NEW LABOUR, NEW EUROPE?

ANNUNZIATA REES-MOGG

&

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A Vital British Business – Getting legislation and democracy right for Britain and British business

by Bill Cash, MP

Was it a coincidence? On the day that Peter Mandelson took up his new Euro-propagandist job as Trade Commissioner, surprise, surprise, the relentlessly Europhile Director-General of the CBI, Digby Jones, attacked MPs for being "asleep on the job" when it comes to scrutinising European legislation.

Like many aspects of the European question, the issue of guarding against damaging EU regulations is shrouded in nonsense and misunderstanding. Mr Jones's criticisms are a red herring.

In 1986, at the time of the debate about the Single European Act, I wrote an article for The Times. This led to a whole series of articles I wrote for them over the ensuing years on the European issue. In the initial article – drawing on my experience as a former legal adviser to the CBI in private practice – I urged trade associations to prepare for the coming deluge of European legislation by improving their vigilance and their standard of scrutiny. It is a primary part of their task as a chartered body to monitor all legislative proposals and make practical representations to Parliament about the impact on business. So how often has the CBI lobbied the Commons Scrutiny Committee, on which I have sat since 1985? I fear none.

This year I wrote a pamphlet with Bill Jamieson called The Strangulation of Britain and British Business for the European Foundation. I sent a copy to Mr Jones urging the CBI to communicate with the European Scrutiny Committee. No reply. In the pamphlet I drew attention to the fact that according to a survey by the ever-vigilant British Chambers of Commerce the costs of red tape in the UK since 1997 had spiralled to £30 billion. I showed that "of the red tape burdens every one of the top six was European in origin, with a combined cost of £23 billion." I pointed out that a recent poll had alarmingly indicated that only 9 per cent of the public thought that 'Europe' affected their daily lives and that this was because there was a reluctance to explain how it did affect us – for fear of being branded anti-European. The failure of the CBI to make representations to our committee about European legislation seems, to some extent, to be due to fear of such accusations – and in part that they have not been on the ball.

Every piece of European legislation goes before the Commons Scrutiny Committee before it is voted on in the Council of Ministers; every week the Committee reports on them to the House. This session there have been 1,080 proposals.

The Committee decides whether to recommend such legislation for debate in the Commons; before doing so, it could reasonably expect to hear from the CBI and/or other interest groups as to the impact on business. If a debate is recommended then British ministers are not allowed to vote on the matter in the Council of Ministers until that debate has taken place. There is, therefore, ample opportunity for trade associations, such as the CBI, to give their input to MPs before a decision is made by the Council. Yet Mr Jones says we should act "early on", "pay attention to Brussels legislation" and so on. We do – so why doesn't he?

The weakness of the system does not lie in the 'sleepiness' of backbench MPs. Indeed, we have voted to sit in public but the Government refuses to change the procedure. Alas, when the Scrutiny Committee calls for a debate on the floor of the House, this is invariably refused by ministers. If and when amendments are passed in the European Standing Committee, the Government then reverses them with its heavily whipped majority in the Commons. And the European Scrutiny Committee takes evidence from senior Cabinet Ministers such as Gordon Brown, Jack Straw, Patricia Hewitt and others. It publishes several reports on the scrutiny process and on democracy and accountability in the UK Parliament in relation to the European Union on which it has taken expert evidence.

The Scrutiny Committee's second weakness is hardly its fault. It comes down to who calls the shots and now to the European Constitution as well – with which readers of the European Journal and my recent pamphlets are familiar. The Government's proposed reforms and the European Regulatory Initiative will scarcely improve things. Power has leached away from Westminster so that MPs are prevented from stopping the burdensome legislation that affects business. The situation will worsen if the European Constitution, which gives massive new powers to the EU and to the European Court of Justice, is ratified. The Constitution would give primacy to the EU over UK laws, the UK Parliament, our courts and our Constitution.

What is needed to restore real parliamentary scrutiny is a radical new statute. My Sovereignty of Parliament Bill would allow for all legislation, including that of European origin, to be re-examined. It would authorise the repeal or amendment of obsolete and unproductive laws. The Bill would require British judges to give effect to British laws, passed by the voters' elected representatives, even if they were inconsistent or conflicted with European laws and treaties and the rulings of the Court of Justice.

If Mr Jones is concerned about stopping new European laws – which are marching the British economy "valiantly towards the '70s" – rather than avoiding the issue of where power lies, he should support this Bill and the CBI should oppose the European Constitution in principle in the referendum.

Note: Copies of the above mentioned pamphlets The Strangulation of Britain and British Business and The European Constitution: a Political Time-bomb – Returning Real Power to Britain, Westminster and You are available free on www.europeanfoundation.org or hard copies can be obtained from our offices at a cost of £2.50 each (inc. postage). Please make cheques payable to The European Foundation and send to The European Foundation, Fifth Floor, Silver City House, 62 Brompton Road, London, SW3 1BW.

This article is based on an article by Bill Cash published in The Times on 25 August 2004.

Bill Cash is Conservative Member of Parliament for Stone and Chairman of the European Foundation.
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I n the June/July edition of The European Journal, I wrote a piece urging the Conservative Party to take a more robust line on the EU. As an illustration of the mixed messages that I felt had damaged our June Euro-election campaign, I discussed the Tory MEPs’ relationship with the federalist European Peoples’ Party (Christian Democrats) in the European Parliament.

This relationship has been a contentious matter for at least five years and I was commenting on the so-called ‘new deal’ negotiated with the EPP by Michael Ancram and others earlier this year.

By an unfortunate coincidence, while that issue of the Journal was actually at the printers, another round of negotiation took place, which resulted in a new ‘Dear Colleagues’ letter from Michael Howard during the week commencing 12 July. This letter significantly toughened our stance.

A number of colleagues and I had been doubtful whether we should re-join the EPP-ED group for the new parliament, but following Michael Howard’s clarification, we felt able to do so.

A number of colleagues and I had been doubtful whether we should re-join the EPP-ED group for the new parliament, but following Michael Howard’s clarification, we felt able to do so.

We now have agreement that the ED (the ‘European Democrats’ wing of the EPP-ED parliamentary group) will have a real and substantive existence. Previously it was little more than a cosmetic fig-leaf, with no real substance at all – simply a name on a letterhead.

The new ED will have its own, separate meetings, constitution, policy statements and officers. We are promised it will have ‘sufficient resources’.

This is a major step forward and I strongly commend Michael Howard for insisting that the ED should have a real and distinct existence, giving us for the first time a platform from which to promote a centre-right, Eurorealist programme in the EU Parliament.

We have already notched up significant successes. For five years, the virtual ED consisted of British Conservatives alone. Already in the new Parliament we have signed up the Czech ODS (nine members) as well as two members from Portugal and an Italian. We are hopeful that other Eurorealist MEPs will feel able to join us as we demonstrate our distinct ED stance. The Polish Justice and Law Party would be particularly welcome.

Nevertheless, there is much more to do – we have no laurels to rest on so far. Michael Howard’s letter promises “sufficient resources”. This needs clarification. One of our biggest problems with the EPP has been their stranglehold on both staffing and funding, with around half of ‘our’ funds diverted to the EPP to promote their federalist agenda. We will be pressing for clarification on independent staffing and funding for the ED.

We also need to watch like hawks to ensure that the EPP’s new “respect for our distinct positions on institutional and constitutional matters” – enshrined in the recent EPP-ED rule change – is delivered in practice. Early signs are not good.

The EPP’s ‘Budapest Declaration’, following a conference in the city during the week of 5 July, was issued in the name of the whole EPP-ED group, with no exception for the ED, and absolutely no reference to our distinct policy positions. And it reiterated all the old EPP nonsense – support for ‘ever closer union’, for the Constitution, for the European social model. We may have assurances in the rules promising respect for our distinctive views, but those assurances have clearly not reached the hearts and minds of the EPP-ED leadership.

Nevertheless, we have a basis we believe we can work with. And there is a great prize in view. With a couple more nationalities represented, the ED would meet the parliamentary criteria for a totally independent group. Even if we were never to exercise that option, and disengage entirely from the EPP, the possibility of it would clarify the mind of the EPP wonderfully and hugely strengthen our negotiating position in any dispute that might arise. And if we did eventually bite the bullet, we should find that we had created a lifeboat, which could be floated off independently and could become a powerhouse for Conservative policy in the Parliament and in the EU generally.

None of this will work, however, unless we have a Conservative policy on the EU that chimes with the views of party members and, indeed, of the public. Which brings me back to the main point of my original article. We must learn the lessons of the Euro-election and understand the success of UKIP. Party members, and the public, are crying out for an EU policy based solely on free trade and voluntary cooperation. This is what the Conservative Party must now recognise and deliver.

Roger Helmer is a Conservative MEP for the East Midlands and a member of the European Foundation’s UK Advisory Board.
As Mandelson heads off to Brussels, to join the runaway gravy-train, two opposing camps in the UK celebrate. There are those who, like Gordon Brown, are just glad to see the back of him. Then there are some Eurosceptics, who think that Mandy embodies everything negative about the EU and therefore see him as the ideal antidote to pro-European sentiments over here. It has also been one of the best stories to hit the Westminster rumour-monger group for quite some time. Why? What? How? To all intents and purposes, it seems like a move that the Prime Minister would have to be mad to make.

Peter Mandelson is supposedly the UK’s least trusted politician. Twice he has left the Cabinet in disgrace – the first man to ever achieve such an accolade.

Peter Mandelson is supposedly the UK’s least trusted politician. Twice he has left the Cabinet in disgrace – the first man to ever achieve such an accolade. He is known to be an astute political manoeuvrer but that does not mean that he has the ability to win the trust of the ‘man on the Clapham omnibus’. He is described as ‘smarmy’, ‘calculating’, ‘dishonorable’ and ‘sly’. He scores highly on name recognition but his popularity rating is abysmal. Despite his shortcomings, he has remained at all times one of Blair’s closest confidents.

Blair has proved himself to be a savvy, if not ideal, Prime Minister. In order to manage this he has had to work his way to the top, making character assessments the whole way up the ladder. Of all people he ought to be capable of judging his friend’s competence for the job. And yet, all his enemies appear to think he has played into their hands. After ten years as leader of New Labour, seven years as Prime Minister and with two general election landslides under his belt, no one could call him ineffective or inexperienced. He has made thousands of pressurised decisions, some popular, others not, but he is still there, still leading a party that was once seen as unelectable. Mandy was the main architect of the New Labour transformation.

As Blair’s ‘little helper’ Mandelson engineered taking the Labour image from despondent and out-dated to optimistic and forward-looking. He built the found-

Those of us who oppose the European Constitution should not run to whoop for joy at Mandy going to Brussels.

It has been reported that some Eurosceptics believe that by sending Mandy to Brussels the No Constitution campaign will win an extra two million votes. This is complacent, arrogant and wrong. Yes, Mandelson is as unpopular as you get in British politics but he is around because he is effective. Blair is genuinely in favour of the furthering of the European project; he would not have risked a high-profile pre-general election by-election unless he
thought it would reap rewards elsewhere. Mandy is not the only astute political operator; Blair is not too naïve himself.

The moment he arrived in Brussels Mandy grabbed the headlines and his propaganda began. He announced he would be the great reformer of the EU, increasing accountability and transparency and that if the British voted ‘No’ in a referendum the European ‘project’ would go on regardless (something he contradicted within twelve hours). Whilst the rest of the British politicians enjoy their summer holidays and the press carries on with silly season stories, Mandelson has been in the news every day. The most recent update on his activities is that he is learning French – oh, and he is turning his back on spin in order to help the world’s poor. He has only been in Brussels for less than a week and he already wants us to believe that it is where prosperity is created and that we should all love it. Even the Eurosceptic press is falling for these stories. The Daily Telegraph tells us that we are winning the battle against the French by getting more officials in high places; the Daily Mail suggests that Europe is becoming more democratic as Germany

When he says “It is not my prime responsibility to change UK public opinion,” he means that it is only his unofficial priority. Leopards don’t change their spots by crossing the Channel.

considers a referendum on the Constitution. These stories are coming from somewhere and it is odds on that such positive angles are being provided by someone at the heart of the project. A man who understands spin. A man that knows how to appeal to the hearts of the British electorate. A man called Mandelson.

When he says “It is not my prime responsibility to change UK public opinion,” he means that it is only his unofficial priority. Leopards don’t change their spots by crossing the Channel.

Neither Blair nor Mandelson is stupid. They are very aware of what they are doing and why. Mandelson is in Brussels to promote the European ideals they both believe in. With a referendum coming up Blair needed his closest ally strategically placed – he now has that. Whilst Mandelson may be hated it does not seem to prevent him from making sure other things are seen in the best light. He will do this for Europe. He is a formidable enemy not to be underrated.

Anunziata Rees-Mogg is editor of the European Journal.
The Common Fisheries Policy is a joke – a cruel joke. That was what Struan Stevenson MEP and I were told by the fishermen of Iceland when we visited their country recently. They had nothing but contempt for a system that had driven British industry into penury and caused a widespread collapse of stocks.

This opinion was shared by officials who manage the Icelandic fisheries and even leading bankers on the island. One, who invests worldwide in successful fishing industries, has made it company policy not to invest in any fishing business in Russia or the EU because of arbitrary political decisions.

The Icelandic Fisheries Ministry explained that its core objective is to ensure that fishing is not a burden on the economy, but must contribute to it. They have certainly succeeded in doing that. Fisheries now accounts for 10% of Iceland’s GDP. It employs 5000 marine fishermen and another 5000 ancillary workers and processors onshore.

As to the industry itself, its prosperity is obvious. There were modern, well-equipped trawlers tied up in the fish docks in Reykjavik, and modern fish processing plants. Prosperity was something the industry shared with the Faroes, which I visited earlier this year. Yet, in a country of 293,000 people that claims ownership of 260,000 mobile phones, the fisheries system could not be more different.

While the Faroes rely on effort control – with days at sea – the Icelanders dismiss this idea. They rely on an annual TAC and Individual Transferable Quotas (ITQs). Quotas can be bought and sold between fishing companies, none of whom are allowed to own more than 12% of the total quota.

This has seen the consolidation of the industry, which is now owned by around a dozen major companies. However, because the fishermen themselves own the resource – the fish stocks – there is no landing of ‘black fish’, very little discarding and a general drive towards a fully sustainable fishery, where no more than a quarter of any stock can be fished in a single year.

Although different in that respect from the Faroes, it is also successful. Cod stocks have fluctuated between 1.5 and 2.5 million tons over the last decades and catches are lower than in the heady days of the 1980s when stocks of 1.2 million tons were recorded. But they have clawed back from the disastrous ‘90s, when they dropped to 600,000 tons, currently restored to a healthy 8-900,000 tons, allowing landings of over 200,000 tons. Total catches of all species amount to some 2 million tons. Skippers and senior crew bringing home earnings of €100,000 a year are not abnormal. To achieve this, their system has commonalities with the Faroes – not least national control. Not only are discards banned, there is a premium on getting rapid, accurate information from the fishery, fast decision-making and very rapid implementation.

With TACs calculated annually, allowing vessel quotas to be allocated (with specific quotas reserved for small vessels), the significant difference between the Icelandic system and the EU is the information flow. While the CFP is based on old and unreliable data, Icelandic TACs are determined with the most up-to-date information from landings, which is generally reckoned to be accurate, augmented by extensive data from government survey vessels.

Also, the fishing effort is constantly being fine-tuned. Reports of excessive juveniles being caught are radiod in to the Fisheries Directorate, which employs 95 staff, and the area affected is immediately closed. Public radio broadcasts are made to warn fishermen to steer clear of the designated area. Additionally, there are huge conservation areas, off-limits to fishing, to preserve spawning and juvenile stocks.

The Government sets the rules, and the fishermen are left to get on with it. There are no subsidies and no state aid. Those who break the rules are ‘named and shamed’ on the Fisheries Directorate internet site. Serious or serial offenders lose their licences.

This light touch has seen the fleet contract from 2,500 registered vessels in 1992, to less than 1700 in 2002, with fewer people employed. But capacity has not reduced significantly. The fleet has become more modern, and more efficient, as the stability afforded by the management system has encouraged vessel owners to invest. This is not just confined to the large vessels. Skippers of boats under ten metres are prospering as well. They have one of the most modern and efficient fleets in the world.

What gives the system some of its advantages is its flexibility. Skippers who land over quota are allowed to buy more quota to cover the excess, although they are only given 48 hours to do so, once the fish are landed. On the other hand, skippers who do not meet their quotas are not allowed to keep them – to prevent people making a living out of trading quotas.

Yet, despite their successes, they admit that they still do not fully understand the ecosystem on which they depend. They have thus invested in a world-class marine research centre, which employs 180 people, paid from a levy on fish auction prices. It is this that helps to keep Iceland in front, in a rapidly changing market, where quality and availability of stocks are at a premium.

Generally, the Icelanders are happy with their system. Certainly, the fact that they can make fishing pay made a refreshing change from the doom and despondency of Britain, where the British Government is pouring money into scrapping our best and most modern vessels and where crew members and skippers are thrown on the dole in large numbers. Their flexibility and imagination was in total contrast to the leaden bureaucracy of the CFP.

We were deeply impressed by a system that has been so successful that the Government is about to implement a special resource tax of 9.5% on ‘excessive profits’ from the industry.

We left determined that, at the first available opportunity, we will restore national and local control to the British fishery. We will use the Iceland experience, and the experience from the other fisheries we have visited, to help us shape a successful UK policy.

Conservative Shadow Fisheries Ministers John Whittingdale and Owen Paterson intend to draw up an Opposition Green Paper setting out post-CFP withdrawal fisheries management options. With Struan Stevenson, MEP, and Ted Brocklebank, MSP, (Front Bench Conservative Fisheries Spokesman at Holyrood) they have recently visited many of the main British ports.

Owen Paterson is MP for North Shropshire and Shadow Minister for Agriculture, Fisheries and Food as well as a member of the European Foundation’s Advisory Board.
A Critique of the Proposed EU Constitution

by Paul Howard

The new EU Constitution does nothing to resolve the inherent failings of the current institutions. Worse, it adds further obstacles to the pursuit of meaningful international co-operation.

With all the claims and counterclaims made during the negotiations for the proposed European Constitution it is all too easy to be lured into believing it is not as bad as it has been painted. Certainly, some of the more outlandish attempts to create an EU government by proxy have been resisted – a national veto still pertains to foreign policy, defence and taxation.

But let us not be deceived. The reason for such 'concessions' from advocates of closer union is to disguise the real rationale behind the proposed changes to the EU’s institutions: a pragmatic response to reinforce the control of existing institutions in the wake of expansion, rather than a meaningful attempt to address the inherent failings of the current system. Little is done, for example, to emasculate the Commission – a body that currently enjoys the dubious privilege of combining the roles of the EU’s interpreter and guardian of the treaties, which gave it the power and indeed the obligation to interpret the treaties (Rome, Maastricht, Nice, etc.) that until recently formed the de facto and un-elected executive of the EU.

The proposed Constitution explicitly perpetuates the Commission’s historical role as guardian of the treaties, which gave it the power and indeed the obligation to interpret the treaties (Rome, Maastricht, Nice, etc.) that until recently formed the de facto constitution of the EU:

“The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and measures adopted by the Institutions under the Constitution. It shall oversee the application of Union law under the control of the Court of Justice of the European Union.” [Article I-25 1]

That this power continues to be vested in an unaccountable body like the Commission (where the opportunity for genuine debate over what constitutes the ‘general interest of the Union’ is further stilled by the requirement placed on Commissioners to have an undefined ‘European commitment’ [Article I-25 4]) may in itself be tolerable, even desirable – in states with written constitutions the unaccountable judiciary provides this role of interpreter.

The Commission, however, is also the de facto and un-elected executive of the EU. Until recently it was the only body with the power to initiate legislation, and although its remit has been curtailed to some degree in the wake of corruption scandals and the growing restlessness of the European Parliament, this role also continues:

“Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Constitution provides otherwise.” [Article I-25 2]

It would be nice to think that the unease felt in the UK – and elsewhere – at this combination of powers had been a catalyst for the new Constitution. However, the plans do nothing to redress this power imbalance and lack of democratic accountability (further exacerbated by the record low turnout in the recent European Parliament elections, caused not by apathy but by the lack of legitimacy of the EU’s institutions).

These inherent failings, though, are only symptoms of the EU’s malaise, not its cause. Indeed the new Constitution, intentionally or otherwise, overlooks not just these intrinsic flaws, but also the real inconsistencies at the heart of the EU.

These inherent failings, though, are only symptoms of the EU’s malaise, not its cause. Indeed the new Constitution, intentionally or otherwise, overlooks not just these intrinsic flaws, but also the real inconsistencies at the heart of the EU.

After the fall of the Iron Curtain, the EU became split between idealists intent on spreading the doctrine of the EU and pragmatists fearing lost votes at home when the cash flow from the EU dried up. The argument has now been resolved in favour of expansion, with the caveat of strict membership criteria to mitigate the costs.

Nevertheless, this in itself raises the question of what the required standards for membership are. From the prescriptions and requirements currently in place it is clear that simply being a European country is not enough. Indeed, the prospect of a union of 50 or more countries incorporating some of the most economically and politically unstable states in the world is anathema to many in the regional organisation as it stands. However, following the principles that inspired the creation of the EU and its forerunner, the European Coal and Steel Community – to prevent a repetition of the millennia old warmongering and antagonism of Western Europe – it is these countries that are in most desperate need of membership. Yet it seems unlikely that the Balkan states or the former Soviet Republics of the Caucasus will join the EU in the near future.

It is this departure from the EU’s founding ideals that puts the lie to its aspirations for global moral leadership and brings into question its very existence, whether in its current form or with a new, equally flawed Constitution. While the EU’s current power brokers have been looking to mitigate the effects of expansion and preserve their own influence, the debate has remained focussed on where it is acceptable to draw the new boundaries.

This would not be the case if the true benefits and original motives of the EU – peace and tolerance driven by economic interdependence rather than patronising protectionism motivated by economic self-interest – had not been superseded by a fear of the costs to existing members. Instead of the question being ‘how can we limit membership?’ it would become ‘how many can we encourage to join?’ Nor would this appeal be limited to the arbitrary confines of Europe.

Anything that compromises this approach, including the new Constitution, perpetuates the pursuit of vested interests and merely increases the risk of an Orwellian superstate – for Europe read Europa. If this ensues, the question of whether it is federal or supranational, has a new Constitution or the existing spider’s web of treaties, will become irrelevant. It will be the people living in it, as well as outside it, who will suffer.

Paul Howard is a journalist and author specialising in international affairs, sport and the environment.
Gibraltar

This year marks the 300th anniversary of British sovereignty in Gibraltar, a situation that the Gibraltarian population has fought hard to maintain. The European Foundation wishes to congratulate the people of the Rock and to wish them the best for what promises, even by Gibraltarian standards, to be a precarious future. Rob Foulkes reviews the situation.

Gibraltar has not had an easy century. Contested by the Spanish and Moorish empires for seven hundred years, and suffering from Spanish aggression against its British rule throughout the eighteenth and nineteenth century, the Rock began the twentieth century primarily as a British military outpost with only a small civilian population. But Gibraltarian merchants had already begun to pursue rights against the British fortress, and popular agitation in the 1920s and the civil rights movement of the 1940s-50s successfully pushed for further gains. By the mid-1960s when the question of Gibraltar’s decolonisation was raised at the UN, the Rock was almost entirely internally self-governing.

The UN Special Committee on Decolonisation proposed talks between Britain and Spain over the future of Gibraltar, despite protestations from Gibraltarians and British delegates that decolonisation could not involve the passing of any sovereignty to Spain against Gibraltar’s will. It was in this context that Britain and Gibraltar drew up the 1969 Constitution, which granted Gibraltar its own full government.

But in General Franco’s view, the UN Special Committee’s recommendations opened the door for further Spanish claims to Gibraltarian sovereignty, and his resulting closure of the border and cessation of trade and telecommunications between with Gibraltar was only lifted in 1984. One condition of the removal of the obstructions, negotiated with Britain in Brussels, was that the two governments would aim at “overcoming all the differences between them over Gibraltar”. The door has thus been left open for Spain to pursue its supposed rights in Gibraltar for the past twenty years, and its Government continues to make clear that nothing less than shared sovereignty, preferably as a precursor to a complete transfer to Spain, will suffice.

HMG has in many ways been supportive of the British subjects in Gibraltar since 1969, negotiating vital exemptions for the territory from damaging EU policies while successfully including the Rock within the EU’s border controls and securing a vote for Gibraltarians in the recent European elections. But since Blair’s Government identified the Gibraltar question as a major point of contention with its Europhile partners in Spain, it has given the Brussels Process a new priority and attempted to take it far beyond the terms agreed in 1984. These terms re-emphasised the 1969 Constitution’s pledge that HMG ‘will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes’. Yet in 2002, Jack Straw and then Spanish Foreign Affairs Minister Josep Piqué devoted much diplomatic energy to negotiating a joint sovereignty deal over the heads of the Gibraltarian people.

The Gibraltarians have repeatedly stood firm against external attempts to undermine their political choice. When, in 1967, the UN decolonisation process looked like transferring the sovereignty of the Rock to Spain, Gibraltarians responded by referendum with a near-unanimous demonstration of their preference for British sovereignty, resulting in its continuation in the 1969 Constitution. Threatened again in 2002, this time by the British Government itself, the Gibraltar Government arranged an independent referendum of its population, which again showed overwhelming support for the British status. Already struggling over the details of the deal, the Straw-Piqué negotiations collapsed in the face of such a clear message from Gibraltar.

Had the Government of Gibraltar waited for Britain and Spain to reach an agreement before staging the referendum, they would in all likelihood have been too late, since Spain openly rejected the idea of a Gibraltar referendum and Britain, although bound by the 1969 Constitution to send any deal to the population for ratification, had hinted that a ‘No’ vote would merely table the proposal for repeated referenda rather than scrap it. Blair had also proposed a package of trade incentives to encourage a ‘Yes’ vote.

Clearly, any expression of Gibraltarian sentiment was to be a matter of form only. The Government of Gibraltar’s insistence on its rights of self-determination has put off a ‘done deal’ for the present, but the Blair Government has shown that it will be willing to trade Gibraltar for European concessions when the time is right.

The inhabitants of Gibraltar have long been accustomed to invasion and siege, but the threat they face today, from their own governors who seek to alienate this prosperous and strategically vital territory, is relatively new. The engine for Gibraltarians is not the British people, nor Parliament, nor even the Labour Party as a whole, all of whom have expressed support for continued British sovereignty in Gibraltar. It is instead a core of policymakers for whom the incontrovertibly and democratically expressed will of British subjects takes second place to the considerations of the European project. The anniversary celebrations must serve as a source of strength for the will of Gibraltar, to hold out against this new diplomatic siege until a government takes power in Britain with conviction in its principles of self-determination, and pride in its British identity.

Rob Foulkes is a research assistant at the European Foundation, having recently graduated in Social and Political Sciences from Cambridge University.
Introduction

The Charter of Fundamental Rights of the European Union (‘the Charter’), originally formulated at Nice in 2000,¹ is now incorporated as Part II of the proposed Treaty Establishing A Constitution For Europe, agreed at the Inter-Governmental Conference of the European Union on 18th June 2004 (“the Constitution”).² The Charter is to be interpreted in accordance with “the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter”³ (‘the Explanation’).⁴ The Constitution also provides (Article I-7) that the Union “shall” accede⁵ to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”)⁶.

The proposed Constitution categorically asserts the supremacy of all European Union law over national constitutions and domestic law.⁷ The inclusion of a dual human rights code, with full legal effect, would prima facie give it the stamp of a truly federal constitution for the European Union.⁸ Unless adequately restrained, the doctrine of legal supremacy (already asserted by the European Court of Justice under the early treaties⁹) would allow the new Union rights law to displace national provisions in highly sensitive areas of social policy and public morality, unrestrained by democratic accountability or control.

The following discussion argues that:

• the putative restraints on the extension of Union law via the Charter may not prevent the ECJ from determining particular Charter rights to be part of the fundamental rights of the Union which it protects on its own authority,
• the subsidiarity provisions of the Constitution are unlikely to be sufficient to restrain the centripetal tendency of federal structures vis-à-vis member states,
• a code of fundamental rights requires a shared set of values in society, which in the case of the Charter does not exist,
• the Charter encourages judicial activism, without any democratic safeguards, which is a very unsatisfactory way to resolve controversial issues of social policy and public morality,
• the provision permitting the limitation of all fundamental rights in the Charter reveals important conceptual flaws at the heart of the project,
• the Charter supports controversial values such as rowing back on the abolition of the death penalty, giving priority to industrial strategy over human life in embryo research and legal recognition to diverse forms of marriage and family,
• the addition of federal layers to the adjudication of human rights would add substantial delay and expense to the vindication of the rights of the citizen, which would normally favour the powerful over the weak,
• juridical competence in the protection of fundamental rights can and should be expressly reserved by the member states when ratifying the treaty,
• ECJ policy should be directed to the management of a healthy pluralism in fundamental rights rather than the imposition of an unworkable and inherently substandard uniformity.

Legal restraints on the Charter

Article II-51(1) says that the Charter is “addressed to the Institutions, bodies and agencies of the Union … and to the Member States only when they are implementing Union law.” Article II-51(2) asserts that the Charter does not extend the field of application of Union law or establish any new power or task for the Union. Article I-7(2) says that “Such accession [to the ECHR] shall not affect the Union’s competences as defined in the Constitution.” These provisions clearly address member-states concerns that the formal incorporation of these fundamental rights provisions into the Constitution would greatly expand the reach of EU law. The Explanation does not address the implications of proposed accession of the EU to the ECHR but expresses confidence that Article II-51 will prevent encroachment on member states’ jurisdictions: “the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be ‘implementation of Union law’.”

These assertions cannot simply be taken at face value. An understanding of the fundamental rights jurisprudence developed by the ECJ is important in assessing its likely approach to the Charter. Article I-7(3) states clearly that “Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.” In Cinéthèque¹⁰ the ECJ expressed the normative statement about human rights as an Institutional duty: “It is the duty of this Court to ensure the observance of fundamental rights in the field of Community law.” This case is significant because it belongs to the pre-SEA, TEU era, namely to an era in which fundamental human rights were not explicitly mentioned or even alluded to in the treaties. The duty which the Court imposed on itself did not relate to an explicit objective laid down in a treaty, but was deemed by it to be necessary to enable the Community to carry out its functions. Respect for and protection of human rights were thus conceived as an integral, inherent, transverse principle forming part of all objectives, functions and powers of the Community.

The attitude of the ECJ to the Charter, in the period after it received a political endorsement from the heads of government (while devoid of any legal status), was consistent with this approach. In Case T-112/98, Mannesmannröhren-Werke AG v Commission, the applicant invoked the new Charter, but the Court of First Instance ruled against it (20th February 2001): “As regards the potential impact of the Charter, to which the applicant refers, upon the assessment of this case, it must be borne in mind that that Charter was proclaimed by the European Parliament, the Council and the Commission on 7 December 2000. It can therefore be of no consequence for the purposes of review of the contested measure, which was adopted prior to that date.” That early rejection, however, was based on the date of the cause of the action, not on any inadmissibility of the Charter. The pattern in many subsequent cases has been that the Charter is regularly cited as confirmation of the inclusion of a particular right in the general body of fundamental rights, which the Court has already taken upon itself to
protection. It is read as a compendium of shared Union values and fundamental rights. In v The United Kingdom (Application no. 25680/94), the ECJ also cited Article II-9 of the EU Charter to confirm its argument that the modern understanding of Article 12 ECHR has changed, such that marriage of a ‘man and woman’ no longer means what it used to mean.¹¹

If the ECJ already uses a Charter with no legal standing as a key reference point and a source of guidance for the protection of unspecified fundamental rights which have no treaty basis, it is reasonable to suppose that it will not easily allow ambiguous provisions in Article II-51 or 52 to prevent it from further expanding this jurisdiction if the Constitution is ratified. The ‘flexibility clause’ (Article I-17) shows that the potential scope of future Union law is as wide as the objectives of the Union – see also Article I-9(2). Article II-51(1) says that “The provisions of this Charter are addressed to … the Member States only when they are implementing Union law.” That begs the question as to what will be found to come within the scope of the new Union law. Article II-51(2) provides “This Charter does not extend the field of application of Union law beyond the powers of the Union … defined in the other Parts of the Constitution.” Again, the question is begged as to what powers the Constitution will be found to confer on the re-invented Union. The Article II-51(2) restraint may be circumvented if the other Parts of the Constitution (e.g. the Union’s values and objectives in Articles I-2 & 3 and the “general principles of law” in Article I-7(3)) are found to contain the legal authority for such Union powers as may be necessary to enforce particular Charter rights.

Article II-9 commits the EU to protect the right to marry and the separate right to found a family (whether or not based on marriage).¹³ Article II-14 protects a right to personal development and to the physical and mental health of the person. Article II-32 protects a right to the personal and private life of the individual.

We should learn the lessons of history. The American Constitution was drafted precisely to define and confine the powers conferred on the federal legislature and, conversely, to protect and safeguard the powers and prerogatives of the constituent state governments. The Nineth and Tenth Amendments were designed to further many (if not most) of the same goals as the Constitution’s doctrine of ‘subsidiarity’. The Ninth Amendment to the US Constitution states that the “enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”¹⁷ The Tenth Amendment, in turn, provides that all powers not delegated to the federal government “are reserved to the States respectively, or to the people.”¹⁸ But, while unquestionably adopted to preserve the same range of subsidiarity interests as Articles II-51 and II-53, the Ninth and Tenth Amendments have not protected state governments (and their constitutions) from the wholesale expansion of federal power. The United States Supreme Court eventually abandoned as artificial and impractical the attempt to police the division of powers.¹⁹

A similar dynamic is evident in the jurisprudence of the European Court of Human Rights (ECHR). Despite the clear statement that “Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party”, Article 53 ECHR has not effected “any constraints on the ECHR’s dynamic and teleological style of interpretation.”²⁰ Rather, the court “has on several occasions discovered or stipulated inherent rights” even when they seemingly conflict with national constitutions.²¹ A clear indication of the impatience of the ECHR with the restraint implied in the notion of subsidiarity may also be gleaned from the following passages from Christine Goodwin v. The United Kingdom (Application no. 28957/95):

“...In accordance with the principle of subsidiarity, it is indeed primarily for the Contracting States to decide on the measures necessary to secure Convention rights within their jurisdiction and, in resolving within their domestic legal systems the practical problems created by the legal recognition of post-operative gender status, the Contracting States must enjoy a wide margin of appreciation… Nonetheless, the very essence of the Convention is respect for human dignity and human freedom… In the twenty first century the right of transsexuals to personal development and to the physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable… Having regard to the above considerations, the Court finds that the respondent Government can no longer claim that the matter falls within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention.”

Following the example of the ECHR, the strongly activist and federalist tendencies displayed by the ECJ would suggest that – in a much shorter time-frame than in the case of the US Court – it would consider itself entitled to uphold the rights recognised in the Charter against member states whenever necessary to promote “common” Union values or objectives or to implement “general principles of law”. This observation is not intended to disparage the US Constitution, the ECHR or the ECJ, but to point out that it is unreasonable and undemocratic to proffer a ‘solution’ to the problem of subsidiarity which has already been tried and (perhaps for good reason) found wanting.

United in diversity

If this analysis proves to be correct, the Charter will gradually substitute a common human rights standard for the indigenous value systems developed organically by each member state. The motto of the
reconstructed Union is to be “United in Diversity”. This may be seen as a frank acknowledgement of the enormous practical difficulties facing this political project, but it also identifies a contradiction inherent in the concept of a single code of fundamental rights for 25 or more diverse nation states. A Charter of Fundamental Rights is inescapably a statement of values, of philosophical and religious beliefs about the human condition, which shape how human beings ought to live together in society. While there is substantial consensus on some values, there are important differences among member states as to the basis and content of the most fundamental of human rights. These differences (consistently ignored in the Charter) constitute a major obstacle to the feasibility of the constitutional project.

The “universal values of human dignity, freedom, equality and solidarity” are common principles in most national codes. It is the content of these and related values that defines the character of each system. Article II-1, for example, boldly declares that human dignity is “inviolable”. This impressive declaration is of little practical value, however, until one can identify what it is that cannot be violated and who is entitled to the protection. Likewise with the right to life, equality etc.. Is human dignity inherent in the human being or is it legally dependent on circumstances or physical capacity or on the jurisdiction under which a detainee is interned? Are all human beings (or only the able-bodied) equally protected? Does legal protection run from conception (or 14 days, or 12 weeks or birth) to natural death (or assisted suicide or euthanasia)? Is ‘marriage’ a malleable social construct involving two or more adults, or a life-long natural institution involving a man and a woman? What are the rights of a parent in the moral or academic education of a child? Does advertising which exploits aspects of human sexuality violate human dignity? Can religion be practised and promoted freely or are religious symbols to be banned in public? Who can found a school or university? Are all human rights amenable to limitation by law in the interests of the State, or are some rights inalienable or exceptionless (as “the inviolable and inalienable rights of the human person” in the Preamble would seem to require)?

These and other important human rights questions currently find substantially different answers among the 25 member states of the Union. We do not all share the same values or draw the same conclusions from the values we share. The first priority of any valid code of fundamental rights is not a fictitious uniformity or a “unity in diversity” but an understanding of the truth about the human person, of the rights that necessarily follow from that truth and a prudential judgement about how best to regulate life in society. That understanding and those judgements are shaped over time by a nation’s composition, history, culture and religious beliefs.

Judicial activism

I n Article II-52(5) a distinction is made between “principles” (to be observed) and “rights” (to be respected) in the Charter, with the idea that principles are not judicially cognisable until implemented by legislative acts. Given the importance of this distinction, one might expect a schedule or other means of distinguishing those Articles of the Charter which fall into each category. No such categorisation is provided, however, even in the non-binding Explanation. The guidance that is given illustrates the difficulty in applying the distinction in practice. The Explanation mentions by way of example that Articles II-25, II-26 and II-37 contain “principles”. However, Articles II-25 and II-26 are in fact expressed as potentially justiciable personal “rights” which the Union “respects”, whereas Article 37 is clearly a general policy or “principle” to be observed, in favour of environmental protection and sustainable development. Article II-52(5) will therefore have to be applied by the ECJ to each Article as it sees fit. This ambiguity adds to the indeterminacy of the Charter and increases the burden on the Court to resolve politically sensitive issues according to its own lights. As many of the “rights” or “principles” in question are based on the European Social Charter and derivative instruments, the decisions of the Court as to whether it has jurisdiction in a particular area could have enormous implications for social policy, employment and labour law and economic policy.

The content of “fundamental” rights may also be subject to radical change by judicial decree over a relatively short period of time. The already established “dynamic and evolutive” jurisprudence of the ECHR is clearly illustrated in the parallel passages of the decision of the Grand Chamber in I v The United Kingdom (cited above) and Christine Goodwin v. The United Kingdom (cited above), both of 11 July 2002, overturning UK law on transsexuals and reversing its own recent case law on the subject:

“Since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any evolving convergence as to the standards to be achieved.”

It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Court to maintain a dynamic and evolutive approach would indeed risk rendering it a bar to reform or improvement...

The Court proposes therefore to look at the situation within and outside the Contracting State to assess ‘in the light of present-day conditions’ what is now the appropriate interpretation and application of the Convention.”

The interpretation of much of the Charter is tied to corresponding provisions in the ECHR and it will therefore be subject to a similar evolution. This example also illustrates that these codes cannot enact ‘neutral’ value positions on controversial questions which must inherently be resolved one way or the other. In its interpretation of the Charter, the ECJ will inevitably adopt value positions which will be contrary to some deeply held beliefs or conclusions. The sources nominated in the Constitution from which it may derive its human rights jurisprudence are so varied and indeterminate that they amount to a licence to answer these questions as it pleases. On many issues it will follow the precedents of the ECHR but, whatever the basis, its decisions will be divorced from any national, social or political context or value system. They will ultimately reflect the personal values of the judges of the Court and of the EU oligarchy, rather than the values of the societies they serve.

While to some extent this may also be true of national courts, in the case of the ECJ there would be no practical possibility of any democratic control or reversal of its decisions. In the absence of unanimous agreement among member states, it would always be impossible to bring about an amendment of the EU Constitution to vary the effect of an unwelcome decision. To all intents and purposes, therefore, ratification of the Constitution by a member state
involves a formal and irreversible adherence to whatever interpretations of the Charter may be handed down in the future by the ECJ, whether or not compatible with the fundamental rights recognised in its national constitution. Respect for the Rule of Law is grounded on an effective relationship between the citizens and the legal system, mediated through the democratic process. Where there is already a glaring ‘democratic deficit’, as in the EU, the supplanting of national human rights provisions with what may be perceived as a ‘foreign’ code is likely to further undermine respect for law and to increase the alienation of the citizen from the institutions of the state and the EU.

Limitations on human rights

The underlying philosophy of the Charter is also deeply problematic. The Rule of Law protects the interests of the weak against unjust claims of the strong. It protects the interests of the individual against unjust claims of the community. It puts people before politics or profits. The priorities implicit in the Constitution appear to be otherwise. The catalogue of fundamental rights is set out in very brief, unqualified, statements (e.g. Article II-2(1): “Everyone has the right to life”). However, all of these rights are subject to Article II-52(1), which in turn is based on the case law of the Court of Justice: “… it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights” (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds).

The proposed Charter thereby formally subordinates the rights of the individual to the collective, of the person to the State, of the weak to the strong. Article II-52(1) is a succinct testament of the positivist view of human rights – the Benthamite theory that “rights are the fruit of the law and the law alone. There are no rights without the law, no rights contrary to the law, no rights anterior to the law.” It is a far cry from the “inalienable and imprescriptible rights, antecedent and superior to all positive law” protected by the Irish Constitution and various other national Constitutions, or the carefully worded limitations permitted (in some Articles only) by the ECHR.

Should all fundamental rights be subject to limitation by law, to meet “objectives of general interest”? Clearly not. Whatever the underlying philosophy of a constitution or charter, the existence of exceptionless norms is widely accepted as a basic tenet of a well-reasoned human rights jurisprudence. There are some actions which it is never just to perform against an innocent person, no matter what State objective or other ‘good’ end might be served in so doing. What national constitution, for example, would ever legislate to allow some of its citizens to be unjustly mutilated, poisoned or killed (e.g. by medical experimentation or research), even to assist or protect others? Equally, there are no circumstances in which a just law could permit someone to be violated or tortured, even in the interests of national security. Recent events in Iraq demonstrate that this is not an idle observation. To allow anyone to be abused in this way for the benefit of others would be a denial of his radical equality as a human being, the basis of all human rights. It is the very antithesis of a sound human rights philosophy.

Life issues

The limitation of all human rights in the Charter is illustrated in its approach to the death penalty. Article II-2(2) – which purports to abolish the death penalty – is in clear breach of Protocol No. 13 ECHR, although that Protocol has been adopted individually by the member states. Any doubt about the intent of Article II-2(2) is removed by consulting the corresponding Explanation. It expressly relies on Protocol 6 ECHR, which allows the death penalty in time of or threat of war, instead of the alternative Protocol 13 (which provides a total ban). In the context of the developing military role of the EU, this derogation may become highly significant. The corporate accession to the ECHR by the EU (without ratifying Protocol 13) would imply that the death penalty would continue to be available to it, e.g. in a future military court under EU control, despite the unanimous avowal by the member states in ratifying Protocol 13 that they have totally abolished the death penalty.

The recent controversy over the massive funding by the EU of research on human embryos provides another practical illustration of its approach to human rights. An EU Commission Report found that many member states oppose embryo research and that it is currently illegal in some (including Germany, Austria and Denmark). The Report noted: “Opinions on the legitimacy of experiments using human embryos are divided according to the different ethical, philosophical, and religious traditions in which they are rooted. EU Member States have taken very different positions regarding the regulation of human embryonic stem cell research.”

Ethical issues such as this, which impinge on very considerable industrial interests in the EU, would gradually come to be dealt with by the ECJ on the basis of the fundamental rights declared in the Charter. How would the ECJ derive an answer, given the strong differences that have emerged among the Member States? The priorities that inform the EU institutions may be gauged from the fact that stem cell research is dealt with by the Competitiveness (Internal Market, Industry and Research) Council, although it touches on fundamental dimensions of human life and dignity. The objective currently being pursued by the Council Decision in its funding of this research is given as follows: “The strategic objective of this line [of funding of research on human embryos] is to foster the competitiveness of Europe’s biotechnology industry by exploiting the wealth of biological data produced by genomics and advances in biotechnology.” While this may be a laudable economic or scientific aim, it cannot responsibly be argued that it should be advanced at the expense of human life, dignity and integrity. There is nothing to indicate, however, that the ECJ would hold such funding to be contrary to the fundamental rights protected by the Charter. Article II-13, in fact, provides that all scientific research “shall be free of constraint”.

Issues such as this make it clear that general undertakings about protection of human rights are worthless in the absence of a clearly defined common understanding on fundamental questions. A member state which found itself over-rulled by the ECJ on an issue such as this would have to accept a rather heavy responsibility for having conceded to the ECJ the jurisdiction to protect fundamental rights without any effective guarantee that those rights would be in fact be protected.

Cross-border family law

The demands of the internal market also loom large in relation to marriage and the family. Although “the right to marry
A federalised human rights jurisprudence would therefore interpose layers of difficulty between a litigant and a final resolution of his dispute. This could only favour the more powerful interest, often a State or large corporation. Uniformity and remoteness would thus combine to substantially diminish the protection of fundamental rights in important areas, far outweighing any additional protections the Charter might offer in peripheral matters.

A pluralist alternative

The root of these difficulties lies in the assumption that Union law must be uniform and monolithic in order to ensure the functioning of the internal market. This doctrine was firmly enunciated by the ECJ in Hauer v. Land Rheinland-Pfalz, in response to an indication from the German Verwaltungsgericht that it would review a Community law for compatibility with fundamental rights recognised in the German Grudgesetz:

“As the Court declared in its judgment of 17 December 1970, Internationale Handels-gesellschaft, [1970] ECR 1125, the question of a possible infringement of fundamental rights by a measure of the Community institutions can only be judged in the light of Community law itself. The introduction of special criteria for assessment stemming from the legislation or constitutional law of a particular Member State would, by damaging the substantive unity and efficacy of Community law, lead inevitably to the destruction of the unity of the Common Market and the jeopardizing of the cohesion of the Community.”

While this argument may justify the concept of EU legal supremacy in matters bearing directly on economics, commerce and industry, it seems bizarre to apply the same concept to the protection of truly fundamental human rights (bearing on human dignity, life, marriage, family, education etc.). The legal protection of human rights must of necessity reflect the values held in common in a society and it is inevitable that in a political conglomerate such as the EU there will continue to be a wide divergence on many important values for the foreseeable future. That being the case, a pluralist solution to the protection of human rights is the only viable option. A credible protection of human rights by the ECJ should accept and indeed welcome decisions by the constitutional courts of member states which point out human rights defects in an EU law. That would provide the ECJ with a genuine “constitutional tradition common to the Member States” with which to guide the development of EU law in ways compatible with human rights. Where differences in the national understanding of human rights might arise, the ECJ – in the interests of a genuine pluralism – should allow a discretion to each Member State to act on the understanding proper to its own culture and jurisprudence. The ECJ would have the task of regulating the consequences of any disparities that might arise, but that would be less objectionable than enforcing a uniform standard of human rights, of its own devising, for the sake of political or commercial expediency.

Suitably restricted ratifications of the Constitution, by those member states willing to adopt it, would be a practical way to initiate the process of a reform in the direction of pluralism. Such ratifications should expressly reserve to their domestic courts, in accordance with Article I-5(1), Article II-52(4) & (6) and Article II-53, the protection of fundamental rights in accordance with national constitutions, in matters not exclusively within the competence of Union law. Such reservations would help to secure the spirit of the subsidiarity provisions of the Constitution and to ensure that the federalising dynamic of the US Constitution is not repeated in the European Union.

The Union cannot hope and does not deserve to prosper unless it demonstrates a real respect for the practical and ethical requirements of its motto – “united in diversity”.

Notes

1 The presidents of the European Parliament, the Council of the European Union and the European Commission proclaimed the Charter on 7 December 2000 during the Nice European Council.

2 References to the Constitution in this article are to the provisional consolidated version of the draft Treaty establishing a Constitution for Europe (CIG 86/04, dated 25th June 2004) prepared for information purposes on the sole responsibility of the Secretariat of the Intergovernmental Conference. The Protocols are contained in an Addendum 1 to CIG 86/04 and the Declarations in an Addendum 2. This text represents the provisional consolidated version of CIG 50/03 together with its corrigenda, as well as documents CIG 81/04 and CIG 85/04, as approved by the Intergovernmental Conference on 18 June 2004. Note that the Intergovernmental Conference also agreed on a continuous numbering of the text of the Constitution using Arabic numerals, with the proviso that, in order to accentuate the division of the
Constitution into four parts, the Arabic numerals will be accompanied in each case by a Roman numeral corresponding to the relevant part. This change is to be made before the Constitution is signed in Rome in October 2004.

3 Preamble to Part II, Recital 5, see also Article II-S2(7) and the Declaration concerning the explanations relating to the Charter of Fundamental Rights.

4 For the text of the Explanation, see CIG 86/04 ADD 2, dated 25th June 2004 (based on CONV 828/03).

5 Accession is subject, on the part of the Council of Europe, to the ratification by all the parties to the ECHR of the new Protocol 14, which permits accession to the ECHR by the EU and modifies the Court system of the Convention to take account of the anticipated increase in its workload.

6 The Explanation (Article II-S2) states that reference to the ECHR “covers both the Convention and the Protocols to it.” It appears from the Explanation to Article II-2(2) that Protocol 6 is to be ratified by the EU rather than the alternative Protocol 13 (which provides for a total ban on the death penalty).

7 Article I-Sa.

8 In Case 294/83, Parti ecologiste, ’Les Verts’ v. European Parliament, 1986 E.C.R. 1339, 1365, the European Court of Justice already spoke matter-of-factly of the EEC Treaty as ”the basic constitutional charter of the Community”. On this reading, the treaties have already been “constitutionalised” and the Community has become an entity whose “operating system” is no longer governed by general principles of public international law, but by a specified interstate governmental structure defined by a constitutional charter and constitutional principles.

9 Costa v ENEL, Case 6/64, [1964] ECR S85; [713] It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question. [14] The transfer by the States from their domestic legal system to the Community legal system of their policies and obligations arising under the Treaties carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail. Consequently Article 177 is to be applied regardless of any domestic law, whenever questions relating to the interpretation of the Treaty arise.”

10 Joined Cases 60 and 61/84 Cinéthèque, 1985 ECR 2605, Recital 26.

11 See, for example, Case C-173/99: BECTU - Opinion of AG Tizzano: “I think therefore that, in proceedings concerned with the nature and scope of a fundamental right, the relevant statements of the Charter cannot be ignored; in particular, we cannot ignore its clear purpose of serving, where its provisions so allow, as a substantive point of reference for all those involved – Member States, institutions, and the Community context. Accordingly, I consider that the Charter provides us with the most reliable and definitive confirmation of the fact that the right to paid annual leave constitutes a fundamental right.” See also Case C-353/99 P: Council v Heidi Hautala - Opinion of AG Leger.

12 Preamble to Part II, Recital 5.

13 “The Court would also note that Article 9 of the recently adopted Charter of Fundamental Rights of the European Union departs, no doubt deliberately, from the wording of Article 12 of the Convention in removing the reference to men and women.”

14 cf. Explanation (Article II-9).

15 cf. Explanation (Article II-51): “… an obligation, pursuant to the second sentence of paragraph 1, for the Union’s institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.”

16 See, for example, Case C-173/99: BECTU - Opinion of AG Tizzano and Case C-353/99 P: Council v Heidi Hautala - Opinion of AG Leger.

17 US Constitution Amendment IX.

18 US Constitution Amendment X.

19 See generally NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) (concluding that any distinction between matters of ‘national’ and ‘local’ concern is artificial; federal regulatory power extends even to local matters if there is a legitimate federal regulatory interest.).


21 Id. See, e.g., Open Door Counselling v. Ireland, 1992-A, paras. 78-79. In that case, the European Court of Human Rights concluded that, despite Ireland’s strong and unequivocal protection of unborn life, Ireland could not restrain dissemination of certain information about the availability of abortion services.

22 “The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.” - Preamble, Part II.

23 cf. Article I-6a.

24 The heated political dispute over the proposed inclusion of references to Humanism or Christianity in the Preamble of the Constitution gave some inkling of the difficulties to which these differences may give rise in the future.

25 e.g. when referring to the “constitutional traditions common to the Member States” - Article II-S2(5).

26 Preamble, Part II.

27 Preamble, First Recital.


30 See the above-cited Stafford v. the United Kingdom judgment, § 68.

31 See the Tyner v. the United Kingdom judgment of 25 April 1978, Series A no. 26, § 31, and subsequent case-law.

32 Article II-S2(3).

33 See for example Articles I-2, I-3, I-4, I-7, II-52, II-53 and the Preambles to the Constitution and the Charter.

34 Short of voluntary withdrawal from the Union, cf. Article I-59.

35 CIG 86/04 ADD 2, at p. 61.


37 Article 41.1.1, Irish Constitution.

38 This Protocol entered into force on 1st July 2003. It prohibits all exceptions to the abolition of the death penalty. The 4th Recital says: “The Member States of the Council of Europe signatory hereto… Being resolved to take the final step in order to abolish the death penalty in all circumstances, Have agreed as follows…”

39 Council Decision 2002/834/EC - The amount for “advanced geonomic” research is € 1.1 billion, in a research budget of € 12.9 billion.


42 See the corresponding Explanation, and also the decision of the ECHR in Christine Goodwin v. The United Kingdom (Application no. 28957/95), which cites Article II-9 and lays the foundations for a same-sex marriage jurisprudence in the ECHR. If member state ‘A’ adopts such legislation, a same-sex couple who married in ‘A’ would appear to be entitled to have that marriage recognized throughout the EU. If the couple subsequently moves to member state ‘B’, which does not recognize same-sex marriage, the ECHR, enforcing the Article II-9 right, could oblige member state ‘B’ to recognize the marriage of the same-sex couple (and presumably to provide social security and other spousal legal benefits also). Otherwise, member state ‘B’ would either be denying the couple “the right to marry… in accordance with the national laws [i.e. the laws of member state ‘A’] governing the exercise of these rights” or else unlawfully frustrating their right as a family to freedom of movement and residence within the EU.

43 While the ECJ has developed this doctrine over many years, its reception by national courts has not been uniform. It is a matter for speculation how the 25 national constitutional courts would accept the new human rights jurisdiction implied in the Constitution.

44 Article I-28.1 “Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.”


46 Article I-6a and Fourth Recital of the Preamble to the Constitution.

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The Euro and EU Enlargement

by Professor Wilhelm Hankel

EUROPEAN MONETARY UNION is without precedent in monetary history. States that belong to EMU relinquish their monetary sovereignty and their monopoly of money-issue on the currency which is legally valid within their borders. These monetary rights are transferred to the European System of Central Banks and to its executive organ, the European Central Bank.

EMU and its institutions are radically different from anything that has previously existed in inter-state monetary cooperation, such as the Bretton Woods Agreement, which was set up after the Second World War, or the Gold Standard, which existed in the 19th century and in the inter-war years. These global systems respected the monetary sovereignty of their member states and they did not jeopardise the continuing existence of national currencies. The members of these arrangements undertook only to respect the rules on currency exchange and capital movements.

The reasons that led to the creation of EMU are well-known. The EU states did not only want to crown the 'internal market', which had functioned for 40 years, with their common currency, the euro. The euro was also supposed to prepare the way for a political union of the EU states, based on the model of the United States of America. The expectation was that state borders would lose their importance and 'die off' with the abolition of monetary borders.

The question of whether the USA is a good model for the political unification of Europe was never put. The memory was suppressed that the New World had solved the problem of nation-building 220 years ago with the Bill of Rights. This transformed multinational immigrants into one nation with its own history and democratic tradition. 'Old Europe' is still light years away from this. Therefore it must be decided whether the idea of a single monetary constitution for all EMU states can deliver that which politicians promise – a democratically constituted federation of states with monetary and political stability.

With the eastward enlargement of the EU that has added ten of the structurally weakest and capital-poorest countries in Europe (they make up just 5 per cent of the EU’s Gross Domestic Product and, with the exception of Slovenia and the three Baltic States, none of them fulfil the conditions of the Stability Pact), the following question needs to be posed: what is supposed to become of the EU and EMU when these countries join and, as planned, introduce the euro as their national currency? No less important is the question of the effect that their membership will have on the countries themselves and on the old EU states. Who will finance the process of catching up and how much will it cost?

The limits to what tax can do

For the economies of the EMU states, the adoption of the euro implies the introduction of a quasi 'foreign' currency over which neither the national central banks nor the national legislature have any influence. In this sense, the EU institutions are more autonomous than the German Bundesbank ever was. In the EU, no member state can enlist the help of its own central bank for national emergencies, the threat of payments squeezes, banking crises, state bankruptcy or for any other reason. But the separation of monetary policy from the national interests of the member states, expressed in the Maastricht Treaty, is pure fiction – both monetarily and politically.

Monetarily, because the ECB can control the money supply of the EMU only by buying bonds, obviously including state bonds. Which papers it prefers, and from which states, is its affair. It can discreetly help out a state that is having more difficulty placing its debt than the others. This tendency will increase when national central banks’ governors get a majority in the ECB directorate and determine its policies.

More explosive still is the political case of a state emergency, for it also concerns rich countries, as the ‘German case’ shows. If a state finds itself in a situation where it has to reveal to its citizens that it can no longer finance key aspects of the social contract like pensions, health care, unemployment benefit or welfare claims – or that it can do so only after meeting external obligations like those which flow from the EU treaties – then sooner or later it will give into the temptation of breaking the international agreements.

The Basic Law of the Federal Republic of Germany leaves no doubt that Germany’s constitutional commitment is to the ‘social state’ and not to ‘Europe’, as Chancellor Schröder recently claimed. Articles 20 and 109 of the Basic Law are clear: Germany is “a democratic and social federal state” (Article 20.1), and the federation and the Länder are obliged to “manage their budgets in keeping with the economic cycle” (Article 109.3). They are also obliged to “avoid any disturbance in the overall economic balance” (Article 109.4) – this means state borrowing and the expansion of the budgetary room for manoeuvre through temporarily higher debt. The emphasis is on ‘temporarily’, for the same article obliges these debts to be paid when the purpose of the operation – the avoidance of a crisis and mass unemployment – has been achieved.

European Monetary Union closes this option off for Germany, as for the other member states, as a way out of a potential crisis. What that means is clear from one single figure: the existing legally binding pension obligations amount to €6 billion, twice Germany’s annual GDP. This future state debt will have to be paid in the coming years and even the most rigorous pension reform can only limit the amount of money owed. It cannot get rid of it completely.

Payments of this magnitude cannot be met with fiscal measures, neither by cutting spending nor by increasing tax. The mere attempt by the state to maintain its solvency this way would throw it and society into chaos. Europe and the social state are incompatible with each other. Germany can survive as a social state (as its Constitution defines it) only by keeping or regaining its monetary autonomy. Budgetary squeezes, whether they are the result of crises or of the rules of the Stability Pact, are not sufficient ground to put the social state in jeopardy on the pretext that the cupboard is bare. The cupboard is bare only when the last cent of state credit has been exhausted.

However, the solvency of a state is not determined by the amount of money it has in the coffers, but instead by its credit potential. The state as an eternal and indissoluble association (Basic Law Article 79.3) has a different status and role from that of a private organisation. Its achievements must be guaranteed for future generations. So the time that it has at its disposal for the payment of debts goes way beyond the present. These debts are ‘safe’ because they are based on future tax
revenue. And no one demands that they be definitively settled because they can always be paid off (‘consolidated’) with new loans. Only one question has to be asked: where do the boundaries of state debt lie – at the 60 per cent of GDP laid down in Maastricht, or somewhere else?

The answer to this question brings us back to EMU. The last (but not the inexhaustible) source of credit is the central bank. It is obvious that no central bank that is bound to ensure currency stability will orientate its policies exclusively according to the state’s need for liquidity. The guideline for the non-inflationary credit needs of an economy is the real capital that is available, the total of real savings.

Even people with no training in economics should understand: first, that the division between private and public use of an economy’s credit potential is shaky. Private individuals go into debt too much when there is an economic upturn; in times of economic downturn, like now, they borrow too little or not at all. In both cases the state has to do the opposite – it saves in times of economic expansion and it borrows in times of crisis. It has to do this, or else the whole economy will suffer from its high private savings quotient. This is the paradox of savings. A state that does not make use of its credit potential behaves negligently towards its citizens and towards future generations.

Second, the central bank of a rich country has a greater need for credit, and greater room to manoeuvre, than the central bank of a poor country. This means that with EMU the rich countries of Europe (not just Germany) have sacrificed valuable credit potential on the altar of Europe. It is obvious that a European Central Bank, which is orientated towards allowing less room for manoeuvre for poorer EMU countries like Poland or Portugal, must keep credit tighter than the Germany Bundesbank ever had to. Under a national monetary regime, the German crisis would either not have occurred at all, or it would have been softer, because neither the Maastricht Treaty nor the Stability and Growth Pact would have prevented the Federal Government and the Bundesbank from pursuing timely and active crisis management.

The transfer of national monetary constitutions to the EMU does not mean a heavy loss in growth and a fateful blockage of the powers of self-remedy solely for the more prosperous member states. This sacrifice of the currency is useless because it does not bring poorer states any benefit either. Not only do they not get what the others lose, the crisis of the stronger states reduces their export potential in the common market. Thanks to EMU, the whole of Europe loses, for unexploited savings capital does not remain at the disposal of the country or the currency area – it leaves altogether. In 2002 alone, Germany suffered a net capital outflow of €1.3 billion.

The stateless euro currency is destabilising Europe

For this, too, is one of the political lies told in times of crisis: prosperity and the social state are not only threatened by demography (the ageing population) and the world economy (globalisation) – and, even if they are, then only in the long term. More threatening is the danger that comes from abandoned economic growth today and from today’s drops in productivity. These block reforms. In addition to this, in a European Union that is ever becoming structurally less homogeneous it will become more and more difficult to co-ordinate the economic cycle, crises and the activities of the state. The conflicts between divergent state interests will escalate.

All previous monetary unions, and all other international monetary arrangements, have collapsed because of the conflict between national self-interest and inter-state loyalty. The most recent example was the Bretton Woods system. The national desire for monetary stability caused it to be dissolved. And today? When a few months ago Argentina – which had a currency board with the US dollar for a decade – had to declare itself unable to pay its debts, the International Monetary Fund had few cards to play. It simply had to give in.

EMU institutions stand in the same relationship to their member states as the IMF. If an EMU country is subject to a crisis or a national emergency, it will ignore or even abrogate any EMU rules that make the situation worse. This process is already under way, as violation of the Stability Pact has already become a habit, even by the founding member states of the EU.

But the real test comes with eastern enlargement, as countries join the EU which are structural violators of the Stability Pact like Poland, the Czech Republic, Hungary and so on. The opening of their internal markets to superior western competition has already condemned large parts of their production and service structures to death. They are as incapable of competing with the western states of the existing EU, as was the former East Germany.

An early introduction of the euro could provide some temporary relief for these countries. It would bring East European countries lower interest rates. Their risks in their old national currencies would be ‘Europeanised’, as happened with the capital-poor accession countries in the EU’s previous enlargements (Ireland, Portugal, Spain, and Greece). But this comes at a price. Inflation is rising in capital-poor countries within EMU who have access to cheap credit and more quickly than in the stagnating rich states. This widening inflation gap is preventing the ECB from adapting its monetary policy to the crisis situation in the core EMU countries (Germany, France, Belgium, the Netherlands). Inflation in the poor EMU countries is making the crisis in the rich EMU countries even worse!

If deficits rise across the EMU and the Maastricht rules collapse completely, the guardians of the currency will have to show their hand. They will have to decide whether to fight the danger of inflation or to let it rise. Poor ECB: its statute instructs it to do the former, but political reality means that the only choice is between two forms of failure. Either the ECB allows the euro to weaken or, remaining faithful to its principles, it will have to force even more states to leave the EMU. Some ‘need’ inflation to overcome the crisis, others cannot get a grip of the situation because of the harsh fight against inflation.

The ‘stateless’ euro currency is destabilising Europe’s states and democratic institutions. Meanwhile, the ‘currencyless’ states are burdening the euro with problems which it, as a currency, cannot solve. The euro can neither stabilise the relationship between the economy and employment in the EMU states while remaining stable, nor can it prevent more and more states from sliding into crisis, mass unemployment and political instability (assuming monetary stability is preserved). If EMU states in times of crisis are prevented from having recourse to their national currency and credit potential, the threat of state bankruptcy is not avoided. On the contrary: it will be made systematically more likely with state coffers which will by then be really empty. Europe can more easily do without its common currency, which fans the flames of crisis, than it can do without stable and democratically solid states.
A common currency shared by economically and politically weak states will inevitably lose its purpose. Neither the economy nor private households can be forced to use it as a means of transaction or a store of value. The economy in general, including savers, will turn instead to safer substitute and parallel currencies, even if these are to be found in other parts of the world economy, for instance to the US dollar.

Thus far the star of the euro shines brilliantly on world markets. This should not deceive anyone that the phase of its inner stability is coming to an end with EU enlargement, even if the accession countries are not going to join EMU immediately. There is not enough 'money from Brussels' (subsidies) to pay for the enormous adjustment needs of these countries. They will have no choice other than to increase their already high budget deficits.

Indeed it was incredibly thoughtless to abandon the competition between European currencies that was built into EMU’s predecessor, the European Monetary System. It created for the early EEC states, especially the poorer ones, the room to manoeuvre for national strategies to catch up. It protected the then more homogenous common market from ‘imported crises’ from this or that region; such crises could have been neutralised before the euro by means of the exchange rate safety valve (revaluation or devaluation). This is why the first 40 years of European integration (1958 – 1998) were a success story. These times are now coming to an end. Through the euro, which abolishes exchange rates between states, the rich EMU states import crises, like the poverty of their neighbours. The dynamics of this process – perhaps ‘dynamite’ would be better – will increase with eastern enlargement.

How to Maximise Your Expenses: Advice to new Members of the European Parliament

Welcome to Brussels! Less than half of those eligible to vote in the June 10th elections to the European Parliament may actually have done so – despite the fact of compulsory voting in three EU countries. So not exactly a great victory for European democracy. Nevertheless, you have achieved a great personal victory…

How to Maximise Your Expenses: Advice to new Members of the European Parliament

by Tristan Smithers-Johnson, MEP†

Dear Colleague,

Welcome to Brussels! Less than half of those eligible to vote in the June 10th elections to the European Parliament may actually have done so – despite the fact of compulsory voting in three EU countries. So not exactly a great victory for European democracy. Nevertheless, you have achieved a great personal victory. Never mind that yours was just a name on a party list and ninety nine per cent of voters will never remember it. The fact is that you have been given the opportunity to play a part in completing the great European Project and to live in a style commensurate with the high importance of your work.

In this connection, it is worth explaining a vital and central aspect of the life of a European parliamentarian: the system for paying expenses. It is important this is clearly grasped not just in your own interests but in those of the other MEPs – with whom cordial relations must be established if your parliamentary career is to blossom. European politics are not like the adversarial politics of Westminster. Forming relations with Parliamentary colleagues with common interests is what being an MEP is all about, and there is no doubt we have a shared interest in preserving the present system of MEPs’ expenses.

Hence this explanatory note. The first thing to understand about the system for payment of Members’ expenses is that it will most certainly differ from any system that you may have known in the past; expectations will have to be revised accordingly. This is because in other walks of life ‘expenses’ refers to the reimbursement of sums spent in the course of one’s work. In the case of the European Parliament, however the situation is quite different: ‘expenses’ refers to a remarkable stream of non-taxable income, well, actually to four remarkable streams of tax-free income. Payments may consequently have little relationship with what has been spent. MEPs have fought courageously to preserve this system against a barrage of misplaced criticism; it is part of our heritage and it is incumbent upon new members to defend it.

Perhaps the least understood aspect of that heritage is the travel allowance. British and German tabloid newspapers have frequently alleged that this is being abused by Members who fly to Brussels or Strasbourg on one of the many budget airlines, then fraudulently claim for First or Business class and trouser the difference. This is libellous and quite without foundation. The great merit of the travel allowance is that it prevents the submission of claims on the basis of actual air fares. You simply hand in your boarding pass and receive a sum calculated according to kilometrage. In
nearly all instances this amounts to a sum in excess of Business Class and so provides a very nice little earner – worth maybe £600 a week and even more if you happen to live a long way from Brussels. No receipt is required and the money rolls in without a fib being told or any kind of effort, criminal or otherwise, on your part. It is true that there have been one or two regrettable instances where MEPs have invented far flung addresses in order to bump up their claims: it cannot be stressed too strongly that this kind of behaviour threatens to kill the goose that lays the golden egg.

You should also be warned against allowing a sudden fit of morality to lead you to try to demand a sum equivalent to that which you have actually spent. This will not only play badly with colleagues; an official will politely explain that no machinery exists to pay honest expenses (while privately entertaining doubts about your sanity).

In its own way the attendance allowance of €262 (£180) – widely known as the ‘sign-on and sod-off’ fee – is just as remarkable. In order to claim this it is merely necessary to sign on before 10 am on any or all of the 155 days on which the European Parliament sits; there is no need to speak in a debate or even to stay. Thus, like many words, ‘attendance’ does not mean what it means elsewhere. After signing on there is, of course, nothing to stop you from pursuing business or professional interests, returning home or heading for the nearest swimming pool in order to work up an appetite for the top class lunch you can expect a few hours later.

Glenys Kinnock, wife of the former Labour leader whose duties as vice-president of the EU Commission included rooting out fraud and corruption, is a record breaker when it comes to signing on and sodding off: she did so 26 times during the last parliamentary session according to one of her colleagues, Hans-Peter Martin who has been rash enough to campaign on the issue of MEPs’ expenses and to what he refers to as ‘sleaze’. When contacted by the media, a spokesman for Mrs Kinnock said – perfectly correctly – that she had not broken the rules and that she would not dignify Peter-Martin’s allegations with a further response. Glenys, who is very popular among MEPs, is an example to us all: always respond to criticisms of that kind by asserting that these amount to an attack on the dignity of your office. Remember: it costs well over a million pounds to send you to Brussels – more than two and a half times the cost of sending a British MP to Westminster and thirteen times the cost of maintaining a member of the House of Lords. So it is important that you should deport yourself in a style commensurate with the sacrifice made by the taxpayer.

In theory, the attendance allowance is paid to cover accommodation and meals. In reality, most MEPs have wisely bought flats in Brussels, many of which are sub-let to research assistants who hand back part of the income they receive from the Member’s staff allowance (see below) as rent. As for meals there is no reason to spend a penny of your allowance or your £56,000 salary – salaries are presently set at the same levels as those received by members of their national parliaments. To eat well simply flag down a passing lobbyist who will be delighted to take you to breakfast, lunch or dinner. (Some friendly advice here: until you get into the swing of things you may find a working breakfast too much to take after the working dinner the previous evening and the working lunch and reception that you enjoyed earlier in the day.) Brussels is the home to many thousands of lobbyists and the number is still growing. Since there are usually more lobbyists wanting to dine an MEP than there are MEPs wanting to be dined, you can expect to eat out a first class restaurant every night. My own favourites are the Chez Marius en Provence in the Place du Petit-Sablon where the bouilabaisse is quite delicious and the Comme Chez Soi in the Place Rouppe where Pierre Wyants, surely one of Europe’s greatest snipe, eel, truffle and lobster – all worthy of Europe’s legislators. Oh, and bearing in mind that you won’t be picking up the bill, don’t pass up an opportunity to visit the sumptuous La Maison du Cygne situated in one of the guild houses of the Grand Place. Another useful tip: should you linger too long over brandy and miss the opportunity to use the official limousine service which stops running at 10pm, don’t worry: the £35 a week taxi allowance ensures that you will not be out of pocket.

Spouses frequently complain that politics is a career which is unlike to families. Not so in the case of the European Parliament, I am pleased to report. Indeed, thanks to the extremely generous staff allowance (£8,500 a month at current rates of exchange) you can put the family on the payroll. Around seventy per cent of MEPs demonstrate their commitment to the family by employing a wife, husband or other member of their family as secretary or assistant, which, of course, leaves plenty of money left over to employ a researcher and still provide a handsome surplus. The British seem particularly keen to employ their spouses. Dan Hannan, the eurosceptic Conservative MEP for the South East recalls being asked by a French MEP: “What is it about you English? You employ your wives, and you sleep with your staff.” The important thing to remember about the staff allowance is that it is entirely up to you how you spend it. No receipts are necessary and there is no audit.

No receipts are necessary either in the case of the general expenses allowance. This is meant to cover office expenses and the like. It amounts to £2,540 a month. The system is not subject to audit and you may, if you wish, have this paid directly into your account.

How much profit can one make out of all of this? Well, this may certainly exceed your formal income. Estimates range as high as £300,000 per annum, but naturally it is not the kind of thing that you expect me to be precise about. Should you be weak enough to accept the case for ‘transparency’ or ‘reform’ expect trouble: Dan Hannan was ‘sent to Limoges’ as a result of a few critical words about the way in which EU expenses were paid.

Worse befell Hans-Peter Martin, an Austrian Social Democrat MEP when he rashly exposed the ambiguities of the attendance allowance earlier this year, pointing that some MEPs had even claimed the allowance on a day when there was no debate to attend. Called to account for his actions at a meeting of the Socialist group on 11th February Martin was rightly condemned for his lack of solidarity and ‘his inquisitorial and policing methods’. Some members accused him of ‘Nazi tactics’ in asking his assistant to observe the behaviour of his fellow MEPs. Martin, however, refused to apologise, was ordered from the room by Enrique Baron Crespo, the then leader of the Socialist group, and immediately expelled from the group. Martin was also wrestled to the ground by a parliamentary colleague when a scuffle broke out later in the parliamentary foyer. But he is back as an independent with an enhanced majority and the issue of reform is unlikely to go away. Indeed, the present arrangements will have to be robustly defended if they are to survive.

In December 2003 we successfully fought off an attempt to ensure that all expense
claims were backed by receipts. But I am ashamed to report that a few weeks later, some of my weaker colleagues gave way as the result of sustained and unprecedented media attack on our rights and privileges ahead of the June elections. By a narrow majority MEPs voted for a 'reform' package that promised to ensure strict 'accountability' and 'transparency' whilst also unifying pay rates. True, we did not sell ourselves cheaply. As part of the deal it was agreed that MEPs should in future receive a salary of just over €100,000 (£68,000) according to a formulae that – for no obvious reason – fixed pay at half the salary received by a judge in the European Court of Justice. So while MEPs may have felt traumatised at the loss of an historic right – I personally suffered many sleepless nights – there was the consolation of a huge salary increase – 20 per cent in the case of British MEPs, considerably more in the case of Members from Spain, Portugal, France, Finland, Luxembourg, Denmark and Belgium.

Still, in terms of overall earning power there was no doubt that we had suffered a considerable set-back. Then, unexpectedly, there was no doubt that we had suffered a considerable set-back. Then, unexpectedly, deliverance came in the form of inter-vention by Joschka Fischer, the German Foreign Minister who announced that his government, supported by France, would block the deal in the European Council on the grounds of 'timing'. With elections looming Fischer apparently took the view that voters would not warm to the spectacle of politicians being bribed to give up the right to payments for attending parliamentary sessions they didn't attend and air fares they had not paid for. And quite right too! The deal was defeated at the eleventh hour, and I celebrated in a most unusual way by buying my own lunch at the Chez Marius.

However, the victories of the last Parliament will need to be repeated if our privileges are to be protected. There will be fresh attempts at 'reform', and these will probably again seek to link the issue of pay to that of expenses. Here lies the danger. Because their pay is at the same rate as that of legislators in their national parliaments the MEPs from 'New Europe' – the Czechs, the Poles, Hungarians, Slovaks, the Latvians, Lithuanians, Estonians and Maltese – will receive only a fraction of that earned by the top earners – the Italians, the Austrians, the Brits and the Germans. Being new and naïve they may therefore be tricked into accepting a revived pay and expenses package that equalises salaries but in the end leaves us all worse off. This is where you can begin to play an important role. Our Central European friends need to be educated to understand that an attack upon our rights and privileges and a way life that we hold dear is an assault upon the dignity of our office and ultimately upon the European project itself. I know you will understand that such attempts cannot be allowed to succeed!

Yours sincerely,
Tristan Smithers-Johnson

† The author, Tristan Smithers-Johnson, MEP does not, of course, exist. He is a literary fiction brought into being in order to describe the real-life behaviour and widely-held attitudes of Members of the European Parliament.

How to Maximise Your Expenses is based on interviews with Members of the European Parliament and their research staff.

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Jeffersonian Principles

The text reproduced below was presented as a speech to the American Legislative Exchange Council (ALEC). Roger Helmer, MEP, is the Council’s first Adam Smith Scholar – a prestigious title to reflect his commitment to Jeffersonian principles – free markets, free enterprise, individual liberty and limited government. In this speech he focuses on the challenges faced by conservatives on both sides of the Atlantic as well as his role in the European Union and the future and mechanisms of the European project.

It is a huge honour, and a huge pleasure, to be here to speak to you today, and I say that not as a mere conventional courtesy, but as a heartfelt affirmation.

To understand why I feel so strongly, you need to know a little about the European Parliament where I spend my working life. The European project and the European institutions are run by a political élite who are hooked on Jean Monet’s fifty-year-old dream of a united Europe, but are increasingly out of touch with the opinions and aspirations of ordinary people.

They talk the language of peace, freedom, justice, the rule of law and democracy, yet the Europe they are creating is profoundly undemocratic, even anti-democratic. So we have a paradox. How can an elected member of the European Parliament assert that the EU is anti-democratic?

The fact is that Members of the European Parliament, although voted into office, are in a vital sense self-selected. Traditionally, only those who were passionately committed to the European ideal cared to offer themselves for selection and although a few of us, myself and my colleagues, are cut from different cloth, still the great majority of EU parliamentarians are passionate integrationists.

This gives rise to a vast disjunction between the EU institutions and public opinion. At almost every test, the public show their reluctance for integration.

In 1992, the Danes, in their referendum, voted against the Maastricht Treaty and were told to go away and vote again until they got the right answer. The French admittedly voted ‘Yes’, but by a margin of less than one per cent.

Across Europe, opinion polls show growing dissatisfaction with the EU project. In Germany, for example, there has never been an opinion poll favouring the euro, but their leaders took them into it anyway. Participation in European elections has declined steadily for decades.

And the political ethos of the EU is the very antithesis of the Jeffersonian principles, which you in ALEC hold in such high regard. The founding paradigm of the EU is
big government, big welfare, high taxes, all accompanied by paralysing levels of prescriptive and intrusive regulation. And the EU’s philosophy implicitly rejects the nation-state and is designed to dissolve proud and ancient nations into new supranational structures.

The EU’s social model is draining the lifeblood of European economies. They have a mountain of employment protection legislation, yet unemployment is at historic levels in France and Germany, and growth is derisory. Investment goes elsewhere.

And the new euro currency adds to the problem. Here in the USA, Alan Greenspan has done an excellent job in delivering growth, stability and low inflation, and he has done so by using the tools of monetary policy and interest rates. But European nations have denied themselves those tools. By creating a common currency, with common monetary policy over diverse economies, they ensure that they have the wrong interest rates for most countries, most of the time. They reach for the economic levers to pull themselves out of recession, only to find that the levers are no longer there.

The EU talks bravely about developing a competitive knowledge-based economy, but the reality is very different. The European economies are facing long-term relative decline under the triple pressures of obese governance, monetary rigidity and the demographic time-bomb.

By contrast, we British Conservatives subscribe to Jeffersonian principles – only we call them Thatcherism! So as you may well imagine, we are seen in Brussels as an eccentric minority, a voice crying in the wilderness.

As a politician, I have made a point of reflecting the views of the people I represent – not just for electoral reasons, but because I happen to agree with them. So at home in England, in political meetings and public houses, I find a wide measure of agreement on the European question. But in Brussels, it often feels like pushing water up hill.

That is why, ladies and gentlemen, I am so pleased to be here. It is a huge pleasure to be amongst people who are proud to call themselves conservative, who believe in liberty and responsibility and enterprise and limited government. It is refreshing to leave the stuffy statism of Brussels for a few days and to breathe the bracing air of freedom.

There have been major developments in the EU in recent weeks, which could have a huge impact on its future direction. In the European elections in June, parties opposed to EU integration made great strides. In the UK, a fringe single-issue party called UKIP, the UK Independence Party, came from nowhere to gain around 17% of the vote and a dozen of the UK’s 78 Euro-MPs.

In May, the largest ever enlargement of the EU took place, with ten new countries joining. These countries, mostly from Central and Eastern Europe, had been under Soviet domination for decades. While they wanted to join the EU, they certainly do not want to find themselves subjected to a new domination from Brussels.

It is by no means clear that the peoples of Europe are prepared to settle any longer for the integrationist project of “ever closer union”. The proposed new Constitution for the EU could become the focus for resistance.

The plan was to replace the long accretion of EU treaties with a new, clear document. It’s so clear that it runs to 360 pages of turgid prose.

It’s important to understand that in key respects the proposed EU Constitution is more centralising than the US Constitution. Far from creating a federal state, it seeks to create a single, unitary state. And the alarm bells are ringing across our continent.

In the UK, my party, along with others, fought a long campaign to demand a referendum on the proposed Constitution and our Labour government was finally forced to concede. France has also announced a referendum; Germany is talking seriously about the idea. It seems that at least ten states, perhaps more, will put the Constitution to a referendum and as things stand a No in any country could bring the project down, possibly forcing a major restructuring of the EU.

In the aftermath of the Second World War, the USA was keen to promote unification in Europe, and for a clear and honourable reason: twice in the first half of the twentieth century, America expended huge amounts of blood and treasure to solve European problems. Rightly, you wanted to be sure that it didn’t happen again.

Equally, American political leaders wanted to get a handle on Europe. As Kissinger famously asked “When I want to talk to Europe, who do I call?”

Sadly, however, life is not that simple. Europe is not a single entity, and the currents of divergence may well be about to derail the integration project. Donald Rumsfeld was vilified for his characterisation of ‘Old Europe’ and ‘New Europe’, yet the phrase immediately passed into common use, because it sums up the contrast between the old, inward-looking continental Europe, and the new Europe, including Britain and most of the accession states, who are much more globalist and Atlanticist in outlook.

Why should this matter to America? Because in much of Old Europe, there are strong currents of anti-Americanism. These have been aggravated by the current US administration’s assertive foreign policy. I and many of my colleagues admire and endorse President Bush’s war on terror. But the Chancellories of Paris and Berlin take a different view.

They think of the transatlantic relationship not so much in terms of co-operation and friendly competition, as in terms of challenge and confrontation. They plan for a separate European defence capability outside NATO to ‘counterbalance’ American dominance – although they seem curiously reluctant to pay for it. They see the euro currency less as an economic measure, more as a political device to challenge the dollar’s global position.

Let me give you a practical example of the problems we face. America’s Global Positioning System is vital to modern navigation and communication, and you generously make it available free-of-charge to the rest of the world. But it also has a vital strategic significance. You can deny GPS access to any opponent in a shooting war, so it makes a critical contribution to US battlefield dominance.

But the EU has now decided to launch its own, parallel system, called Galileo. We don’t need it, because you have generously given us access to your system. It will be hugely expensive and will merely duplicate existing US facilities. It is, in a sense, merely a macho political gesture. The US has a global currency, so we have to have one. The US has a GPS system, so we have to have one.

The problem is that the EU has co-opted both Russia and China as partners in the project. Imagine a future confrontation, in the Taiwan Straits, say, where America seeks to deny China use of its own GPS, only to find that China is using the European system.

The EU’s Galileo system could destabilise the strategic situation. It could damage defence and intelligence co-operation between the UK and the USA. And it may force
LETTERS TO THE EDITOR

From Dr Bernard Juby
Dear Editor,

People in Britain should not be surprised to discover that the proposed EU Constitution has been written by a French ‘enarque’ (Valerie Giscard D’Estaing) entirely along the lines of the Code Napoleon and is therefore totally consistent with the State (in this case Brussels) via the bureaucrats running everything and with the State (in this case Brussels) via the International Criminal Court. So I hope you will forgive me if I raise my concerns on one aspect of US policy.

This administration is urging us to fast-track Turkey’s application to join the EU. Turkey is seen as a key NATO ally, the lynch-pin of NATO’s eastern flank, so the US is keen to lock them in. EU membership seems, in US terms, a cheap and easy way to do that.

If we had the kind of EU that I should like to see – essentially a free trade area – then I should be very happy for Turkey to join. Indeed Turkey already has a trade deal with the EU. But the EU is much more than that. It means open borders and the free movement of people. Worse yet, it means that EU member states make the laws that affect me and my countrymen in England. And they make them by majority voting.

Turkey is a country with a totally different history, culture and religion from my own. I may respect the Turkish people, but I don’t want them to make the laws that govern me in my country. On current demographic trends, Turkey may have the highest population – and therefore the biggest voting weight – in the EU in a couple of decades.

Let me give you a parallel. Suppose I were to suggest to you that the USA should open its border with Mexico, and allow Mexico a 10% vote in all new US legislation. I suspect you might not agree to do that. Yet that is what the USA is asking us to do with regard to Turkey. That is why I and many of my colleagues are profoundly concerned about the question of Turkish accession.

Can I summarise my message to you on Europe? I should like you to take away with you two very clear ideas. First, EU integration may not be a one-way street. There are powerful currents of dissent and opposition. There are serious economic issues. The tectonic plates are starting to crack.

Second, further EU integration may not be good for America. The EU should be America’s ally, but may end up as a competitor. I would urge a US foreign policy tailored to individual European countries, promoting transatlantic cooperation and a liberal trade environment. It may be more trouble than treating the EU as a single entity, but it will be hugely more rewarding.

And a final word directed especially at the paid-up Republicans in the room, whom I believe may be in a majority. They tell me you have an election in November. I believe a Kerry Presidency would mean protectionism at home and appeasement abroad. I believe a second Bush term will be good for prosperity and security not only in America, but around the world. I believe it will promote the Jeffersonian values we all cherish. And you guys are in the front line. For heaven’s sake, go out and win in November!

For more information on ALEC please see www.alec.org

Roger Helmer is a Conservative MEP for the East Midlands and a member of the European Foundation’s UK Advisory Board.

From Mr Roger Wilson
Sir,

On first reading Roger Helmer’s article, ‘Time for a New Conservative Policy on the EU’, one had a sudden flash that there is still a spark of hope for the failing Conservative Party, but no, it is yet another careful restitching of the emperor’s clothes.

Helmer rather gives the game away by comparing UKIP’s uncompromising stance on the EU with the Conservative’s “carefully nuanced ambiguity”. It is this very ambiguity which, deservedly, brings the accusation of dishonesty against the Conservative Party more so than on either of the two major parties.

The real clincher, though, is in his final paragraph where he extols the worthiness of Bill Cash’s phrase ‘Associate Membership’ in reference to the EU. I have the privilege of Honorary and Associate Membership of various Bodies; if I want to retain those privileged positions I still need to obey the rules. So, what new policy can the Conservatives possibly come up with? I suppose they could try being honest and commit to withdrawal – or would that be an oxymoron?

Yours faithfully,

Roger Wilson, Chairman of the North West Hampshire Constituency of the UK Independence Party.

From Mr Ed Daniel
Sir,

I always find The European Journal extremely informative and enjoyable, but the June/July 2004 issue was exceptionally good. Your publication is a crucial arm in the defence against European federalism. Keep up the good work!

Yours faithfully,

Ed Daniel
Willesden Green, London
Fahrenheit E1 11

by Robert Oulds

RUMOUR has it that following on from his attacks on President Bush Michael Moore will soon start filming what will be a fact-based blockbuster documentary exposing the corrupt workings of the European Union at home and abroad.

Your author has an advanced copy of the film script.

Michael Moore will first argue that, “even though the American political system allowed Bush to steal the election at least the USA has elections and publicly scrutinised appointments to key positions, unlike the European Union.”

His mocking of the European Union’s political structures continues with, “it is ironic that the EU is insisting on democratic reforms in Turkey when the EU is itself so undemocratic that it could not join the EU if it applied to be a member.”

Then he exposes how the House of Europe was built by deceit and subterfuge.

He then looks at that which is to come. Picture his alarm at the EU Constitution. He compares and contrasts the contradictory statements made by the British Government and those made by European supporters of the Constitution.

All the time Michael Moore compares the emerging European Union and its Constitution with that of the United States. He poignantly says, “the EU Constitution is nearly 300 pages long, yet America’s is only 16 and that includes the amendments!”

He explains that America’s Constitution actually created limited government, something Europeans have struggled with.

The EU’s Constitution, however, contains the Flexibility Clause which will allow for the Council of Ministers to change the Constitution at will. He remarks that the Constitution’s language is ambiguous, allowing the European Court of Justice and its ally the Commission to build their House of Europe with no regard for the wishes of the EU’s population or the national parliaments of its member states.

The focus shifts to civil liberties.

He looks at the European Arrest Warrant and how it creates many new crimes, such as the vague legal notions of racism and xenophobia. It will, Moore argues, “remove the elementary safeguards of any extradition policy.”

What is worse, according to Moore, is that foreign police and judiciary from alien legal systems, which have less regard for the rights of the individual and little for the presumption of innocence, will have jurisdiction over British subjects who will have no recourse to the courts in Britain or the police.

He continues, “It is proposed that Europol will be transformed into a body resembling a mix of both the FBI and the CIA. Europol, with a jurisdiction over every citizen and subject in the European Union, will have powers worthy of any Police State.”

Moore will then tell the by now riveted audience that Europol will be completely unaccountable to the governments of member states and any democratic institution, even the European Parliament. And that its officers, unlike Britain’s police, are immune from prosecution should they commit a criminal offence in the course of their duties. Europol will also have prevalence over our own security services, which shall be relegated to information gathering for this new hybrid organisation.

Then he hits us with the case of the German journalist Hans-Martin Tillack, who was arrested on 19th March on the orders of the EU’s anti-fraud office OLAF. Hans-Martin Tillack, who was investigating EU fraud, was taken into custody and his personal papers, computer and archives confiscated in an effort to identify his sources for revelations about EU corruption.

Moore asks, “Is 1984 emerging?”

This leads nicely into the topic of EU corruption. He shows how the accounts have not been signed off for over eight years. Michael Moore says, “Not even Arthur Anderson can sign off the EU’s accounts. Okay, we had Enron…” “Moore declares “but at least they are being prosecuted. In the EU the pigs with their snouts in the trough are running the show.”

Moore moves on to international affairs.

He is worried about the establishment of an EU foreign and defence policy. This he suggests will be French foreign policy writ large.

Moore will look at the EU’s dealings with Putin’s Russia and other unsavory regimes particularly the pressure for the lifting of the arms embargo on China. He then focuses on the EU’s Galileo project, which has ambitions to harness the key military technology of our age – the ability to use satellite-positioning technology making possible the development of high-accuracy all-weather weapons targeting and enhanced command and control systems. The EU’s business partners in the Galileo project include the People’s Republic of China. This, Moore suggests, could threaten world peace.

Great fun is made of French, German and Russian economic ties with Saddam Hussein’s Iraq. He deviates onto the corruption of the UN’s oil-for-food programme. Moore really does leave no stone unturned. He even uses controversial sources that reportedly show the close personal relationship between the corrupt tyrant and the President of Iraq, i.e. Chirac and Saddam Hussein.

Apparently upon hearing of the capture of Saddam Hussein by US forces and learning of the terrible physical and mental state and the squalid conditions in which Hussein had been living, the Jacques Chirac of Moore’s film remarks that,” Obviously Saddam’s gassing of Halabja, his draining of the Marsh Arabs’ lands and the attacking of his neighbours was just a cry for help. Could not America have seen that that he was suffering from low self-esteem? It was classic attention seeking behaviour. He made his plea for approval the only way he knew by lashing out. All Blair and Bush did was to reciprocate that negativity by attacking him. Why did the Anglese only hear Saddam’s angry speeches but fail to search for the hurt little boy beneath those words? Inside that maniacal mass-murderer – beneath the veneer of evil and sadism – there was a scared little child searching for love. The war could have been avoided if only US forces had met Saddam’s emotional needs, giving him the love and approval he so desperately sought.”

Moore, supported by Bob Geldof, also attacks the EU’s Common Agricultural Policy and French-inspired aggressive trade practices, such as the dumping of sugar on the world market. This, Michael Moore argues, is “literally killing people in the third world. In fact it is killing more people than all of Duddy’s bombs.”

This could all be coming to a cinema near you. Unfortunately, however, the factual world of the EU’s unscrupulous activities is not as in vogue as America bashing.

Cllr Robert Oulds is the Director of the Bruges Group.
Unions split on EU Constitution
Unions look set to split on the EU Constitution when they meet for the annual TUC conference next month. Following the publication of the final agenda for the four-day Brighton meeting in September, Europe has emerged as the biggest single dividing line.

The RMT says there are "legitimate fears" that the document, if ratified in a referendum, will "centralise power to Brussels and strengthen unaccountable EU institutions at the expense of national, elected parliaments" and "entrench neo-liberal policies of privatisation and transfer control of the public sector to the EU, threatening the existence of a National Health Service." — Epolitix.com, 26 August 2004

EU opinions survey to be run by British firm
Europe's social opinion survey, the Eurobarometer, passed into British hands yesterday. The survey, established by the European Commission 30 years ago to inform its policy-making, will be conducted by the market research group Taylor Nelson Sofres for the next four years under a €50m (£33.8m) contract. However, a glance the findings of the survey suggests that the most democratic decision of all would be for the European Union to disband itself entirely. Since the 1970s, more than half the population of the EU's member states have told Eurobarometer that they would feel either indifferent or very relieved if the EU was scrapped tomorrow. Of the Britons asked last year, only 16 per cent said they would feel sorry if the EU ceased to exist. — Daily Telegraph, 26 August 2004

Women’s Rights?
Godfrey Bloom, member of the UK Independence Party, has become a recent addition to the European Parliament’s Women’s Rights Committee. However, this position does not appear to be quite a fitting match. Mr. Bloom stated: “I just think they [women] don’t clean behind the fridge enough. I am here to represent Yorkshire women, who always have the dinner on the table when you get home. I am going to promote men’s rights.” He further said: “No self-respecting small businessman with a brain in the right place would ever employ a lady of child-bearing age.” — Daily Telegraph, 26 August 2004

Au revoir les Francais
The tradition of the French having the most influential positions in the European Commission has been broken. British bureaucrats are racking up one success after another in securing coveted posts, much to the chagrin of the French. Admired for a no-nonsense style, British fonctionnaires have secured a high profile as chiefs of staff in the team put together by José Barroso, the Commission president. — Daily Telegraph, 27 August 2004

French socialists to decide on EU Constitution in December
French socialists will make the important decision on whether or not they will support the European Constitution in December. The text is to be put to a referendum in France next year, however socialists have been split on whether to support the Constitution, which they say is too economically liberal. Leader of the Socialist Party in France, François Hollande, told the Nouvel Observateur that he hopes his party will say ‘Yes’ to the Constitution after its internal consultations. “The Socialist Party will decide its position on the constitutional treaty in December. I hope it says yes to Europe. But if in the end the question turns into one about Jacques Chirac’s fate, let there be no illusions – [our answer] will be no, with all the consequences that carries for the continuation of his mandate,” said Mr Hollande. — EUObserver, 27 August 2004

Expensive Students
The European Union will be financing LM200,000 (€0.5 million) for Maltese interpreter training. Eight Maltese youths will be following the course for the European Masters in Conference Interpretation at the University of Westminster while another youth was selected for training in Brussels. At the end of the courses these youths will be signing a two-year contract to work within European institutions as interpreters and will also be training other Maltese students for the interpretation courses due to begin in October 2005. — MaltaMedia Online, Network 26 August 2004

Turkey should start EU accession talks within two years
An influential Dutch advisory group has recommended that Turkey’s EU accession talks start within two years, stressing that there is room for Islam within the 25-nation bloc. "Admitting a Muslim country may be new to the EU, but does not principally differ from earlier expansions," said the Dutch Advisory Council on International Affairs in a new report. The 30-page report, available in the Dutch language only, came out about four months before the leaders of the EU member states are to decide whether to start accession talks with Turkey. The Dutch Government, which took up the rotating six-month EU presidency in July, has included the issue on its agenda of priorities. — Southern European Times, 25 August 2004

Love thy neighbour
A high level European Union delegation is holding a day of talks with Israeli officials over Israel’s participation in the European Neighbourhood Programme. According to European officials, the EU wants to wrap up negotiations with the first wave of countries to be involved in the project before the new European Commission takes office in November.

The European Neighbourhood Programme, also known as the Wider Europe Initiative, is designed to upgrade the EU’s relations with a circle of some 14 countries bordering the enlarged EU, with the ultimate goal being to allow free access to and from the EU of goods, services, capital and people from the countries involved in the initiative. The countries in the first wave include: Israel; Jordan; Moldova; Morocco; Tunisia and Ukraine. — The Jerusalem Post, 24 August 2004

Saphira Kürschner is studying International Relations at St Andrews University and is currently working as a research assistant at the European Foundation.
BOOK REVIEW

Will the EU’s Constitution Rescue its Currency?”
by Professor Tim Congdon, CBE
Reviewed by Dirk van Heck

This pamphlet, the sixth in the Bruges Group’s series ‘Exposing the EU Constitution’, provides a tight and compelling assessment of how well the euro is working and the degree of political union that might be required to make it work better, by one of Britain’s most respected economists.

Professor Congdon sets out by explaining the dynamics of asymmetric shock between countries in the eurozone, caused by the uniform interest rate, and explains how “the behaviours of real interest rates and banking systems have aggravated the disequilibrium between monetary conditions in the winners and losers.” In one of the many highly illuminating footnotes, he points out that a UBS analysis of interest rates in the eurozone, compared with a level implied by a Taylor rule, showed that the current two per cent interest rate was in fact wrong for every one of the zone’s Member States.

Whilst the gap between monetary conditions in the winners and losers from the euro should not widen indefinitely, Congdon observes that, so far, “the equilibrating mechanisms have been trounced by the disequilibrating mechanisms,” the former having failed to neutralise the pressures for divergent inflation rates and unemployment levels in different Member States. The obvious policy instrument appropriate for dealing with the imbalances between Member States, he says, is fiscal policy, applied along Keynesian lines. Activist fiscal policy at the national level is, however, outlawed by the Maastricht Treaty and the Stability and Growth Pact that accompanied it.

Professor Congdon traces the genealogy of the Stability and Growth Pact to the macroeconomic orthodoxies of the Deutsche Bundesbank and the West German Stability and Growth Act of 1967, pointing out the irony of Germany’s position as the country that insisted on the adoption of rules to enforce fiscal rectitude, only to become their principal transgressor. He observes that the EU is in danger of biting too hard the hand that feeds it, as the result of a paradoxical situation: “If the excessive deficits procedure were to be taken to its limits, Germany’s taxpayers would be paying the rest of Europe in the form of both fiscal transfers which constitute much of its large budget deficit and a fine imposed because that deficit was excessive” (emphasis supplied).

Since this paradoxical situation would be politically unacceptable, however, the Stability and Growth Pact is instead left looking increasingly like a dead letter. If, as German Finance Minister Hans Eichel insists, despite the ECJ’s recent judgement that the excessive deficit procedure may not legally be suspended by Ecofin (the Council of EU finance ministers) as happened in November 2003, “we are no closer to sanctions than we were before,” then the pact is effectively defunct. In that case, there would be only one alternative. As Congdon remarks, in those circumstances “both admirers and sceptics might well agree on one proposition, that monetary policy cannot work well in an incomplete political union where fiscal policy has not been centralised.”

Examining the economic provisions of the draft Constitution for Europe, Congdon concludes that such a centralisation of fiscal policy is “the only possible interpretation … If Article III-71 … has any substance, it is that the determination of fiscal policy guidelines is to be centralised under Ecofin just as monetary policy has been centralised under the European Central Bank.”

The potential for fiscal policy to be centralised under Ecofin is inherent in the Constitution’s prospective bestowal of legal personality upon the Union, which would enable the EU to have its own debt and tax revenues as well as a budget. All that would be required to do this, Congdon says, is one more treaty. Even that, however, may be unnecessary, as the Constitution contains mechanisms for the Council of Ministers to amend the Constitution without the need for a fresh treaty.

The first step in this process, identified by Professor Congdon, is already being considered – he predicts a proposal for an EU finance minister to oversee the centralisation of fiscal policy. At the trilateral Franco–German–British summit of 18 February this year, one of the points agreed on was the need to establish a European ‘super-commissioner’ to oversee ‘economic reform’. Ostensibly, this referred to the ‘Lisbon Process’ of economic reform, but the scope of reform envisaged can, and usually does, expand over time.

Towards the end of the pamphlet, Professor Congdon allights on a disingenuous argument made in evidence to the Commons Treasury Committee in February 2003, by Gordon Brown: “As a United Kingdom Government we oppose tax harmonisation… There is no need for there to be tax harmonisation and the experience of the United States of America is one demonstration of that.” As Congdon says, what the American example really demonstrates, emphatically, is that monetary union entails fiscal centralisation and political union. It is, therefore, amply justified to say that “monetary union cannot work well without a degree of political integration akin to that now found in such federal states as the USA.” This of course was the original intention of the euro, which set up future integrationist imperatives as mechanically as winding up a clock sets the hands in motion. It is as well to remember in this context that, even if the UK continues to escape euro membership, we are nevertheless subject to the legislative baggage that comes with it.

The only significant shortcoming of this pamphlet is that it was written some time ahead of publication. Professor Congdon’s analysis of the Constitution for Europe is based on the Convention text of June 2003. As I observed in the last issue of The European Journal, the final provisions of the text agreed at the Intergovernmental Conference of June 2004 take the totality of the EMU provisions further in the direction of increased integration than earlier drafts. If Professor Congdon were to produce an updated analysis, he would be able to make his points even more emphatically, on the basis of fresher and stronger evidence.

Dirk van Heck is Head of Research at the European Foundation.
PRAGUE

by Elizabeth Sheahan & Felix Paterson

Straddling the River Vltava, the ‘city of a thousand spires’ has, in recent years, become one of Europe’s top tourist destinations. Its rich architectural history has remained virtually untouched by natural disaster or war. Prague retains much of its mediaeval layout and the street facades display a rich variety of Baroque, Rococo and Art Nouveau.

Prague’s history can be traced back to 4000 BC when Germanic and Celtic tribes established permanent farming communities in this particularly attractive part of Bohemia. By the 9th century the Great Movenarian Empire had conquered the area and in 880AD Prince Borivoj of the Premyslid dynasty founded Prague Castle, signifying the beginning of the city of Prague. The short-lived empire introduced the locals to Christianity but it was ‘Good King Wenceslas’(of Christmas carol fame who was actually a Duke) who made it the state religion of Bohemia in the 930s. He remains the patron saint of the Czech Republic. In the 13th century three separate medieval towns grew out of the Prague settlement below the castle, each surrounded by walls and endowed with royal charters. They were the Old Town of Prague (c.1230), Gall’s Town (c.1240), which merged with the Old Town before the end of the 13th century; and the Lesser Town of Prague, known as Mala Strana (c.1257).

Medieval Prague flourished during the reign of the Holy Roman Emperor and King of Bohemia, Charles IV (1346-1378). Charles founded the oldest university in Central Europe in Prague in 1348 and built the New Town of Prague in the same year. With 40,000 inhabitants, Prague became one of the largest towns in Europe at that time.

When the Hapsburg dynasty ascended the throne of Bohemia in 1526 the Prague Towns lost a large part of their property and political privileges. But it was a period when culture flourished thanks to the court of the art-loving Emperor Rudolph II (1576-1612). After the defeat of the major uprising of the Bohemian Estates at the Battle of the White Mountain in 1620, Prague lost the rest of its political privileges, landed property and the leading members of the intelligentsia, who were forced to emigrate to avoid the harsh reintroduction of Catholicism.

This insurrection catalysed the Thirty Years War (1618-1648) that devastated much of Europe; a quarter of Bohemia perished signalling the end of any movement towards Czech independence for the next three centuries. However, the Czech national spirit was not destroyed and by the 19th century Prague had become the centre of the so-called Czech National Revival. Czech literature, architecture and journalism were celebrated, even though Czechs were denied participation in the political process.

In 1784 Emperor Joseph II merged the four historical Prague Towns into one unified city of Prague. This became the centre of industrialised Bohemia and the core of Bohemian national revival. Prague began another period of rapid growth and it became the centre of the Czech national movement. In 1866, the Austrians surrendered to Prussian forces at Prague during the Seven Weeks’ War. The Austrian defeat helped establish Prussia as Europe’s dominant power, but the Hapsburgs continued to control Prague until World War I.

The 20th century solidified the Czech nationalist movement. Czechs had no interest in fighting for their Austrian rulers in World War I and neighbouring Slovakia was equally reticent about taking up arms for their German occupiers. With Allied support, Czechoslovakia became an independent nation in 1918 and Prague became its capital.

German forces occupied the city during World War II and Prague’s community of some 120,000 Jews was all but wiped out – almost three-quarters of them either starved or were murdered in concentration camps. On 5 May 1945, the population of Prague rose up against German occupation forces and most of Prague was liberated before the Soviets arrived. In the 1946 elections, the Communists became the republic’s dominant party and in 1948 did away with a multi-party system through a Soviet-backed coup d’état.

Under Communist rule, Prague and its people became isolated from other European cities and Czech culture suffered from the negative effects of Communist control. In 1968, after years of gradual liberalisation under General Secretary Dubcek, the ‘Prague Spring’ occurred. Fifty-eight people died, almost 300,000 sympathizers lost their jobs and Dubcek was arrested when Moscow sent troops in to quell the demonstrating populace.

The Communist leadership maintained control until the Berlin Wall fell in 1989. A series of peaceful demonstrations beginning on 17 November became confrontational, though the uprising was essentially non-violent, earning it the name ‘Velvet Revolution’. Free elections were held in 1990, and the Czech and Slovakian separatist movements subsequently inspired the peaceful 1993 split into the Czech and Slovak Republics known as the ‘Velvet Divorce’. Prague quickly became one of the top tourist destinations in the world during the 1990s. In 1999, the Czech Republic became part of NATO and most recently was one of ten new states to join the European Union.

Elizabeth Sheahan is currently working as a freelance journalist specialising in political and legal affairs.

Felix Paterson is a full-time student and research assistant at the European Foundation.
**SIGHTS**

**Prague Castle**
Prague Castle is a vast mixture of architectural designs dating back to the 9th century. Within the fortress walls are St George Basilica, St Vitus Cathedral and an art gallery with paintings and drawings from the 16th to the 18th centuries including works by Titian, Tintoretto and Rubens.

**Charles Bridge**
This stone Gothic bridge connects the Old Town and the Malá Strana. Constructed and designed by the same architect who created St Vitus Cathedral, it dates back to 1357 during the reign of Holy Roman Emperor Charles IV.

**The Old Town**
The Old Town is situated in the heart of Prague and consists of many of the most important tourist destinations. Highlights include the Old Town Hall, one of the most striking buildings in the city and with a tower over 200ft tall, which offers visitors spectacular views of the city. Also situated in this area are the Prague Jewish Ghetto and the Municipal House.

**The Astronomical Clock**
This ancient piece of 15th century clockwork is located in the Old Town Square. Every day thousands of tourists will gather in the square to witness the memorable striking of the hour.

**EATING**

**U Modré Ruze**
Rytírská 16, 110 00 Prague 1
Phone +420 224 225 873 / Fax +420 224 222 623 www.umodrereduze.cz
Romantically located between Staromestska and the Wenceslas Square, the restaurant is set in a 15th century cellar and provides diners with an unique medieval atmosphere. Although the restaurant is nominally Czech, the chef has delved into continental territory and centuries including works by Titian, Tintoretto and Rubens.

**Kampa Park**
Na Kampe 8b, Mala Strana, 110 00 Prague 1
Phone +420 575 326 856 / Fax +420 257 533 223 www.kampapark.cz
Kampa Park offers a mixture of Czech and Mediterranean foods and a breathtaking riverside view of the Charles Bridge. This restaurant is, unsurprisingly, highly popular with celebrities.

**SHOPPING**

**Wenceslas Square**
Despite being more of a sloping boulevard than a square, the hub of Prague's cultural, social and business activity can be found in Wenceslas Square. It is certainly the primary shopping area in Prague with shops ranging from antique book sales to modern designer clothing.

**Moser Glass**
Na Prikope 12, Old Town, Prague 1
Phone +420 224 211 293 / www.moser-glass.com
There are Bohemian glass shops everywhere in Prague but Moser Glass is the best of them. Located close to Wenceslas Square, this shop has been making crystal glass for kings, presidents and other VIPs for centuries. Moser glass is justifiably referred to as 'The Glass of Kings'.

**ACCOMODATION**

**Hotel Carlo IV**
Senovazne Namesti 13, Prague 1
Phone +420 224 593 111
www.boscolohotels.com
The Hotel Carlo IV is located in the city center, only a short step away from important sightseeing spots such as Wenceslas Square. With a neo-classical exterior design and decorated on the interior with ornate stuccowork, the hotel provides visitors with an extremely luxurious and dashing experience. Prices range from €95 to €299.

**Hotel Bellagio**
U Milosrdnych 2, Prague 1.
Phone +420 224 575 360 / Fax +420 224 576 168
www.motylek.com/bellagio
Situated in Prague's historical town centre, the Bellagio is in close proximity to the Prague Jewish Ghetto and the Charles Bridge. This restaurant is, unsurprisingly, highly popular with celebrities.

**Lavka Bar and Club**
Novotneho Lavka 1, Old Town, Prague 1
Phone +420 221 082 299 / www.lavka.cz
This large complex not only houses a club and a bar but also a restaurant, function rooms and a theatre. 'Klub Lavka' is widely regarded as the most attractive destination for both tourists and Prague residents.

**GOING OUT**

**National Marionette Theatre**
Zatecka 1, Old Town, Prague 1
Phone +420 224 819 322 / www.mozart.cz
Puppet shows have a long tradition in the Czech Republic and the National Marionette Theatre provides entertainment for adults and children alike. Amongst the repertoire is the puppet version of Mozart's famous opera Don Giovanni, which is performed with puppets in period costumes and authentic 18th century stage sets.

**Lvi Dvur Restaurant**
U Prasneho Mostu 6/51, Hradcany, Prague 1 Phone +420 224 372 361
www.lvidvur.cz
An exceptional restaurant with amazing terrace views of the cathedral and the castle gardens. It serves a traditional Czech cuisine, its speciality being grilled piglet served with roasted potatoes, fresh lettuce, onion and olive oil.

**PRAGUE TOURIST CARD**

Offering free entrance to more than 40 Prague museums, the Botanical Gardens and major sights such as the Prague Castle and Vysehrad Castle. A 3-day card costs approx. €27 and includes all means of transport within the city. Cards can be ordered at www.tbs.cz.
Likewise, the temporary civil administration was equally made up of different nationalities. The lesson is clearly that you do not need an integrated European military, let alone a single state, to deploy forces overseas. Clearly, the absence of certain contingents (read: Old Europe) demonstrates that the principle of the alliance of the willing (and capable) remains the only practical solution. Anyway, who wants to be up close to a unit that really doesn’t want to be there?

Much of the work being done by the Italians, I have to say, impressed me: not least the efforts of their carabinieri. Obviously, they have an advantage over certain other police forces in that they follow the Napoleonic model of being a paramilitary force, originally designed to maintain order behind the lines and shoot the odd participant in a Tosca opera or the like. Consequently, they are armed, and, comparatively at least, mean. They do not have to resort to using bits of polished wood in the face of trouble. They have very, very big guns. No, really big: you can knock other people out of pick-ups with them. Rather like the RUC (or whatever Andrex-soft acronym they presently endure), they have also gained something of a reputation in such environments through having to deal with ruthless gangsterism at home. One of these tasks has been to deal with cultural protection.

By this, I don’t mean guarding some boutiques hawking dishevelled Tracey Emin displays of Bedou camping utensils. Scattered round the Province of Dhi Qar lie the shattered vestiges of arcane proto-history. From out of cursed plains rise the ziggurats, tombstones of archaic cities. Other sites can only be discerned by low-flying Puma, scratchings in the ground scarcely betraying the trace of ages. These bear the names of hallowed antiquity; the silence of the desert cloaking their fame, whose names now are but whispers that fleet past our ears through the Epic of Gilgamesh. Ur we know from the Bible, the house of Abraham, and its fabulous tombs (familiar to Agatha Christie: she met her future husband here). Their people are touchable in their relics and handicraft that now grace the greatest metropolitan museums. There are literally hundreds of sites scattered around, as yet unexcavated. Unexcavated, but not undug. The government, though lately in charge of its own destiny, remains a long way from capable of protecting these treasure troves from the robbers. That task is left to a handful of archaeologists and curators and their support staff. A mark of the chaos came a few weeks ago with the burning of their museum library in An Nasiriya, destroying several thousand manuscripts, maps and books. The barbarians of Moqtadah’s Militia danced as the proof of civilisation burned. Out in the plains meanwhile, profiteers and the desperate alike raid the sites with shovels, wrenching from the sand the artefacts that are the common inheritance of the world. Take a stroll some rainy Sunday through the Middle Eastern galleries of the British Museum, past the intricate cylinder seals, to the fabulous golden ram in the thicket, the so-called royal standard, and to the tablets relating the story of the Flood. What like wonders are already lost we cannot know.

But from even this grim circumstance there arises hope. There is a scheme that has been put together to start to repair the damage from the insurgency and restore the library, museum and archives. There are plans to do what the local police cannot do and install guards at the sites run by the Archaeology Service themselves, to create a network of armed personnel linked by walkie talkie. For a few thousand dollars they can plug the gap. Baghdad is presently incapable of playing the role – its priorities are more life and death, of food, water, power and fighting insurgency and terror. Culture, even if the culture of such antiquity and universal importance, must sink further down the list of priorities as a luxury in a life-or-death struggle against, well yes, against evil.

Further afield, we have more of a luxury, and less of an excuse.

Will national governments – particularly the British and Italian – come up with those few thousand dollars that could make such a solid difference?

Will (for all it’s ambitions in cultural affairs) the EU unplug its propaganda circuitry this budget year and spend what is after all our money on something a little less selfish?

Or, in the absence of Whitehall concern, can ordinary people be found who are prepared to support men and women like the curators in Dhi Qar, guarding with their very lives the last line of defence for five thousand years of history?
The Great College Street Group was formed in October 1992 in order to oppose the Maastricht Treaty. The group, consisting of academics, businessmen, lawyers and economists, provided comprehensive briefs in the campaign to win the arguments in Parliament and in the country. The European Foundation was created after the Maastricht debates. Its task has been to mount a vigorous and constructive campaign in the United Kingdom and throughout Europe for the reform of the EC as a community of independent sovereign states. The Foundation continues to establish links with other like-minded institutes across Europe.

Objectives

The objectives of the Foundation, set out in its constitution, are as follows:

- to provide a forum for the development of ideas and policies for the furtherance of commerce and democracy in Europe;
- to increase co-operation between independent sovereign states in the European Community and the promotion of the widening and enlargement of that Community to include all applicant European nations;
- to resist by all lawful democratic means all and any moves tending towards the coming into being of a European federal or unitary state and for the furtherance and/or maintenance of such end;

Activities

The Foundation pursues its objectives by:

- organising meetings and conferences in the UK and in mainland Europe;
- publishing newsletters, periodicals and other material and participating in radio and television broadcasts;
- producing policy papers and briefs;
- monitoring EC developments and the evolution of public opinion and its impact on the political process in the main EC countries;
- liaison with like-minded organisations in other EC and EC applicant countries and elsewhere;
- liaison with trade associations and other professional bodies affected by EC action and policy.

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The Foundation addresses itself to the general public and to politicians, journalists, academics, students, economists, lawyers, businessmen, trade associations and the City.

It concerns itself with the following main topics:

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