EU's chief trade negotiator, Peter Mandelson, issued an alarming assessment of EU-Russia relations in April. Both sides, said the Commissioner, had reached a level of misunderstanding not seen since the end of the Cold War. He accused Russia of using its energy resources as a political weapon and pointed to the EU as being unable to speak with one voice.⁸² The outlook for EU-Russia relations is currently grim, but the Samara summit on 18 May could entail a turn for the better.

3.6.2 The European Neighbourhood Policy

Separate from the discussions about EU-Russia relations, but constantly overshadowed by them, the European Neighbourhood Policy (ENP) is about to enter into a new phase. The ENP, created in 2003, is thought to be an overarching paradigm for neighbourhood relations with the East and South. The ENP is aiming at prosperity, stability and security in neighbouring countries. Yet the attractiveness of the ENP was originally limited because it was seen as an alternative to accession, which repelled especially the Eastern European countries. Individual action plans have been set up with each partner. Russia refuses to take part in ENP.⁸³

In the summer of 2006, the Grand Coalition leaked a paper from the Foreign Office planning staff, saying that Eastern Europe would be a priority for the EU Presidency. Germany wanted to improve the ENP, to tie its partners closer to the EU *acquis* and to integrate them better in

⁸¹ See Voss, Julia, Geiseln des Staates: Russland beschweigt die Eskalation der Gewalt, FAZ, 20.4.2007.

⁸² Bilefski, Dan, Senior EU aide issues warning on Russia ties, in: IHT, 23.4.2007.

⁸³ See Koopmann, Martin, Lequesne, Christian (Hrsg.), Partner oder Beitrittskandidaten: Die nachbarschaftspolitik der Europäischen Union auf dem Prüfstand. (ASKO Europa Stiftung, Denkrat Europa 2) Baden-Baden 2006.

European decision-making. The focus should be on converging interests, for instance concerning the energy policy or the Single Market.⁸⁴

The EU Commission took up the German initiative and issued a Communication in December 2006, timed in parallel with the ENP progress reports. The Commission did not follow the Eastern bias of the German program, but looked at the overall ENP. The strategy proposed new measures like strengthening trade through tailor-made Free Trade Agreements, easing visa regulations for the mobility of the citizens of ENP countries, dialogue and cooperation on cross-cutting issues like energy and stronger regional cooperation.⁸⁵ Since January 2007, the Commission has a new specific financial tool: the European Neighbourhood and Partnership Instrument (ENPI) makes it possible to base assistance on political criteria and is better suited to support transborder projects.

The new paradigm of the ENP should be to focus on joint problems between the EU and its neighbours and to allow for a closer participation of ENP countries in EU policies and the Single Market. Foreign Minister Steinmeier said at a press conference for the presentation of the Presidency program, that the EU should cling to an overarching neighbourhood policy, but “I believe we must do more here – for all of the EU’s neighbours, in the East as in the South. This means greater cooperation in individual sectors, possible participation in the internal market and more scientific and cultural exchange.”⁸⁶ Germany was given the mandate to develop the ideas about the ENP plus and to present a report to the European Council in June 2007. Germany is paying special attention to the ENP partners in Eastern Europe, while the succeeding EU Presidency Portugal will focus on the South.⁸⁷

In March, *Ukraine* entered into a negotiation about a new and improved cooperation agreement with the EU. The country will have to incorporate

⁸⁴ Germany also had in mind to adjust the ENP budget, of which Eastern Countries receive only a smaller part. See Frankenberger, Klaus-Dieter, *Berlin entwickelt eine neue Nachbarschaftspolitik für die EU*, in: FAZ, 3.7.2007, more specific Kempe, Iris, *Was sind die Pfeiler einer „Neuen Ostpolitik“ im Rahmen der Deutschen EU-Präsidentschaft*, in: Caucaz europenews, 19.3.2007, at http://www.caucaz.com/home_de/breve_contenu.php?id=230

⁸⁵ EU Commission, *Communication from the Commission to the Council and the European Parliament on strengthening the European Neighbourhood Policy*, (COM(2006)726 final), Brussels, 4.12.2006, at http://ec.europa.eu/world/enp/pdf/com06_726_en.pdf

⁸⁶ Introductory remarks by Federal Foreign Minister Steinmeier, at the press conference launching the German EU Council Presidency, 19.12.2006, at http://www.eu2007.de/en/News/Press_Releases/January/1912AA.html?

⁸⁷ Hanns-D.; Machowski, Heinrich, *Dimensionen einer neuen Ostpolitik der EU*, in: APUZ, 10/2007, at http://www.bpb.de/publikationen/9CA1BS,0,0,Dimensionen_einer_neuen_Ostpolitik_der_EU.html

over most of the *acquis*, in a very difficult process, without a promise of membership. A Free Trade Arrangement between the EU and Ukraine is under discussion. As a precondition, the Ukraine has to join the WTO.⁸⁸ To negotiate these issues, the Troika with Minister Steinmeier travelled to Kiev in early February. Victor Yushchenko, the victor of the Orange Revolution in 2004, and Victor Yanukowitch, Ukraine's pro-Russian Prime Minister came to Berlin subsequently but separately in February. Both promised to overcome their political impasse and to carry on with reforms.

Belarus attracted the EU's attention in early January as the (not quite innocent) victim of Russia's energy blackmail. The EU is offering to include Belarus in the ENP, but will not do so until Belarus becomes more democratic. The EU Presidency condemned the non-democratic character of the local elections on 14 January.

Moldova's President Vladimir Voronin was quoted as saying that the country would work for a Partnership and Association Agreement with the EU. The ENP action plan would be a mere transitional step towards membership negotiations.⁸⁹

Steinmeier travelled to the Caucasus in February 2007. He used his meetings in *Georgia*, *Armenia* and *Azerbaijan* to signal the EU's intentions and to promote the new design of the ENP. The three countries, having joint the ENP later, had only signed the action plans with the Commission in November 2006. A great deal of time during Steinmeier's trip was spent on talks about the open secessionist conflicts. There is some hope that a peace settlement in Nagorno Karabakh may be agreed during the German EU Presidency period. Steinmeier also debated the energy interests of the producer and transit countries and conducted some German energy policy on the way.⁹⁰ The Presidents of the three countries travelled to Berlin in the first four months of 2007. Meanwhile, to remind the ENP partners not to forget the Russian ability to divide and conquer, the Putin Government invited the leaders of the seceding provinces of Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh to Moscow, held them in the rank of "Presidents" and labelled their countries as strategic partners.⁹¹

⁸⁸ See Schuller, Konrad, *Ein dorniger Weg*, in: FAZ, 4.3.2007.

⁸⁹ See Schmid, Ulrich, *Transnistrien geht eigene Wege*, in: NZZ, 26.2.2007.

⁹⁰ See Gasasjan, Aschot, *Südkaucasus: Neue Partner jenseits des Schwarzen Meeres*, DW-Radio, Deutsche Welle, at <http://www.dw-world.de/dw/article/0,2144,2361238,00.html>

⁹¹ See Leithäuser, Johannes, *Steinmeier hofft auf Lösung im Streit um Karabach*, in: FAZ, 21.2.2007; *ibid.*, *Eine Region neuer Dynamik*, in: FAZ, 22.2.2007; Dempsey, Judy, *Letter from Germany: EU's good neighbors are Russia's bad dream*, in: IHT, 7.3.2007.

3.6.3 The Black Sea and Central Asia

The ENP plus approach of the German Presidency and the Commission has an element of deeper regional cooperation. Two regions receive special attention, regions which share the fate of being energy producers or transit countries. The Black Sea and Central Asia are focal points of the energy security interests that are driving parts of the German Presidency agenda.

With the accession of Rumania and Bulgaria, the EU now borders the *Black Sea*. The idea is to create a framework to improve regional cooperation among the six coastal countries and their neighbours. The focus on the Black Sea is a direct implementation of the regionalisation element of the new ENP, but must include countries outside, like Russia and Turkey. It will have to cope with contradictions, because the region is not a group of like-minded states. The idea of the EU interacting with a region instead of directly with individual states might be met with some resistance.

The EU Commission issued a strategy paper “Black Sea Synergy” in April, to create a partnership program similar to the Euro-Mediterranean Cooperation or the Northern Dimension. It would incorporate existing EU sector programmes in areas like good governance, mobility, energy, transport, environment, maritime policy, trade and many others. Direct consultations between the EU and ENP partners could be linked to the meetings of the Black Sea Economic Cooperation that has only been operational since 1999.⁹² The Commission paper has obviously benefited from ideas from the German Foreign Office and demands significant funds for helping the Member States build secure energy infrastructure.⁹³ To be successful, the EU initiative must help to create synergies for the diverse actors managing the region inside the EU.⁹⁴

A similar strategy is underway for *Central Asia*, comprising five former Soviet Republics. The growing attention towards Islamic extremism and the need to diversify its energy resources led the EU to rethink its half-

⁹² See EU Commission Communication from the Commission to the Council and the European Parliament, *Black Sea Synergy - a new regional Cooperation Initiative* (COM(2007) 160 final), Brussels, 11.04.2007, at http://ec.europa.eu/world/enp/pdf/com07_160_en.pdf

⁹³ See Vesper, Reinhard, *Wieder Schwierigkeiten mit Russland*, in: FAZ, 27.3.2007; Piehl, Ernst, *Vertiefte Schwarzmeerkoooperation im Interesse der Europäischen Union* (Friedrich-Ebert-Stiftung, Thema aus Brüssel), Brussels, March 2007.

⁹⁴ See Gabanyi, Anneli Ute, *Die Initiative »Schwarzmeersynergie« Die EU plant den Ausbau ihrer regionalen Zusammenarbeit* (SWP-Aktuell 2007/A 29), Mai 2007 at http://www.swp-berlin.org/de/common/get_document.php?asset_id=3978

hearted approach towards the contested region. The Union needs primarily to clarify its own interests and options.⁹⁵

Germany took over the task of developing an EU Central Asia Strategy until the end of its term. For this a Troika travelled to Astana, the capital of Kazakhstan at the end of March for two-day talks with the Foreign Ministers of Kazakhstan, Uzbekistan, the Kyrgyz Republic, Tajikistan and Turkmenistan. The meeting was not only the first the EU held with these countries, but also the first meeting the Central Asian Ministers had among themselves. Steinmeier and the Troika made efforts not to appear as seeking energy partnerships alone, but offered assistance in creating legal systems and education programs. The meeting did not, however, run harmoniously. The Central Asians were seeking foreign investment and quite openly refused to be lectured on democracy.⁹⁶ The first elements of a Central Asia Strategy were presented at the Foreign Ministers Council in Luxemburg in April. Some observers feared that the new openness would undermine the EU's sanctions policy against Uzbekistan.⁹⁷ During a talk in Andijan, EU experts had access to political prisoners.⁹⁸

In both regions, competition with Russia is well under way. The EU is supporting oil and gas pipelines to link Europe to the Central Asian oil fields, most of them running through the Black Sea region, like the envisioned NABUCCO-Gas pipeline. At the same time, Russia is building and developing its own pipelines to gain control over the networks or make the EU's project less profitable.

A cautious assessment of the first four months of the EU Presidency shows that there exists a large overlap of interest with the Eastern partners. The EU finds itself in a position where it has to face competition with an ever more re-assured Russia. The vision of mutually endorsing regional strategies and strategic partnerships, with Moscow serving as a stability anchor, is very hard to achieve. The aims should be defined more pragmatically, so that the progress in regional cooperation can be seen as

⁹⁵ See Mac., *Die Europäische Union bemüht sich um Zentralasien*, in: NZZ, 2.4.2007; Brauer, B., Fünf Staaten, eine Strategie: die deutsche EU-Ratspräsidentschaft sucht einen neuen Zugang zu Zentralasien, *Internationale Politik*, 62 (März 2007) 3, 75–81.

⁹⁶ See Schmiese, Wulf, *Die "Tankstelle Europas" anzapfen*, in: FAZ, 29.3.2007. Steinmeier had been traveling to Turkmenistan in November 2006, shortly before he would carry the EU's Presidency flag. See Vesper, Reinhard, *Der Turkmenbaschi war guter Stimmung*, in: FAZ, 4.11.2007.

⁹⁷ See Lobjakas, Ahto, *EU: Ministers Discuss Strategy For Central Asia*, in Radio Free Europe/Radio Liberty, 23.4.2007, at <http://www.rferl.org/featuresarticle/2007/04/be30f11d-d578-4b84-b69f-6dfdd59cd5ea.html>

⁹⁸ Vesper, Reinhard, *EU beunruhigt über Usbekistan*, in: FAZ, 7.5.2007.

a success. Russia seems to challenge the weaker countries of the EU's Eastern margin. The pressure that Russia is directing at the Estonian Government over the removal of a Red Army monument – with the heated protests of the Russian minority in Estonia and against the Estonian Embassy in Moscow – show the kind of confrontation the EU has to deal with.⁹⁹ Maybe Russia is testing to see whether the EU really is an alliance. However, such behaviour will make it impossible to create a partnership based on mutual trust. It is a challenging contradiction for European policy towards the East that the building of a close and confident partnership with Russia might take decades to work, but that Moscow's cooperation is needed quickly to settle tense conflicts in Europe.

3.7 The status of Kosovo and stability in the Western Balkans

The German EU Presidency has been aware from the very beginning that the Kosovo negotiations would require its utmost attention. The decision of the UN Security Council on the status of the Kosovo Province – or its failure to make a decision – will be a turning point for Western Balkan stability. While the vast majority of Albanians in Kosovo seek independence, Serbia will not accept Kosovo's independence, though forms of far-reaching autonomy seem to be negotiable.

The German Presidency's work plan illustrated the triple challenge that might fall into the hands of Germany. It stresses the need to stabilize the Balkans, "particularly by supporting the Kosovo status negotiations or implementing the outcome if an agreement has been reached by then. To achieve this the EU will conduct its largest civilian ESDP mission to date, concentrating on justice and the police."¹⁰⁰ In that period, the EU would have to help the negotiation of a UN resolution; it would then help to reconcile the regional actors with the settlement. The EU is already preparing to take over the administrative authority and police forces in the Kosovo. The settlement will be embedded in the framework of an accession process for Serbia and the Kosovo to the EU. The German Government is concerned that a failure to solve the status question might cause violence in Kosovo or Serbia, but also jeopardize the stability in neighbouring countries like Bosnia-Herzegovina. Germany is not only involved as the country holding the EU Presidency, but also as a member of the Balkan Contact Group, together with the USA, Russia, France and Great Britain. The Contact Group is the most important framework in the negotiations.

⁹⁹ Vesrer, Reinhard, *Die alten Vorwürfe*, FAZ, 9.5.2007.

¹⁰⁰ See *Europe – succeeding together*, Presidency Programme.

In March 2007, after more than a year of consultations, the special envoy of the UN Secretary General Martti Ahtisaari presented a report and a set of recommendations to the Security Council, proposing a form of supervised independence for the Kosovo.¹⁰¹ The former Finnish Prime Minister had come to the conclusion that his lengthy negotiations with the local actors had reached an impasse and that further talks would make a settlement even more difficult. His proposals seek to secure a multi-ethnic society in Kosovo that is based on the principles of democracy and the rule of law. The recommendations included a number of measures to provide for the security of all ethnic groups in the country.¹⁰²

In a scenario following the recommendations of the report, the Security Council would lift the territorial guarantees Serbia received after the Kosovo War. The province would declare independence and would then have to agree to a new constitution with profound minority rights. The Kosovo would have the right to carry national symbols like a flag and to set up an army. Afterwards, other states could recognize the Kosovo as an independent state. It could enter international organizations as a member. 120 days after the independence, the EU would take over the administrative control of the Kosovo from the UN. NATO would keep providing the military stabilization force KFOR. The Albanian Kosovars support the Ahtisaari Plan. To prepare for the new situation, an intensive planning process is underway. The USA hoped to finalize the difficult negotiations on the resolution in May 2007. Angela Merkel is said not to want to bother the G8 summit in Heiligendamm with the Kosovo issue.¹⁰³ This ambitious schedule is in danger.

In the second half of March, the US started a discussion in the Security Council and the Contact Group about a resolution. Washington is trying to open up the deadlock and to send a positive signal to the Muslim world at the same time. Not surprisingly, the problem was now Russia. Sympathizing with Serbia, it tried to delay the decision. Moscow asked for a detailed report about the implementation of the earlier Resolution 1244 on the Kosovo, demanded further negotiations and a fact-finding mission to the Kosovo.¹⁰⁴ Russians and Serbs energetically lobbied the undecided Security

¹⁰¹ The report had been postponed until after the Serbian parliamentary elections on 21 January 2007. It has as yet not been possible to form a government coalition in Belgrade.

¹⁰² UN Security Council, *Report of the Special Envoy of the Secretary-General on Kosovo's future status*, 26.3.2007 (S/2007/168) at <http://www.unosek.org/docref/report-english.pdf>; Bacia, Horst, Warten auf Russland, in: FAZ, 11.4.2007.

¹⁰³ Dempsey, Judy, *Diplomatic Rush as Kosovo endgame nears*, in: IHT, 18.4.2007.

¹⁰⁴ Martens, Michael; Schwarz, Karl-Peter, *Moskau und Belgrad wollen Kosovo Abstimmung verzögern*, in: FAZ, 3.4.2007.

Council members. They tried to play with the fears of African countries, that the imposed independence would spur secessionist movements in their countries as well. Kosovo envoys have also been active. The US is currently working on a UN resolution to withdraw Resolution 1244, to either force Russia to negotiate of a settlement or go into isolation.

At the same time, the EU was trying to link the Kosovo independence with the EU accession of Serbia, only to sweeten the loss of the province for Belgrade. Serbia could not expect to approach the Union with an unresolved territorial conflict.

The Europeans themselves were seen to diverge on the status question. While having welcomed the Ahtisaari plan in the first place, some EU members disagreed with its recommendations. At an informal meeting of Foreign Ministers in Bremen on 1 April, a splinter group of countries emerged that opposed the speedy move towards independence of the Kosovo. It included Greece, a traditional ally of Serbia, Romania, Slovakia, Spain and Italy – countries that lie in the Kosovo neighbourhood or have ethnic secession conflicts on their soil. At the following meeting of Foreign Ministers in Luxemburg, the Kosovo topic had to be kept off the agenda. In talks with the Russian colleague Sergei Lavrov immediately afterwards, the EU had no position on the Ahtisaari plan.¹⁰⁵ While EU disunity would not block a UN Security Council decision, and the Unions's responsibility for the stabilization mission is undisputed among the members, the frictions will make US-European efforts less persuasive.

Even without a clear time frame, the EU is preparing for the takeover in Kosovo, a large operation with complex executive functions. An International Civil Representative (ICR), doubling up as the EU Special Representative (EUSR), will oversee the implementation of the settlement and will have a number of executive powers. The ICR/EUSR – a possible candidate is the Dutch diplomat Peter Feith – will head a 72-strong team of international staff in Pristina. A second structure the EU is preparing is a rule of law mission under the European Security and Defence Policy (ESDP) that will comprise of 1 300 to 1 500 international police forces, judges, prosecutors and customs officials based in the Kosovo.¹⁰⁶

¹⁰⁵ See Rettman, Andrew; Krasniqi, Ekrem, *EU Splinter Group emerges on Kosovo*, in: euobserver, 1.4.2007, at <http://euobserver.com/24/23920/>; Krasniqi, Ekrem, Goldirova, Renata, in: euobserver, 1.4.2007, *EU ministers to avoid Kosovo question amid ongoing disunity*, at <http://euobserver.com/9/23895/>.

¹⁰⁶ See *Background: Preparing for the future presence in Kosovo*, March 2007, at http://consilium.eu.int/uedocs/cmsUpload/070206-bis-ICO-EUSR_and_ESDP.pdf; EU set to enact supervised statehood for Kosovo, in: IHT, 12.3.2007.

Russia is sending mixed signals, allowing for various assessments. First, to support its opposition to the Ahtisaari plan, Moscow pointed at the possible precedence for other secessionist conflicts in Eastern Europe, indirectly threatening to raise tensions in the “Frozen Conflicts” in its vicinity. Another view is that Russia might plan to use the Kosovo as a bargaining chip for other negotiations, like the one over the EU partnership agreement, or that an open status of the Kosovo simply provides the best means for Russia to retain influence in the region.¹⁰⁷ There is also a rather less rational aspect: Moscow remembers the Kosovo War as a humiliation and will see the independence of the Kosovo as a diplomatic failure.

To this day, there is no settlement in sight. The Ahtisaari report serves as a focal point for the difficult negotiations, but the UN Security Council is not able to produce a resolution. Russia refuses to accept an imposed independence of the Kosovo. The United States and the United Kingdom are seeking to finally answer the status question one way or another. The members of the European Union are split, but maybe not enough to finally impede a joint position. Nobody knows the price the US and the EU might have to pay Russia to cooperate - or whether Russia can be bought at all into a solution. An alternative settlement, in which the Serbian North would become independent or autonomous, might help Belgrade not to lose face. Such a move could destabilize the region, because other small ethnicities in the West Balkans would be invited to seek autonomy themselves. Ahtisaari and the Contact Group have rebuffed such an idea.¹⁰⁸ In the current situation, a dangerous but likely scenario is that the Kosovo will declare independence and only a few countries will recognize it. This could cause frictions between the US and some European countries, as well as among EU Members States. The status question would not only remain open but would also become a cause of conflict at a higher level.

3.8 Conflicts in the Middle East

The Middle East is going through a period of growing international attention with the stronger involvement of external actors. The conflict between Israel and the Palestinians serves as a point of dispute in many other confrontations, and spurs Muslim hatred in other areas of the world. It has

¹⁰⁷ See Reljic, Dužan, Kosovo – Ein Prüfstein für die EU. Im Dreieck EU – USA – Russland wird über die langfristige Stabilität des Westbalkans entschieden (SWP-Aktuell, März 2006), at http://www.swp-berlin.org/de/common/get_document.php?asset_id=2884

¹⁰⁸ See ahn., Belgrad erhält Moskauer Schützenhilfe., in: NZZ, 21.4.2007, Küppers, Bernhard, *Moskau verhindert Einigung*, in: SZ, 20.4.2007; Interview of Foreign Minister Frank-Walter Steinmeier with the Serbian daily “Blic”, 21.2.2007, at http://www.eu2007.de/de/News/Speeches_Interviews/February/0221AABlic.html

strong repercussions on the instable situation in Lebanon. New initiatives have emerged to initiate dialogue and direct the Israel-Palestine conflict towards a settlement. However, the situation in Tel Aviv and Ramallah is not conducive towards peace. The Government of Ehud Olmert has been under pressure ever since the ill-prepared war against the Lebanon, or the Hizbollah positions there. After elections in the Palestine territories, the two fractions of Fatah and Hamas have to form a coalition government, but engaged in flurries of violence until February.

The EU plays a crucial, though sometimes underestimated role in the Middle East. It is a member of the Middle East Quartet, together with the US, Russia and the UN. It is Israel's most important trading partner and has for years paid about half of the Palestinian Authority's budget. Germany is representing the EU in the Quartet as the holder of the Council Presidency. Berlin has a double function: On the one hand, it has to help bring the Quartet's initiatives towards a peace settlement into effect. On the other hand, it has to negotiate a common position in the EU. Berlin is not neutral; it can bring in its long-standing support for the existence and security of Israel and its experience in the naval operations along the Lebanese coast.¹⁰⁹ During the Presidency, German and EU politicians have had a dense travelling schedule in the region. Chancellor Angela Merkel has made two trips in the region since January.

During Merkel's inaugural visit to the United States in January, the situation in Israel and Lebanon were the main issues. As a result, the US agreed to convene a meeting of the Middle East Quartet in Washington. Bush acquitted the idea to revitalize the Quartet structure to Merkel. The Foreign office had been lobbying for this idea too. America has for long been accused to neglect the Israeli-Palestine conflict because of its own involvement in Iraq. With Condoleezza Rice as Secretary of State, the willingness to engage in the Middle East has grown. Germany can count it as a success to have worked for a structure that will allow to tie American diplomacy, which tended towards a US-Israeli bilateralism, into an international framework.¹¹⁰

The Middle East Quartet met twice in February on minister's level and held tight contact on the working level. The sober objective was to initiate dialogue between Israel and Palestine, and develop ideas for confidence-building measures. The second meeting on 21 February 2007 in Berlin saw

¹⁰⁹ See Leithäuser, Johannes, *Schwierige Wiederbelebung*, in: FAZ, 31.1.2007.

¹¹⁰ See *Merkel in Washington: Kanzlerin und Bush wollen Nahost-Quartett wiederbeleben*, in FAZ, 5.1.2007.

a report on Rice about her trip to the region and about a short meeting between Olmert and Abbas she had arranged.¹¹¹ The coalition negotiations between Fatah and Hamas in Ramallah, underway since the Mekka agreement in February, had not made much progress. In an attempt to push Hamas to a more moderate line, the Quartet reiterated as principles that the Palestinian Government must refrain from violence, recognize Israel and accept the existing agreements. A day later, President Mahmoud Abbas travelled to Berlin to discuss the situation.

The relationship with the Palestine Government is especially tricky for the EU. The forming of the “Government of National Unity” in Ramallah a few weeks later was partly due to international pressure. In the new Government, under the Fatah President Abbas, Hamas is represented through Prime Minister Hanija and other ministers.¹¹² The EU Presidency welcomed the formation of a coalition, but carefully promised to only “resume its assistance to a legitimate Palestinian government adopting a platform reflecting the Quartet principles.”¹¹³ The program of the coalition does not live up to the three quartet principles. The EU is now in an awkward position where it wants to work for stability in the Palestine territories, but cannot directly negotiate with the Government as a whole. However, contacts had to be taken immediately.¹¹⁴ The EU Foreign Ministers agreed in Bremen on a formula that Union officials could negotiate with the Palestinians, as long as talks with Hamas were avoided. Meanwhile, to cling to the boycott against a Hamas Government, the EU refuses to pay direct assistance to the Government and transfers aid through a “Temporary International Mechanism” directly to hospitals or other agencies. The Commission is currently examining ways to extend the mechanism without compromising the boycott.¹¹⁵

An interesting impulse came from the Arab neighbours. The Arab League, under the leadership of Saudi Arabia, relaunched its 2002 Peace Plan at a

¹¹¹ Among the participants were Solana, Commissioner Benita Ferrero Waldner and UN Secretary General Ban Ki-moon, see Leithäuser, Johannes, *Steinmeier lobt Engagement des ahost Quartetts*, in: FAZ, 22.2.2007.

¹¹² Bremer, Jörg, *Neuer Anlauf in Ramallah*, in: FAZ, 19.3.2007.

¹¹³ Declaration by the Presidency of the EU on the Formation of a Palestinian Government of National Unity, 17.03.2007, at: http://www.eu2007.de/en/News/CFSP_Statements/March/0317Palestina.html

¹¹⁴ Mark Otte, EU Special Representative in the Middle East, spoke with the Palestinian Treasurer Salam Fajad and Foreign Minister Ziad Abu Amr, both moderates. Abu Amr is not a member of Hamas, but on a Hamas position in government. A delegation from Palestine came to Berlin only days after the agreement, but without Hamas members. The Palestinian Foreign Minister visited Vienna. See Kontakte nach Ramallah, in: FAZ 22.3.2007.

¹¹⁵ See Bacia, Horst, Keine EU-Direktzahlungen, in: FAZ, 12.4.2007.

summit at the end of March. Saudi Arabia is seeking to take on a stronger role in the Middle East negotiations because it is concerned about the growing influence of Iran in the region and is seeking stability in Lebanon to avoid a possible Shiite government there. The Arab Peace Plan is based on the bargain proposing that if Israel would withdraw from its occupied territories to the borders of 1967, the Arab states would recognize it.¹¹⁶ The German Presidency, during Merkel's second trip to the region in early April, welcomed the renewed proposal. An understanding has grown between the US and Europe that the Arab initiative and the Quartet activities must be brought in line. Rice ventured the idea of convening a Peace Conference, with Israel, Palestine, the Middle East Quartet and the "Arab Quartet" consisting of Saudi Arabia, Egypt, Jordan and the UAE. The basis of the negotiations should be the Arab proposal rather than the Quartet's Road Map. During a visit by Merkel to Israel, Ehud Olmert also issued an invitation to the Arabs for a peace conference. He received a Saudi reply, Israel should first settle its conflicts with the Palestinians.¹¹⁷ In mid-May, Germany will convene a joint meeting of the EU Council of Ministers with the colleagues from Arab League in Berlin.

A challenging task not yet resolved is to get Syria to not interfere in a way that would increase tensions. Since the Lebanon war Germany has argued that there is a need to include at least Syria in a dialogue on the conflicts in Israel and Lebanon. Foreign Minister Steinmeier has been more forthcoming with this approach than Merkel. He travelled to Damascus in December 2006 – at that time not as a representative of the EU Presidency, but as German Minister – to convince Syria to abstain from supporting the Hizbullah in Lebanon. He sent a clear message from the EU that Syria should be part of the solution, trying to break the country out of the alliance with Iran. In March, Javier Solana travelled with a EU mandate to bring Damascus closer to the peace process. The EU is not united on this effort, but some room exists to test the Syrian position.

The current situation offers a window of opportunity, with influential actors from the Middle East Quartet and the Arab region joining in in a process that might create conditions for Israel and Palestine to move closer to a settlement. The EU Presidency has had a part in creating this new layout, especially in convening the Quartet, and bringing the different initiatives in line. The task now is to carry the momentum forward and to scrutinize the proposals on the table.

¹¹⁶ See Rößler, Hans Christian, Abdullahs Mahnungen, in: FAZ, 30.3.2007.

¹¹⁷ See Kocher, Victor, Olmerts Angebot trifft auf Skepsis, in: NZZ, 3.4.2007.

4 CONCLUSIONS

As this paper is a mid-term report, it is too early to understand the full impact of the German EU Council Presidency. Much of the work is still in progress. The most difficult negotiations on the EU treaty reform have only just begun in earnest. Some of its success will depend on external actors falling in line.

Looking at the content of the decisions made and the pressure of time, the Germans have been lucky. The EU has seen no final negotiations over fundamentally new steps in European integration, like the Euro or the Maastricht Treaty. The German Presidency has been able to excel in the setting of objectives, work plans and timetables, and the design of frameworks for further negotiation - for instance in creating the link between energy and climate policy, or even with regard to the Constitution. Germany has succeeded to push forward some dossiers and hand them over to later Presidencies. Such progress is in no way a minor achievement: For the design of future policy programmes, courageous conceptual thinking and persuasion is necessary. With regard to the post-constitution treaty, all the procedural or formal questions to be resolved by June are politically sensitive. In walking this thin line, Germany has focused on the politically feasible.

Germany had an interest in preparing its tenure well, both in quality and quantity and has taken to engage its Presidency with a vast field of activities. The lines of communication to the Commission and the Member States even outside the Council structures seem to be working well. A first task of the Presidency has been to create a network that could facilitate negotiations on the treaty reform. The German Presidency is particularly elaborate, with a considerable number of extra staff in operation. Of course, not much else would have been expected from a big Member State.

Comparing goals and achievements mid-way is hardly fair. An overall assessment would likely be mixed, but German influence has been clearly visible. Concerning the Single Market, a number of decisions have been made that have benefited from German leadership. In creating a parallel strategy for energy security and climate protection, with unilateral commitments to binding targets, Germany has achieved one of its central goals. Justice and Home affairs has seen a well-organized work program, driving integration forward through a number of pragmatic steps. The prospect for the presentation of a substantial road map on treaty reform is good, however, this might come at a price: Europe might settle for the least common denominator. In foreign policy, there has not been much room for visions.

Russia has presented itself as an important partner and difficult adversary at the same time. Many conflicts in EU-Russia relations need a solution. Competition with Russia would hamper the regional policy of the EU in the region. Germany's priorities and commitment has helped to forge a renewed partnership with the United States. In the conflict management of the Kosovo and the Middle East, substantial settlements are still far away. In the Kosovo, the EU is preparing for an ambitious operation. Germany has helped to involve the Middle East Quartet in the peace process, putting the conflict higher on the international agenda.

From the beginning, Germany had to fight the huge expectations about how it would lead the EU out of its crisis and the Federal Government took pains to calm down high-flying ideas. Looking at the ongoing process, it might well be that the pragmatic, step-by-step approach of the German Presidency will lead to better results than a sober look at the initial conditions would have suggested.

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