

EDITORIAL

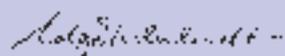
Europe faces major challenges

2004 is a crucial year for the continuation of the process of European integration. The fifth enlargement of the European Union will, at the same time, be the biggest and most complicated one in its entire history. The post-communist countries in transition are going to "arrive in Europe" in cultural terms, while the economic and social consequences of a regional asymmetry that is assuming enormous proportions will absorb the resources and the time budget in the EU for a long time.

Doubts have long since arisen among the majority of those comparing the European economy with that of the USA about the goal of Europe becoming the leading economic, technology and innovation region by 2010, which was postulated wholeheartedly at the 2000 EU Summit. The Transatlantic relations will have to be brought back on track again in 2004. Otherwise, the damage caused by the Iraq controversy, this Cold War within the West, will hardly be repairable.

The USA and the EU will have to share responsibility for the stabilisation and reconstruction of Afghanistan and Iraq. NATO will have to prove its worth as a Transatlantic framework both in Afghanistan and in Iraq. Inner-European controversies culminated in the unsuccessful constitutional summit of December 2003. Mutual trust has been destroyed, the European spirit has been weakened and the leadership abilities of those involved from all countries and institutions have been severely shaken. The old rule applies that whenever the Transatlantic relations are not in order, progress in European integration will not be in order either.

Europe's reputation world-wide and that of the EU Institutions in the eyes of almost 500 million EU citizens depends on the ability of all those involved to seek a compromise and approve the European constitution by the middle of the year after all. Here, everyone has to budge, including Spain and Portugal as well as Germany and France. Otherwise, the next disaster will already be looming on the horizon: a miserably weak turn-out at the elections for the European Parliament on the 13th June 2004.



Prof. Dr. Ludger Kühnhardt

ZEI's involvement in the creation of an EU Constitution

by Hubert Iral

Following the unsuccessful EU summit in Brussels in December 2003, the EU Constitution project has been postponed for the time being. Careful optimism that the constitutional contract really could materialise in foreseeable time is nevertheless justified. ZEI's interdisciplinary research group that supports the EU constitutional process scientifically and has compiled a discussion paper on the EU Convention's draft constitution will continue to keep the issue of an EU constitution on the agenda.

struck for diverging interests among the Member States regarding a number of stipulations. But in particular, the problems in some of its core items (majority relations in council votes, EU presidency, involvement of the Member States in the Commission, etc.), the solving of which had de facto been delegated to the Conference, had neither been dealt with successfully during the deliberations nor at their concluding summit. In contrast with the success forecasts which had been announced relatively confidently on the part of the Italian Council Presidency, at the crucial moment, the latter did not have any concept at its disposal to give new impetus to the stalled negotiations on the controversial contents of the contract.

The attempt by the government conference of the EU Member States to develop a version of the constitutional contract that could be ratified failed, and the meeting was called off in the night from the 13th-14th December 2003. The course of the conference revealed that no balance had been

So the contract can only be approved by a new summit of EU heads of states and governments. Here, in the main, two things will have to be settled. First, whether a common denominator can be found for the attitudes of the (chief) adversaries, e.g. the Poles and the Spaniards, but also those of Germany and France, all of which had sig- ▶



Photo: Marc-Steffen Unger

At the EU summit in Brussels in December 2003 (from left to right): Joschka Fischer, an interpreter, Gerhard Schröder, Jan Peter Balkenende, Jacques Chirac and Hans Eichel.

nificantly contributed to the failure of the constitutional conference owing to their all too stubborn insistence on national particularist positions. Second, whether the Irish presidency will be more successful and convincing in striking a balance in terms of conflicting interests or whether it is going to be up to the next presidency, that of Greece, to lead the constitutional contract process on to the level of maturity for ratification. Moreover, it remains to be seen whether the differences in opinions regarding less critical items of the constitution, which have been pushed somewhat into the background, can be dealt with as well by sieving.

Looking back on what have partly been very sharp controversies in the government conference, a failure of the EU constitution cannot be entirely ruled out. But it can be hoped and, to all appearances expected, that a modified version of the contract will be approved by the EU summit in the foreseeable future. For one thing, in line with its strategy of reactivating dialogue on the EU constitution as quickly as possible, the Irish presidency has initiated a number of exploratory talks to plumb the readiness of adversaries to reach a consensus. At the same time, this corresponds to the recipe for success of Irish diplomacy to avoid anything that might be counterproductive, such as making forecasts on when the EU constitution will be approved or openly announcing concepts to overcome the differences. However, at the latest EU Conference of Foreign Ministers in Brussels in January, Foreign Secretary Cohen hinted that concessions would have to be made by

various sides regarding the controversial weighting of votes.

Examining the substance and the atmosphere

Second, at the end of the day, all major crises and disturbances in the EU have been overcome. However, just like in the past, this is going to require a large number of formal and informal conferences, meetings, negotiation sequences, etc. and take a considerable amount of time. Moreover, experience in coping with crises in the past shows that the "atmosphere" at these meetings is determined to a considerable degree by the action of the persons involved in them. Therefore, both aspects together, the substance of the meetings and the personal component, form important subjects of those fields of science devoted to the analysis and evaluation of the process of European integration.

This already justifies a further analysis and commenting on of the constitutional process as a key task for ZEI that is in line with the endowment purpose. Accordingly, the "Discussion Paper C 124" published by ZEI in September 2003 (*see ZEI Report No. 15, 2003*) is going to be extended as a volume of the "ZEI Papers" (Nomos-Verlag) on the EU Constitution. Now that renowned experts in the field of European integration research have joined the already existing team, this publication is expected to appear in the late summer of 2004 as an analysis with a greater scope and a more in-depth evaluation of the stipulations made in the constitution. Progress made towards

an EU Constitution, documenting convergence regarding the controversial issues, which is indispensable to this end, and, above all, an examination of the struggle for power and authority between the Union and the Member States which can be reckoned with in this context, also form important subjects for ZEI to explore and analyse.

Dr. Hubert Iral is an academic assistant at the ZEI Department "European Value Systems, Cultures and Languages".

ZEI PUBLICATIONS

DISCUSSION PAPER SERIES

C 126/2003

Janko Prunk: Die rationalistische Zivilisation

C 127/2003

Wladyslaw Bartoszewski: Europas Identität nach der Osterweiterung

C 128/2003

Dimitris K. Xenakis and Dimitris N. Chrysochouu: Mediterranean Perspectives on the ESDP

C 129/2004

Fritz Hellwig: Europäische Integration aus historischer Erfahrung

C 130/2004

Thorsten Fass/Tapio Raunio/Matti Wiberg: The Difference Between Real And Potential Power: Voting Power, Attendance and Cohesion

C 131/2004

Andreas Jacobs (ed.): Euro-Mediterranean cooperation: enlarging and widening the perspective

C 135/2004

Hubert Iral: Wartesaal oder Intensivstation? Zur Lage der EU nach der gescheiterten Regierungskonferenz

MAY–OCTOBER 2004

6 May	European Dialogue: Prof. Dr. Per Christiansen from University of Tromsø speaks about "Norway and the European Union" at ZEI	25–26 June	5 th Session of the Macroeconomic Committee of the German Economic Association at ZEI
7 May	Energiegespräche in Bonn: Entgeltregulierung in der EnWG-Novelle, conference at Gästehaus Petersberg	July	BRIE Summer School in Montenegro
25–28 May	35 th Constance Seminar on "Monetary Theory and Policy" in Constance	29 July – 7 August	"ZEI Summer School 2004 on Monetary Theory and Policy" at the Physikzentrum Bad Honnef near Bonn
27 May	Markus Höreth (Research Associate at ZEI) to organise a workshop on EU topics at the Friedrich-Ebert-Stiftung in Bonn	3–4 September	Conference on "Competitiveness and Growth in Europe: Lessons and policy implications for the Lisbon Strategy" at ZEI
28 May	Graduation ceremony of the 2003/2004 cohort of the postgraduate programme "Master of European Studies" at ZEI	9–11 September	European Alumni Meeting of the Woodrow Wilson Center for International Scholars, Washington D.C., organised by ZEI in Bonn
2–5 June	Conference on "New Generation of Risk Measures and Regulation" at ZEI	Sept./Oct.	"European Summer University on Telecommunications Regulation and E-Commerce Legislation (ESU) – The Israeli Experience" at ZEI
11–12 June	International conference on "Advanced Perspectives on Migration and Mobility" at ZEI	1 October	Start of the seventh cohort of "Master of European Studies" at ZEI
24–25 June	5 th Mediterranean Forum at ZEI		

ZEI CALENDAR

Grand finale in the DocMorris law case

by Friederike Meurer

On the 11th December 2003, judgement was pronounced by the European Court of Justice (ECJ) on the issue of the cross-border mail order sale of medicinal products (Case C-322/01). The ruling had also been eagerly awaited by ZEI's "Political, Legal and Institutional Issues" Department. After all, Professor Dr. Christian Koenig LL.M. had acted as counsel for the Dutch pharmacists DocMorris, thus offering several staff members and students of the Masters programme the opportunity to actively accompany and follow the ECJ proceedings.



The European Court of Justice in Luxembourg: Here the judgement was pronounced on the issue of the cross-border mail order sale of medicinal products. The ZEI jurists are eager to follow further debates on the integration of EC-foreign pharmacists into the German health system.

Right from the submission of the case by the Frankfurt Higher District Court in August 2001 via the public hearing in December 2002 and the opinion of the Advocate General in March 2003 up to the concluding pronouncement of judgement, this law case provided an exemplary insight into Community law practice. In terms of contents, the ruling confirmed the applicability of the free movement of goods to a prohibition on the sale of medicinal products by mail, constituting an important contribution to the dogmatics of EC basic freedoms.

In the context of the issue whether such a prohibition may be justified for health protection reasons, the ECJ distinguishes between non-prescription medicines and those that are only available on prescription. For medicines that are not subject to prescription, it explicitly states that no health protection concerns arise regarding mail order sales as a form of distribution.

The ECJ's statement on whether a prohibition on mail order sales of medicines subject to prescription is justified is less clear. Its partly cryptic formulations in

this context allow for different interpretations. Nevertheless, much speaks in favour of the ECJ merely creating an option without having passed a final ruling.

The free movement of goods and many resultant legal issues

However, the issue whether a prohibition of mail order sales of medicines can be justified for health protection reasons will only be of little relevance in future in any case. The prohibition of mail order sales of medicines contained in § 43 Paragraph 1 of the old version of the Medical Preparations Act was only in force for less than three weeks after pronouncement of the judgement. In the version of the Medical Preparations Act in force since the 1st January 2004, it was replaced with a prohibition with a reservation on the granting of permissions. Thus mail order sales of medicines are basically permitted for all medicines authorised in Germany without any distinction being made between prescription and non-prescription

medicines. So the ruling of the German legislator has referred the issue of justifying the former ban on mail order sales to the realm of theory.

However, the statement that cross-border mail order sales of medicine is basically covered by the free movement of goods at least for medicines authorised in the importing country is all the more important in practice. The significance of this ruling cannot be overestimated in terms of numerous resultant legal issues, such as with regard to the status of EC-foreign pharmacists in the system of German statutory health insurance. So while the judgement on the DocMorris legal case represented a preliminary climax, it is by no means the conclusion of the lively debate on the integration of EC-foreign pharmacists into the German health system. Therefore, it is not only the ZEI jurists who are eager to follow further developments.

Friederike Meurer is Academic Assistant at the ZEI Department "Political, Legal and Institutional Issues".

ZEI PUBLICATIONS

ARTICLES AND PAPERS

Koenig / Scholz: Regionalförderung, Public-Private-Partnership und die Nichterfüllung von Förderkonditionen, *Die Öffentliche Verwaltung (DÖV)* 2003, pp. 756–760

Koenig / Steiner: Die Anwendbarkeit des Vergaberechts auf die Leistungsbeziehungen zwischen Krankenhäusern und Krankenkassen (Teil II), *Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR)*, 2003, pp. 150–155

Koenig / Steiner: Die Anwendbarkeit des Vergaberechts auf die Leistungsbeziehungen zwischen Krankenhäusern und Krankenkassen (Teil I), *Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR)* 2003, pp. 98–105

Koenig / Vogelsang / Kühling / Loetz / Neumann: "Workable Competition" in Telecommunications Markets – The Example of Germany, *Computer and Telecommunications Law Review* 2003, p. 68

Koenig / Vogelsang / Kühling / Loetz / Neumann: Der Begriff des funktionsfähigen Wettbewerbs im deutschen Telekommunikationsrecht, *Kommunikation & Recht* 2003, p. 8

Koenig / Winkler: Die (Ultima) Ratio der Regulierung des Endnutzermarktes, *Telekommunikations- und Medienrecht (TKMR)* 2003, p. 371

The USA today – impressions of a divided country that has lost its balance

by Franz-Josef Meiers

Security and defence policies on both sides of the Atlantic as well as different attitudes towards combating terrorism are the field of research the distinguished expert on Transatlantic relations following the end of the East-West Conflict is dealing with: For two months, ZEI's Dr. Franz-Josef Meiers changed places with the American Institute for Contemporary German Studies in Washington, DC, in order to examine developments in European-American relations in the wake of the terrorist attacks in the USA on the 11th September 2001.

Following comments made by President George W. Bush that the country was “in a state of war” after the cowardly attacks and the clichés cultivated by American film producer Michael Moore with his bestseller success in Germany about the American rednecks (“stupid white men”), I was eager to learn how the country I had spent two years studying in at the beginning of the eighties would now present itself to me.

Washington, which had been the target of cowardly terror two years previously, seemed to be far from any state of war. No signs of military presence were to be seen or heard in the streets. I was able to visit a conference attended by high-ranking NATO representatives without any checks. Unlike in Berlin, ambassadors whose countries had participated in the Iraq campaign were not granted any special observation status. Instead, the “war on terror” has created a deep rift in the country itself. Virtues I had come to appreciate so much in the USA in the eighties – openness and tolerance – have made way for barricading oneself in: if you're not on my side, you're my enemy.

The spiritual fathers of the Bush Administration, the much-cited Neo-Cons, and the critics of Bush's Iraq policy only talk about each other, and no longer to each other. They regard the other side of

the barricade as “the enemy”. After I had watched a video film on “The Real Truth about the Iraq War” of the “Move On” campaign, speaking in an Internet telephone conference, the producer spoke of “we and the enemy”. To him, the enemy was sitting in the White House, not in a foxhole close to Baghdad. Proponents and critics of Bush's Iraq policy were at loggerheads, like two mutually repellent poles.

Barricading oneself in puts Germany on the “list of enemies”

This barricading oneself in could also be observed when it came to relations with European partners. Just how deeply rooted the anger of the Bush Administration was about those denying support is underscored by the Memorandum of Deputy Defence Secretary Paul Wolfowitz, an annex to which contains a list of those countries that had qualified for public tenders for the reconstruction of Iraq. The reason the Pentagon provided for the invisible list of enemies came as a surprise. Countries like France and Germany could not be considered because America's elementary national interests might be at stake. Wolfowitz failed to come up with an explanation for why the two opponents of the war represented a threat to the USA's national security. This leaves one with the disturbing impression that the enemy state clause of the UN Charter, which was considered irrelevant when Germany was unified in October 1990, has returned in a new guise.

Reforms à la George W. Bush weaken the weak

Just like the country is split between Democrats and Republicans, its economic policy represents a clear polarisation of society. At local level, I got a vivid impression of what reforms à la Bush mean. Compared to the petty little reforms in Germany which usually already fail technically, a tour de force is being carried out in the White House and in the two Congress Houses dominated by the Republi-

cans. With their tax reform, from which those with an annual income of \$ 250,000 and above – a mere 0.6 percent of the population – benefit most of all, the Republicans have succeeded in piling up a last- ing budget deficit of gigantic proportions that will no longer leave any scope for important reforms once the baby boomers go into retirement. Tax reform is being accompanied by a dramatic redistribution of income.

There is mounting pressure on the lower income groups. For example, Wal-Mart staff are being paid income below the minimum living wage, and as a bonus, they have to foot the bill for their health insurance for the first two years. In response, Californian employees of this chain store have been on strike for months, and so have their colleagues at Tyson Food in Wisconsin, whose wages have also been slashed to below subsistence level. I recalled the images of angry families who felt that their livelihoods were threatened when a professor at the college I had used to study at told me that she was seriously considering emigrating to Mexico because she would no longer be able to pay her medical bills as a pensioner. How ironic it is for a college lecturer wishing to emigrate to a country from which so many migrants are pouring into what they perceive as the “promised land”, the USA.

I returned somewhat alarmed from a country that appears to have lost its balance and is deeply divided politically. One can now eagerly await the new flights of fancy of people barricading themselves in once the spin-doctors, especially those of the White House, have grasped the opportunity and sought to smother the country in a “smear and fear” campaign. It can only be hoped that the Americans will ultimately resort to their old virtue of pragmatism with which the political pendulum also swayed towards the centre again following the excesses of Vietnam and Watergate in the mid-seventies.

Dr. Franz-Josef Meiers is Senior Fellow at the ZEI Department “European Value Systems, Cultures and Languages”.

Fiscal decentralisation – the case of Polish Local Government borrowing

by Bartłomiej Gurba

One of the most important elements of the transformation process in Poland is fiscal decentralisation – the devolution of fiscal responsibilities to local governments. Like in other countries, Polish local governments are heavily dependent on transfers from the central government in the shape of grants and subsidies. A ZEI survey has explored how the risk of higher government expenditure can be minimised.

In the course of the past decade, the Polish government realised two reforms of the intergovernmental fiscal system in Poland. The decentralisation reform of 1991 introduced self-government at local level (gmina), while the reform of 1998 did so at regional (województwo) and intermediate (powiat) levels. Gminas are the only tier of self-governments that may – in a limited manner – set rates for certain local taxes. Given local government's total expendi-

ture, a limitation of local tax revenues leads to a financing gap which must be filled by intergovernmental transfers. This gap is measured by vertical imbalance. Local governments in Poland experience significant vertical imbalance adding to up to about 40 percent of all gminas' total revenues, varying between about 10 and 90 percent across jurisdictions. This variation allows for an analysis of the influence of several transfers on the budget result.

The model of Wildasin (1997) suggests that the central government should participate in the financing of local spending in order to internalise externalities. Externalities emerge when the benefits of certain goods exceed the scope of the jurisdiction which provides these goods. Using matching grants ensures an optimal provision of such a good and maintains decentralisation, but also opens up the chance to accumulate debt and elicit additional transfers in terms of subsidies (bailout) from central government.

The empirical findings for Poland confirm the theoretical predictions that self-governments equipped with fewer revenues of their own borrow more. They also indicate that gminas must co-finance a part of the matching grants with their own deficits. In order to cover deficits from previous years and to get new grants, the local governments accumulate debt. Central government, engaged in the internalisation of externalities, delivers subsidies which increase the local revenues so as to bailout heavily indebted gminas. This indicates that in order to achieve fiscal decentralisation and at the same time preserve fiscal discipline, vertical imbalance must be reduced. Higher deficits and higher government expenditures can result from too little decentralisation rather than from too much.

Bartłomiej Gurba is junior fellow at the ZEI Department “Economic and Social Issues”.

VIEWPOINT Consumer protection overshoots the mark

by Andreas Haratsch

Consumers are becoming increasingly aware of the importance of a healthy diet, and the food industry is responding to this by introducing products on the market which claim to have positive effects on health. In July 2003, the European Commission drafted a regulation that would govern such food claims for all EU states (COM [2003] 424 final) to protect consumers against misleading advertising.

But it has clearly overshoot the mark. If this "Health Claims-Regulation" were to come into force, nutrition claims (e.g. "low energy", "low saturated fat") would be subject to strict conditions of permissibility. Specific health claims would require authorisation by the Commission following an opinion by the European Food Safety Authority. In future, general health

claims, such as "makes you lively", "gives you wings", "keeps you fit", "is healthy", would be prohibited altogether.

The measures recommended regarding health claims violate the rights to freedom of expression and information as well as the right to freedom to conduct a business. These violations of basic freedoms cannot be justified on grounds of consumer protection. In the Commission's opinion, general health claims are "vague and often meaningless". What remains unclear is why consumers should be protected against meaningless information.

Since suggestive images can also be health claims in the sense of the proposed regulation, even the presentation of a consumer smiling after having enjoyed a cup of tea could be regarded as a prohibited claim referring to the property of the respective food to enhance overall wellbeing. At any rate, such a wide in-

terpretation of the prohibition of general health claims would be disproportionate.

With its draft regulation, the Commission appears to be introducing a change to European legislation on consumer protection. Not only shall the consumer be enabled to make well informed purchasing decisions on his own responsibility, he shall quite obviously also be educated. It can only be hoped that the Council and the Parliament will not join this proposal. Of course the responsible consumer requires effective and appropriate protection, but there is no need for paternalism by an excessive consumer protection policy on the part of the European Community.

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AT A GLANCE

At the **Euro-Arab Dialogue** that ZEI held at the University of Damascus on the 13th and 14th December 2003 in collaboration with the Konrad Adenauer Foundation (KAS), societal, political and economic issues of European and Arab states were on the agenda as well as, in particular, the intensive debate on the two "Arab Human Development Reports" published by the United Nations so far. Among their contents, the issues of education systems and the role of the media in developing civil society were given particular attention. Here, the comparative analysis of Arab and European experience proved to be of considerable importance.

Academics, politicians and political consultants from various Arab and European countries, including **Prof. Dr. Ludger Kühnhardt** of ZEI, took part in the conference. The presence of the Syrian Parliament's Vice-President as representative of the host country's political elite contributed to Syria's so far more confrontational attitude towards Euro-Mediterranean rapprochement being guided towards a co-op-

erative orientation that opened up systems. ZEI intends to promote this tendency in collaboration with the KAS during similar events in 2004.

On the 18th March, ZEI ran a workshop on the issue of "The European Role in Reconstructing Iraq" at the Brussels Office of the Konrad Adenauer Foundation (KAS). This event was headed by ZEI Director **Prof. Dr. Ludger Kühnhardt** together with **Dr. Robert E. Weilemann** (KAS). Doctoral candidate **Andreas Marchetti**, also of ZEI, took part in the workshop.

Dr. Iulia Traistaru, Senior Fellow at the ZEI Department "Economic and Social Issues", received the "Best Paper Award" for her study on "Economic Integration and Manufacturing Location in EU Accession Countries", which she wrote together with Simonetta Longhi and Peter Nijkamp of Amsterdam Free University, at the "International Business and Economy" Conference, which was held in San Francisco from the 8th – 11th January 2004. This study reveals

structural changes in regional industrial production in central and eastern European countries over the last decade in the context of progressive economic integration. The authors arrive at the empirical result that both factor endowments and geographic proximity to major markets are decisive in opting for industrial locations in EU candidate countries.



Dr. Iulia Traistaru (right) at the award ceremony.

European Studies for Bulgaria, Romania and Montenegro

by Emil Mintchev and Janusz Musial

The Task Force South Eastern Europe at ZEI is there to make a contribution to long-term, sustainable stabilisation of the region in the framework of the EU Stability Pact. Here, in addition to research and policy counselling, setting up European Studies programmes in the region is the most important pillar of activities. On the 29th and 30th January, the sixth ZEI network conference on "European Studies in South Eastern Europe" was held – this time in the Bulgarian Danube port of Rousse, on the border to Romania.

For it was here in October 2002, at the bridge over to Giurgiu, that the Bulgarian-Romanian Interuniversity European Centre (BRIE) was opened with the financial support of the Hochschulrektorenkonferenz and backed academically by ZEI, which received funds from the Hertie Foundation to this end. Supported by the German Academic Exchange Service (DAAD), network partners from the Balkans region participated in the conference at the University of Rousse. In the opening event, which was also attended by the German Ambassador to Bulgaria, his Excellence Dr. Harald Kindermann, the Mayor of the City of Rousse, Eleono-

ra Nikolova, and Vice-Chancellor Prof. Dr. Marko Todorov stressed the importance of closer co-operation between the EU Member States and Bulgaria's regional centres.

ZEI Director Prof. Dr. Ludger Kühnhardt spoke on the European Constitution and the problems in seeking a consensus following the unsuccessful EU summit in Brussels. His colleague Dr. Emil Mintchev, head of the co-ordinating office for the setting up of BRIE, discussed the current level of Bulgaria's negotiations with the EU and the problems yet to be solved before signing the accession contract. Prof. Dr. Marius Spiridon, vice-director of the European Institute, Bucharest, outlined co-operation between Bulgaria and Romania in the sense of a common route to EU membership. Prof. Dr. Gabriel Popescu, Director of BRIE Giurgiu, described progress made in improving regional, cross-frontier co-operation with Rousse. And Dr. Rafael Biermann, ZEI, who is supporting the establishment of an "MA Programme for European and South East European Studies" in Podgorica (Montenegro), examined the current situation in the western Balkans and progress made in political and economic reforms in the region.

Mintchev presented an ambitious timetable for the network activities in 2004. Just like last year, most of the efforts are to focus on the European Studies



Dr. Emil Mintchev (left), with students of the European Studies Course in Rousse, Bulgaria.

Centres in Rousse/Giurgiu and in Podgorica. This is where ZEI will be once again be seconding German lecturers for intensive courses in the framework of the "Flying Faculty" programme which has already been set up. In addition, ZEI is going to run two summer schools in Kotor/Montenegro and in Dubrovnik/Croatia.

Dr. Emil Mintchev and Janusz Musial are academic assistants at ZEI, Department "European Value Systems, Cultures and Languages".

Federalism in Germany and Europe

by Daniela Treutlein and Arttu Makipaa

Accompanied by high topicality, a priority programme of Deutsche Forschungsgemeinschaft (DFG) under the title of "Institutional Design of Federal Systems: Theory and Empirical Evidence" is being co-ordinated by ZEI. The priority programme runs under the direction of Professor Dr. Jürgen von Hagen (Director of ZEI Department "Economic and Social Issues") and Professor Dr. Helmut Seitz (EUV-Frankfurt-Oder). It consists of academics from 14 German universities and economic research centres.

The functioning of the federal political system in Germany has frequently been criticised in recent times. One of the main criticisms concerns the complex interlinkages of tasks, expenditures and responsibilities between the federal level, the Länder and the municipalities. These interlinkages have reached a degree under which the efficiency of the federal decision-making mechanisms are not secured (concept of "Politikverflechtungsfalle" – joint decision-making trap (Fritz Scharpf)).

Therefore, the federal political system in Germany is presently under intensive review. With the debate having reached enough momentum, the German Bundestag and Bundesrat set up a joint commission on October 17th 2003 in order to discuss the modernisation of the Federal Land order. Hopes are high that this commission will work out practicable reform suggestions to secure the efficient co-operation of the federal subsystems, and thus the successful future of federalism in Germany.

Special focus on fiscal federalism

Having an interdisciplinary approach (fields involved: economics, political science, law) and a focus on topics related to fiscal policy, the primary objective of the DFG scientific programme lies in a comprehensive economic analysis of federalism. A special focus is set on fiscal federalism in Germany and Europe. Not only will the vertical and horizontal relations between the political subdivisions be analysed (e.g. the German Länderfinanzausgleich – fiscal equalisation scheme), but the study of political and institutional mechanisms of control and governance in a federal system is also central to the agenda. These mechanisms will be studied especially with respect to their impact on the financial conduct of governments, economic growth and welfare.

At ZEI, two projects are running under the auspices of Prof. Dr. Jürgen von Hagen. The first one deals with the macroeconom-

ic implications of fiscal equalisation in a federation. The purpose of fiscal equalisation is to smooth volatilities in consumption, production and employment that arise due to asymmetric shocks to the regions of the federation. Fiscal equalisation thus plays the role of an insurance against asymmetric shocks. Furthermore, different possibilities of design are studied in order to assess the best mechanisms of fiscal equalisation with regard to their financing and the form of payments. In the empirical work, the German Länder fiscal equalisation scheme (Länderfinanzausgleich) and other interregional payment flows (e.g. within social security) are examined in a panel analysis.

The question of the existence of the political union

Referring to the national debate, one can also capture the European Union as a developing federal system of the member states and the supranational institutions. The focus of the second ZEI project lies on the question of the existence, or respectively the degree of unitarisation, of the political union. This is in contrast to the completion of the economic and monetary union. The question seems especially relevant since the functioning of the political union is declared a decisive factor for the long-term success of the EMU as well as for the resolution of conflicts among member states (Cohen, von Hagen, Thietmeyer). In the course of European integration, legislative competences have increasingly been shifted to the EU level. Whether this shift of competences also entails a factual meaning can only be judged by the EU's practice of its legislative responsibilities: Does European integration, meaning the shift of legislative competences to EU level, lead to an actual harmonisation of the national legislations? Considering the fraction of national legislation that purely consists of the transposition of EU legislation, how high is the de facto degree of unitarisation among the national policies?

The EU does not have its own administration to implement EU legislation. Thus, the national parliaments need to first transpose EU legislation (in the case of directives) into national legislation before it finally can be implemented by the national administrations. Although the member states are obliged to transpose and implement EU directives, exist empirical differences regarding the degree of unitarisation across policy areas and countries.

Which politico-economic factors account for these differences within the federal multi-level system of the European Union? This question will be theoretically and empirically analysed by this joint proj-

ect of political scientists and economists of the Universities of Bonn and Constance as well as the German University of Administrative Sciences, Speyer, under the direction of Prof. Dr. Jürgen von Hagen, Dr. Thomas Bräuninger and Prof. Dr. Thomas König. Website: www.zei.de/foederalismus

Daniela Treutlein and Arttu Makipaa are junior fellows at ZEI Department "Economic and Social Issues".

ZEI PUBLICATIONS

A. Fatas, J. von Hagen, A. Hughes Hallett, R. R. Strauch und A. Sibert: "Stability and Growth in Europe: Towards a Better Pact". London, Center for Economic Policy Research CEPR, 2003

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Community Law and Broadcasting Licence Fees

by Andreas Haratsch

The debate on financing public service broadcasting and its compatibility with the Community law on State aid control as well as the debate on services of general economic interest are part of the media policy dispute in the dual broadcasting system, not only in Germany. The European Court of Justice (ECJ) in Luxembourg has recently clarified its ruling on the concept of State aid.

The judgement in question is that of 24th July 2003 in the case of "Altmark Trans GmbH" regarding the issue of whether a subsidy granted by the authorities of a Member State to compensate for deficits in urban, suburban and regional scheduled transport services represents State aid within the meaning of Article 87 (1) EC, i.e. whether it distorts competition and is therefore incompatible with the Common Market. The judgement provides significant requirements that must be met by any compensation for providing a service of general economic interest, unless it constitutes State aid. Since public broadcasting corporations are entrusted with public service obligations, this judgement is important for the legal evaluation of German broadcasting licence fees.

According to the ruling of the ECJ, it does not represent State aid provided that the State measure can be regarded as compensation for discharging public service obligations. However, this only applies if the parameters on the basis of which the compensation is calculated have been established in advance in an objective and transparent manner. The calculation process for compensation must be carried out by an independent body and the method applied must be transparent and plausible. Compensation may not exceed what is necessary to cover the costs in-

curring in the discharge of public service obligations. Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical and well-run undertaking would have incurred in discharging those obligations.

German broadcasting licence fees meet stringent ECJ requirements

Financing of public service broadcasting has to be measured against this benchmark provided that broadcasting licence fees are to be understood as subsidies which are at least indirectly granted by State authorities within the meaning of Community law. In Germany, the assessment of the level of broadcasting licence fees is conducted by the independent "Kommission zur Überprüfung und Ermittlung des Finanzbedarfs der Rundfunkanstalten" (KEF – Commission for the Assessment of Financial Requirements of Public Broadcasting Corporations) on the basis of the Interstate Treaty on Broadcasting Finance. Together with the German public service broadcasters ARD and ZDF, KEF has jointly developed a method of assessing the financial requirements of public service broadcasters, the so-called "Index-based Integrated Review and Calculation Procedure". Following this procedure, the broadcasting licence fee is determined in an Interstate Treaty of the Länder on the basis of the recommendation by KEF.

The licence-fee-based financing of public service broadcasting in Germany meets the stringent ECJ requirements. Licence fees serve to discharge public service obligations that are clearly defined in advance by Interstate Treaty

and law. The parameters used to calculate compensation have been established in advance in an objective and transparent manner. Compensation determined *ex ante* by KEF does not exceed what is required to discharge the service. The level of compensation is determined on the basis of a benchmarking analysis of costs that would be incurred by a typical well-run undertaking entrusted with these obligations. Where reference figures are lacking for a benchmarking analysis, the refundable costs have to be calculated on the basis of an analytical cost model, which assumes an average cost-efficient discharge of services.

With its decision in the case of *RAI* of 15th October 2003, the European Commission applied the criteria established by the ECJ to a public service broadcasting corporation for the first time. For in this case neither the compensatory parameters had been established in advance nor the level of compensation had been determined on the basis of an analysis of the costs of a well-run media company, the Commission classified the measures benefiting *RAI* as State aid. However, the decision on *RAI* has shown that the justification of State aid under Article 86 (2) EC, which one might assume to have been rendered obsolete by the ECJ ruling, continues to be of significance. State aid granted to public broadcasting corporations may be justified if certain conditions are satisfied even if they do not meet the stringent "Altmark Trans" criteria. However, the Commission has tightened the conditions in this respect by requiring that an independent body has to monitor whether a public service is being provided in accordance with the public mandate.

Dr. Andreas Haratsch is Academic Assistant at ZEI, Department "Political, Legal and Institutional Issues", and Private Lecturer at the University of Potsdam.

Company investment in the UK

by Eleni Angelopoulou

During the 70s and the 80s the British manufacturing sector declined in size, shrinking to about 20% of GDP by the beginning of the 90s. At the same time, capital stock was among the lowest in comparison to other industrial OECD countries, leading to a relatively low capital-output ratio, while investment rates as a percentage of GDP were also low. Looking back at this period, the general impression is that British companies underinvested. A ZEI survey casts light on investment in the British manufacturing sector during the 70s and the 80s.

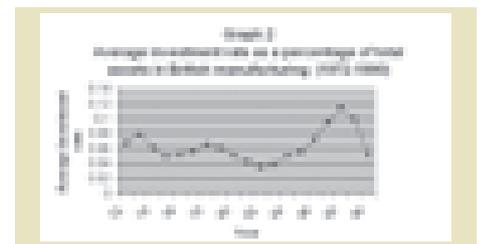
The issue is what explanations are provided by empirical investment models. Two different empirical investment models are considered: one based on Tobin's *q* and a dynamic investment model, using panel data for 779 British manufacturing firms quoted in the London Stock Exchange over the period 1971-1990.

Q type models view the stock market valuation of a firm's assets as an all-encompassing variable determining firms' investment decisions. When *Q* is higher than 1, then an additional unit of capital will produce more revenue for the firm than its cost and therefore the firm will invest. When *Q* is lower than 1 then it is not profitable for the firm to engage in new investment projects. On the other hand, the Euler equation for investment highlights the dynamic nature of

firms' decision-making, i.e. the way current investment strategy influences future investment decisions. The econometric analysis implies a superiority of the Q model compared to the Euler equation approach.

As is evident from Graph 1, average *Q* was quite low for British manufacturing firms for the major part of this period, especially between 1975 and 1985. This provides an explanation for the low investment rates (new investment as a percentage of existing capital was lower than 6% almost throughout this period). Only after 1986 did average *Q* for the sample under consideration rise above the benchmark value of 1, leading to a gradual increase in the investment rates.

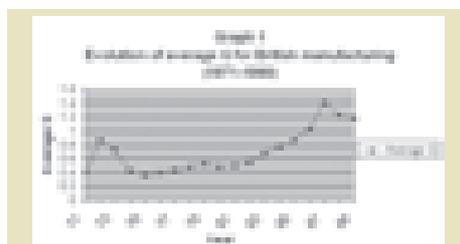
This kind of empirical work is particularly important since it also helps to identify possible financing constraints which lead firms to underinvestment. Indeed, the econometric analysis offers sufficient support for the hypothesis that small companies, compa-



nies with few in-sample observations and companies who pay zero dividends for more than half of their in-sample life are more likely to be financially constrained and, as a result, they underinvest. This in turn highlights the importance of well-functioning financial markets, which can efficiently allocate funds to support firm investment and ensure stable growth.

The results of the study are published in the paper "The comparative performance of Q-type and dynamic models of investment: Empirical evidence from the UK".

Eleni Angelopoulou is a guest researcher at ZEI, Department "Economic and Social Issues". She works for the Economic Research Department of the Bank of Greece and is writing her PhD thesis at the Athens University of Economics and Business (AUEB).



A springboard for a top job with the EU

by Brigitte Linden

The advanced studies "Master of European Studies" course at ZEI, which has been given the FIBAA seal of approval, is to take up 30 fellows from all over the world in its seventh cohort as of October 30th. The deadline for applications is the 1st May 2004.



May Brueggemann is one of the most successful graduates from the "Master of European Studies" course. Following this one-year postgraduate studies course, Ms. Brueggemann, a qualified psychologist, passed the selection procedure for the Foreign Office's diplomatic service and is now working at the Department of Culture and Education in the German Embassy in Belgrade. Looking back on her 2000/2001 year in Bonn, she emphasises the wide scope of the curriculum and the lectures given by practitioners from EU institutions, ministries, industry and business, which allowed "fascinating insights into the EU's Holy of Holies". What really set the points for her career was the concluding practical training at the German Embassy in Riga, Lithuania: "This experience boosted my decision to apply for a job with the Foreign Office."

Yuki Itakura, a scholar from Japan, is also convinced that the interdisciplinary programme in politics, law and economics will have a favourable effect on a career later on with international organisations, in government activities or in business and in-



dustry. She herself did her practical training at the UN Secretariat for the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) in Bonn and, following her four months there, she was awarded a post as a consultant at the neighbouring Secretariat of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA).

"The intensive study programme with around 300 teaching units put high demands on us," the Japanese scholar, who did a Bachelor in International Relations at the University of Maryland Schwäbisch Gmünd, recalls. "We were constantly under the pressure of theses and tests, but it did also represent a huge challenge." She experienced learning in an international group as just as exciting as the excellent lectures given by renowned academics. "At ZEI, I also learnt from the other fellows, who were always ready to share their time and knowledge, so that everyone benefited from this."

In addition, she stresses the excursions, especially the visit to the European Court of Law in Luxembourg, where the permissibility of selling medicaments from other EU States via Internet dispensaries was negotiated. For the 32 Master students, this was a first-class opportunity to experience the implementation of what had previously been worked out in theory. For ZEI's Director, Professor Dr. Christian Koenig, LL.M., was heard there as counsel for the Dutch Internet dispensing chemists Doc-Morris.

Both in her research activities and in preparing presentations for the meetings of the signatory states at the UN Secretariat, Yuki Itakura is benefiting from the knowledge and international experience she gained in the Master programme. "I have acquired the ability to work in a multicultural environment," she stresses. Of course her competence in EU affairs is also an advantage, especially in the field of environmental policy and in co-operating with the European Environment Ministries and the EU institutions. And last but not least, she made use of her year at ZEI to "do excellent training in time budget management and effective working – both on one's own and in the group."

In the meantime, the programme's quality has also got about. Programme Director Cordula Janowski received more

than 130 applications last year, despite the tuition fees for the programme having been raised to 6,500 euros. The "Master of European Studies" has been awarded a seal of approval by the international accreditation agency FIBAA. In an elaborate evaluation, all quality standards were met with good to excellent marks, and practical relevance, the quality of the lecturers and the international orientation of the study programme, which is held almost exclusively in English, were stressed in particular.



Hungarian scholar **Zsafia Sipos** and 30 other fellows from 15 countries are still in the middle of their studies. She studied English and communication science as well as marketing and advertising in Budapest and gained experience abroad in the USA and at summer courses in the Czech Republic, Austria and Belgium. She praises the "European Studies" for its choice of contents in its various modules and the lively "Europe Dialogues", which simultaneously "show the wide scope of practical options that the programme comprises".

She refers to gaining international experience as one of the programme's most important assets. "You get the opportunity to view things from the various national angles, and this contributes strongly to the unique character of this academic training." This is why she is convinced that the Master Programme is "an important milestone" in her education, "an absolutely professional education in the field of European economics and politics". Zsafia Sipos would like to pursue a career in the European institutions. She has already passed the Concour, the strict selection procedure.

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