2 LETTER FROM THE EDITOR  
James McConalogue

3 BILL CASH DEMANDS JUDICIAL REVIEW ON LISBON TREATY AT HIGH COURT (AND IS REFUSED)  
The European Foundation

4 THE NORTHERN ROCK FIASCO: HOW THE EU HAS DAMAGED BRITAIN’S ABILITY TO GOVERN ITSELF  
Tim Congdon

9 WHAT THE LISBON TREATY MEANS  
Karl Albrecht Schachtschneider

12 BRUSSELS MUST WAKE UP AND SMELL THE (IRISH) COFFEE  
Joe Cookson

13 CAMERON MUST SEE THE LISBON TREATY SCRAPPED AND THE EU TREATIES RENEGOTIATED  
James McConalogue

14 THE LISBON TREATY: THE EU DEMOCRATIC PROCESS IN QUESTION  
Laurent Daure & Dominique Guillemin

15 EU PLANS HIGHER AIR FARES, REJOICE, REJOICE, REJOICE!  
Roger Helmer, MEP

16 HOW TO READ THE LISBON TREATY  
Peter Mach

16 ONE DAY IN EUROPE  
Roger Helmer, MEP

17 LISBON AND THE UNITED NATIONS  
Glen Ruffle

18 INTELLIGENCE DIGEST  
John Laughland

24 THROUGH THE EU LABYRINTH  
Margarida Vasconcelos

---

Editor: James McConalogue  
Publisher: The European Foundation  
Queen Anne’s Business Centre,  
28 Broadway  
St. James’s Park  
London  
SW1H 9JX

Telephone: 0207 340 9631  
E-mail: euro.foundation@e-f.org.uk  
Web site: www.europeanfoundation.org  
ISSN 1351–6620

The European Journal is published by The European Foundation. Views expressed in this publication are those of the authors themselves, not those of The European Journal or The European Foundation. Feature articles and reviews should be sent to the Editor at the address above, if possible by e-mail or on 3.5” IBM compatible disc in MS Word. No part of this publication may be reproduced in any form or by any means or stored in a retrieval system without the written permission of the publisher.
Letter from the editor

You will have noticed the horrific subversion of the various citizens of Europe’s nation states and of their elected representatives (particularly of the Irish) in the recent passage of the Lisbon Treaty. The first thing I must report since the last issue is that on 17 June, Bill Cash sought a judicial review in the High Court to ensure that the Lisbon Treaty should not be ratified, given David Miliband’s decision to continue the ratification of the Treaty in the UK (statement on 16 June) after the ‘No’ outcome of the Irish referendum vote (on 13 June). Bill Cash later heard from Mr Justice Collins that permission had been refused. For the records, we have printed in this issue (page 3) the original detailed statement of grounds, the Order by the Honourable Mr Justice Collins and Bill Cash’s subsequent view.

Immediately afterwards, one of Britain’s leading economic commentators, Professor Tim Congdon, looks into the Northern Rock fiasco and asks if the EU has played any part in the way in which Britain governed itself (see page 4). Fundamental to the crisis was the way in which the FSA, the Bank and the Treasury were crippled by limitations on their power, and uncertainties about exactly what their powers were, which arose from the UK’s membership of the EU. The Northern Rock fiasco illustrated, with remarkable clarity, the damage that EU membership has done to Britain’s ability to govern itself.

To return to an analysis of the Lisbon Treaty, I am also fortunate enough to have an article by a prominent Professor of law who is opposing the ratification of the Lisbon Treaty in the German Constitutional Court (see pages 9–11). Professor of Public Law in Germany, Karl Albrecht Schachtschneider argues that if the Lisbon Treaty is to come into force via ratification by the Member States after the precedent signing by the Heads of States and governments and their foreign secretaries, the peoples of the Union will irrecoverably wave goodbye to the fundamental constitutional principles that form the basis of their political culture. European integration will destroy the principles of the constitutional state which have been widely taken as guiding political principles since the Enlightenment. That is how serious the situation has become.

Those articles are accompanied by the key articles and detailed reporting of John Laughland, Margarida Vasconcelos, Roger Helmer MEP, Joe Cookson, Laurent Dauré, Dominique Guillemin, Peter Mach and Glen Ruffle.

James McConalogue
meconalogue@e-f.org.uk
Editor
On 17th June, Bill Cash sought a judicial review in the High Court to ensure that the Lisbon Treaty should not be ratified, given David Miliband’s decision to continue the ratification of the Treaty in the UK (statement on 16th June) after the ‘No’ outcome of the Irish referendum vote (on 13th June). Bill Cash later heard from Mr Justice Collins that permission had been refused. Printed below is the original detailed statement of grounds, the Order by the Honourable Mr Justice Collins, and Bill Cash’s view.

**Original detailed statement of grounds**
Decisions under the prerogative are in principle subject to judicial review ([CCSU v The Minister for Civil Service](https://www.findlaw.com/lexisnexis/court/csu-v-minister-for-civil-service.html) [1985] AC 374) and although many prerogative powers, including the making of Treaties would not be justiciable, the Courts may rule on the legality of action taken in the course of foreign policy [R v Foreign Secretary EXP Rees-Mogg](https://www.findlaw.com/lexisnexis/court/r-v-forex.html) [1994] QB 552 – decision to ratify Treaty on European Union reject on the merits of that case because Government was exercising prerogative power not relinquishing it.

The Treaty of Lisbon was signed on 13 December 2007 by the Prime Minister on behalf of Her Majesty’s Government and the 26 other Member States also signed the Treaty, including the Republic of Ireland. The Treaty is not ratified in the United Kingdom.

The claimant contends that the legal consequence for the United Kingdom of the ‘No’ vote on the Lisbon Treaty in the referendum held in the Republic of Ireland notified on Friday 13th June under Article 29 of the Constitution of Ireland 1937 (which is direct binding legislation) against the coming into force of the Treaty of Lisbon in the Republic of Ireland is that as from 13th June, the performance of the Treaty in relation to the UK (because of supervening impossibility and change of circumstances preventing the accomplishment of the original object or purpose and transforming the original consent of the parties to the terms of that Treaty) is now otiose, terminated and therefore no longer an available lawful use of the Prerogative in the UK.

Furthermore, under the principles of customary international law the Treaty of Lisbon should be stayed (Clausula Rebus Sic Stantibus).

As admitted by the Foreign Secretary in his statement to the House of Commons at 5pm on 16th June “All 27 Member States must ratify the Treaty for it to come into force.” The Republic of Ireland can no longer do so in respect of this Treaty under their Constitution, thereby vitiating the object or purpose of the Treaty as between all 27 Member States including the United Kingdom and in these circumstances and for want of proper and lawful justification the continuing assertion by Her Majesty’s Government that the Treaty is effective in the UK is an abuse of prerogative power and is therefore justiciable by the Courts of the United Kingdom.

In accordance with Article IX of the Bill of Rights, this claim is directed at the decision to continue to ratify the Lisbon Treaty in the exercise of prerogative power and does not question the proceedings in Parliament.

**Mr Justice Collins made the following order:**
Permission refused
1. Since I am refusing permission to seek judicial review, it follows that I decline to make any interim order.
2. This claim is misconceived. There is no reason why the government should not ask Parliament to continue to deal with the European Union (Amendment) Bill despite the refusal of Ireland to ratify the Lisbon Treaty. It will be for Parliament, not the court, to decide whether the Bill should be passed having regard to the Irish decision. The assertion that the decision to continue the ratification process is an exercise of the prerogative power and so justiciable is not correct. In reality, this claim seeks to prevent the parliamentary process from reaching its conclusion and as such is not justiciable. In any event, there may well be a value in the government knowing that they Treaty in its present form has been ratified by Parliament or by a referendum is a matter of political not judicial decision.
3. It follows that this claim is not arguable. It is indeed totally without merit since it is an attempt to pursue a political agenda through the court.

**Bill Cash’s view**
As Bill Cash said in the House of Commons on 16/18 June, he regards the Government’s behaviour in continuing with this Treaty disreputable because this Treaty cannot be ratified by Ireland by virtue of the direct binding legal nature of the ‘No’ vote which cannot be changed by the Government or the Dail under the Irish Constitution itself.

Even Tony Blair as Prime Minister abandoned the original European Constitutional Treaty Bill when the French and the Dutch voted ‘No’ because he knew that that Treaty could not be ratified. The same principle clearly should have been applied to this Treaty and this Bill, as Bill Cash pointed out in yesterday’s European affairs debate.

Bill Cash is considering grounds for an oral hearing which he is entitled to do.
The Northern Rock fiasco: how the EU has damaged Britain’s ability to govern itself

Shocking though it may seem – Parliament is no longer supreme in our own nation. Instead, because of the UK’s membership of the European Union, ‘competences’ over large areas of national life have been ceded to EU institutions, particularly the European Commission. Government and Parliament cannot always respond – sensibly, pragmatically and successfully – to new policy challenges because the EU has issued directives or regulations which are binding in this country. Powers and responsibilities that were once exercised freely and effectively by agencies of the British state have been taken away, and instead belong to the EU.

The transfer of competences has been gradual and, relative to the fundamental nature of the power realignment under way, it has also received surprisingly little comment in the British media. Of course the so-called acquis communautaire has encroached on British law-making since the UK joined the European Economic Community (as it then was) in 1973. But at first its impact was marginal, and largely confined to farming, fisheries and matters very narrowly related to trade policy. It is only since the Single European Act of 1986 that the acquis has come to influence virtually all areas of national economic life.

Nowadays, when there is a clash between national interest and legal principle, it takes a form very different from that before the late 1980s. Policy-makers have to check the answer to the question ‘is the proposed policy compatible with European law (and not just the law of England/Scotland)?’ before they consider the question ‘what policy is most in the interests of the British nation?’ The insidious effect is that policy-makers put the requirements of European law ahead of our own national interest. Although they believe themselves to be ‘doing the right thing’ because they have taken legal advice and behaved accordingly, they end up supporting actions which are against their fellow citizens’ best interests.

By common consent the British state’s handling of the Northern Rock affair in late 2007 and early 2008 was a fiasco. Part of the trouble was that banking regulation was split between three bodies, the Financial Services Authority, the Bank of England and the Treasury which together formed ‘the Tripartite Authorities’, leading to much confusion. The contrast between the Bank of England’s skilful handling of previous financial crises and the Tripartite Authorities’ bungling of the Northern Rock problem could hardly have been more extreme. But also fundamental was that the FSA, the Bank and the Treasury were crippled by limitations on their power, and uncertainties about exactly what their powers were, which arose from the UK’s membership of the EU. The Northern Rock fiasco illustrated, with remarkable clarity, the damage that EU membership has done to Britain’s ability to govern itself.

The crisis began in mid-August, when Northern Rock found that its usual source of funding – the international market in so-called ‘structured finance products’ – was closed as a by-product of rising defaults on American home mortgages. It told its regulator, the FSA, about its problems, and the FSA and the Bank of England tried to co-ordinate a response. Perhaps the simplest answer would have been for the Bank to open discussions about Northern Rock’s travails with larger, better-funded banks, and to persuade them to lend to Northern Rock for, say, six months or longer until a more permanent solution could be found. A low-key and small-scale rescue effort – conducted quietly between the Bank of England and banks in the private sector – ought to have been sufficient to deal with the immediate problem. Northern Rock’s funding shortfall was modest compared with the UK’s inter-bank market and the capital of the British banking system.

Unhappily, the Bank – or the Bank, the FSA and the Treasury acting in concert if that is the right expression – fluffed the negotiations. They failed to organize inter-bank support operation for Northern Rock, let alone the injection of more permanent capital or a take-over. Even worse, when the announcement of a Bank of England loan facility for Northern Rock was made in mid-September, it did not reduce...
nervousness about the bank’s funding difficulties. A BBC financial journalist, Robert Peston, somehow came into possession of a leak about Northern Rock’s troubles and put out an alarmist story which gave the impression that the bank was bust. A run on Northern Rock’s deposits developed, with television pictures of long queues outside its branches adding to the momentum of the withdrawals. The run – the first on a British bank since the late 19th century – was halted only by the further announcement, on 17 September, that the government would guarantee all of Northern Rock’s deposits.

When asked by the Treasury Committee of the House of Commons on 20 September for his views on the crisis, Mervyn King, the Bank’s Governor, said that the Bank would have liked to act as lender of last resort as it had done in the 1990s. He then identified the interaction between ‘four pieces of legislation’ as hindering the exercise of the lender-of-last-resort function:

• the Takeover Code
• the Market Abuse Directive
• the UK’s system of deposit insurance, and
• the lack of special legislation in the UK for failing banks.

The next few paragraphs will show that, for the first two of these four alleged culprits, the European dimension was critical.

First, the Takeover Code was introduced in 1968 to set out a framework for the orderly and honest conduct of takeover activity in the City of London. For most of the subsequent period it has been a voluntary code respected by participants in financial markets, rather like the rules of chivalry in medieval warfare. Until recently it had no legislative force, and was readily set aside in both the secondary banking crisis of the mid-1970s and the mini-crisis of the early 1990s. It became statutory only in 2006, as a by-product of EU legislation as the member states tried to reach an accord on the conduct of takeover activity across the whole of the Union. Whether the Takeover Code was in fact an obstacle to an inter-bank rescue operation in the summer of 2007 seems moot, to say the least. The important point for present purposes is that King thought that it was a valid justification for the Bank’s reluctance to organize such an operation.

Before 2006 he could have acted pragmatically and sensibly, as had his predecessors in similar circumstances, because the Takeover Code was not law.

Secondly, King believed that the appropriate method of dealing with Northern Rock’s funding problem was ‘covert’ lending, but – in his opinion, after taking legal advice – ‘covert support is ruled out because of [the EU’s] Market Abuse Directive’. The Market Abuse Directive describes how publiclyquoted companies must reveal inside information that may affect the stock market’s valuation of their businesses. The obvious counter-argument is that the Bank of England had been involved in commercially sensitive negotiations, of one sort or another, with publiclyquoted companies for many decades before 2007. No one had thought that a EU directive on insider trading should intrude into such negotiations or somehow stop them taking place.

King’s reference to the Market Abuse Directive may have been misjudged. According to Professor Willem Buiter of the London School of Economics in a report in Financial News on 4 February 2008, ‘There is nothing in the Market Abuses Directive to prevent covert support to banks in trouble. On the day the Governor of the Bank of England said it, the statement was contradicted by a spokesman for the European Commission.’ Three months after King’s initial evidence to the Treasury Committee, the Tripartite Authorities submitted a further memorandum on the meaning of the directive. This included a lengthy but inconclusive disquisition on whether an announcement about certain types of commercial negotiations might be delayed and still comply with the Market Abuse Directive, because the announcement would itself materially affect the outcome of the negotiations! As King himself noted, the wording of the directive was ‘ambiguous’.

Arguably, the important point here is not whether King was right or wrong in his original interpretation of the Market Abuse Directive. Rather the point is that the uncertainties of the legal context did affect his perception of the Bank’s own responsibilities. Further, these uncertainties arose – above all – from the difficulty of understanding a law made by the EU. In earlier financial crises the Bank of England had not had to bother about the perplexities and confusions of European law, because there was no European law to bother about. In the summer of 2007 the time and energy absorbed by legal
niceties hampered the Northern Rock rescue.

Third, deposit insurance is relatively new in the UK. Until 1979 bank deposits were not insured at all and, in principle, a bank failure would cause depositors to lose at least part of their money. Academic studies have shown that bank failures are more common in nations with deposit insurance than in those without. Nevertheless, as with takeovers and insider trading, the EU has made attempts to regularise different member state’s arrangements. In 1994 a directive was produced requiring all member states to have a deposit insurance scheme, even though the minimum level of the insured deposit was very low at 20,000 euros. This directive cannot be blamed in any way for the Northern Rock fiasco, but the message seems to be that the UK will in future have to retain a system of deposit insurance whether it likes the idea or not.

In short, King’s remarks on 20 September reflected the Bank of England’s difficulties both in interpreting European law and in responding to Northern Rock’s funding problems given what it took the legal framework to be. Whatever the rights and wrongs of the matter, King and the Bank have subsequently been heavily criticised for their initial handling of the crisis. From the extension of the government guarantee to all of Northern Rock’s deposits on 17 September, the Bank was sidelined and the Treasury increasingly took control. But the Treasury’s response was also conditioned by a perceived need to respect EU law. Like the Bank, it made a complete hash of the situation.

A central objective of public policy in lender-of-last-resort lending must be to obtain the maximum value from the borrowing banks’ loan assets. But the extraction of the maximum value from a portfolio of bank loans and securities takes time. A commonplace of business life is that, if assets are sold off in a rush under pressure (in a so-called ‘fire sale’), they are worth less than if the seller can choose the time of the transactions and take advantage of favourable market conditions. It follows that – when a central bank extends a lender-of-last-resort loan to a bank with funding problems – the imposition of a deadline for early repayment is, almost invariably, misguided. The correct attitude is flexibility over the timing of repayment, plus the enforcement of a penalty rate of interest.

So, once Northern Rock had received its lender-of-last-resort loan and deposit guarantee in September 2007, the Tripartite Authorities should have been in no rush for the loan to be repaid. Unfortunately, the Treasury was anxious that the assistance to Northern Rock constituted state aid under EU law. If the assistance were state aid, it was subject to a specific set of rules, including – crucially – rules about the length of time the aid could continue before it became illegal. Indeed, unless a number of conditions were met and an exemption obtained from the European Commission, state aid had to be repaid within six months. The logic of the situation and a large body of precedents argued that a deadline for early repayment of Northern Rock’s loan should not be imposed; the obligations of EU membership, as understood by the Treasury, implied that a deadline for early repayment was mandatory.

From an early stage the Treasury’s lawyers were busy in enunciating their interpretation of EU law and taking the steps necessary for its enforcement. On 28 September the UK authorities made a submission to the European Commission, in which they sought clarification of the legal status of the Northern Rock rescue package. Since they believed that parts of the package were state aid, they expected 17 March 2008 (i.e., six months from 17 September 2007) to be the effective cut-off point. In late 2007 a number of private sector parties were interested in investing in or even acquiring Northern Rock, despite its well-publicised difficulties. In line with the final cut-off date of 17 March, these parties were told that they must put together their proposals by 4 February. The Treasury insisted that, to be considered valid at all, bidders must include clear and definite plans for full repayment of the lender-of-last-resort loan.

The evident tensions between the Bank of England and Britain’s leading commercial banks and the high-handed attitude of the Tripartite Authorities did not encourage potential investors. But the rigidity of the deadline for the repayment of the lender-of-last-resort loan was the more fundamental deterrent. One of the front-runners, the Olivant private equity group, withdrew in early February, citing the Treasury’s insistence on a three-year deadline for the loan.
repayment as the main stumbling-block. The government's preferred bidder turned out to be Sir Richard Branson's Virgin Group. But several newspapers carried stories that Virgin had been unable to line up the inter-bank funds needed to repay the lender-of-last-resort loan. So for Virgin also the Treasury's inflexibility on the timing of the loan repayment was a basic problem. This inflexibility may have been partly the result of 'Treasury ministers' and officials' own attitudes, but it must also have owed something to their apparent fear of being reprimanded by the European Commission for breaching state aid rules.

Finally, on 18 February the Chancellor of the Exchequer, Alistair Darling, announced that the two remaining private sector options – the Virgin bid and another from an in-house management team – were unacceptable to the government. Northern Rock would be nationalised. Over the next week a bill for that purpose was passed by both Houses of Parliament. The resulting legislation – the Banking (Special Provisions) Act 2008 – included criteria for the compensation of shareholders that would, if interpreted at face value, leave them with only a fraction of the book value of Northern Rock's equity.

What did the European Commission think of all the shenanigans between Northern Rock and the Tripartite Authorities in late 2007 and early 2008? On 5 December it produced a decision on the various measures of state assistance to Northern Rock. The Commission's main finding was that the lender-of-last-resort loan from the Bank of England was not, by itself, a form of state aid, but that the subsequent guarantees on Northern Rock's deposits were state aid. On the face of it, the Tripartite Authorities would have been justified in making every effort to present their approach as – in all the key essentials – a lender-of-last-resort operation. After all, Northern Rock had to pay for the government's guarantee and the guarantee fee was analogous to the penalty element in the interest cost on a last-resort loan. However, that was not the line taken by the UK's Tripartite Authorities who, by this stage, were clearly being led by the Treasury. Instead the Treasury and its ministers, who ultimately pulled the strings, showed a remarkable willingness to kowtow to the Commission's verdict.

Under the state aid rules the European Commission allows the governments of member states to keep rescue packages in place for longer than six months as long as clear efforts are being made to restructure the business involved. Large redundancies are regarded as evidence of such restructuring. So on 18 March, a day after the Treasury's six-month's deadline, the newly-nationalised Northern Rock announced that 2,000 jobs would be lost from a total payroll of 6,500.

Public comment was muted, but here surely was the ultimate dottness. The British state had given financial support to a cash-strapped bank in order to keep it in business, but – in order not to be reprimanded by the European Union for its action – the Treasury had to instruct the same bank's management to sack a third of their staff. A spokesman for Neelie Kroes, the Competition Commissioner, advised The Guardian that Northern Rock had 'to be restored to viability so that it can survive in future without any further injections of public money. There must be compensatory measures to offset the distortion of competition caused by the subsidy and normally that's a reduction of capacity'. As will be discussed, these remarks from the Commission's spokesman were a grotesque misrepresentation of the facts of the Northern Rock situation, even if they parroted numerous reports in the British press. At any rate, the redundancies of 2,000 people in one of the UK's poorest regions constituted the necessary 'compensatory measures'.

But that was not the end of the EU's involvements in the Northern Rock affair. Three more need to be mentioned. First, the nationalisation of Northern Rock opened up the possibility of unfair competition. Since it was in public ownership and its deposits enjoyed a government guarantee, the terms on its deposits would – at the same interest rate – be more attractive than those of other banks. To anticipate possible criticisms the European Commission had to lay down the business framework within which Northern Rock was allowed to compete. As Ron Sandler, the executive chairman appointed to the newly-nationalised bank, himself noted on 18 February, 'the bank will have to operate according to a set of rules set in Brussels'.

Secondly, the evident intention of the Banking (Special Provisions) Act 2008 was to take Northern Rock into public ownership regardless of shareholders' wishes and to pay negligible compensation to those shareholders. But only a few weeks after nationalisation Northern Rock published its results for 2007, showing positive shareholders' funds at end-year of about £1.7b. No one knew for certain in early 2008 whether Northern Rock would be able to repay the Bank of England loan and still have most or all of this £1.7b. intact. But Sandler – again in his statement on 18 February – said that the bank was 'a very sound and well-managed institution'.

Given the large sums of money at stake and the important matters of principle raised, it is hardly surprising that the shareholders decided to seek judicial review of the government's actions. The most important legislation to help them in their claim was the 1998 Human Rights Act, which included a right to private property. According to Lord Woolf, Lord Chief Justice from 2000 to 2005, in his collection of papers on The Pursuit of Justice, the passage of the Human Rights Act 'incorporated the European Convention [on Human Rights] into our domestic law'. In his view this 'had proved a catalyst, transforming the availability of protection for breaches of human rights' in the UK. Again, in his words, before the Human Rights Act became effective in 2000, 'All too often our citizens would have to appeal to the Court of Human Rights at Strasbourg for remedies they could not obtain from their own English courts'.

Thirdly, in early June the European Commission wrote to the Treasury expressing concern that – despite the steps
already taken by the British government – some elements of the Northern Rock package remained illegal under state aid rules. Despite the 2,000 redundancies, the EU’s officials felt that more needed to be done. As explained below, the economic basis of the Commission’s attitude, that Northern Rock was in receipt of state aid, was almost certainly wrong. Nevertheless, it demanded more job losses in a part of England already suffering from high unemployment, purely in order to comply with the rules.

Most British people continue to believe that they live in an independent nation. A British army, a Royal Navy and a Royal Air Force are still in being, a British team appears in the Olympics, a British entry is made for the Eurovision song contest, every year the Queen makes a speech about the government of her realm at the state opening of Parliament, thousands of young people sing ‘Rule Britannia’ with gusto at the Last Night of the Proms, and so on. The account of the Northern Rock affair in this paper has shown that in reality key institutions of the British state now take their orders, to a large extent, from the European Commission or other EU agencies.

Most conspicuously, the Treasury may purport to be the premier department in the British state, but on important matters it regards itself as subordinate to the European Commission. That is the only interpretation allowed by its determination to seek out the Commission’s opinion of the applicability of the EU’s state aid rules to the Northern Rock package. Moreover, Treasury ministers took decisions with the deliberate and explicit purpose of complying with these rules. Britain’s own national interest appeared not to figure in their thinking. Again, after its nationalisation Northern Rock’s new management acknowledged that it had to respect a mass of rules for state-owned banks formulated in Brussels, not in London. Even worse, within a few weeks of the nationalisation announcement the management had to sack almost a third of the staff for no reason other than that the European Commission demanded that they be sacked.

While direct contacts between the Bank of England and EU institutions are unimportant and infrequent because the UK has retained its own currency, the Governor of the Bank of England’s concern to obey European law was at least partly to blame for the Bank’s unimpressive performance in the Northern Rock affair. The imprecise wording of allegedly relevant directives, especially on insider trading, delayed and hampered decision-taking in the critical weeks in August and September when Northern Rock sought help from its regulator, the FSA, and the Bank. Depressingly, the first question in the minds of senior Bank of England officials seems to have been ‘are we acting in accordance with European law?’, not ‘what is the right course of action for Britain and its financial system?’

In some respects the EU contribution to decision-taking was downright wrong. Neelie Kroes’ spokesman referred to ‘the injection of public money’ into Northern Rock, echoing numerous statements in British newspaper about how ‘government money’ was supposedly being wasted on ‘a bank bail-out’. In fact, no government money had been injected. Instead Northern Rock had received a loan and a government guarantee on its deposits. A loan is a loan and must be repaid; it is not a gift. Further, the loan was at a penalty rate and a fee was charged for the guarantee, so that significant sums – running into tens of millions of pounds – have been paid by Northern Rock to the state. The effect of Northern Rock’s payment of these items has so far been positive for the public sector’s finances. It is possible that Northern Rock may ultimately not be able to repay the Bank of England’s loan in full, and that the intervention may have a net cost to the taxpayer. But – as noted earlier – that was not Sandler’s assessment in February this year.

A case can be made that the Bank of England’s loan to the solvent but illiquid Northern Rock in the autumn of 2007 amounted to nothing more than a particularly large-scale lender-of-last-resort operation and was not ‘state aid’ at all. If it had been deemed not to be state aid, the deadlines and 2,000 redundancies in March 2008 would not have been necessary. The British government should have been arguing with the European Commission, as every other European government does, instead of meekly accepting its diktat.

As far as Britain and the EU are concerned, the implications of the Northern Rock fiasco are at least twofold. First, if its agencies are to function freely and effectively (as they did in the past), the British state must repatriate powers from the EU. At present bodies such as the Treasury and the Bank of England are unsure how their responsibilities are to be defined, and the uncertainties affect the quality of their decision-taking. Secondly, Parliament must either pin down the meaning of EU directives or replace such directives with clearly-expressed English law which is superior to the directives. Of course, the deliberate replacement of loosely and ambiguously stated European ‘law’ (i.e., the so-called ‘law’ contained in directives and regulations) by better home-made law conflicts with commitments made by the British government in a succession of treaties.

A basic question raised by the shambles of the Northern Rock affair is therefore whether it would be sensible for Britain to renegotiate its membership of the European Union. In the view of a large and growing number of people in this country, the UK’s membership of the EU on the present terms is becoming increasingly difficult to reconcile with the efficient and sensible conduct of British public policy. The European aspects of the Northern Rock fiasco therefore illustrate a wider and more important theme.

Professor Tim Congdon is one of Britain’s leading economic commentators and the founder of Lombard Street Research.

This article draws heavily on a pamphlet Northern Rock and the European Union recently published by Global Vision.
What the Lisbon Treaty means

Professor of Public Law in Germany, Karl Albrecht Schachtschneider argues that if the Lisbon Treaty is to come into force via ratification by the Member States after the precedent signing by the Heads of States and governments and their foreign secretaries, the peoples of the Union will irrecoverably wave goodbye to the fundamental constitutional principles that form the basis of their political culture. European integration will destroy the principles of the constitutional state which have been widely taken as guiding political principles since the Enlightenment.

If the Lisbon Treaty is to come into force via ratification by the Member States after the precedent signing by the Heads of States and governments and their foreign secretaries on December 13 in 2007, the peoples of the Union will irrecoverably wave goodbye to the fundamental constitutional principles that form the basis of their political culture. According to the article of integration in its Basic Law (Grundgesetz), Germany may only “to achieve a united Europe participate in the development of the European Union that is committed to democratic, social, and federal principles, to the rule of law, and to the principle of subsidiarity, and that guarantees a level of protection of basic rights essentially comparable to that afforded by this Basic Law”. Article 23 (1) GG. If the Lisbon treaty is enforced however, the EU Member States will irretrievably lose their status as democracies, constitutional states and welfare states. They essentially also forfeit the protection of fundamental rights. The federalism of the federal Member States is weakened especially as the subsidiarity principle is not put into practice. All the aforementioned constitutional principles are not for political disposal. They are enshrined in Article I of the Basic Law which declares human dignity inviolable and obligates Germany to protect fundamental rights, as a “fundament to every human community, to peace and world justice” and in Article 20 of the Basic Law, according to which the Federal Republic of Germany is “a democratic and social federal state” and most importantly, “all state authority is derived from the people” and shall be “exercised by the people through elections and other votes and through specific legislative, executive, and judicial bodies.” Article 79 (3) of the Basic Law declares amendments to the principles of these articles inadmissible. More importantly, they are the constitution of a human's humanity and therefore beyond any policy which wants to be and has to be the realisation of everybody's good life in universal freedom on the fundament of truth, provided it wants to do justice to human dignity.

European integration suffers from an irremediable democratic deficit. There is no “European people” which is capable of legitimising the exertion of the Union’s sovereignty. Such a people can only be created by an EU constitution which all EU citizens have agreed to by referendum. Such a step has to presuppose an opening of the Member States to such an existential union state and their agreement to limit their own authority in favour of the authority of such a federal state. This cannot be achieved without referenda in the individual Member States which the oligarchies of the various national parties fear like the devil fears holy water. It is enshrined in the national constitutions that all state authority is derived from the people, thus in Germany from the German people. The treaties may not circumvent this fundamental principle of democracy. Yet this is attempted by feigning that “Citizens are directly represented at Union level in the European Parliament”. (Article 10 (2) TEU). This parliament has no democratic legitimacy because it does not represent a people, even though it is now declared as being “composed by representatives of union citizens” (Article 14 (2) TEU). Not only are the elections of MEPs different depending on the various electoral laws – but first and foremost they are carried out unequally. It is however incompatible with political freedom that the weight of a vote

“ European integration suffers from an irremediable democratic deficit. There is no ‘European people’ which is capable of legitimising the exertion of the Union’s sovereignty. Such a people can only be created by an EU constitution which all EU citizens have agreed to by referendum. . . .
in one parliament is unequal to that of another: one vote can weigh up to twelve times more than another. Thus the popularly elected assembly is not a parliament in the sense of the law and it cannot legitimise legal acts democratically. As stated by the Federal Constitutional Court in the Maastricht decision of 1993, the democratic legitimacy of the Union's regulation is therefore achieved through the national parliaments. This however presupposes the parliaments’ ability to take responsibility for Union policy which again presupposes that they can anticipate it, as the court has declared. Given the virtually unlimited expanse of the EU’s authority, this is not the case. It constantly performs surprising actions nobody considered possible or in any case that no Member of the Bundestag would have dared to take responsibility for, e.g. the jurisdiction of the European Court of Justice in terms of freedom of establishment has thus introduced the end of co-determination in German enterprises.

The legislation of the EU would be democratic if legal proposals had to be consented by all Member State parliaments. This would not accelerate the rate of integration but it would serve universal liberty, equality and fraternity. Parliamentarians must be capable of making reasonable practical policy; they cannot merely serve interests. Reasonable practical policy means the recognition of truth and what is just. This also enables EU-wide policy-making, particularly as the principle of subsidiarity states that the EU should only be concerned with policy areas where collective action is necessary, for example shared principles on commercial policy, competition policy, or common defence policy. Yet the EU effects on all areas of life, including higher education and even education policy and family policy. If Europe wants to remain European, i.e. national identity of the peoples shall be respected as affirmed by Article 4 (2), 1 TEU, only the stringent adherence to the subsidiarity principle can justify a common exertion of the Member State authority through the EU – presupposed that the EU is democratically organised. According to the Lisbon Treaty however, the subsidiarity principle is accounted for by the EU bodies, ultimately by the Court of Justice. One third of the national parliaments can put in motion a pitiful pre-warning system which does not even obligate the Commission to withdraw their proposal. A fourth of the parliaments suffice in the areas of freedom, security and right, and thus border control, immigration, and justice and home affairs. Subsidiarity has to be legally defined by every single Member State. (In Germany according to the Germans Basic Law Article 23 (1) 1).

Furthermore, European integration destroys the principles of the constitutional state which have been taught to be vital and have been widely taken as guiding principles since the Enlightenment. These principles are the separation of the powers and more significantly the protection of rights. The creation of EU law lies firmly in the hands of the executive and not the parliament. There cannot be a constitutional state without democracy. In terms of protection of the great principles of law, mainly human and fundamental rights, the rights’ protection has been conferred to the Union’s jurisdiction to the greatest possible extent. Yet the Union’s jurisdiction is by no means democratically legitimate and therefore unauthorised to make judgements in the name of a people or the peoples. The ability to make judgements on questions that concern core principles require a high level of democratic legitimacy. Every Member State has one judge sitting in the Court of Justice and the EU Court. As a consequence foreign judges judge the right of peoples they do not know, whose language they don’t speak and who did not appoint them – not to mention the peoples’ capacity of understanding the judges’ resolutions. Not once in half a century has the European Court of Justice been able to detect one out of over 100,000 legislation acts as being illegal because it went against a fundamental right. The protection of fundamental rights has substantially been lost through European integration, at least within economic areas.

With the destruction of democracy comes the destruction of the welfare state. The democratic electoral process is a motor of social development but within EU policy, it is virtually ineffective. The disastrous social developments are
visible daily, and although bemoaned everywhere, their actual causes are never specified. In spite of sufficient competences and due to the insufficient majority ratios, the Union is incapable of making social policy which has to be constructed via the legislative. This incapability, underpinned by the deregulatory effect of the basic freedoms (free movement of goods, services, capital, labour, and the freedom of establishment) that are brought to an extreme by the European Court of Justice, causes the principle of capitalism to unfold. The worldwide freedom of capital empowered by EU law (Article 63 (1) TFEU) is the concept that truly stirs living conditions in the EU and that has led to the downfall of the welfare states. EU policy has severely deviated from the social fundamental rights enshrined in great declarations on human rights, in particular completely from the right to work in Article 23 (1), but also poignantly from the right to own property in Article 17 in the 1948 Universal Declaration of Human Rights. The human right of Article 23 (3) “just and favourable remuneration” of work has also been neglected on countless occasions as well as the right to remuneration enabling the employee and his family to have “an existence worthy of human dignity”. Today usually two people, a man and woman, need to work to order to scrape together a living, especially if the family has several children. The universal principle of family is being devalued.

The European Union is a region of global capitalism. The true basic law of our living conditions is the world trade system which is negligent of any social aspects. Due to the rank in its constitution of the social principle, Germany has a social economy regulated by the market. Not only aspects of efficiency but also basic laws of economy justify the economic system being regulated by the market. Yet this system has to defer to the social principle. The economy and mainly capital can only play a serving role within the polity. By integrating into the EU, Germany has bowed out of this economic condition in favour of an “open market economy with free competition” (Article 119 (ex Article 4 TEC) TFEU). The freedom of competition is nothing but liberalism devoid of any social aspects, the lack of which allows our present exploitative circumstances to exist. Lacking equal opportunities for competition, the global economic war is without rights.

The Charter of Fundamental Rights, set to become legally binding through the Lisbon Treaty, weakens the protection of fundamental rights tremendously. In all matters of the Union, the protection of fundamental rights is almost completely moved under EU jurisdiction which is neither democratically legitimate nor structurally able to protect fundamental rights. The EU judiciary habitually defends policy from the Commission and Council, and the Union’s integration interests are strictly enforced upon the Member States by the Court of Justice who views itself as the engine of integration. The dogma sketched out in the Charter of Fundamental Rights will subjugate fundamental rights just as they were during the Weimar Republic, only now it will subjugate them to the methods of the Union. It will not – as the German Basic Law does – guide legislation to encompass fundamental rights.

Through the Lisbon Treaty, the Union is undoubtedly becoming a federal state. The Union’s obligations and competences over its Member States are more expansive than for example those of the Federal Government of Germany over its Länder. The EU’s status as a federal state is constantly denied by many because they say it is not allowed to be one, according to the German Basic Law and the constitutional laws of other Member States. This of course depends on one’s notion of what a federal state is. The EU will become an actual federal state because it is founded upon treaties and it will not be an unauthentic federal state like Germany that is founded upon constitutional law. A federal state that, like the EU, has obligations and competences of existential statehood has to be democratically legitimate. As previously stated, this original legitimacy could only be granted by a European people. The onset of the Lisbon Treaty is the last point at which the Union state will definitely gain expansive competence-competences characteristic of a federal state. Not only can it expand its competences to support its interests in the fruition of its aim without the participation of national parliaments (Article 352 (ex. Article 308 TFEU)), not only is it empowered to levy Union taxes (Article 311 TFEU), but within the “simplified revision procedures” according to Article 48 (6) TEU, it also presumes its competence to alter virtually the entire content of the treaty completely or partly by decisions made by the European Council (except in common foreign and security policy).

National parliaments only have to give their consent if their constitutional laws so require. That is not the case in Germany. The Lower House (Bundestag) and Federal Council (Bundesrat) can only give their opinions, which are generally ignored. The authorisation to even have the simplified revision procedures is nothing short of a constitution of dictatorship.

The constitution of the European Union needs to be rewritten but in a thoroughly different fashion. Primarily in a manner which allows us to live in a European Europe, in a Europe that puts freedom and rights first, in a Europe that consists of democracies and welfare states, in republics; not in a dictatorship of industries, banks and their bureaucracies.

Professor Karl A. Schachtschneider is Professor of Public Law at Erlangen-Nürnberg University, and is a wellknown specialist in European law and the European Union’s Constitutional Treaty. He is also the author of ‘The Euro Illusion: Is it Too Late to Save Europe?’ In 1992, he petitioned the Federal Constitutional Court of Germany in an attempt to prevent Germany from ratifying the Maastricht Treaty. In 1998, alongside Professors Wilhelm Hankel, Wilhelm Nölling, and Joachim Starbatty he petitioned the Federal Constitutional Court to prevent Germany from adopting the euro.
Brussels must wake up and smell the (Irish) Coffee

Joe Cookson looks at how a referendum on Thursday 12 June may have marked a turning-point in the history of the European Union, as Ireland, a once solidly pro-European country, stood up against the European elite for the rest of Europe, denied a say on the content of the Lisbon Treaty.

Thursday 12 June may have marked a turning-point in the history of the European Union, as a once solidly pro-European country stood up against the European elite for the rest of Europe, denied a say on the content of the Lisbon Treaty. The ‘Yes’ campaign have used a number of excuses for this abject failure to convince the sceptical public into backing new and erosive reforms, ranging from the contention that people want more integration, and not enough was being offered, to the fact that people don’t understand either the document or the philosophy behind it. The reality is very different; Europeans are simply bored of being lied to, taken for granted and press ganged into agreements which are detrimental to the national interest. Before Brussels understands this, it has no chance of addressing the problem.

The Irish campaign was a lesson in how to lose public confidence. Only Sinn Féin, representing just over a tenth of the Irish electorate, campaigned against the Treaty, yet resoundingly 53.4 per cent of voters opposed the implementation of this further step towards assimilation. A mixture of political scare-mongering, such as that of Fine Gael Leader Enda Kenny who argued that Ireland would ‘decide whether we want to reaffirm and strengthen our place in Europe or turn our backs on the huge progress we have achieved over the past 35 years’, inability to explain the content of the document to the public, and failure to combat widespread contempt for the political classes following the resignation of Bertie Ahern as Taoiseach contributed to the recycled Constitution’s defeat.

Also crucial was a vibrant campaign from Libertas, and Chairman Declan Ganley, who made the running and headlines, drawing attention to the fact that the Treaty handed over powers in sixty policy areas including immigration, culture, transport and the appointment of the European President and Foreign Minister. The Eurocrats in Brussels must be worried about how the threat to the Irish Commissioner, who would only have sat for ten out of every fifteen years under the proposals, was so spectacularly unpopular, and the running which was made with the, largely accurate, critique that the Treaty was chiefly about cementing European control in areas like international trade and foreign direct investment, whilst opening the door to interference in new areas, with economic interests like tax being a poignant example.

In a week where Greece, Finland and Estonia brought up to eighteen the number of countries which had ratified Lisbon, the arguments across Europe towards Ireland became more threatening as the day of reckoning drew ever closer. French Foreign Minister Bernhard Kouchner asserted that Ireland would be ‘the first victim’ if it rejected the Treaty, whilst another Frenchman, MEP Daniel Cohn-Bendit, threatened them with expulsion; ‘a referendum must have consequences: if we say ‘No’, we leave Europe’. The Irish political elite also became more and more desperate, with

“The ‘Yes’ campaign have used a number of excuses for this abject failure to convince the sceptical public into backing new and erosive reforms, ranging from the contention that people want more integration, and not enough was being offered, to the fact that people don’t understand either the document or the philosophy behind it. . . ."
statements like ‘future generations of young Irish people will suffer’ and ‘if we vote No, we are saying we don’t care about…tackling climate change, energy security or future competitiveness’ coming from the major parties.

Ultimately, the ‘Yes’ campaign only won ten out of forty-two constituencies because these wild accusations were inconsistent with earlier claims by European Commissioner Charlie McCeevy that the document was hard to sell because ‘it does not bring tangible benefits to the population’. The prolixity of some very patronising arguments also turned voters off, with leading ‘Yes’ campaigner Gay Mitchell MEP announcing that as over 90 per cent of the Dáil Éireann voted for the Treaty, that people should ‘repose some confidence in those they entrusted to negotiate’ for they ‘cannot be expected to know all the contents of a detailed Treaty’. Much more fundamental, even than such political snobbery though, was that much of Ireland, a country which has greatly benefited from EU subsidies, now feels it no longer benefits substantially.

So where does Europe go from here? If past evidence is anything to go by, probably in a totally opposite direction to the will of residents in the twenty-seven member states. Indeed, the largest coalition in the European Parliament, the EPP-ED, has already called for the ratification process to continue despite the Irish refusal, and Gordon Brown seems likely to follow suit. Irish Prime Minister Brian Cowen also stated that he wished ‘to make it clear to our European partners that Ireland has absolutely no wish to halt the progress of the Union’, seemingly positioning himself to force a second poll on the issue. Labour coalition partner Eamon Gilmore has failed to support his ‘full-steam ahead’ approach, though, interestingly offering the possibility of a split in the future.

With European Commission President Jose Manuel Barroso asserting that ratifications ‘should continue to take their course’, it seems the EU shall forge undemocratically ahead defying popular sentiment, again. His view, that this vote was not one against the EU, seems to worryingly widespread, with many Irish Europhiles concluding that not enough centralisation and integration had been offered. So long as the European elite remain this out-of-touch, there is thankfully little prospect of a popular mandate for further bureaucratic institutional change.

Joe Cookson is reading History at Grey College, University of Durham and resides in North Yorkshire

Cameron must see the Lisbon Treaty scrapped and the EU Treaties renegotiated

It is a terrifying thought that whilst Ireland has rejected the Lisbon Treaty, the rest of Europe – led by Germany’s Merkel, France’s Sarkozy, Netherlands’ Balkenende, and our very own Gordon Brown – have all called for the continued ratification of the Treaty as originally planned. I am baffled.

Firstly, this is an illegal move (is it not?), since all the 27 Member States of the European Union must, by law and for the purposes of Parliament, agree to the Treaty in order for it to be implemented in law. If they do not agree, it cannot be pursued, ratified, repackaged, recycled, or maintained as legal.

Secondly, it is certainly the most undemocratic thing I have heard from Brussels for some time. Our supposed EU leaders have grown so overtly authoritarian (in the European manner) in these modern times, under Germany’s authoritarian European leadership, but the proposal that we just go on regardless of the Ireland vote makes no sense. Miliband has admitted this in BBC interview at the same time as defending the continued ratification of the Treaty – it is a completely untenable and undemocratic position.

Thirdly, don’t be fooled by the misreporting in the press: it is not merely a case that Ireland has set an example or that we should look to Ireland for how to act. The fact is that under the EU’s own rules and ours, Britain is bound by its democratic politics and law to witness that the Lisbon Treaty has failed and acknowledge that it can go no further.

I believe that Brown must abandon the Bill for the Lisbon Treaty and that Cameron must demand that the Prime Minister do so immediately. If the Treaty were to come into effect, it would have cheated not only the Irish electorate, but the rest of Europe who were denied a referendum. Perhaps now is the time to sort out this old problem of our relationship with Europe, since it places the Government in a popular and strong position to renegotiate not only this Treaty but all the existing Treaties.

It has come to this. If EU leaders cannot accept, at the very least, that this Treaty must be abandoned then I would feel that a campaign to oppose the Lisbon Treaty (along with other aspects of EU reform) will have become the same as campaigning for the reform of the Nuremberg laws.

James McConalogue
The Lisbon treaty: the EU democratic process in question

Following the ease of ratification of the Lisbon Treaty under President Sarkozy in France, Laurent Dauré and Dominique Guillemin argue that there is now a general climate of political and media approval in which no debate has been raised on the content of the project which had been directly rejected by the French people in 2005. They fully expect that 2008 will be dedicated to national ratifications and the new European institutions will be in office as early as 1 January 2009.

On 4 February 2008, the French Parliament voted in the Bill modifying title XV of the French Constitution in Versailles, and three days later, on 7 February, the Treaty of Lisbon was formally ratified.

The Lisbon Treaty, which provides for the reform of the EU’s institutions, was drawn up to replace the draft European Constitution, which was first rejected on 29 May 2005 by 55 per cent of French voters and then on 1 June 2005 by 61 per cent of Dutch voters.

How did we go from the voters’ refusals to the adoption of the text by Parliament in 2008? Before the 2005 public vote, Valéry Giscard d’Estaing, chief author of the Constitution, declared: “It is a good idea to have chosen the referendum, so long as the outcome is yes.” And one year later: “The rejection of the Constitution was a mistake which will have to be corrected.” In spite of the French and Dutch noes, some countries did adopt a Constitution which had little chance of success, an indication that the initial project was not amendable: “If it’s a Yes, we will say ‘On we go’, and if it’s a No we will say ‘We continue.’ (...) If at the end of the ratification process, we do not manage to solve the problems, the countries that would have said ‘No,’ would have to ask themselves the question again.” Why then was so imperative a text chosen to be put to a public vote? Pro-Europeans, who were convinced that their project would arouse popular enthusiasm, may have shown too much optimism. In 2005, the citizens, who had received a copy of the text, were encouraged to follow the campaign massively, and they did not miss the opportunity to express themselves. The debate was not only covered by the main media – characterized by their clear preference for the “yes vote” – but was also soon led on numerous forums, meetings, blogs or through various publications. At the time, defenders of the Constitution resorted to meaningless but imperative maxims: “We need to build Europe”, “Europe needs a new start”, “Let’s be more European!” and so on. In brief, the idea was that we needed to build Europe because we needed to build Europe. Their method – a convenient one – was to present arguments against the Constitution as dangerous and reactionary. Great disasters to come were announced in order to persuade the more reluctant. But the sole purpose of such alarmist outcries was to hide the true political nature of the project. Was it to build a federal Europe? A European superstate? A Europe of the nations? In any case, Constitution defenders considered no “Plan B”, and “Europe had to get out of the rut it was in”. This kind of phrase, which was to be heard everywhere in 2005 as well as in 2008, falls within the province of EU mythology: the peoples of 27 sovereign nations were to be united in a new political framework. The EU still believes that popular legitimacy will put the finishing touches to what it has achieved in terms of legislation.

In 2005, this ideal scenario was ruined by the ‘Non’ and the ‘Nee’, but it would not be rewritten. It has quite plainly never been an option. The “EU crisis” was not about Europe’s political and institutional orientation; it was a slight incident which needed solving. But no new text was submitted before summer 2007. There are two reasons for this, one being the French electoral calendar, for Jacques Chirac could not go back on the verdict of the ballot boxes, and therefore left the task to his successor; Nicolas Sarkozy promised indeed to take the 2005 vote into consideration and proposed a “simplified treaty to gather the measures on which there is a consensus in Valéry Giscard d’Estaing’s Constitution”, which would be ratified by Parliament. The second reason is that the treaty should be based on the following principle: “[That] all the earlier proposals will be in the new text, but will be hidden and disguised in some way”.

Thus, with the Lisbon Treaty the EU was concealing the Giscard Constitution, which it refused to give up. Although President Sarkozy’s approach was legitimate to the extent that the “simplified treaty” was supposed to be radically different from the previous text (more protective, less liberal, more consensual…), how to account for such declarations as: “The substance of the Constitution has been maintained. That is a fact”; “We have not let a single substantial point of the Constitutional Treaty go...”; “90 per cent of it is still there...These changes haven’t made any dramatic change to the substance of what was agreed back in 2004.”; “The
substance of what was agreed in 2004 has been retained. What is gone is the term ‘Constitution’; “‘It’s essentially the same proposal as the old Constitution.’; “The good thing about not calling it a Constitution is that no one can ask for a referendum on it.”; “Of course there will be transfers of sovereignty. But would I be intelligent to draw the attention of public opinion to this fact?” etc., etc.?

Those confessions betray relief and satisfaction about the maintenance of the original treaty, but they also betray explicit intentions of dissimulation, which is totally unlike the spirit of openness that was a major claim of the Constitution. “The aim of the Constitutional Treaty was to be more readable; the aim of this treaty is to be unreadable…The Constitution aimed to be clear, whereas this treaty had to be unclear. It is a success.”

The Lisbon treaty is not a consistent text, but a combination of amendments to the European Constitution, references to previous treaties and annexes, which isolate the most controversial parts. The method “is to keep a part of the innovations of the Constitutional treaty and to split them into several texts in order to make them less visible. The most innovative dispositions would pass as simple amendments of the Maastricht and Nice treaties. The technical improvements would be gathered in an innocuous treaty. The whole would be addressed to Parliaments, which would decide with separate votes. The public opinion would therefore unknowingly adopt the dispositions that it would not accept if presented directly.” Little matter then that the treaty should be 267 pages long, and about 3000 with the annexes. Thanks to this sleight of hand, the reluctant peoples can be ignored. This draws suspicion on the previous steps of European integration. For after all, as José-Manuel Barroso put it, “If a referendum had to be held on the creation of the European Community or the introduction of the euro, do you think these would have passed?”

With Nicolas Sarkozy in power and supported by a majority in Parliament, French ratification became little more than a formality, since “[the changes] have simply been designed to enable certain heads of government to sell to their people the idea of ratification by parliamentary action rather than by referendum.” The rest followed easily: on 13 December 2007, the treaty was signed by the 27 heads of State in Lisbon; France was the fifth country to ratify it. Thanks to a general climate of political and media approval combined with soothing “end of crisis” lines, no debate was raised on the content of the project which had been rejected by the people in 2005. 2008 will be dedicated to national ratifications and then the new European institutions would be in office as early as 1 January 2009. But only Ireland is Constitutionally bound to put it to a plebiscite. The date has been put off several times because the opinion polls did not predict a clear outcome. A ‘yes’ outcome, of course.

EU plans higher air fares

The European Commission plans to include the aviation industry in its Emissions Trading Scheme (ETS) from 2012, piling new costs on airlines already struggling to cope with exceptional prices for fuel. Airlines will be allocated a limited carbon allowance based on historical levels, but will have to purchase more in auctions or in the open market.

Earlier this week in Brussels, the parliament’s Environment Committee voted overwhelmingly to introduce the scheme a year earlier, in 2011; to increase the amount the airlines have to purchase from 10 per cent to 25 per cent; and to lower the overall emissions cap. This will certainly result in higher fares, and very probably fewer flights. Some airlines could go broke. There will be a knock-on effect on aircraft manufacturers like Airbus, some of whose production is UK-based, and on aero-engine makers like Rolls Royce in Derby. And by reducing airline profitability, the move will delay fleet replacement, keeping older, dirtier and noisier planes in service for longer.

Commenting on the move, East Midlands MEP Roger Helmer argued that the parliament’s decision would be a blow for family holiday flights. It would contribute to inflation on goods carried by air. It would particularly disadvantage UK and European-based carriers and hand a bonus to non-European operators, and was yet another measure that would make Europe less attractive to inward investors.

The ETS scheme was designed to reduce CO2 emissions in the EU. But as several studies have noted, it has wholly failed to reduce European CO2 emissions, which are rising faster than those of the USA. What it has done is to impose major new costs and bureaucracy on industry, and to create a range of distortions which has particularly disadvantaged the UK.

After the vote, Helmer said “Foreign Secretary David Miliband recently remarked that tackling climate change was the great mass mobilising movement of our age. But with the increasing costs of motoring, plus these new assaults on the airline industry, climate change is set to become a great immobilising movement. This is a real threat to freedom and personal mobility”. Roger Helmer, MEP

Rejoice, Rejoice, Rejoice!

Thank Heaven for the Irish! They have struck a blow for freedom and democracy not only in Ireland, but across Europe. But the reaction of the EU is instructive. In one breath they say “We respect the verdict of the Irish people”; and in the next breath “But ratification must go ahead.” The EU claims to be “A Union of Values based on democracy and the rule of law”. Yet their contempt for voters is monumental. One thing is certain. After the Irish vote, the EU has lost its last pretension to public consent or democratic legitimacy. It is an élite project which lacks popular support. Roger Helmer, MEP
How to read the Lisbon Treaty

Executive Director of the Center for Economics and Politics and advisor to Czech President, Peter Mach, argues that the Czech government, like other governments of the other EU Member States, did not introduce to the Parliament the consolidated version of the Treaty of Lisbon specifying what had been changed as is common with ordinary bills. Thus the Czech government, Peter Mach suggests, is in fact selling a pig in a poke.

If one wants to learn what the Lisbon Treaty is really about, reading the treaty itself is insufficient. Reading consolidated version of the current treaties (where amendments of the Lisbon Treaty are incorporated) is also insufficient.

One must compare individual articles of the Lisbon Treaty with individual articles of the current treaties. The Czech government (similarly as governments in other EU member states) did not introduce to the parliament the consolidated version of the Treaty with specifying what was dropped and what was added as it is common with ordinary bills. Thus the government is in fact selling a pig in a poke.

Let’s show an example. Paragraph 79 on page C306/70 of the Lisbon Treaty says:

“At the end of Article 93, the words within the time limit laid down in Article 14 shall be replaced by and to avoid distortion of competition.”

Seemingly an innocent sentence. Something about avoiding distortion of competition. After all – who would object to avoiding distortion of competition!? But-First we must understand that the above mentioned article 93 is that of the Treaty establishing the European Community which says:

“The Council shall, acting unanimously on a proposal from the Commission ...adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Article 14.”

Thus a seemingly inconspicuous sentence somewhere in the middle of the Lisbon Treaty abolishes the time limit within which the EU can harmonize indirect taxes, which as we could see in the Article 14 has expired! The new sentence would also enable the Council of Ministers to adopt directives on minimum rates of taxes and excise duties upon a claim that the current rates distort competition. If the Lisbon Treaty is ratified one should not wonder when the Commission proposes, say, increases in minimum VAT rate from 15 to 19 (currently basic rate in Germany or France) pointing that British 16 or Luxembourg 15 per cent represent “harmful tax competition” and “distort competition” in the single market.

Shall we then console ourselves at least by the fact that the EU needs unanimity in the Council of Finance ministers in order to adopt such a directive? Precociously. Another series of inconspicuous paragraphs in the Lisbon Treaty enables shifting taxation from unanimity to majority voting.

The Lisbon Treaty (on page C306/43) says, that in the article 93 the words “acting unanimously on a proposal from the Commission” shall be replaced by “acting unanimously in accordance with a special legislative procedure” and then (on page C306/39): “Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.” Keep in mind that the words “ordinary legislative procedure” in the Lisbon Treaty mean majority voting while the “special legislative procedure” means unanimity.

Can we then at least believe that our prime minister will never agree to a proposal that would shift taxes from unanimity to majority voting? Hardly. In comparison with signing the whole Lisbon treaty, which enables all this, a single voting in the European Council is a bagatelle. A Prime Minister who easily signs the Lisbon Treaty can - one late night of a Council summit - even more comfortably support a proposal like “decisions according article 93 (113) shall be adopted in accordance with the ordinary legislative procedure”.

The purpose of this Article is not to describe all the changes included in the Lisbon Treaty. We have just shown a small example, whereas the Lisbon Treaty is full of similar “innocent” provisions.

Peter Mach is executive director of the Center for Economics and Politics, a think tank in Prague, and an advisor to Czech President Vaclav Klaus.

One Day in Europe

On a single day (June 4th), headlines included: “Government: EU’s renewables target to cost UK £5 billion a year by 2020”; “UK Treasury Minister: CAP costs European consumers £30bn a year”; and “Head of EP Foreign Affairs Committee: Foreign policy will move ‘from one era to another’ with Lisbon Treaty – the EU will eventually have its own army”. Be afraid. Be very afraid.

Roger Helmer, MEP
Lisbon and the United Nations

Glen Ruffle argues that the Lisbon Treaty not only takes Britain into “ever closer union” but it also becomes a statement of the type of international order the European Union wants to be a part of. He argues that by buttressing the United Nations system, the EU will be pushing US unilateralists into further isolation, instead of drawing them out into the international system.

The Treaty of Lisbon, as well as taking “ever closer union” to new levels, is also a statement of the type of international order the European Union wants to be a part of. It clearly places the Union in the role of buttressing the United Nations system of multilateralism, and in opposition to unilateralism. Article 10 A, paragraph 2 (h) of the Treaty states that the EU shall “promote an international system based on stronger multilateral cooperation and good global governance”.

The Lisbon Treaty places the European Union as a support to the multilateral international system represented by the United Nations.

Article 2.5 on page 12 states that the EU, as an aim, shall contribute to “…the strict observance and the development of international law, including respect for the principles of the United Nations Charter”.

• 10A in Chapter 1: General Provisions on the Union’s External Action again places the EU in line with the United Nations Charter: “The Union’s action on the international scene…shall…respect…the principles of the United Nations Charter and international law”. This continues into the Second Paragraph, committing the EU to promoting “…multilateral solutions to common problems, in particular in the framework of the United Nations.”

• Under Section 2: Provisions on the Common Security and Defence Policy, the EU commits Member States to solidarity by stating that: “If a Member State is a the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter” [Article 28 A, paragraph 7]. Yet this is also stepping onto the territory of NATO. In other clauses in the Treaty, it seems as though the EU is developing a parallel system to NATO (via the European Defence Agency [Article 28 D] and a worrying commitment to the militarization of Europe in Article 28 A, paragraph 3 on page 39) that shall exist in silence until a situation emerges in which NATO does not wish to act, but the EU does. At such a time, the EU will have a fully fledged military structure ready and waiting to be used, thus most probably rendering NATO useless.

• The Treaty passes into law the demand that the EU shall establish all forms of cooperation with UN organs and agencies [Article 188 P, Title VI: The Union’s Relations with International Organisations and Third Countries and Union Delegations, page 115], and in the area of humanitarian aid, the EU is committing itself to ensuring that its aid operations are “…coordinated and consistent with those of international organizations and bodies, in particular those forming part of the United Nations system” [Article 188 J, paragraph 7, Chapter 3: Humanitarian Aid, page 111].

None of this is necessarily a bad thing; it is good not to duplicate efforts in relation to humanitarian aid, and the United Nations has achieved a vast amount in its time, making the observation of international law much more of an accepted ‘norm’.

Yet at a philosophical level, there appears to be a clear placing of the EU in opposition to unilateral action, and thus states who adopt it, the United States being the most obvious target of this. By buttressing the UN system, the EU is pushing US unilateralists into further isolation, instead of drawing them out into the international system.

This has democratic implications as well. The former US Ambassador to the United Nations, John Bolton, defined sovereignty as power that belongs to the people of a nation. Any attempt at ‘sharing’ that sovereignty with others, is in fact, sovereignty lost, not gained, as the people are losing power to control their own destiny democratically.

The alternative argument, put by Lord Watson of Richmond during the Nice Treaty debates, is that “by pooling sovereignty, in effect, we increase sovereignty”. This is obviously the viewpoint of EU policy makers, and increasingly our own government, though Ambassador Bolton surely raises some crucial points about democracy. Just when did the British people give the temporary government the right to permanently share and reduce the power of the British subjects?

The Lisbon Treaty is a clear move towards a new federal structure whereby a division of powers has emerged. The Treaty strongly states that which the EU may do; that which the EU and Member States may do (though Member States take second priority); and the rest. This is an entrenching of multilateralism and therefore the movement of democratic power away from the people of Britain.

In attempting to explain why the Foreign Office might be so supportive of such a Treaty, the multilateralist could point towards the argument that strengthening the UN system ultimately strengthens the UK position as a permanent member of the UN Security Council. This argument would obviously be extremely short sighted, as the Treaty starts the process whereby the UK will lose its UN Security Council seat to the EU High Representative [Articles 13A and 19A of the Common Foreign and Security Policy].

The direction of the EU and democratic concerns raised here all build the case more strongly that the government must hold a referendum on this Treaty. It is a serious movement of power away from the British people that further erodes our ability to govern ourselves.

Glen Ruffle is researcher at Global Vision.
I. The Lisbon Treaty after the Irish referendum

Gauweiler appeals against Lisbon

The fate of the Lisbon Treaty now strongly resembles that of the European Constitution. When the Constitution was rejected in 2005 by France and the Netherlands, the EU grandees said that all other countries should press ahead with their own ratifications regardless, and many of them did. It was to no avail. One of the reasons why was that Germany never ratified the text, and this in turn was because an appeal had been launched against it by German Eurosceptics following the two “No” results. The Constitutional Court which heard the appeal instructed the Federal President not to sign the Treaty, pending a political decision on what to do after the French and Dutch votes.

The same thing has happened with Lisbon. The veteran Eurosceptic Bavarian politician, Peter Gauweiler, has lodged an appeal with the German Constitutional Court in Karlsruhe against ratification. The move followed the decision by the German Bundesrat or Federal Council – the Upper House of the German Parliament – to ratify the Treaty, a decision which completed the parliamentary process. All that remains now is for the President of the Federal Republic of Germany to sign the instrument of ratification – and this is what Gauweiler wants to prevent.

Gauweiler is assisted (and indeed formally represented) in his court action by Karl-Albrecht Schachtschneider, Professor of law at the University of Nuremberg-Erlangen. Schachtschneider has helped organise several previous appeals to the court, notably against the Maastricht Treaty in 1992 and of course against the Constitution in 2005. The previous appeals have had considerable success; the Maastricht appeal led to a significant restriction on transfers of power from Germany to the EU.

This new appeal is based on a long legal opinion delivered by a professor of law at the University of Freiburg, Dr Dietrich Murswiek. The basis of the claim is that the Lisbon Treaty is substantially the same as the defunct European Constitution and that it deprives German citizens of their fundamental political rights by fatally weakening their representation by the German Bundestag. Gauweiler’s and Schachtschneider’s appeal against the Constitution was successful, in the sense that the Constitutional Court succeeded in preventing the German President from signing the text, on the basis that it had in any case by then been rejected by voters in France and the Netherlands.

The appeal argues that the Treaty creates a de facto federal state with its own source of authority. Such a step, the claimants argue, can occur only on the basis of a referendum by the various peoples of Europe. The claimants argue especially that the Treaty contains a mechanism (Article 48, paragraph 6) by which the EU can change its own procedures without referring back to national parliaments, still less electorates. [See http://www.peter-gauweiler.de]

Gauweiler is a member of the Christian Social Union, the Bavarian branch of Germany’s Christian Democrats. The CSU is usually considered more right wing than the CDU. But the Left Party in Germany, Die Linke – led by the former Finance Minister, Oskar Lafontaine, and a former member of the East German Communist Party (Socialist Unity Party), Lothar Bisky – is also hostile to Lisbon, which it describes as “neo-liberal and militaristic”. As a result, the Land of Berlin, where it is part of the regional government, was the only Land in Germany not to vote for Lisbon in the Bundesrat. It may launch its own legal appeal against the Treaty.

Is the ‘hard core’ about to make a comeback?

The President of the German association of employers, Dieter Hundt, has said, “A single state cannot be allowed to prevent the EU from ensuring its capacity to act through Treaty reforms. That would stand the whole purpose of the integration process on its head.” The view that the vote of a single state – even when it is the only direct vote by any European electorate – should be ignored is of course widely held in the EU, which regards direct democracy (and indeed democracy tout court) with great suspicion. Hundt added that Europe cannot be “led into absurdity by the shackle of unanimity”. Frank-Walter Steinmeier, the German Foreign Minister, who like other leaders has said that the ratification process should proceed in other states – even though Germany herself has not ratified the text because of an appeal to the Constitutional Court – has also suggested that if Ireland cannot be persuaded to hold a second referendum
then the country should partially stay out of integration. He made a reference immediately after the referendum result was announced to the prospect that “Ireland would for a while make the way open for the remaining 26 states to pursue integration”. This is another way of saying that the old German concept of the “hard core” (Kerneuropa) is about to make a comeback – the idea that some EU states should be able to group together within the institutions of the EU without other peripheral states being able to stop them. The Lisbon Treaty would therefore somehow enter into force without those states which did not ratify it. Perhaps the solution would be simply to offer Ireland opt-outs which would then be submitted to a new referendum. However, European lawyers have pointed out that any variations now to the Treaty, even in the form of opt-outs for Ireland, would require new ratification of the new amended text. Not only would this be onerous: other states might then start demanding opt-outs too and the whole Treaty could unravel. Poland, for instance, is divided over the Lisbon Treaty and could be such a country. The Belgian Prime Minister, Guy Verhofstadt, has also suggested that France, Germany, the Benelux states and others might get together and create a “hard core”. Luxembourg’s premier, Jean-Claude Juncker, has also said that, while he has never been a supporter of a “hard core”, he is now beginning to think that it is the only way out, given the difficulty of getting all states to agree. But what would other large states like Britain say to that? [Eric Bonse, Daniel Goffart and Andreas Rinke, Handelsblatt, 16 June 2008]

Some German commentators are in any case not convinced that Kerneuropa is the answer. In a strongly worded opinion piece in the business daily Handelsblatt, entitled “A tragic mistake”, Helmut Hauschild has said that the EU must either make the Irish change their minds and vote again or else “we will witness the decline of the EU into a meaningless shell with a small core of closely allied countries in the middle and loose alliances for specific purposes on the periphery”. [Handelsblatt, 16 June 2008]

II. The French presidency

Irish rain on Sarkozy’s parade

The whole of the EU has been plunged into disarray by the Irish No to Lisbon. But the country most directly affected is France. President Sarkozy presented himself as the main architect of what he called “the simplified Treaty” (in reality, the Lisbon Treaty was infinitely more complicated and obscure than the European Constitution) which, he said, would get Europe out the mess created by the rejection of the European Constitution in 2005. (In fact, of course, it was Chancellor Merkel of Germany who initiated the project.) Now he will be faced with the task of finding a solution to the new crisis, his earlier solution to the previous crisis having been spectacularly rejected. It means that his presidency will be saddled with the same institutional problems as before, whereas he had hoped to have a presidency of the “grand gesture” with the EU apparently achieving great things on the international stage. [Arnaud Lepartmentier, Le Monde, 14 June 2008]

The focus is also now on the Czech Republic, which assumes the European Union presidency on 1 January 2009. It had been expected that the new European Council President would be in office by then, the Lisbon Treaty having been ratified, but this now seems impossible and therefore Prague will run the EU in the full sense of the term as understood hitherto and as provided for by the Treaty of Nice. The Czech government is in full crisis already (see below) and the President of the Czech Republic is of course the Euro-sceptic Václav Klaus, who has already said that he considers the Lisbon Treaty to be now dead in the water and has called the Irish vote “a victory for democracy and reason”. [Henri de Bresson & Philippe Ricard, Le Monde, 16 June 2008]

France to hold referendum on Turkish accession

The French National Assembly is to ensure by means of a constitutional amendment that there will be a referendum in France on Turkish accession to the EU, in the event that the country is invited to join. The amendment provides that a referendum must be held for all future enlargements of the EU which will increase the population of the Union by more than 5 per cent. This means that no referendum would be necessary for the accession of Albania or Croatia but that it would be required for Turkey. The amendment amends an earlier amendment introduced on the initiative of the previous President, Jacques Chirac, which provided for all enlargements to be submitted to referendum. This new version keeps the substance of Chirac’s promise to hold a vote specifically on Turkey. [Der Standard, 1 June 2008]

Turkey shaping up for battle with France

Turkey is in no mood to cooperate with France on Paris’ proposals to beef up the EU’s military capability, since Paris is now seen as the major obstacle to EU accession. It has attacked the vote providing for an obligatory referendum in France on Turkish membership as “discriminatory” and has said that it will damage Ankara’s relations with Paris. In any case, the referendum decision comes two years after a vote...
in the French Parliament condemning the Armenian genocide in 1915, which infuriated the Turks at the time and which has not been forgotten since. Ankara has still not lifted the restrictions it placed on French aircraft, preventing them from flying over Turkish airspace on their way to Afghanistan, or on French navy ships from using Turkish ports. Gaz de France remains excluded from participation in the Nabucco pipeline project which will cross Turkey and bring gas to Europe. The Turkish leaders may not even turn up for the Mediterranean Union summit on 13 July. (Indeed Paris is having difficulty persuading people to attend, since a number of the North African states do not want to enter into any Union with Israel.) Ankara can also put spokes in Paris’ wheels over the EU’s military capability since of course Turkey belongs to NATO and she can demand guarantees on access to any EU military project which would operate through NATO logistics. [Natalie Nougayrède, *Le Monde*, 6 June 2008]

**Sarkozy-Merkel relationship in trouble**

The French President has visited the German Chancellor in Bavaria for the ninth Franco-German cabinet meeting, attended by ministers from both countries. The meeting, held on 9 June, had originally been scheduled for 3 March but was cancelled at short notice by Nicolas Sarkozy. That did not go down very well in Berlin at the time, and although the summit produced agreement on CO2 emissions and a statement of support from Mrs Merkel about the forthcoming French presidency of the EU, the fact is that the two politicians do not get on. According to Le Monde their relations are characterised by “mistrust and above all a silent rivalry for the leadership of Europe”. Between the two leaders, “nothing works” on a personal level, according to the paper. This remains the case in spite of public attempts to repair the relationship, such on 1 May as when Nicolas Sarkozy specifically said, in an aside from his speech at Aix-la-Chapelle (Aachen) on the occasion of the award of the Charlemagne prize to Mrs Merkel, that he liked her more than people say in the press. She has replied by praising him and the imminent French presidency, but few people are fooled. The Germans have reacted furiously to attempts to curb carbon emissions from cars, because of course they do not want to penalise their manufacturers of large vehicles like Mercedes and BMW. Sarkozy’s plan to create a Mediterranean Union is also regarded with suspicion in Germany, although the Germans have managed to neutralise it geopolitically as a French zone of influence by bringing it entirely under the aegis of the EU.

The two leaders even managed to disagree over the person they want to be the President of the European Council – although this disagreement has now been overtaken by events, since there can be no President of the European Council until the Lisbon Treaty is ratified, which may take many years now and may indeed never happen. Mrs Merkel wanted to propose the former Austrian Chancellor, Wolfgang Schüssel, but Paris has been very hostile to him since he formed a governmental coalition with the far right Freedom Party in 2000. Sarkozy still resents that, even though he is friends with Silvio Berlusconi who governs in coalition with two far right parties, not one. The disagreement only underlines how badly the Irish ‘No’ has damaged Sarkozy’s plans for Europe, because he wanted the EU to have a strong President in the mould of Jacques Delors, not a compromise figure from a small country. [Arnaud Lepartmentier, *Le Monde*, 14 June 2008]

**France wants unified EU asylum policy**

Paris has said that it wants a “European Pact on Immigration and Asylum” to be put to EU heads of state and government during the French presidency in the second half of this year. The purpose of the pact would be to harmonise the asylum and immigration policy of EU states. Paris wants the same criteria to be used in all EU states for the admission of asylum seekers. It also wants the EU border control agency to be beefed up and for there to be no more mass naturalisations in the EU of illegal immigrants. Sources in Brussels say that France has already discussed the terms of the proposed pact with other big EU states by submitting a document which is to serve as a basis for discussion. Paris wants the EU to have a single procedure for asylum by 2010 and for this procedure to be institutionalised by a new office in Brussels. There would, in other words, be an EU immigration policy. France wants Frontex, the EU border protection agency, to be given two extra commandos, one for Eastern Europe and one for the South Mediterranean coast. She also wants all EU visas to have biometric data by 2011. According to France’s plan, EU member states would still have the right to decide how many immigrants they want to admit to their countries. But they want a common declaration by heads of state and government stating that there will be no more mass naturalisations of illegal immigrants already in Europe, as has happened in Italy and Spain, because these only encourage new waves of illegal immigration. Paris also wants to encourage other EU states to agree to an “integration Treaty” which would require long-term immigrants to learn the language of their host country, and to adopt national and European values. These would include equality between men and women, tolerance and the duty to send children to school. France also wants to improve cooperation with countries of origin so that illegal immigrants can be repatriated. Here, the document says, very special effort is needed since currently in Europe only one in three repatriation orders are actually carried out. France proposes that all member states agree repatriation arrangements with the main countries of origin with five years. The document concludes by saying that Europe needs immigration for economic and demographic reasons and that no one supports the “unrealistic and dangerous” doctrine of zero immigration. [Nikolaus Busse, *Frankfurter Allgemeine Zeitung*, 29 May 2008]

Spain has reacted to the French proposal, saying that it wants to play a key role in elaborating the pact together with
France. The Spanish Minister for Europe has said that Madrid wants an agreement with Paris on a common text for the Pact. He has said that the current French proposals are too rigid; he wants the EU to fix only a framework, allowing states to take care of implementation. Spain is especially opposed to the Italian proposal to make illegal immigration a crime. Rome has since backtracked on this idea, saying that instead illegal immigration will be considered an aggravating circumstance if a person is convicted of another crime. [Le Figaro, 4 June 2008]

Sarkozy and Berlusconi

Nicolas Sarkozy has become the first foreign leader to be received by Silvio Berlusconi following the latter’s recent election to a third term as Italian Prime Minister. Sarkozy was in Rome for the UN food summit and went to pay a courtesy call on Berlusconi. He had been the first foreign leader to congratulate Berlusconi on his victory on 14 April and the two men evidently respect one another. The Italian press has seen the meeting between the two men as the beginning of a Franco-Italian “axis” in Europe. In 2007, Berlusconi had said, “If you read Sarkozy’s speeches, you will find that many points have been taken from my books.” Both men share a love of “bling”; both a pro-American and pro-big business. However, their attitudes towards the far Right could not be more different. Sarkozy has maintained the French centre-right’s traditional opposition to Jean-Marie Le Pen’s “National Front” while Berlusconi governs in coalition with both the post-fascist “National Alliance” and the anti-immigrant “Northern League”. [Jean-Jacques Bozonnet and Arnaud Leparmentier, Le Monde, 4 June 2008]

III. Other European News

Slovakia to introduce euro

European Finance Ministers have agreed to allow Slovakia to adopt the euro on 1 January 2009. At the same time, they called on the government in Bratislava to ensure price stability. The ministers ruled that Slovakia fulfils all the conditions for joining the euro even though the European Central Bank has expressed doubts as to whether the country can keep inflation under control over time. In July the Council of Finance Ministers will fix the rate of exchange at which the Slovak crown will be exchanged for the euro on 1 January 2009. Slovakia will become the fourth new member state to adopt the euro, after Slovenia, Malta and Cyprus, adding to the weight within the euro zone council of weaker economies and smaller countries. [Handelsblatt, 3 June 2008]

Eurozone puts off balanced budgets until 2012

Meeting in Frankfurt on 2 June, the Finance Ministers of the eurozone have decided to delay for two more years, until 2012, the deadline for achieving balanced national budgets. The excuse is that it is unwise to cut public borrowing (and spending) at a time of economic downturn. Jean-Claude Juncker, the Prime Minister of Luxembourg and the chairman of the so-called “Eurogroup”, tried to pretend that nothing had changed by saying that 2010 remained the deadline but that it was “conditioned” by the economic cycle. “2012 is a date which must be absolutely respected,” he said. This decision is a political victory for Nicolas Sarkozy, who said immediately after his election that the 2010 deadline should be extended for two years. At the time, other EU states reacted negatively to this suggestion. [Le Monde, 3 June 2007]

EU wants better relations with Eastern Europe

As the EU prepares once again to conclude a partnership agreement with Russia, perhaps during the French presidency of the EU, President Sarkozy has undertaken a new charm offensive to improve relations with Eastern European states both inside and outside the EU.

As the EU prepares once again to conclude a partnership agreement with Russia, perhaps during the French presidency of the EU, President Sarkozy has undertaken a new charm offensive to improve relations with Eastern European states both inside and outside the EU. Sarkozy visited Warsaw on 28 May to sign a partnership agreement; a similar one was signed with the Czech Republic on 16 June.

Sarkozy’s initiative is an attempt to repair the damage caused in 2003 when ten then candidate states signed a letter of support for the war on Iraq. The then President, Jacques Chirac, said that the countries “had missed a good opportunity to be quiet”. A key part of Sarkozy’s initiative is his decision to open the French labour market to EU citizens from Central and Eastern Europe.

One of France’s main strategic goals is also to create a European military capability. With Gordon Brown in difficulty and the German elections only a year away, it is unlikely that either Britain or Germany will move on defence. But the Eastern European capitals are very interested in the project, especially since Sarkozy has prepared the ground by indicating his desire to have a close relationship with the United States. The pro-American Eastern Europeans have therefore ceased to think that the French initiative is just a plan to undermine NATO. [Henri de Bresson & Arnaud Leparmentier, Le Monde, 29 May 2008]

The EU is also trying to improve relations with former Soviet states which are not members of the EU. They want to reinforce links with Ukraine, Moldova, Belarus and states in the Caucasus, an initiative known as “the Eastern dimension” in EU-speak. Some have seen in this an attempt

“ As the EU prepares once again to conclude a partnership agreement with Russia, perhaps during the French presidency of the EU, President Sarkozy has undertaken a new charm offensive to improve relations with Eastern European states both inside and outside the EU. ”
to counter-balance the French initiative to create a Mediterranean Union, which is to be launched in Paris on 13 July.

**Talks underway in Cyprus**

Since the election of the Communist President of Cyprus, Demetris Christofias, technical talks have been taking place two or three times a week between representatives of the Greek and Turkish Cypriots. The meetings take place both North and South of the border. The leaders of both the Greek South and the Turkish North (the latter is Mehmet Ali Talat) are politically disposed to an agreement. They know each other well and are friends, no doubt from their Communist days (Talat’s party used to be aligned with the Communist parties in Eastern Europe). Of course negotiations have been going on ever since Turkey invaded Cyprus in 1974, including between the great dinosaurs of Cypriot politics, Rauf Denktash and Glafkos Clerides who were also on cordial terms. But the two new leaders want to have another try. Turkey, which has 30,000 soldiers stationed in Northern Cyprus, will no doubt have the last word but it is keen for a solution too since it wants to join the EU and cannot do so unless an agreement is reached. [Daniel Vernet, *Le Monde*, 4 June 2008]

**Medvedev suggests pan-European defence**

In his first major foreign policy speech since taking office, President Dmitri Medvedev of Russia has criticised NATO. He said that the trans-Atlantic alliance was no longer capable of assuring European security and that it ought to be replaced by an ‘all-embracing’ agreement encompassing all European states i.e. including Russia. “In his first major foreign policy speech since taking office, President Dmitri Medvedev of Russia has criticised NATO. He said that the trans-Atlantic alliance was no longer capable of assuring European security and that it ought to be replaced by an ‘all-embracing’ agreement encompassing all European states i.e. including Russia.”

Medvedev added that the ambassador’s own father was repatriated to Serbia by the Czechoslovak authorities in 1948 after he refused to pledge loyalty to Stalin against his own President, Tito. Finally, Klaus reminded his readers that Yugoslavia was the only country to declare its own President, Tito. Finally, Klaus reminded his readers that Yugoslavia was the only country to declare its own President, Tito. Finally, Klaus reminded his readers that Yugoslavia was the only country to declare its own President, Tito. Finally, Klaus reminded his readers that Yugoslavia was the only country to declare its own President, Tito. Finally, Klaus reminded his readers that Yugoslavia was the only country to declare its own

Klaus ‘ashamed’ at Kosovo recognition

The President of the Czech Republic, Václav Klaus, who is a member of the International Advisory Board of The European Foundation, has spoken of his “shame” at the decision of the Czech government to recognise the Serbian province of Kosovo as an independent state. Klaus published an article in the prominent national daily, Mlada fronta Dnes, entitled “How ashamed I was”, in which he recounted the conversation he had had with the Serbian ambassador in Prague whom he had asked to see when the government announced its intention to recognise the secessionist province. (In a highly unusual move, Klaus asked to see the ambassador precisely to underline his own opposition to the recognition.) The Serbian ambassador told Klaus that the Serbs were particularly hurt by the Czechs’ decision because they regarded the Czechs as their historic allies and friends. Klaus wrote, “I believed that with my quick invitation of the Serbian ambassador before his unwanted departure, I would send out at least a small signal to people in this country as well as in Serbia that nothing is changing in Czechs’ relations to Serbs.” The two men had discussed the historical events which linked their two countries: the first President of Czechoslovakia, Tomáš Masaryk, had been able to travel through Europe during the First World War only because Serbia had given him a passport, while the Gestapo persecuted Masaryk’s followers in occupied Serbia during the Second World War. One of these supporters was the Serbian ambassador’s own grandfather. Klaus added that the ambassador’s own father was repatriated to Serbia by the Czechoslovak authorities in 1948 after he refused to pledge loyalty to Stalin against his own President, Tito. Finally, Klaus reminded his readers that Yugoslavia was the only country to declare its own mobilisation after the 1968 invasion of Czechoslovakia by Soviet troops. [Mlada fronta Dnes, 24 May 2008]

The bonds which unite Serbs and Czechs grow not only out of the fact that they are both Slavic nations which led new multi-ethnic states created at Versailles (Czechoslovakia and Yugoslavia had the Czech and Serb capitals respectively as their capital city); they also derive from their mutual hostility to the power of Germany (and, earlier, Austria) in Central Europe. At the same time as the Czechs were fighting for their independence from Vienna, the Serbs were fighting the encroachments of the Habsburg empire in the Balkans. This basically anti-German position was radicalised, in the case of the Serbs, in 1991 when Germany forced the other EU states to recognise the independence of Croatia and Slovenia; in the case of the Czechs, there has been a long-running dispute (as between Germany and Poland) over the expropriation and expulsion of Germans after the Second World War.

Above all, Klaus made the comparison, in 2007, at a meeting with the Serbian President, Boris Tadić, between the West’s decision to recognise Kosovo and the decision taken
at Munich in 1938, also by the Western allies, to allow the Sudeten Germans to secede from Czechoslovakia. That decision has entered the annals of history as one of the most shameful episodes in Western diplomacy. Yet it is difficult to see how it is different from the decision to recognise Kosovo, against the will of Belgrade and in the absence of any agreement between Serbs and Albanians.

In the Czech case, the disagreement between Klaus and the Czech government (which is dominated by the ODS party which Klaus founded) came to light when he attacked the appointment of Karel Schwarzenberg as Foreign Minister. Klaus said that Schwarzenberg was too closely linked to Austria to be a reliable defender of Czech interests and indeed he is: Karel Schwarzenberg is in fact Prince Karl VII of Schwarzenberg, the scion of one of the greatest Habsburg princely families whose full title is His Serene Highness The Prince of Schwarzenberg, Count of Sulz, Princely Landgrave in Klettgau and Duke of Krummuau. Schwarzenberg is also a long-time friend of Klaus’ nemesis and sworn political enemy, his predecessor, Václav Havel.

Others in the Czech Republic have also voiced their hostility to their government’s decision to recognise Kosovo – a decision which several other EU states, including Slovakia, have refused to take. The government has been accused by the opposition and by members of the Czech Parliament of failing to consult widely enough before taking such a decision.

Czech PM honours anti-communist fighters

To compound its difficulties, which in any case are grave because of an unpopular health reform, the Czech government has taken a controversial decision to honour three anti-communist “heroes” who committed various crimes, including murder, as they escaped Czechoslovakia in 1953 on their way to West Berlin. The award was given by the Czech Prime Minister, Mirek Topolanek, at a ceremony at the Czech embassy in Washington. Convinced that the Third World War was about to break out, and determined to fight Communism, five young men (Josef and Ctirad Masin, Milan Paumer, Zbynek Janata and Václav Sveda) took 28 days to cross Czechoslovakia secretly. Three of them managed to escape, while two were caught and executed – because as part of their escape they had robbed a security van carrying workers’ pay before storming a police station and slitting a policeman’s throat. While in East Germany, there had been a shoot-out in a country station and the escapees killed several policemen. [You can read the extraordinary story of their escape on Wikipedia.] One of the survivors, Milan Paumer, now aged 76, has expressed no regret at all for the people he killed. “We wanted to free the country from Communism and people now are snivelling at the death of six people. These guys were war victims, I have no especial pity for them.” The old man, who came back to the country in 1991 and who is often attacked as a murderer in the street, says that the killings were justified by the fact that he was fighting a totalitarian regime. The Masin brothers have refused to return to the country for as long as the Communist Party is not banned. Many Czechs think that the award is misplaced and incompatible with the country’s stated commitment to the war on terror.

EUFOR forces see action in Chad

Even though the EU’s military capacity has yet to be legalised by the Lisbon Treaty, an EU force has been deployed to Chad, where shots have been fired in anger as that African state starts to feel the effects of the war raging in its Eastern neighbour, Sudan. There are some 3,700 EU soldiers there, most of them French but also with 400 Irish (the very country most concerned about its military and political neutrality!) and other neutral states like Austria and Finland. Rebels approached the town of Abéché where they were engaged by government forces while the refugee camps were protected by EUFOR. This did not prevent the rebels from entering the town, where they seized a number of vehicles and satellite telephones from the NGOs operating there. Many of the other European capitals suspect that France is using EUFOR as a cover for its political project of protecting the President of Chad, Idriss Déby, whom Sudan wants to overthrow. [Jean-Philippe Rémy, Le Monde, 16 June 2008; see also www.consilium.europa.eu/eufor-tchad-ra]
Germany and Romania, are not convinced by the Commission’s proposals on decoupling as they believe it will not promote production.

The Commission has pointed out that in order to strengthen the EU efforts in the field of climate change, renewable energy, water management and biodiversity, additional funding is needed. The Commission believes that “the best way of meeting them is through Rural Development policy.” Therefore, it has proposed to increase the transfer of direct payments to the Rural Development budget by 8 per cent. Modulation provides a mean to ensure the transfer of subsidy funds from Pillar 1 of the CAP (guarantee expenditure and single farm payments) to Pillar 2 (rural development and agri-environmental schemes). Some Member States are concerned that the rural development support will come at expense of market supports and subsidies.

Presently, all direct aid payments of more than €5,000 are reduced by 5 per cent and the money is transferred into the Rural Development budget. The Commission wants to make further cuts for bigger farms. It has proposed that any amount of direct payments to be granted to a farmer that exceeds EUR 5,000 shall be reduced for each year until 2012 by the following way “2009: 7%, 2010: 9%, 2011: 11%, 2012: 13%.” However, several Member States such as Germany are concerned that reducing subsidies to big farmers might lead to splits into smaller farms in order to qualify for subsidies. The Commission has also proposed to replace the present intervention systems under which farmers are able to sell stock into EU reserves if they cannot get a decent price for their produce on the market into a “genuine safety net.” It has proposed to abolish the existing intervention mechanisms for durum wheat, rice and pig meat. Intervention will be set at zero for feed grains and tendering will be introduced for bread wheat, butter and skimmed milk powder. The UK has been demanding the end of all market instruments whereas France does not. 

Franco-German united front against CAP reform

News @ European Commission. Mariann Fischer-Boel, Commissioner for Agriculture and Rural Development, has recently unveiled the Commission’s proposals for the so-called CAP Health Check. The Commission’s proposal does very little to boost farm competitiveness, to phase out all the price support measures and to cut bureaucracy. The situation is likely to get even worse through the negotiations as several Member States such as France and Germany believe that the Commission’s proposals are too ambitious since they both want to keep the coupled payment system and market instruments. It is very likely the UK will have few or none of its demands met through the negotiation process.

CAP has been through recent reforms but it continues to be one of the most expensive EU common policies, it imposes substantial costs on developing countries as well as on EU consumers and taxpayers. Tony Blair not only gave up part of the UK rebate but there appears to be no serious CAP reform on the way. The Government has stressed, on its longer term vision for the CAP, published in 2005, that “the CAP has been estimated to be equivalent to a value added tax on food of around 15 per cent” and that “removing market price support would bring a one-off reduction in inflation of 0.9 per cent.” The European Commission has proposed to increase decoupling, strengthen rules on cross compliance, reduce market intervention mechanisms and increasing modulation. However, the Commission’s proposal to reform CAP is far from satisfactory.

The Commission has proposed further decoupling, meaning reducing the link between how much farmers produce and how much financial support they receive from the CAP with the exceptions of suckler cows, goat and sheep premia where Member States would be allowed to maintain the coupled support. Whereas the UK favour direct aid to be completely decoupled from production, several EU Member States such as France, Portugal,
want to give up market interventions. The Commission has also proposed to abolish existing rules on keeping 10 per cent of farmers’ arable land untouched.

Unsurprisingly, the Commission’s proposed reform has not pleased France and Germany which united forces to defend the present CAP. France and Germany have been arguing that CAP is needed to keep food price stability in the EU as well as to protect farmers through the import tariff system. On the other hand, the UK has been demanding serious CAP reform. France and Germany are completely against the idea of cutting farm subsidies. Mr. Darling has called for a “phasing out all elements of the CAP that are designed to keep EU prices above world market levels (such measures cost EU consumers 43 billion euros in 2006), an end to direct payments for EU farmers (which cost EU taxpayers 34 billion euros in 2006).”

Mr Seehofer, Germany’s Agriculture Minister, has said “we have to make sure that we can provide this continent with food sustainability. This cannot be done by taking away subsidies from European farmers.” Yet, Alistair Darling believes that is “unacceptable that, at a time of significant food price inflation, the EU continues to apply very high import tariffs to many agricultural commodities.” According to Michel Barnier, French agriculture minister, “The solution to the crisis is not, first of all, through free trade (…).” Mariann Fischer Boel has dismissed the French claims, saying “I am not interested in a protectionist approach to the agricultural production in Europe (…).” Nevertheless, she has also dismissed the UK position, while saying “The market has a very important role to play, but left to itself, it will not care for our landscapes or respond to other public demands.” Moreover, she said, “This is not the time to scrap the CAP, as some have proposed.”

The EU Agriculture Minister will further discuss the Commission’s CAP health check at the Agriculture Council in June which will face opposition from several Member States. On the one hand, France and Germany defend farm subsidies while on the other hand, the UK wants to scrap them. France will be wearing the EU helmet in July and ironically the CAP reform will be debated during its presidency. France being the biggest beneficiary of CAP does not want to see a reduction on farm subsidies. The Commission’s proposals are expected to be adopted by the Council by the end of the year and come into force in 2009.

US frustrated as EU Commission remains defiant in lifting chicken ban

News @ European Commission. The credibility of the Transatlantic Economic Council (TEC) is at stake as the Commission will not be able to honour its commitments. On 13 May, Gunther Verheugen, Vice President of the European Commission and TEC chairman had promised that the Commission would put forward a proposal to lift the 1997 EU ban on the US chlorinated chickens (see The European Journal, June issue). On 28 May, the European Commission has submitted the proposal to the Standing Committee on Food Chain and Animal Health. The Commission’s Draft Regulation establishes strict rules and criteria for the use of antimicrobial substances. Operators would be required to set up controls to check the potential effects of the use of such substances. Moreover, operators are required under the Commission proposal to affix the sign of “chemical decontamination” or “treated with antimicrobial substances” on the poultry packaging. The operators are also required to rinse the poultry carcasses with potable water after treatment.

The Commission’s proposal sets a temporary authorisation of two years for the import of chickens for human consumption treated with chlorinate. Mr Verheugen has made significant efforts to work with the United States however he may have provided false hopes, as it will be very difficult for Member States to approve the proposal. At the Agriculture Council which took place on 19 May, it became clearer that the majority of the EU agriculture ministers are against the idea of authorising US poultry in the EU market. The poultry issue is among the main priorities of the TEC.

The US has already criticised the Commission’s proposal. Daniel Price, the Co-Chairman of the TEC, has said, according to Europolitics, that the Commission’s proposal “is the functional equivalent of leaving the ban in place.” According to Price, the European Commission is already undermining the TEC, adding, “The message being sent out is that if an issue is politically difficult or affects the commercial interests of local domestic constituents, it may not be appropriate for the TEC. This really is not about the poultry trade – it is about the TEC’s integrity.”

The Standing Committee on the Food Chain and Animal Health voted on 2 June to keep the ban on US poultry imports, rejecting the European Commission proposal. All the EU Member States, with the exception of the UK which has abstained, have voted to keep in place the ban on imports of poultry rinsed in chlorine. According to the comitology rules, the Commission’s proposal will go to the Agriculture Council which is very likely to reject the proposal as the EU agriculture ministers have recently shown their opposition to such measure. This is effectively a blow to the EU and US trade relations. Günter Verheugen has promised that it would work with the Member States in order to find an agreement on lifting the ban on US chickens but up until now, it has achieved the
opposite. The TEC’s credibility is already at stake in achieving little in the way of removing barriers to transatlantic trade. The EU-US Summit took place on 10 June and trade tensions are set to stay rather than be sorted. The summit unsurprisingly has not brought any major developments. According to a Joint Declaration, the EU and US have welcomed the work of the Transatlantic Economic Council yet it was stressed that that in order “To fulfill the TEC’s mandate of creating a barrier-free transatlantic market, it is essential that both sides follow through on their commitments …” The US is already considering taking the issue to the World Trade Organisation. In order for the TEC to start producing results, Gunter Verheugen needs support from the EU presidency which does not seem likely during the French presidency as it is obvious that France is not willing to remove regulatory trade barriers.

The Commission strikes again on UK budgetary control

News @ European Commission. On 11 June, the European Commission adopted a report according to Article 104 (3) of the EC Treaty, to initiate the excessive deficit procedure for the United Kingdom. The European Commission adopted the report following the UK notification, in March 2008, of a planned deficit of 3.2 per cent of GDP in financial year 2008-09, which is above 3 per cent of GDP – the Treaty reference value.

The Commission has stressed that the planned figure for 2008-09 provides evidence of the existence of an excessive deficit in the UK which was confirmed by the spring forecast. The Commission has accepted that the planned deficit is close to the reference value and has concluded that the UK’s planned excess over the deficit over the reference value cannot be qualified as exceptional within the terms of the Treaty and the Stability and Growth Pact, or temporary. Therefore the Commission has suggested that the UK is not respecting the deficit criterion established in the Treaty. Hence, the Commission has issued a warning for the UK to keep the budget deficit under the 3 per cent GDP level.

The UK is therefore under EU pressure to improve its finances. The Commission has already warned that tax cuts would further sprain public finances. Consequently, Alistair Darling might raise taxes to reduce the deficit. The initiation of the excessive deficit procedure against the UK though would not lead to financial sanctions if the UK does not follow the recommendations but it raises doubts over Alistair Darling’s management of public finances. The report will be assessed by the Ecofin Council.

On 5 June, the European Commission has also lodged a formal complaint to the ECJ against the UK for alleged failure to comply with European employment legislation relating to road transport activities. According to the Commission, the UK has not informed it of its national measures transposing Directive 2006/22/EC which regulates the controls that Member States have to carry out in order to ensure compliance with rules on driving time and rest periods. Member States were required to adopt the necessary legislation before 1 April 2007. Moreover, the Commission has also sent a reasoned opinion against the UK for alleged failure to fully transpose Directive 2005/45/EC into national law on the mutual recognition of seafarers’ certificates issued by the Member States. Member States had until October 2007 to transpose the Directive. It is aimed at encouraging mobility of seafarers within the European Union. The UK will have to adapt its national legislation on maritime transport if it does not want to find itself before the ECJ.

Everyone wants a stronger Europe and a stronger common foreign policy

In the Plenary debate on CFSP, I was struck by a remark of High Representative Xavier Solana, so I abandoned my prepared text and spoke extempore. As near as I can remember, I said: “Mr. President, I have a question. How is it that our High Representative Mr. Solana can come to this House and tell us a direct untruth (I eschewed the word “lie”)? I have just heard him say that everyone wants a stronger Europe and a stronger CFSP. I represent 4.2 million people in the East Midlands: not one has asked me for a stronger Europe. But many have asked for our country to leave the EU. The Lisbon Treaty and the previous EU Constitution would have delivered a stronger CFSP. Yet the French and Dutch voted down the Constitution. If you believe the people want it, why will you not let them vote for it? In my region, 80 per cent of voters want a referendum, and 80 per cent would vote ‘No’. The British people want trade and cooperation in Europe. But they are absolutely opposed to political union and a European Army.”

Roger Helmer, MEP
EU Parliament seeks larger role in foreign and defence policy

News @ European Parliament. It is well known that the role played by the EU in the international arena would be enhanced if the Lisbon Treaty goes through. On 5 June, the European Parliament adopted two reports on the impact of the Lisbon Treaty on the EU’s Common Foreign and Security Policy (CFSP) and on the European Security and Defence Policy (ESDP). Obviously, the European Parliament wants to have a bigger role in these areas. The European Parliament adopted by a large majority (520 votes in favour) Jacek Saryusz-Wolski’s own initiative report on the Council’s 2006 Annual Report on CFSP. The European Parliament welcomed the “improvements” introduced by the Treaty of Lisbon regarding external action, the CFSP and the ESDP, which will become the Common Security and Defence Policy (CSDP).

The European Parliament has stressed the necessity of improving EU political unity in order to strengthen the CFSP. Under the Lisbon Treaty, there is an overall transfer of further political power to EU level, through the new President of the European Council and the High Representative on Foreign and Security policy. All these changes would eliminate or diminish the ability of Member States to conduct their own foreign policy. The intergovernmental nature of the CFSP is maintained under the Lisbon Treaty however it increases the areas in which QMV would be applied to CFSP matters which includes decisions on proposals presented by the High Representative, all of which is unacceptable.

However, the European Parliament wants to scrap the veto on CFSP matters. According to the European Parliament, the Lisbon Treaty improves the existing CFSP arrangements but “further efforts are needed in order to streamline the decision-making process as regards foreign policy with a view to overcoming the veto power and introducing qualified majority voting.” The European Parliament has called for further transfer of power from the Member States to the Union. If the Lisbon Treaty goes through, the Union would not only have a “foreign affairs minister” but also a European external action service (EEAS), meaning a diplomatic service with delegations in several countries. The organisation and functioning of the EEAS will be established by a Council decision, acting by a QMV, on a proposal from the High Representative after consulting the European Parliament and obtaining the consent of the Commission. The European Parliament has stressed its right to be consulted on the establishment of the EEAS. Obviously the creation of the European external action service will challenge the distinction of European and national foreign policy priorities and interests. The Member States would no longer represent themselves but the Union on the international stage.

The European Parliament also adopted Helmut Kuhne’s own initiative report on the implementation of the European Security Strategy (ESS) and the European Security and Defence Policy (ESDP) by a large majority (500 votes in favour). According to Geoffrey Van Orden MEP, Conservative Spokesman on Defence, “This report is a manifesto for an EU takeover of our armed forces – the greatest prize for the federalists and their ambition to create a state called Europe.”

The European Parliament has invited the High Representative to include in a White Paper major proposals endeavouring to improving and complementing the European Security Strategy (ESS), mainly “the definition of common European security interests and criteria for the launching of ESDP missions.” The European Parliament has also called on the High Representative “to define new targets for civilian and military capabilities (...) and to reflect on the implications of the Lisbon Treaty with regard to ESDP and proposals for a new EU-NATO partnership.”

The European Parliament has welcomed the Lisbon Treaty’s major innovations in the area of ESDP such as the High Representative of the Union for Foreign Affairs and Security Policy, a European External Action Service, a provision on mutual defence assistance, a solidarity clause, permanent structured cooperation in the field of defence and an extension of the “Petersberg tasks.” The Common Security and Defence Policy would be further developed under the Lisbon Treaty. There would be a major transfer of power in this area from the Member States to the Union. The Lisbon Treaty would further the Union’s defence integration. UK relations with the rest of the world and NATO would be undermined. The Lisbon Treaty also introduces a provision for “permanent structured cooperation” between a group of Member States, allowing greater cooperation in the area of capabilities. The aim is to move forward in military and defence integration. It is a step towards a Single European Army. As this would not be enough, the European Parliament has asked the Member States to examine the possibility of possessing (under the terms of permanent structured cooperation, and as foreseen in the Lisbon Treaty) existing multinational forces such as Eurocorps, Eurofor, Euromarfor, the European Gendarmerie Force, the European Air Group, the European Air Coordination cell in Eindhoven, the Athens Multinational Sealift Coordination Centre and all relevant forces and structures for ESDP operations. As regards civilian crisis management and civil protection, the European Parliament has called upon the Commission to...
look into the possibilities for setting up of a specialised unit within the European external action service aiming to ensure a more coherent approach to civilian crisis management based on better coordination of internal EU instruments. Moreover, the European Parliament has stressed the importance of strengthening the conflict resolution civil capacity and consequently urged the establishment of an EU Civil Peace Corps for crisis management and conflict prevention. Furthermore, the European Parliament has reiterated its opinion that its is unacceptable that although the EU Code of Conduct on Arms Exports hits its tenth year in 2008, it is not yet legally binding. The European Parliament has stressed the need for the EU to have a leading role on strengthening the international arms control regime.

Geoffrey Van Orden has spoken against arms trade being surrendered to EU control. He has said “Britain is fortunate to possess the largest and most successful defence industry in Europe. Strategic industries and British jobs would be put at risk if the EU was allowed to bind us with more of its bureaucratic red tape.” The European Parliament has also called on the Council to assess the Battle Group concept in order to create a more extensive catalogue of available capabilities and to be in a position to promptly generate a force adequate to a mission’s circumstances. It also wants to set up within the EU Operations Centre a permanent planning and operational capability to conduct ESDP military operations. The MEPs have also proposed “to place Eurocorps as a standing force under EU command and invite all Member States to contribute to it.” Keeping in mind the training of those European forces, the European Parliament has called for a military ‘Erasmus’ programme. The European Parliament has welcomed the Commission’s proposals for a directive on defence procurement and for a Directive on intra-Community defence equipment transfers. The MEPs have stressed that the European Parliament should adopt a recommendation or resolution before the launch of any ESDP operation and have asked the Council to include in a decision authorising an ESDP operation a reference to a recommendation or resolution adopted by Parliament.

EU creates sanctions for environmental crimes

News @ Justice & Home Affairs Council. The Council has recently reached an agreement with the European Parliament on the Directive for the protection of the environment through criminal law (at first reading, under the co-decision procedure). According to Hartmut Nassauer, European Parliament rapporteur, “we are setting a precedent” whilst stressing that criminal penalties might be extended to other areas than protection of environment. This Directive intends to harmonise the approach of Member States in the breach of EU environmental protection rules. Presently, there is no express power conferred by the EC Treaty to the Community to adopt criminal law measures.

In 2001, the European Commission proposed a Directive on the protection of the environment through criminal law however the Council had adopted a framework decision instead. In September 2005, the ECJ ruled that the Community had the competence to adopt criminal measures to ensure compliance with environmental protection rules and annulled the framework decision. Obviously, the ECJ ruling was an important victory for the European Commission which could not wait to initiate legislation in criminal matters. In February 2007 the European Commission had put forward a proposal for a Directive on the protection of the environment through criminal law aiming at replacing the Council Framework Decision annulled by the ECJ. The Directive will apply to breaches of Community law on the protection of the environment such as the illegal transport of waste, illegal trafficking of threatened species, the significant deterioration of protected habitats, unauthorized emissions into the water, air or soil, through dangerous activities which includes the production, storage and transportation of nuclear material, or the production and placing on the market or use of ozone depleting substances. Under the Directive such behaviour will be considered as a criminal offence throughout the EU when unlawful and committed intentionally or with serious negligence.

Member States are therefore required to introduce in their national legislation criminal penalties for serious violation of Community environmental protection law committed intentionally or by seriously neglect and to introduce the necessary measures to ensure that these offences are punishable by effective, proportionate and dissuasive criminal penalties. Under the Directive, inciting, aiding and abetting of such conduct will also be considered a criminal offence. The Commission was initially aiming at harmonizing the minimum levels for fines but this was withdrawn as the ECJ ruled that the Community does not have competence to determine the type and the level of the criminal sanctions.

The Lisbon Treaty confers powers on the Union to define criminal offences and sanctions when they are necessary for the implementation of one of its policies. The Justice and Home Affairs Council gave its blessing to this Directive on 6 June. The power to define criminal liability and to impose criminal penalties is another sovereign power which has been transferred from Member States to Brussels.