

Time for Action Immediate Priorities for the Next European Commission

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Executive Summary

The EU is at present suspended in a leadership limbo, with the new Commission President nominated but not yet approved. Moreover, until a second referendum is held in Ireland, uncertainty over the institutional framework will persist. So far, attention has focused mainly on who should be the next President of the EU or the European Commission. However, given the immense internal and external challenges facing the EU, the key issue should be what to do.

This CEPS Policy Brief provides an action plan for whoever will sit at the helm of the Union, and *in primis*, at the helm of the Commission. Setting priorities means concentrating on a limited number of fields. Therefore CEPS research staff has identified priorities in four selected policy fields where concrete action is needed immediately: reform of financial sector regulation and oversight, climate change and energy policy, Justice and Home Affairs and the Common Foreign and Security Policy.

These fields are crucial to fostering a recovery of the EU economy and allowing the EU to become a real actor on the international scene. Taking the actions proposed will stabilise the economy and set the EU on the right course out of its current limbo, allowing it to become a more relevant actor on the global scene as well.

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Time for Action

Immediate Priorities for the Next European Commission

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1. Introduction

Daniel Gros & Julia De Clerck-Sachsse

As the EU administration is entering a new five-year term, it is faced with a number of tasks of crucial importance. It needs to find an exit strategy from the economic and financial crisis, it will have to assert itself as a leader in negotiations on climate change, it is grappling with a more unified approach to immigration and it needs to rethink the way it presents itself on the international scene. At the same time, the EU still finds itself in institutional limbo, while the precise rules of the future functioning of the EU and its leadership remain to be finalised. Nevertheless, there is no time for complacency. A lot of ink has already been spilled on the perceived lack of EU leadership on the international scene. Rather than more talk of crisis, however, what the EU needs now is a concrete programme to set it back on track to tackle the immediate challenges it faces.

To be sure, the most severe challenges facing the EU today – the economic crisis, the effects of climate change, illegal immigration and international peace and security – can only be addressed on a global scale. The EU certainly cannot resolve them alone. Yet, in all of these policy fields, concerted action within the framework of the EU is already an important step towards a more cohesive global strategy. In order to remain a relevant actor on the international scene, therefore, the EU must set clear priorities and focus on those fields where it can actually make a difference. In particular action is required in four areas:

Finding a way out of the **economic and financial crisis** must be at the top of the EU agenda. The two priorities in this field are to: **a) preserve both the single market and the stability of the financial sector, and b) ensure the application of the Stability and Growth Pact (SPG)**. In this latter task, the Commission faces a considerable challenge given that the large rescue and stimulus packages passed in order to stabilise the banking sector and national economies have been organised at the national level and fly in the face of efforts to balance the budget. While the Commission's capacity regarding the SGP is limited and the short-term economic outlook remains so uncertain, at this point it would be premature to push for a rapid

return to an orthodox fiscal policy. In the area of financial market regulation, however, the role of the Commission is essential. Many initiatives are being pursued at the same time, but what is missing is a holistic approach to dealing with the economic and financial crisis. The Commission is busy implementing as rapidly as possible the recommendations of the de Larosière Report as agreed in the European Council of June, and by September, the Commission should already have drafted concrete legislative proposals. But this is not enough. The Commission should complement these measures that deal essentially with supervision of the financial sector with concrete proposals concerning the problems of 'burden-sharing' through the creation of a European Deposit Insurance scheme and new measures for winding up insolvent banks. Moreover, the Commission needs to have a clear and tough line on state aids in the banking sector, where it is important now to separate the viable from the non-viable institutions to avoid a prolongation of the problems in this sector by allowing governments to keep so-called 'zombie banks' alive forever.¹

The Copenhagen Summit in December 2009 makes the need for a clear programme on how to combat the problems of **Climate Change and Energy supply**, if it wants to serve as a model in this field. A key sector in this regard will be transport – for 97% of the sector still depends on fossil fuels and therefore produces large amounts of greenhouse gas (GHG) emissions. Without targeting emissions in the transport sector it is unlikely that the EU's emissions targets will be met. In order to do so, a **transport and climate change package** should be adopted to set the Union on track to decarbonise the transport sector and thereby take a crucial step towards reaching the emissions targets it has set for itself. This would imply reviewing the current EU tax regime for fuels and rethinking the current transport infrastructure, in particular by increasing the share of low-carbon electricity in road transport. Reducing emissions in the fields of international aviation and maritime transport will also play an important role. While R&D and new technologies

¹ This necessity to distinguish between viable and non-viable banks is completely independent from the issue of whether savings and cooperative banks should be transformed into joint stock companies. See a recent CEPS study on this issue (Ayadi et al., 2009).

will be at the heart of such efforts, demand-side management will also be crucial to this task.

Justice and Home Affairs have also become an increasingly important issue on the EU policy agenda as the Union's competences have increased in this field (and will continue to do so if the Lisbon Treaty is ratified). So far the EU's JHA agenda has been driven by the logic of a 'Europe of results'. Rapidity and urgency however are often difficult to reconcile with proper protection of fundamental rights and standards of rule of law. This is why a **high quality and independent (ex post) EU evaluation mechanism** focusing not only on the correct and timely transposition of EU laws at national level but also on general rules of law and good administration standards (such as the quality of judicial and asylum systems) remains crucial. This mechanism would ensure that a Europe of results goes hand in hand with a Europe of Rights and Justice. Another important step in this direction is the EU's policy towards immigration. With few related European measures adopted so far, legal migration and the rights of migrants should remain high on the next Commission's agenda. Among the five measures announced in the 2005 Migration Policy Plan, only one – the least controversial on highly qualified employment (EU Blue Card) – has been agreed to. In order to develop this policy domain further, the Commission's idea to create a single instrument is most welcome. Adoption of an **Immigration Code** to guarantee a "clear, transparent and equitable approach" to migration could constitute a crucial step towards a clearer and non-fragmented framework on migrants' rights. For that to happen, this framework should allow for the incorporation of human rights and guarantees for all third country nationals migrating and residing to the EU (including undocumented migrants). Such a Code should also not leave the door open for lowering existing standards and rights in EU immigration law.

Last but not least, the EU's role in establishing a **Common Foreign and Security Policy (CFSP)** is as relevant as ever with conflicts from Afghanistan to the Middle East process and Iran calling for concerted action. The proposed changes in the Lisbon Treaty, however, will necessitate a **general rethink and overhaul of the institutional structure for the CFSP**. The creation of the EU's External Action Service (EAS) would be the first immediate step. The Commission should present a detailed blueprint for the organisational structure and staffing needs of the EAS. Moreover, arrangements for creating posts for several deputies under the new Vice President of the Commission (the High Representative for the Union's Foreign, Security and Defence Policy) will have to be made.

A logical step following from these institutional innovations would be to also rethink the way in which the EU is represented (or not) both in third countries and in international institutions. For example, does the Commission propose to create common diplomatic and consular services in at least some countries of limited importance where not all member countries are represented? Is there any new thinking on the coordination/common representation of the EU in the UN and its agencies? At a minimum, the representation of member countries (and especially of those in the eurozone) should be reduced in the IMF and international financial institutions with the aim of having a unified euro area representation by the end of the life of this Parliament.

2. Financial markets and the economy – Time to define a holistic approach to the crisis

Daniel Gros & Karel Lannoo

The challenge for the incoming European Commission will be to define an integrated response to the financial/economic crisis, combining a number of different elements into one coherent policy. A vast number of specific legislative proposals are at varying stages of advancement (on ratings agencies, hedge funds, capital adequacy, etc.). They are important in their own right, but are not of systemic importance. There are two systemically important issues on which the Commission seems to be concentrating: i) implementation of the de Larosière proposals as approved by the European Council of June and ii) the need to find the right time to bring fiscal policy back into the parameters defined by the Stability and Growth Pact (SGP). These two elements are important, but not sufficient in themselves.

Regarding the SGP, the influence of the Commission is limited and the short-term economic outlook remains so uncertain that at this point it is premature to push for a rapid return to a Maastricht-like, orthodox approach to fiscal policy. However, in the area of financial market regulation, the role of the Commission is essential. Here it is not enough to just implement de Larosière agenda.

Four key issues need to be addressed regarding financial markets.

First, there is general agreement that de Larosière proposals should be implemented as soon as possible. The Commission is committed to presenting in autumn the necessary draft legislation. The guiding aim in doing so should be to articulate as clearly as possible the objectives, functions, organisation, governance and funding of the new

supervisory entities – the European Supervisory Authorities (ESAs) and the European Systemic Risk Council (ESRC). Another key element will be to ensure the proper cooperation of these new entities with the existing structures. At the centre of the new structure, owing to its status and composition, will be the Steering Committee of the ESRC, composed of three central bankers (ESCB), three supervisors (ESA's chairs), a European Commission member and a delegate of European financial ministers. The structure and decision-making mode of this Steering Committee need to be carefully defined and the Commission and the European Central Bank should prepare an ambitious initial work programme as this will set the tone for this new entity. But this is not enough; the other measures are needed.

A second element, which has so far received too little attention, is deposit insurance. It is not enough to just strengthen the existing patchwork of national deposit insurance schemes. What is needed now is a truly European deposit protection system administered by a European Deposit Insurance Corporation that insures deposits in cross-border institutions. Without such a European scheme, small countries will no longer be able to host large banks, and national supervisors will constantly put pressure on banks to transform branches into subsidiaries, thus destroying the meaning of the European passport and the single market. The Commission needs to publish as soon as possible concrete proposals for such a European Deposit Insurance scheme. Such a new system should bring back market discipline in the European financial system and re-establish confidence because it would avoid the problems that arose in the case of the Icelandic banks.

Third, the Commission should work on proposals for a European-wide bank resolution and liquidation regime. This is urgently needed because at present it is exceedingly difficult to close down banks without running into the legal problems (and the systemic impact) a formal insolvency would have. (Moreover, only very few member countries have such a scheme.)

A fourth issue to be addressed is the question of state aids and bank stress tests. The ground needs to be prepared first to start limiting and then rolling back state aids in the banking sector on a coordinated euro-wide and, preferably also EU-wide basis. So far, around 40% of the guarantees and the recapitalisation allowances for the banking sector have been used, indicating that the situation has been stabilised. The Commission should establish clear criteria under which the unused portions should be frozen so that new aid for banks in difficulty would be subject to normal state aid rules. Having a proper framework for winding up banks

without formal bankruptcy procedures would of course be extremely important at this stage.

All these elements need to be put together in a holistic approach. The Commission should set out in a strategic paper on financial markets its overall vision of how these different aspects can be combined in a coherent manner. Naturally these initiatives should be coordinated with the ECB on a number of aspects (for example, liquidity facilities for the banking sector, lender of last resort issues, etc.).

Beyond policy, success in overcoming the current crisis also has a clear institutional and personal dimension: reaching agreement and later implementing this holistic approach will require close cooperation of a number of Commissioners (with responsibility over DGs Markt, COMP, ECFIN, etc.) and will require a collegial approach, under the leadership of the Commission President.

Finally, one should not forget that the incoming Commission already faces a huge task in restoring the reputation of the EU (and the Commission) as an effective regulator for financial markets. Rightly or wrongly, the Barroso I Commission was associated with the concepts of 'self regulation' and 'regulatory pause'. In hindsight, it is clear that this was a strategic error of the first order. Correcting this reputation will also be a matter of finding the right personalities for the key portfolios and choosing the right structures to define and implement these policies.

3. Transport and climate policies – Time to decarbonise transport in Europe *Christian Egenhofer & Arno Behrens*

In order to come closer to reaching its greenhouse gas (GHG) emissions targets by 2020, the EU urgently needs a new transport and climate package. The transport sector is not only vital for European integration, it also constitutes an important component of the European economy. The sector contributes some 7% of GDP and more than 5% of total employment in the EU. Progressive European integration, notably via successive waves of enlargement, has led to a substantial increase in transport volumes in recent years. On average, passenger transport increased by 1.7% annually since 1995 – mainly driven by air and road transport – while freight transport increased by 2.7% over the same period – mainly driven by road and sea transport. These developments have led to an increasing recognition of the negative side-effects of mass transportation in Europe, including deterioration of infrastructure, misuse of land, congestion, air and noise pollution, injuries and

deaths, as well as substantial amounts of GHG emissions. The latter is of particular importance in the context of the EU's global climate leadership. Failure to address GHG emissions in transport will not only jeopardise recently adopted EU emissions reduction targets; it would also hinder the industrial transformation of the transport sector.

While GHG emissions have decreased in all sectors of the European economy since 1990, transport was the only sector that experienced continuous growth in emissions, which increased by some 36% in the period between 1990 and 2006.² As a result, the European transport sector was responsible for almost one-quarter of all EU GHG emissions in 2006. The fastest-growing modes of transport were civil aviation (+89%) and navigation (+51%), while in absolute terms the largest increase was in road transport (+29%). The latter continues to contribute the bulk (71%) of transport-generated GHG emissions and is responsible for some 17% of total EU GHG emissions. These figures indicate the challenge posed by the transport sector in the EU's efforts to reduce GHG emissions. In order to meet the 2°C climate change target by 2020, emissions from road transport need to decrease in absolute terms while increases in emissions in the aviation and maritime modes need to be halted. In the longer term, i.e. until 2050, emissions from the transport sector need to decrease by up to 80% in order to achieve the global emissions reduction targets. Achieving these objectives will require a dramatic shift in the way people travel and in the way we move goods.

Reducing transport emissions will have additional benefits in terms of security of energy supplies. The transport sector today depends on hydrocarbons for 97% of its fuels, and mainly on oil. Biofuels and other renewables will not be enough to address this vulnerability. The overall EU transport demand is projected to increase to such an extent – 18% by 2020, according to the IEA (2008) – that the EU target of replacing 10% of transport fuel use with renewable energy sources can only moderately reduce European dependence on oil. In a time where oil imports will continue to replace declining domestic oil production and import dependence will increase, a low-carbon transport strategy seems unavoidable.

A transport revolution

While the EU Common Transport Policy has “assisted social and economic cohesion and promoted competitiveness of European industry, therefore contributing significantly to the Lisbon

² All figures include international bunkers, i.e. international traffic departing from the EU.

Agenda for Growth and Jobs” (European Commission, 2009), there has been little progress in designing an integrated response to rising GHG emissions, security of energy supply issues and the transport sector's innovation challenge. The transport-related elements of the energy and climate change policy (including the renewables Directive, the clean cars Directive and the fuel quality Directive) represent a step in the right direction but fall significantly short of an integrated strategy leading to a low-carbon transport sector. To do this, the new Commission should draw up a ‘transport and climate change package’ comparable to the recent energy and climate change package. This package must give answers to fundamental strategic questions about what a sustainable EU transport system would look like and how it can be achieved. In addition, it should comment on the cost-effectiveness of alternative low-carbon transport options with the aim of building political consensus for their implementation.

The transport and climate package needs to review of a number of policies at EU but also member state level. One such policy area is taxation, which will need to treat comparable fuels in a similar way. The tax exemption of aviation fuels, in the fastest-growing mode of transport, will thus need to be reconsidered. Another central policy area will be infrastructure. Upgraded and new transport infrastructure will be required to master the transition to a low-carbon economy in much the same way as smart grids will become the backbone for the energy sector's transition. In fact, road transport infrastructure and electricity grids will need to become more closely connected because decarbonisation of road transportation will not be possible without an increasing share of low-carbon electricity in transport. The decarbonisation of the power sector is thus a prerequisite for decarbonisation of road transport. Although it looks likely that future road transport will rely on electricity, this is not to say that other alternatives to conventional combustion engines (e.g. hydrogen) should not be looked at. The largest challenge for decarbonising the transport sector will be in international aviation and maritime transport because of a lack of technological alternatives for the near future. Biofuels will need to play an increasing role, together with energy efficiency measures and demand reductions. In addition, the expansion of the high-speed train network may help in the substitution of air and road travel.

R&D and technology will be at the heart of these efforts. On the one hand, technologies will need to be tested. On the other, only deployment ensures that costs decrease. The new transport and climate package should thus introduce technology

deployment targets, for example in the area of advanced car technologies. This could relate to the vehicles themselves (e.g. a certain share of the vehicle fleet needs to be carbon neutral), as well as to innovative infrastructure projects (e.g. minimum requirements for electricity infrastructure for cars). To stimulate technological innovation, a number of demonstration projects may be considered aimed at using advanced telematics technology in urban transport to increase efficiency, reduce congestion, reduce GHG emissions and increase competitiveness through advanced technologies. Such systems can now be based on the GALILEO global navigation satellite system. Mandatory large-scale demonstration projects can be justified because they play an important role in bringing down the costs of the equipment.

It should be noted, however, that technology alone will not be enough to bring down emissions, and demand side management, including infrastructure pricing, will also need to be given consideration in the proposed transport and climate package. Internalising the full environmental and social costs according to the polluter-pays principle together with better data and information will be crucial in influencing consumers' behaviour.

The transition towards a low-carbon transport system in the EU is a European task. One or several member states will not be able to do it on their own. If the Commission is serious about pushing its climate and energy agenda, it should start working on the transport and climate package without delay.

4. JHA – Time to reconcile a 'Europe of Results' with a 'Europe of Rights and Justice'

Elsbeth Guild, Sergio Carrera & Anaïs Faure Atger

The area of Justice and Home Affairs has been one of the most dynamic policy fields in the EU in recent years. Indeed this surge of activity is welcome in a field where a coordinated EU approach has become crucial. However, in order to ensure that an EU-wide Area of Freedom, Security and Justice (AFSJ) takes account of citizens' needs as well as the need for effective policy development, the EU must focus on establishing effective EU evaluation mechanisms as well as adopting an instrument for addressing questions regarding legal migration of third country nationals in the form of an EU migration code.

An AFSJ and a 'Europe of Results'

The EU's AFSJ has been driven by the logic of a 'Europe of results'.³ Since 2004, these policies have been among the most dynamic in terms of legislative outputs but also of soft-law production and cooperation. AFSJ-related policies portend deep repercussions for the liberty and security of the individual. **Rapidity and urgency are often difficult to reconcile with proper protection of fundamental rights and rule of law.** This liberal deficit becomes most relevant when taking into account the presumption that the way in which the EU legal system functions guarantees full compliance with the rule of law and the principles of fundamental rights.

Before the European Commission published its Communication COM(2009) 262 on an "Area of Freedom, Security and Justice serving the Citizen" of June 2009,⁴ we had already argued that the EU lacked **high quality and independent (ex post) EU evaluation mechanisms** focusing not only on the correct and timely transposition of EU laws at national level, but also on practical support measures and the assessment of more structural and horizontal questions such as those of good administration and quality of the judicial systems.⁵ The Commission's Communication COM(2009) 262 identified evaluation tools to be one of the central priorities for the future AFSJ, but this has not been accompanied by a tangible strategy as to how to implement them in practice. Any proposal needs to avoid duplication of existing (dispersed) EU evaluation systems as well as those for instance of the Council of Europe.

It would be also important that any EU evaluation system would actively involve not only member states, but also the relevant services at the European Parliament, the Committee of the Regions and the European Economic and Social Committee. The local and regional dimensions of the AFSJ could play a decisive role when monitoring

³ Term coined by José Manuel Barroso in his paper on the future of Europe, presented in May 2008, following a period of reflection intended to rebuild citizens' confidence in the EU after the rejection of the proposed EU Constitution.

⁴ European Commission, Communication on an *Area of Freedom, Security and Justice Serving the Citizen: Wider Freedom in a Safer Environment* COM(2009) 262, 10 June 2009.

⁵ E. Guild, S. Carrera and A. Faure Atger, Challenges and prospects for the EU's area of freedom, security and justice: Recommendations to the European Commission for the Stockholm Programme, CEPS Working Document No. 313, Centre for European Policy Studies, Brussels, April 2009.

implementation and results, as well as when examining the added value, social impacts and effectiveness of EU policies. It would be also necessary to ensure a partnership with EU agencies dealing with freedom, security and justice, e.g. the Fundamental Rights Agency (FRA), the European Data Protection Supervisor (EDPS), the European Ombudsman, etc. Transparent, formalised and open consultation mechanisms with other key stakeholders (practitioners at national and local levels), civil society organisations and academic networks should be further improved in AFSJ policies in order to better take on board their views and expertise.

The ethical implications of the EU's AFSJ policies should also be more carefully monitored, institutionalised and developed before moving the European policy agenda further forward. An example of this current shortcoming is given by the European Arrest Warrant, which was implemented prior to ensuring minimal common standards with respect to the rights of defence across the member states, thus putting some national authorities at risk of breaching their national constitutional obligations at times of transferring suspects. Even though the European system of **fundamental human rights** is already well developed, the full respect and protection of these rights at times of member states' practical implementation of EU AFSJ law remains at stake and an issue of concern. Fundamental rights cannot be taken for granted in the EU and further strategies should be foreseen for the years to come. The Commission Communication does not develop a clear European strategy as to the precise ways in which a common area of fundamental rights could be further developed and evaluated both at EU institutional level (e.g. by strengthening and expanding the competences of the FRA) as well as by member states' authorities while implementing and practising EU law. The text of the Communication fails to go beyond formalistic and official allusions to the existing system of tools and institutional structures in charge of fundamental rights and freedoms without presenting a proactive roadmap for the near future.

Further, any new priorities, policies/laws or activities by EU agencies need to be carefully and independently assessed against **the principles of cost-effectiveness and proportionality**. This is particularly relevant in relation to current assumptions that specific political and social dilemmas can be reduced to technological solutions and the goal to develop a European Information Management Strategy. The 2008 Commission Communications on a new border package, the evaluation of FRONTEX and a proposal for a new external border management system illustrate the

dynamism of European policies in the controlling of borders and in responding to the phenomenon of irregular immigration through the expanded use and development of new security technologies, European-wide surveillance systems and large-scale information systems/databases. Still, the proposed systems do not appear to stand up to the tests of proportionality, purpose limitation and reasonableness that are essential for any new EU legislation in light of the general principles of EU law. Indeed, their huge impact over the fundamental rights of protection of personal data and non-discrimination will fundamentally transform the ways in which border controls take place in Europe and the position of the individual (and the effectiveness of current data protection systems) against these processes.

Migration, integration and rights

A serious deficit is currently apparent in the delivery of fundamental human rights in the EU, particularly in what concerns third-country nationals (nationals of countries outside the EU). Turning this **rights gap** around so that they are welcomed into the EU and enjoy security of residence and of rights in a framework of equality will be central for the success of the next AFSJ. With few related European measures adopted so far, legal migration remains high on the European Commission's agenda. Among the five measures announced in the 2005 Migration Policy Plan, only one – the least controversial on highly qualified employment – has so far been agreed to. To circumvent current obstacles, the Commission appears to have rehabilitated its original idea to create a single instrument: The Communication COM(2009) 262 on an "Area of Freedom, Security and Justice serving the Citizen" of June 2009 proposes the creation of an **Immigration Code** to guarantee a "*clear, transparent and equitable approach*" to legal migration. This Code would aim at ensuring the respect for human rights of immigrants and would imply a return to the Tampere European Council Conclusions' approach of securing a uniform level of rights between EU citizens and 'legally residing third-country nationals'.

This initiative offers interesting opportunities as it creates a remarkable chance to finally create a single, unambiguous framework for migrants' rights in the EU. The fragmented approach which until now characterises this policy field could in this way be resolved with the consolidation of all existing legislation into one sole common corpus of legislation. Similarly to the ways in which the adoption of the EU Schengen Borders Code has provided clearer rules and guarantees on border-crossing, the adoption of an Immigration Code

could equally ensure more transparency and visibility of the **European framework of rights for non-EU nationals residing in EU territory**. In the context of the Global Approach to Migration, in particular, the Immigration Code could become a practical tool of external relations by formalising the EU's position vis-à-vis migrants at times of establishing cooperation with third countries.

Guaranteeing an equitable and secure status for third-country nationals migrating to and residing in the EU implies ensuring that they have access to the complete set of fundamental rights and guarantees provided under EU law. In addition, and in order to achieve its intended purpose, it would be necessary that any future Immigration Code would expressly refer to (and promote) existing **international human rights instruments and conventions** (e.g. United Nations, International Labour Organisation, Council of Europe, etc.), fundamental human rights obligations as well as the principles of non-discrimination and proportionality. Finally, effective mechanisms to ensure their correct application should be foreseen and accessible to third-country nationals irrespective of their legal status and of the country they are in (within or outside the EU). A rights-based approach ensuring the principle of fair and equal treatment for all immigrants would indeed need to be the driving force of such an instrument.

5. Foreign policy – Time to get organised

Michael Emerson

Assuming that the Lisbon Treaty will soon be ratified, it will be time for a step change in the organisation of the EU's foreign and security policy. The immediate institutional changes should be of major systemic importance, the double-hatting of the High Representative as Vice-President of the Commission, the shaping of a common diplomatic service and creation of the post of permanent President of the European Council.

How to follow through? We leave aside the unending flow of substantive foreign policy issues that these new or reformed structures will have to handle, and focus here just on making good the institutional innovations.

The new High Representative, chairing the foreign ministers' Council as well as serving as Vice-President of the Commission, and will have extraordinary opportunities to develop his/her role. The first institutional task will be to sort out his/her position in relation to other members of the Commission. No-one will be able to fulfil this role however without a set of virtual deputies. Even if all members of the college of Commissioners will have

equal votes in the deliberations of the Commission, such votes are hardly ever taken, and the main functional requirement will be for the Vice President to be able to rely upon his/her colleagues in the manner that is observable in any large foreign service: one or several deputy ministers for different geographical areas or sectors of policy, and separate ministers for development and trade policies.

Second, the external action service will have to be created, combining the relevant parts of the Council Secretariat and the Commission's Directorate-General for External Relations. This will presumably be located physically or at least legally apart from either the Council or the Commission, and become their common property. The Commission's 100 or more delegations worldwide will presumably be converted into EU delegations and see their political staff reinforced. This reinforcement will be coming in part from member state diplomatic services. The merger and reinforcement operation will be a task of exquisite bureaucratic complexity and take some time to settle down. Robust ground rules will be needed, notably to ensure a competitive and objective selection process, and the prerequisite that member state diplomats deployed into the service of the EU have adequate experience with EU affairs (for example, they must have served in a permanent representation in Brussels or one of the EU institutions for at least one posting).

A third – less immediate but still overdue – task is to review comprehensively and bring into line with the new realities the EU's representation in the multilateral organisations and fora. This is now in a state of appalling obsolescence. The EU is often underrepresented or even not represented at all, and member states massively overrepresented in our world of newly emerging global powers. In the less formally constituted institutions, the EU is adequately represented (G8, Middle East Contact Group etc.). But elsewhere it is either not represented at all (IMF, World Bank, UN Security Council), or only with observer status (e.g. in the OSCE, where the Vatican and various other micro-states have higher status than the EU). For the IMF, the case for explicit representation for the eurozone is plausible, and for the World Bank and OSCE there should be full EU representation. Meanwhile member states are going to have their presence or weight diluted (we still observe the monumental absurdity of the Benelux constituency in the IMF enjoying a weight comparable to China). Where member states remain, there should be increasing recourse to constituency arrangements, with larger and fewer constituencies. The UN Security Council presents a particularly important and delicate case, with France and the UK jealously guarding their

privileged positions. One day UNSC reform should see one EU permanent member, but not tomorrow. So the search for more adequate intermediate solutions is needed: for example arrangements whereby common EU positions might be articulated from the seat of one of the two permanent members, who would be mandated to speak and indeed use his/her vote on behalf of the EU. The High Representative could be hosted in the delegation of one of the two permanent members for specific occasions, and entitled to speak from that seat. These are among the examples that need attention. The immediate step could still be to launch a comprehensive review of these issues of EU representation in the world's multilateral system, since enlightened and effective multilateralism is among the main normative principles of the EU's self-branding in international relations. It is time now to align the practice with the principles.

6. Conclusion

Daniel Gros & Julia De Clerck-Sachsse

The list of issues dealt with in this Policy Brief presents only a selection of the many areas where action is needed. In times of crisis, however, it is imperative to set priorities. A long wish list of areas where the EU should make progress is not useful in this context. The concrete proposals presented here for the areas of financial regulation, climate change and energy, justice and home affairs and foreign policy are meant to stimulate the efforts towards a concrete political programme for the next European Commission.

The priorities presented here do not apply to the Commission alone. They constitute issues for the EU at large. We assumed throughout this exercise that the Treaty of Lisbon will enter into force. This implies that soon the Commission President will have an *alter ego* in the person of the newly created President of the European Council, a figure who is meant to lend more continuity and give a face to the EU abroad. A final priority for the new President of the Commission will thus be to coordinate his or her agenda with that of the President of the EU.

Selective References

- Ayadi, R., R.H. Schmidt and S. Carbo Valverde (eds) (2009), *Investigating Diversity in the Banking Sector in Europe: The Performance and Role of Savings Banks*, CEPS Paperback, CEPS, June.
- Behrens, A. (2008), "Biofuels or bicycles? Why the European Union should reconsider its biofuels target", CEPS Commentary, CEPS, February.
- Behrens, A. (2009), Interactions between Climate Change Policy and Energy Security, Pre-Study for "Getting in the right lane for 2050", a pilot study on the connection between long-term visions and mid-term policies for EU sustainable development, available upon request, February.
- Bigo, D., E. Brouwer, S. Carrera and E. Guild (2008), *Freedom, Security and Justice in the EU: Recommendations for the Future*, Contribution by the Justice and Home Affairs Section of CEPS to the Open Consultation Procedure by DG JFS of the European Commission.
- Bigo, D., S. Carrera and E. Guild (2008), *What Future for the Area of Freedom, Security and Justice? – Recommendations on EU Migration and Border Policies in a Globalising World*, CEPS Policy Brief No. 156, CEPS, March.
- Carrera, S. (2009), *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, Leiden: Martinus Nijhoff Publishers.
- Checchi, A., A. Behrens and C. Egenhofer (2009), *Long-Term Energy Security Risks for Europe: A Sector-Specific Approach*, CEPS Working Document No. 309, CEPS, January.
- De Grauwe, P. and D. Gros, *A New Two-Pillar Strategy for the ECB*, CEPS Policy Brief No. 191, CEPS, June.
- European Commission (2009), A sustainable future for transport: Towards an integrated, technology-led and user friendly system, Communication, COM(2009) 279/4.
- Fujiwara, N., J. Núñez Ferrer and C. Egenhofer (2006), *The Political Economy of Environmental Taxation in European Countries*, CEPS Working Document No. 245, CEPS, June.
- Gros, D. (2009), *Global Imbalances and the Accumulation of Risk*, CEPS Policy Brief No. 189, CEPS, June.
- _____ (2009), "Institution-Building in Action", CEPS Commentary, CEPS, June.
- Gros, D, U. Klüh and B. Weder di Mauro, (2009) "Reforming global governance: How to make the IMF more independent", CEPS, April.
- Guild, E. and F. Geyer (2008), *Security v. Justice? Police and judicial cooperation in the European Union*, Aldershot: Ashgate.
- Guild, E., S. Carrera and T. Balzacq (2008), *The Changing Dynamics of Security in an Enlarged European Union*, CHALLENGE Research Paper No. 12, CEPS, October.
- International Energy Agency (2008), *The European Union*, IEA Energy Policies Review, OECD/IEA, Paris.

- Kernohan, D (2006), *Integrating Europe's Transport System: Practical Proposals for the Mid-Term Review of the Transport White Paper*, CEPS Task Force Report, CEPS, June.
- Key, S.J. (1992), *Deposit-Protection Schemes: Issues for an EC Directive*, CEPS Research Report in Finance and Banking, CEPS.
- Lannoo, K. (2008), *Concrete Steps towards More Integrated Financial Oversight in the EU*, CEPS Task Force Report, CEPS, December.
- _____ (2008), "A crisis is a terrible thing to waste", CEPS Commentary, CEPS, 27 May.
- Micossi, S. and C. Di Noia with J. Carmassi and F. Peirce (2009), *Keep it simple: Policy Responses to the Financial Crisis*, CEPS Paperback March.

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