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The Journal of the European Foundation



Rejecting a Common Energy Policy
Tony Lodge
&
Sara Rainwater • Jiří Brodský
Roger Helmer, mep • Carlo Stagnaro
David Wilkinson • Jocelyne Saunders
Bill Cash, mp • Dirk van Heck • John Laughland
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from the editor

Dear reader,

Gazprom. Eni. Enel. E.On. Endesa. Suez. The latest corporate buzzwords to hit the cover of the *FT*. With the possibility of an EU-wide Common Energy Policy combined with the rise in economic nationalism and ongoing domestic debates, the 'energy' issue is poised to become as hot as a nuclear reactor.

In the lead article of this edition, Tony Lodge looks at energy from a UK perspective (see page 5). He feels that Britain's unique position, built upon abundant indigenous energy supplies, demands an appropriate energy policy which takes her special situation into account. It would be dangerous for the UK to relinquish control of its energy policy to Brussels; he thinks a free market for energy, not an integrationist Common Energy Policy as proposed by the Commission, is in Britain's best interest. On the other hand, Carlo Stagnaro comes at the debate from a continental perspective (see page 9). As Italy is almost completely reliant on foreign energy imports, he believes a Common Energy Policy would be the best option for Italy and the rest of the EU. The two articles prove the dichotomy that can and does exist between Member States. Clearly in the case of energy policy, what is good for the EU goose is *not* good for the gander. In another article on energy, Roger Helmer takes us into the ever-popular debate over wind power and exposes some new figures as to what the true cost of wind turbines may actually be (see page 8).

On other issues, Jirí Brodský debunks ten myths of the 'reflection period' over the EU Constitution (see pages 3-4) and Jocelyne Saunders examines the ever-contradictory issue of the free movement of workers within the Single Market.

And finally, on to the Legislative and Regulatory Reform Bill. This is a critical Bill whose EU implications have been completely overlooked by British media. The Government is claiming the Bill will tackle the problem of over-regulation. However, because the majority of the over-regulation that burdens UK business stems from Brussels (not Westminster), the Government's proposal will achieve relatively little. That is why our Chairman, Bill Cash, presented new Clause 17 as an Amendment to the Bill (see page 13) which would ensure the supremacy of the Westminster Parliament overriding EU legislation and require UK judges to comply with the legislation made in Westminster even if inconsistent with EU law made under the European Communities Act 1972 from which EU law derives its authority. This is the most fundamental issue of all. Bill made a convincing argument in his speech to the House of Commons and the Conservative Party formally supported his Amendment (see pages 13-17 for excerpts of the debate). It may be worth checking how your local MP voted on this issue.



Myths of the EU Reflection Period

by Jiří Brodský

One year ago, the referendums in France and the Netherlands decided the fate of the Treaty Establishing a Constitution for Europe and started the so-called 'reflection period', which should be used to determine the further course of the European integration process. The results of the referendums in the two founding Member States made it clear that the Constitutional Treaty, as prepared by the Convention on the Future of Europe, is not the course European integration should take. Despite this, the reflection period has been characterised by a number of both unintentional and deliberate misinterpretations. The referendums, the ratification of the Constitutional Treaty, the process of enlargement, and the EU itself have been wrapped up into several myths. These myths are unfortunately not virtual. They were not artificially created merely for the sake of academic debate. They form a part of the current political discourse in Europe. They have been presented as self-evident. They have become familiar and almost unquestioned. The reflection period should first be used to uninstall these myths. It should be used to demythologise the European integration process and to decide where to go next.

Myth No. 1: The French and Dutch referendums failed

Referendums do not fail. It is only what you put to the referendums that can eventually fail. Whether one likes it or not, the referendums in France and the Netherlands rejected the Treaty Establishing a Constitution for Europe. Their results should be respected and should be taken seriously. To say that the referendums failed implies that the politicians were not capable of convincing the French and Dutch electorate of the benefits of the Treaty; it implies that the politicians didn't 'sell' the Treaty well. It implicitly implies that those who participated in the referendums didn't really know what they were voting about and, as some self-anointed analysts argue, that the voters did not, in fact, say 'No' to the Treaty but rather to their domestic political representations or that they were expressing their dissatisfaction with the current economic and social policies in their respective countries.

We should be wary of such judgements. French and Dutch citizens have participated in the project of European integration since its very beginning. Every family in France received a copy of the Constitutional Treaty before the referendum. The pre-referendum campaigns in France and the Netherlands were thorough and informed. They weighed up the pros and cons of the Treaty and were much noticed by the citizens.

Myth No. 2: Those who voted 'No' to the Constitution are anti-European

Let it be said once and for all – those who do not applaud everything that is proposed or agreed by the European Union are not anti-European. Nor are they less European than those who are in favour of a particular policy initiative, EU Treaty or legal act. Those who voted 'No' to the Constitution did not apply the brakes to the process of European integration; they just put up a no-entry sign before one of the side streets. The Dutch and the French voters thus did not bring 'the European project' – whatever this may mean – to an end, as is often wrongly interpreted.

Myth No. 3: The European Union is in crisis

Looking at the history of European integration, the EU/EC/EEC has been said to be in crisis whenever a Treaty has not been ratified in some Member State(s), whenever unanimity has not been reached where it is required, whenever the EU has been incapable of agreeing on something or – more specifically – whenever Member States have not accepted what the Commission or some EU-related supranational institution/bureaucratic body has proposed. The EU has interestingly been given the 'crisis' label whenever the idea of building a 'State of Europe' has seemed discredited; whenever supranational initiatives have not been on the winning side; whenever European integration has not seemed to evolve towards 'an ever close union', towards federal statehood or towards the illusionary 'higher' European-wide democracy. The empty chair crisis of 1965, the first referendum on the Maastricht Treaty in Denmark, the first referendum on the Treaty of Nice in Ireland or the referendum on the single currency in Sweden are more than illustrative examples of this fact.

The European Union is not in crisis in the wake of the French and Dutch referendums on the Constitutional Treaty. Those who say the EU is now in crisis use this argument only in order to revive the ratification process of the Constitution. They need the reflection to be just 'a period'; they are afraid of constant reflection and democratic accountability. Valéry Giscard argued that if the Constitutional Treaty is not ratified unanimously by all the Member States, *"there is no plan B."* Since the Treaty was rejected in France and the Netherlands, there is no need for the ratification process of this Treaty to continue. Let us not discredit the process of European integration by implying that it is a one-way street that has to be followed by all the Member States.

Myth No. 4: The ratification of the Constitutional Treaty must be revived and must continue

The EU has a unique chance not to throw itself into crisis by the theatrical and absurd repetition of referendums in states which did not or will not ratify the Constitutional Treaty. Why should the ratification process continue? In order to point the finger at France, the Netherlands and eventually other countries, and to make their citizens vote on the Treaty again and again until it is ratified? The history of the second referendums in Denmark and Ireland is a sad warning in this respect. It is difficult to quantify the extent to which the second vote has disturbed the legitimacy of the integration initiatives that followed, but let us not play with expressed popular opinion; let us not undermine the seriousness of European integration and its positive effects, connected primarily with liberal opening-up.

Myth No. 5: We are building Europe

One might suppose it is so obvious that it goes without saying – Europe is not the same as the European Union. Yet the political reality is different. Countries applying for membership of the European Union have to be European and nominees for Commissioners have to prove their 'Europeanness' in

order to qualify for the post. The European Union is often substituted for Europe, not surprisingly by those who live in the European Union and favour supranational forms of integration, or by those who think they own the keys to Europe, labelling those who oppose them as anti-European. These people think they have a monopoly to speak for Europe; they live comfortably isolated from the reach of the electorate and standard democratic mechanisms. They usually speak about building Europe and want to homogenise, standardise, compete and shut off at the continental level. They want to bring 'Europe closer to its (!) citizens' through the Treaty Establishing a Constitution for Europe (!).

Myth No. 6: European identity has to be built

Those who are building Europe aim at building a European identity – i.e. not the natural feeling of belonging to the European continent, which undoubtedly exists and doesn't need to 'be built', but an imposed quasi-identity artificially established above nation states. This quasi-identity is supposed to spring from the EU law, EU anthem, EU flag, EU institutions, EU currency, Day of Europe, EU citizenship, EU territory (which is not identical to Europe!), European Voice in our mail boxes, Euronews on our TV, from the existence of the '.eu' internet domains, Euroelections, Eurospeak, Euronetworks, Euroregions, or Euroconferences full of Eurovisions.

Myth No. 7: The EU has to be communicated to its citizens

Such a European identity cannot be based on the non-existent 'European' people and it thus has to be based on communicating the EU to the citizens of EU Member States, on gaining self-assuring support from the electorate, or just on making sure that the citizens know what the EU is doing, what the EU political elite want it to be, what a new legal act, policy, or treaty is about. This campaigning is a bad substitute for democratic accountability. It tries to artificially fill in the existing democratic deficit – the wide gap between the EU Member States' citizens and EU political elite – by letting the citizens know about goods they might have not wished to order. The European Parliament's plan to spend €235 million under a separate budgetary heading 'Europe for citizens' is an example of a wasteful initiative for which there is no demand. Commissioner Figel said that this initiative should *"develop into a sense of belonging to the EU and of a European identity."* Should the citizens' money be thrown into such campaigns or the actual EU initiatives responding to everyday problems which give legitimacy to the EU and the integration process as such?

Myth No. 8: The Union can be ever close and ever wider at the same time

The founding Treaties prescribe the European Union to be ever close, but the Member States have never taken the time or effort to define when the Union will be close enough and when the EU will be wide enough. It should be obvious that the EU cannot be ever wider and in the same respect it cannot be ever close. There is a trade-off between the Union's enlargement and degree of integration. In other words, it is impossible to have more Member States and a more unified/rigid European Union at the same time. The process of deepening can only proceed at the expense of widening and vice-versa. This is the basic point of departure for defining which form integration should take in the future. While intergovernmentalists tend to support a less unified organisation of European states and thus further enlargement, the supranationalists tend to argue for the process of widening to stop (sooner rather than later, even after the accession of Romania and Bulgaria) and advocate a closer Union between the current Member States. This paradigm should be noticed in the current discussion on the further course of European integration and, to be fair, it should be said that those who support an ever closer Union do not support the continuation of enlargement, because – by definition – the two processes cannot run parallel to each other in the same direction.

Myth No. 9: We should be afraid of accession of countries such as Ukraine or Turkey

The process of the enlargement of the European Union has to continue after the accession of Bulgaria and Romania. This doesn't imply that it should continue hastily. Enlargement is the EU's most effective foreign policy tool. It has a sell-by-date because the EU cannot be territorially all-inclusive, but this policy tool exists and it should be used. It is in the interest of the current Member States for the EU to expand and unroll its borders to countries such as Ukraine or Turkey. Not only is this a unique chance to anchor these countries firmly among the European democracies, but it is also a promising quality of the EU Member States' bilateral relations with these countries. Moreover, *"it may turn out that in such a European Union there are more choices than the simple yes-or-no to another mega-treaty."*† There could be more space for variable geometry or concentric circles of countries with different levels of integration among them, but this is precisely how the EU already operates today. Not all the Member States are members of the Economic and Monetary Union, not all of them are included in the Schengen area, not all of them have adopted the Social Charter, not all of them can have their labour force moving freely across the EU, not all of them participate in the international missions which have military and defence implications, etc..

† Bielecki, Jan Krzysztof. Something Ends, Something Begins, pp 46, in "On the Future of Europe", Ministry of Foreign Affairs of the Republic of Poland, Warsaw 2005.

Myth No. 10: The EU has to be stronger – or more unified – in order to stand up to the political and economic challenge from China, India, oil-rich Arab countries and a robust United States

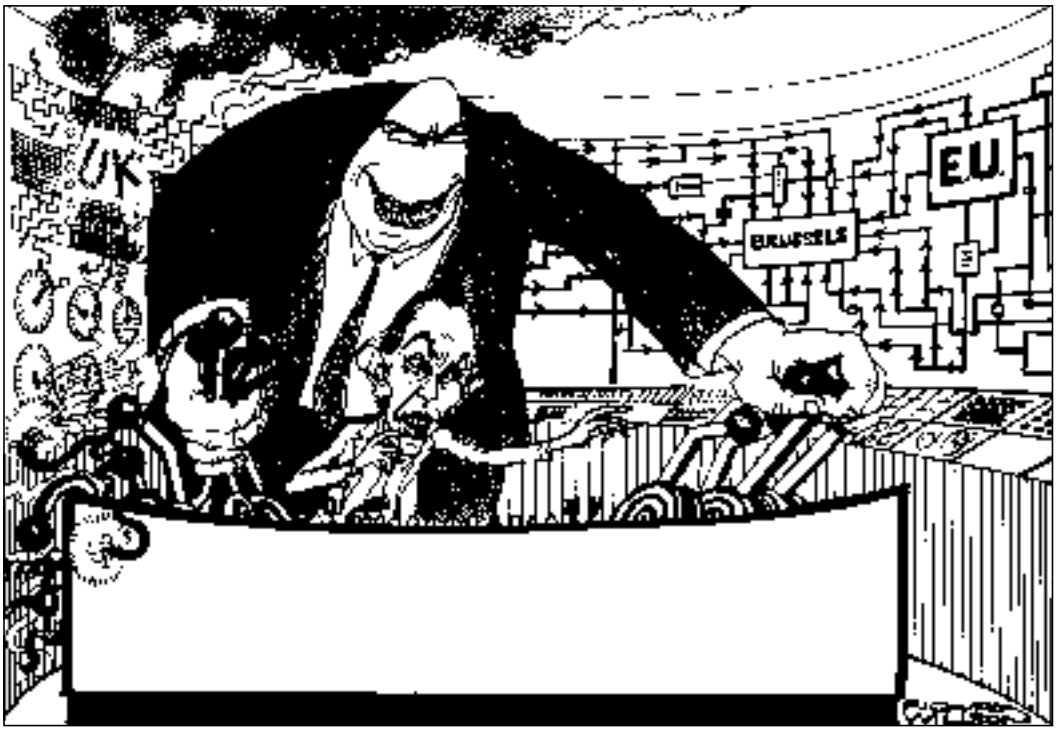
It has always been easier for parts of Europe to unite 'against' something rather than 'for' something. The European identity, and also the process of European unification (as a form of integration), has been conceived or interpreted with respect to creating a necessary counterweight to totalitarianism, the United States, Asia, or globalisation. This conception of European integration should be abandoned. The EU is not here because of *"le défi américain"* (because of the necessity to challenge the US dominance). The EU does not need to be big and more unified in order to compete with the rest of the world.

We should uninstall these myths about the European integration process and delineate the future of the European Union in a qualitatively different way.

Jiří Brodský is Deputy Director of the Foreign Affairs Department in the Office of the President of the Czech Republic.

Rejecting a Common Energy Policy

by Tony Lodge



Alarmed by the surge in energy costs, the threat of an acute gas shortage and the determination of implementing the rejected European Constitution by the back door, the European Commission has moved to seize control of energy policy from national governments. This development has acute implications for the future sovereignty of Britain's remaining indigenous energy reserves, including North Sea oil and gas, future ministerial accountability in Parliament and the eradication of fuel poverty.

Instead of attempting to secure agreement on a genuine single market for energy, with the lower prices and greater choice that this could entail, Brussels is set to expand its portfolio on energy which could involve the creation of a common European energy resource and future energy planning for the whole EU, thereby stripping the British government of its energy responsibilities to the electorate and the UK consumer.

The British government welcomed the initial proposals when they were published in an EU Green Paper on 8 March. Energy Minister Malcolm Wicks told *The Times* on 6 March, "*By speaking in the same voice towards the same goals, the European Union can achieve its energy goals for the benefit of all EU citizens.*" The Conservative Party has opposed any move to a "*bureaucratic trans-European energy regime.*"

Proposals for the Common Energy Policy have received limited coverage in the wider media, which is surprising given the potential medium-term implications for Britain. The European Commission called for a common EU-wide fuel and power strategy directed from Brussels with a regulator, which illustrates a clear strategy to remove the grip of national governments over energy policy. The regulator and a new EU energy observatory would be responsible for forward planning; Brussels would also take over energy negotiations.

Jose Manuel Barroso, the Commission President, said Europe could no longer allow itself the luxury of national pride as dependence on risky foreign sources rises from 50 to 70 per cent by 2030. "*If we want to sing with the same voice on the world stage we cannot have 25 mini-markets. We should refuse any kind of nationalism of an economic kind, especially in the energy sector,*" he said.

Following the publication of the British government's White Paper on the European Constitution, in September 2004, the government stated that the final Constitution text on energy was "*a good outcome.*" The government proclaimed that through tough negotiation they had secured a pledge, which appeared in the final text as follows: "*European laws shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.*" Following the rejection of the Constitution in the Dutch and French referendums, some politicians heralded the halting of the federalist express. This was a naïve call.

Before the Constitution's rejection, the text on energy satisfied and calmed some MPs who had raised questions on energy policy in the House of Commons, but more eagle-eyed watchers of the Brussels machine had noticed with alarm the draft text on energy, which the final text had replaced following DTI protests. Draft Article III-157 gave the European Union powers to decide energy policy. It prohibited Britain from passing laws in the field of energy unless Brussels chose to waive its primacy. Voting would have been by qualified majority (QMV), leaving Britain without a veto. The text of the draft Article said, "*The Union shall aim to ensure the functioning of the energy market, secure security of energy supply and promote energy efficiency.*" The most significant extract of this text is that Brussels would hold the final say on security of supply and management of the energy market. This would involve control and management of energy reserves and future projects in the Member States.

National energy ministries would become obsolete.

The most significant extract of this text is that Brussels would hold the final say on security of supply and management of the energy market

In light of the call for a Common Energy Policy, it is increasingly apparent that the contents of the Draft Constitution, which were rejected by Britain's own negotiating team, have been reheated and form the base of the new policy. The rejected European Constitution is being imposed on Britain through the back door with colossal implications.

Britain is a unique member of the European Union in the energy context. She enjoys the luxury of abundant indigenous reserves of oil, gas and coal. Although not self-sufficient, Britain requires tailor made energy policies to fit her status as the world's fourth largest economy. New projects, which will allow for greater exploitation of these assets, are underway and it is in this context that a common energy policy must be closely examined and the dangers for Britain exposed.

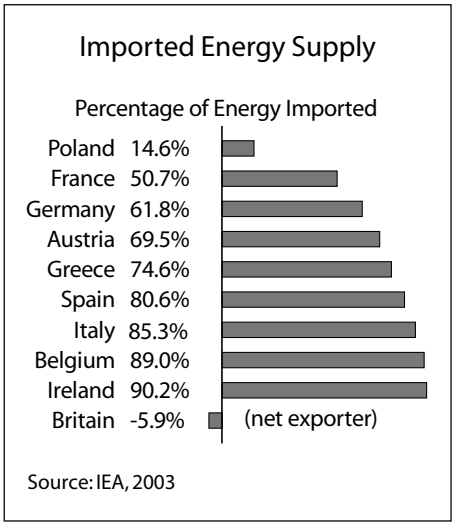
Britain's Unique Position – Indigenous Energy Reserves

Oil and Gas

Britain is rich in indigenous reserves of oil and gas, largely found in the North Sea. Britain enjoys 90 per cent of the EU's oil reserves in a £20 billion industry that supports 250,000 workers. The North Sea allows Britain to provide a large portion of her own, cheap and reliable energy.

The United Kingdom and Canada are the only major economies that are net exporters of oil. The UK produced 1.75m barrels a day in 2005 and used only 1.66m. In 2005 the UK produced more oil and gas than Nigeria, Venezuela, Indonesia or Kuwait. Though, because of maintenance work, 2005 was not great for oil production, there will be little change in production levels for 2006. Production is forecast to increase in 2007 when the Buzzard Field, the latest big oil field find, starts producing 200,000 barrels of oil a day and other new fields come on stream.

Crucially, industry insiders claim that sustained investment in the UK North Sea could secure production of around 1.75-2m barrels of oil equivalent per day by 2020, meeting 50 per cent of UK oil needs and 20 to 30 per cent of its gas demand. This represents the cornerstone of UK energy security, with huge obvious benefits in balance of payments, skilled jobs, inward investment and a strong, world leading oil and gas industry sector.



This past winter, the UK North Sea delivered what National Grid expected of it – around 300 cubic metres (cu m) of gas a day. The UK's continental shelf still delivers energy security for the UK. Maximising its contribution must be a strategic imperative. Planners agree that if current rates of investment are maintained, the UK continental shelf has a healthy future well beyond 2020.

Clean Coal

Britain enjoys around 7 per cent of the world's coal reserves and the industry has arguably not been better positioned since the great oil shock of 1973. Thanks to a substantial rise in energy prices, this crucial energy asset is being reassessed, as new revolutionary clean coal power stations will allow the fuel to be stripped of its carbon when used to generate electricity. However, the run down of the indigenous industry has led to a scenario where more than half of the coal used in Britain's power stations is now imported, at increasing cost. Around 60 million tonnes are burned each year in Britain's power stations, with just over 20 million tonnes being produced in deep mines and opencast sites.

This winter the fuel provided 50 per cent of the nation's electricity, up from its usual 33 per cent share of the grid. This figure demonstrates the fuel's crucial 'swing' capacity for the nation's electricity provision. Coal provides Britain with a source of reliable, flexible and uninterrupted base-load energy, which can now be used in a clean and environmentally friendly manner. It can be stockpiled at power stations at times of high demand and provides cheap electricity. A megawatt hour of coal-fired electricity is now cheaper than gas or nuclear. New mine projects in the UK look set to come on stream later this year which can substantially increase indigenous output, thereby placing less reliance on imports.

Of the other EU countries, only Germany and Poland have retained a significant indigenous coal industry, which provide similar security of supply in electricity generation. Poland exports considerable amounts of coal to overseas markets.

There is a strategic need for clean coal within the UK's electricity generation mix:

- to ensure competitively priced electricity is available to UK users and further eradicate fuel poverty;
- to offset the security risks and costs of importing gas from unstable overseas locations;
- to meet rising electricity demand;
- as a reliable energy source to 'smooth' the less predictable output from renewables;
- to meet and demonstrate the UK's commitment to reducing carbon emissions and embracing new carbon capture technologies.

Future Nuclear Power Stations

The Prime Minister told the CBI on Tuesday, 16 May, that a new generation of nuclear power stations will have to be built to meet future energy needs and avoid dependence on foreign imports. He pre-empted his government's own energy review by declaring that the replacement of existing nuclear power stations was now *"back on the agenda with a vengeance."*

New nuclear stations are a significant boost for cheaper electricity for the British domestic and industrial consumer, further bolstering indigenous generating capacity and security of supply.

Set against the continental energy scene, which is largely dependent on imports, Britain's position is arguably more fortunate than many other European countries. Abundant coal to exploit, coupled with a

crucial commitment to clean coal by the government, as well as the remaining and new oil and gas reserves, alongside a commitment to new nuclear stations could catapult the UK into a unique position. Renewables also have a crucial role to play in supporting indigenous capacity, albeit on a much smaller scale due to issues of unreliability and cost.

The EU's increasing dependence on a few external suppliers (mainly OPEC and Russia) have kick-started the debate.

Portents of a looming energy crisis in Europe have been there for some time. The onset of national power blackouts in import dependent Italy in September 2003 and price spikes faced by other Member States have forced the Union's energy vulnerability to the top of the political agenda. The EU's increasing dependence on a few external suppliers (mainly OPEC and Russia) have kick-started the debate. The Commission has launched its common energy proposals amid rising tension and frustration resulting from the Kremlin's Christmas decision to turn off gas supplies to the Ukraine, thereby disrupting supplies to the EU in the process, alongside the failure of policymakers to grapple with EU gas liberalisation.

Where Britain has a free market in energy, the rest of Europe does not. Even with high UK prices, the EU still does not sell to us. The Secretary of State for Trade and Industry, Alan Johnson, told the Commons on 14 March, "*we are not getting the gas that we should be getting … the primary cause was that in the European Union, principle has not been put into practice.*" The British government's EU presidency singularly failed to address and tackle energy liberalisation, after much initial posturing.

It is only now, with the failure to secure greater market liberalisation, that the Commission has turned this fiasco of failure into its justification for calling for a common energy plan. Through a political strategy which has been very successful in the past, Jose Manual Barroso, who leads perhaps the most liberally inclined EU executive ever assembled in Brussels, sees energy liberalisation as a rare cause capable of uniting Europe's free marketeers and EU integrationists, who view a common energy strategy as one of the most crucial prizes in the journey towards a federal Europe.

Crucially, Mr Barroso is about to be joined by a key ally – Germany's Chancellor, Angela Merkel, who will become EU President when Germany assumes the presidency on 1 January 2007. Angela Merkel has already said she regards energy as a crucial priority for Germany's presidency and is also committed to reviving the rejected EU Constitution, stating she was "*deeply convinced*" that the project was essential to guarantee the future of the continent.

While all of this is going on, the EU is proceeding as if the Constitution is already in place. Most of the institutions and policies that it would have authorised are being enacted anyway: the External Borders Agency, the European Public Prosecutor, the External Action Service, the Charter of Fundamental Rights, the European Defence Agency and the European Space Programme. As Daniel Hannan, MEP, observed in the *Daily Telegraph* on 20 March, "*The (Constitution) text is not, as the cliché of the moment has it, being 'smuggled in through the back door'; it is swaggering brazenly through the front.*" Hannan continues, "*This is how the European project has always advanced. First, Brussels extends its jurisdiction into a new field of policy and then, often years later, it gets around to regularising that extension in a new treaty.*" The Commission's recent manoeuvres on energy become clearer.

British energy policy has traditionally enjoyed a particularly high level of accountability, both in Parliament and amongst planners. Up until 1992, a Secretary of State for Energy led, and answered on behalf of, the government's responsibilities. Since then the post has been demoted to a lone Minister in the Department of Trade and Industry. This Minister answers questions in the Commons once a month, but the post is still one of the most important roles in Government, outside of the Cabinet, especially in light of the ongoing Energy Review, which is set to rule on Britain's future energy choices. Importantly, the Minister, according to the government's own *List of Ministerial Responsibilities – 2006,* enjoys powers in the following areas:

- overall responsibility for energy issues;
- sustainable energy and the environment;
- corporate social responsibility;
- security of energy supply;
- fuel poverty and nuclear security.

Each of these responsibilities would be transferred under a Common European Energy Policy, as set out in the present text in the Green Paper. The British Parliament would lose an accountable, elected politician answering on the energy challenges facing the country, appointed by the Prime Minister. Interestingly, many energy observers and industry leaders have called for more accountability and more time for energy affairs in Parliament. In a joint letter to the *Financial Times* on 13 December 2005, Lord Fraser of Carmyllie and Robert Mabro, Director of the Oxford Institute for Energy Studies wrote, "*The energy problems facing us need more resources for research and policymaking than are now available to the ever-shrinking energy division of the DTI. The time has come to re-establish a Department for Energy led by a cabinet minister.*"

British agreement on a common European energy policy represents a significant transferal of domestic legislative authority to supranational EU level. Key responsibilities that have previously provided the UK with a cheap, secure and reliable energy supply would be transferred to Brussels, which would then inevitably plan for a Union-wide strategy. It is highly likely this would be part of the next EU Treaty thereby relegating British priorities, such as the further eradication of fuel poverty, and possible future energy self sufficiency.

In light of the developments of recent months it is essential that our political masters grapple with one of the most ambitious and audacious integrationist initiatives that have emerged from the EU in recent years. Britain must push for a free market for energy in the EU, in the spirit of the Single Market, and not acquiesce in a plan which could have devastating long term implications for her political accountability, economic stability and long term energy security.

Tony Lodge is Co-Author of Electrifying Britain – Forward with Coal, Gas or Nuclear, *published by the Economic Research Council, 2005. He is a former Editor of the* European Journal.

The Answer is Blowing in the Wind …

by Roger Helmer, MEP

.... or maybe not. It's a wonderful dream. Slim, modern, elegant towers raise their arms to the skies. A sleek new interpretation of an ancient technology holds out the prospect of pure, clean energy, free and fresh from Mother Nature. The grime, dust and smoke of sulphurous coal-burning power stations, the coal-mining accidents, the terror of nuclear disasters – all consigned to history as we march forward together to a green future.

If only. Let's leave aside for the moment the aesthetic argument, the visual intrusion, the NIMBY factor (although it may be difficult to leave aside when a throbbing 400-foot tower looms over your home, and housing blight slashes the value of your property).

Wind power is not free. In fact it's rather expensive, both in terms of money and of energy. There is a widely-circulated claim – a sort of urban myth – that the embodied energy of a wind turbine is recovered in a mere three months. This appears to originate with the British Wind Energy Association (BWEA), which may not be entirely disinterested.

The government's Sustainable Development Commission (SDC) has also been a strident advocate of wind power. It seems to have accepted uncritically the claims of the BWEA. The SDC is often described as 'independent'. But it is funded by a government keen to burnish its green credentials and it is tasked with promoting alternative energy – so we can scarcely be surprised when it does just that.

The reality is that the high building costs and low power output from wind turbines results in a carbon debt which takes roughly 20 years to pay back before you start saving any emissions.

A new study by Peter J. Ward, an independent consulting engineer (currently in preparation for publication, but in the meantime available on my website, www.rogerhelmer.com), relates to the total economic activity involved in erecting wind turbines. This includes the turbines themselves, the extensive road building needed and the problems of connecting to the electricity distribution system. Using this method, Ward reaches a figure of over 22 years for energy payback on an on-shore wind turbine – close to its design life of 25 years.

Although there is room for the debate over methods of analysis, the industry's three month figure looks increasingly untenable. But the wind energy industry has a way of exaggerating its claims. Recently in Swaffham, Norfolk, a wind energy operator, Ecotricity, claimed that its wind farm would serve 3,000 homes. The Advertising Standards Authority ruled that the claim was unjustified. It seems that wind energy companies like to base claims for powering thousands of homes on the maximum rated capacity of the turbines. But with the wind blowing intermittently, wind farms typically deliver only between 25 and 30 per cent of rated capacity. The reality is that the largest 2MW nominal turbines will power the equivalent of 932 homes. But since the power is not continuous, in fact their output must be spread over a much larger number of homes, if they call for power at the moment the wind blows. Offshore turbines get more wind, but require massive infrastructure to bring power ashore.

It is perhaps not too unkind to say that turbines absorb rather a lot of energy in their fabrication, construction, installation and erection, while delivering an intermittent trickle of power in return.

There is nothing less efficient, in both economic and environmental terms, than a backup power station on standby and used intermittently to compensate for the wind

It is the intermittent nature of wind power that creates the greatest difficulty. The grid requires predictable power. Wind is largely unpredictable, so wind farms require conventional backup – and the more we depend on wind power, the more backup we need. In this case, 'backup' means more than just a coal-fired plant in mothballs. It means a conventional power station fired up and ready to go at short notice. There is nothing less efficient, in both economic and environmental terms, than a backup power station on standby and used intermittently to compensate for the wind.

"Aha!", say the apologists for wind. "*The wind may be intermittent, but wind farms are distributed geographically. If it's a calm day in Cornwall, the wind may well be blowing in Yorkshire. Across the grid, it will even out.*"

Well no, actually. For a start, it is by no means uncommon in Britain to have high pressure settle in across the country for several days, with little wind anywhere. And for most wind farms, the power never gets to the National Grid at all. Except for the largest installations, it is just not economic to up-convert to 130/160 kV for the grid, so typically the power is up-converted to 33 kV for local networks, precluding any balancing between regions.

Denmark was one of the pioneers of wind power and currently generates up to 20 per cent of its requirements from wind. But they are reportedly having second thoughts on further expansion, largely because of the grid balancing issue. And interestingly, despite their huge commitment to wind, their total national CO_2 emissions have risen quite sharply.

In real terms, wind power is two to three times as expensive as a good modern gas plant. So why are operators keen to invest in wind? Simply because the government's system of 'Renewable Obligation Certificate' creates an implied subsidy (but from the consumer, not the Treasury), and a captive market. They should beware: markets created by government fiat can be shut down at a stroke of Gordon Brown's pen.

So should we abandon renewables? Not at all. It's just that some renewables are a better prospect than others. My Finnish colleague Ari Vatanen, MEP, insists that, "*Biofuels will save CO_2 the way a haircut will help you lose weight*" – but they are still worth pursuing. Solar has potential as production costs on photovoltaics come down. Wave, tide and hydro power have a place, where geography allows.

But there is only one technology that can deliver the consistent, reliable, clean, carbon-free base-load energy that will power our economy and our children's jobs. That technology is nuclear.

Roger Helmer is a Member of the European Parliament for the East Midlands and a member of the European Foundation's UK Advisory Board.

La Prospettiva Italiana

by Carlo Stagnaro

It is often claimed that Italy has no energy policy. For example, a recent report by the World Wildlife Fund on environmental policies of the Berlusconi administration (2001-6) talks about a *"political blackout"*[1] and suggests that the core problem is a *"lack of governmental planning."*[2] The authors claim that the administration should have – and the new administration should – invest more resources to create incentives for renewable sources of energy[3] as well as implement *"demand controls"*.[4] Such a critique is unjustified. In fact, the last few administrations had a consistent energy policy, which ultimately has led the country into the present situation. Whilst liberalisation efforts are relatively recent (they date back to 1999 and 2000), the level of governmental intervention is still very high. The real problem, then, is not the absence of an energy policy; it is rather about the presence of a wrong energy policy.

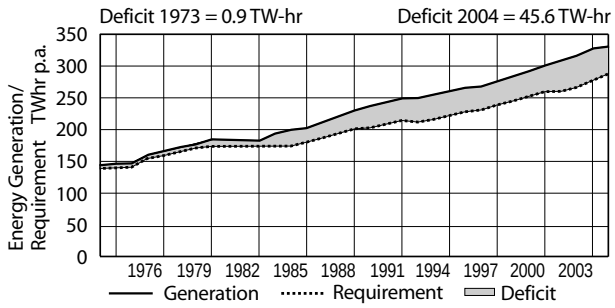


Figure 1

Italian energy need (continuous line) vs. domestic generation (broken line) (GWh).

Source: Terna.

The current situation

In Italy, two major problems are the over-dependence on imported fuels and the over-reliance on natural gas as far as electric generation is concerned. Because of the scarcity of natural resources, Italy imports almost 85 per cent of its primary energy need. As far as electricity is concerned, 14 per cent of the demand is met through electricity imports from neighbouring countries (especially France and Switzerland) (see Figure 1). Of the remaining part, conventional thermal energy accounts for 81.4 per cent of domestic generation, hydropower covers 16.2 per cent, and the remaining is covered by other renewables. If one looks closely at the thermal component, one notices a dramatic decrease in oil (that fell from 56 to 28 per cent in 1997-2003) paralleled by a growth in natural gas, which today accounts for 49.2 per cent of the carbon-based sources. Coal accounts for 16.3 per cent of domestic generation (Figure 2).[5]

At least part of the inefficiencies in the electricity market – which have to do with confused regulation, a complex programme of incentives that has given momentum to rent seekers, and the role of local governments (see below) – reflect other inefficiencies in the natural gas market. It must be recalled that natural gas is today the leading source for electricity generation in Italy. Despite the liberalisation process, Eni (the former monopolist) is by far the dominant subject in the market; what is worse, it holds its position mainly because of the competitors' failure to invest. The failure is not at all voluntary: again, the projects for new infrastructures (especially Liquefied Natural Gas [LNG] Terminals) are slowed, stopped, or prevented by local and environmentalist vetoes. Paradoxically, if one looks at the number of authorised projects, one is led to think about a problem of over supply; but if one looks at actually operating plants, one is led to think that the problem is scarcity.[6]

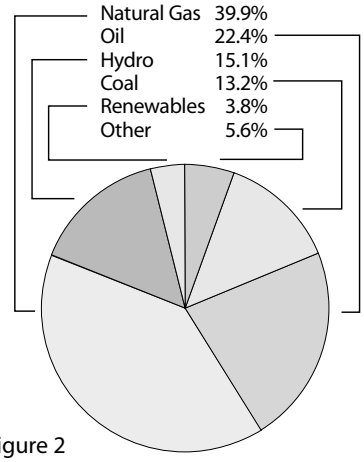


Figure 2

Gross domestic generation of electricity per source (2003).

Source: AEEG/GRTN.

The European context

Italy imports most of its natural gas from Algeria (35 per cent) and Russia (33 per cent). Thus it depends heavily on relatively unreliable state monopolists, such as Sonatrach and Gazprom, which often make decisions based on political, not economic, reasons. What may appear as an Italian problem is in fact a European one: several Member States have the same kind of relationship with unstable producer countries.

Precisely for this reason the recent wave of nationalism in Europe looks like the wrong answer to the wrong question. The real question is not, 'Who owns energy companies in Europe?' Rather it is, 'Which is the best institutional framework to provide energy security?' Integration of European markets brings about more flexibility, thus more security. Instead, it looks like several countries are going the other way around, by closing as much as possible their domestic markets. It is the case of Spain's opposition to the German E.On's bid on Endesa, as well as France's reaction to the announced project of the Italian Enel to take over Suez, which controls Belgium's Electrabel, the real prey of the Italian utility.

Alas, nationalism – or economic patriotism, as they say in France – is not the answer. As Daniel Yergin puts it, *"Markets need to be recognized as a source of security in themselves. The energy security system was created when energy prices were regulated in the United States, energy trading was only just beginning, and futures markets were several years away. Today, large, flexible, and well-functioning energy markets provide security by absorbing shocks and allowing supply and demand to respond more quickly and with greater ingenuity than a controlled system could. Such markets will guarantee security for the growing LNG market and thereby boost the confidence of the countries that import it. Thus, governments must resist the temptation to bow to political pressure and micromanage markets. Intervention and controls, however well meaning, can backfire,*

slowing and even preventing the movement of supplies to respond to disruptions."[7]

If then the problem is to make the market as free as possible, then liberalisations are to be taken seriously. But liberalisation cannot be just an issue of market shares, as is often assumed – in Italy as well as elsewhere. The long-term goal is not to have more firms within an industry; it is about removing barriers to entry so that the size and the structure of the firms are determined by the market itself in a way that maximises efficiency.

The reforms that Italy needs

Reform is needed in Italy that can reconcile the apparently opposite requirements of ensuring energy security, creating a level of flexibility that is high enough to respond to shocks, and providing the Italian economy with an adequate level of competitiveness to compete in global markets. For that reform to be undertaken it must be understood that today the real challenge isn't a regulatory one;[8] rather it lies in the ability to remove barriers to investments. Barriers to investment are not discriminatory *per se*: in principle they do not harm the newcomers more than the incumbents. However, such barriers result in two consequences. First, in terms of general efficiency, they prevent the Italian energy system from evolving towards a more stable set-up: the ability to adapt to changes is a key feature to respond to the challenges of globalisation (including, but not limited to, the rise in oil prices and the unreliability of a few strategic partners, such as Gazprom) as well as the growth of domestic demand of energy (it is no surprise that, typically, Italy faces a gas crisis by winter and an electricity crisis by summer, especially when temperatures are particularly low or high). Secondly, in terms of market competition, barriers to investments translate into a fossilisation of the competitors' relative positions, a problem that is in fact greater in the natural gas market (where Eni is still by far the largest operator) than in the electricity market (where Enel's market share has fallen to little more than 40 per cent). Again, it must be recalled that an excessive emphasis on market shares may distract attention from the presence (or absence) of barriers to entry: after all, in a fully liberalised market the largest companies might remain the dominant subjects; they might even grow if ceilings were removed.

For liberalisation to deliver the expected benefits, five major reforms – or five major changes in energy and competition policy – are required:

- The major reason why investments are slowed (that is, they are made more costly) is local and environmentalist opposition. Local governments and environmentalist organisations often hold a *de facto* veto power. Obviously local governments must play a role in the decision making process, and should be involved even more (for example through open negotiation with the energy industry, which may consider offering discounted prices to the consumers of the area where plants are located), but the number and the scope of legal actions that they take against companies must be significantly reduced. High pressure from litigation does not benefit anyone but lawyers and those who are able to manage protests and opposition as a political tool. Secondly, the principle of the so called 'administrative continuity' should be implemented; once an authorisation is issued, it can't be revoked if the governing majority changes after elections or simply changes its mind because of pressure groups' lobbying activity.
- The Antitrust Authority should guard against the creation of barriers to entry on the market, not against the size or structure of companies. Such a point is especially important because we are moving towards greater integration among European markets: the more our common market looks like an internal European market rather than a juxtaposition of national markets, the more harmful the activity of an Authority that prevents companies from growing as a consequence of their ability to meet the demand becomes.
- Both Eni and Enel are more than 30 per cent state-owned. That induces different distortions in the market as well as in those companies' behavior. First, as a matter of fact the companies can't be taken over, thus shares are prevented from going in the hands of the highest bidder with a virtual loss of value to shareholders. Secondly, government decisions may be influenced by pressures from state-owned companies and will probably be taken in a way not to harm state-owned companies' interests even when there is no reason to protect them. Finally, some say that Eni and Enel invest too little: one reason is that, as a majority shareholder, the Treasury Ministry pushes such companies to pay high dividends, which in fact are a hidden tax.
- The need to shift the Antitrust's focus at the European level and the need to allow takeovers of energy companies also requires the need to make several steps forward in European energy markets' integration. On Italy's side, that means a full liberalisation as well as putting pressure on Brussels for the other Member States to do the same.
- Finally, environmental and climate policies should be reviewed with greater attention paid to economic efficiency issues. In the long-term, environmental problem number 1 is poverty: anti-economic growth policies are in fact anti-environmental policies, regardless if they were conceived for the sake of ecology. For example, the Kyoto Protocol is all (economic) pain and no (environmental) gain; its cost is unsustainable and the only effect would be to delay and make more costly the country's modernisation.

Thus far, the focus of Italian energy policy has been the reduction of the incumbent's size that was probably a due step to put an end to the energy state monopolies era. However, that has to do with a problem of transition: almost 10 years after the liberalisation process began, transition must end and the system must be made able to respond to global and national challenges. In other words, policy makers' attention should shift from breaking up monopolies to creating an economic environment where competition works properly.

1 Gaetano Benedetto (ed.), *Politica e ambiente: Bilancio della legislatura 2001-2006* (Milano: Edizioni Ambiente, 2005), p.344.
2 *Ibidem*, p.347.
3 *Ibidem*, p.346.
4 *Ibidem*, p.343.
5 Autorità Garante della Concorrenza e del Mercato – Autorità per l'Energia Elettrica e il Gas, *Indagine conoscitiva sullo stato della liberalizzazione dei settori dell'energia elettrica e del gas naturale* (Roma: Istituto Poligrafico e Zecca dello Stato, 2005), http://www.autorita.energia.it/pubblicazioni/IC22.pdf, p.8.
6 Alberto Clò, "Riflessioni a caldo sull'emergenza gas e dintorni (con un post scriptum), *Energia*, No.1/2006. See also Alberto Clò, "Liberalizzazione del mercato del gas metano: le ragioni di criticità", *Energia*, No.4/2002, pp.30-37.
7 Daniel Yergin, "Ensuring Energy Security", *Foreign Affairs*, March-April 2006, pp.79-80.
8 According to the EU Commission's DG Competition, in fact, the level of market openness in Italy is 100 per cent in the natural gas market and 79 per cent in the electricity market. See European Commission – DG Energy and Transport, *Energy & Transport in Figures 2005*, http://europa.eu.int/comm/dgs/energy_transport/figures/pocketbook/doc/2005/etif_2005_whole_en.pdf.

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Greetings from Khartoum

by David Wilkinson

Like the other so-called 'ratifications' of the EU Constitution since the French and Dutch referendums, the Estonian and Finnish ratifications are small, but tragic, defeats in which we all share.

When the *Riigikogu* ratified the Treaty Establishing a European Constitution on Europe Day, 9 May, it did something so irrelevant that not even the Eurosceptics got too excited. The local grassroots activists in Estonia mounted a few brave protests and sent out a few emails; Ivar Raig did some TV and published some articles; and we pestered some people. But no full-on campaign.

Eurosceptics had won the championship when the Giscard EU Constitution was killed stone dead by the very European people of France and Holland. Everything else is like the play-offs for fifth place.

That is why our think tank, UKVE, has not devoted its meagre resources to protesting against this 'ratification' but rather to encouraging people to assert a radical alternative to the whole Constitution approach.

The EU's campaign to get selected poodle Parliaments to ratify a dead Treaty has to be seen in that context because, as everyone knows, by the EU's own rules if one party rejects a new agreement then that agreement must be replaced with something that satisfies all parties.

However, we will have realised that the EU does not always respect its own laws nor its own people. So it has pressed on with a series of phoney ratifications in the most accommodating Parliaments. It must be noted here that no one dared put the EU Constitution to the Estonian people in a referendum, even though we were once given to understand that there would be one.

In recent weeks, we have heard all the leaders of Europe pontificating on what modifications to the Constitution will be required. At one end of the scale we have a four page appendix about social solidarity to keep the French happy. This is based on the myth that has been put about that if one does agree with the French *Non,* one is siding with Bolsheviks who cannot face up to the economic realities of the modern world. At the other end of this scale are those who simply pretend it is not a Constitution at all. Many countries do not use a word that would be translated as 'Constitution' but as 'Basic Law' to describe the fundamental set up of their state.

And stone me if the Germans have not suggested fooling the British by having something called 'A Basic Treaty for Europe' instead of a Constitution. Many people have already been persuaded not to call it by its official title, 'Treaty Establishing a Constitution for Europe', but just as 'the Constitutional Treaty'.

Dan Hannan has tirelessy pointed out use of the 'if at first you don't suceed, cheat' strategy of going ahead with the favourite parts anyway – but that is another story.

What is certain is that the document 'ratified' so obediently by the *Riigikogu* will never be implemented.

Why does the EU want so badly for the little Parliaments of Eastern Europe, who so quickly passed through their independence phase, to ratify this dead Constitution?

While the Finnish President has spoken of the absurdity of ratifying any agreement that must never be enacted but soon replaced by another, Estonian Euro-optimists, as they like to be called, are saying that there will be no need to consider the new Treaty when it comes because it will be more or less the same as what has been ratified already. I think confidence tricksters must have a special word for such people, and I think it is stronger than 'optimist'.

It was recently in the news that on top of his salary, Estonian Commissioner, Siim Kallas, receives various expenses and other sources of income famously open to those in the Commission. Were such incentives and inducements sufficient explanation for the mass insanity that meant UKVE's board member, Igor Gräzin, was the only member of the Riigikogu with the moral courage to vote against the Constitution? Opposition member Mart Laar attended but did not vote and some of those absent for the vote have claimed to me they were ill or went to the toilet at just the wrong moment. That is unimpressive but important.

Since the collapse of the *Res Publica* government, Estonia has been governed by an uneasy coalition involving the supposedly Eurorealist *Rahvaliit* (EP election campaign based on rejecting euro), the supposedly Eurosceptic Centre Party (whose membership voted against joining the EU) and the supposedly free market Reform Party. Just why the Reform Party is so keen to go from the relatively free market systems of Estonia to the relativley socialistic structures of the EU is one of those little mysteries like why David Cameron does not want to have a European policy. While the forces of federalism are also at work in the other parties, particularly the careerist youth wings, Reform has been the driving force behind 'ratification', building it into the coalition agreement. But then, what is the point of the expense of a referendum on a dead Treaty? That would be even more stupid that wasting parliamentary time.

Members of the other coalition parties who voted for the EU Constitution have privately expressed doubt and even shame about debasing their Parliament by even going along with this phoney ratification and for going along with a Constitution they knew to be wrong.

The Eurosceptics (that is to say, we) did not make a fuss over this ratification because this was not the real thing. Lee Rotherham has argued that we should have made a fight of all of these little play-offs. He is right, but we simply do not have the resources to fight on all fronts, not even on this crucial one.

We still have one greater mystery.

The Eurosceptic movement should not have these problems today. We should be on a rampaging counter-offensive after our adversaries were thrown back in disarray by the French and Dutch referendums. After a quarter of a century of manning our defensive positions we should have been out of our trenches mounting an intellectual and political counter-offensive, mopping up pockets of federalist resistance. Or, as Lee Rotherham put it in the last *Journal*, relieving the Mafekings of the last besieged skeps. Instead, as Lee has it, we really are experiencing a series of Khartoums.

Sceptic organisations are having difficulty fundraising and activists seem to have gone to sleep. There have been particularly courgaeous attempts to offer leadership such as Democracy Movement's *Vision Europe,* but people have not followed in the numbers required.

We sat in our trenches after the French and Dutch referendums and waited for our adversaries to regroup and attack us again.

That is why Khartoum happened in the *Riigikogu*.

David Wilkinson is Director of UKVE (Research Centre Free Europe) based in Tallinn.

Practice what is Preached

by Jocelyne Saunders

Welcome to 2006, the European Year of Workers' Mobility. This year, the Commission has pledged to spend €4.3 million on mobility awareness raising projects (such as the Vienna Mobility Conference in June and the Job Fair for Europe in September) in response to the discovery that just 1.5 per cent of the EU's workforce are employed outside their home country. Such a small figure sits uneasily with the EU's oft-stated claim that the free movement of persons is one of the *"fundamental freedoms guaranteed by Community law"* and is *"perhaps the most important right under Community law for individuals, and an essential element of European citizenship."*

Despite these mobility awareness projects, words of encouragement from MEPs and optimistic Commission reports, the majority of the EU15 is surprisingly reluctant to honour its commitment to their Central and Eastern European friends and abolish restrictions to workers from the new Member States. The moment of truth dawned on 1 May, when those old Member States who had chosen to impose restrictions on workers from new Member States were required to declare whether they would continue with their restrictions and, if so, to what extent. The EU's ideals have been predictably crushed by the intransigence by some of the most influential and established Member States, including all six of the founding members of the EU. Just four countries – Spain, Finland, Portugal and Greece – signalled their intention to join the UK, Sweden and Ireland in scrapping their transitional restrictions on the EU8.[1]

Commissioner for Employment, Social Affairs and Equal Opportunities, Vladimir Spidla, chose to look positively on the outcome, claiming, *"It is a real success, as a few months ago nobody would have expected half of these countries to be without any restrictions…"* However, the situation now means that over half of the EU15 will continue to impose restrictions of varying degrees until perhaps 2011. The issue of the free movement of workers therefore simply represents another example of the EU's internal contradictions, where its aspirations have been blocked by the insular attitudes of its Member States. Whilst the Commission's website boldly asserts that, *"every citizen of the EU has the right to work and live in another Member State without being discriminated against on the grounds of nationality"*, the small print at the bottom of the screen places the situation in its current, more sober context, *"it will not yet fully apply across the enlarged EU."*

The free movement of workers has its origins in Article 39 of the Treaty of Rome 1957, which states:

1. Freedom of movement for workers shall be secured within the Community.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

On 1 May 2004, the EU's population increased by 20 per cent from 380 million to over 450 million with the accession of the ten new Member States. The perceived threat that cheap labour would flood the existing Member States' workforce was so great that Article 24 of the Accession Treaty of 2003 established a seven year transitional period which set the terms under which workers from the EU8 would be able to work in the EU15.

The transitional period was divided into three phases in a '2 + 3 + 2' formula. Different conditions apply during each phase, with the eventual requirement that every Member State must allow complete access to their labour markets by 2011. Countries such as the UK, which allowed full access to their labour markets from the start, did so under national law or bilateral measures as opposed to Community law. This is the loophole that allowed the majority of the EU15 to put up barriers to Central and Eastern European workers initially. As a Commission report phrased it, *"Community law on the free movement of workers* cannot *apply during this period. An old Member State may liberalise access to its labour market entirely, but this must be* national *law."*[2]

At the end of the first two year transition phase – 1 May 2006 – the EU15 were required by the Accession Treaty to declare whether they would continue with labour restrictions and on what basis. Failure to do so would result in the existing restrictions being automatically lifted. Germany and Austria indicated they would not lift restrictions in any way until 2009 when the final stage of the transitional arrangements enters into force. France more promisingly indicated it would lift restrictions gradually over the next three years. Italy announced it would raise its quota of workers from new Member States to 170,000, but this is more of a symbolic gesture than a concrete pledge, as 76 per cent of permits issued are temporary or for seasonally specific work. Belgium, Denmark and Luxembourg skirted the issue by pledging to make their labour markets more flexible for migrant workers whilst maintaining restrictions. The Dutch centre-right government had proposed to lift its barriers in January 2007, but a parliamentary debate on the issue in April revealed broad opposition to the plan and forced the government to delay the decision until the end of this year.

In an act of defiance, Poland, Hungary and Slovenia have imposed retaliatory reciprocal restrictions to nationals from the EU15

In contrast, Sweden, the UK and Ireland are the only countries that have benefited from honouring their commitment to the principle of the free movement of workers. The flood of migrant workers seeking to undercut nationals never materialised. Workers from Central and Eastern Europe largely filled vacancies in areas such as construction, hospitality and leisure, thereby filling gaps in the labour market. This is demonstrated by the fact that levels of employment of nationals in the three countries have remained steady since 2004. Furthermore, immigration from non-EU countries since 2004 has been more prevalent than intra-EU mobility, making it baffling and slightly farcical as to why the remaining EU15 are placing so much emphasis on migration from the EU8.

Continued on page 26 …

As with human rights, so with the European Union –Parliamentary Supremacy and the Judiciary

It is acknowledged amongst constitutional experts in the House of Commons that this is the first occasion since the debate on the European Communities Act itself in 1972 that, on a substantive government Bill, an override of ECA 1972 has been selected, moved and voted on by any party. It is particularly significant that Bill Cash's backbench Amendment on the Legislative and Regulatory Reform Bill was formally supported on a whipped vote by the Conservative Party and the Conservative Whips acted as tellers. The Amendment, 'Clause 17', would ensure the supremacy of Westminster over Brussels. It was of course Edward Heath who brought in ECA 1972, which was passed on a free vote by eight votes, with many Conservative and Labour members in rebellion against their own parties. An Amendment to uphold the sovereignty of the United Kingdom Parliament was also included in those debates but was defeated. This therefore is a landmark debate and a landmark in the history of the Conservative Party.

The following is an excerpt of the debate on the Legislative and Regulatory Reform Bill in the House of Commons on 15 May 2006. It includes the speech given by the European Foundation's Chairman, ***Bill Cash****, MP.*

Legislative and Regulatory Reform Bill

New Clause 17

Dissaplication of the European Communities Act 1972

(No.2)

'(1) An order made under Part 1 containing provision relating to Community treaties, Community instruments or Community obligations shall, notwithstanding the European Communities Act 1972, be binding in any legal proceedings in the United Kingdom.

(2) In section 1 and in this section –

"Community instruments" and "Community obligations" have the same meaning as in Part 2 of Schedule 1 to the European Communities Act 1972 (c. 68);

"Community treaties" has the same meaning as in section 1(2) of the European Communities Act 1972.' – [*Mr Cash*]

Mr Redwood: … Finally, I turn to the amendments on the European issue tabled by my hon. Friend the Member for Stone (Mr Cash). Nowadays, so much of our regulation comes from Brussels that we cannot exempt that from scrutiny and from our deregulatory urge. New clause 17 makes a good attempt to draw the House's attention to that and to make Ministers understand that they cannot have a deregulation policy worth anything unless they are prepared to tackle quite a number of the regulatory burdens coming from Brussels. That would preferably be through renegotiation of those individual items, but it would be good to have a legislative back-up to make it crystal clear that if this House wishes to deregulate something, that should be law made here in the United Kingdom.

Mr Cash: I am glad to follow my right hon. Friend the Member for Wokingham (Mr Redwood) in his remarks. I, too, have reservations about the principal objective of this Bill, which is to have a fast-track procedure for dealing with matters that is very far-reaching even with the changes proposed in new clause 19, as my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke) and other hon. Members have said. The fact is that this is a very invasive Bill. No doubt we shall wait to see what happens on Third Reading, when all our other debates have been concluded.

In an earlier intervention, I said that there was a vast omission – indeed, a black hole – in the proposal before us, which has been dressed up and presented as a deregulatory measure to reduce the burdens on business. That raises some practical questions. I am delighted to say that some six weeks ago, 50 of my right hon. and hon. Friends put their names to my amendments, which would ensure that we got the clarification in our own law that would enable us, where necessary and after appropriate negotiations – it would be done in a responsible and prudential fashion – to insist that we should deregulate on our own terms at Westminster and make it law in this country, binding on the judiciary and overriding the requirements of section 2 of the European Communities Act 1972 in that regard. Having spoken to senior advisers in the House, I understand that this is the first time that an amendment of this significance has been selected for debate since 1972. There was an attempt, during the passage of the 1972 Act, to table an amendment that proposed that nothing in the Act should derogate from the sovereignty of the United Kingdom Parliament.

Some of us will recall the Single European Act that was passed in 1986. I tabled a similar amendment to that legislation. It was on the Order Paper, and my name remained in splendid isolation until I walked into the Lobby on the afternoon of the debate, where a certain very distinguished parliamentarian came up to me and said, in his inimitable fashion, *"I think you will be interested to see that I have put my name to your amendment."* Of course, it was none other than the right hon. Enoch Powell. He perfectly understood the object of the exercise.

Despite the best efforts of the European Scrutiny Committee and the European Standing Committees, the present volume of

European legislation, and the fast-track procedures that are used to introduce that legislation into the House, are such that the accusations made by my right hon. and learned Friend the Member for Rushcliffe about the reduction – and, some would say, the redaction – of our legislation within the procedures set out in our Standing Orders could easily be explained in terms of the European legislation that we have to accept under Section 2 of the European Communities Act. That legislation receives scrutiny, but if anyone ever attempts to do anything about it by voting against a particular provision in a European Standing Committee, the House immediately reverses the decision. Many people, including me, regard those procedures as a waste of parliamentary opportunity.

David Howarth: Does the hon. Gentleman think it wise that this country should breach the principle of the supremacy of Community law, which is what his amendment would appear to seek to achieve, by means of a statutory instrument and not of a Bill?

Mr Cash: That would be a valid point, were it not for the fact that the only way in which it is possible to assert the legislative supremacy of this House is under, and by virtue of, primary legislation. The hon. Gentleman is a distinguished lawyer, and he probably anticipated my saying that. In my legal opinion, it would be impossible to seek to override Section 2 of the European Communities Act 1972 merely by order. However, I can assure the hon. Gentleman that the mechanism that I have employed in my new clause has been before parliamentary counsel and cleared for this purpose. It says,

"notwithstanding the European Communities Act 1972",

and refers to any order repealing, amending or replacing other legislation that has been introduced under Section 2 and is therefore binding on this Parliament only by virtue of the 1972 Act. We could not change that by order, but if the authority were given by primary legislation, using the words,

"notwithstanding the European Communities Act 1972",

that would attract the legislative supremacy of the primary legislation that the Bill before us would then provide. At that point, the provision would have effect with regard to the fast-track procedure, notwithstanding my concerns about the fast-track procedure in principle, which will no doubt be resolved on Third Reading.

David Howarth: The hon. Gentleman has made my point for me. The only kind of procedure available under the Bill is the statutory instrument, which does not receive sufficient parliamentary scrutiny. That is why many of us have objected to the Bill over the past few months. The hon. Gentleman is seeking to use a regulatory reform order, which would not receive sufficient scrutiny, to violate the principle of Community law supremacy. That would be an extraordinary thing to do, diplomatically.

Mr Cash: I am glad that the hon. Gentleman added the word 'diplomatically' there. Ultimately, this is a matter not only of grave constitutional importance but of political significance. I would say it was more political than diplomatic, but it is a matter of great importance, for all the reasons that I shall outline.

Mr Redwood: The ill-judged intervention by the hon. Member for Cambridge (David Howarth), who clearly does not understand the important point that my hon. Friend is making, shows that the Lib Dems are craven and slavish on European matters. They want our regulations to come from Brussels, and they do not want this House to be able to influence or change them.

Mr Cash: I do not want to antagonise the Liberal Democrats too much. I am not in the business of laying traps for people, but the hon. Member for Somerton and Frome (Mr Heath) said that he was minded to support my new clause, and I hope that he will stand good on that when we go into the Lobby.

Important questions arise that are not merely of an abstract nature. The House has a long history in this regard. Those who have studied constitutional law will remember Henry VIII and the Statute of Proclamations, the great Edward Coke, the achievement of the legislative supremacy of Parliament in 1688, following the final denouement of the Stuarts' attempts to insist on the divine right of kings at the expense of the people of this country, and the assertion in the Bill of Rights in that year that decisions would be made by Parliament and not by the monarchy. Those issues are not dissimilar to the questions that arise in the context of the European Communities Act 1972.

Mr Kenneth Clarke *rose–*

Mr Cash: I thought that that might get a rise out of my right hon. and learned Friend.

Mr Clarke: I am sure that my hon. Friend would not suggest that any of those great measures should be set aside by statutory instrument, subject to the veto of two Select Committees. He is helping the arguments of those who think that the Government have not gone far enough. The Government say that no politician would conceive of abolishing a tax or a criminal offence by statutory instrument, yet my hon. Friend is advocating the repudiation of our treaty obligations – and, effectively, our leaving the European Union – by a parliamentary process that would allow those of us who are pro-European merely the opportunity to object to a statutory instrument, or to get a Select Committee to block it.

Mr Cash: I am delighted that my right hon. and learned Friend has now entered into the debate with gusto. I had hoped that I might be called to speak before him, so that he could have engaged in a series of interventions on me. I am afraid that the issues that he raises do not add up.

Since 1972, we have been subjected to a constant stream of legislation that has been brought in by prerogative. Let us take the Maastricht Treaty as an example, or the Treaties of Nice or Amsterdam. I do not need to weary the House with the vast amount of legislation of that kind that has gone through this House, actively encouraged by my right hon. and learned Friend. Much of it has been resisted by popular sentiment, even though not everyone has understood every jot and tittle of it. My right hon. and learned Friend himself said that he found it difficult, to use the words of new clause 19,

"for example, where the legislation is hard to understand".

With regard to the population at large, the same applies to much of the European legislation, which is regularly visited on them by virtue of the extremely truncated, undemocratic and unaccountable methods employed through the European Treaties and the mechanisms of the House. Ultimately, those lead to legislation going through effectively because we are told that the European Communities Act 1972 is inviolable, cannot be touched and is in concrete, that there is an *acquis communautaire,* that we should forget about any changes, and that the constant stream of European

integration must therefore continue. Well, I have news for my right hon. and learned Friend – this is a moment when we say no.

Mr Andrew Turner: Is not my hon. Friend being a little incautious in his advocacy of this altogether welcome new clause? The manner in which he is proposing it and dealing with interventions not only from my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke) but from the hon. Member for Cambridge (David Howarth) is widening the gulf between those who are in favour of the new clause and those who are against it, rather than bringing together those who have some concerns with those who are in favour of the new clause. When the hon. Member for Cambridge says that the supposed supremacy of European law is being set aside by a mere order, it is not an order that is doing that but this new clause. My hon. Friend was wrong to agree with the hon. Member for Cambridge on that.

Mr Cash: With respect, my hon. Friend might consider that matter again. The mechanism to enable the constitutional procedure to have the effect that I desire is contained in the new clause. I think that the hon. Member for Cambridge (David Howarth) understood that. We need the backing of primary legislation, using the magic words,

"notwithstanding the European Communities Act 1972",

and then referring to the fact that it shall be binding in legal proceedings in the United Kingdom. That provides the mechanism whereby the judiciary are under a duty to give effect to that latest Act of Parliament.

Before I move on to the question whether legislative supremacy is a principle to which we still adhere, I want to deal first with the reasons why, from a practical point of view, I regard it as extremely important that we understand how invasive the burdens have been in relation to the business community, industry, competitiveness and enterprise. Leaving aside the system that I have employed to achieve my results, that is my main point. For example, a short time ago, the British Chambers of Commerce produced figures showing the accumulated cost of burdens that arose in respect of a number of regulations. It did not, however, demonstrate that the top six –the most burdensome and most costly ones – were all of European origin, of which I could give several examples. The total cost, from the moment that the burdens were introduced to the moment that the figures were published, came to £25 billion. The regulations concerned included the working time regulations, the Data Protection Act 1998, the Employment Act 2002 and so on.

In addition, Sir David Arculus, the Government-appointed chairman of the Better Regulation Task Force, estimated the cost to business of over-burdensome regulations – I stand to be corrected, as the figure seems extraordinarily high, but it is the one that he gave, as far as I can recollect – as £100 billion. No wonder the Government are looking for a way to deal with the problem. We can break down the European element of that, but we should also consider the percentage of legislation passed through the truncated, unaccountable, unattractive and undemocratic procedures in the House, which impose those expensive regulations on British business. Those regulations are then in concrete, and we can do nothing about them, whatever their merits. Once such regulations have been passed by a qualified majority vote, the legislation is imposed on us, and other Member States might have a vested interest in not making changes that may be required.

I take seriously the point made by my hon. Friend the Member for Isle of Wight (Mr Turner). However, I do not want or intend to over-egg the pudding on this point. For me, this is essentially a practical question about the burdens on business and deregulation. It is not a foray into the abstractions of sovereignty; it is about the way that the system works. It is a time check on reality. Are we going to allow this legislation to continue to invade our business community? The House should remember that I have always said that I am in favour of trade and political co-operation, and I voted for the Single European Act, notwithstanding my attempt to preserve the sovereignty of the United Kingdom, for that reason. I wrote an article in *The Times* for that purpose at the time. I foresaw that we might find ourselves saturated in unnecessary burdens and that we would need to relieve them in the interests of competition. It was therefore essential to have the mechanism to enable us to do that. Unfortunately, under the rules of the supremacy of Community law – the other law, in the parallel universe that exists in legislation – we are not allowed to have that mechanism, under the terms of the case law of the European Union. The hon. Member for Cambridge and I could go through all the case law, and I would agree with him that the position is clear under Community law.

However, all that case law, every one of those burdens and every aspect of that European legislation depend on one thing only – the legislative supremacy of this House in passing the European Communities Act 1972. As a consequence, it is open to our judiciary – as in the different context of the Human Rights Act 1998 – to interpret and apply that law. That is solely, exclusively and entirely because of the European Communities Act 1972 passed by this House. If this House decides that it wishes to make changes, by whatever procedure, it is incumbent on the judiciary to give effect to that subsequent inconsistent law, providing that it is express and unambiguous. That case law is laid down unequivocally by Lord Denning in the case of McCarthy's *v.* Smith, by Lord Justice Laws in the case of the metric martyrs and by Lord Steyn himself in a lecture in 1996.

There are so many misunderstandings about the role of the judiciary in these matters. So much confusion is created by invoking the principles of Community law when we are dealing with, and must continue to insist on, the principles of United Kingdom constitutional law. From the earliest days of the 17th Century, in a constant movement towards the establishment of the democratic Parliament that we have today, that has been dependent on the fact that we legislate and the judges obey. I do not mean that in a derogatory sense; it is what the judges say of their own function.

I mentioned Lord Steyn. He is well known as a distinguished lawyer, with – I would say – some influence, and with strong views about the European Community. We understand that he is enthusiastic about it. In a lecture that he gave in 1996, however, he made his opinion abundantly clear. He said,

"in countless decisions the courts have declared the unqualified supremacy of Parliament. There are no exceptions."

Mr Heath: It is always worth listening carefully to the hon. Gentleman. I agree entirely with his point about legislative supremacy in the context of the European Communities Act 1972, and, as he knows, I agree largely with what he says about the proper application of subsidiarity and excessive regulation. However, he has posed a conundrum to both the Liberal Democrats and his own Front Benchers, who in Committee supported new clause 7, which excluded the European Communities Act from consideration of the procedural device that the Government propose. We agreed that it was not a matter that should undergo the fast-track procedure. Now

the hon. Gentleman is inviting us to place it squarely and centrally in the fast-track procedure. As I think he will recognise, that poses a great difficulty both to us and to the hon. Member for North-East Hertfordshire (Mr Heald).

Mr Cash: I hear what the hon. Gentleman says, but what I am trying to do is to invoke T.S. Eliot's famous observation that humankind finds it very difficult to deal with reality.

Mr Heald: I think my hon. Friend will agree that using the order-making power to amend the European Communities Act 1972 might be a bit strong, even for him. Is not his point that, if a procedure allows us to change the law in this country and if there is a principle of sovereignty, it is open to our Parliament to use that procedure to change laws that affect our European Union treaty obligations? Of course, whether that is a good idea is a different question, and it is possible that my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke) and I would not make the same judgment as my hon. Friend. In terms of the sovereignty of Parliament, though, it must be right for us to be able to change laws that break EU treaty obligations. It is just that it is probably not a very good idea.

Mr Cash: My hon. Friend has put the case well from his point of view. Looking at the complexion of this Government, I should not have thought that there was a cat in hell's chance of their using the fast-track procedure in any way to affect the European legislation, but the case that I have made in respect of the burden on business is unanswerable, as is my observation that it is not included in the package. I do not expect the Government to take it up, but my hon. Friend is right to point out that if we are to be correct and accurate in regard to our constitutional position in UK law, and in the context of the legislative supremacy of Parliament, it is incumbent on us to recognise the issues and to recognise that, through a process of absorption, osmosis and camouflage, they have been overtaken. People have come to believe that everything is set in concrete. It is not, and that is part of the point of my new clause.

Mr Shepherd: My hon. Friend is right, especially in one respect. The new clause demonstrates clearly to those who are persuaded by the reasons given for membership of the European Communities that they can be changed and irrevocably broken by a statutory instrument. That is what is wrong with the Bill.

Mr Cash: Indeed. It is undesirable that fast-track procedures should be regarded as the best way in which to go about things – we have been through the argument already, and we may well vote against that proposal on Third Reading – but it is important to establish and reassert a principle. We have not had many opportunities to do that in the context of a substantive Government Bill to which amendments can be tabled for purposes of clarity.

Let me say this to my right hon. and learned Friend the Member for Rushcliffe, a distinguished chairman of the Conservative party's democracy commission. It would not be good enough to assert – if he were to do so – that what I propose is not possible through the legislative supremacy of the House of Commons. He cannot avoid the fact that what I am saying is good constitutional law of the United Kingdom.

Mr Kenneth Clarke: My hon. Friend is a long-standing opponent of section 2, in particular, of the European Communities Act. Surely it is open to any Government to introduce legislation to repeal that section, if they so wish. My hon. Friend and I would disagree on the desirability of such a measure, but a proper way of dealing with the issue would be to present primary legislation – which, I would hope, would be debated at the same length as the original legislation – on the Floor of the House of Commons. My hon. Friend is a great parliamentarian, and I cannot understand why he of all people should suggest that no more than the Bill and a statutory instrument should be employed to enact a drastic measure on which he and I will not reach speedy agreement.

Mr Cash: My right hon. and learned Friend has made a political point. I have listened to what he has said, as I have on many other occasions.

Mr David Heathcoat-Amory (Wells) (Con): For the avoidance of doubt, will my hon. Friend confirm that new clause 17 could not be used to amend or repeal the 1972 Act, but could be used to make explicit that Parliament can change statutes notwithstanding the provisions of the Act? That is a rather unexceptional constitutional convention under which we all live. My hon. Friend's new clause is thus a modest measure that will certainly not lead to the vast constitutional revolution posited by my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke).

Mr Cash: My right hon. Friend has put it very well. The principle embodied in new clause 17 is the vital principle of preserving and reasserting, and the Bill has given me the opportunity to do that. Notwithstanding the concerns of my right hon. and learned Friend the Member for Rushcliffe, which are primarily political, and those of the hon. Member for Cambridge, which appear to be primarily diplomatic, I insist on my point.

David Howarth *rose –*

Mr Cash: I see that the hon. Gentleman wishes to intrude again.

David Howarth: I merely wish to ask the hon. Gentleman what aspect of new clause 19 would prevent the repeal of the 1972 Act.

Mr Cash: The answer is simple. Without primary legislation, which new clause 17 would constitute –

David Howarth: I was talking about new clause 19.

Mr Cash: I am referring to new clause 17. If it were incorporated in the Bill, it would confer authority – on the basis of principles that I need not repeat – enabling the legislation to have the effect that I want: that is, where necessary to override the 1972 Act to reduce the burdens on business. I think that that point is well catered for.

Edward Miliband: I hesitate to intervene in this debate among what one might call the European trainspotters, but if I understand the hon. Gentleman correctly, if the new clause were to be inserted, we would be able to override the principles of the 1972 Act. What does he think would follow in terms of our relationship with the European Union?

Mr Cash: Predictably, there would be enforcement proceedings, infraction proceedings and various other actions. Until very recently, my party had precisely such a policy in respect of the common fisheries policy, except that we had not spelled out the legal mechanism for doing that. We are perfectly happy to accept that, where matters of vital national interest are concerned, Europe does not necessarily get it right. In fact, the low growth and high unemployment, the riots in France, the problems implementing economic reforms that Angela Merkel is experiencing, the difficulties that Mr de Villepin experienced, and so on – the list is

endless – are all indications of the fact that the Lisbon agenda does not work –

Mr Deputy Speaker (Sir Michael Lord): Order. This is a wide-ranging debate, but the hon. Gentleman is starting to range rather too wide.

Mr Cash: I am grateful to you, Mr Deputy Speaker. I give way to the hon. Member for Edmonton (Mr Love).

Mr Andrew Love (Edmonton) (Lab/Co-op): I am forced to intervene in the hon. Gentleman's long oration. Has he discussed new clause 17 with his Front Benchers, and are they minded to support it should it be pressed to a Division?

Mr Cash: Obviously, the hon. Gentleman is a late entrant to the debate. My hon. Friend the Member for North-East Hertfordshire said that they will support new clause 17. I hope that that helps the hon. Gentleman.

The basis of legislative supremacy is that the courts obey Acts of Parliament. You are right, Mr Deputy Speaker, to bring me back to that point, because that is the essential point that must be understood.

"The rule of judicial obedience is in one sense a rule of common law … it is the ultimate political fact upon which the whole system of legislation hangs."

Those are the words of Sir William Wade, one of the great constitutional authorities. I mentioned the judgments of Mr Justice Edward Coke, which, relying on the sovereignty of Parliament, stated that the courts could void Acts of Parliament. We now have democracy, votes and general elections but, unfortunately, in the context of the Human Rights Act 1998, which I shall not dwell on, and the European Communities Act 1972, the judiciary have been trying to push the boundaries beyond the established legislative supremacy of Parliament, by drawing down a greater degree of supranationalism. They have even been saying that treaties have a special status. Neither treaties nor convention can stand in the way of legislation – of Acts of Parliament. All the judicial decisions given in the past several centuries have reasserted that main proposition. Ultimately, the judiciary derive their judicial authority from Parliament and, I should say, from the source of their payments, salaries and allowances.

I mentioned the comments of Lord Steyn, who is by no means a person with whom one would easily disagree. In the case of Manuel *v.* Attorney-General, Sir Robert Megarry stated unequivocally:

"the duty of the court is to obey and apply every Act of Parliament"

What is required to deal with the problem facing us of burdens of business is a clear and unambiguous statement in the Bill, for which the appropriate form of words is:

"notwithstanding the European Communities Act 1972"

Even the case of Factortame, which dealt with the Merchant Shipping Act 1988, ultimately depended on the passing of the European Communities Act 1972. In the words of Lord Bridge, Parliament's surrender of sovereignty in the 1972 Act was voluntary. What has been given can be taken away; that is the principle. It does not necessarily follow from my new clause that there would be a political decision and a vote in the House of Commons to do that, although I believe that we have gone far too far in European integration and that we need a substantial and radical retrenchment. Even the judgment of Lord Hope in the recent case of Jackson and others *v.* Attorney-General ultimately depends on the 1972 Act. Mr Justice Laws referred to "constitutional statutes", which were purported to be given an additional status over and above ordinary Acts of Parliament. In the context of the European legislation, they themselves would depend on the fact that Parliament had passed the necessary legislation.

The Parliamentary Secretary, Cabinet Office, the hon. Member for Wolverhampton, South-East (Mr McFadden), has it in mind that some gold-plating can be removed. However, where that gold-plating ultimately depends on the fundamental and intrinsic nature of the European directive or regulation on which it is based, merely removing it and all the Cabinet Office mechanisms that are employed, including regulatory impact assessments, transposition notes, and so on – complicated stuff that nobody in the small business community really knows exists – will be of no value at all if the fundamental issue is not tackled. In the democracy in which we live, the United Kingdom Parliament acquires its authority from the voters at general elections, which decide the Government. The hon. Member for Stoke-on-Trent, Central (Mark Fisher) is correct: Parliament is first. The bottom line is that we have the right to be able to decide what legislation is to be passed.

There are those, such as my right hon. and learned Friend the Member for Rushcliffe, who – uncritically, I think – are willing to accept pretty well everything that comes from the European Union and do not want it to be amended or repealed. He would argue strongly, as he has today, that the mechanism that I propose is not to his liking. The reality is that we must stipulate that this House is the sovereign place where the democratic wishes of the people of this country are implemented. If it is necessary to override supranational legislation, whether the Human Rights Act or the European Communities Act, it is our right and our duty to do so.

The legislative supremacy of this House is what the Bill is all about and it is the reason why I tabled new clause 17. I believe that, in the context of the burdens of business and deregulation, this debate has been necessary. I am extremely glad that my hon. Friends will go into the Lobby to support the new clause.

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With reference to the referendum on the European Constitution

Jack Straw confirmed on the floor of the House a statement which he made previously to Bill Cash regarding the circumstances in which the referendum on the European Constitution was conceded by the government. This followed Bill Cash's challenge to the Prime Minister on the floor of the House giving constitutional reasons why there was *"fundamental change"* warranting a referendum which at that point the Prime Minister was refusing. Following that exchange, there was a change of heart and policy now borne out by Jack Straw's comments on 10 May 2006, set out below.

Jack Straw: As for the hon. Member for Stone (Mr Cash), I was about to say that he turned up like a bad penny, when I was dealing with Europe and followed me around on Europe. I finally ensured that the Government served up what he was demanding in respect of Europe – a referendum on the EU constitution – and no sooner was that over and we dealt with that, he turns up here…

Legal Digest

***Dirk van Heck** comments on developments at the legislative coal-face of the EC/EU.*

Exercise of Voting Rights by Shareholders

The Commission's communication to the European Parliament and the Council entitled *Modernising Company Law and Enhancing Corporate Governance in the EU* included measures to improve shareholder information and improvements in shareholders' ability to participate in a company's affairs on a cross-border basis.

Following the draft Transparency Directive, the draft Directive on the Exercise of Voting Rights seeks to ensure that all general meetings are convened sufficiently in advance, to abolish all forms of share blocking, to remove legal obstacles to electronic participation in general meetings and to provide non-resident shareholders with simple means of voting which do not require attendance at the general meeting.

The European Scrutiny Committee welcomed the proposal in principle, but noted that some of the detailed provisions could have the effect of decreasing the rights of shareholders, in particular by requiring 30 days' notice of company meetings in all cases, whereas there might be cases, such as the approval of a rights issue of shares, where it would be in shareholders' interests for a meeting to be held more promptly.

The Committee also considered that the draft Directive was concerned essentially with the internal governance of companies and so Article 44 EC should have been used as the legal base, as it has been for earlier Directives in the field of Company Law, as opposed to Article 95.

In his letter of 19 April 2006, the Minister for Employment Relations and Consumer Affairs, Gerry Sutcliffe, said that the Commission was showing flexibility on the question of notice periods and considered that shorter notice periods should be permitted for extraordinary general meetings. A number of Member States have expressed concerns about the potential for long, costly meetings and other burdens on business if there were to be an unrestricted right to ask questions at an annual general meeting.

The Commission has confirmed that Article 3, which allows Member States to maintain or introduce provisions which are more favourable to shareholders, would not permit legislation providing that shareholders could appoint one proxy per share, as is permitted in the UK.

The Minister said that the Government's initial reaction is that Article 95 EC is the correct legal base for the Directive rather than Article 44, since the former is the appropriate legal base for measures intended to improve conditions for the establishment and functioning of the internal market. Further advice is, however, being sought. The Committee remained concerned on this score, observing in particular that Article 44(2)(g) refers specifically to safeguards for the protection of members of companies. The draft Directive was therefore held under scrutiny.

Procedural Rights in Criminal Proceedings

A draft Framework Decision has proposed establishing common minimum standards concerning certain aspects of criminal procedure, notably the right to legal advice, interpretation and translation and the right to have medical attention and to seek consular assistance.

The European Scrutiny Committee had doubted whether the proposal was properly based on Article 31(1)(c) EU (judicial cooperation in criminal matters) since it would have applied also to purely internal cases involving only nationals of the Member State of trial and in cases where no question of recognition or enforcement in another jurisdiction could arise. It subsequently transpired that the issue of the legal base and other serious issues arising from the detailed provisions meant that the proposal was not agreed by the Hague Programme deadline.

In considering a revised version of the proposal, the Committee then observed that it remained too broad in scope and purpose, sought to cover the generality of criminal procedure and provided no benefit which was not already better provided by the European Convention on Human Rights. The Committee asked Attorney General Lord Goldsmith about these points, and about whether it might be more realistic and appropriate to consider measures more closely linked to the mutual recognition of judicial decisions.

Lord Goldsmith's reply, of 23 March 2006, stated that Member States agreed that there was no evidence that the Framework Decision was required to facilitate cooperation; the Committee found this striking and thought that it must fatally undermine the use of Article 31(1)(c) EU as the legal base for the proposal. There was now an impasse as to the way forward, but there was no appetite among Member States either for measures linked to mutual recognition of judicial decisions or for confining any Framework Decision in this area to cross-border cases. The Committee kept the proposal under scrutiny.

Implementation of the European Arrest Warrant

The controversial European Arrest Warrant (EAW) provides for the abolition of safeguards traditionally applied in extradition treaties such as dual criminality (the principle that a person may only be extradited for conduct which is unlawful in the country requesting extradition and the country from which extradition is sought) and presupposes a high level of trust between Member States' judicial and other authorities.

In July 2005, the German constitutional court ruled that the law implementing the EAW was incompatible with the German Constitution and, following this judgment, it appeared that Spain would no longer apply the EAW procedure in respect of extradition requests from Germany. Also, several Member States had difficulty transposing the list of generic offences in Article 2(2) and in abolishing the safeguard of dual criminality, notably in relation to the extradition of the Member State's own nationals (difficulties anticipated by the previous European Scrutiny Committee). Italy then reserved the right to refuse to extradite a person where this would be contrary to the Italian Constitution and on a number of additional grounds.

The Parliamentary Under-Secretary of State at the Home Office, Andrew Burnham, replied to the Committee's request for an assessment on the continuing viability of the EAW on 28 March 2006. He said that amending legislation to give effect to the EAW had been prepared and may be adopted in Germany with immediate effect. There were no current plans to amend the EAW, but "*all Member States have experienced practical difficulties with the application of Articles 4(6) and 5(3) of the Framework Decision which allow Member States to impose certain conditions where the extradition of one of their own nationals has been requested.*" The Committee looked forward to the next report on the operation of the EAW.

Protection of Critical Infrastructure

A Commission Green Paper has set out the Commission's ideas on how critical infrastructure should be protected at EU level. The UK government's reply is thorough as well as critical of the Green Paper, emphasising that protecting critical infrastructure is, and should remain, a national responsibility. The then Minister of State at the Home Office, Hazel Blears, had already confirmed previously that the armed forces were to be excluded from any 'common framework' at EU level.

Cadbury-Schweppes *v* Inland Revenue Commissioners

by Dirk van Heck

Cadbury-Schweppes plc, the well-known British manufacturer of confectionary and soft drinks, incorporated two unlimited liability subsidiaries in the International Financial Services Centre (IFSC) in Dublin (a low-tax zone) with the intention that these two subsidiaries would attract Irish tax at 10 per cent, as opposed to the 30 per cent rate payable in the UK. The UK, however, like at least 9 of our fellow EU Member States and the USA, have provisions to counteract the use of low tax jurisdictions for corporate tax avoidance. The British provisions are referred to as 'controlled foreign company' (CFC) legislation. It has been estimated that this legislation saves the Treasury around £300 million per year.

The UK tax authorities claimed more than £8 million in a tax notice for the financial year ending December 1996 from Cadbury-Schweppes's two subsidiaries in the IFSC, Cadbury Schweppes Treasury Services Ltd and Cadbury Schweppes Treasury Services International Ltd. Cadbury-Schweppes plc appealed to the UK Special Commissioners, contending that the CFC legislation was contrary to the rules on freedom of movement in the EC Treaty, and a reference was made to the ECJ for a preliminary ruling on the matter.

The first stage in a preliminary ruling on a point of EC law is for an Advocate-General's opinion to be produced to the ECJ. This has now been done in the Cadbury-Schweppes case, Advocate-General Philippe Leger producing his Opinion in early May. Advocate-Generals' opinions usually form the basis of an ECJ ruling and often constitute a more coherent statement of the law than the judgments themselves, as they are composed by one individual as opposed to a judicial committee.

Advocate-General Leger stated in his Opinion that, "*Articles 43 EC and 48 EC do not preclude national tax legislation which provides for inclusion in the tax base of a resident parent company profits of a controlled foreign company established in another Member State.*" The Opinion also appears to provide a purposive test for establishing whether such legislation would be appropriate: *"Such legislation must therefore be exempted by providing proof that the controlled subsidiary is genuinely established in the state of establishment and that the transactions which have resulted in a reduction in the taxation of the parent company reflect services which were actually carried out in that state and were not devoid of economic purpose with regard to that company's activities.*"

The Opinion argues that Member States do have a right to interfere with fundamental freedoms such as freedom of establishment in order to counter tax avoidance, since this constitutes an overriding reason in the public interest. EU case law has strictly limited these interventions, but it remains permissible to limit the rights of a company to avoid tax by a *"wholly artificial arrangement"* which has the sole intention of avoiding tax. National courts should judge such arrangements, the Opinion says, on a case-by-case basis, taking account of such factors as the subsidiary's activity and its economic value to the parent company.

Specifically, the Advocate-General said that the UK legislation is unfair because it treats domestic subsidiaries and subsidiaries in higher tax countries differently from subsidiaries in low tax countries like Ireland. If the ECJ follows the Advocate-General's Opinion, therefore, the CFC legislation may have to be repealed or redrafted, potentially costing the UK Treasury hundreds of millions of pounds per year, in addition to the hundreds of millions per year it already loses as a result of existing ECJ decisions on tax law.

UK tax advisers have said that the Opinion is likely to lead to extensive litigation. Guy Brannan, global head of tax at the City law firm Linklaters, said, *"the Opinion gives plenty of scope for uncertainty."* Mark Persoff of Clifford Chance (the largest law firm in the UK and in the world) said, *"This will run and run. I would be sceptical that this would be resolved at the level of the Special Appeal Commissioners. Appeals may go all the way back to the House of Lords and even back to the ECJ for clarity."*

In the meantime, both Cadbury-Schweppes and the Treasury have welcomed the Opinion. Cadbury-Schweppes said it was *"encouraged"* whilst the Treasury expressed itself pleased that the Advocate-General had not gone so far as to state that the CFC legislation was contrary to EU law. Tax advisers said that the complex, nuanced nature of the Opinion was typical of the approach taken by the ECJ over the past year. It coincided with growing concern on the part of governments about the potential of the Court's judgments to erode national sovereignty over tax regimes and to undermine public finances.

Between 1994 and 2004, taxpayers won 85 out of 87 cases on discriminatory direct tax legislation, which were heard by the ECJ. Over the past year, however, the Court has ruled at least partly in favour of governments in some important cases. Its decision in the Cadbury-Schweppes case will have implications for a separate 'group litigation' claim being brought by 24 large European multinationals, including Prudential and Anglo-American, over the same core issue. Lawyers at Dorsey & Whitney, advising in that case, welcomed the Opinion.

The case also has serious implications for Ireland's IFSC, which has been highly successful in drawing overseas corporations to Dublin, especially in the form of subsidiaries dealing with the management of internal company finances. Germany in particular has been critical of the IFSC for causing losses to the German tax authorities as German companies have established numerous subsidiaries managing billions of euros in Dublin, to reduce their tax bill. The reaction of the Institute of Chartered Accountants in Ireland, however, has been sanguine. Its Director of Taxation, Brian Keegan, commented that the findings were *"good news for all of us who recognise the significance of the Irish tax regime in attracting foreign investment."* Aileen O'Donoghue, of the Irish Business and Employers' Confederation, said that the stipulation that a company must be able to demonstrate that its subsidiary is engaged in genuine economic activity was *"pretty much the line that our Irish revenue authorities would take."*

The judgment of the ECJ is expected in 6 to 8 months' time.

Dirk van Heck is a barrister and former Head of Research at the European Foundation.

Intelligence Digest

by John Laughland

Constitution re-launched

The reports in the last *Digest* about Germany's desire to re-launch the failed European Constitution have been proved correct. On 11 May 2006, in a formal government statement to the Bundestag, the German Chancellor, Angela Merkel, called for *"a new foundation"* in *"the European project."* *"We must put citizens at the centre,"* she said, apparently happy to gloss over the fact that when the citizens are given a say over EU affairs they generally vote 'No' as in France and the Netherlands last year. Merkel said that, in the age of globalisation, people wanted political arrangements which reflected their values. She said that it was wrong that Germany, the EU's largest economy, should once again violate the EU's Stability Pact by running too high a budget deficit. Merkel also committed her government to reducing EU bureaucracy, while at the same time saying that EU integration and harmonisation would have to continue and that states would have to get used to abandoning their sovereign powers.

She said that EU citizens wanted security and that, since terrorism and fundamentalism were the new threats, a common EU policy would have to be developed to counter them. She said that the EU had not acted swiftly enough in the Balkans and that lessons had been learned from these past failures. *"Europe has learned to intervene before it is too late."* This was the reason why an EU force was being sent to the Congo for the elections there. The Chancellor also said that clear borders had to be drawn, a veiled reference to her view that the enlargement process had to come to an end at some point. Merkel is known for her state's opposition to the accession of Turkey. *"We will not be able to admit all the states which want to become members,"* she said.

It was for all these reasons, the Chancellor argued, that Europe had to able to act. *"We need the Constitutional Treaty,"* she said. Merkel said that the Constitution outlined clear powers and that *"mixed competences always create a democracy deficit"* because people did not know who was responsible for what. She said that the EU was made able to act for the first time by the Constitution and that Germany would use its presidency in the first half of 2007 to tackle the issue of the Constitution. On the other hand, she did not say exactly how she proposed to solve the EU's institutional impasse. She also warned against making any hasty decisions on the matter. In the ensuing debate, the various opposition parties attacked the coalition government generally for not doing enough to tackle the EU's outstanding issues. [*Frankfurter Allgemeine Zeitung*, 11 May 2006]

Commentators agree that Merkel's plans for the Constitution remain unclear. Even the government statement has not explained just how Germany expects to make progress with the Constitution. Instead, the speech was notable mainly for its repetition of old chestnuts about how the EU creates peace, together with the new line about how it will in future intervene militarily wherever it likes. Merkel even tried to square the circle of saying she wants less bureaucracy but more integration by saying that *"less Europe can also be more."* The difficulties of Germany's announced plan to rescue the Constitution are compounded by the fact that France is holding its presidential elections in May 2007, just one month before the end of the German presidency. This is no doubt why the Chancellor wants to avoid saying too much now about the various possible courses of action. These include new referendums on a revised text, the partial adoption of sections of the old Constitution by executive decision at a summit or a new decision on institutional reform and decision-making. Despite this lack of clarity, Europe experts in the German government are confidently predicting that there will be a clear plan, with a timetable, by around this time next year. [Nikolas Blome, *Die Welt*, 12 May 2006]

French pro-EU MPs call for new Constitution

The pro-European centre-right party in France, the UDF, has called for a new EU Constitution to be proposed and for it to be submitted to all EU citizens at the time of the European Parliament elections in 2009. The leader, François Bayrou, said that the old text should not be fiddled around with, for this is the one that was rejected in referendums in the Netherlands and France. Bayrou said that if the new Constitution were rejected, then a Constitution for *"core Europe"* around the eurozone should be drawn up instead, an odd suggestion since both France and the Netherlands are in this category themselves. [*Die Welt*, 15 May 2006]

Barroso attacked over Constitution

The leader of the Social Democrats in the European Parliament, Martin Schulz, has mounted a strong attack on the President of the European Commission, José Manuel Barroso. He accused Barroso of *"wholesale failure."* Schulz said that Barroso had shown that he is *"emphatically not the man for the job"* by making statements on the Constitution. Schulz said that it was *"a provocation"* and *"a fatal signal"* that Barroso was encouraging a policy of cherry-picking. Schulz said that both the Irish Prime Minister, Bertie Ahern, and the German Chancellor, Angela Merkel, had openly discussed ways in which the Constitution could be revived. Schulz says that it was highly likely that the Constitution would be ratified by at least 20 states and that the EU states had undertaken in 2004 to reflect on the future of the Constitution if this figure was achieved. Barroso, Schulz claimed, had been saying that there was no agreement on what to do and that this made him unfit for his job. Schulz said it was Barroso's duty to act on the basis of existing agreements. *"The Commission President ought to fight for the Constitution more than anyone else,"* said Schulz, but he had failed to make the Commission into the driving force of the EU. [*Frankfurter Allgemeine Zeitung*, 12 May 2006]

Europe in paralysis

The EU is said to be in a state of institutional paralysis as a result of the rejection of the EU Constitution in the French and Dutch referendums. But the same is true of the individual Member States. With the exception of Spain, most EU countries are in a state of political limbo. No one knows exactly what either Britain or Poland will do in relation to European policy, the Poles having recently included within the governing coalition two of the most Eurosceptic parties in Europe, the Self-Defence party of Andrzej Lepper and the conservative Catholic party, the League of Polish Families. Any project, such as that proposed by the UDF in Paris to re-launch *"the European project"* with the eurozone countries alone, would exclude both Warsaw and London. Tony Blair has forfeited all claim to be a leader within the EU because of his Iraq policy, which distanced him from so many influential European capitals. In any case, he is widely perceived as coming to the end of his term in office. France of course is also in political limbo, as all political energies are now directed towards the presidential election of June 2007. Little can be expected from Paris between now and then. Things are little better in Germany or Italy. The new Italian President, the Communist Giorgio Napolitano, was Chairman of the constitutional committee of the European Parliament. Like Mr Prodi, the new Italian

Prime Minister and former President of the European Commission, he is obviously very pro-European. But Prodi has only a tiny majority while the centre-right opposition in Italy contains Eurosceptic elements and may be able to frustrate the government from time to time. The German government coalition between Christian Democrats and Social Democrats gives Angela Merkel a large majority, to be sure, but all policy will be subject to friction if there is any disagreement between these two huge political formations which are used to opposing one another rather than governing together. Frictions have indeed broken out already over employment law and there is talk in the press of the coalition collapsing. [Henri de Bresson, *Le Monde*, 16 May 2006; *Süddeutsche Zeitung*, 17 May 2006]

Juncker calls for *"pause for thought"*

The Prime Minister of Luxembourg, Jean-Claude Juncker, has said that the EU will need to take *"a pause for thought"* on the disputed questions it faces and that this pause should last until 2009 or 2010. *"Even those dates are optimistic,"* he told a German newspaper. Juncker has said that he does not think Chancellor Merkel has much chance of success in her declared desire to revive the moribund Constitution. *"We have a pro-European German Chancellor,"* said Juncker, *"but with which head of government from which large Member State is she going to pull the Constitution forward?"* Germany, in other words, cannot do it alone. Juncker said he thought there was *"more exhaustion than enthusiasm"* in the EU today and he firmly rejected the idea that further integration should be pursued between a limited number of states. *"Everything we do in Europe we should do with all the Member States,"* he said. [*Süddeutsche Zeitung*, 17 May 2006]

Europe still unclear on Romania and Bulgaria

Even though they have been waiting for years for a decision, Romania and Bulgaria will have to wait until October to see if they are to be admitted as members of the European Union next January. Although it had promised to make a decision on 16 May, the European Commission has given the two countries another four months – or rather, made them wait another four months – before it decides finally on whether or not they are fit to join. When it finally takes a decision in October, the Commission could decide to recommend postponing membership for the two states until 2008. The main concern is said to be the failure to fight against corruption in both countries, although this is an extremely imprecise condition and in any case corruption is rife in Brussels itself. In the case of Romania, there is said to be delay in setting up offices for the distribution of EU farm money and technical shortcomings in agricultural and tax administration. All other areas concerning Romania – the fight against fraud and corruption, the protection of intellectual property, and preparations for Romania to join the Schengen agreement – have apparently all been cleared up.

Government sources in Berlin, however, are saying that the accession of Romania and Bulgaria is 'politically decided', i.e. that it will go ahead in spite of the apparent delay in the final decision. Both the German Foreign Ministry and people in the Christian Democrat parliamentary party say that both countries will join on 1 January 2007. The German Foreign Minister, Frank-Walter Steinmeier, has said that the two countries will be able to join next year if they fulfil all the conditions laid down in May's report. Steinmeier said that a delay to Bulgaria's accession could be decided only by unanimous vote and it would need a two-thirds majority to delay Romania's. Berlin considers that both scenarios are *"extremely unlikely."* [*Die Welt*, 18 May 2006]

West Africans continue to flood to Canaries

The flood of refugees from the West coast of Africa to the Canary Islands is continuing unabated. Spanish fishermen regularly see boats at sea packed full of people. The Mauritanian authorities make no attempt to stop them and so they land on the Canaries and apply for political asylum. During the weekend of 13-14 May, one thousand refugees landed on Tenerife, Gran Canaria, Fuerteventura and La Gomera: this is a new record for the archipelago, where refugees have been arriving in ever greater number for months. The local authorities complain that Madrid has not sent the extra patrol boats promised and that the islands are incapable of coping with the flood. The Spanish Foreign Minister has promised to talk tough with the countries concerned and diplomats are to be dispatched to Mali, Guinea Bissau, Senegal, Mauritania, Ghana and Nigeria to sign repatriation agreements. The first repatriations are due to start soon. Because the camps in the Canary Islands are full, refugees are generally transferred to mainland Spain within forty days of their arrival. Naturally, many of them disappear while they are being processed, especially since they typically destroy their identity cards in order to make it more difficult for the Spanish authorities to know where to repatriate them. The government's decision to naturalise 700,000 foreigners in Spain last year has sucked ever more refugees to the country, making the situation even worse than it already was. The Red Cross estimates that more than 1,200 people have died at sea since last autumn on these perilous crossings. Meanwhile, in early May, fisherman in Barbados discovered eleven mummified corpses on a boat from Senegal. The boat had originally had 37 passengers and it had evidently been drifting around the Atlantic for some three months. [El País, 16 May 2006; Ute Müller, *Die Welt*, 16 May 2006]

Slovenia to adopt euro

The former Yugoslav republic has been judged fit to join the eurozone, which it will do on 1 January 2007. On the other hand, the Commission has said that Lithuania is not in a position to adopt the European single currency since its inflation rate is too high. The recommendations of the Commission are to be voted on by the Council of Finance Ministers in July following consultation with the European Parliament and after a discussion with the heads of state and government at the bi-annual summit in June. However, there is little doubt that the recommendations will be approved and that the eurozone will therefore have only one new member next year. Slovenia thus becomes the first and only new Member State to adopt the European single currency. [*Corriere della sera*, 16 May 2006]

Iran rejects latest EU offer

Tehran has rejected the latest proposals made by the EU. The Iranian Foreign Ministry has said that Iran's right to enrich uranium is *"absolute and unimpeachable"* (which it is, under the terms of the non-proliferation treaty) and that any proposals to prevent it from doing this were unwelcome. The EU had suggested that Iran do this in return for giving it the latest nuclear technology and building a light water reactor. China seems to be siding with the EU against Iran on this issue. [*Die Welt*, 17 May 2006] The Iranian President, Mahmoud Ahmadinejad, said, *"The Europeans seem to think they are dealing with a four year-old child whom they can trick with walnuts or chocolate into giving away gold."* [*Die Welt*, 18 May 2006]

The Europeans had made the offer, which Tehran described as *"generous,"* with a slightly threatening note. The Europeans had reaffirmed the right of the Iranians to use nuclear weapons for peaceful purposes and had proposed a deal which would have allowed them to do so without enriching their own uranium. (Russia had previously made a similar offer.) Javier Solana, the EU Foreign Policy chief, had said prior to the Iranians' rejection that, *"If the Iranians want to build electricity generating stations using nuclear power, they can benefit from the cooperation of the Europeans and other members of the international*

community and have access to the most sophisticated technology. But if they reject the proposal, then that means they are rejecting something else." Washington and Brussels will no doubt now conclude that Iran indeed wants to enrich uranium for military purposes, even though the relevant treaties allow her to do what she says she wants. The Europeans had also expressed their *"profound concern"* at various human rights violations in Iran, including the continued use of the death penalty. [Thomas Ferenczi, *Le Monde*, 17 March 2006]

Afrikakorps

Up to 800 German soldiers are to be sent to the Congo during the elections there. The 'mandate' is to begin on 30 July and last for four months. The German troops will be part of the EU military mission to the country, which is supposed to ensure the smooth running of the elections. The troops are to be under German command. The cost of the mission to Germany is some €56 million, which will be met out of the usual defence budget. [*Die Welt*, 17 May 2006]

The Congolese themselves do not seem very keen on the idea of having European troops in their country. During a recent opposition demonstration in Kinshasa, protesters held up placards saying, *"Foreigners want to rule the Congo."* There is plenty of room for the rumour-mill to function, since there are no officers from EU states in the Congo yet, no one knows where the troops are to be sent and there are not even any interpreters yet. Albrecht Conze, Deputy Director of the UN Peace Mission MONUC in Congo, says, *"There are rumours in the capital that the troops will protect only Europeans if there are any incidents, or that they will support one candidate in particular."* The Congolese opposition, indeed, has attacked the international community, which is paying for 100 per cent of the election costs, will simply support Joseph Kabila, the current President, and that the troops are there to back up this aim. It is not very difficult to guess which side Conze himself is on. *"It must be made clear,"* he says, *"that the EU is coming to tell bad losers to shut up and to ensure the elections."* [Sophia Bouderbala, *Die Welt*, 18 May 2006]

Ayaan Hirsi Ali

A Dutch MP of Somali origin has announced that she is leaving the Netherlands to live in America, where she will be a fellow of the neo-conservative think-tank, the American Enterprise Institute. Ayaan Hirsi Ali has become famous in the Netherlands as a critic of Islam. She wrote the script for a film about the ill treatment of women in Muslim countries, the director of which, Theo van Gogh, was murdered by an Islamic fanatic. Ayaan Hirsi Ali herself then had to live under permanent armed guard. Her supporters say this is because she tells uncomfortable truths and therefore has many enemies, even in Dutch society. Although she has been showered with awards for bravery and free speech, it turns out that she had in fact lied about the being persecuted in her home country (she had claimed that she was being threatened with an honour killing by her family) and her Dutch citizenship is therefore being revoked. [Jean-Pierre Stroobants, *Le Monde*, 17 May 2006]

US imposes travel ban on Belarus officials

The United States has followed the European Union in imposing a travel ban on the President of Belarus, Alexander Lukashenko, and on other officials which it says were involved in electoral fraud during the recent presidential elections. (There is no actual evidence of fraud, but the Western-backed 'observers' say that the electoral climate was 'unfair' and have therefore condemned the poll.) [*Radio Free Europe Newsline*, 16 May 2006]

Meanwhile, the Secretary-General of Interpol, Ronald K. Noble, has criticised the European Union for not sending delegates to the organisation's 35th regional conference, which is being held in Minsk, the Belarusian capital. Noble said that the EU should not introduce its own rules into the activities of Interpol, which is the world's largest police organisation and free of political influence. The choice of Minsk as the venue for the conference had been made in a transparent and near unanimous vote last year. [*Interfax*, 17 May 2006]

The European Union states have also frozen the assets of the Belarusian President and those of the other 35 officials whom they have also banned from travel to the EU. The decision speaks of freezing the assets *"of all persons who are responsible for the violation of electoral norms, for the repression of civil society and of the democratic opposition in the contest of the elections of 19th March 2006."* [*Le Monde*, 18 May 2006]

Whatever happened to Radovan Karadzic?

The EU has told Serbia and Montenegro that it is ready to resume accession talks as soon as the former Commander in Chief of the army of *Republika Srpska* in Bosnia-Herzegovina, General Ratko Mladic, is arrested. [*Radio Free Europe Newsline,* 16 May 2006] This follows the decision of the EU on 3 May to suspend negotiations on the basis that, *"It is disappointing that Belgrade has been unable to locate, arrest and transfer Ratko Mladic to The Hague."* [Statement of Commissioner for Enlargement Olli Rehn, 3 May 2006]. However, no mention seems to be made any more of Mladic's co-indictee, Radovan Karadzic, the President of the Serb Republic in Bosnia-Herzegovina. As President, Karadzic had political responsibility for the Bosnian Serb army, which is accused of perpetrating a genocidal massacre at Srebrenica in July 1995. However, his name is no longer mentioned much in EU circles and it seems that the European powers would be perfectly happy for him to remain at large. Only Mladic interests them now.

Mass emigration from Baltic states

According to official figures, some 300,000 East Europeans have emigrated to the United Kingdom and Ireland since 2004 when the EU expanded to include ten new Member States. Of course no one knows the true figure, since the British Prime Minister has admitted that the government has now idea how many illegal immigrants there are in the UK, and the official figures for the new EU states rely on a voluntary system of registration by Poles and others, many of whom work on the black market. The true figure is therefore undoubtedly much higher.

Irish officials from the state employment agency have been travelling around the new Eastern European states handing out information leaflets including the phone numbers and addresses of job agencies so that people can try to find work before they leave their home countries.

This mass migration of people is having a very negative effect on the countries that supply the cheap labour. The Baltic states are particularly badly hit. Despite Stakhanovite official figures, which suggest absurdly that their economies are growing – Latvia, for instance, is said to have the highest growth rate in the EU, 10 per cent in 2005! – the Baltic states are in reality an economic wasteland. The population of these countries has therefore collapsed. Latvia had a population of 2.66 million in 1991 but the official figure now is only 2.3 million. According to Eurostat, Latvia is facing the sharpest demographic decline in the whole of the EU, with the population predicted to fall by 19 per cent between now and 2050. 18,000 Latvians have made their way to Ireland in the last eighteen months: the figures for the UK will be many multiples of that. In the Latvian capital, Riga, people speak of a massive exodus: it is estimated that between 40,000 and 70,000 people have left the country to go and work elsewhere in the EU. [Olivier Truc, *Le Monde*, 18 May 2006]

Prodi calls Iraq war 'a grave error'

The new Italian Prime Minister, Romano Prodi, has said that the Iraq war was *"a grave mistake"* and has promised to withdraw Italian troops from Iraq. The war was very unpopular in Italy and the previous Prime Minister, Silvio Berlusconi, was heavily criticised for his support for the US position. Prodi, who was previously President of the European Commission, also said that Europe needed *"a Constitution."* Other appointments to the new Italian government are evidently intended to stress Rome's pro-European orientation. The Foreign Minister is Massimo d'Alema, a Communist, who has served as an MEP and who will also be co-deputy Prime Minister. The Interior Minister is Giuliano Amato, former co-chairman of the European Convention that drew up the now defunct European Constitution. The new Finance and Economy Minister is the veteran European banker, Tommaso Padoa Schioppa, who until a year ago was the Italian representative to the European Central Bank. The Europe and External Trade Minister is Emma Bonino, a former member of the European Commission. [*Corriere della sera*, 18 May 2006]

Israel protests against Ahmadinejad visit

The Israeli ambassador in Germany, Shimon Stein, has called on the German Interior Minister to prevent a visit to Germany by the Iranian President, Mahmoud Ahmadinejad, who might come to the country for the world football championships. Stein said that a visit would make absurd the championships' slogan, *"Inviting the world as friends."* "*By his tirades of hatred, Ahmadinejad has excluded himself from the community of states,*" Stein said, *"and therefore has nothing to find in the civilised world."* The Interior Minister, Wolfgang Schäuble, started the polemic in April when he said that there was no problem with the Iranian leader's presence. "*If Ahmadinejad comes, then he comes.*" As a head of state, Ahmadinejad does not need a visa to come and watch the football. Unless there is a decision by the UN or the EU, Schäuble said that German law provided that he could come. [*Handelsblatt*, 19 May 2006]

El-Masri appeal rejected

A US judge has rejected a lawsuit brought against the CIA by a German citizen of Lebanese origin, Khaled El-Masri, who was abducted by American forces in Macedonia and kept captive and tortured in Afghanistan for several months before his captors realised that they had got the wrong man. The federal judge in Alexandria ruled that the appeal could not be brought because state secrets would be revealed if there was a trial, and that was not allowed. The judge said that the case would not be fair unless state secrets were revealed, and that could not happen. The judge therefore ruled that the US's national security had to take priority over El-Masri's *"private interests."* The judge emphasised that his ruling was not on the substantive claim but that if El-Masri wanted compensation he would have to obtain it directly from the government and not via the courts. [*Handelsblatt*, 19 May 2006]

Montenegrin leader accused of smuggling

As the European Union tries to work out what to do with the question of Montenegro's independence from Serbia, a German customs official in Augsburg believes that he has proof of what everyone in the region believes, namely that the Montenegrin strong-man, Milo Djukanovic, wants independence so that he can better pursue his activities as one of Europe's biggest cigarette smugglers. The official, Günther Herrmann, and a state lawyer, Jans-Jürgen Kolb, have been collecting information for a decade about cigarette smuggling from Montenegro, especially during the 1990s when Djukanovic's activities were tolerated because he was an opponent of Slobodan Miloševic and when Montenegro became one of the main centres of cigarette smuggling. Djukanovic claims now that the 'goods' left Montenegrin ports in a fully legal way and that the Montenegrin authorities merely charged a transit fee. On the subject of whether these 'goods' made their way onto the European black market, the Prime Minister says, *"I can neither confirm nor deny that."* Hermann has a slightly different take on the matter. *"Djukanovic version is a lie,"* he says. *"What happened there is fraud, tax evasion to the scale of millions. We have watertight proof that immense quantities of cigarettes were smuggled through the port of Bar in Montenegro to the immense detriment of the European Union, and we know how it was done."* Hermann's investigations go back to 1992 when sanctions were imposed on Yugoslavia (Serbia and Montenegro). The import and export of various goods were forbidden, with the exception of food and medicine. At this time, the customs officials discovered that more and more cigarettes were being exported from Switzerland to Montenegro using letterbox companies. Hermann says, *"Every week 25 trucks with cigarettes would leave Switzerland for Montenegro. That just did not make sense. What were the people there doing with them all? Besides, these transport operations had receipts which anyone could see were falsified."* Hermann speaks of 'Mickey Mouse companies' registered in Switzerland, the Virgin Islands or in Panama. At the end of 1993, the customs office examined the matter. The state prosecutor also got involved. In 1994, two French citizens with false papers were arrested on the German border and imprisoned for three years and six months in connection with the smuggling. 170 other people were also given lesser sentences. But these people were only the small fish. Kolb and Hermann were therefore not satisfied with their catch. *"We said to ourselves that we cannot catch only the small people and let the big fish get away,"* says Kolb. Thus began an enquiry which was to change their lives. Hermann travelled to Montenegro and looked at the ports and was amazed to see the smugglers going openly about their business, usually driving Porsches ostentatiously up and down the quayside. Together the two men realised that the smuggling system was very simple. The front companies bought masses of cigarettes, ostensibly for consumption in Montenegro. Because Montenegro is not in the EU, the cigarettes were not subject to tobacco tax, duty or VAT which make up the bulk of the price to the consumer in the EU. Thus duty free cigarettes poured into Montenegro from all over the world and the Montenegrin state would take a 'transit fee' before the cigarettes were smuggled to Italy using high-speed boats which made the short trip across the Adriatic. There the Italian Mafia would distribute them on the black market across the EU. When Günther Hermann went to Montenegro in 1995 and asked the dockers where the huge quantities of cigarettes were headed, they laughed and pointed across the sea towards Italy. He saw countless high-speed boats on the coast at Kotor. *"They worked day and night. At peaks times there were 120 boats in operation,"* he said. But in spite of the simplicity and openness of the smuggling, it turned out to be very difficult to do anything about it. The buyers of the cigarettes in Switzerland said they were doing nothing wrong; the truckers said they were just transporting them; the government in Montenegro said it was merely allowing transport and storage. *"Djukanovic and his people let the smugglers use Montenegro as a basis for their operations,"* says Hermann, *"and they got a lot of money for it."* Djukanovic says that this was the only way the population could escape the effects of the UN sanctions against Yugoslavia, but these were lifted in 1995 and yet the smuggling continued. According to the investigations, from 1995 to 2001 between 6,000 and 8,000 lorry-loads of cigarettes were delivered to Montenegro. Hermann says that everyone knew about this and he is under no illusions why it was allowed to continue. "*Djukanovic was supported by the EU after he broke with Miloševic in the hope that he could construct a democratic country. So nothing happened.*" [Michael Martens, *Frankfurter Allgemeine Zeitung*, 15 May 2006]

The Relentless March

*Since the end of the Second World War, the European Union and its predecessors, have, to the detriment of the national sovereignty of its Member States, been mapping out the road to a federalist, politically integrated organisation. Here is a look back at some of the major events that occurred during the month of **June** over the past 60 years.*

1947 US Secretary of State General George Marshall promises aid for the economic recovery of Europe.

1950 Belgium, France, Luxembourg, Italy, the Netherlands, and Germany subscribe to the Schuman declaration.

1955 Meeting in Messina (Italy), the Foreign Ministers of the Six agree to aim at the integration of their countries on the economic front.

1956 Formal negotiations open between the six members of the ECSC, with a view to creating an Economic Community and European Atomic Energy Community.

1965 France and Germany both ratify the Treaty instituting a Council and Commission of the EC.

1966 Luxembourg ratifies the Treaty instituting a Council and Commission of the EC.

1967 The Commission signs the final Act of the General Agreement on Tariffs and Trade (GATT) multi-lateral negotiations (Kennedy Round).

1970 The EC opens accession negotiations with Denmark, Ireland, Norway and the UK.

1971 The Ministers of Justice of the Community meet for the first time in Luxembourg. They sign two protocols that, after ratification by the Member States, will grant new powers to the Court of Justice.

1973 The Association Agreement and the additional protocol between the EC and Cyprus comes into force.

1974 Reyners ruling. The European Court of justice rules that whenever a national of a Member State wishes to set up in business in another Member State, the other Member State is obliged to refrain from applying any law, regulation or administrative provision or practice which might discriminate against him as opposed to its own nationals.

1975 A majority of the UK public vote in favour of continued EC membership in a national referendum.

Greece applies for EC membership.

1977 The treaty reinforcing the budgetary powers of the Parliament enters into force.

The Commission proposes the creation of a new Community borrowing instrument to finance structural investment.

1978 The EC opens accession negotiations with Portugal.

1979 The first direct elections to the EP are held.

The EC opens accession negotiations with Spain.

1984 After years of insistence, Margaret Thatcher secures the UK rebate at the Fontainebleau European Council meeting. The VAT ceiling is also raised from 1 to 1.4 per cent in order to increase Community resources.

1985 Spain and Portugal sign accession treaties with the EC.

1987 Turkey applies for EC membership.

1988 The EC and Comecon (Eastern European trading bloc) sign agreement to officially recognise one another. This is the first time the Comecon states distinguish the ability of the EC to negotiate on behalf of its Member States.

Jacques Delors appointed chairman of the committee entrusted to study how the EC might progress to EMU by the Hanover European Council meeting.

1989 Madrid European Council meeting sets date of 1 July 1990 as the start of Stage 1 of process to initiate EMU.

1990 The EC's commitment to political union is confirmed at the Dublin European Council meeting.

The Benelux countries, France and Germany sign the Schengen Agreement.

The EEC and EFTA start formal negotiations for the creation of the European Economic Area (EEA).

1991 The Opening of the first session of the Conference on Security and Cooperation in Europe (CSCE) Council is held in Berlin, Germany.

1992 The Danish electorate reject the Maastricht Treaty in a national referendum by 50.7 per cent to 49.3 per cent.

The Irish electorate vote in favour of the Maastricht Treaty in a national referendum.

1994 The Austrian electorate vote in favour of joining the EU in a national referendum.

A partnership and cooperation agreement between the EU and Ukraine is signed.

1995 Romania and Slovakia apply to join the EU.

Association Agreements are signed with Estonia, Latvia and Lithuania.

1996 Slovenia applies to join the EU.

1997 The European Council meets in Amsterdam and reaches a consensus on a draft Treaty. It approves various proposals facilitating the smooth passage to the third phase of the Economic and Monetary Union, adopts a resolution on growth and employment and clears the way for launching the enlargement process.

1998 The United Kingdom deposits the instruments of ratification of the Treaty of Amsterdam.

European Central Bank is established.

2001 The Irish electorate vote against the Nice Treaty in a national referendum.

2003 Referendums are held in Poland and the Czech Republic on joining the European Union. The majority is in favour of accession in both countries.

European Council is held in Thessaloniki. The draft EU Constitution is welcomed as a good basis for forthcoming negotiations on the future of Europe.

2004 European Council decides that accession procedures with Croatia should begin.

2005 The Dutch electorate reject the European Constitution in a national referendum.

BOOK REVIEW

Design for a New Europe

By **Professor John Gillingham**, Cambridge University Press, 2006, 298 pp, ISBN 0521686644, £12.99

Reviewed by James Frayne

There are very few occasions when the public registers a political event and begins to change its mind quickly and significantly about a subject. Such occasions are rare because they generally have to occur at a time when a cluster of other related events are already making people begin to register change, making them open to interpreting a new event in the right context.

We may be witnessing such a period now. People seem to be losing faith in the government's ability (and maybe politicians' ability generally) to protect them. The government's release of foreign prisoners has come at a time when the government has been accused of not controlling illegal immigration, of not doing enough to prevent the terror attacks on London last summer, of allowing judges to get away with imposing meaningless sentences on serious criminals, and so on. Some of this may be unfair, but the point is that these things have all come together, making it more likely that the public will 'connect the dots'.

Very few single events over the last few years have changed people's minds in Britain about the EU. The corruption of the EU did not really change people's minds – it just seemed like business as usual. The failure of the EU over decades to reform its economies and its agriculture and fisheries policies did not either, for the same reason. However, unusually, last year's double rejection of the EU Constitution by France and Holland may actually have been one of those events that did have a genuine impact on people's views about the EU. It seems to have made people begin to question the future direction and stability of the EU, and even the benefits of Britain's continued membership of the EU on existing terms.

Again, this is because it came at a time when the public was beginning to take notice of a cluster of other events. The double rejection came at a time when the public had been hearing for a while about the failure of the eurozone economies, the rise of the far-right in Europe, the breakdown of law and order in parts of the EU (particularly France, one of the few European countries British people know well), and the massive split in opinion between the EU and the US over the War on Terror – something which, despite the unpopularity in this country of George Bush, makes people nervous.

The significance for the EU of last year's double rejection of the Constitution is at the heart of an excellent new book, *Design for a New Europe*, by Professor John Gillingham of the University of Missouri. In it, Professor Gillingham makes clear the importance of the events of last year: *"It almost had to happen. The crisis, which broke out across Europe in early summer 2005 after the French and Dutch people repudiated the proposed federal constitution, had been mounting for years. The dead certainties of yesterday ring hollow because the EU has long since broken down. The fallout has been widespread."* This is the context Gillingham uses for a description about the failings of the modern EU.

This is a short book and is all the better for it. Gillingham uses four concise chapters to analyse the failings of the EU – Governance, Economics, Innovation, and, the chapter which is obviously closest to his heart, Democracy. For someone that clearly cares about the future of Europe and its people, and who makes a point of saying he wants the EU to work, Gillingham's analysis of the failings of the EU is brutal. He does not mince his words. On the economic failure of the EU, he writes, *"It would be tempting to write the recent history of the three big continental economies – Germany, France, and Italy – as one of stagnation. Regression, however, better characterises the past few years."* Similar analysis appears throughout the book.

Of course, some of what Gillingham says will be familiar to British Eurosceptics, who will point to the useful work that various politicians, businesspeople and campaigns have been saying for the last decade at least. But, as so often in politics, the power of an argument often depends on its timing and Professor Gillingham's timing is spot-on. Gillingham combines his excellent grasp of the history of Europe with an obsession about current events to emphasise the sheer scale of the problems the EU faces at this particular point in time. The result is that the crisis the EU now finds itself in is given historical importance.

But as its title makes clear, the book is not meant simply to be the accurate analysis of EU failure that it provides. Unlike Robert Kagan's *Paradise or Power?*, which described EU failure as if it was permanent and something that just had to be accepted, Gillingham wants Europe to improve and believes there is a chance it can. Gillingham does not attempt to provide a detailed blueprint though. Instead, his final chapter sketches out some of the institutional changes he thinks need to be made, which are quite radical: the Commission to be reformed or replaced; the European Parliament to be massively scaled down, and a scaling down of the bureaucracy generally; the selling off of EU assets; a re-issuing of national currencies. He is no defender of EU bureaucracy and clearly believes the EU only has a future if it scales down physically and scales down its ambitions.

But the main thing that Gillingham repeatedly argues needs to be at the heart of a new design for Europe is democracy. This theme keeps coming up throughout the book. In his conclusion he writes, *"Strengthening democracy, both at present and in an enlarged future EU, should become the overriding purpose of the integration process… To be worth saving, the Brussels institutions must be drastically reformed or, failing that, be replaced with better ones. Unless the politicians are up to the job, Europe's peoples should do it."*

It will be interesting to see how Gillingham's views evolve as the EU fails to evolve itself. After all, there seems no chance that the politicians running the EU are serious about scaling it down or turning it into a modern, democratic and accountable union. Nor are they are very likely to listen to the peoples of Europe any more than they ever have. Even now, when the continent is clearly facing a long period of political and economic decline, EU politicians are still talking about how to 'convince' people that they should learn to love Europe. For them, it is not a matter of genuine reform, but improving the quality of the propaganda.

So, given the slim chance of the EU's leadership ever accepting the need for reform, the challenge for British Eurosceptics is to come up with a concrete plan that will

change our relationship with the EU and force a change in the way the EU works. Unilaterally repatriating controls over things like trade, criminal justice, defence and so on is the only way we are going to get these powers back and the only way Britain is going to make sure it does not go the same way as the rest of the EU, which is currently heading towards irrelevance. It also provides the only realistic chance that Europe will reform – showing a better way by taking action alone or with a group of sympathetic countries from Eastern Europe.

Eurosceptics in Britain should welcome Gillingham's book. Like his previous work on the history of EU integration, it is an excellent read – clear, concise and entertaining. Above all, Gillingham highlights the crisis that Europe faces now and its historical significance. It will be down to us to determine the next steps.

James Frayne is Campaign Director of the TaxPayers' Alliance (www.taxpayersalliance.com) and worked for the No Campaign against the euro between 2000 and 2003.

FACTS

by the Editorial Staff

1 In case you missed it…

… 9 May was Europe Day. But don't worry if you missed it, we did, too! To mark Europe Day, Brussels held a debate on the future of Europe. The event kicked off with a two-day forum hosted by MEPs and members of the Austrian presidency. (One can only wonder how many Eurorealists were invited to participate!) In other parts of Europe, an EU photo exposition opened (Paris); an EU-Polish parade and pop concert took place (Warsaw); and those lucky Irish got to hear Agriculture Commissioner Mariann Fischer–Boel speak to the Parliament (Dublin). The European Foundation is currently taking submissions on how best to celebrate Europe Day 2007.

[*European Parliament Agenda* 8-14 May 2006]

2 Merkel and Blair top earnings list

The UK Prime Minister and the German Chancellor are the best-paid leaders in the world according to a recent study published by management consultancy Hay Group in the German magazine *Wirtschaftswoche*. Blair earns €268,500 per annum whilst Merkel earns just below him. Merkel's annual salary is €261,500. Out of the 13 countries surveyed, the Slovakian Prime Minister was the lowest paid leader, on €39,100, and the Polish Prime Minister only earns €53,400.

[*Reuters* 6 May 2006]

3 Finland set to ratify Constitution

The Finnish Parliament is expected to ratify the European Constitution during its EU presidency, which beings on 1 July. The ratification process began in May, with the Finish Parliament expressing itself in favour of ratification. The process could be finalised as early as September. This would make Finland the sixteenth country to ratify the Constitution. Estonia became the fifteenth when it ratified on Europe Day.

[*EU Observer* 9 May 2006]

4 Something fishy about the Faroes

On a recent trip to Brussels, the Faroese Prime Minister, Joannes Eidesgaard, said the Common Fisheries Policy remained the main factor behind his country's decision not to join the EU – the same reason given when the country rejected EC membership in 1973. Eidesgaard told *EU Observer*, *"The reason back then was that we could not live with the Common Fisheries Policy because … if we lose our fish we have nothing left. It is the same reason today."* Conversely, the Prime Minister indicated that if Norway and Iceland were to join, they would seriously consider joining. He said it would be worse to be left in isolation, *"but right now, there are no signs that they* [Norway and Iceland] *will become members of the EU."* Eidesgaard did, however, express keen interest in joining EFTA. [*EU Observer* 4 May 2006]

… continued from page 12

The EU15's hostility towards workers from the EU8 has soured relations between the two blocs, with the latter left feeling as though they are 'second class citizens'. In an act of defiance, Poland, Hungary and Slovenia have imposed retaliatory reciprocal restrictions to nationals from the EU15 (who apply restrictions against them). More worryingly, the Czech Republic has indicated it may impose restrictions against Bulgaria and Romania when they join the EU, if the EU15 persist with their barriers. Clearly this is the wrong attitude to take, but when faced with such prejudice it is easy to act with such prejudice – it is a case of the pot calling the kettle black.

Finally, both Ireland and the UK have recently suggested that they may not open their labour markets to Bulgaria and Romania unless the remaining EU15 act likewise. Irish Prime Minister Bertie Ahern stated, *"We'll eventually have to look at Bulgaria and Romania but I'd rather see my colleagues being a bit more advanced,"* whilst Sir Andrew Green of Migrationwatch commented, *"It is not the role of the UK to shoulder alone the full weight of a potentially very large influx."*

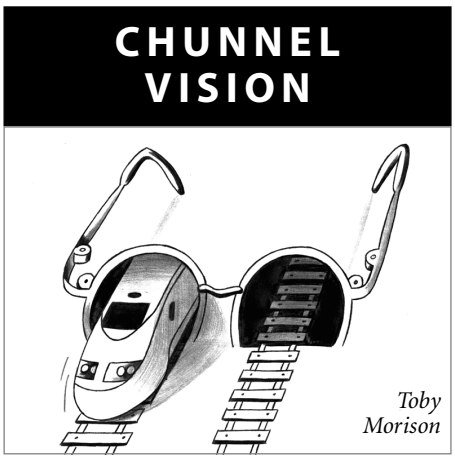
By erecting barriers against migrant workers, Member States not only make a mockery of one of the fundamental freedoms of the European Union, they also create deeper implications for its internal dynamics. Member States who have battled against others to ensure the barriers against their citizens are lifted should think very hard whether it is right to take the same approach as the one they have been so quick to criticise.

1 The term EU8 is used here as opposed to EU10 as Malta and Cyprus were both exempt from the terms of the transitional arrangements.

2 The Commission's emphasis.

Jocelyne Saunders is Head of Research at the European Foundation.

Advertisement for Roger Helmer, MEP



Ta-Ta-EPP.com

by Dr Lee Rotherham

For the past, well, while now, I have been involved in putting together a new website. Needless to say, I am not technologically minded. The Stone Age I can handle. The concept of bronze smelting, alright. But bring me any technology more advanced than say a bathtub and I'm at a loss.

I have grasped a couple of fundamentals about modern gadgetry. There is this thing called the 'web', which is full of magic and allows the scryer to behold marvellous visions of the arcane, of lands far off, of wondrous devices, and possibly, depending on how well your filter is set, the odd set of marvellous dancing jugs from the UKIP site as well.

This implement of remote access is a powerful tool for spreading insight, wisdom and knowledge. It is Gutenburg with wrap round shades.

Used wisely, it conveys jedi-like powers and the ability to determine at great distances what the latest football score is. But beware its dark side, lest thee be tainted with an accidental purchase of an e-bay garden shed.

Particularly recent history also shows it to be an effective tool of party political use. The outstandingly democratic move by Conservativehome.com to publish a compiled chart of A List candidates has thrown sharp relief on that particular debate, and has got people thinking.

Hopefully the enterprise upon which I am now engaged will prove to be of some vaguely comparable utility. Adieu-EPP.com is being set up to provoke thought, stimulate debate, and provide key information as part of the EPP concern, rather than simply be read by dyslexics looking for the Johnny Depp fan club. Crucially, it's there as a tool to support declared Conservative Party policy, namely that we can do better in Brussels than hang around a bunch of raving federalists who would stitch us up like a kipper if it got them a United States of Europe (I paraphrase somewhat but such is the gist). We like David Cameron's idea to pull out of the EPP. Well, actually, it was Liam Fox's. Well, actually actually it was Duncan Smith's, but that just goes to show it's a policy with principles and some back history that, and how it's been seriously looked into and judged to be right.

So how does one go about setting up a campaigning website in the first place? Well, for readers thinking of doing it themselves one day, there are three key obstacles.

Let's just say that there's now a resource centre online for anybody who needs to know what's what with the EPP business

The first is the name. It has to be catchy. Zingy. Something you can almost hum down the street. With easy spelling, so xenoprestidigitation.com is out for starters. It's good if it's visionary, a little marketable, like clearbluewaters.org but without it sounding like a Radox ad. While memorable, it also has to be relevant, which rules out mypantsareonfire.co.uk. You can even abuse the end suffix, like Kickthe.eu.int. As you can already see, this process typically involves hours of arguing over pints, squinting and saying, *"Oh that's nearly there but …"*, then wandering off completely drained only to bump into someone who gets it right within 15 seconds.

The second obstacle is the computer geek stuff. I am not Keanu Reeves. I do not do mainframe bullet dodging and kick boxing because I used to have a ZX81 and it was all I could do to slot on the 16K Ram pack and turn the box on. If you are no technowizard, forget DIY. Roll with GSETDIFY: Get Someone Else To Do It For You. Or you'll still be applying bits of sellotape to your computer screen in three months time.

The third obstacle is the material. Here, the lesson is one of self-restraint. There is a sore temptation, for starters, to trawl through hundreds of photos in your albums and pick out the really arty stuff. Flower growing through concrete. Silhouette of Roman Arch by Via Appia. Deceased symbolic penguin, I know not what. This bit requires significant resilience. Use only the relevant, the subliminal or the sublime. A picture of a broken pencil next to a piece on the EU Constitution might work; a picture of a camel wearing a fez might not. Unless your website is about the decline of the North African hat industry, obviously.

Which leaves the writing. In this instance, that was the easy bit. Practically wrote itself.

And what's in it? Well, I'll leave you to find out.

Let's just say that there's now a resource centre online for anybody who needs to know what's what with the EPP business.

Who they are; how we got here; what the practicalities are in terms of the European Parliament; where the key differences in belief lie; who backs staying in and who backs leaving; what a major whistleblower thinks about how the EPP treated her; and what key political insiders (including members of the Shadow Cabinet, and figures from overseas) think of it all.

It's a one-stop debating aid to prick the state-subsidised pro-EPP balloons.

www.adieu-epp.com

Tell your friends about it. Even better, e-mail it to people you hate. One day soon it's going to be big. A bit.

Dr Lee Rotherham is co-author of the TaxPayers' Alliance new publication, The Bumper Book of Government Waste, *which can be ordered online at on http://www.harriman-house.com*

The European Foundation

Mission Statement: The aims and objectives listed below are summed up in The Foundation's overall policy of 'yes to European trade, no to European government'. We believe that greater democracy can only be achieved among the various peoples of Europe by the fundamental renegotiation of the treaties of Maastricht, Amsterdam and Nice. The Foundation does not advocate withdrawal from the European Union, rather its thoroughgoing reform.

Objectives

- To further prosperity and democracy in Europe;
- To renegotiate the treaties of Maastricht, Amsterdam and Nice and prevent the ratification of the European Constitution;
- To reform and scale down the *acquis communautaire;*
- To ensure that future member states get a fair deal from EC/EU membership;
- To halt the continuing arrogation of power by the EC/EU;
- To prevent the UK from adopting the euro;
- To contribute as actively as possible to an informed public debate about the future of Europe;
- To liaise with like-minded organisations all over the world;
- To liaise with organisations affected by EC/EU action and policy.

Activities

- Addresses itself to the general public and to politicians, journalists, academics, students, economists, lawyers, businessmen, trade associations and the City;
- Organises meetings and conferences in the UK and in mainland Europe;
- Publishes newsletters, periodicals and other material and participates in radio and television broadcasts;
- Produces policy papers, pamphlets and briefs;
- Monitors EU developments and the evolution of public opinion and its impact on the political process in the EU.

The Foundation's History: The Great College Street Group was formed in October 1992 in order to oppose the Maastricht Treaty. The Group, consisting of politicians, academics, businessmen, lawyers, and economists, provided comprehensive briefs in the campaign to win the arguments both in Parliament and in the country. The European Foundation was created by Bill Cash after the Maastricht debates. It exists to conduct a vigorous campaign in the UK and across Europe to reform the EC/EU into a community of free-trading, sovereign states. The Foundation continues to establish links with like-minded organisations across Europe and the world.

Subscription Rates & Donations

UK: Minimum £30; UK Senior Citizens & Students: £20.00; Europe excl. UK: £34; Rest of World: £38

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