

Preparing Europe for the future – Recommendations to the German EU Council Presidency



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ISBN 3-938349-26-3



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Preparing Europe for the future – Overview of recommendations

More growth and jobs continues to be the central challenge for the EU. The **major themes** that have to be resolutely addressed to that end include:

- consistent implementation of the **Lisbon reform strategy**. The entire credibility of the Lisbon process turns on national governments fully implementing the integrated guidelines for EU Member States' economic and employment policy decided jointly at European level in the framework of the Lisbon strategy, and carrying through the necessary structural reforms. To meet this objective, BDA expects the German EU Council Presidency to work for a credible reorientation of all policy areas at both national and European level with the aim of improving competitiveness.
- **simplification and improvement of the European legislative framework**. BDA expects the German EU Council Presidency to further intensify the activities already initiated by the European Commission with a view to dismantling excessive regulation. In order to prevent bureaucracy in new legislation, the German EU Council Presidency must also advocate that impact assessment of legislative proposals is carried out – or at least verified – by an independent body.
- consistent implementation and enforcement of the 1997 **Stability and Growth Pact**. Before new members join the eurozone, the convergence criteria must be met without exception. Europe needs reliable rules for a sound finance policy and a stable currency, without which sustainable growth and jobs cannot be achieved.

On the **role of the European Court of Justice** (ECJ), fresh thought is also needed:

- After fifty years of successful integration, the task of **ECJ** can no longer be that of “engine of integration”. Rather, it must strike the balance between national sovereignty over policy formulation and establishment of the necessary uniformity in Community law. In line with the existing rules for free movement of persons, the EU Treaty should extend the exclusive right of supreme authorities to present cases also to the area of social policy.

European social policy must consistently be at the service of growth and jobs. Important dossiers currently on the table and which the German EU Council Presidency should address are:

- **portability directive** – it must be shaped in such a way that voluntary occupational pension provision in Germany is not damaged.
- **working time directive** – it must be adopted rapidly and without any additional restrictions.
- **services directive** – the newly incorporated obligation for Member States to notify the rules that they as host countries apply to cross-border service providers must now be consistently implemented.
- **European qualifications framework** – the last problems must be solved so that the corresponding recommendations from Council and European Parliament can be adopted and implementation can start during the German EU Council Presidency.

The **European internal market** with more than 450 million people is the most striking success of European integration and the foundation for further growth and employment opportunities in Europe. Equally, fifty years after conclusion of the Treaty of Rome, it is not yet complete and its potential has not yet been fully exploited. German business expects the German EU Council Presidency to focus on the following points:

- Improving European framework conditions for transforming the results of scientific research into commercial products. Protection of **innovation** must be simplified. To that end, a Community patent is needed which meets the needs of companies and has a cost-effective language regime.
- Securing an efficient, competitive and durable **energy supply** for Europe. To this end, BDA expects the German EU Council Presidency to work actively for liberalisation of energy markets in Europe and progress towards an efficiently functioning internal market in energy. Furthermore, external relations with countries which export raw materials must be more strongly coordinated, and partnerships with energy producers must be established and/or enhanced.

- Completion of the **internal market**. Transposition and implementation of internal market directives must be markedly improved and fragmented markets must be opened up. The German EU Council Presidency needs to take effective initiatives to liberalise postal markets and open public procurement for defence equipment. In the current debate on **services of general interest**, it must be ensured that this is not a pretext for market fragmentation.

Lastly, the European Union must play the role that is its due in the **shaping of globalisation** actively and offensively:

- Following the suspension of the **WTO** round, the negotiations must resume as soon as possible. In addition, better implementation of existing WTO rules is of fundamental importance. BDA invites the German EU Council Presidency to intensify dialogue with China on this point. Also in relation to China, it should redouble efforts for a dismantling of non-tariff barriers to trade.

Preparing Europe for the future

A strong European Union capable of action is of paramount importance for the German economy. Since its foundation the European Community has been the engine for economic development and a cornerstone for a stable political environment. Also in the future, we need shared responsibility for growth and jobs in an age of increasing global competition. Hence, the European Union must be prepared for the future.

Today, fifty years after the conclusion of the Treaty of Rome, Europe is at a decisive crossroads. Persistent high unemployment, sluggish growth, diminishing global competitiveness and an absence of clarity as to the Union's future borders characterise the situation of the EU. The failed referendums on the constitution are an expression of a widely perceived uncertainty among citizens and their lack of confidence that the EU is able to meet the major challenges that Europe faces. The EU must demonstrate that it is able to make a positive contribution to shaping globalisation and EU enlargement, and hence to convey both developments to citizens as an opportunity and less as a threat. Without sustained reforms in EU Member States with long-term successes in combating high unemployment, and without clear outlines regarding the EU's future borders, Europe as a whole will not be able to win back citizens' trust. In addition, subsidiarity and proportionality must play a greater role as a leitmotiv for joint action. The EU must concentrate single-mindedly on its core tasks in which it can add genuine value for Europe.

The alignment of European policy on growth and jobs is a fundamental condition for solving the constitutional crisis. In the view of employers, the European constitution can and must make an important contribution to legal certainty in Europe which makes the EU institutions capable of action and equips the EU more generally for the future. However, regaining the acceptance of citizens with new policy directions is the precondition for further progress in the constitutional process.

BDA's recommendations to the German EU Council Presidency on themes relating to social policy are set out in greater detail below. In order to be able to work credibly as the EU Council Presidency for their realisation, the German government must above all carry through consistently the policy changes needed for more growth and jobs at national level.

Recommendations to the German EU Council Presidency

With the EU Council Presidency, the German government has the opportunity to play a decisive role in helping to shape the essential changes in policy direction. The simultaneous G8 Presidency also makes it possible to generate synergies and coherence between EU policy and the G8 process. It must make resolute use of this opportunity to make Europe once more capable of facing up to the future. Against the background of the alignment of European policy already outlined, BDA makes the following recommendations on social policy themes:

Make a success of the Lisbon strategy

More growth and jobs continues to be the central challenge for the EU. To that end, the Lisbon reform strategy must be implemented with greater consistency than hitherto. The entire credibility of the Lisbon process turns on national governments fully implementing the integrated guidelines for EU Member States' economic and employment policy decided jointly at European level in the framework of the Lisbon strategy, and carrying through the necessary structural reforms. The three-year national reform programmes presented by Member States in autumn 2005 are in most cases insufficiently ambitious to achieve the Lisbon strategy's employment policy objectives of a 70% employment rate, a 60% employment rate among women and a 50% employment rate for older workers. The reform rhetoric at European level must finally be made good by concrete actions at national level. In its role as EU Council Presidency, the German government has a particular duty to set a good example and drive the reform process in Germany forward.

At EU level, the reform efforts of Member States must be given greater support and flanking. It must be ensured that the focus of the Lisbon strategy on growth and jobs is maintained and consistently reflected in all EU policy areas. The request by the 15-16 June 2006 European Council that the social consequences of European legislation be given particular attention in impact assessments must not lead to a dilution of the Lisbon process. Only with a dynamic economy can Europe reach its social and ecological goals.

► BDA expects the German EU Council Presidency to use the 2007 spring summit, which will examine progress with implementation of the Lisbon strategy on the basis of the European Commission's report, to present an unvarnished picture of Member States' reform deficits, and to demand sufficiently ambitious reform programmes. The spring summit must not be limited to lip service. Instead it must finally draw the necessary consequences and set the compass clearly for a credible reorientation of all policy areas at both national and European level on more competitiveness.

Better regulation – further intensify activities

Since the foundation of the European Community the corpus of EU law has expanded relentlessly. In the area of social policy there are many more than one hundred legislative texts which contain not only sensible provisions but also unnecessary rules which often go beyond the capacities of small and medium businesses in particular. For instance, the visual display unit directive provides that every employer must evaluate technical details of a software package to see whether they can be adapted to match the user's level of knowledge and experience. At the same time, they must ensure that the characters shown on the screen are sufficiently sharp and clear, and are displayed with adequate character and line spacing. Too many such unrealistic, bureaucratic and cost-intensive legal provisions undermine the urgent need to rebuild confidence in Europe.

Simplification and improvement of the European legislative framework plays a key role in strengthening corporate competitiveness. Companies need a straightforward, coherent and stable legislative framework in order to succeed on global markets. The European Commission has now made "better regulation" a political priority. That is very welcome. However, in day-to-day policy-making at Community level it is not yet translating this priority into reality to the necessary extent. In this area there is an urgent need for all EU institutions to act, to intensify their activities further.

Alongside simplification of legislative initiatives, dismantling of existing over-regulation needs to be tackled with resolve. The European institutions have taken the first important steps in this direction.

► BDA expects the German EU Council Presidency to further intensify activities to dismantle existing red tape. Over-regulation in the area of social policy needs to be a more central concern than has been the case hitherto. Business invites the German EU Council Presidency to take on board its simplification proposals and work for their rapid implementation.

An effective impact assessment is essential to give policy-makers a sufficiently precise picture of the expected consequences of a legislative proposal at an early stage in the process.

► BDA expects the German EU Council Presidency to argue for this impact assessment to be carried out – or at least verified – by an independent body, in order to give the results greater weight. BDA joins UNICE in advocating that this will produce a credible impact assessment and will prevent bureaucracy while a legislative proposal is still in its infancy.

The importance of impact assessment is all too clear in the preparatory work on the planned Common Frame of Reference (CFR) for European contract law. Preparatory work on CFR is a textbook example of the threat of bureaucracy and more over-regulation. Neither European businesses nor EU citizens need a harmonised civil law, however well intended. In addition, it is not obvious what supposedly serious internal market obstacles could justify a harmonisation of civil law, or on what legal basis. Rather, even countries whose economic success has been above-average have lived for centuries with several civil law systems.

► The German EU Council Presidency should work to have proposals for the planned Common Frame of Reference (CFR) for European contract law withdrawn.

Limit the ECJ to core competences

The European Court of Justice (ECJ) today performs a different function than in the early decades of the EEC. With application of the principle of subsidiarity, its task can no longer be the “motor of integration”. Rather, it must strike the balance between national sovereignty over policy formulation and establishment of the necessary uniformity in Community law. This understanding of the institutional position of ECJ was reaffirmed very recently during a Subsidiarity conference organised by the Austrian Presidency in April 2006.

However, contrary to the necessary balance, in the field of labour law ECJ is increasingly developing into a supreme revising body. The result is an unacceptable legal uncertainty for companies in their day-to-day activities. ECJ often uses requests for preliminary rulings from politically motivated labour and social judges in lower tribunals as a pretext for interpretations which go too far. This questionable development must be halted. There are good reasons for extending the disqualification (Article 68 TEU) on lower tribunals submitting cases – which already applies to the free movement of persons – to the area of social policy. Accordingly, an obligation for supreme courts only to present cases also in the area of social policy is indicated and sufficient for the proper functioning of the preliminary ruling procedure. The recommendation made recently by the European Commission in a communication that the right to present cases to ECJ for a preliminary ruling for the free movement of persons should also be extended to lower tribunals is diametrically opposed to what is needed and should not be implemented.

Restriction of the right to present cases would substantially ease the burden on ECJ caused by labour-intensive examination of many, often frivolous cases, or – as in the Mangold case – procedures agreed in advance. To date, lower tribunals have made far and away the most use of preliminary ruling cases. According to official statistics, between 1952 and 2005, of the 1,465 requests for preliminary rulings submitted by German tribunals – the most enthusiastic applicants – 985 of these (67%) came from lower tribunals. In the case of Italian courts – in second place with 862 requests – as many as 84% (728) were submitted by lower tribunals. If the right to submit cases relating to social policy were also restricted to supreme courts, procedural delays would be reduced to a manageable level.

- ▶ The German EU Council Presidency should further develop the Austrian Presidency's initiative and submit ideas for extending the disqualification on lower tribunals submitting cases, which already applies to free movement of persons, to social policy.

An employment-friendly European social policy

European social policy must be more employment-friendly. More social policy rules is the wrong route for combating high unemployment in Europe. In particular, excessive labour market regulation stands in the way of creating new jobs and makes it more difficult to reduce existing unemployment. It is therefore of fundamental importance that the new “Social agenda for future opportunities and solidarity” announced by the European Commission does not follow the regulatory approach of the current social agenda. The new social agenda must focus on effective implementation rather than extending the regulatory framework. Together with the European employers' federation UNICE, German employers call for a moratorium on all social policy legislation which places additional obligations on companies. This will not only help to strengthen Europe's position as a location for business, it will also and above all give the new EU Member States the opportunity to implement on the ground the EU *acquis communautaire* which they have already transposed into their national law.

The German EU Council Presidency should pay particular attention to the following dossiers:

“Flexicurity” concept – EU principles add no value

More flexibility in the area of social policy is essential if Europe is to be able to meet the challenges of globalisation and demographic ageing. In this connection, the concept of “flexicurity” is gaining visibility. On this point, BDA supports the concept of flexicurity expressed by Commissioner Spidla: “The most important thing is not to protect existing jobs, but rather to create new ones and help people to fill them”. However, the development of additional shared EU principles for “flexicurity” announced by the European Commission adds no value and should not be further pursued, since national employment and labour market policies are already coordinated via the European employment

strategy incorporated in the new Lisbon process. Guideline 21 explores the concept of flexicurity directly, and calls for flexibility and employment security to be brought into balance.

- ▶ BDA expects the German EU Council Presidency to work to avoid the creation of any new employment policy instruments and the establishment of additional obligations under social legislation at European level. Instead, the guidelines for Member States' economic and employment policy incorporated in the new Lisbon process should be resolutely applied.

Green paper on labour law – focus on simplification and flexibility

In the debate that the European Commission wishes to launch with its long-announced green paper on labour law, the issue will be how European labour law should be shaped in the future. In BDA's view, it is of fundamental importance that the focus should be on simplification of European labour law.

- ▶ BDA expects the German EU Council Presidency to work with determination to ensure that this debate is not the launch pad for more labour law rules at EU level. This would not only thwart the Lisbon strategy newly aligned on growth and jobs, but would also be diametrically opposed to the goal of more effective application of the subsidiarity principle.

Working time directive – move the revision forward rapidly

A revision of the working time directive became necessary after ECJ ruled that on-call time is to be regarded as working time in its entirety – decisions with considerable implications, not only in Germany. The Council of Ministers has already proposed in the legislative procedure workable solutions for the future shape of the working time directive. These include the provision that inactive periods of on-call time should not as a rule be regarded as working time, and that it should be possible to credit this time in

accordance with legal rules in the Member States or on the basis of collective agreements or other social partner agreements. However, arguments about maintenance of the so-called "opt-out" clause, which makes it possible to derogate from maximum weekly working hours, have so far held up the necessary rapid adoption of the draft proposal. Given the importance of discretion for flexible arrangements, it is important that the opt-out clause is maintained. The opt-out helps small and medium businesses in particular to smooth out fluctuations in orders, and hence to preserve jobs.

- ▶ The German government must address the impasse again and help find a workable solution for the opt-out, so that the legislative process can be concluded rapidly. To that end, the Finnish EU Council Presidency's efforts to find agreement should also be supported.

Portability directive – prevent a blow against voluntary commitments

The principle underlying proposal for a directive on portability of supplementary pensions runs counter to its objective of increasing worker mobility. The planned rules would greatly damage occupational pension provision and reduce the willingness of companies to participate in schemes. For that reason, the draft proposal should be rejected. An especially serious point is that existing pension rights are also covered, with the result that a burden would be placed on companies retrospectively. In particular, the proposed obligation to upgrade the rights of former employees would considerably add to the costs. The same applies for the draft directive's provision whereby rights would be vested before an employee is thirty years old. The shortening of the vesting period to two years would not only pose the threat of higher costs but would also devalue occupational pension provision as a personnel policy instrument for increasing employee loyalty. Moreover, the provisions would considerably restrict the two important implementation routes (direct commitments, support relief funds), despite any transition periods. In addition, implementation of the directive would impose new bureaucratic obligations on employers.

Adoption of such a portability directive would reduce the interest of employers in providing an occupational pension which, as a supplementary benefit, is always voluntary. The willingness of employers to give their employees new commitments for occupational

pension provision would decline. Ultimately, the draft directive's objective of increasing worker mobility would not be served.

- ▶ BDA expects the German EU Council Presidency to work for the EU to refrain from any interference in voluntary benefit promises. Hence, it is important to prevent voluntary occupational pension provision being impeded at a time when supplementary pension provision is essential to complement benefits from the statutory pension insurance scheme.

Services directive – ensure transparency and legal certainty

The European internal market has developed successfully in many areas. However, in the field of services there are still major obstacles which prevent this area from achieving its full potential. For that reason, the draft directive on services in the internal market, which seeks to facilitate cross-border provision of services and freedom of establishment, is very important. It is regrettable that the European institutions have departed from important elements of the original draft directive on services in the internal market as the legislative procedure has progressed, to the detriment of legal clarity. It is now urgently necessary, as the procedure moves forward, that cross-border provision of services has the greatest possible legal certainty and transparency for companies. The new obligation incorporated by the Council of Ministers whereby Member States have to notify the rules that they as host countries apply to cross-border service providers is a first step in the right direction.

- ▶ BDA expects the German EU Council Presidency to ensure that, following adoption of the directive, the process for implementation in the Member States is coordinated, and that it is made clear in this connection that companies are providing cross-border services are acting in accordance with the law if they comply with the rules that Member States have notified to Brussels.

Services of general interest: eliminate distortions of competition in the internal market

The notion of “services of general interest” encompasses a large number of different areas and describes the provision of essential goods and services. Although the concept has no fixed contours, it is often used to mean the provision of public facilities for society at large, i.e. transport services, provision of gas, water and electricity, rubbish collection, hospitals, etc. In recent years, the theme of services of general interest has been intensively discussed in Brussels again and again. With the increasing economic integration of Europe, the tension is becoming ever more perceptible between free competition in the European internal market on the one side and restriction of competition to the benefit of municipal undertakings in the area of state-organised and sometimes state-run services of general interest on the other. BDA believes that it is impossible in practice to draw a clear line between services of general interest and services of general economic interest, or between health services and social services, partly because structures in the individual Member States are highly divergent, and partly because many of the tasks traditionally performed by the state have economic components. German business therefore sees an urgent need to prevent distortions of competition justified on the pretext of “services of general interest”, and to ensure that citizens’ demand for a high level of services of general interest can be satisfied by private undertakings in competition.

- ▶ BDA expects the German EU Council Presidency to intensify efforts to open markets which are not yet, or insufficiently liberalised, and to prevent distortions of competition justified on the pretext of “services of general interest”. In addition, it should work to ensure that efforts to create a framework directive on services of general interest go no further. German business believes that a framework directive is neither useful nor necessary. In this context, there should be no Europe-wide definitions, e.g. for services of general interest and services of general economic interest.

Streamline the open method of coordination

Social security systems need to be modernised with a view to demographic developments. In this context, the open method of coordination at EU level for the areas of social inclusion, pension systems, health and care is a useful instrument for learning from the experiences of other Member States. Since there were in the past overlaps and sometimes contradictions between the objectives in the individual coordination processes for the four areas because of their thematic closeness to each other, German business supports the European Commission's intention of streamlining and combining the open method of coordination for these areas. Bearing in mind the close interaction between social protection and economic and employment policy, full integration of the open method of coordination for social protection (social inclusion, pension provision and health/care) in the new Lisbon process would be desirable.

- ▶ The German EU Council Presidency should support a merger of the coordination processes in the field of social protection. In this regard, it must be ensured that the European Commission does not use the open method of coordination as a back door for extending competences in this area. Competence for social protection systems lies with the Member States. The German EU Council Presidency should also endeavour to ensure that the emphasis of the reform objectives is increasingly placed on sustainable financing of social protection systems as well as on promoting growth and jobs. Furthermore, the number of objectives and indicators should be kept to manageable levels.

Foster lifelong learning in Europe through greater permeability between education systems

General education and occupational training policy is key for the European Union's competitiveness. Notwithstanding national competences, the EU can and must make an important contribution to implementing the Lisbon strategy in this area. German employers believe that the German EU Council Presidency's priority in the area of education policy should be greater permeability between education systems, with the goal of creating more opportunities for lifelong learning.

Permeability within the education system through implementation of the European qualifications framework

BDA welcomes development of the European qualifications framework (EQF) to promote transparency, mobility and permeability between education systems in Europe.

- ▶ BDA expects the German EU Council Presidency to work energetically for adoption of the Council and Parliament recommendation, and to initiate and move forward the discussion on development of national qualifications frameworks in the Member States.

Merger of Bologna and Copenhagen processes

The Bologna process to create a European higher education area and the Copenhagen process to create a European occupational training area run alongside each other almost without connection. This is counterproductive in terms of transparency, permeability and lifelong learning. Representatives of higher education and occupational training must come together to discuss the overarching EQF and plan its implementation, instead of propagating two different European qualifications frameworks and different credit systems within their subsystems. The simultaneous holding of the next Bologna ministerial conference and the expert conference as part of the Copenhagen process offers a first and unique opportunity to bring these two processes together.

- ▶ BDA expects the German EU Council Presidency to ensure that this opportunity is used productively and that the two conferences' resolutions on education policy can be implemented consistently across the two processes.

Quality assurance in occupational training and higher education through consistent alignment of systems on employability

A permeable education system requires efficient quality assurance. A central quality criterion is the success of those leaving the system on the labour market, i.e. the level of employability they have acquired from their chosen educational course. This can be regarded as the shared element, i.e. shared quality criterion, for quality assurance in occupational training and higher education. At the initiative of employers, this quality aspect is likely to be a major theme of the Bologna ministerial conference.

- ▶ BDA expects the German EU Council Presidency to launch a European discussion on how education systems and courses can be more consistently aligned on employability, e.g. through a study on education policy or a multi-stakeholder dialogue.

Immigration: do not trim Member States' competences

In December 2005 the European Commission presented a strategic plan for legal immigration (COM(2005)669) in which it announced a range of legislative measures in this area. This was a follow-up to the social agenda (COM(2005)33). On this issue, the European Commission wants to present a concrete proposal for a directive to the Council in 2007. In the opinion of BDA, common rules for immigration are only acceptable if the principle of subsidiarity is maintained and European measures do not impinge on Member States' competences to determine for themselves the number of non-EU nationals they wish to allow onto their labour markets.

- ▶ BDA expects the German EU Council Presidency to ensure that the European Commission at the very least maintains the principle of subsidiarity when drawing up its proposal for economic migration. Its proposals must not impinge on the competence of Member States to determine for themselves the number of non-EU nationals they wish to allow onto their labour markets. An EU-wide work permit would be in conflict with this and would represent flagrant interference in the competence of Member States.