

## The 40th Anniversary of the Elysée Treaty

The Franco-German Jubilee as Catalyst for Bilateral Relations and European Policy

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**The occasion of the 40th anniversary of the Elysée Treaty on January 22, 2003 not only served as a symbolic representation of Franco-German reconciliation and cooperation. The governments in Paris and Berlin also used the event to renew their claim of cultivating a privileged relationship within the European Union. What concrete results did the Jubilee summit bring about? To what extent is a long-term political renewal of the Franco-German relationship to be expected beyond the celebrations? What is the added value for Europe of the two countries' most recent European policy initiatives? What risks does the further development of bilateral relations entail and what are the main hurdles to be overcome?**

If the 40th anniversary celebrations of the Elysée Treaty had not existed, they would have had to be invented, wrote *Le Monde*. The media coverage of the anniversary celebrations and its results was quite positive in both countries. Critical voices, such as those of former German Chancellor Helmut Schmidt and Günther Nonnenmacher, editor of the *Frankfurter Allgemeine Zeitung*, were the exception. As for Schmidt, he declared the Franco-German “engine” of European integration as just plain “dead.” Nonnenmacher for his part noted that the leading politicians of both countries had “neither shared memories nor a common vision of the future.”

In the run-up to the jubilee both states launched a battery of common initiatives:

- ▶ They decisively contributed to a successful outcome of the Brussels European Council in October 2002 with their

bilateral agreement on the unresolved financial issues of EU enlargement announced prior to the summit.

- ▶ Their common position on the procedure and schedule for beginning EU accession negotiations with Turkey was by and large reflected in the corresponding resolutions of the Copenhagen European Council.
- ▶ They continued the tradition of presenting coordinated position papers on EU constitutional reforms when they presented four joint contributions to the EU Constitutional Convention. The proposals dealt with European Security and Defense Policy (ESDP); strengthening Europe as an area of freedom, security and justice; economic governance; and the institutional structure of the EU.
- ▶ The “highlight” in this series of joint initiatives and contributions was the so-

called "Joint Declaration on the Occasion of the 40th Anniversary of the Elysée Treaty." This document sketches out a comprehensive program for intensifying bilateral cooperation between essentially all ministries. This is to be achieved through new forms of and institutions for cooperation.

In order to evaluate the importance and extent of these joint efforts to renew bilateral cooperation, one must first provide criteria for evaluation. To this end, the "Joint Declaration" and the "Franco-German Contribution on the Institutional Structure of the European Union," published just days prior to the anniversary, will be evaluated in this paper with regard to the following questions:

- ▶ What impact on the quality of bilateral relations are to be expected?
- ▶ What is the "added value" of these common proposals for European integration?

### **A Comprehensive Bilateral Program**

The most clearly visible progress was made in the area of direct bilateral relations. Following a decidedly difficult phase of relations between the two countries during the period of cohabitation in France and after the formation of a government in Germany, the contacts between the governments in the run-up to the treaty anniversary were considerably stepped-up. The joint summit declaration, with its comprehensive program for intensifying bilateral cooperation, raises the expectation that this process will be continued in the coming months.

The declaration aims at a nearly across the board deepening of cooperation in various policy areas and it affects almost all ministries of government. Virtually no area of state activity is left out, including: foreign and defense policy; economic and finance policy (including long-term reforms of the healthcare and social security systems as well as the labor market); cooperation in development and environmental policy;

research and technology policy; regional and interregional cooperation (for example, the creation of transborder "Eurodistricts," starting with Strasbourg/Kehl); the harmonization of law and legislation (civil law, in particular family law, and ethics); cultural and media policy; and youth, education and sport policies.

Although the declaration refers to the priority of certain areas of activity for bilateral cooperation, the very comprehensive agenda fails to establish clear priorities. In terms of bilateral cooperation, the experience and willingness of the affected ministries varies considerably. Depending on the policy area, there are great differences between both sides in the traditions, starting points, political priorities and preferred policy instruments. This makes the issue of how such a broadly defined action plan can be implemented all the more questionable. Without setting clear priorities and a schedule for intensifying bilateral cooperation, the impetus provided by the jubilee threatens to rapidly peter out into bureaucratic routine.

### **Institutional Renewal**

In order to ensure improved coordination and political direction of Franco-German cooperation, it was decided to transform the semi-annual government consultations into a Franco-German Ministerial Council and to establish a new office of Commissioner (Secretary-General) for Franco-German Cooperation. The joint Ministerial Council, in which all cabinet ministers are to participate, is expected to lend the summit meetings, which up to now were characterized by a great deal of diplomatic ceremony, a more sober working atmosphere. These joint cabinet meetings are expected to ensure more binding implementation of the joint decisions. The bilateral Ministerial Councils, which can also meet in a smaller format to deal with specific issues, will be prepared by the Foreign Ministers. Contacts at the ministerial level are to be intensified in the interest

of closer and more systematic coordination. This will also entail participation of the competent minister of one country in the cabinet meetings of the partner country, if the agenda lends itself to such cooperation or joint legislative initiatives are to be presented. At the top level, the informal “Blaesheim Process” of regular, monthly meetings of the heads of state and government and Foreign Ministers is to be institutionalized.

The Commissioners (Secretaries-General) for Franco-German Cooperation of both governments will be assisted by a deputy from the partner country. They are responsible for preparing the work of bilateral coordination bodies, especially that of the Ministerial Council in which they also participate. Moreover, they follow-up on the implementation of its decisions. France was able to push through its vision of positioning this new office at a high level, namely within the offices of the Federal Chancellor and the French Prime Minister, in order to ensure a maximum degree of top-down control. The work of the Commissioners will be supported by the foreign ministries. In a best case scenario, the concomitant ties to the offices of the Chancellor and Prime Minister and the foreign ministries could have synergetic effects. In Germany this could reduce the friction between two offices that are headed by different coalition partners. In less propitious circumstances, the new arrangement could be the source of competition between these two offices.

The Commissioners will take the place of the Coordinators, whose office has lost importance due to the choice of incumbents as well as to its work having been confined to bringing the civil societies closer to together. The new structure could truly be advantageous if:

- ▶ the position is filled on both sides by persons who ideally have both political as well as administrative experience;
- ▶ the Commissioners receive the requisite administrative support; the current support for the offices of the Coordinator

is insufficient for carrying out their coordinating function.

The Commissioners can be realistically expected above all to improve the flow of information within and between the two governments, especially in terms of providing an overview of the status, development and lapses in the implementation of joint projects and resolutions of the Council of Ministers. A public, annual report together with a parliamentary debate would give the incumbents the opportunity provide some political impetus. The Commissioners could also serve as a sort of early warning system within their governments, signifying when inter-ministerial coordination is necessary and seeking to identify potential conflicts of interest between their governments. While they are likely to be ill-equipped to handle the political aspects of such issues, they should, however, be in a position to pass on issues regarding bilateral relations needing attention to the Franco-German Council of Ministers. The expectation expressed in the joint declaration that the Commissioner (or “Secretary-General”) for Franco-German Cooperation will be able to coordinate “the process of moving of our two countries closer within the European bodies” seems unrealistic. Why should they be expected to be able to overcome obstacles that are the result of both the complex German European policy-making machinery and the structural differences in the decision-making systems on European policy of the two countries?

### **The European Added Value of Deepening Bilateral Cooperation**

According to the joint declaration, the two countries intend to “intensify in an exemplary fashion” their bilateral cooperation. Bilateral projects should “create a basis for European policies.” Conceivable projects include military cooperation, a common armaments policy or collaboration in civilian technology and research. The Franco-German Defense and Security

Council Declaration of January 22, announces concrete bilateral plans that would clearly represent added value for Europe. Thus, for example, the two countries are considering establishing a joint operational commando for directing interarmy operations. Another plan is to transform the Franco-German Brigade into a rapid reaction force. Finally, in the long-term a joint air force squadron is to be created on the basis of the A400M program.

A project of systematic deepening of bilateral cooperation as announced in the joint declaration necessarily raises the question of the function of such a program for integration policy. Should bilateral cooperation provide selected impetus for numerous European policies? Is there a plan to concentrate on a few areas of activity that are of strategic importance for the further development of the EU? Should cooperation serve to replace acting in concert with all EU member states? What is the relation between a deepening of bilateral integration and the EU legal system? Is in fact the goal of the planned intensification of cooperation to create a "Union within the Union," a sort of "core Europe" model? In a recent newspaper article (*Berliner Zeitung*, 17.1.1993, p. 7), EU Commissioners Pascal Lamy and Günter Verheugen called for just such a "Franco-German Union" to form the nucleus of a core Europe.

Of the possible paths mentioned here, it remains unclear which one will be taken to further develop bilateral cooperation and extend it to the European level. The sum of a number of projects for cooperation does not add up to a plan, let alone the "common vision for the Europe of tomorrow" proclaimed in the declaration. As Foreign Minister Fischer has done in earlier speeches, Jacques Chirac has placed a strengthening of cooperation within the context of creating a "pioneer group" and a "gravitational center" within the EU, without, however, bringing the contours of such a plan into sharper relief.

In the coming months it will be imperative to translate the series of non-binding and non-prioritized areas of cooperation – the "catalog of intentions" (*Le Figaro*) contained in the Joint Declaration – into a concrete and coherent action plan with clear priorities, realistic timetables and a more precise definition of the integrationist function of bilateral cooperation.

### **Proposals for the Institutional Structure of the EU**

Germany and France have once again demonstrated their ability to serve as a catalyst for European policy with their joint contribution to the work of the EU Constitutional Convention. In particular, the common initiative on the institutional architecture of the Union is likely to serve as a key point of reference for the decisive phase of the Convention's work.

At the heart of the heated debate this initiative has sparked is the idea of a "dual presidency." This proposal calls for the establishment of a new full-time President of the European Council to coexist with the President of the EU Commission, who is elected by the European Parliament. While this joint proposal was presented by both sides as a sort of synthesis between the supranational and intergovernmental schools of thought and European policy traditions, closer examination reveals that it is really an addition of diverging starting positions that leaves a lot of room for interpretation and for further development. The fact that the two core countries of the EU could find a compromise to overcome their differences on integration by agreeing on some key elements of a potential compromise raises the chance that a successful conclusion to the Convention can be reached.

But, to what extent do the proposals truly contribute to improving the EU's ability to act and to a balanced strengthening of its institutional triangle, the declared goal of the Franco-German reform efforts?

## The Capacity to Act and Lead

The key novelty of the joint proposal consists of the creation of a full-time President of the European Council, which would replace the current practice of a semi-annual rotation of the presidency. Without a doubt, this would improve the continuity and coherence of the European Council's work. It would eliminate the inefficiencies associated with the rapidly changing priorities of the successive presidencies. The European Council would be able to concentrate more on defining strategic priorities and their long-term oversight.

The European Council's ability to act and to provide overall political leadership would be improved. On the other hand, however, it would become more difficult to coordinate its work with that of the Council of Ministers with its diversity of compositions. According to the Franco-German proposal, the chairmanship of various formations of the Council of Ministers would no longer be in one single hand (the rotating Presidency), rather it would vary according to the formation of the Council. Institutionally defined chairmanships (such as the European Foreign Minister chairing the External Relations Council or the Secretary-General of the Council chairing the General Affairs Council) would coexist with elected Presidents (ECOFIN Council, Eurogroup Council, Justice and Home Affairs Council) or – as to date – rotating presidents in the purely legislative councils.

The intergovernmental aspects of the EU would be clearly strengthened if the President of the European Council were to give political direction to this complex council system in collaboration with the Secretary-General of the Council who, as Chair of the General Affairs Council, is capable of coordinating across the specialized Council formations..

The main criticism of the proposal for a "dual presidency" is that it would potentially create competition between the Presidents of the Commission and the European Council. One passage in the Franco-German proposal that gives pause for

thought assigns the European Council President not only with the standard responsibilities of a chairperson – such as preparation for meetings and chairing and organizing the proceedings of the European Council – but he or she is also expected to "ensure its decisions are carried out." How does this square with the Commission's duty up to now to translate strategic plans of the European Council into a executive and legislative program for the Union? This could lead to a considerable curtailment of the Commission's political leadership and right of initiative when combined with the multiannual strategic program of the European Council of heads of states and governments decided on at the Seville European Council in June 2002 and which is to be fleshed out by the Council in the form of an annual operating program of Council activities. The danger of creating a perennial institutional conflict is very real indeed if the delimitation of competencies is not clearly defined in the "job descriptions" of the European Council President and the Commission President. Still, not everything can be spelled out in detail in the text of a constitution. Much will depend on how the first incumbent of the new office interprets his or her role. The widespread skepticism and criticism of the proposal for a full-time European Council President at the Convention could be used by the German members of the Convention to their advantage. At the Convention, many participants are also interested in strengthening the position and executive role of the Commission and its President and want to clearly limit the power of the European Council presidency. A process of "intergovernmental drift" of the EU system could be prevented by building in the following guarantees:

- ▶ The responsibilities and functions of the European Council President as codified in the Treaty must be clearly delineated from those of the Commission and its President.
- ▶ The President of the European Council should not be allowed to build up a

bureaucratic apparatus larger than that of a small cabinet of personal collaborators. Otherwise, there is a chance of a “Battle of the Bureaucracies” breaking out. Moreover, in the long run, the Commission would end up subordinate to the European President and his or her apparatus, and it would be limited to purely administrative tasks.

- ▶ The Chair of the General Affairs Council should not be filled by the Secretary-General of the Council. Otherwise he or she would end up serving as a civil servant in a position subordinate to that of the President of the European Council.
- ▶ The Commission’s monopoly on the right of initiative in the “communitarized” area should be maintained and should remain untouched by any multiannual strategic program of the European Council.

The creation of the post of an European Foreign Minister by choosing one single, double hatted person to occupy the posts of the current High Representative and the Commissioner for External Affairs, as foreseen in the Franco-German proposal, would clearly represent progress in EU’s capacity to act. The Foreign Minister could be supported by a European diplomatic service, made up of the Commission’s foreign affairs directorate and a to-be-created foreign policy unit of the Council. A conflict of roles, however, could arise if, as proposed, the Foreign Minister has the formal power to initiate policy in the External Affairs and Defense Council and is at the same time responsible for bringing about compromises by virtue of his or her function as Chair of the very same Council.

What is decisive, however, is that decisions of the Common Foreign and Security Policy (CFSP) “are as a rule approved by qualified majority,” as long they have no implications for security or defense. The realization of this recommendation could present a true breakthrough by providing the EU with improved foreign policy capabilities, although obviously a common

foreign policy cannot be achieved simply by virtue of majority vote.

The reaction in Germany to the Franco-German proposal has been so focussed on the “dual presidency” that French concessions in the area of foreign policy have gone largely unnoticed. France accepted both the German “double hatting” proposal, whereby the offices of the High Representative and the Commissioner for External Affairs should be held by a single person, and the long-standing German demand for changes in the CSFP decision-making rules. While the delimitation of competencies of the European Council President, the EU Foreign Minister and the Commission still needs to be clarified, if the Franco-German proposals are realized, they are likely, at least in the long run, to bring about a partial shift in the overall responsibility for foreign policy from the national to the EU level.

### **Balanced Strengthening of the Institutional Triangle?**

An issue of central concern in terms of the acceptance of the Franco-German proposals for reforming the institutions is whether they would strengthen the components of the EU’s institutional triangle – the European Council plus the Council of Ministers, the European Parliament (EP) and the EU Commission – in equal measure. Taken on its own, the EU Commission and its President would definitely be strengthened. The latter would be elected by the EP and confirmed by the European Council, giving him or her greater legitimacy. The President would have more freedom to determine the size and constitution of his or her College and could structure it hierarchically. This could ensure the coherence and capacity to act of the Commission even in an expanded Union. Decisive, however, for determining the future position of the Commission is the still unclear arrangement of the “dual presidency.”

Largely at the behest of France, the Franco-German proposal tries to avoid

another potential danger for the position and role of the Commission, namely that of its work being “politicized” by making it dependent on a (simple) parliamentary majority. The EP is to elect the Commission President by qualified majority, although what constitutes a quorum remains open. This rule, combined with the European Council’s right of approval, guarantees a politically pluralistic Commission. A purely “left” or “right” Commission would surely fail to receive a qualified majority vote from either the Parliament or the European Council, not to mention from both of them. The requirement of double qualified majority seems more appropriate for guaranteeing the independence of the Commission and its role as guardian of the treaties and the embodiment of a common interest than electing the Commission President by a simple majority of MEPs.

In Germany, the option of “politicizing” the selection of the Commission President and the Commission’s work is often viewed favorably. This is expected to transform the relationship between the Commission and the Parliament along the lines of the parliamentary majoritarian democracy model. The proponents of such a development fail, however, to recognize that the need for consensus in the EU’s political system is much greater than in national political systems.

This sort of “politicization” of the Commission by tying it closely to a parliamentary majority might well lead to higher participation rates in European elections. At the same time, however, the position of the Commission and the EP in the decision making process of the EU would be weakened vis-a-vis the Council. For its part, the Commission rejects such a development for good reason.

The position of the European Parliament would be raised a notch by virtue of its increased role in choosing the Commission President. It is to share legislative power with the Council within the framework of the co-decision procedure. In terms of budgetary powers, the possibility of granting the Parliament the power to determine

revenues – that is to say to levy European taxes – is under consideration. At the same time, France has made no concessions in this regard in terms of budgetary powers of the EP on the expenditure side. The separation between obligatory and non-obligatory expenditures in the EU budget is clearly to be maintained. The EP will continue in the future to have no comprehensive say on the EU budget outlays, including agricultural expenditures. This represents a serious weakness in parliamentary control within the EU. To speak of a balanced strengthening of the individual parts of the EU’s institutional triangle makes little sense as long as the budgetary powers of the EP remain limited. But the power relations within the Convention suggest that a solution can be found that comes closer to meeting the vision and preferences of the German Convention members than what was outlined in the joint Franco-German proposal.

### **Risks for the Development of the Relationship**

The Franco-German proposal on the institutional structure of the EU leaves a lot of issues open regarding the concrete arrangement of relations between the European organs. It also leaves it up to the Convention to deal with these issues. This way of transferring issues unresolved on the bilateral level to European-level negotiations is not recommended for other issue areas.

This is above all the case for European agricultural policy. The compromise reached in October regarding the development of expenditures in the course of the Eastern enlargement surely made it much easier to reach a successful conclusion of the negotiations with the candidate countries. It also helped prevent a degradation of the EU’s image in the accession states. Another positive development was the agreement on ceilings for the development of agricultural expenditures. The Franco-German differences over the substance and

financing of European agricultural policy have, however, by no means been overcome. The first was revisited during the preparation of an EU position for the Doha Round of World Trade Organization (WTO) negotiations. The latter will come up again in 2005/2006 in the course of negotiations over the EU's new financial framework for the period from 2007 to 2013.

In order to avoid new strains on Franco-German relations due to this constellation of interests, it will be necessary to:

- ▶ carry out joint preparations for the Agenda 2007-negotiations very early on;
- ▶ place the developments of agricultural expenditures within the context of the development of total expenditures of the EU so that common priorities for shifting resources from agricultural to other more future-oriented policy areas (e.g. civilian and military research and technology policy) can be agreed upon. Only if France no longer perceives the reduction of agricultural expenditures, as desired by Germany, as a zero-sum game for them to lose and if they are able to see the prospects of benefiting from a comprehensive Franco-German (and European) deal, will French approval of anything more than cosmetic reform of agricultural policy be realistic.

A further great risk for the dynamism of Franco-German cooperation lies in the development of the Iraq conflict. The two countries might be led to adopt diverging positions and strategies on this conflict despite all the current efforts to maintain a common policy within the UN Security Council. The potential damage that such a divergence in interests and diplomatic strategy would have for creating a bilateral (not to mention European) foreign policy and for the chances of implementing the two countries' long-term goal of creating a European defense community is easy to see.

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