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* The Berlin Study Group Europe of the Friedrich-Ebert-Stiftung was founded in 2005. Participants come from the German parliament, political parties, federal ministries, representations of the Länder, associations and research institutions.

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1 10 Key Tasks for the European Commission

1. The **EU's economic and social policy** needs a paradigm shift. Economic, social and environmental integration should no longer be regarded as in conflict. The European Commission ought to produce a report laying out »The Costs of a Non-Social Europe« and present proposals for a change of course. This includes equal wages and working conditions for the same work at the same place. Protection of employment rights and the social dimension must be brought to the top of the EU's agenda. Besides the Posted Workers Directive this should also be reflected in a social progress clause in primary law.
2. **Employment policy and economic policy** must be given equal status in a reorientation of the Lisbon Process after 2010. The Integrated Guidelines should be oriented in particular towards promoting research and development, as well as fair and high quality education systems, environmental modernisation of the economy, a positive linkage between wage development and productivity increases, and the concept of »decent work«. The need for national minimum wages must also be enshrined in the Guidelines. Particularly in a time of crisis it is important to strengthen economic democracy. The maintenance and promotion of high standards of workers' participation should be developed into a trade mark of the EU.
3. Tax competition between EU member states undermines a fair **tax policy**. This is why we need a uniform basis of assessment and minimum rates for corporate taxes. As cross-border trading of financial products is becoming increasingly opaque, it must be regulated through the introduction of a Europe-wide tax on financial transactions.
4. The EU must set up an effective European supervision of the **financial markets** that overcomes the fragmentation of toothless supervisory structures. As a first step, cooperation between national supervisory authorities must be improved. On top of that, the establishment of a central European regulatory authority should be seriously considered. In particular, business policy should be more tightly bound to the attendant risk. To that end the Capital Requirements Directives have to be formulated more strictly and oriented towards long-term stability. Secondly, rating agencies, hedge funds and private equity funds have to be effectively regulated and controlled as far as possible at international level, but certainly at European level.
5. Since municipal **provision of public services** often conflicts with European competition and Single Market regulations, greater legal certainty must be established at European level. It is fundamental for a social Europe that local authorities can continue to ensure, efficiently and cost-effectively, the extensive provision of essential services and high quality goods on an equal and non-discriminatory basis. In cases in which public services and other legal domains – such as subsidies and public procurement legislation – impinge on one another, priority should be given to the proper functioning of public services.

6. Security of energy supply must be enhanced by extending infrastructure such as electricity cables and gas pipelines, gas storage and terminals for liquefied natural gas. Besides the establishment of a solidaristic energy single market an **energy security concept** must also be developed in order to reduce one-sided dependencies. The EU finally has to make a determined effort to tackle the environmental reorganisation of the industrial society, as well as continuing to play a leading role in global **climate policy**.
7. In order to promote a **common area of justice** in the EU and to create a shared culture of civil rights the current Directorate General Justice and Home Affairs should be divided into two separate Directorates General presided over by their own Commissioners. A Directorate General for Home Affairs should be responsible for police cooperation, border controls, asylum and migration policy, and integration activities. A Directorate General for Justice should press ahead with the harmonisation of procedural rules in criminal law, the implementation of common guidelines in the protection of fundamental rights and data protection and better cooperation between judicial authorities in the EU member states.
8. The European Commission needs to give new momentum to the development of the European **asylum system**. This requires the further standardisation of the legal framework and procedures, as well as specific criteria for granting asylum. In addition, the concept of **circular migration** needs to be advanced. In order to avoid »brain drain« effects in developing countries, migrants should be allowed to return to their home countries for longer periods without losing their residence status in the respective EU member state.
9. The EU needs a comprehensive and long-term **foreign and security policy strategy** that is supported by all the EU member states. It must take its bearings from the concepts of »human security« and »effective multilateralism«. The European Commission should play its part in the necessary reform measures within the framework of its competences. Above all, the European Parliament has to be involved in the decision-making process at an early stage in order to enhance the democratic legitimacy of the Common Foreign and Security Policy.
10. The European Commission should develop a coherent strategic approach to the **European Neighbourhood Policy** that reflects the interests of the EU as a whole. The European Neighbourhood Policy should be turned into a more attractive opportunity for cooperation especially for neighbouring states that have no immediate prospects of accession. A flexible approach to specific circumstances in the ENP partner countries should be as much of a priority here as the promotion of regional cooperation. A clear conditionality should be built in to the process by which the ENP partner countries come closer to the EU, oriented towards the implementation of ENP action plans.

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2 The Social and Economic Dimension

2.1 Background

It has become fashionable to emphasise the social dimension both at national and European level. However, the obligation to give equal status to economic, social and environmental considerations is fulfilled, if at all, to a very limited extent. Economic interests are usually given priority, while the social dimension is reduced to combating poverty and social exclusion. Furthermore, efforts in the field of education are increasingly seen as a reasonable substitute for social policy measures. The German Council Presidency in 2007 tried to establish »decent work« as a guiding principle for the EU. This would have required giving equal consideration in all measures across the policy spectrum to workers' rights, participation, fair pay, and health and safety at work, as well as family-friendly work organisation. The fact that nowadays social policy is considered at best to be a useful palliative in the treatment of negative economic developments reflects the predominance of conservative governments in the EU. Having said that, the Socialist Group in the European Parliament has been able to ensure, in the teeth of the conservative-liberal majority, that important EU laws bear a social stamp. The Services Directive and the Port Services Package spring most readily to mind. In each instance it was possible to rein in the unconditional liberalisation strategy being pushed by the European Commission, and so to avoid a further increase in social disparities, wage dumping and job losses in the EU.

EU enlargement from 15 to 27 member states in 2004 and 2007 significantly increased the EU's economic heterogeneity. This resulted in intensified competition and a lack of policies which would confront positively the challenges of economic globalisation. EU member states are set against one another in mutual competition for production locations, jobs and capital investments. In this context national wage, tax and social policies have an important European dimension. Even though the EU has no competence to lay down rules on a number of these issues, they are influenced indirectly by decisions in other policy areas. For example, the discrepancy between a centralised monetary policy and national financial policies, particularly in the Eurozone, is becoming apparent. Also, the gradual inclusion of the European neighbourhood in the Single Market will further aggravate hostile regulatory competition in the EU without bringing higher social standards in its train.

With its 2008 judgments in the »Viking«, »Laval«, »Rüffert« and »Luxembourg« cases, the European

Court of Justice (ECJ) nailed its colours to the mast of the Single Market freedoms. The Social Package presented by the European Commission in 2008, besides being merely a hotchpotch of half-baked measures, also looks like a frantic attempt to boost the EU's social profile in the face of the European elections and the negative outcome of the Irish referendum.

2.2 Tasks

- A paradigm shift is needed in EU **economic and social policy**. While the increasing divide between rich and poor undermines people's trust in the EU, it also calls its effectiveness into question. In broad terms, the antipodes of economic, social and environmental integration have to be reconciled. They can no longer be considered as antithetical. In this spirit, the European Commission should write a new report – similar to the Ceccini Report of 1992, »The Costs of Non-Europe«, and building on Didier Fouarge's 2003 report – which estimates **»the costs of non-Social Europe«** and presents proposals for necessary changes.
- Within the framework of the **Lisbon Process** the EU lays down guidelines for economic and employment policy. In their national reform programmes – which the European Commission evaluates and uses to generate recommendations for further development – the EU member states present the measures they have taken. The so-called »Integrated Guidelines« valid from 2005 prioritise growth and employment while social considerations are subordinated. Creation of new jobs is to the fore. In the upcoming debate on what direction the Lisbon Process should take after 2010, the European Commission should ensure that equal weight is given to economic and social objectives. Employment policy should no longer be subordinated to the broad economic policy guidelines. In particular, the guidelines should be geared towards stimulating investment in research and development, not to mention fair and high-quality education systems, environmentally-friendly modernisation of the economy, the positive linking of wage development and productivity increases, »decent work« and easy access to high-quality and affordable social services. On top of this, the need for national minimum wages must be established as part and parcel of the employment policy guidelines.
- The **relationship between the basic freedoms and workers' rights** has been debated since the ECJ judgments in »Viking«, »Laval«, »Rüffert« and

»European Commission vs Luxembourg«. The ECJ has recognised in principle that the right to strike and employee protection can take precedence over the basic freedoms. In the individual cases, however, the ECJ either left the judgment to the national court or based its argument on the wording of the Posted Workers Directive with regards to the implementation of the basic freedoms. The European Commission needs to submit a proposal for a proper implementation of the Posted Workers Directive, which was clearly conceived as an exception to the basic freedoms. In particular, the principle »equal wages and working conditions for equal work in the same place« needs to be realised. At the same time, the objective of social progress must be enshrined in primary law by means of a Social Progress Clause.

- The EU's initiative »Better Regulation« seeks to implement quality control regarding existing regulation. Besides such necessary measures as consolidating much-amended regulations in a new text, in some quarters recasting legal texts in a manner that makes fewer demands on business has been advocated (deregulation). This does not take into account, however, the possible consequences of such a reorientation on social policy and the labour market. In the field of **impact assessment of new legal provisions** the European Commission ought to make sure that an analysis of social policy effects is made. In addition, social protection clauses need to be inserted in Single Market legislation.
- In the Green Book on labour law of November 2006, the European Commission followed the European Council's request to address the topic of **flexicurity**. In its opinion on the Green Book the German government has pointed out that labour law cannot be considered in isolation. Furthermore, the German government emphasised that the protective character of labour law is one of its central aspects and that striking a reasonable balance between the interests of employers and employees must be regarded as crucial. Within the framework of the uncompleted work on common principles on flexicurity, the European Commission needs to ensure that the flexibilisation of labour markets and employment relations takes place solely on the basis of employment and income security, as well as social security. It is critical that full consideration be given to the various underlying circumstances. This applies in particular to precarious employment relations.
- **Tax dumping** and regulatory competition have a negative impact on EU member states' social policy. They need to be reined in. A unitary basis of

assessment for corporate taxation and minimum tax rates, as well as the uniform orientation of wage agreements to price development and production levels are therefore needed. The European Commission should also make an effort to eliminate **tax havens**.

- The proposed Directive on sanctions against persons who employ third-country nationals without legal residence addresses the problem of **undeclared work**. The current proposal does not even require that employers check documents, however, and envisages that sanctions should be imposed only if documents are manifestly false. Although, as a result, this proposed directive remains ineffective it has not yet been adopted by the EU member states. Among other things, this is due to the proposed obligation to implement spot checks. Since undeclared work undermines not only a state's tax base, but also the financial sustainability of effective social systems, the European Commission needs, quite apart from migration policy issues, to address this topic in a new and also more stringent document. It should also increase efforts to raise public awareness of the problem.
- Almost all EU regulations affect the interrelations of economic, social and environmental issues. For a Social Europe to be realised, we therefore need to go beyond changes merely in social policy. The proposal for a **regulation on the European Private Company** is a case in point. Under this proposal the **employee participation rights** of the EU member state in which a European Private Company has its registered office would apply. However, such companies are free to transfer their registered office to another EU member state. Although a special rule is envisaged for cases in which employee participation rights differ in the two states concerned, the fact that participation rights are weakly developed in many EU member states means that this may result in a further diminution of such rights. Given the importance of striking a proper balance between employers' and employees' interests, the European Commission needs to launch initiatives aimed at fully functioning workers' participation. A **directive on transfer of seat** could increase the number of transfers of company seats between EU member states, thereby improving the workings of the Common Market. However, it would have to ensure the highest standards of workers' participation between the EU member states to or from which the seat is being transferred. Especially in the current crisis it is important to strengthen industrial democracy. Halfway through its term of office, the Euro-

pean Commission should present a Communication concerning the plurality of company forms and elements of industrial democracy in the Common Market.

- Following on from the European Youth Pact, the European Commission should set out measures on the **mobility of young people** that go beyond the existing rules. It must be ensured that young people working in other EU member states are not discriminated against, especially as regards their educational and vocational qualifications. The European Commission should set up a European contact point for this target group that in particular supports young people from socially deprived backgrounds, hears complaints and takes action against barriers to mobility. **Lifelong learning** has to be improved across the board.
- Despite a plethora of verbal commitments, **poverty** in the EU has increased significantly since 2001. In 2005, 16 per cent of the EU-25 population were at risk of poverty. The European strategy for the eradication of poverty and child poverty must urgently be expanded and put into action.

2.3 Perspectives

The financial and economic crisis proves that an over-emphasis on profit leads not only to a dysfunctional financial sector but also has serious consequences for the real economy. The EU's liberalisation and deregulation policy has only encouraged this development. The relationship between the market and the state has to be recalibrated. The common good has to be safeguarded once again. The European Commission must play a key role in this since the very basis of its existence is to protect the interests of the EU as a whole. Apart from the particular measures involved, this is necessary, first, in order to take globalisation in hand rather than merely accommodating it. The European model will hold only if a proactive stance is adopted. Second, a proactive approach is needed to maintain the consent and support of the population and so, ultimately, to prevent the disintegration of the EU. Among the main reasons for rejecting the Lisbon Treaty in the various referendums was doubt concerning the safeguarding of social Europe. A European Economic and Social Union, in which economic, social and environmental policies are linked on an equal basis, remains a distant prospect. Although the European Commission cannot bring this about alone, it can be of crucial importance in developments in this direction. The European Commission's right to take initiatives is central here. A White Book on European

social policy is needed that takes up Jacques Delors' ideas and brings them up to date.

In a Social Union of equal status with Economic and Monetary Union a Social Stability Pact would have to be put in place. This would establish the obligation for all EU member states to maintain social spending at an appropriate and predefined level, corresponding to their level of economic development. The social spending corridors formed in this way would prevent individual countries from seeking to gain an advantage by means of below average social expenditure ratios. Economically weaker countries would not be overburdened by unitary rules. States with high GDP growth rates would have to spend more on welfare. The European Commission should propose that regulatory competition among social protection systems be ended and focus more strongly on convergence between similarly structured welfare sectors. This must find expression chiefly in the Open Method of Coordination (OMC), which must be developed into a sustainable and binding instrument. In social protection in particular, qualitative and quantitative indicators have to be ranked equally. In addition, the extent to which the OMC is binding must be increased by means of new incentive and sanction mechanisms.

The global dimension of the financial and economic crisis shows the need for unitary macroeconomic management in the EU. The European Commission needs to lead the way by proposing the permanent establishment of a concerted European economic policy. Not only do European financial markets require a coherent regulatory structure, but the EU member states' tax, spending and wage policies need stronger coordination. An optimal policy mix that, in cooperation with the ECB's monetary policy, speaks with one voice in EU fiscal policy requires a stronger commitment to the broad economic policy guidelines.

Please see for further information:

Christian Kellermann, Matthias Ecke, Sebastian Petzold:

A New Growth Strategy for Europe beyond 2010

March 2009

<http://library.fes.de/pdf-files/id/ipa/06219.pdf>

Andrej Stuchlik, Christian Kellermann:

Europe on the Way to a Social Union? The EU Social

Agenda in the Context of European Welfarism

January 2009

<http://library.fes.de/pdf-files/id/ipa/06013.pdf>

International Policy Analysis:

10 Theses on European Economic and Social Policy

August 2008

<http://library.fes.de/pdf-files/id/ipa/05602.pdf>

Brian Nolan:

A Comparative Perspective on the Development of Poverty
and Exclusion in European Societies

November 2007

<http://library.fes.de/pdf-files/id/05016.pdf>

Marius R. Busemeyer, Christian Kellermann,

Alexander Petring, Andrej Stuchlik:

Overstretching Solidarity?: Trade Unions' National

Perspectives on the European Economic and Social Model

September 2007

<http://library.fes.de/pdf-files/id/04751.pdf>

Michael Sommer:

A Social Europe Needs Workers' Consultation and
Participation

April 2007

<http://library.fes.de/pdf-files/id/04422.pdf>

3 Tax Policy

3.1 Challenges for European Tax Policy

Tax policy in the EU faces a number of urgent challenges. One important area is the unfair, but legal corporate tax competition in a context of widely varying tax regimes in the EU. Unfair tax competition interferes with and undermines central aspects of fair tax systems, such as progressiveness and equitable burden sharing. There is also a need for immediate action on tax havens and, in this connection, on illegal tax evasion both within and outside the EU. Given its size and global political importance, the EU is well placed to put pressure on tax havens to become more transparent. A third important problem to be tackled is the taxation of financial transactions. The speculative and crisis-prone nature of cross-border capital movements needs to be reined in. Such a tax – set at a minimal rate – could be levied as an EU tax and serve to substantially expand the EU's development-policy resources.

3.2 Unfair Tax Competition

Tax competition is a major problem for the EU today. EU member states compete with one another to offer the lowest taxes. At the same time, tax rate reductions go hand in hand with regulatory competition in pursuit of investment. In addition, the current structure of European tax law enables cross-border enterprises to accrue their losses in high-tax countries while transferring their profits to low-tax countries or tax havens. This kind of tax optimisation uses a range of techniques, such as the (legal) manipulation of the internal prices of primary and intermediate products (transfer pricing) or tactical choice of financing structures.

What states are really vying for in tax competition, then, is the allocation of profits. Competition for real investments plays second fiddle here because enterprises have no need to relocate physically in order to take advantage of tax benefits. But although tax competition is conducted primarily by means of book transfers of profits and losses it has real effects all the same. In all EU member states nominal tax rates, which are a major factor in corporate decision-making with regards to profit adjustment, have fallen over the last 10 to 15 years. At the same time, the tax base has been broadened in order to avoid drastic revenue losses. The fundamental effect of tax competition is therefore not a decline in corporation tax revenues, but a shift in the structure of tax revenues.

Broadening the tax base has resulted in a lower burden on highly profitable investments and an increased burden on less profitable or »new« capital. Furthermore, labour has come to bear more of the load, relatively speaking, and there has been a shift towards indirect taxes. What this means in practice is that the tax burden on large multinational enterprises has been eased, while small and medium-sized enterprises, as well as workers, have seen their burden increase.

What the European Commission Has Done So Far

One measure adopted to regulate corporation tax competition was the so-called code of conduct against harmful tax practices. States agreed to relinquish certain taxation practices if they explicitly targeted foreign capital and the foreign tax base without offering domestic companies equal benefits. However, this code is not legally binding. Besides that, it allows states to set tax rates at whatever level they wish as long as they do not discriminate between domestic and foreign investors. As a consequence, the success of the code lay primarily in increasing sensitivity to the problem.

Up until the Irish referendum on the Lisbon Treaty, the European Commission aimed to harmonise tax policy at least partially. Until 2008 it wanted to present a draft directive on a »common consolidated corporate tax base« (CCCTB). The European Commission's aim in pursuing this project was to simplify cross-border investments for enterprises by making tax treatment more transparent for them.

Our Proposals

Work on the CCCTB should be resumed immediately – regardless of outstanding referenda on the Lisbon Treaty. The CCCTB is intended to replace separate entity accounting as the current principle governing international tax law. With separate entity accounting, the different parts of a multinational company are taxed on a strictly national basis, as if they were entirely independent units. In a system with CCCTB a company's total profits are determined over all parts of the company in accordance with uniform rules. Profits are allocated to the various home states in accordance with a formula yet to be established. This formula should include factors such as payroll, turnover and assets at each location (formulary apportionment). A unitary tax base with formulary apportionment can impose firm limits on the shifting of paper profits, provided that the factors entered into the formula consist of meaningful real-economy values.

The European Commission's initiative foresees the optional introduction of CCCTB without minimum tax rates. These are the concept's two weak points. Nevertheless, the EU's previous efforts to introduce a CCCTB may serve as a good point of reference for further reform of European corporate taxation. In that light we are calling for a non-optional, unitary, consolidated tax base with formulary apportionment, accompanied by a minimum tax rate. Unitary taxation with formulary apportionment can limit the possibilities for shifting profits and losses purely on paper. The CCCTB should be shared out among the EU member states in accordance with an allocation key with a microeconomic component. The major part of the total tax base should be shared out between those countries in which the company has establishments. The distribution would be determined by the microeconomic parameters of payroll, assets and turnover at destination. The distribution key must be resistant to influence and fairly weighted. It must be ensured that tax competition is not simply shifted onto the factors in the formula. On top of that, there is a danger of conflicts ensuing when group members receive revenues from third countries since the dual tax agreements of the respective EU member states are not identical. This opens up new horizons for tax planning. A joint approach to double taxation with third countries must therefore be developed. The CCCTB can only be launched once this question has been answered.

Given the automatic cross-border profit adjustment and loss relief that would accompany a CCCTB, EU member states must be able to instigate measures to limit loss offset. This is necessary to avoid incalculable risks for national tax revenues. Otherwise, we can expect an increase in the amount of losses claimed in the EU that are attributed to imports from third countries.

Finally, it is imperative that the introduction of a CCCTB be accompanied by minimum tax rates.

3.3 Tax Havens

But it is not only the *legal* tax avoidance described above, that fuels the EU member states' »race to the bottom« and leads to revenue losses in those EU member states with comparatively high tax rates.

Illegal tax avoidance – tax evasion – in particular inflicts severe losses on the German national budget. Estimates range from 30 billion to 100 billion euros a year.

Tax havens do not need to be located in the Caribbean, they can be much closer to home. For example,

statistics on implementation of the European Savings Tax Directive show that, alongside Switzerland, Luxembourg and Austria are major destinations for capital flight. Liechtenstein, San Marino, Monaco, Jersey, the Isle of Man, and so on, are a long way behind.

What the European Commission Has Done So Far

For the longest time it was not self-evident that such statistics would ever be generated. It was as late as 2005 that the Savings Tax Directive closed at least some of the loopholes that the directives contained concerning cooperation between authorities across national borders. This Directive is supposed to ensure a minimum level of effective taxation of interest earnings. The main instrument is cross-border notification of tax authorities. It is true that the Directive applies only to the taxation of natural persons and not to enterprises. Also, it concerns only a certain kind of interest earnings, namely earnings from cross-border capital investments paid in the form of interest in one EU member state to natural persons resident in another EU member state. Accordingly, capital earnings from dividends, derivatives and life insurance, as well as many investment funds are not taxed. The Directive does not apply to tax havens outside the EU, either.

In addition, some EU member states – specifically Austria, Luxembourg and Belgium – have obtained special arrangements. They do not notify the home tax offices of those liable for tax, so that capital earnings can be taxed there at the applicable rates. Instead the three countries will – like, for example, Switzerland, Liechtenstein and Monaco – levy withholding tax at a rate of 25%, most of which they will transfer to the tax payers' home countries. From 2011 the figure will be 35%, as agreed.

Our Proposals

Within the EU the system of notification should be applied to all capital earnings and extended to all EU member states as a matter of urgency. In the wake of the »Liechtenstein affair« the European Commission has tabled a proposal for a directive. However, the directive excludes a number of facts and is progressing very slowly. Only a full-fledged system of notification would guarantee what should be a given: the real possibility of taking action against tax evasion. In relations between the EU and third countries, too, there is an urgent need for action. This concerns in particular those states that the OECD has labelled »uncooperative«. They refuse to engage in any kind of cooperation between authorities as regards the investigation of tax evasion and tax evaders. Bilateral treaties

concluded by EU member states with third countries cannot be the only way of reaching agreement. The EU has a number of means at its disposal for putting economic pressure on uncooperative states, including restrictions on free movement of capital.

3.4 Taxation of Financial Transactions

Capital movement must also be subject to other restrictions. The financial crisis has exposed the speed and opacity of trading in financial products that has become known as »casino capitalism«. It is clear that something must be done about this in terms of taxation. A tax on financial transactions would do no more than extend to financial products the Tobin tax, which applies to foreign exchange transactions.

What the European Commission Has Done So Far

Unfortunately, the European Commission's initiatives have so far involved simply abolishing all forms of impediment or restriction on free movement of capital. For example, European capital duty was standardised early on in 1969. It was aimed at clearing away forms of discrimination, double taxation and differences due to tax that hindered free movement of capital. Since then capital duty has been the sole tax permissible under European law on substantial parts of capital transactions. Since 1985, EU member states have been free to levy standardised capital duty (11 EU member states still do this to some extent), or to abolish it completely. Since 2008, capital duty, once abolished, may not be reintroduced. Also, any capital duty still levied in the EU member states must be abolished in the medium term.

Our Proposals

There must be a clear rethink within the European framework. The introduction of a tax on financial transactions is an essential lesson to learn from the financial crisis: a tax on all transactions involving financial assets, spot and derivative transactions, stock exchange trading and bilateral trade transactions. Normal payment transactions would not be subject to this. The aim of such a tax, alongside the welcome revenue, is to slow down capital movements through the taxation of substantial transactions, at least to some extent.

3.5 European Taxes

A tax on financial transactions would also be uniquely suited to becoming the first European tax. There are a number of good reasons for this. First, it can most usefully be levied Europe-wide (the partial collision with existing European law is another good reason for the tax). Second, revenues from stock exchanges accrue mainly in the UK and Germany. It is difficult to conceive of a »fair« European distribution of revenues here because of course the capital for transactions does not come from only these two countries. Third, it is easier to establish a tax that is being newly introduced as a European tax – after all, it does not take anything away from any EU member state (those member states that still tax similar transactions could be offered compensation). And fourth, the tax would raise a fair amount of revenue – the Austrian Institute for Economic Research estimates, based on a tax rate of 0.1 per cent of earnings in Europe, tax revenues in the amount of 2.2 per cent of GDP. Former French president Jacques Chirac demanded four years ago, with the support of the German chancellor at the time, that European development projects be financed from a financial transaction tax in particular. In view of the devastating effect of the financial crisis in the Southern part of the world this seems a very good idea.

Please see for further information:

Christian Kellermann, Thomas Rixen and Susanne Uhl:
Europeanizing Corporate Taxation to Regain National Tax
Policy Autonomy
July 2007
<http://library.fes.de/pdf-files/id/04760.pdf>

4 Financial Markets

4.1 Background

The crisis on the financial markets, which began in summer 2007 and escalated massively in 2008, is the most severe since the world economic crisis of 1929-33. It is wreaking havoc not only in the financial sector itself, but also in the real economy. This has dire repercussions for the general population, not least working people. The consequences of aggressive risk-taking on the part of investors and financial institutions and their pursuit of inordinate returns now have to be shouldered by everyone. Losses are being socialised as immense resources from tax funds and central bank reserves are committed. This affects the broader populace.

The crisis underlines the enormous importance of the financial and capital markets for modern economies. At the same time, it shows that the financial and capital markets cannot be controlled by the free play of market forces, but must be politically regulated. We can no longer rely on voluntary agreements and self-monitoring in this sector of the economy. Precisely because the financial and capital markets carry such immense risks they have to be oriented towards sustainability and regulated by the state. What is needed here is intelligent regulation that, while limiting losses as far as possible, at the same time harnesses the essential functions of the financial and capital markets and thereby contributes to a sustainable economy.

The financial crisis was able to assume such alarming proportions because it emerged from one of the core elements of our economy, the banking system. Among the fundamental causes of the crisis we might mention the following: the provision of excessive liquidity or excessive lending by the credit institutions; easy and negligent loan allocation as regards financial investors and consumers; misguided objectives, control principles and incentive systems in the financial sector, which lured people into excessively risky practices; the development of complex and opaque *financial products*¹ loaded with risk; large-volume and opaque insurance transactions on loans; and the inaccurate assessment of bonds by *rating agencies*.

The EU has a special role to play in dealing with these causes. Even though an international approach is desirable in almost every area, the EU can and must set an example and develop further existing European regulations – the *Banking Consolidation Directive* (2006/48) and the *Capital Adequacy Directive*

(2006/49). The European Commission's proposals for a regulation on *credit rating agencies* and a *capital requirements directive (CRD)* point in the right direction. The EU must take account of the major economic blocs that have emerged in the wake of globalisation. Against the backdrop of its economic strengths, the EU needs to create its own structures to foster and control efficient financial and capital markets.

The goals set by the G20 summit of April 2009 point in the right direction and need to be applied consistently in both the European and the global context.

4.2 Tasks

- The **principles of sustainability** have to be incorporated into the existing rules and regulations governing the real economy and the financial and capital markets. The financial and capital markets ought to serve the real economy. Alongside an orientation towards the long term, buffers have to be put in place at all levels of the economy capable of absorbing economic setbacks and crises. To deal with such exceptional circumstances enterprises, banks, local authorities, states, social security systems and central banks need adequate capital reserves. On top of that, limits have to be laid down for the fashioning of *financial products* and for the level of gearing in financial transactions.
- We need a keener **awareness of responsibility and risk in the financial system as a whole**. The decision to issue a loan and the responsibility for the attendant risk must in future be linked. Financial institutions should therefore no longer be permitted to securitise and pass on their credit risks up to 100 per cent. In future, subject to international regulation they should have to bear at least 20 per cent of the risk themselves. The figure of 5 per cent suggested in the European Commission's proposal for a regulation is too low. Apart from that, *minimum capital ratios* should be introduced, independent of risk assessment. This would serve to limit *leverage*. Capital ratios in the allocation of credits to *hedge funds* must be raised considerably. For risks to be appraised better the EU must further develop *accounting rules: special purpose vehicles* should be included in the balance sheet, *fair value assessment* must be scrutinised and there must be a return to the »*lower of cost or market*« principle.
- European supervisory bodies should instigate procedures in international organisations that over the

¹ Terms in italics are explained in the glossary.

long term lead to an **international registration office for financial innovations**. The first step would be the medium-term establishment of a registration office at European level. This office would be tasked with ensuring that *financial products* were standardised and simplified, and characterised by a high degree of transparency and the lowest possible individual and systemic risks. Similarly, the EU should work towards an **international clearing house for derivatives** that in the medium term eliminates bilateral contracts for these products. Here too the first steps could be taken at European level.

- We need **more effective European supervision**. The national fragmentation of regulatory authorities in the EU enables financial market actors to avoid the jurisdiction of particular authorities and play them off against one another. As it stands, there is neither an effective European supervisory body nor has any effort been made to clamp down on the race to introduce the laxest possible supervision. As a next step, therefore, colleges of supervisors involved with international banks must be authorised to take binding decisions. A supervisor's voting rights should depend on the extent of business conducted in their respective country (volume and value added). How to reach necessary decisions even in the case of disagreement between the supervisory authorities of the member states needs to be regulated at European level. In addition, it must be ensured that the relevant decisions are binding on all the supervisory authorities involved. The European Commission's proposals of 1 October 2008, which give the consolidated supervisor the casting vote in the case of disagreement, are a step in the right direction. We need effective collective supervision. Should cooperation between national supervisory authorities prove unsatisfactory, the next step should be to set up a central European regulatory authority.
- The **supervisory authority should also scrutinise binding efficient risk models**, which should be continually improved in consultation with experts. These models should include not only normal risks, but also major, systemic risks. They should be imposed on the banks and the financial and capital markets as mandatory since they form the indispensable basis for effective risk management, whose core is the anti-cyclical calculation of risk.
- The EU must join with other economic blocs, in particular the USA, to achieve long-term **standardisation of financial and capital market regulation**. This can be ensured only by means of permanent dialogue on binding agreements. In the

most important areas the first regulatory measures should be taken as soon as possible. Given that even a unified system within the EU has only limited scope, international cooperation is of particular importance here.

- The EU should push for thoroughgoing **reform of the most important international financial market institutions**, in particular the International Monetary Fund, the *Bank for International Settlements* and the *Financial Stability Forum*. These institutions should be put in a position to carry out better and timely analyses of financial and capital market developments that are as independent and accurate as possible. They ought to propose suitable measures for worldwide regulation; and to ensure continuing and mandatory communication at a high level concerning market developments. The EU should be represented by a single voice in international financial institutions and also actively contribute to shifting the balance of voting rights in favour of developing countries.
- The European Commission has to heed the **national characteristics of the EU member states**. In Germany the three-part banking system has proved its mettle; it must not be sacrificed to European competition law.
- **Tax havens and largely regulation- and law-free offshore financial centres**, which have contributed to the unchecked growth of financial markets, may be found in Europe too and a crackdown is a matter of urgency. The EU must recognise its special responsibility here and take joint action to that end. Although the current *EU Savings Directive* constitutes a first contribution to fairness in tax competition, in its existing form it falls far short of effectively preventing tax flight and tax evasion. It must be considerably extended.
- There ought to be a **European agency to register and control rating agencies by imposing clearer standards**. On top of that, one or several European *rating agencies* should be established to instigate competition in sustainable and transparent rating procedures. The agencies should strictly separate rating and consultation, make their rating procedures publicly transparent and be obliged to implement sustainable risk models. *Rating agencies* should be subject to constant supervision, continuously checking the accuracy of assessments and procedures. Clearer rules, better and more transparent assessment methods and more supervision would endow classical rating with the additional function of providing a »*financial product MOT*«, which would furnish early warnings in the event of

major adverse changes in product risk. The *European Commission's proposal for a regulation* contains a number of important substantive rules, although the envisaged implementation by national authorities appears questionable. European regulations should be adapted to reduce the importance of ratings to a certain extent. A »good rating« of *financial products* should not relieve those responsible of making their own risk assessments.

The *accounting rules* in accordance with the US GAAP (Generally Accepted Accounting Principles) or the IFRS (International Financial Reporting Standards), which henceforth will also be adopted in German commercial law to some extent (*Bilanzrechtsmodernisierungsgesetz – Accounting Law Reform Act*), are too much oriented towards the short term. This development must be reversed on a number of central points. Quarterly company reports, *fair value assessments* and *mark-to-market* rules may in good times give short-term oriented investors timely indications concerning the intrinsic value and profitability of investments. In crises, however, even this short-term benefit breaks down. In addition, these principles are open to fundamental criticism. They have led on – sometimes even compelled – actors in both the financial and the real economy to engage in ever riskier behaviour. At the same time, they reinforce procyclical developments in the economy by overvaluing assets in boom periods, thereby overheating the economy even further. In crises, these principles induce the undervaluation of assets and accelerate the downward spiral. The *fair value principle*, *mark-to-market* rules and the reporting of uncertain future returns in the balance sheet must therefore be revoked and replaced by principles of sustainable management: on the one hand, accounting in accordance with *at the lower of cost or market* and/or value at the time of purchase, and abandonment of the activation of future returns in the case of uncertain evaluations; and on the other hand, the inclusion of major risks. Accounting regulations must guarantee the disclosure of all banks' securitisation positions and their risks.

- The **capital requirements directives**, under which *Basel II* has a special status for financial institutions, have also been too much oriented towards short-term principles. Furthermore, they have not dealt properly with risks due to complex and barely comprehensible risk assessment models and the reliance on – opaque and inaccurate – ratings in the classification of risks. The following principles should be firmly embedded in **European directives for the banking sector**:

- risk-independent indebtedness limits for financial institutions, for example, 4 per cent of the balance sheet total (limitation of bank *leverage*);
 - reporting of all risks in bank balance sheets, including transactions of *special purpose vehicles* and their committed credit lines; these risks should be covered with own capital;
 - *minimum capital ratios* for all credit risks;
 - higher capital ratios (by a factor of five) for very risky transactions, for example, for credits to and investments in *hedge funds*;
 - higher capital ratios for new *financial products*, for example, 40 per cent;
 - sound practice in relation to mortgage loans: at least a 20 per cent equity position on the part of the debtor, a check on income and assets, no variable rates and minimum redemption amounts. Redemption and interest should at most amount to a third of the debtor's income;
 - stricter provisions against period transformation (refinancing of long-term investments by means of short-dated securities): for example, use of *commercial paper* only for capital adequacy and risk minimisation;
 - orientation of bonus schemes for managers and other employees to the long term (at least three years); restriction of bonuses to 30 per cent of fixed salary; »maluses« (or »penalties«) in the event of poor economic performance (cancellation of bonus, reduction of fixed salary); restrictions on share options as a component of managers' salary; limitation of tax deductibility of emoluments and payments of board members as operating expenses to the order of 1 million euros and 50 per cent of any amount exceeding that.
- **Hedge funds and private equity funds should be regulated more strictly:**
 - Regulations on transparency should include data on business models, ongoing transactions (fully up to date and differentiated in terms of problematic operations such as *short selling*), ownership structures and investors in the fund.
 - *Hedge fund* management companies must register in order to operate in the EU.
 - Special employee protection and codetermination rights, as well as rights to information and consultation in case of a change of control on the investors'/shareholders' side should be embedded in company and labour law. There should also be options for corresponding company and codetermination agreements, as well as collective agreements.

- Regulatory barriers to the withdrawal of assets and the loading of debts on target companies should be introduced (for example, a *minimum own capital* for funds of 50 per cent or regulations on minimum capital ratios of target companies by modifying the Capital Directive (77/91/EC).
- A duty to pay business tax should be introduced for *private equity funds*.
- Fund managers' *carried interest* (the high proportion of total profits they receive) should be taxed as normal income and not as capital gains at a lower tax rate.

4.3 Perspectives

After prioritising the liberalisation of financial markets with the *Financial Services Action Plan (FSAP)* the EU must now endeavour to guarantee the functionality of financial markets as a public good. The crucial levers for effective regulation of the financial markets have to be applied as follows: comprehensive supervision of all financial institutions and instruments; strict and simple capital adequacy for all financial institutions; limitation without exceptions of avoidance strategies beyond official supervision and balance sheets; and reduction of the complexity of financial market instruments. The principal aim of regulation is the fundamental reduction of the procyclical character of financial systems, which is linked to the current »*Basel II*« logic and executive remuneration. The EU member states must put aside national egoism and take the required measures together – only a strong and united Community will be able to generate the necessary momentum at international level.

4.4 Glossary

The **Accounting Law Modernisation Act** (*Bilanzrechtsmodernisierungsgesetz*) is a legislative project of the German Federal Government for the reform of German (Commercial Code) accounting legislation. It brings the previous regulations more closely into line with the principles of international accounting systems. For example, it lays down accounting guidelines for *special purpose vehicles*. *Fair value assessment* is altered to make it less procyclical. The law should be passed within the 16th legislative period.

Accounting rules lay down, among other things, the rules in accordance with which a company has to value its assets and put them in the balance sheet. A distinction is made between *fair value assessment* (or

mark-to-market assessment) and the *at the lower of cost or market* principle. In accordance with the principles of international accounting (US-GAAP and IFRS) the principles of *mark-to-market* or *fair value assessment* have to apply. Accordingly, assets have to be entered in the balance sheet at the current market value. Fluctuations in market prices therefore lead to corresponding changes in the balance sheet. These assessment principles therefore have a procyclical effect and intensify booms and crises.

The **Bank for International Settlements (BIS)** is a public limited company with its head office in Basel. BIS shareholders are almost all European central banks. The Bank's activities include fostering cooperation between central banks.

The **Banking Consolidation Directive** (2006/48) regulates the taking up and pursuit of the business of credit institutions of the EU member states and their supervision.

»**Basel II**« is a set of rules issued by the Basel Committee on Banking Supervision introduced in the EU end of 2006/beginning of 2007. It regulates capital requirements for banks. The greater the default risk to which the bank is exposed, the greater the amount of capital the bank needs to put in its balance sheet. This has »procyclical« effects because in a cyclical downturn financial risk increases. Due to capital requirements this leads to a reduction of bank lending and so further aggravates the economic downturn. The reverse situation holds in an upturn.

The **Capital Adequacy Directive** (2006/49) lays down capital requirements for investment firms and credit institutions, as well as regulations for their calculation and supervision. This is supposed to guarantee the liquidity of financial institutions even in the case of bad credit events.

Carried interest is a kind of profit-sharing for investment companies and their employees, borne by investors in a private equity fund. Usually, fund managers receive a share (generally 20 per cent) of the profits from capital investments.

A **clearing house for financial products** is a central office for the settlement and clearing of credit *derivatives* and *financial products*. Credit *derivatives* have so far largely been traded over the counter and are therefore difficult to control. The most important types of credit *derivatives* are credit default swaps (CDS), a form of insurance against loan defaults.

The nominal value of outstanding CDSs was valued at over 60 trillion dollars as early as the end of 2007.

Commercial papers are unsecured short-term debt instruments, which usually serve to meet short-term debt obligations of the issuer (issuing company).

Investors include especially investment companies, insurance companies and other large companies.

Derivatives are financial market instruments whose values are derived from the value of something else, for example, shares, corporate bonds or exchange rates. The value of derivatives fluctuates with the movement of the underlying base value («the underlying»). A set of derivatives operates on the basis of *leverage*: in this way the value of the derivative fluctuates much more than the underlying. This increases the likelihood of losses or risk. Derivatives therefore act like bets on the underlying.

European Commission draft regulation on rating agencies: With this initiative the European Commission in particular wishes to lay down an obligation for *rating agencies* to register, as well as rules to prevent conflicts of interest on the part of agencies.

The **EU Savings Directive** provides that from 2005 EU member states will supply information on the savings income of foreign investors to their home tax offices. In the country of residence income should be taxed in accordance with the locally applicable fiscal laws. For some countries, such as Switzerland and Liechtenstein, there are exceptions, however. To protect bank secrecy these states can transfer a flat rate withholding tax.

Financial market supervision denotes state supervision of financial market actors. Depending on the country there is either a central authority («single supervision system») or a number of authorities for different sectors of the financial market (banking supervision, stock market supervision, insurance supervision).

Financial products are investment and financial instruments offered by, for example, banks, independent financial advisers, securities companies, investment companies, and so on.

The **Financial Services Action Plan (FSAP)** is an action plan drawn up by the European Commission with a view to creating a unified European financial market.

The **Financial Stability Forum** set up by the G7 in 1999 comprises finance ministers, central bankers and international financial institutions. The aim of the Forum, established at the *Bank for International Settlements*, is to promote international financial stability. Its aim is to facilitate the supervision of financial institutions and transactions.

Hedge funds are a special kind of investment fund that pursue highly risky investment strategies (for example, *short selling*). Alongside their own capital, hedge funds as a rule invest external capital in order to generate *leverage*. The increased yield opportunities go hand in hand with high risk.

Leverage in a financial transaction refers to the relationship between internal and outside capital. If an investor can borrow outside capital at a lower rate or under more favourable conditions than he can obtain as a return on capital employed, he can achieve what is called a leverage effect, since the use of additional outside capital frees more own capital which can be used for further investments. This is conditional upon the interest rate for the outside capital being lower than the interest on the total capital invested. The drawback is that the risk increases with higher indebtedness, for example, in the form of a greater probability of insolvency.

The **lower of cost or market principle** of earlier German accounting principles is a rule of adequate and orderly book-keeping. It serves to protect the creditor and must be observed in the preparation of the company balance sheet. In accordance with the lower of cost or market principle an evaluation of individual balance sheet items must be carried out according to the principle of prudence (or conservatism principle). While assets should be estimated at the lowest price, debts should be reported at the highest.

The **(minimum) required capital ratio** is the relationship between the (minimum) required capital and an enterprise's total capital, or in the case of a bank the total amount of originated loans. The lower the ratio, the more exposed the institution is and the greater the risk to creditors of loan defaults.

Offshore financial centres are international financial centres where banks conduct business principally or exclusively with non-residents. Offshore financial centres are characterised by the pronounced absence of central bank policy measures, a high level of deregulation and very low taxation of profits.

Private equity funds pool investors' resources and use them to purchase shareholdings in companies (majority if possible) in order to realise the highest possible profit after an investment period of around two to eight years («exit»). The profits are distributed to the investors after the withdrawal of a very high share for the fund manager (*carried interest*) and an administrative fee.

Rating agencies are private (and profit-oriented) service companies that assess the creditworthiness (soundness) of enterprises and states, as well as the risk of *financial products*. Assessment (so-called «ratings») as a rule takes the form of letters: AAA («triple A») is the highest rating (almost no chance of default). The worst rating is D (in payment default).

Short selling involves the seller of an asset speculating on a fall in prices. For this purpose he borrows securities for a lending fee or premium (for example, from investment banks) and sells them in the market.

If the price falls as expected he can buy the securities at a more favourable price in the market and return them to the lender. The spread between the selling and the repurchase price constitutes the speculative profit. In so-called »naked short selling« a security is sold short without the seller even bothering to borrow it.

A **special purpose vehicle** is a legal entity established to fulfil a specific objective. A number of banks have set up special purpose vehicles (conduits or structured investment vehicles) to refinance long-term investments with short-dated commercial paper or to hold high risk structured *financial products*. Under the previous *Basel I* capital requirements these companies and the credit lines committed to them did not have to be reported in the balance sheet. In accordance with the new provisions of *Basel II*, which were introduced in the EU member states in 2007 and 2008, but not in the USA, this is no longer permitted. Companies established under these requirements have caused enormous losses in numerous banks in several countries because in the financial crisis the corresponding loans and securities connected to the special purpose vehicles were devalued.

Please see for further information:

Christian Kellermann:

Europe's Leverage in Financial Market Regulation
September 2008
<http://library.fes.de/pdf-files/id/ipa/05712.pdf>

Jörn Griesse & Christian Kellermann:

What comes after the dollar?
April 2008
<http://library.fes.de/pdf-files/id/ipa/05257.pdf>

5 Public Service Provision – Services of General Interest

5.1 Background

The safeguarding and improvement of public service provision – in EU usage, services of general interest – is an essential condition of a Social Europe. These public welfare services – mostly provided by local authorities – range from water and energy supply and refuse and sewage disposal, through public transport, to education, schools, health care, housing, culture and many social services. These services ensure the proper functioning of public life and provide the basis for economic competitiveness and job creation. They lay the foundations for the social and territorial cohesion of the EU, make a decisive contribution to social participation and ensure the livelihood of future generations.

However, local authorities, particularly as regards the provision of services of general interest that can be regarded as economic in nature, are increasingly facing problems. According to the European Treaty the provision and organisation of these services are in principle subordinate to the regulations on the Single Market, subsidies and competition law, insofar as they affect trade between EU member states. However, the Treaty is not clear about when and how to apply this rule. The provision and organisation of these services are not regulated in detail. Until now, it was largely left up to the European Court of Justice (ECJ) to flesh out the requirements of the European Treaty for local authorities on the basis of individual cases. As a result, local decision-makers face considerable legal uncertainty. First of all, it is unclear whether or not the provision of services of general interest has to be put out to tender. Secondly, it remains to be clarified if the public provision of such a service constitutes a subsidy, and if so, whether this would require authorisation.

5.2 Tasks

It is fundamental for a Social Europe that local authorities can continue to ensure, efficiently and economically, an extensive range of essential services and goods of high quality, on an equal basis and without discrimination. This means that greater legal certainty has to be created at European level for local authority public service provision:

- As regards services of general interest, **legal clarity** must be created in the area of subsidies concerning the differentiation of the economic and the

non-economic, as well as differentiation between services relevant to and not relevant to the Single Market. This should be accomplished through the definition of (abstract) criteria of differentiation.

- In addition, **European procurement directives have to be modified**. Organisational decisions taken by local authorities that result in more efficient and cost-effective structures for citizens should not be impeded by too sweeping an interpretation of procurement law. In particular, excessive tender obligations should not create de facto pressure for privatisation. As a matter of fact, cooperation between local authorities – involving the conferment of tasks from one administration to another – is an efficient and citizen-oriented way of fulfilling public obligations. Recently, the ECJ has issued a number of clarifications on the issue. However, we need European regulation that exempts cooperation between local authorities from procurement law. It needs to be clarified unambiguously that in-house procurement and institutional public–private partnerships are possible. Apart from that, service concessions should not be subject to an explicit procurement procedure.
- The variety of local authority public service provision shows that it can be organised successfully in accordance with local or regional needs and structures. **It should not be laid down that priority should be given to private service provision**. Cities and municipalities should continue to decide within the framework of local government whether and how they provide a public service, whether they do it themselves, entrust it to a municipal enterprise or let a third party take care of it. Decisions on the liberalisation of individual sectors of public service provision must continue to be taken on a case-by-case basis. Experiences with sectors that have already been liberalised, such as electricity, gas and telecommunications, bear this out. For example, liberalisation of water supply and sewage disposal should be rejected on the grounds of their special significance for public welfare and the environment. Apart from that, for ecological reasons water has to be managed differently in different geographic areas. This requires specific organisational models that should be kept up. Similarly, in the area of social services quality provision of general-interest services must be ensured, especially for the poor and disadvantaged. We would also emphasise the importance of mutual savings banks as a decentralised and customer-oriented structure for regional banking and public service provision in Germany.

The aim of social democratic policy is to improve people's conditions of life and to help combat social exclusion by modernising and increasing the efficiency of services of general interest. Competition can serve as a means to an end in this respect, but it is not an end in itself and has to be subordinated to political objectives. Where other fields of law conflict with provision of public services (for example state subsidy rules and procurement legislation), the provision of properly functioning public services must be given priority.

6 Energy and Climate Policy

6.1 Background

Energy and climate policy have assumed enormous importance in recent years. As the recession begins to bite, this policy area will provide the basis for sustainable economic recovery and create vital opportunities for investment-based countermeasures leading out of the recession. The evolution of energy prices, particularly if they rise again in the medium term, and guaranteed energy supplies are of the utmost importance for all energy consumers, whether corporate or domestic. At the same time, the energy sector – as the main perpetrator of CO₂ emissions – has a central role to play in the current debate on limiting climate change. It is quite clear that the most urgent energy and climate policy challenges – *sustainability, efficiency and security of supply* – can no longer be managed adequately at national level. Although a European energy and climate policy has been very rudimentary, recent years have seen a new dynamism. A European Energy Strategy and an Energy Action Plan for 2007–2009 were worked out recently on the basis of a minimum consensus of the 27 EU heads of state and government. Since then a number of initiatives and legislative procedures have been instigated.

Sustainability has been at the core of EU policy so far. This may be seen not only in the ambitious goal of reducing CO₂ emissions by 20 per cent by 2020 (compared with 1990), but also in the agreement swiftly reached on a comprehensive Energy and Climate Package in December 2008. On the other hand, completion of the EU internal energy market is proceeding very slowly. The corresponding legislative package is a matter of considerable dispute. It is already clear that the European Commission's proposals will be watered down significantly in the legislative process.

Least progress has been made in the area of security of supply, as the gas dispute of January 2009 clearly demonstrated. However, there is a change of perspective on the policy on security of supply. So far, the EU has concentrated – with little success – on developing a common foreign policy on energy. This prioritisation was due to the fact that many Central and Eastern EU member states consider energy security as primarily a foreign policy problem. The European Commission's »Strategic Energy Review« in autumn 2008 brought the internal dimension of security of supply into sharper focus. Issues such as building more links between pipelines and developing national

gasholders in Europe, as well as solidaristic crisis response mechanisms came to the fore.

In the coming years, energy and climate policy will arrive at a number of key junctures at European level. Global developments will have a strong influence here, especially the outcome of international negotiations on a post-Kyoto climate treaty, but also the course of the worldwide financial and economic crisis. The focal point of the European policy process from 2010 will be working out a long-term energy strategy up to 2030/2050, as well as the adoption and subsequent implementation of a new Energy Action Plan.

The forward-looking project of an integrated energy and climate policy in Europe will be accompanied by far-reaching structural changes in the economy. Intelligent transition to an energy-efficient low carbon economy will not only improve the EU's competitiveness in world markets and create millions of sustainable jobs. It will also help to reduce the conflict potential inherent in global competition for raw materials. From a social democratic standpoint, however, it is imperative that structural change in the EU does not take place at the expense of particular groups and regions. The inevitable adjustment costs – whether in the form of higher energy prices, more rapid industrial restructuring or massive extension of energy infrastructure – have to be distributed fairly.

6.2 Tasks

An integrated energy and climate policy aimed at a **sustainable energy supply** must set priorities. It has to provide a convincing response to the simplistic arguments of those who put their trust in prolonging the life of atomic energy and other miracle cures. The EU cannot achieve all desirable intermediate aims equally easily, particularly those on which agreement must first be reached with external partners. Moreover, it makes sense to start with measures that will have the broadest impact. For example, the creation of a functioning internal energy market will have a positive effect on all the other intermediate aims. An effective mechanism for energy solidarity would not only increase security of supply, but also bring home to its citizens the EU's »added value«.

■ The **completion of the internal energy market** for electricity and gas will make European energy supply structures more flexible and robust. What is principally needed here is not the disentanglement of the big energy suppliers, i.e. the effective separation of generation and grids. Rather, the harmonisation of European regulation and the extension

of cross-border connections is critical. The aim is not only to strengthen competition between providers, but also to Europeanise the energy policy interests of the EU member states and the energy suppliers. In a discrimination-free and unitary EU energy market there is no room for the assertion of national special interests.

- To **increase security of supply**, the EU may not rely solely on foreign policy measures. In line with the completion of the Single Market, energy infrastructure must be expanded. Above all, this concerns cross-border electricity and gas connections, but also gas storage and terminals for liquefied natural gas (LNG). This is the only way of establishing an effective rapid response to potential crises. The required investments should come primarily from the private sector, but they should be backed by the EU for particularly important projects. Implementing the principle of European **energy solidarity** requires not only the accumulation of gas, electricity and oil reserves, but also adequate provisions on the part of all EU member states. As with the Single Market, obligations of solidarity will lead to the Europeanisation of the energy policy outlooks of business and EU member states. Anyone who has to step in to help another EU member state in case of need will devote much more effort to dealing with the particular problems and supplier relationships of individual European regions.
- In its **energy foreign policy** the EU should avoid a geopolitical approach, which in the past has achieved little. So far, the diversification debate has concentrated too much on one-sided slogans and projects. The Nabucco pipeline to »circumvent« Russia is a case in point. The EU should develop a global approach that combines the different geographical regions and individual measures into a **coherent plan**. A pragmatic approach that also incorporates the interests of the supplier countries can better guarantee future security of supply. Thinking in terms of spheres of influence and pipeline corridors will not help. Instead, supplier relationships must be largely depoliticised. But there also has to be a great deal more diversification, in terms of both the origin of raw materials and transport routes. »Speaking with one voice«, an aim so frequently invoked, is realistic only when the EU member states' foreign policy interests in the field of energy have been harmonised. This requires greater Single Market integration as well as a functioning solidarity mechanism. But even then the EU's foreign policy ambitions in energy must remain realistic. In the end, supply is regulated by means of contracts between enterprises, not be-

tween governments. Although bilateral agreements will continue to form supplier relations, in a solidaristic Single Market this is of secondary concern. In light of the gas crisis of January 2009 it will also be important to develop the political and legal apparatus to take account of increased energy dependency. Negotiations on an association agreement with Ukraine and partnership, cooperation and free trade agreements with Russia are central here.

- **Rational use of energy** helps to reduce absolute energy consumption, thereby not only saving in costs and emissions, but also decreasing import dependency as regards fossil fuels. So far, the EU has predominantly emphasised **increasing energy efficiency** by means of tightening up energy efficiency requirements for individual product groups (electric light bulbs, stand-by buttons, engines, buildings, and so on). In order to sustain innovation, however, efficiency criteria must constantly be tightened up. Introducing a »top runner programme« based on the Japanese model would be helpful. However, continually increasing energy efficiency alone will not necessarily lead to significant savings as usage frequently increases, for example, in the transportation of passengers and goods. Besides regulating individual products, the European Commission should concentrate more intensively on instigating structural changes in the most important sectors for energy consumption. Consequently, **energy savings targets** – at present merely indicative – could be made **binding**. This would compel the EU member states to pursue more ambitious and more comprehensive approaches not only in transport policy but also concerning the necessary decentralisation of energy supply.
- The agreed **extension of renewable energy sources** to 20 per cent of end energy consumption by 2020 is one of the greatest successes of the EU's energy and climate policy. When intermediate targets are missed due to negligence, the European Commission should not hesitate to apply the full range of **sanctions**. An ambitious research and technology policy would not only speed up the transition from fossil fuels to regenerative energy sources. It would also offer the EU major export opportunities on world markets. Appropriate development programmes at EU level must be put in place to prevent the potentially enormous damage that could be inflicted on the development of renewable energies by the financial and credit crisis.
- In terms of **internal climate policy** over the next few years, goal-compliant implementation of what

was agreed in December 2008 will come to the fore. Specific regulations governing manufacturing industry within the framework of emissions trading must be understood as *phasing in* en route to a global carbon market. They must not be permitted to absolve this branch of industry from innovation efforts. Concerning reduction targets of each EU member state for sectors not covered by emissions trading (households, transport, agriculture, and so on), the European Commission must see to it – as in the case of renewable energy – that the EU member states swiftly address themselves to achieving each of the 2020 targets. For this purpose the European Commission should encourage a »**best practice race to the top**« in the EU member states (for example, with short- and medium-term national carbon budgets, together with verification mechanisms). The European Commission should also take the initiative as regards much stricter eligibility criteria for international climate protection projects (CDM/JI) in terms of EU reduction goals. Europe must not offload its obligations onto other countries but make its own way forward with ambitious innovation projects. Reviving atomic energy is no real solution to climate change either. Not only are there risks attendant even upon normal operations, but it is a fact that at most atomic energy could provide only 6 per cent of global emissions reductions. And finally, there are unresolved waste disposal and proliferation issues related to nuclear waste and building new nuclear power stations.

- In terms of **global climate policy** the EU must maintain its **leadership role** and take advantage of the new US government's commitment (intermediate target: commitment to a peak year of 2020 and a base year of 1990 with regard to the targeted 50 per cent reduction by 2050). Besides setting a global example by means of unilateral concessions, the EU must also play a constructive role in the development of a climate-related global financial architecture and technology transfer, including further development of the flexible market mechanisms of the Kyoto Treaty (for example, sectoral targets, Clean Development Mechanism with tailored reduction contributions for developing countries). The EU must set out a **robust European financing contribution** that is binding on EU member states in proportion to their economic capacities and does not anticipate the outcome of international negotiations in its details. It must deliberately prioritise negotiations on a post-Kyoto agreement over the G8 and major-economy process and at the same time try to expedite the global

linking of regional carbon markets via the institutional forum for global emissions trading (ICAP). The EU should spare no effort to reach a new agreement as early as the UN Climate Conference in Copenhagen at the end of 2009, but only if an ambitious agreement on principles can be agreed with a clearly regulated implementation phase.

6.3 Perspectives

Climate and energy policy represents **an opportunity to renew the European economy** beyond the crisis. The global financial and economic crisis cannot become an excuse for stepping down climate protection efforts. On the contrary, economic stimulus packages should aim deliberately at changing over to sustainable energy consumption and at climate protection. If we remain true to our common values and longer term policy aims, our crisis countermeasures will lay the foundations for a smooth transition to the economy of the future. We must therefore not stint in our efforts to fashion a transition to a low-emission economy. When the recovery sets in, green technologies and products will be leading markets: the worldwide market for low carbon goods and services is at present worth 3 trillion euros, and it is growing.

Besides being right at the top of the EU's agenda, climate and energy policy is also something of a »Yes We Can« issue for the new US government. Together with the Obama administration, the EU can set about the overdue reordering of global governance structures and relations with developing countries. A path towards a global partnership of responsibility lies ahead. EU leadership in climate policy points far beyond negotiations on a post-2012 agreement in Copenhagen. In the face of the global economic and financial crisis a new internationalism with a global »New Deal« is becoming necessary. International climate and energy policy can make a special contribution to the establishment of sustainable cooperation mechanisms. Together with the USA the EU must use the double crisis to create new forms of global cooperation, such as an expanded G8, and to renew existing institutions, such as the IMF and the World Bank. This is an historic opportunity and the EU, together with its strategic partners, must point the way forward.

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International Policy Analysis:

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7 Towards a Culture of Civil Rights, Security and Freedom

7.1 Background

In 1997 the EU set itself the goal of establishing an area of freedom, security and justice. Since then, several measures have been taken for common security. Now it is time to create a common area of freedom and justice, too. After all, freedom and the rule of law are central elements of European society. They do not conflict with security, but on the contrary are two of its main conditions.

Freedom, the rule of law and EU citizens need to be protected against organised crime and against violence motivated by political and religious extremism. But repression in the form of prohibition, controls and criminal prosecution can constitute only part of the solution. Our society can prevail only if its members are persuaded of its merits. This means that social inclusion, education and equality of opportunity are as important for internal security as judicial action and the police. Security is a means to an end. It serves to protect our society which is based on freedom and the rule of law. No state can guarantee absolute security. Societies must therefore learn to take action against the causes of violence at the source and to put up with the residual risks. The basic consensus on the values and democratic structures of our society must not be undermined.

Security should not be reduced to protection against threats to the state. As a general rule, the force the state may use for its protection ought to be limited. This corresponds to both the constitutional tradition of EU member states and the Charter of Fundamental Rights that builds on it. An essential requirement of such limitation is that the state monopoly on the use of force is maintained, since only a privileged minority would be able to afford the privatisation of security. Equality before the law must also be safeguarded in the provision of protection against threats. There must therefore be no special regulations on certain criminal acts or perpetrators, for example, in relation to terrorism. So-called »criminal law for enemies« (*Feindstrafrecht*) that restricts or even withdraws basic rights on the grounds of a person's belonging to a certain group is incompatible with the rule of law and is to the detriment of all.

In an age of electronic data processing, information and communication, the right to informational self-determination is more important than ever. With people making their personal data freely available on the Internet, consumer data being passed on to processing companies (for example, via loyalty cards)

and state authorities increasingly collecting personal data, new questions are being raised about the importance of self-determination in this respect. Since national borders are becoming increasingly irrelevant, answers must be found at European level.

As the borders between EU member states lose their significance we have to develop common positions in order to protect European society and to ensure a balance between freedom, justice and security.

Fear of terrorism came to dominate politics in all EU member states in the wake of the Islamist terrorist attacks in New York (11 September 2001), Madrid (11 March 2004) and London (7 July 2005). Accordingly, joint action focused on measures to combat terrorism and to prevent attacks and conspiracies.

Specific measures included intensification of the exchange of information between EU member states' security services, the decision on data retention, the coordinated monitoring of the Internet, tightened security at airports and borders, and recently the proposal for a European system of passenger name records. Considerations of the rule of law give us every reason to be wary of many of these measures, which constitute a gross infringement of so-called »personality rights« (*Persönlichkeitsrechte*) and in particular the right to informational self-determination.

The EU's security structures were also strengthened after the terrorist attacks. Creation of the Joint Situation Centre and FRONTEX established bodies for the exchange of information between national intelligence services and the coordination of external border controls respectively. Europol will be granted further competences and the Schengen Information System will in future also contain biometric data.

Cooperation in the prosecution of certain criminal offenses was introduced by means of the European Arrest Warrant. Substantive criminal law was created at Community level for the first time with the Directive on protection of the environment through criminal law. Eurojust, a network of EU member state judicial authorities, and the European Judicial Network were also set up within the framework of cooperation in criminal law.

To protect civil rights the European Fundamental Rights Agency was established, supplementing the European Court of Human Rights. Protection against discrimination was established in law across the EU. None of the measures on the minimum level of harmonisation of criminal procedure envisaged in the Hague Programme have been adopted, however, and in some cases not even drafts have been submitted.

Article 8 of the Charter of Fundamental Rights lays

down specific criteria for data protection in the EU. For the private sector Directive 95/46/EC provides a common legal framework, although its implementation in the EU member states varies considerably and there are major gaps. The European Data Protection Supervisor and the Data Protection Working Group in the European Council lend a voice to data protection in the EU. Their comments or recommendations are non-binding, however, and all too frequently go unheeded.

The European Parliament has repeatedly pronounced in favour of giving greater prominence to data protection and civil rights in judicial and police cooperation in criminal prosecutions in the EU. Only in the area of visa policy and where regulations were adopted on single market competences (for example, data retention) was the European Parliament able to assert its influence under the rules of the Nice Treaty. By means of the Lisbon Treaty this will become the rule in almost every area of domestic and judicial policy.

7.2 Tasks

- We must actively promote the **implementation of the European model of a free and democratic society**. Security cannot be achieved merely by repression. The EU stands as the model of a pluralistic, open society. We must combat discrimination widely and effectively. We must bring those living on the margins of society back into the fold. The proposed discrimination directive should be adopted as soon as possible and its implementation should be monitored by the Fundamental Rights Agency. The Fundamental Rights Agency's means of action should be extended to include consultancy in individual cases.
- **Cooperation between the police and other security authorities** should be extended to crime prevention and supplemented by an effective exchange of experiences. The mandate and financing of the EU Crime Prevention Network (EUCPN) should therefore be expanded and upgraded. Minimum standards – for example, an entitlement to rehabilitation for those in prison – could make a substantial contribution to crime prevention across the EU.
- A **sustainable security policy** has to start with the structural causes of crime, violence and extremism. A lack of opportunities and prospects, as well as a deep-seated sense of structural disadvantage are breeding grounds for radical ideologies. These problems need to be addressed. EU programmes can help to promote social integration by improving educational opportunities and social mobility, and by facilitating political participation. Cross-border phenomena such as religious intolerance, football hooliganism or political extremism should be tackled in joint programmes. Exchange of experiences in integration efforts should be backed up by comparative indicators, for example, on political participation, discrimination, social mobility and educational outcomes.
- The key contribution of Europol, FRONTEX, the Joint Situation Centre and Eurojust to **combating cross-border crime** has to be further legitimised by parliamentary control and involvement, as well as by the bolstering of fundamental rights. The European Parliament's right to codetermination, which is laid down in the Lisbon Treaty, and national parliaments' associated control rights in relation to Europol provide a good basis for this.
- The new EU member states must be supported in their efforts to develop **effective police structures committed to the rule of law**. Combating organised crime and corruption is a matter of common concern to all EU member states and can be fought successfully only if they act together. Exchange programmes for police officers and criminal lawyers should be properly resourced so that they have an effect beyond the level of senior staff.
- The current proposals for the **retention of passenger data** in the EU are unacceptable. Data gathering and networking of ever wider scope not only represent a danger to data protection, but also raise questions concerning the cost effectiveness of the relevant data processing systems. Besides evaluating what has been done so far it must be established whether there is a compelling need before further resources are committed.
- Europe is not an island. Strong and well-thought-out **participation in international police missions** and in the development of the police forces of third states also enhances the EU's security. The European gendarmerie Eurogendfor represents an important contribution to this. Eurogendfor must be opened up to non-paramilitary police units so that Germany and other states without paramilitary units are able to participate.
- The EU needs a **common culture of civil rights**. Much has been done to improve the means of action available to state security organs. Civil rights, for example, the right to informational self-determination, have suffered as a result. They must be afforded renewed respect and protection.
- In order to achieve this crucial goal a **separate Directorate General for Justice** should be created,

presided over by its own Commissioner for Justice. The current Directorate General Justice and Home Affairs, as well as the Office of the Commissioner for Justice and Home Affairs would in this way be divided into two separate Directorates General and two Commission portfolios. Such a division is in keeping with the rule of law traditions of the EU member states and would promote the emergence of a common »area of justice« in the EU.

- Cooperation in criminal prosecution and combating terrorism in the EU cannot make progress without an adequate **definition of common minimum standards for the rights of both victims and the accused**. Guaranteeing such standards and bolstering civil rights in criminal procedure law is a central task for the coming years. With the Lisbon Treaty both the European Council and the European Parliament can make decisions on this much more easily. The abortive framework directive on procedural rights in criminal proceedings must therefore be taken up again. The list of offences contained in the European arrest warrant should be supplemented by a sentencing framework. The itemised offences should be defined more clearly. Mutual recognition of judgments must not replace parliamentary legislative procedure. We therefore need a debate on harmonisation in substantive law and criminal procedure law.
- Victims' rights also vary greatly in the EU member states. For the victims of violence in particular inadequate recognition of their concerns can be very stressful. European minimum standards should therefore be laid down for victims' rights.
- The gaps in the **implementation of data protection** in EU member states must be closed in both judicial and police cooperation and civil and contract law. Consumers' and employees' data must be secure. The discretionary powers in the current directives must be reduced and their implementation in the EU member states must be more consistent. At the same time, every effort must be made to keep up with technological developments.
- Terrorism is an urgent threat. But we need to react responsibly. We consider terrorism to be a crime that should be combated using the regular apparatus of the police and criminal law. Novel repressive measures should generally be time-limited and their effectiveness regularly reviewed. A »criminal law for enemies«, especially for terrorists, is to the detriment of all. This also applies at European level.

8 Migration and Integration

8.1 Background

European migration and integration policy has so far been dominated by restrictive and conservative concepts. These concepts are not adequate to manage the new global challenges of shaping and controlling migratory movements. What we need are comprehensive approaches connecting economic, development, social and security policy considerations that integrate the different forms of immigration in one global approach. The European Commission has recognised this and is driving things forward in this policy area. The European Council has also taken up the challenge by adopting the European Pact on Immigration and Asylum in October 2008. However, security policy considerations continue to predominate.

It is obvious that without internal borders the EU needs a common, mutually agreed European immigration and asylum policy. Given the different immigration histories and »evolved« national peculiarities that characterise immigration control and integration policy, however, the principle of »as much unitary, communitised policy as possible, and as much attention to national peculiarities as necessary« should be adhered to. At the same time, it must be considered that the EU is not only an economic, but also a value community, in which democracy, human rights and the welfare state count.

European migration and integration policy needs to be active, modern and coherent. And it is on the European Commission to initiate a fundamental change of course.

8.2 Tasks

- For both demographic and economic reasons, the EU will be reliant upon the immigration of skilled and qualified workers. In comparison with other »classic« immigration regions, however, the EU's attractiveness as an immigration destination remains relatively low. The European Commission needs to develop **a common approach to labour immigration** that takes on board all previous ideas and directives. Discussing individual proposals will no longer be sufficient. The aim of such a common approach must be to enable in particular well-qualified workers to emigrate long term. Depending on their duration of stay they should be granted extensive mobility rights within the EU.
- The **development of a common European asylum system** is another important task for the Eu-

ropean Commission. As a first step, the general legal conditions and procedures, as well as standards for granting asylum need to be standardised further. Every refugee – even those picked up at sea – should be given the right to apply for asylum in the EU. Accommodation for refugees should meet humanitarian criteria. Refugees should be provided with a range of integration measures from an early stage. So-called »tolerated« refugees should be given the prospect of remaining after an appropriate period.

- A European »Blue Card« needs to be the central element of any comprehensive regulation of immigration for employment purposes. The European Commission should introduce such a **»Blue Card« for the recruitment of highly qualified third-country nationals**. »Blue Card« holders ought to be entitled to extensive social rights and immediate family reunification. The definition of »highly qualified« should not be restricted to formal educational qualifications, but also take account of comparable professional experience. Furthermore, EU citizens from Central and Eastern Europe should no longer be discriminated against. Finally, a »Blue Card« must also leave room for national regulations to control the immigration of highly qualified workers.
- European migration policy should take more account of the **situation in migrants' countries of origin**. »Brain drain« effects in developing countries and emerging economies are to be avoided. Having said that, the migration of qualified workers can benefit both sending and receiving countries (»brain gain«, »brain circulation«). The European Commission should analyse the conditions underlying such positive effects in more detail so that in future they can be incorporated in policy measures. In particular, the **concept of »circular migration«** ought to be developed further. Above all, mistakes made in the past with »guest-worker« recruitment ought to be avoided. A number of policies are central to this aim: Multiple entry should be made possible for migrants. Migration decisions need to be voluntary and family reunion must be guaranteed. It should be possible to consolidate residence status and educated migrants should be able to return to their country of origin for extended periods without losing this status. At the same time, **migrants' socio-economic rights** must be safeguarded. The interests of the country of origin and of the host country, as well as of the migrants themselves, must be considered. Migration approaches should be embedded in »mobility partnerships«, which require negotiations and

agreements with the sending countries on an equal basis. Development-policy challenges and human rights considerations have to be taken into account. »Diaspora communities« in the target countries should be included in these programmes.

- **The equal treatment of all EU citizens in all EU member states** must be a given. In particular, the European Commission should ensure that in future enlargement rounds there are shorter transitional periods for freedom of movement of workers. Moreover, if the labour market situation permits, freedom of movement should be granted from the outset. Romanians and Bulgarians ought to enjoy freedom of movement in all EU countries from 2012.
- The EU will continue to be confronted by a certain amount of **illegal migration**. The European Commission should therefore – for example at European summits – do what it can to ensure the retention of the »legalisation« option, as practiced by a number of EU member states in the past. National peculiarities are to be heeded in this policy area.
- The European Commission should also develop approaches to **avoid irregular migration**, rather than focus on fighting it. Against the backdrop of the Returns Directive that aims to standardise treatment of the problem across the EU and to lay down minimum standards, the European Commission should insist that EU member states adhere strictly to asylum, human rights, humanitarian and social standards in their handling of returns.
- The planned legal framework at EU level for **seasonal work** should lead to more legal certainty and improved working and wage conditions for those affected. National peculiarities concerning the employment of seasonal workers must of course be taken into account.
- **Educational disadvantage among children and young people from immigrant backgrounds** must be eliminated. Although responsibility for education policy remains a matter for the EU member states, useful ideas can be developed at European level. European impetus can be lent to the reform of national education systems. The European Commission should therefore continue initiatives such as the consultation »Migration and Mobility: Challenges and Opportunities for EU Education Systems«.
- Among the fundamental values of the EU is a **ban on discrimination** on the grounds of sex, age, religion, disability, belief, sexual orientation and ethnic origin. The implementation of previous European directives is a step in the right direction. As these directives for the most part were limited to

the labour market and employment and took account only of sex and ethnic origin, the European Council should lend its support to the European Commission's new proposal for a directive, which extends the principle of equal treatment to all other areas. As a next step the European Commission would be obliged to make available the resources needed to implement the improved anti-discrimination strategy.

- The EU member states' **integration policies** should be accompanied by **European initiatives**. Since national sovereignty has to be taken into account, the European Commission should organise the exchange of best practices between the EU member states. Integration requires recognition of **migrants' competences and achievements**. Professional qualifications obtained in the migrant's country of origin must be recognised. Besides university degrees, vocational qualifications and experience must also be recognised. Furthermore, language and intercultural skills enhance immigrants' qualifications. Support measures enabling people to acquire a second language are very important in this connection.

8.3 Perspectives

European cooperation in the area of migration and integration will only gain in importance. Though national solutions are rapidly exhausted in the organisation and control of migration, the EU member states insist on sovereignty in certain policy areas, such as the control of labour migration and integration policy. The European Commission must continue to play a role in this highly charged environment.

The goal is the development of a coherent European migration policy. Coherence must be achieved at a number of different levels:

In the interest of substantive coherence, the effects of migration in different policy areas must be taken into account. Labour market and development policy considerations must line up alongside security policy ones. Common aims have to be formulated. Comprehensive policy approaches must incorporate the perspectives of sending and receiving countries and the interests of migrants.

Decision-making within the EU must become more transparent. Concerted action is needed between the EU institutions, that is, the European Commission, the Council of Ministers and the European Parliament. Although the competences of the »supranational« institutions – European Commission and Parliament – have been extended in recent years, unanimous de-

cisions are still required in the areas of »labour immigration« and »integration«.

Finally, future European migration policy must also be vertically coherent: local, regional, national and European levels have to be taken into account. Non-governmental organisations too have to be included in political decision-making.

9 Common Foreign and Security Policy

9.1 Background

The EU's Common Foreign and Security Policy (CFSP), and the European Security and Defence Policy (ESDP) which is an »integral part« of the former, have developed dynamically in recent years. Within this framework the EU's apparatus has been extended and further elaborated. In the meantime, the EU has been active and visible in more than 20 civilian and military missions across the world.

Nevertheless, the EU is not meeting the goals it has set for itself in international crisis management. Shortcomings can be attributed to, among other things, the unanimity rule that hinders or even blocks the adoption of clear positions or pragmatic decisions by the European Council, for example, in regional conflicts. Since policy areas increasingly overlap in the face of European and international challenges a large number of actors – some of whom have strongly divergent views – are involved in foreign policy decision-making. This complicates matters even further. Besides these structural failings the EU lacks a long-term foreign policy strategy supported by all the EU member states. This lack of strategic direction makes itself felt directly where measures are implemented.

The Lisbon Treaty contains a number of institutional innovations aimed at making the EU's external relations more coherent by bringing different policy areas together (for example, the creation of a European External Action Service). Besides that, there is room – apart from revisions of the Treaty – for reform and new directions of an effective CFSP for the EU. The European Commission should play its part in the necessary reform steps within the framework of its competences under the Treaties.

9.2 Tasks

The EU's foreign and security policy measures should be brought together under a comprehensive and long-term strategy. While the European Security Strategy (ESS) of 2001 – recently supplemented by a report – identifies a number of important international challenges, it offers no specific or helpful practical guidance for EU foreign relations. The EU's »broader concept of security« remains vague.

■ The relevant bodies in Brussels should be put in a position to engage in **strategic planning in foreign and security policy**. The current procedures and structures are oriented solely towards precipitating a decision on individual dossiers. The strate-

gic framework of individual measures is not taken into consideration.

- The **concept of »human security«** presents itself as a central point of reference in a long-term EU strategy. This concept would enable the EU to play to its strengths in foreign and security policy and to concentrate on civilian measures rather than military ones.
- Based on this conceptual orientation, a **list of criteria** should be drawn up, among other things, in accordance with which specific **EU civilian or military missions** will be launched. Such a list could be supplemented by guidelines on how missions are to be implemented.
- The **EU's basic documents on foreign and security policy should be regularly revised** to incorporate experiences made. The provisions of the Lisbon Treaty should be implemented in accordance with the agreed fundamental strategy.
- The sheer number of international conflicts and crises should not tempt the EU into arbitrary and ad hoc measures that strain its capacities and capabilities. Besides the substantive focus on human security, **geographical priorities** must also be set. In the field of conflict prevention the EU ought to focus on its immediate neighbourhood and hone in on the stabilisation of this region as the central aim of EU security policy. The European Neighbourhood Policy and security policy should be tightly meshed.
- **Dialogue with third states** constitutes an important element of the EU's external relations. Having said that, the institutionalised and unvarying routine of meetings should give way to a more flexible approach. This would make it possible to conduct dialogue in a more goal-oriented way, taking due account of the context.
- The **»effective multilateralism«** called for by the EU itself should be its guiding principle in foreign policy. This requires strategic dialogue with key partners such as the USA and Russia. There must also be an open debate on relations and the international division of labour between the EU, which is increasingly active in the area of security policy, and NATO, which is undergoing a strategic reorientation.
- The **democratic legitimacy of the CFSP** has to be bolstered by the European Parliament and the national parliaments in keeping with the increasing importance of this policy area and public expectations. The European Parliament should be involved in decision-making at an early stage, being given the opportunity to issue an opinion.

- A **European diplomatic and security culture** should be nurtured by means of a coordinated training policy. The European Security and Defence College (ESDC) is a positive model that should be extended over the whole area of CFSP. In this way it may be possible to counteract the fragmentation of training measures. Both foreign and security policy decision-making and outside perceptions of the EU would benefit from the cultivation of an *esprit de corps*.

Please see for further information:

European Integration Working Group:

The European External Action Service - The nucleus of a strong European foreign policy

May 2009

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An alternative to statecraft: a human security proposal for a European external action service

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10 The EU's Relations with Its Neighbours

10.1 Background

The European Union's relations with its neighbours are central to its external relations. These relations rest on three pillars: Enlargement Policy (focusing on the Western Balkans), European Neighbourhood Policy (ENP) in the South (with the Barcelona Process and the Union for the Mediterranean) and European Neighbourhood Policy in the East (ENP-East, Eastern Partnership and relations with Russia). We should also mention relations with members of the European Economic Area (EEA) (Norway, Iceland and Liechtenstein) and with Switzerland. The EU's relations with these countries are distinguished by two different integration models: While countries of the EEA adopt the *acquis* without participating in EU decision-making processes, Switzerland is pursuing gradual integration via individual sectoral treaties.

In the last two years the ENP has been given new impetus in both the South and the East. At the insistence of Southern EU member states, and under the leadership of the French EU presidency, the Union for the Mediterranean was founded in July 2008. It builds on its predecessor, the Barcelona Process, but significantly enhances regional cooperation by means of new initiatives, regular summit meetings and a joint secretariat. By way of balancing this orientation towards the South, a number of EU member states proposed the establishment of an Eastern Partnership, in essence an »ENP + the East«. In December 2008 the European Commission adopted a Communication to this end. It is aimed at strengthening existing initiatives, enhancing bilateral relations with individual states and supplementing them with a regional initiative for increased cooperation.

The basic direction of these two initiatives is to be welcomed. Nevertheless, there are a number of structural shortcomings.

For one thing, the different policy areas and regional initiatives do not mesh: they are often unconnected and lack a common denominator. Furthermore, resource allocation reflects rivalries between the geographical preferences of individual EU member states – conflicts about funding for specific regions or the financing of different ENP action plans clearly exemplify this.

As regards the Eastern dimension of the ENP the biggest structural problem is the unresolved question of whether Russia is to be included or excluded. The EU member states have very different positions on this, ranging from a pan-European approach (advocates of cooperation with Russia) to a form of containment (Russo-sceptics). Given the diverging geographical and political preferences it is unlikely that a coherent strategy on the relations between the EU and its neighbours will be developed in the foreseeable future. Nevertheless, conceptual adjustments and raising the profile of certain areas seem to be possible.

ates of cooperation with Russia) to a form of containment (Russo-sceptics). Given the diverging geographical and political preferences it is unlikely that a coherent strategy on the relations between the EU and its neighbours will be developed in the foreseeable future. Nevertheless, conceptual adjustments and raising the profile of certain areas seem to be possible.

10.2 Tasks

- For the ENP to be successful in the long term, the EU needs to address the fundamental **question of enlargement**. The European Commission should clarify the perspectives for accession of ENP countries. This way, the ENP will not be confounded with enlargement policy, or taken as its preliminary stage. Also, the relationship between the ENP and enlargement policy should be defined. Ultimately, the choice of EU instruments and resources should depend on whether a given country can become a member of the EU or not. For example, it makes no sense to open negotiations with a ENP country about implementing the whole EU *acquis* if it has no prospect of accession.
- The European Commission should develop a **coherent strategic perspective** for the ENP. The policy should be guided by the interests of the EU as a whole rather than by specific interests of individual EU member states.
- The European Commission should put a stronger emphasis on **what is expected of the ENP partner countries**. A clear conditionality should be built into the process by which the ENP partner countries come closer to the EU. The implementation of ENP action plans plays a pivotal role in this.
- The European Commission must also work harder to achieve an **interlocking of different policy areas and initiatives**. Existing structures must be made compatible with one another to generate synergies. A particular case in point is the Black Sea Synergy, which should be incorporated into the Eastern Partnership. Better coordinated deployment of the available instruments is also fundamental.
- A **better regional and interregional cooperation structure** is needed. The European Commission should see to it that new structures complement existing ones. The joint secretariat for the Union for the Mediterranean should not create parallel structures that blur competences and could instigate rivalries. As a matter of policy, the European Commission should develop regional cooperation as a complementary element to bilateral

relations with individual ENP countries. ENP countries need to be convinced of the benefits of increased regional cooperation, especially with regards to regional conflicts.

- The European Commission should set **clear priorities in the formulation and implementation of ENP action plans**. The current approach appears to be too broad and too unfocussed. The fundamental aims of creating stability and prosperity should point the way here. On top of that, crucial horizontal aspects that characterise the whole neighbourhood of the EU should be attributed greater importance. A number of topics, although contained in the various ENP action plans, should be paid more attention to: good governance, migration and the social dimension.
- Concerning the **implementation of ENP action plans and flagship initiatives** as are being developed within the framework of the Eastern Partnership, **better control and evaluation** is required. A pragmatic approach would seem to recommend itself: cooperation and possible assistance from the EU should be organised on a step by step basis, so that real progress in the different policy areas is a necessary as a condition of moving on to the next stage (upgrading).
- **Non-governmental organisations are not adequately integrated** into most areas of the ENP. They are essential to the implementation of ENP action plans, however, and should be more involved.
- As regards the Eastern Partnership, the **question of Russia's involvement** is fundamental. Given the ENP countries' often close economic and social linkages with Russia, some involvement appears inevitable. The Eastern Partnership should not be conceived as a form of confrontation with Russia, but as contributing to stability throughout the region.

10.3 Perspectives

In future, a security-policy component will have to be built in to the current ENP strategy. The EU's neighbours have also called for this. For political and institutional reasons this is unrealistic at the moment, but an effort must be made to integrate this area at least conceptually with current approaches. This is underlined by the example of the Caucasus, where some form of regional stability pact is needed which encompasses all policy areas, including security policy issues.

Please see for further information:

International Policy Analysis:

10 Theses on the European Neighbourhood Policy (ENP)
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Barbara Lippert:

The Discussion on EU Neighbourhood Policy – Concepts,
Reform Proposals and National Positions
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