

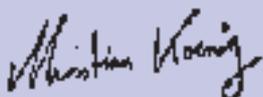
## EDITORIAL

### A decisive point, but not a setback

After its ten-year developing phase, ZEI is now facing a crucial stage. On the 31.12.2004, means from the Bonn-Berlin compensation fund are to expire. But ZEI's future is still secured, for the University of Bonn will be providing basic financing for fifteen positions. This continuation of the institute is a result of ZEI's successful work that led to an across-the-board positive assessment by the Higher Education and Research Ministry's evaluation commission. Not only has ZEI held its own as an interdisciplinary institute, but it has also proved its worth as an interface between science and practice. Valuable links have been forged both with industry and politics on the basis of which a direct relation between theoretical insights and practical requirements has been created. The aspects of integration and interdisciplinarity were at the forefront of the major joint project of accompanying the formation of the European constitution. As a result of this work, ZEI is to submit a systematic and cross-subject commentary of the constitution text. ZEI has also intensively followed the process of EU Eastern Enlargement.

In addition, the three Departments of ZEI have scored a major success in post-graduate education. The "European Studies" Masters Course has now become an internationally esteemed sign of quality that is in high demand in all European and non-European countries. Also, a new international Masters Course on "Regulating Network Industries" is in its planning stages.

In spite of Federal financing gradually running out, ZEI is not going to be less active or present in future. Thanks to its excellent relations with industry and the reputation that ZEI has acquired in its formative years and up to this day, additional funding via third-party means is ensured. So the decisive point is by no means a setback, and the voice of ZEI is also going to be clearly heard in the academic debates of the future.



Prof. Dr. Christian Koenig



On the way to power. The new EU Commission with its President, Jose Manuel Barroso (second from left) and Austrian Commissioner for External Relations Benita Ferrero-Waldner (ÖVP), flanked by Industry Commissioner Günter Verheugen and Dutch Competition Commissioner Neelie Kroes.

## Reorganising power in the EU. The formation of the new Commission An assessment of decision-making processes from the angle of ZEI

by Hubert Iral

**In the course of configuring the new EU Commission, the structure of the European Union has undergone evolutionary developments in several respects. This is an essential step on the way to political integration, a step that has to be a reason for European research to take a closer look at the issues behind these developments. So ZEI is also going to devote its attention to this theme in addition to monitoring the ratification process of the European Constitution.**

On the one hand, not only has the EU Parliament made use of a status it already saw considerably strengthened since Maastricht and Amsterdam in the formation of the

new EU Commission, but in addition, in rejecting the Commission's staffing proposals, some of which were not convincing, it may also have reflected the extension of competencies it is promised in the EU constitutional treaty. On the other hand, the Member States, whose original task it is to choose members, were ultimately forced to conform with the refusal behaviour of the EU Parliament and accept changes to the composition of what is de facto the EU government. Thirdly, the Commission itself and its President had to realise that, within the power triangle of the Council, the EU Parliament and the Commission, the EU Parliament is willing to reject the Commission or what its composition may be in a sort of *ultima ratio*, should the need arise. ►

- ▶ The central issues of research in this regard will be:
  - What led or contributed to this development?
  - What processes of shifts in power are in progress or are commencing?
  - What could the outcome be in terms of political and institutional integration?

An initial look reveals that several reasons have been crucial here. First and foremost, there is the change in the way the EU Parliament sees itself. Often enough, Members of the European Parliament have voiced their disgruntlement with decisions of the Member State governments or the Commission on the quiet. But the factions supporting them hardly ever let it come to the crunch, so that controversial debates were ultimately avoided. Efforts to persuade the last but one Commission headed by Santer were one of the handful of exceptions. But in this case, the malconduct of some Commissioners had become all too obvious and too public, so that the EU Parliament simply had no choice but to act in such a way.

Regarding the Barroso/Commission issue, the EU Parliament, which without a doubt can claim the highest level of democratic legitimacy in the series of the top Community/Union bodies, quite obviously had the mandate of the citizens resulting from this for a transparent and efficient policy in mind. It was no longer willing to give approval required to the candidates for the office of Commissioner that had been selected by the Member States and by Barroso in a relatively obscure manner, especially not if the candidates proved to be not (sufficiently) qualified for their office for subject or general reasons, as was the case, for example, with the designated Energy Commissioner Laszlo Kovacz or Competition Commissioner Neelie Kroes. What proved far less decisive, in contrast, was the unfortunate remarks made by designated Minister of the Interior and Justice Rocco Buttiglione. With the possible exception of the Greens and large parts of the

Liberal faction in the EU Parliament, most held that they merely prompted the debate and, of course, highlighted it in public, but that they were not the cause of refusal behaviour.

### A power struggle between the Commission and the institution of the EU Parliament

What was, however, far more important was Barroso's almost stubborn insistence on his complete list of proposals, including the persons themselves and the departments they had been allocated to. Here, two aspects came to the fore. For one thing, there was an attempted struggle for power on the part of the Commission President with the institution of the EU Parliament regarding the delimitation of the areas of competency and action assigned to the two bodies in the treaties, also and especially with regard to the significantly extended powers of the EU Parliament at the expense of the Council and also the Commission in the treaty. Here, reference to the extension of co-determination, i.e. its elevation to regular EU legislation, stipulated in Article I-33, Paragraph 1 VVE, ought to suffice.

So Barroso's refusal to comply with the EU Parliament's request for changes was not solely or predominantly due to the Commission's intention as an institution. Rather, it was based on the Council's, or the Members of the Council's, interest in gaining power and influence. The latter were obviously aiming to signify to the EU Parliament, which has been much more strongly involved in the Convention in relation to its participation in earlier sequences of deliberation at top EU level and has therefore also succeeded in asserting the shift in the balance of power in its favour, where the limits of its powers are. In the run-up to the constitutional treaty, the EU Parliament's attempts to assume extended powers to take action were to be limited; Parliament was to be demonstrated that it still depends on a consensus with the Council when exercising its powers.

### Europe now has to be fully parliamentarised

And then there is the personal aspect. Following Barroso's appointment as EU President, the Portuguese press characterised his personality as that of a "petty landlord" who would always just smile, remain non-committal, hardly ever contradict and, should he ever air his opinion, only do so if he could promise everything to everyone. From this angle, his yielding after the weeks of objections raised by the EU Parliament really ought to have been expected.

However, Barroso's insistence was also the result of a (legitimate) claim to integrity and the will to assert oneself on the part of an incumbent found for this office after a long quest. So having to change his shortlist, which had initially been referred to as a major coup (and which had partly been hyped by the media), was something he found it difficult to come to terms with.

Barroso's ultimate withdrawal and the formation of a typical compromise cabinet (one reappointment, one swap of departments and one candidate retained) shows that the process of reorganising power in the EU is far from over. All that is certain is that the way the Commission was formed in the past is not going to be accepted so simply by the EU Parliament in future. Europe now has to become fully parliamentarised.

### Reinstating the balance between the institutions

One solution could be to form and involve cross-frontier parties out of which the EU Parliament is configured. The Commission President would then be whoever manages to bring about a majority in Parliament, and he at least ought to be allowed to choose from various Commissioner candidates from the Member States. Only by way of such reforms can the balance between the institutions, which has become unstable because of growing power on the part of Parliament, be reinstated.

However, bearing realities in mind, this process appears to be a lengthy one. For the time being, it remains to be seen whether and to what extent the constitutional treaty is going to develop a steering effect. It will be an important task for science to make a contribution both to the impending ratification process of the constitution and to its (hopefully) subsequent implementation in what the EU citizens think and feel and to the proper and useful development of integration based on a clever and balanced distribution of power among the bodies involved. ZEI is going to follow these steps.

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

#### Up to March 2005

## ZEI CALENDAR

- |                           |                                                                                                                                                                                                                                                                                     |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 25 <sup>th</sup> February | 5 <sup>th</sup> meeting on mining and environmental protection, RWTH Aachen, Lehr- und Forschungsgebiet Berg- und Umweltrecht: Prof. Dr. Christian Koenig speaks about "Emissionshandel und Beihilfenverbot".                                                                       |
| 17 <sup>th</sup> March    | Prof. Dr. Christian Koenig speaks about "Ausschreibungen im Hilfsmittelbereich (§127 Abs. 2 SGB V) – Wettbewerbliche Leistungserbringung oder gnadenlose Kostensenkung?" on an event at Hamburg University dealing with "Die Rechtsstellung der Leistungserbringer im Sozialrecht". |

## INTERVIEW

# "We have to look forward and are going to maintain our quality standards"

ZEI was founded nine years ago at the University of Bonn together with its sister institute ZEF (Center for Development Research) in the framework of the "International Forum of Sciences Bonn" (IWB), and supported with generous pump-priming funding from the Bonn-Berlin compensation scheme. Up to now, around 2.2 million euros a year has been available for academic activities. Towards the end of 2004, these funds will have been used up.

This is the right moment to identify the status quo of the institute and take a look at a future in more restricted conditions.

Brigitte Linden spoke to ZEI's Managing Director, Prof. Dr. Christian Koenig, and IWB's Director, Dr. Hartmut Ihne.



Prof. Dr. Christian Koenig



Dr. Hartmut Ihne

### What is ZEI's position today?

*Koenig:* The evaluation commission appointed by the Ministry of Higher Education and Research has certified for us that ZEI has taken up its activities with great momentum and considerable success in its formative phase. This applies to scientific surveys concerning political, legal, economic, societal and cultural issues of European integration as well as to working out recommendations on solutions. By engaging in policy counselling, ZEI has turned into an interface between theory and practice. Research is conducted in international, interdisciplinary working groups. Finally, qualified training of postgraduates is also among the institute's tasks. The report puts a special emphasis on internationality and the centre's consistent orientation on practice.

*Ihne:* The good links that ZEI has forged with industrial partners and industrial federations as well as with political practitioners are also remarkable. A major network has evolved, and this is reflected both in a high level of third-party funding and in the large number of studies, expertises and consultancy activities. Here, the clients are both Federal and Land Ministries, for example with regard to EU enlargement issues, and Accession States, the Brussels Commission, parliaments, industrial enterprises and international organisations.

### Has ZEI's interdisciplinary structure with its three departments proven to be effective?

*Koenig:* It definitely has. The best evidence of this is our "European Studies" Masters Course. We receive around 160 applications a year for this one-year elite training course addressing German and foreign graduates from higher education institutions aiming for careers in the international area, such as with the diplomatic service or foreign agencies of major firms

and banks. Here, all three ZEI departments work in concert, so that the fellows can acquire practice-oriented knowledge regarding any European law, political and economic issues.

Academic activities are conducted in interdisciplinary research groups at ZEI. For example, one major joint project accompanied the process of preparing the European Constitution in the Convention on the Future of Europe. ZEI presented the first systematic commentary of the text.

*Ihne:* The Israel-Palestine Project reaches way beyond European issues in a narrower sense. Irrespective of the political situation in their home regions, 40 experts from both countries jointly attended the Summer University on regulating the telecommunications industry and E-commerce legislation at ZEI. Next year, this course is to be continued, first in Bonn, and then in Israel. In this way, ZEI is also forging links with development politics and demonstrating how experience in European politics can be handed on to other contexts.

### One important topic in ZEI's formative years was EU Enlargement. How did the institute manage to become involved in this process?

*Koenig:* ZEI very intensively supported this phase. A Task Force South Eastern Europe was set up that has implemented the largest educational programme in the framework of the Stability Pact for South Eastern Europe. In addition to research, this also included practical support for the Accession States of Central and Eastern Europe. There, a Network for European Studies was developed. And ZEI was also in overall charge of setting up the "Bulgarian-Romanian European Centre" at the Danube Bridge between the two countries. There, two ZEI guest lecturers are assisting in running two-year Masters Courses in European Studies.

### With the compensatory funds running out, the fat years are over for ZEI. What is the institute's financial basis going to look like?

*Ihne:* The positive expertises compiled by the evaluation commission for ZEI and ZEF have resulted in a secure future for the two institutes. The University of Bonn is providing 35 positions with basic funding, 15 for each institute plus five for joint administration. While this means that there will be a considerable reduction in staff numbers that virtually amounts to their being halved, staff will be boosted by positions funded by third-party means. So in future, we are going to have to ask ourselves even more intensively where our strengths lie and where our opportunities are to raise funds.

### What does this mean for ZEI's overall orientation?

*Koenig:* I am very thankful for the "fat years" in which we had the chance to gather experience, try out instruments and acquire professionalism in a joint effort. We have left the ivory tower far behind and learnt to apply our models to practical needs. Now that funds are scarcer, we can benefit from our having gained a reputation of holding a monopoly in innovative fields and can work in these areas in a very concentrated manner. There is special know-how in counselling Enlargement countries (the Department of Prof. Dr. Ludger Kühnhardt) and in critical support of European monetary policy (Prof. Dr. Jürgen von Hagen's Department).

As far as my own Department is concerned, I would like to mention the major topics of regulating the telecommunications markets, the law on infrastructure funding, infrastructure funding legislation and network economies in the energy sector. We developed the comprehensive network economy approach here at ZEI, and as a major new project of the entire centre, we are currently in the process of preparing a further international Masters Course on "Regulating Network Economies" that is not only going to deal with telecommunications but will also address other former monopoly companies in areas such as electricity, gas and rail transport. It is going to be a modular concept that computer and engineering scientists as well as economists and media scientists can graduate from either in a twelve-month compact course or alongside their career. The scheme will be launched in 2006. All in all, scarcer funds mean a great opportunity to demonstrate what can be achieved if our staff resources are used efficiently. We are not going to lower our quality standards.

*Dr. Brigitte Linden is a free-lance journalist based in Bonn.*

# The “go” signal or just a siding? Regulating competition in rail transport

by Krzysztof Jaros

As the privatisation of former network monopolists progresses, regulatory issues are increasingly coming to the fore. In this context, the ZEI Department “Political, Legal and Institutional Issues” is also involved in working out practical solutions. With its quarterly journal ‘Netzwirtschaften & Recht’ (network industries and law) and regular events on themes concerning regulation and competition in infrastructure, this department has created a discussion forum for practitioners and academics. Intra-modal competition in rail transport forms a focal field of research.

Looking at the business sections of dailies, one quickly notices what consumers in the EU are probably rejoicing about most of all: air tickets for internal European city links that have now become affordable for all income groups as a direct consequence of increasing competition in the air transport sector. In this context, competition between the railway and the growing number of low-cost carriers has become a focal point of public interest, although it is often based on the aggressive advertising campaigns run by individual airlines against their rail competitors. In contrast, intra-modal competition in rail transport, i.e. between Deutsche Bahn AG and the rival rail transport companies, has so far hardly been perceived by the public at large.

The main reason for this is that, at least in the area of long-distance passenger transport, where Deutsche Bahn AG has a de facto monopoly, such competition is virtually obscured from the majority of passengers. For example, anyone wishing to travel from Cologne to Stuttgart can only do so using Deutsche Bahn. But a glance at the articles, press releases and policy papers of various passenger and transport organisations as well as the numerous associations of private railway enthusiasts reveals a multitude of discriminations against competitors by the railway infrastructure company DB Netz AG, which belongs to the DB AG Holding.

## DB Netz AG charge excessive fees for using the railway network

Rival enterprises above all feel discriminated against in access to the railway network because of excessive fees for using railway lines and DB Netz AG's one-sided setting of technical standards for rail vehicles, which largely make resorting to used material impossible. Furthermore, they claim that DB Netz AG persistently refuses to provide passengers with information on trains run by railway companies that are outsiders to DB AG Holding, let alone to adopt such information in its own official timetable media in a manner plausible to all passengers. Only recently, Berlin's Supreme Court ordered Deutsche Bahn AG by way of an interim injunction to add to its online programme and its telephone information service the timetable data for two long-distance rail links of the rival company Connex, which belongs to the Vivendi corporation.

Thus it is not only the view of most market participants that at present, there is no adequate level of protection against arbitrary action on the part of DB Netz AG, who are in control of the market. However, adequate protection is a basic prerequisite for the development of sustainable competition in the rail transport sector. Competition in this sector also appears to be poorly developed in comparison to other network industries, (telecommunications, postal services and utilities such as electricity, gas and water).

## Two independent regulatory authorities for competition

Thus the question arises how supervision of competition in the rail transport sector has to be designed in order to ensure fair competition for the benefit of the consumer. And precisely this issue is currently causing headaches among politicians and competition law experts, for at present, the protection of competition falls within the competencies of two regulatory authorities independent of each other and working partly in parallel, the Federal Railway Authority (Eisenbahn-Bundesamt, EBA) and the Federal Cartel Office (Bundeskartellamt BKartA).

EBA, an independent Federal superior authority in the portfolio of the Minister of Transport that is located in Bonn, is monitoring general aspects of railway law. One of EBA's chief tasks is to ensure non-discriminatory access to the rail network for all rail transport companies in accordance with § 14 Section 1 AEG (Allgemeines Eisenbahngesetz – German law on railways). However, § 14 Section 3 a AEG stipulates that monitoring of compliance with competition law as laid down in the Law against Restrictions on Competition (GWB) falls within the exclusive competence of the BKartA. Hence, the latter prevents companies from abusing their dominant position in accordance with § 20 Section 1 GWB. In this respect, the BKartA is dealing predominantly with cases of a railway infrastructure company holding a dominant position on the market that denies access at a reasonable fee to its rail network or other infrastructure facilities to a company not belonging to the holding.

If a dominant market position is ascertained, which is almost always the case with Deutsche Bahn AG, the general basis for access to a network in accordance with § 19 Section 4 No. 4 GWB applies in addition to the sector-specific entitlement to access to the railway infrastructure established in § 14 Section 1 AEG. Moreover, the BKartA has to ensure a non-discriminatory setting of fees for the use of infrastructure in the framework of its duty to control abusive practices.

## A risk of different decisions on equal issues

Thus, according to current legislation, responsibility for controlling fees for the use of the rail network is de facto held in parallel by the BKartA and the EBA. Although the two authorities have to inform each other about the deci-

sions they adopt (§ 14 Section 3 a AEG), the consequences of sharing competencies in such a manner do raise problems, considering that the EBA is performing what are the original tasks of a sector-specific competition authority without, however, relieving the BKartA of its responsibility to ensure competition in general.

This entails the inevitable risk of equal issues being decided on in different ways by the BKartA and the EBA depending on the approach the authority dealing with the respective issue chooses to apply. And considering the fact that administrative decisions are binding for other authorities, the looming danger of a lasting fragmentation of competition law in this sector becomes apparent. As long as these shortcomings in regulation are not addressed, free competition like that in air transport cannot develop.

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# Four more years of George Bush. How could this happen?

by Franz-Josef Meiers

**The 43rd President of the United States of America, George W. Bush, has been re-elected with a clear majority of 3.5 million votes and a distinct majority of delegates in the electoral college as well as a comfortable majority for his Republican Party in both Congress Houses. An analysis of the election results from the angle of ZEI.**

What tipped the scales this time was the Federal State of Ohio with its 20 delegate votes. Once the gap between the President and his rival had grown to more than 140,000 votes in the "batleground state", the Democrats' contender John F. Kerry conceded his defeat one day after the elections. Given the clear lead the president in office had in Ohio as well as among the votes throughout the country, the nation was spared a second "Florida".

It is Mel Gibson's "The Passion", and not Michael Moore's "Fahrenheit 9/11", that determines the value orientation of the considerable majority of Americans that the White House, together with its architect Karl Rove, successfully mobilised for Bush's re-election. The Ohio result reflects that what moves Christian conservative voters in their voting behaviour is not their economic interests but their concern over maintaining marriage between men and women. In Bush's first period of office, no other Federal State was as badly affected by job losses as Ohio. Nevertheless, the "blue-collar" Democrats voted for the President and his Republican Party. The share of Christian conservative voters throughout the nation as a whole was more than a quarter, and Bush garnered their support at a ratio of 4:1. The record turnout of more than 60 percent was to the benefit of the incumbent president, who succeeded in mobilising the "Evangelists" with a referendum on the introduction of homosexual marriages as a constitutional principle in eleven Federal States. A comparison of the result with that of 2000 makes

Bush's triumph even more imposing, for he actually gained 8.6 million votes this time.

## America presents itself as a country of value conservatives

Much to the surprise of many Europeans who had been convinced that the Democrat contender John F. Kerry would score a landslide victory, the election results show how strongly Americans are oriented on conservative values. As far as moral values are concerned, outrage at the personal views of the Italian candidate for the office of EU Justice Commissioner, Rocco Buttiglione, on homosexual marriage reflects a wide gulf between the European and the American public. The shock among American Europeans over the unexpected result shows how little they are acquainted with America's two faces. Their notion of America is shaped by the tinsel town of Hollywood or the glamour of Manhattan, and not by the country's widely unfamiliar, rural Christian conservative heartland. To a major share of the European population as part of a globalised and Internetised world, the United States remains a strange, unknown country.

## Torn between the urban centres and the rural regions

The four foreign and domestic policy core topics – the war on international terrorism, the Iraq war, the state of the American economy and the preservation of Christian moral values – reflected the country's deep rift between the urban centres along the eastern and western seaboard and the rural regions in the South and the Midwest. While the former above all demand freedom, security and the unshakeable stability of Christian values, the latter have taken up the cause of justice, a balance of interests at domestic and international level and adapting the system of values to societal and economic and technological change. The outcome of the election shows that there is a clear

majority in the USA who are in favour of a morally and socially conservative USA and thanks to whom Bush and his Republican Party have scored their triumphant victory. And it also shows that, after the era of Bill Clinton, the Democrats neither have a personality nor a programme to win over the American people. But those who no longer reach America's heart and soul are barred access to the White House. Neither will they achieve any majorities in Congress.

## Bush is the dominant political force in Washington

Despite all the euphoria in the Republican camp, the election results also show that two camps are facing each other in the country the sizes and the power of which do not differ to a degree that would allow the Republican majority to marginalise the Democratic minority. It will now be up to Bush to overcome these tensions and divides in the USA and pursue policies to the benefit for all Americans. While he stressed his readiness to unite the country anew in his victory address, he left no doubts whether he was going to take advantage of the new political assets he had acquired and made it clear that he was going to take up conservative priorities in his second period of office. The message of the re-elected President is unambiguous: I am the dominant political force in Washington (also with regard to the other powers in the world) that has been legitimised to translate the outcome of the election into its priorities. Bush's cabinet reshuffle, the personalities of the Supreme Court Judges to be appointed and the tenor of his Address on the State of the Union will show whether, and if so, how Bush is willing to unite the country without forfeiting his mandate to go ahead with conservative changes.

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

## Wine quotas for Romanian EU Accession

by Genoveva Perju

**Romania, which is going to accede to the EU in 2007, is one of the oldest viticultural countries in Europe and a traditional exporter of wines recognised and appreciated on the external markets. Today, Romania's wine production is nearly five million hl. a year, with the countries of the European Union constituting the biggest export market. Wine is Romania's fourth most important exported agricultural product. A recent study at ZEI investigates what is the optimal quota level that should be attained in the negotiations for EU accession.**

The production level of noble wine varieties was 3331.9 thousand hl. in 2003, while the European wine quota with excise exemptions is only 300 thousand hl. Considering the Romanian production potential, the viticultural organisations appear to have a case when lobbying for an increase in the wine quota. Adding to this the perspectives of decreasing wine production in the European Union as a result of its setting-aside policy, it could be expected that Romania's accession would not have a major impact on

the European viticultural environment if a higher quota level for wine exports were to be negotiated. And the European decision seems to indicate this if we acknowledge that Romania obtained more than expected in its agricultural negotiations, such as the acceptance of the actual size of the viticultural area (only 30,000 ha has to be replaced, as opposed to the 130,000 ha reckoned with initially).

## Modelling of the negotiation process to establish a Free Trade Area

Despite early work on the equivalence between tariffs and quotas such as that of economist Bhagwati J. N. (1965), there is a recognised difference in their economic effects. But looking at the protectionist theoretical debates, unlike tariff, quota as trade instrument cannot be found. The situation changed as interest in the process of European integration grew. The work of Cadot, Melo and Olarreaga (2002) is of special importance to the ZEI study because of their analytical focus on what happens inside the process of quota harmonisation in a trading block such as that of the EU. They analyse the internal and external quota harmonisation between symmetric countries with a small focus on countries' asymmetry. But the integration process is dominated by trade accords between

asymmetric countries, particularly large European Union countries and the small applicant countries.

In the ZEI study, the negotiation process to establish a Free Trade Area between two asymmetric countries is modelled. Parameterisation captures the influence of a country's market size in the negotiation process. The bargaining game determining the choice of a particular trade agreement is explicitly modelled. The applied bargaining rules correspond to the ones widely accepted in the field of political economy, as do those of Grossman & Helpman's bargaining models.

The theoretical results are a quantitative measurement of the negotiated trade quotas as a function of a country's market size. As expected, the market size of the country plays a significant role in establishing the Nash equilibrium quotas. The punishment quota is an increasing function of the country market size for a large country and a decreasing one for a small country. The results of the modelled game are an indicator of the scope a small country can have in a bargaining process within a trading block such as the EU.

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# Co-operation among medical service companies to reach joint negotiations with the health insurances.

## A case for merger control?

by Tobias Katzschmann  
and Kristin Hentschel

**Optimising quality while simultaneously cutting costs is a major matter of concern to the health system. So service companies in the field of resources may benefit from organising co-operative schemes in order to conduct joint negotiations on agreements as well as joint contracts with the statutory health insurances incorporating uniform health standards and uniform fees. From a legal angle, co-operation in the shape of setting up joint ventures raises the issue of whether such constellations are subject to the application area of merger control law.**

However, in the field of German merger control, co-operation among providers of services may first of all only be classified as start-ups of joint ventures subject to European regulations on merger control if they are set up as fully functional joint ventures. In the collaborative ventures discussed here, the joint venture is assigned the task of co-ordinating the distribution or sale of products from the parent companies involved in the joint venture vis-à-vis the health insurance companies. Thus collaborative ventures between the providers of resources only perform individual entrepreneurial tasks and therefore qualify as the founding of joint ventures that are only functional with regard to certain tasks, and rather from being subject to the application area of EU merger control regulations, they have to be controlled with regard to cartels law in accordance with Article 81 EC.

Doubts may be raised with respect to the applicability of German merger control law regarding the collaborative ventures discussed here bearing in mind the revised version of § 69 SGB V in the framework of the Health Reform Act 2000. With this revised version, the legislator intended to create a basis for generally ruling out the applicability of cartels and competition law in the case of action by the statutory health insurances with this revision. At first glance, no legal relations exist between the providers of services and the health insurances in the framework of the collaborative ventures to be assessed. However, with a view to developing co-operation, there are weighty arguments that would speak for including co-operation organised on the basis of company law in the concept of an association in accordance with § 127 Section 1 SGB V as well, so that ultimately, a legal relationship develops between the health insurances and the providers of services.

### EC merger control regulations are not applied

So co-operation among the providers of resources serves not only the organisational improvement and the enhancement of positions in the subsequent negotiations with the health insurances in accordance with § 127 SGB V, but it also fulfils the factual conditions of § 127 Abs. 1 SGB V in that, in the sense of this norm, the health insurances only enter contracts with *associations* of the providers of services. With the aid of the intended co-operation, negotiations can be taken up according to the stipulations of this regulation, and the parties involved are entitled to sign a contract. Assessing such collaborative ventures as legal relationships in

the sense of § 69 SGB V results in this regulation's area of application being opened up. The consequence is that German merger control law cannot be applied as a yardstick in assessing such forms of co-operation either.

### German merger control law cannot be applied either

In contrast, if a different legal assessment regarding the applicability of German merger control law were made, with regard to the setting up of a joint venture via co-operation, the mergers discussed here could constitute the realisation of a merger in accordance with the German merger control regime. The factual requirements of a merger standardised in § 37 Section 1 No. 2 GWB would be realised by the form of co-operation at issue here in that several companies would jointly obtain the option of taking certain influence on the activities of a (new) joint venture, especially given that the parent companies are co-ordinating their approach vis-à-vis the joint venture. Moreover, if the setting up of a joint venture is correspondingly developed in accordance with § 37 Section 1 No. 3 S. 1 GWB, vertical associations between the joint venture and each parent company that holds at least 25% of the joint venture's stocks can be identified. Furthermore, the legislator also fabricates a horizontal association among the parent companies for the market of the joint venture in order to be able to take the group effect ensuing from co-operation into consideration.

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## Bankruptcy Systems and Asset Allocation

by Haiping Zhang

**As debt is a major source of firms' external financing, the structure of the creditor-debtor relationship and the optimal design of a bankruptcy system have attracted the attention of academics, lawmakers, and practitioners. The enduring debate on reforming bankruptcy systems centers on incentives and efficiency. A ZEI study models some relevant costs incurred in bankruptcy procedure and analyses the effects on asset allocation as well as social welfare.**

The new "German Insolvency Order" took effect on January 1, 1999. The United Kingdom and France had previously adopted new bankruptcy laws. A major purpose of the reform in these three countries is to shift the traditional exclusive focus from the enforcement of creditors' liquidation rights during bankruptcy procedures to putting more emphasis on the balance between protecting creditors and rescuing distressed debtors.

### I. Optimal Bankruptcy Systems

Debtors will be punished more harshly in a "tough" bankruptcy system than in a "soft" one if they default at the repayment date. On the one hand, they will behave diligently ex ante in order to avoid financial distress as much as possible. On the other hand, if they are already in bankruptcy, harsh punishment might be economically inefficient. Povel (1999) shows that either tough or soft bankruptcy laws can be optimal,

while the "hybrid" procedure combining some elements of soft and tough procedures could prove redundant and possibly harmful. Berkovitch and Israel (1999) analyse the fundamental differences across economic systems and propose that an optimal bankruptcy system utilises the creditor's information while minimising the debtors' use of strategic information.

### II. Strategic Default

The author analyses how liquidation costs and "theft" costs affect the debtor's strategic default decision in collateralised lending. Normally, lenders grant a loan only up to the borrower's expected net collateral value. If debtors could divert revenue for free, they would default strategically when the ex post collateral value fell below their predetermined debt amount. Liquidation costs reduce the borrower's debt capacity and restrict their productive investment, which distorts asset allocation. So, as a first result, deepening the second-hand asset market helps to reduce liquidation costs and then improves production efficiency.

The author shows that harsh pecuniary and non-pecuniary punishments against default create "theft" costs for the debtors and reduce the probability of their strategic default. Although the fall in default premium could improve asset allocation at the contracting date, the debtor's financial situation would be even worse in bankruptcy. A second result of the work is that an optimal punishment against default should be moderate.

*Haiping Zhang is Junior Fellow at the ZEI Department "Economic and Social Issues".*

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# MERCOSUR – how economic integration affects the spatial distribution of manufacturing activities

by Christian Volpe Martincus

The regional trade bloc MERCOSUR, established by Argentina, Brazil, Paraguay, and Uruguay in 1991, is one of the most important integration schemes among developing countries. From the European point of view, this is a particularly interesting case. The EU is the largest trade partner for MERCOSUR, and both groups of countries are now negotiating the creation of a free trade area. A series of studies conducted by ZEI fellows have aimed at analysing the effects of economic integration on the distribution of manufacturing activities across and within the larger member countries of MERCOSUR.

While the changes in location patterns after the dismantling of trade barriers between European countries have been extensively documented in the empirical literature, there are no analyses of the effects of the so-called “South-South Preferential Trade Agreements”, i. e. arrangements between developing countries, where one partner is privileged.

## Reorganisation of production along the lines of internal comparative advantage

The ZEI paper “Economic Integration and Manufacturing Concentration Patterns: Evidence from MERCOSUR” by Iulia Traistaru and Christian Volpe Martincus shows that, on average, relative concentration of industries increased across Argentina, Brazil, and Uruguay over the period 1985–1998. It also finds that that localisation of demand and comparative advantages are the main driving forces of concentration patterns. In particular, the establishment of MERCOSUR has been associated with

an increasing influence of relative labour intensity and production linkages and a declining relative importance of technology.

The ZEI paper “The Impact of South-South Preferential Trade Agreements on Industrial Development: An Empirical Test” by Pablo Sanguinetti, Iulia Traistaru, and Christian Volpe Martincus explicitly assesses the impact of preferential trade liberalisation on manufacturing production patterns over the same sample. This study highlights that Uruguay, the smallest country in this sample and with an extreme comparative advantage in agriculture (relative to Argentina and Brazil), has witnessed a decrease in its share in overall industrial activity in the bloc since 1991. Moreover, preferential trade liberalization in the Southern Cone is found to be driving a spatial reorganisation of production along the lines of internal comparative advantage and weakening agglomeration forces.

## Industries with highly tradable products locate in those Brazilian states closer to Argentina

Trade liberalisation has also affected the spread of manufacturing activities within member countries of MERCOSUR. Thus, the ZEI study “Do Economic Integration and Fiscal Competition Help to Explain Location Patterns?” by Christian Volpe Martincus shows that industries with highly tradable products locate in those Brazilian states closer to Argentina that offer a better access to this market, and that this tendency has accentuated over time. The increased relative importance of foreign markets induced by reduced trade barriers has also been associated with a weakening of home demand linkages, as well as with a strengthening of the propensity of firms to locate in those states with better infrastructure.

Overall the results of these studies show that economic integration has resulted in substantial changes in the spatial distribution of manufacturing activities across and within MERCOSUR member countries. Trade policy has indeed been an important factor shaping location patterns in South America. The next research stage is to assess whether explicit policies are needed to deal with these developments and, if this is the case, to identify appropriate policy actions.

*Dr. Christian Volpe Martincus is Senior Fellow at the ZEI Department “Economic and Social Issues”.*

## ZEI PUBLICATIONS

### Discussion paper series

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Nicole Christina Groß: *Netzwerkbildung in der EU als regionale Standortpolitik?* Nordrhein-Westfalen und die transnationalen Beziehungen zu Regionen im Benelux-Raum sowie in Mittel- und Osteuropa

C 135

Karl-Heinz Narjes: *Europäische Integration aus historischer Erfahrung.* Ein Zeitzeugengespräch mit Michael Gehler

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Ludger Kühnhardt: *The Global Proliferation of Regional Integration.* European Experience and Worldwide Trends

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Andreas Marchetti (Ed.): *The CSCE as a Model to Transform Western Relations with the Greater Middle East*

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Lothar Rühl: *Conditions for a European intervention strategy in application of the ESDP and US/Nato crisis management*

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Ludger Kühnhardt: *From National Identity to European Constitutionalism.* European Integration: The First Fifty Years

## AT A GLANCE

ZEI is making an important contribution to the development of a culture of European Research in Europe. This is demonstrated by a survey in which the Paris institute “Notre Europe”, which is headed by former Commission President Jacques Delors, subjected the think tanks established in the EU that deal with European issues to a rigorous analysis. For Germany, the survey “Europe and its think tanks” ([www.notre-europe.asso.fr/IMG/pdf/Etud35-en.pdf](http://www.notre-europe.asso.fr/IMG/pdf/Etud35-en.pdf)) lists 23 institutions that address European issues. However, the survey states that it is only ZEI in Bonn and the Institut für europäische Politik (IEP) in Berlin that specialise exclusively in issues relating to European integration. With a view to the significance that Europe has assumed in the everyday lives of the EU citizens, the survey arrives at the result that, regarding the EU as a whole, there are not enough think tanks that concentrate on Europe in particular.

The fourth issue of the quarterly journal “**Netz-wirtschaften & Recht**” (N&R), which gives an interdisciplinary review of juristic and economic aspects of network industries, i. e. especially the energy, telecommunications and transport branches, but also the post and water industry sectors, has just appeared. The chief ingredients of the concept for the journal, for which ZEI Director Prof. Dr. Christian Koenig is managing editor, were developed at ZEI, and it is a further building brick in the concept of a cross-network industry perspective that the Department “Political, Legal and Institutional Issues” has always been pursuing as an exemplary case of a regulatory implementation of integration. N&R is a publishing interface between science and practice, a feature that is also reflected in the composition of its academic advisory council, which comprises a large number of renowned university lecturers, and its editing committee consisting of high-ranking representatives of the individual network industries.

On the 26<sup>th</sup> November, a **Conference on Communications Law** titled “Nach der Novelle ist vor der Novelle” (after the amendment is before the amendment) was held in collaboration with the Center for Applied Law (ZAR) at the University of Karlsruhe (TH).

On the 29<sup>th</sup> November, at the Petersberg Guest House, Königswinter, ZEI Director Christian Koenig moderated an event of the European Law Institute for Public Procurement & Infrastructure, Berlin, Brussels, Bonn (ELIPI) on the issue of “Infrastructure Funding outside EC Aid Law?”. There, Koenig also gave a lecture on the topic of “Infrastructure Funding in EC Aid Control and Cost Calculation Logic declined with a Project Study. A Joint Effort of Jurists and Auditors”.

# A personal network for an international career



Katherine M. Simpson



Daniella Désirée Schneider



Christian Krappitz



Erman Topcu

by Brigitte Linden

**ZEI's advanced full-time "Master of European Studies" Course, which has been awarded the FIBAA stamp of quality, has now commenced its seventh year with 30 fellows from 17 countries.**

On the 11<sup>th</sup> October, at ten o'clock on the dot, Programme Director Cordula Janowski and her assistant Barbara Giordano were looking at a host of expectant faces when they welcomed the fellows to the one-year power programme on European issues.

Expectations are high among these young people, all of whom have graduated from a university and some of whom have already gained professional experience. "I found the programme on the Foreign Office homepage, and my goal is a career with the diplomatic service," says Christian Krappitz from Chemnitz, who has already obtained a degree in "European Studies" in the United Kingdom and has given preference to the ZEI course over studying at the renowned London School of Economics.

Daniella Désirée Schneider, who, at just 23, is one of the youngest master fellows, is also aiming for the Foreign Office. This German, who grew up in Kenya and obtained a French Baccalauréat there, studied law in the United Kingdom and did practical training with the German Embassy in Paris. In Bonn, she wishes to acquire knowledge of economic and political European issues and establish a personal network. She appreciates learning in an international group. "It is so interesting to view topics from different angles and to get to know other opinions and cultural backgrounds," she remarks.

Acquiring more in-depth knowledge of international law is the aim of US American Katherine M. Simpson, who says that she is "fascinated by the peace and security policy of the United Nations and the EU. This is something I would like to be involved in." She is looking forward to the Masters Programme, for two years ago she took part in the "Transatlantic Summer Academy" (TASA) at ZEI. "There, we got to know sev-

eral political experts and personalities, and now I can do this great programme for a whole year. That's wonderful."

One of the special features of the seventh Masters cohort is that among the 160 applicants, four Turks have succeeded in acquiring a study place. All of them are grant-holders of the EU Commission's Jean Monnet Program, which is currently focusing on training an elite with a knowledge of the EU in view of Turkey's possible accession to the Union. "In our country, there is a considerable information deficit regarding the EU," says Erman Topcu, who studied "International Relations" in Ankara and aspires to start a career with the Turkish Foreign Office "in order to provide my knowledge and my contacts that I will acquire during the Masters Programme to my country when the accession negotiations start".

But before that is accomplished, the fellows are going to have to face a lot of hard work. The interdisciplinary study course with around 300 teaching units in European Politics, Economics and Law demands their full attention: lectures, discussions, presentations and, again and again, written tests – 25 in all. And then there are letters of application as well as the Masters Thesis as their final paper. But the previous years have shown that the stress all this results in is in no way detrimental to the readiness among the participants to engage in discussions. Looking back, they praise the wide scope of the curriculum as well as presentations given by practitioners from EU institutions, ministries, industry and economics and excursions to Berlin, Brussels, Luxembourg, Strasbourg and Frankfurt am Main affording a concrete insight into the EU.

The programmatic approach of international, interdisciplinary and practice-oriented training on the basis of which the fellows develop a career network of their own is unique in Germany. The idea is that students attending the European Studies course in Bonn are in touch with potential employers as often as possible. In addition to EU and government institutions, this also includes

policy consultancies and lobbying associations in Brussels.

And the international composition of the participants from EU countries, new Member States, Candidates and from overseas – this time, two fellows have come from the USA, one from Mexico, one from Taiwan and one from South Korea – ensure that a very special atmosphere is created in which the fellows can learn from one another and with each other. This is also the reason why the Alumni Club, which already has 138 members, is working so well. Moreover, ZEI alumni who have already attained an excellent professional status are increasingly offering their support to the "young" fellows and running modules of their own in the framework of the practice dialogue.

The programme's high standards are documented by the stamp of approval given by the international accreditation agency FIBAA. In the elaborate evaluation process, all quality requirements have been met with good to excellent marks, with special emphasis being put on practical relevance, the quality of the lecturers and the international orientation of the study course, which is held almost exclusively in English.

In order to give applicants more time to prepare themselves for their stay at ZEI in future, the application deadline for the next cohort has been brought forward from the 1<sup>st</sup> May to the 15<sup>th</sup> March 2005. Suitable candidates are invited to a telephone interview with Programme Director Cordula Janowski. Notice of acceptance of applications will already be sent as from the 1<sup>st</sup> June. Applications can already be filed for these much-sought study places.

For more information, contact Cordula Janowski (Tel.: 73-18 99, e-mail: [www.europeanstudies.zei@uni-bonn.de](mailto:www.europeanstudies.zei@uni-bonn.de)) and, in the Internet, [www.zei.de](http://www.zei.de). The Evaluation Report of the accreditation agency can be found at [www.fibaa.de](http://www.fibaa.de)

*Dr. Brigitte Linden is a free-lance journalist based in Bonn.*

## IMPRINT

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