

Vysoká škola ekonomická v Praze
Recenzované studie

**Working Papers
Fakulty mezinárodních vztahů**

9/2008

**The Czech EU Council Presidency –
priorities in Justice and Home Affairs
issues**

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**Faculty of International Relations
Working Papers**

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Volume II



Vysoká škola ekonomická v Praze
Working Papers Fakulty mezinárodních vztahů
Výzkumný záměr MSM6138439909

Tato studie byla vypracována v rámci Výzkumného záměru Fakulty mezinárodních vztahů Vysoké školy ekonomické v Praze MSM6138439909 „Governance v kontextu globalizované ekonomiky a společnosti“. Studie procházejí recenzním řízením.

Název: Working Papers Fakulty mezinárodních vztahů
Četnost vydávání: Vychází minimálně desetkrát ročně
Vydavatel: Vysoká škola ekonomická v Praze
Nakladatelství Oeconomica
Náměstí Winstona Churchilla 4, 130 67 Praha 3, IČO: 61 38 43 99
Evidenční číslo MK ČR: E 17794
ISSN tištěné verze: 1802-6591
ISSN on-line verze: 1802-6583
ISBN tištěné verze:
Vedoucí projektu: Prof. Ing. Eva Cihelková, CSc.
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The Czech EU Council Presidency – priorities in the justice and home affairs matters

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Summary:

The Czech Republic will take on its EU Council Presidency on January 2009 for the first time. This paper focuses exclusively on the priorities of cooperation in JHA issues. It starts by discussing the functions of the Council Presidency, as well as the specific conditions under which the Czech Presidency will operate. The paper asks whether the published priorities reflect the national interests of the Czech Republic. Regarding the TRIO Presidency with France and Sweden, the formulation of the common priorities is examined both in consonant and in differing interests. The paper then tries to compare the priorities of the Slovenian and Czech Presidencies as the states share some similar characteristics.

Keywords: European Union, justice and home affairs, Czech presidency

České předsednictví Rady v Evropské unii – priority v oblasti justice a vnitřních věcí

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Abstrakt:

Česká republika se v lednu 2009 ujme poprvé předsednictví Rady EU. Tento článek se věnuje výhradně prioritám spolupráce v záležitostech justice a vnitra. V úvodu jsou formulovány funkce předsednictví Rady EU obecně a dále specifické podmínky, které mohou české předsednictví ovlivnit. Stat' si klade si otázku, zda priority v této oblasti reflektují národní zájmy České republiky. S ohledem na společné (TRIO) předsednictví s Francií a Švédskem se stat' věnuje i formulování společných priorit a hledá jak společné, tak rozdílné zájmy. Pokouší se také porovnat priority slovinského a českého předsednictví, neboť Slovinsko i Česká republika mají některé společné charakteristiky – jde o nové členské země patřící k malým členům, obě navíc drží své předsednictví poprvé.

Klíčová slova: Evropská unie, justice a vnitřní záležitosti, české předsednictví.

JEL: A00, B01, C01

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Introduction

The Czech Republic belongs among the group of New Member States of the European Union (EU). Thus, it had to adopt all Community Law [acquis communautaire] without the option of an opt-out, or the chance to promote its own position during the accession period. Nowadays, the Czech Republic is preparing its first Council Presidency, which is set to begin in January 2009. Does this state have specific priorities; is it ready to set a specific agenda reflecting its national interests?

This paper will not focus on the whole agenda but only on justice and home affairs (JHA) cooperation within the EU. I will examine whether the proposed agenda on JHA matters corresponds to Czech interests. Firstly, the Czech Republic is a small state in the middle of Europe, hence, it should have specific demands concerning security. Has it declared such demands in the list of priorities? Secondly, the Czech Republic has an interest in the free movement of persons – has this interest been reflected in its priorities? Moreover, since 2007 the so-called TRIO Presidency has been operating to guarantee the consistency of the three successive presidencies. The Czech Republic is preparing the TRIO Presidency together with Sweden and France. Have these three states found common ground in JHA matters? Will the Czech Republic be able to put across its own interests in both cooperation and competition with these two “co-presiding” states?

As the Czech EU Council Presidency is an upcoming event, more detailed literature dealing with this topic is rare. Besides the official declarations of the Czech government, there are several articles examining the preparations for the Czech Presidency (available at e.g. www.euroskop.cz or www.euractive.com) or the co-presidency (Tomalová 2007). Some of them also touch on JHA cooperation as one of the agenda under discussion, as well as the upcoming monograph (Karlás et al. 2008) including a chapter which discusses JHA matters exclusively (Šlosarčík 2008). Thus, this paper will complement the insights in the official declarations with the accessible papers, as well as interviews with the relevant politicians. Comparing Czech priorities in the JHA agenda with the existing Slovenian priorities; being both small and New Member States of the EU, can help to assess the ambitions of the Czech Presidency in JHA matters.

Firstly, I will focus on the institution of the Council Presidency, as the tasks of the Presidency, such as agenda setting etc., establish the framework of the negotiations within which the national teams function. I will mention the changes in this institution according to the Lisbon Treaty, because it may affect the Czech Presidency (in the case of its coming into force). Secondly, I will examine Czech priorities in JHA matters and I will ask whether the priorities reflect the Czech specifics. Comparing the Czech and Slovenian priorities (or

the TRIO Presidency consisting of Germany, Slovenia and Portugal, respectively) in the same issues can be helpful in assessing the continuity as well as Czech gains there. Thirdly, I will look at the role played by the TRIO Presidency in the achievement of the common aims in the JHA area. I seek to identify the Czech contribution to the setting of the broader agenda.

1. What is the EU Council Presidency; and what are the specifics of the Czech Presidency

According to the current system, the Presidency of the EU Council rotates every six months (January – June, July – December) when one of the Member States takes over the Presidency. This state becomes the “face and voice” of the EU; it speaks on behalf of all the Member States. The order of the presiding states has been scheduled by the European Council,¹ and the Czech Republic will preside over the EU Council during the period of January – June 2009 for the first time. What are the tasks of the Presidency, for which the Czech Republic should be prepared?

In the first place, the presiding country chairs all the Council meetings, as well as all the Heads of State or Government meetings. It means that the Prime Minister of the presiding country chairs the European Council meetings, while its ministers chair the corresponding meetings of the relevant Council formations (e.g. the interior minister chairs the Justice and Home Affairs Council). Thus, the EU Council Presidency will carry out all EU executive administrative tasks while having political responsibility during the six-month period.

The main tasks of the Presidency are as follows (*What is the EU Council Presidency?* 2008: 1):

- Organizing and chairing all meetings of the European Council, the Council of the EU and its preparatory committees and working groups;
- Representing the Council in its dealings with other EU institutions and bodies, such as the Commission and the European Parliament;
- Representing the EU in international organizations and in relations with countries outside the EU.

The presiding member state acts not only as a mediator during negotiations, and as support for formerly initiated developments, but can also introduce, and publicise, its own vision and priorities for the development of European

¹ See: schedule of presidencies at e.g. <http://www.euroskop.cz/47627/120299/clanek> or the Decision of the Council of the European Union on 1 January 2007 determining the order in which the office of President of the Council will be held at <http://www.euroskop.cz/admin/gallery/25/629989c8e038c00ffb8a1333e036829f.pdf>

integration. That is why the formulation of national priorities attracts great attention, not only within the Member State itself, but also within the whole EU. Hence, the national priorities are submitted to the EU Council and the European Parliament at the very beginning of the period of presidency.

Since 2007, a slightly modified rotating presidency system came into operation consisting of the so-called TRIO Presidency. This means a joint eighteen-month presidency of three successive presidencies so as to ensure more consistency in the development of the EU.² Moreover, not only does the individual Presidency draft the programme of priorities, but also the joint TRIO Presidency submits the list of common priorities for one and half years. The first TRIO Presidency consisted of Germany, Portugal and Slovenia (2007 – 2008); the second consists of France, the Czech Republic and Sweden (2008 – 2009).

The Czech Presidency will come into force within the period of the expected ratification of the Lisbon Treaty (signed on December 2007) which could come into force – provided the ratification process is successful – in January 2009. This could bring changes to the Presidency's performance as "according to the new treaty, the presidency is supposed to be, rather, a mere administrative function" (Hruška – Havel 2008) and the 'real' politics should be the responsibility, first and foremost, of the High Representative for the Common Foreign and Security Policy and the President of the European Council.

Nevertheless, the Czech Republic's Presidency preparations should, in any case, take into consideration three possible scenarios relating to the ratification of the Lisbon Treaty – the Treaty will enter into force just at the beginning of the Presidency; the Treaty's ratification will be delayed; the Treaty will be rejected before or during the Czech Presidency (Braun 2008: 1). The latter scenario is the worst, because efforts to overcome the looming crisis would overshadow almost all of the proposed priorities.

The other two scenarios would not be so bad for the Czech Presidency as the new institutional structures would probably not commence operations immediately after the Treaty enters into force. Presumably, the personnel postings will be affected after the European Parliamentary elections, i.e. after June 2009. Furthermore, completion of the ratification within one year is not very probable in the EU, so, the second scenario (i.e. delay of the ratification) is the likeliest possibility. In any case, the Czech Deputy Prime Minister for

² In September 2006 the Council of the European Union laid down the following in its amended Rules of Procedure: "Every 18 months, the three Presidencies due to hold office shall prepare, in close cooperation with the Commission, and after appropriate consultations, a draft programme of Council activities for that period." (http://www.eu2008.si/en/The_Council_Presidency/trio/index.html)

European Affairs Alexandr Vondra³ assures us that “we will be prepared for all eventualities” (Hruška – Havel 2008)

In any case, the Czech Presidency will take place under specific conditions that could influence the quality and speed of negotiations (*Evropská unie a Schengen. Předsednictví v Radě EU* 2007):

end of the legislative cycle – the European Parliament will operate probably only till March or April because of the elections taking place in May or June; thus, the bulk of legislative work should be done during first three or four months of the Czech Presidency⁴;

small states and their first Presidency – countries holding their first Presidency usually have good reputations; moreover, small states tend not to pursue national interests but general consensus instead;

Spring Presidency – is longer than the Autumn Presidency;⁵ nevertheless, this comparative advantage will be lost by virtue of the European Parliament elections;

expecting the entry of the Lisbon Treaty into force – the Lisbon Treaty will make it easier to reach agreement among Member States by reinforcing the competences of the Commission and by using Community legislation (during the first half of 2009 it may both accelerate and decelerate the legislative process).⁶

All these specifics should be taken into consideration during the preparation period that began in 2006 and which is currently nearing completion.

2. The Czech priorities in the area of justice and home affairs

The Czech Republic is a New Member State of the EU belonging to the group of small states that is placed within the Schengen Area. Such basic characteristics could help to assess relevant Czech interests in the JHA field, as no official manifestation has been made. There are several interests that seem to be supported across the political scene⁷:

³ He is the person responsible for the coordination of the Presidency preparations.

⁴ A very similar situation exists with the European Commission, which will be engaged in the search for a new president and so will not submit many new legislative proposals.

⁵ Due to the European institutions' holidays during August.

⁶ A decelerating effect would be caused by future expectations of a smoother course of dealing if the Lisbon Treaty does not enter force by January 2009, while an accelerating effect would be the result of the Lisbon Treaty entering force by January 2009 (and legislative proposals which do not reach consensus now, would be pushed through with greater intensity). See Šlosarčík 2008: 104 – 105.

⁷ For the formulation of Czech interests in the political debates see Šlosarčík 2008: 107 – 1111.

immigration policy (with regard to the Czech preference for the region of Eastern Europe and the Balkans), equality among Old and New Member States (especially concerning the transition period for the free movement of workers and the visa policy – both the effort to abolish the asymmetrical visa regime with the U.S. and the helpful attitude towards the region of Eastern Europe and the Balkans).

The Czech Republic has chosen „Europe Without Barriers“ as the motto of its Presidency, promoting the idea of liberalism and freedom. The Concept for the Communication and Presentation of the Czech Republic’s Presidency of the Council of the EU was adopted in 2007⁸. The message area of the Czech Presidency converges around the issues of competitive strength, the four freedoms and a liberal trade policy (*Evropa bez bariér 2007*). This paper focuses exclusively on the issues of JHA that are also supported by the majority of the Czech population as the main priority for the Czech EU Presidency.⁹

2.1 Have the national interests been reflected in the priorities?

The issue of internal security, i.e. the focal point of the JHA agenda, is one of the most dynamic issues within the EU’s development, as approximately 40% of the Council’s activities fall within the range of JHA (Šlosarčík 2008: 102). The Czech Presidency reflects this trend and gives priority to the following spheres of interest (*Priority Areas of the Czech Republic’s Presidency... 2007*):

- policy on asylum and migration;
- Schengen cooperation;
- cooperation in criminal justice matters;
- civil justice cooperation.

Generally, EU development in the JHA area does not leave wide scope for any innovations in this field during the Presidency. The European Council has been publishing a multi-annual programme since 1999¹⁰ containing a framework concept of mutual cooperation on JHA issues that present the basis for specific activities within a given period. Thus, Czech priorities in the area of JHA consist, more or less, of inherited agenda, and the main task of the Czech

⁸ For more info see <http://www.euroskop.cz/admin/gallery/35/dd8012f514faff67bde1e38fd04b57c0.pdf>

⁹ “More than 30 percent of Czechs view the enhancement of freedom, safety and rule of law as the main priority for the Czech EU Presidency, in the first half of 2009, according to a poll ...” (*Czechs view freedom as priority for Czech EU presidency – poll*(2008. České noviny.cz, zpravodajský server ČTK. Available from: http://www.ceskenoviny.cz/index_view.php?id=288478).

¹⁰ The first Programme was adopted in Tampere (“Towards a Union of Freedom, Security and Justice: The Tampere Milestones, 1999) for a period of five years.

Presidency is to complete the provisions of the Hague Programme. The Hague Programme was accepted in 2004 for the following five year period, hence, during 2009 the implementation process should be accomplished and a new multi-annual programme should be introduced as well. However, the negotiation and introduction of the new programme will rest mainly on the successive Swedish presidency.

Consequently, the main task of the Czech Presidency remains the completion of the Hague Programme. The political pressure to finish the planned activities will be high. There is much to do, particularly in the field of the policy on asylum and migration, especially in finalizing the common asylum procedures and discussing controlled migration. There are several instruments that should be implemented during the time of the Czech Presidency, e.g. the legal instruments under the Policy Plan on Legal Migration and the Policy Priorities Against Illegal Immigration (*Priority Areas of the Czech Republic's Presidency of the Council of the European Union ... 2007*). The burning issue of the integration of foreign nationals from third countries will be discussed as well.

In the area of Schengen cooperation, the Czech Presidency will monitor Romanian and Bulgarian preparations for full membership in the Schengen Area. In addition to this, the supervision of the reform of the Schengen Information System (SIS II) will fall within the competence of the Presidency.

Cooperation in criminal matters will remain the intensification of mutual cooperation in the fight against actual threats (e.g. organized crime, drug trafficking, terrorism, cyber threats etc.) by the application of practical instruments. Examples of these instruments are, for instance, the implementation of the Prüm Treaty¹¹, the creation of an electronic network of national judicial records etc.

The Czech Republic is prepared to draw attention to, during its Presidency some issues relevant from the point of view of national interests, such as the transitional period for the free movement of workers, obstacles to the four freedoms etc.¹² However, in the field of JHA there are no exclusively national interests which the Czech Republic would promote, and it is, rather, prepared to mediate in favour of deeper mutual cooperation. Czech interests in JHA matters

¹¹ The Prüm Treaty was signed by seven EU member states on 27 May 2005. The objective of the Treaty is to “further the development of European cooperation, to play a pioneering role in establishing the highest possible standard of cooperation, especially, by means of the exchange of information, particularly in combating terrorism, cross-border crime and illegal migration, while leaving participation in such cooperation open to all other Member States of the European Union” (Preamble of the Prüm Treaty, <http://register-consilium.europa.eu/...900.en05-.pdf>)

¹² See more in *Priority Areas of the Czech Republic's Presidency of the Council of the European Union in the First Half of 2009 (2007)*, p. 2 and Šlosarčík (2008): 107-111.

have a mainly reactive character with the country making an effort to manage what is “unavoidable” (Šlosarčík 2008: 115).

2.2 Comparison with Slovenian priorities in JHA matters

Slovenia shares some characteristics with the Czech Republic – it is a new and small Member State of the EU and it holds its first Presidency. Thus, comparing these two countries could indicate their ambitions, or according to the characteristics of the Presidency, rather, the scope to which they are able to enforce national interests.

Slovenia currently holds the Presidency (January – June 2008), and strengthening the areas of freedom, security and justice belongs among the Slovenian priorities under discussion.¹³ Slovenia’s specific priorities in the JHA area cover (*Slovenian Presidency Programme* 2007):

- strengthening the Schengen Area;
- common asylum and immigration policy;
- enhancing police cooperation and information exchange;
- combatting international terrorism;
- external dimension of JHA;
- better access to justice and legal certainty;
- mutual trust and closer cooperation in criminal matters.

Slovenia takes care of the Schengen Information System reform¹⁴ and it will also put in place the evaluation of Switzerland’s preparations for Schengen Area access. Concerning police cooperation, Slovenia will settle the conditions for the transposition of the Prüm Treaty into Community Legislation. At the top of the agenda of the Slovenian Presidency, there will be a discussion about the future of the integrated management of the EU external border (*Slovenian Presidency of the EU 2008* 2007).

It is evident that the Slovenian agenda is conditioned by both external and internal influences as well, and is largely given by previous developments in JHA matters. The proclaimed priorities respond to the Union’s needs and actual threats facing it. Therefore, the agenda is to a great extent also “inherited” as in the case of the Czech Republic.

¹³ For more info about the Programme in the Area of Justice and Home Affairs see http://www.eu2008.si/includes/Downloads/Policy_Areas/BRO__URA_SLO_ANGL_FRA.pdf

¹⁴ The current system operates under so called SISone4all basis. The planned reform on the SIS II will include broader categories registering into the system, biometrics and data access for more authorities.

3. The priorities of the TRIO Presidency in justice and home affairs

The Czech Republic shares the TRIO Presidency with Sweden and France. Negotiations on their common priorities started on September 2007 and should be completed by June 2008; the common Presidency will assess the EU agenda in the period from July 2008 to December 2009. Consultations held to date, have shown that general agreement on common aims is attainable. The agreed upon agenda on JHA by the TRIO Presidency will probably stress that finalization of the implementation of the Hague Programme will be one of the key tasks, however, not at all costs (*Strategic Framework* 2007). Concerning illegal migration into the EU, the three Presidencies have settled at present on the need to evaluate the current situation and examine the Member States' needs (e.g. FRONTEX actions, Community measures to be adopted etc.). There are other possible specific areas of interest according to the text of Strategic Framework (2007):

- visa policy, borders and the Schengen Area;
- integration and intercultural dialogue;
- fighting trafficking in human beings;
- fighting terrorism;
- fighting drugs;
- police and customs cooperation;
- exchange of information;
- strengthening civil rights – increasing legal certainty for citizens and the business sector;
- strengthening the justice system and practical cooperation;
- civil protection.

Furthermore, the achievement of full visa reciprocity between all EU Member States and third countries could be of special importance especially for the Czech Republic. It is not easy to estimate the influence of this issue over the TRIO Presidency, and the extent to which the Czech Republic is willing to push the visa agenda through in the situation when the other co-presiding states do not share the same problem.

The Czech Republic has declared that it shall make every effort to achieve most of its priorities, and it seems that all the five key areas¹⁵ will be supported by

¹⁵ · Safe and sustainable energy;
· The Budget Review and reform of the Common Agricultural Policy;
· Transatlantic relations, Western Balkans, Eastern Neighbours;
· Further development of the areas of freedom, security and justice;
· Institutions and their reform, election of the President of the European Commission and the High Representative for Common Foreign and Security Policy (*Evropa bez bariér. Východiska k prioritám předsednictví České republiky v Radě EU v prvním pololetí 2009* (2007)).

France and Sweden in general. Nevertheless, some controversy may appear as well. Looking at the specific area of JHA, some points of difference may arise around the Czech idea of “Europe without barriers”, representing liberalism which could clash with French protectionism. French president, Nicolas Sarkozy, highlighted three major political priorities for the French Presidency – Energy, the Environment and Immigration. Immigration issues had been at the forefront of the recent presidential election campaign, and Sarkozy had alluded to a more 'protective' Europe (*France outlines EU Presidency priorities* 2007).

France will aim to foster a European pact on global and coordinated management of migration, highlighting the selective approach to immigrants as a principle at present (*The Czech Republic behind ...* 2007). Thus, any potential disputes might, at first, concern common EU immigration policy which seems to be one of the French priorities. However, the Czech vice-premier and minister for European affairs thinks that “... the French proposal could be in line with our interest in keeping the EU doors open.” (*Vondra: “Europe without barriers” top priority for Czech Presidency* 2008).

It does not seem that similar contradictions will appear in the case of Sweden, which will not promote any specific issues in the JHA area, as it will target, in the first place, the Hague programme, which will be renegotiated during the Swedish Presidency. The key priority of the Swedish Presidency will be concluding the post-Hague programme successfully. Fighting cross-border organized crime, and asylum and migration issues (*The Czech Republic behind ...* 2007) will be further areas of interest. Sweden will focus, for instance, on the fight against illegal immigration, but will try to avoid building closed walls along the borders of Europe at the same time (Malström 2008).

Furthermore, the three joint Presidencies will have slightly different territorial preferences – France is oriented on the Mediterranean, Sweden on the Baltic region and the Czech Republic concentrates on the Balkan region (Tomalová 2007: 4). This diversity in territorial engagement might affect some economic-security relations, but it need not necessarily have a negative impact; on the contrary, it may contribute to more complex examinations of the external relations.

Conclusion

The JHA agenda has been a fixed star for the current Presidencies of the EU, and the Czech Presidency will not be an exception to this tradition, nor will the common TRIO Presidency (the Czech Republic, France and Sweden). JHA issues stand traditionally high on the list of programme priorities, accenting the actual needs, and threats to, (terrorism, organized crime, immigration etc.) the Union.

Even though the Presidency programme is more or less set by both internal (within the EU) and external influences, almost every presiding country tries to attach its own image to the half a year Presidency. The Czech Republic has come up with the “Europe without Barriers” motto and promotes liberalism, however, it seems that the Czech Republic stresses no specific – i.e. national – interests in the area of JHA. Some would expect visa policy to be one of the top priorities, but still it is not the case; probably because the Czech Republic decided to act on its own, without strong EU backing. Nor is immigration the focal point of the Czech priorities, as the Czech Republic is more a transit than a target country. Finalization of the Hague Programme provisions is the main objective, but it would be in any case, regardless of which Member State is the presiding country.

Looking at the TRIO Presidency, general agreement on JHA priorities is emerging; however, some points of difference are becoming visible by virtue of French priorities in immigration. The potential cause of dispute concerns the “clash of ideas” – Czech liberalism against French protectionism. Nevertheless, such disputes are useful as they reflect the will to reach agreement in a small-scale.

The institution of Presidency can be compared to driving a train with a given track; the only thing you can influence - and even then only to a certain extent - is the speed of the train. And even this influence is dependent on the passengers of the train, i.e. the Member States.

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Vydavatel: Vysoká škola ekonomická v Praze
Nakladatelství Oeconomica

Tisk: Vysoká škola ekonomická v Praze
Nakladatelství Oeconomica

Tato publikace neprošla redakční ani jazykovou úpravou

ISSN 1802-6591