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America: still Britain's best buddy

Glen Ruffle

Recent releases of secret files by the Wikileaks website brought hysterics from the British media about the state of the UK's relationship with the United States. Accusations that the US was spying on the UK, using the UK as a pawn in negotiations, and generally treating London as an inferior sideshow abounded. Yet as the House of Commons Foreign Affairs Committee reported, in their 6th report of the session in 2010 on the state of the UK's relationship with America, the British media loves to "indulge in speculation" on this issue and this can not always be helpful, especially when one considers the other alternatives, such as further European integration.

The flame behind the smoke: There is, of course, cause for concern. United States military personnel have for a long time been disappointed in the inabilities of their allies to keep pace and with the lack of political will to give the required financial commitments. Despite treaty obligations, NATO members have consistently failed to match the 2 per cent of GDP spending commitment required, resulting in an ever deepening gulf between US capabilities, and European ones.

However, the 'special relationship' between the UK and United States is strongest behind the scenes, in the field of intelligence. Here, the UK offers the US a partner par excellence and one that Brussels is jealous of – the European Parliament has already investigated the relationship in 2001, with suspicions that the UK is helping the US spy on Europe, and that this undermined the UK's Treaty commitments in relation to Articles 11 and 12 of the (then) Treaty on European Union, to enhance political solidarity. The amusing thing about this is the comparison with the views of Dr Robert Niblett, who gave evidence to the Foreign Affairs committee, who argued that, once the US did indeed fear a united Europe could undermine the United States, but, having seen how Europe runs, now has no such fears!

Digging for the truth: Closer analysis of the files released by Wikileaks shows that the real subject of investigation should be the quality of the journalism, and not the quality of the UK's relationship with the US.

Regarding allegations of the US spying on the Foreign Office, closer examination reveals that actually the US officials simply reported that Ivan Lewis, Junior Foreign Office Minister in 2009, was a bully with tendencies to be happy one day, and depressed the next. Such information is undoubtedly useful when working with a partner, because you can understand more about where they are coming from, why they do certain things, and not to be offended when someone's mood changes suddenly. And the information was gathered from chatting with FCO officials, not by spying on people in undercover operations.

And when it comes to the 'shocking' news that the US is using British nuclear secrets to bargain with the Russians, again closer examination blows a hole through any doubts that the US and UK don't work well together.

Some defence analysts were drafted in to comment on the story, claiming that with the US transferring serial numbers of missiles to the Russians, over time, the Russians could understand the size of the British nuclear arsenal, and that of course would undermine official policy of not stating exactly how large it is.

A number of points quickly arise here: firstly, William Hague himself publicly stated we have "up to 160" nuclear missiles. Secondly, if the Russian intelligence agencies don't already know that information, then they are really doing a poor job. Thirdly, we should look at what Washington originally asked, and how they responded to Whitehall's refusal. The original request was to give Russia much more detailed information, and when London refused, Washington did not betray us, but rather obeyed and did not hand over the information. Only serial numbers of missiles manufactured in the US were given.

And why were these given? Because missiles manufactured in the US can have a dual purpose – they can go to allies, like the United Kingdom, or for US-national security uses. So in the interest of transparency with Russia, and in the interests of moving towards a nuclear free world, the US was obliged to give notification of where missiles it was making were going. Refusing this would leave Russia wondering if the missile was being secretly deployed in the US, or being sold abroad.

And finally, if the UK really does not want to be in such a position, then the UK should stop buying American. That would leave us with the option of doing it ourselves, doing it in collaboration with the EU, or buying Russian or Chinese.

The last two options are obviously non-starters, and when one considers the technological inferiority, the economic problems and political opposition that an EU nuclear weapons project would meet, the European option also becomes a non-starter.

Where do our interests lie? The UK should re-evaluate carefully our obligations and where our interest does lie. Being part of an integrating Europe that has ambitions to rival the United States can not sit happily with deeply integrated UK-US intelligence networks. And let us remember what our obligations, under the Lisbon Treaty's 'Treaty on European Union', are.

The UK is committed to taking no actions that could hinder the EU's attainment of its objectives (Title 1, Article 4). Under Articles 24 and 32, Member States are to converge their actions and support the European Union's actions, and are under instruction to show mutual political solidarity and refrain from anything that is contrary to the EU's interests.

If the UK believes it can walk the thin line and be best friends of the United States and of Europe, then the Treaty says otherwise. Member States are to aim for a convergence of policies (Article 24.2), because the EU is 100% aiming for a common defence (when the European Council decides unanimously (article 42.2). And Member States are also to make their military capabilities available for EU usage (42.3), meaning the dissemination of secrets and technology across Europe.

The EU is committed to developing a secure area and can make deals with third, neighbouring, states, that the UK would have to acknowledge (Article 8). This could see deals made with Russia, for example, that contradict and compromise US aims.

Essentially, the EU's competences cover all areas of Foreign and Security Policy now (Article 24) and as such the UK finds itself increasingly compromised as a trustworthy and solidly staunch ally of the United States. Leaving things as they are, the UK will find that the US has no choice other than to walk away, because of the baggage our European 'family' will be bringing. That day will be a great loss for the UK, the US and for the world.

A Revolutionary Clause? Three Schools of Thought on Clause 18

Ben Elliott

The European Union Bill commences the final stages of the Parliamentary process on 8 March 2011. It will enforce referenda for future transferrals of power to the EU and restructures the UK's election of MEPs. However, potentially the most fundamental constitutional consequences will derive from the final and shortest part of the bill, Clause 18, the Government–designated 'sovereignty clause'.

"It is only by virtue of an Act of Parliament that directly applicable or directly effective EU law (that is, the rights, powers, liabilities, obligations, restrictions, remedies and procedures referred to in section 2(1) of the European Communities Act 1972) falls to be recognised and available in law in the United Kingdom." [1]

There are three major interpretations and predictions which have been imposed on this section concerning its constitutional and legal consequences:

(1) Belief that the clause merely reaffirms the existing balance of constitutional authority between Parliament, the EU and the Judiciary.

(2) The possibility that Clause 18 may impose a statutory restraint on the Judiciary's authority to implement and enforce EU law before the UK courts.

(3) Concerns over the autonomy the clause may confer upon the Judiciary as the authorised arbiters of the UK's Constitution. [2]

1. Reaffirming the Constitutional Balance

The Government stance on Clause 18 is that it is merely declaratory and recognises the legal relationship between the UK Parliament and EU institutions. The Sovereignty of Parliament is a, if not the, central principle in the UK's uncodified constitution. In its classic Diceyan definition "no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament".[3] Such bodies include not only UK institutions but also international organisations, such as the EU. Therefore, the UK courts have consistently assumed a 'dualist' approach to international law: "A treaty", Lord Griffiths explained in Rayner v Department of Trade and Industry "is not part of English law unless and until it has been incorporated into the law by legislation". [4] Therefore, "until they are embodied in laws enacted by Parliament" Lord Denning stated in Blackburn v Attorney–general the UK courts "take no notice of treaties."[5] On this basis, the EU Treaties, originally the Treaty of Rome but later the Treaties of Maastricht and Lisbon, require a medium of incorporation before their provisions can enter UK law and be applied by the national courts.

Such an outlook contrasts with a number of other EU Member States and happens to be directly contradictory to the perspective of the European institutions themselves. 'Monist' states, such as the Netherlands, have constitutions with provision that international law is automatically incorporated into that country's legal system without any necessary action by the national legislature. Therefore, the signing of a treaty is the act which allows its provisions to be applied by national courts.

European institutions have adopted the same outlook since the earliest days of the Community. In the one of its formative cases, Costa v ENEL, the Court of Justice of the European Union (ECJ) held that when Member States signed the treaties, European law "became an integral part of the legal systems of the member states which their courts are bound to apply." [6] This occurs irrespective of each Member State's constitution because, as the ECJ declared in the case of Van Gend en Loos, those treaties created a "new legal order of international law" which achieved paramountcy "independently of the legislation of Member States." [7] Therefore, the view in Strasbourg is that EU law supersedes national provisions because of the inherent nature of that legislation, and does so without any enactment by Member States.

Such irreconcilable contradictions in legal theory were tacitly ignored by all parties when the UK joined the European Community. The Treaty of Rome was initially processed identical to any other international agreement which establishes regulations and obligations, such as NATO or the European Convention on Human Rights (the rights of which, due to the UK's 'dualist' constitution, were not enforceable before national courts until the enactment of the Human Rights Act 1998). They were signed by the government of the day exercising its royal prerogative to make international agreements. However, the laws, rights and provisions contained in the Treaty of Rome were rendered judicially enforceable by the European Communities Act 1972; section 2(1) declares that all Treaty provisions are "without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly" and section 2(4) states that all UK law "shall be construed and have effect" subject to directly effective EU law. [8]

The UK courts have consistently stated that, through this statute, Parliament voluntarily chose to limit its own ability and, therefore, sovereignty to legislate authoritatively in spheres of EU jurisdiction. [9] In the famous case of Factortame, the House of Lords understood that the Merchant Shipping Act 1988 potentially contradicted provisions of EU law and that European law therefore demanded that the Merchant Shipping

Act be suspended. However, the Diceyan articulation of the doctrine of Parliamentary supremacy does not allow any person or body to override Parliamentary legislation, even the highest court in the land. Lord Bridge's solution was to explain that section 2(4) of the European Communities Act had the same effect as if a section were incorporated into every statute passed after 1972 stating that such legislation was to be without prejudice to directly enforceable European law. [10] Consequently, it was possible to derogate from the traditional doctrine of sovereignty because Parliament itself had legislated to limit the application of the doctrine in practice. In theory, therefore, although the courts were not enforcing Parliamentary legislation which contradicted EU law, they were upholding the doctrine of Parliamentary Sovereignty because they were enforcing Parliament's intention regarding the supremacy if EU law as stated in European Communities Act 1972. "The fundamental legal basis of the United Kingdom's relationship with the EU", LJ Laws concluded in Thoburn v Sunderland City Council, "rests with the domestic, not the European, legal powers". [11]

Clause 18 of the present bill is effectively paraphrasing the Judiciary's assertions in cases such as Factortame and Thoburn by stating that it is only through the medium of an act of Parliament, the European Communities Act 1972, that EU law is recognised and available in the UK. [12] It continues to deny the legal theory applied by 'monist' states and the EU itself and reaffirms the sovereignty of Parliament in relation to EU law. This has been the interpretation of Clause 18 as asserted by many academics providing evidence to the European Scrutiny Committee, by commentators and by the Government itself. [13] As the Bill's Explanatory Notes describe, Clause 18 is only a "declaratory provision" and "does not alter the existing relationship between EU law and UK domestic law". [14]

2. Restraining the Judiciary's Application of European Legislation

However, such an interpretation is based on two assumptions. Firstly, a view that this 'sovereignty clause' reaffirms the relationship between the EU and UK legal systems assumes that the intended audience of the clause lie across the English Channel. If European judges were meant to react to the clause, such a blatant assault on the 'monist' European view would only antagonise that audience and would certainly be unlikely to undermine or encourage an alteration of that legal theory. In reality Clause 18 is intended to shape the decisions of those much closer to home, in fact those on the other side of Parliament Square.

The second assumption is that, if the clause is reaffirming an existing relationship between UK and EU law, the legal relationship articulated is that which currently exists in practice. In other words, for Clause 18 to reaffirm that EU law is enforceable due to the European Communities Act, the Judiciary must presently be enforcing EU law only to the extent that the Act sanctions.

The will of Parliament and its legislation may not be overridden or set aside, Dicey asserted, by any institution, including the UK courts themselves. In other jurisdictions courts, such as the Supreme Court in the USA, have the authority to 'strike down' legislation, but in the UK the Judiciary's role, in theory, is to declare and clarify legislation which constitutes the will of the people's democratically elected representatives. The Explanatory Notes to the bill state that Clause 18 seeks to "address concerns that the doctrine of Parliamentary sovereignty may in the future be eroded by decisions of the courts". However, in practice that erosion has already occurred and the courts have already exceeded the authority granted them by the European Communities Act.

The clearest example of this process is the UK courts' application of the doctrine of indirect effect. The European Communities Act and Clause 18 specifically state that only "directly applicable or directly effective EU law" is to be enforced by the courts. [16] Directly applicable and effective legislations include treaty articles themselves, Regulations and, if the defendant is an "emanation of the state", Directives.[17] Directives are not however directly effective or applicable against other defendants.

However, the ECJ decided in the case of Von Colson that Directives might be 'indirectly effective' if there exists relevant national legislation which might be interpreted in light of a Directive. [18] Initially the UK courts were sceptical of such an approach since such an interpretation exceeded and, therefore, contradicted the literal wording of a Parliamentary Statute. In the case of Duke v G.E.C. Reliance Ltd the House of Lords declared that they were unwilling to "distort the meaning of a British statute", in this case the Sex Discrimination Act 1975, in order to implement the 1976 Equal Treatment Directive which was not directly effective and therefore could not be legitimately enforced through the European Communities Act.

The only justification for applying the meaning of a Directive by indirect effect would be if Parliament had actually intended to implement the Directive in question. This would include instances in which Parliament had failed to fully implement the wording or meaning of a Directive (or its interpretation by the ECJ) into a statute or regulations which had specifically been intended to implement that Directive. Thus in the case of Pickstone v Freemans the House of Lords were prepared to interpret the Equal Pay (Amendment) Regulations 1983 because Parliament had intended them to implement the judgement of Commission v UK and Ireland. Furthermore, in the case of Litster v Forth Dry Dock the House of Lords were similarly willing to interpret the Transfer of Undertakings (Protection of Employment) Regulations 1981 in the light of a Directive which those Regulations had been intended to implement because in doing so the court was enforcing the "intention of Parliament". [19]

The courts were therefore acting in accordance with the doctrine of Parliamentary Sovereignty and in so doing were in practice, if not in legal theory, following the jurisprudence of the ECJ concerning the doctrine indirect effect. This precarious stance was demonstrated in the case of Finnegan v Clowney Youth Training Programme. The House of Lords were not willing to interpret the Sex Discrimination (Northern Ireland) Order 1976 in light of a 1976 Directive enacted prior to the order because there was no relationship between Parliamentary intention in passing the order and the relevant Directive: the order was worded identically to the Sex

Discrimination Act 1975 and therefore the order should be interpreted according to Parliament's intention when passing that act which could not have been to implement the 1976 Directive. [20] Therefore, throughout the 1980s the courts were still only enforcing directly effective EU legislation, as authorised by the 1972 Act, and interpreting national legislation which had been specifically intended by Parliament to implement EU law.

However, in the 1990 case of Marleasing the ECJ asserted that indirect effect could also be applied if the national legislation had been enacted prior to the enactment of the Directive itself. [21] This decision completely undermined the relationship between Parliamentary intention and the relevant Directive which the Judiciary had attempted to safeguard in the previous decade. Parliamentary sovereignty and EU law were in direct contention as neither the European Communities Act nor any other Parliamentary legislation had intended to implement EU legislation which did not have direct effect and which Parliament had not attempted to implement. The courts were soon called upon to determine such a case. In Webb v EMO Air Cargo the circumstances were identical to those in Duke v Reliance with the Claimant seeking to use the 1976 Equal treatment Directive to interpret the Sex Discrimination Act 1975. The courts had to decide whether to apply the strict doctrine of Parliamentary Supremacy and not enforce the meaning of the Directive, or to apply the European doctrine of indirect effect despite the fact that the Directive's meaning had clearly not been intended by Parliament.

The Court of Appeal stood its ground and refused to "distort" the meaning of a Parliamentary statute. However, the House of Lords examined Marleasing and, following a reference to ECJ on the interpretation of the Directive, reversed the Court of Appeal's decision and interpreted the 1975 Parliamentary legislation using the 1976 Directive. [22] The House of Lords' justification for their decision is unclear but they could not rely on Parliamentary sovereignty manifested in either the Sex Discrimination Act 1975 or the European Communities Act 1972.

The House of Lords, therefore, implemented EU legislation without Parliamentary authority. Consequently, Clause 18 of the EU Bill cannot merely be reaffirming the relationship between EU and UK legislation. The emphasis on the 1972 Act as the justification for enforcing EU law clearly cannot extend to the enforcement of non–directly effective and applicable legislation. If Parliamentary Supremacy in relation to European legislation is asserted in the clause, then this is an amendment to current judicial practice. Since the UK is a common law jurisdiction in which case law can determine legal theory, the clause is therefore also a modification of current legal theory which, for two decades, has allowed the application of indirect effect. Could it not, therefore, be only a matter of time before this application is challenged using the doctrine of Parliamentary Sovereignty stated in Clause 18? The clause, therefore, has the potential to restrain the Judiciary's implementation and enforcement of EU law and force the courts to return to the strict legal authority granted by Parliament in the European Communities Act 1972.

3. The Battle for Constitutional Sovereignty

The third interpretation of Clause 18 is that its provisions will not strengthen Parliamentary Sovereignty but rather undermine it. We live in an age in which the UK's unwritten constitution appears to be evolving at an unprecedented rate. In addition to political changes, such as devolution and the proposed reform of the electoral system, the UK Judiciary has been granted enhanced status and autonomy over the past two decades. The introduction of the Supreme Court has emphasised and enshrined the Judiciary's independence from Parliament and even the courts new name suggests an institution with jurisdiction and powers which might begin to resemble those of its American counterpart. The Human Rights Act 1998 enhanced the Judiciary's power to scrutinise and criticise Parliamentary legislation and granted judges remarkable discretion in the manner in which Human Rights may manifest and be determined to have been infringed by Parliamentary legislation. [23] The powers granted to the courts by section 2 of the European Communities Act have enabled the courts to suspend Parliamentary legislation, in the case of Factortame, and also to make declarations of incompatibility with EU law, in Regina v Secretary of State for Employment Ex parte Equal Opportunities Commission, which in effect renders the relevant Parliamentary legislation inapplicable. [24]

Meanwhile, judicial comments have grown increasingly disparaging regarding Parliament's unlimited legislative supremacy. In Jackson Lord Steyn stated that any attempt by Parliament to abolish judicial review might be struck down by the courts. Indeed, a Parliamentary attempt to limit judicial review was effectively struck down by the Judiciary in Anisminic. Moreover, Lord Steyn also stated that Parliamentary Supremacy is "a construct of the common law. The judges created this principle. If that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism". [27] In essence, Parliament is sovereign because the courts have decided that it is, and they therefore retain the authority to undermine that supremacy. Furthermore, in the same case, Lord Hope, presently Deputy President of the Supreme Court, that "the rule of law enforced by the courts is the ultimate controlling factor on which our constitution is based" and that "the courts have a part to play in defining the limits of Parliament's legislative sovereignty". "Parliamentary sovereignty" he described "is no longer, if it ever was, absolute." [28] Lord Steyn later expanded in the European Human Rights Law Review

"For my part the dicta in Jackson are likely to prevail if the government tried to tamper with the fundamental principles of our constitutional democracy, such as five–year Parliaments, the role of the ordinary courts, the rule of law, and other such fundamentals. In such exceptional cases the rule of law may trump parliamentary supremacy." [29]

It is therefore not surprising that Members of Parliament such as William Cash anxiously believe that "the sovereignty of Parliament is not much loved in legal circles". [30]

With the Judiciary apparently increasingly willing to articulate and develop concepts of Judicial Supremacy, Clause 18 could

potentially be deployed to the detriment of Parliament. Firstly, the Clause only enshrines the sovereignty of Parliament in relation to EU law. The entrenchment of Parliamentary Supremacy in other areas of law has not been specified and, by this omission, has not been safeguarded but rather rendered vulnerable.

Secondly, the Explanatory Notes assert that the Clause is "placing on a statutory footing the common law principle". David Cameron, in his letter to William Cash, stated that the term 'common law' was only used to distinguish it from statutory doctrines. [31] However, this designation of the doctrine of Parliamentary Supremacy as common law doctrine effectively reasserts Lord Steyn's declarations in Jackson and implies that the doctrine only subsists at the discretion of the Judiciary.

William Cash's attempts to amend Clause 18 to include "The Sovereignty of the United Kingdom Parliament is hereby reaffirmed" were defeated and the Explanatory Notes remain in the Bill as it approaches the final stages of enactment. Though perhaps Clause 18 is a 'sovereignty clause' in relation to EU law, it will effectively enshrine in statute the Judiciary's right to challenge Parliamentary Sovereignty and render Parliament subject to the "judicial activism" which Cash and his partisans fear. [32]

The Impending Constitutional Conflict

Therefore, it is very possible that, rather than enshrining a static state of affairs, Clause 18 of the EU Bill has the potential to be deployed on two significant constitutional battlefields. The flow of indirectly effective legislation from Brussels may be stemmed in due course by a party who dares to question the statutory basis by which a Directive may be used to interpret statutes contrary to their literal meaning. This would create a stand–off between EU legal theory which asserts that its legislation requires no incorporation to be applied by national courts, and Parliament who have enshrined 'dualist' UK constitutional principles in Clause 18. The arbiters will naturally be the Judiciary who may have to question their erstwhile uninhibited implementation of EU law without Parliament's sanction.

Alternatively, when next the Judiciary feel it is their duty to not apply Parliamentary legislation, for instance if it severely breached the Rule of Law or even an article of the Human Rights Act, they will be armed with the knowledge that Parliament itself has classified its own sovereignty as a common law principle. Since Clause 18 has failed to enshrine Parliamentary Sovereignty in statute, the judges will have the discretion as to whether they qualify that sovereignty, or make it conditional of Parliament's commitment to other constitutional principles, such as the Rule of Law.

These two debates, which may never see the light of the courtroom, are not mutually exclusive. Clause 18 simultaneously re-establishes Parliamentary Supremacy in relation to EU law, whilst undermining that sovereignty in the application of statute generally and in relation to the right of the Judiciary to interpret Parliamentary legislation – interpretation which need not be congruent to Parliament's actual intention. Certainly, Clause 18 has the potential to be deployed in the redefinition our constitution.

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European Union hypocrisy over Egyptian regime – the discrepancy between generous EU funding and demands for democratisation

Margarida Vasconcelos & Jim McConalogue

1. It is clearly not possible to deny that the European Union has historically been cooperating with autocratic rulers in the Middle East. Regimes such as that of Mubarak's in Egypt have enjoyed the EU's financial support over the past 30 years. On 11 February, following several days of protests and violence, Hosni Mubarak stepped down. In a joint statement Van Rompuy and Barroso and Ashton welcomed Mubarak's decision to stand down, calling for "an orderly and irreversible transition towards democracy and for free and fair elections" and reiterated the EU's willingness "to help with all its instruments." Moreover, they pointed out "The preservation of regional peace and stability should remain our shared priority."

2. It is crucial to ask if the EU has ever had a proper strategy on the region. The European Union has supplied extraordinary amounts of funding without any sufficient democratic measures attached. As if there were any doubts,it is now crystal clear that the EU neighbourhood policy is not working, the Barcelona Process as well as the Union for the Mediterranean has failed. It has been said that from now on any EU aid "to the democratic transformation processes" shall have strong conditions attachedand insisted upon. However, it is important to question whether the EU can really demand reforms from its southern neighbours, given its previous record. In the meantime, taxpayers' money has already been spent in projects that provided little in the way of democratic progress.

3. EU diplomatic relations with Egypt go back to the 1960s– and since then the EU has continued to develop a privileged relation with the country. The European-Egyptian partnership started in 1977, even before Mubarak came to power, and since then until 2004 a Co-operation Agreement governed their bilateral relations. Such agreement provided for economic co-operation and established provisions for non-reciprocal trade liberalisation and market access. The EU is now the largest trade partner of Egypt.

4. Within the framework of the Co-operation Agreement, from 1977 to 1995 four financial Protocols have provided EC funding for programmes and projects in Egypt for a total amount of €1.463 billion Euros.

5. In 1995, the Barcelona Process started–the Euro-Mediterranean partnership between the EU and Southern Mediterranean countries, intended to establish political, economic and social cooperation. In fact, the aim of the Barcelona Processwas to build "a space of dialogue, peace, security and shared prosperity". However the project has not achieved the expected results.

6. Within the framework of the Barcelona process, EU-Egypt relations embarked on a new phase. The EU is one of Egypt's main donors.Funding to Egypt has mainly been channelled through the MEDA programme as well as through the European Initiative for Democracy and Human Rights (EIDHR). Under the first MEDA phase (1996-1999) Egypt benefited from financial support of 686 million Euros.

7. Relations between the EU and Egypt are now governed by a legally binding treaty – an Association Agreement, which was signed in June 2001 and entered into force in June 2004. It includes provisions related to the three pillars of the Euro-Mediterranean partnership, i.e. political dialogue, trade and economic integration, and social and cultural co-operation. The aim is to promote political stability, economic development and regional cooperation.

8. As it is the case with other Association Agreements between the EU and its Mediterranean partners, the Egypt Association Agreement stresses the importance of the principles of the United Nations Charter, particularly the observance of human rights, democratic principles and economic freedom. The adherence to human rights and democratic principles is, therefore, an essential element of the Agreement. The Association Agreement established several institutional frameworks to follow its implementation, particularly the Association Council.

9. Between 2000 and 2006, Egypt received 594 million Eurosin funding from the MEDA II programme.Moreover, Egypt received €5 million from the European Initiative for Human Rights and Democracy, under which the European Commissionfunds NGOs. With the intention to upgrade the institutional capacity of the Egyptian administration, in

2005, the EU and Egypt signed the "Support to the Association Agreement" programme whereby Egypt has received another €25 million.

10. In the meantime, the European Neighbourhood Policy (ENP) was developed – and the European Neighbourhood Partnership Instrument (ENPI) replaced MEDA since 2007. Within the framework of the ENP, Egypt and the EU agreed to further develop and enhance their relationship, emphasising close cooperation on democratic reform, economic modernization, social reform, and migration issues.

11. In March 2007, the EU-Egypt Association Council adopted the EU-Egypt Action Plan under the European Neighbourhood Policy (ENP), which set out the agenda for the EU-Egypt cooperation for the next 3-5 years,within the scope of the Association Agreement and in line with Egypt's reform agenda.The implementation of the AP was supposed to be regularly assessed by sub-committees established by the Association Council.

12. The EU-Egypt ENP Action Plan has been seen as "a key element in reinforcing EU–Egypt relations, underpinning political, economic and social reform in Egypt." According to the European Commission "Fulfilmentof the commitments of the AP contributes to deepening and broadening EU-Egypt relations through closer co-operation in areas of mutual interest and through frequent political dialogue."However, the EU has been deepening and broadening its relations with Egypt and allocating more funds, even though AP's commitments have not been fulfilledby Egypt, particularly in the field of human rights and democratic reforms. On the 2007-2010 Egypt's Strategy Paper, the Commission noted "Following the commitments made in the 2002-2007 National Development Plan, hopes about democratisation were raised by the promises of politicalreform announced by President Mubarak during his 2005 Presidential campaign" but "the first-ever multi-candidate Presidential elections suffered from serious restrictions and, since then, progress on delivering the promised reforms has been slow."

13. The Action Plan proposed several reforms intend to tackle several issues such as: low participation in political life, the exclusion of certain political parties, lack of recognition of civil and political rights, centralisation of powers, continuation of the emergency law, lack of independence of the judiciary as well as of the media. The Action Plan called, therefore, for enhanced political dialogue and support for Egypt's political and judicial reforms.

14. The funding instrument to support the implementation of the Action Plan is the European Neighbourhood and Partnership Instrument. The European Commission earmarked a €558 million financial assistance package for Egypt for 2007 to 2010, in order to support three priorities: political reform and good governance, competitiveness and productivity of the economy, socio-economic sustainability of the development process. These priorities were decided jointly with the Egyptian authorities and the funds are channelled through government bodies. According to the Commission "This demonstrates the EU's commitment to support Egypt in its national priorities and reforms."

15. The Commission has allocated around €39 million for "Supporting reforms in the areas of democracy, human rights, good governance and justice" for 2007–2010, which corresponds to 7 per cent of the total amount allocated to Egypt for this period. The Commission has developed three programs to support the Egyptian Government's "efforts" in this area: Support for political development, decentralisation and promotion of good governance(€12 million), Promotion and protection of human rights (€17 million) and Support for modernisation of administration of justice and enhancement of security (€10 million to support the Ministry of Justice).

16. According to the EU-Egypt Association Council, which met last April "Progress in the strengthening of EU-Egypt relations in the last year has been significant and wide-ranging." It was stressed, "The EU reiterates that enhanced relations are to be based on the full implementation of the Action Plan. In this context, further progress in areas related tohuman rights and democracywill be fundamental." The Egypt Strategy paper underwent a mid-term review in 2009 where it was concluded that the "overall progress on implementation of reforms in Egypt can so far be summarised as limited but encouraging, with a stronger commitment to economic reforms, increasingly to social reforms, and to a lesser extent to political reforms."

17. For the period 2011-2013, the bilateral ENPI budget allocation for Egypt has been proposed at €449.29 million, which represents an average of €149.76 million per annum. According to the Commission "This is in line with Egypt's commitment to advancing the implementation of the AP, as well as its demonstrated capacity to effectively absorb ENPI funds." As it has happened with the previous programme, the allocation of funds is divided between the three priorities: Supporting Egypt's reforms in the areas of democracy, human rights, good governance and justice (11.1%), Developing the competitiveness and productivity of the Egyptian economy (42.2%), and Ensuring the sustainability of the development process with effective social, economic and environmental policies and better management of natural resources (46.7%).

18. The European Commission has earmarked €50 millionsfor supporting reforms in the areas of democracy,

human rights, good governance and justice. However, it is important to mention that, according to the Commission the programmes funded during2007-2010 "have not yet produced definitive results." Brussels will continue to fund the same three subpriorities during 2011-2013: Support for political development, decentralisation and promotion of good Governance (€5 million), Promotion and protection of human rights (€15 million), Support for modernisation of administration of justice (€10 million), and Upgrading of regulatory, institutional and legislative environment (€20 million).

19. Attention must also be paid Egypt's active participation in the Euro med ministerial conferences in various fields. The Euro-Mediterranean Parliamentary Assembly (EMPA) was established in December 2003 by decision of the Ministerial Conference of the Euro-Mediterranean Partnership. Its first Bureau comprised the Presidents of the Egyptian People's Assembly, the European Parliament, the Tunisian Chamber of Deputies and the Greek Parliament.The EMPA firstsession was held in Cairo, in March 2005. Moreover, Egypt has played an important role for the creation of the Union for the Mediterranean. The Union for the Mediterranean was officially launched at the Paris summit in July 2008. It was decided that it has co-Presidency from the EU (EU presidency and the European Commission in the external representation ofthe EU) and one from a Mediterranean country (chosen by consensus for a non-renewable period of two years). The co-presidency applies to summits, annual Foreign Ministers' meetings, sectoral Ministerial meetings, senior officials and Joint Permanent Committee meetings. Unsurprisingly, HosniMubaraktogether withNicolas Sarkozytook on the role of Co-President of the Union for the Mediterranean.

20. EU Member States may have different interests in Egypt but all of them have interest in an Egypt free from political troubles. Obviously, there are concerns over what regime will emerge in Egypt, what impact it might have on Middle East peace process as well as how committed it would be to the peace treaty with Israel.

21. The European Council in its recent declaration stressed that "The basis for the EU's relationship with Egypt must be the principles set out in the Association Agreement and the commitments made." Moreover, the EU leaders "emphasised that the citizens' democratic aspirations should be addressed through dialogue and political reform with full respect to human rights and fundamental freedoms, and through free and fair elections."

22. When the Barcelona Process started in 1995 and the EU started signing Association Agreements it made the adherence to human rights and democratic principles an essential element of such agreements. The EU attached fundamental conditions such as human rights and governance reforms to its support for projects and funding. This has failed.The EU has introduced several explicit conditionality elements into its policy towards Egypt, which have been incoherently applied. The Egyptian government has never fulfilledits commitments to political reform. The European Commission reports have mentioned the slow progress and the reluctance of the Egyptian government to commit to serious political reforms, there was little progress with regards to democracy, human rights and the independence of the judiciary. The EU and its provision of funds therefore had a worryingly minimal impact on Egyptian political reforms. The conditioning economic aid to political reform has been, therefore, unsatisfactory. It seems that the EU has made conditionality negotiable.

23. The EU focal point on Egypt has not been political reform but economic cooperation, security and stability in the region. In fact, Egypt has a major role in the Middle East Peace Process and in promoting stability of the region. The EU's border monitoring presence at Rafah has also been facilitated by Egypt. However, as John Bolton has said "But everyone will remember that we treated the autocratic Mubarak like a used Kleenex, at a potentially huge cost to us, Israel, friendly Arab regimes and other "allies" globally."

24. According to the Foreign Affairs Council's conclusions from 21 February "on Developments in the Southern Neighbourhood", "The Council is committed to a new partnership involving more effective support to those countries in the Southern Neighbourhood which are pursuing political and economic reforms…" The Council is also "committed to respond to democratic transformation processes with specific political initiatives and support packages, building on existing and relevant programmes." Moreover, it reiterated "the need for a comprehensive approach across all fields of EU engagement building upon the European Neighbourhood Policy and the Union for the Mediterranean with a view to lending more effective support reflecting partners' commitment for reform."

25. But one could ask has the EU ever had a proper strategy on the region? As if there were any doubts,it is now crystal clear that the EU neighbourhood policy is not working, the Barcelona Process as well as the Union for the Mediterranean has failed. It has been said that from now on any EU aid "to the democratic transformation processes" shall have strong conditions attachedand insisted upon. However, there is no proper basis upon which the Government can assume that the EU can really demand reforms from its southern neighbours. The previous record of the European Union is deeply unsatisfactory. In the meantime taxpayers' money has already been spent on projects that provided very little in the way of democratic rewards.

United Kingdom Parliamentary Sovereignty Bill

A

B I L L

TO

Reaffirm the sovereignty of the United Kingdom Parliament; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Sovereignty of Parliament

The sovereignty of the United Kingdom Parliament is hereby reaffirmed.

2 Treaties

No Minister of the Crown shall sign, ratify or implement any treaty or law, whether by virtue of the prerogative powers of the Crown or under any statutory authority, which—

(a) is inconsistent with this Act; or

(b) increases the functions of the European Union affecting the United Kingdom without requiring it to be approved in a referendum of the electorate in the United Kingdom.

3 Judicial notice

This Act shall have effect and shall be construed as having effect and deemed at all times to have had effect by the courts of the United Kingdom notwithstanding—

(a) the European Communities Act 1972;

(b) any exercise of, or rule of prerogative, or rule of international law; and

(c) any Act of Parliament, whenever enacted, unless in that Act it is expressly stated that, subject to a referendum under section 4, it is to have effect without regard to the United Kingdom Parliamentary Sovereignty Act 2010.

4 Royal Assent

Her Majesty the Queen shall not signify her Royal Assent to any Bill which contravenes this Act or to any future Bill amending this Act or which purports so to do except and until the Bill, having been approved by both Houses of Parliament, has also been approved in a referendum of the electorate in the United Kingdom pursuant to an Act of the United Kingdom Parliament.

5 Short title

This Act may be cited as the United Kingdom Parliamentary Sovereignty Act 2010.

Presented by Mr William Cash,
supported by
Mr John Redwood, Mr Peter Lilley,
Mr David Heathcoat-Amory,
Mr Edward Leigh, Mr Bernard Jenkin,
Mr Graham Brady, Sir Peter Tapsell,
Mr Richard Shepherd, Mr Christopher Chope,
Mr John Whittingdale and Mr Brain Binley.

Remember this proposed Bill?

The Sovereignty Act that never was

European Court of Justice ruling means burdens for insurance industry and high consumer costs

Margarida Vasconcelos

Following the Court's own principle that the Treaties cannot be strictly interpreted but taking into account the state of integration and its objectives, it has enabled the Community to expand its competences. It is noteworthy that the Treaties as well as secondary EU legislation has been amended to incorporate ECJ's rulings. The present case is not an exception, but another example of the ECJ interference in member states legal systems, and overriding national rules.

The European Court of Justice recently delivered its ruling in the Test-Achats case (C-236/09) concerning the validity of Article 5(2) of a Council Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services. The reference has been made by the Belgian Constitutional Court in proceedings brought by the Association belge des Consommateurs Test-Achats ASBL, against the Belgian Council of Ministers for annulment of the law which transposes that Directive. Belgian Law makes use of Article 5 (2) derogation for life insurances, which according to the applicants is contrary to the principle of equality between men and women. Consequently, the Belgian Constitutional Court asked the ECJ whether taking the sex of the insured person into account as a risk factor on the formulation of private insurance contracts is compatible with the principle of equal treatment for men and women. The ECJ ruled that insurance companies cannot use gender as a risk factor in insurance contracts, as it held that the derogation is invalid.

The 2004 Council Directive prohibits direct and indirect discrimination based on sex in access to and supply of goods and services. Article 5 (1) of the Directive reads "Member States shall ensure that in all new contracts concluded after 21 December 2007 at the latest, the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits." Hence, in principle, the Directive forbids the use of gender as a factor in the calculation of insurance premiums. Nevertheless, Member States have the right to derogate from the principle of equal treatment with regard to insurance contracts. Article 5 (2) provides "Notwithstanding paragraph 1, Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data." Member States were, therefore, allowed, from 21 December 2007, to derogate from the general rule of unisex premiums and benefits, providing that they can "ensure that accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated." Under this provision, Member States are required to review their decision to make use of the derogation five years after 21 December 2007, thus on 21 December 2012.

All Member States have applied this derogation for insurers. Consequently, the insurance industry has been benefiting from this exemption, being allowed to use statistics to set different premium rates for men and women.

The ECJ recalled that "Equality between men and women is a fundamental principle of the European Union" and that "Articles 21 and 23 of the Charter of Fundamental Rights of the European Union … prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas." Hence, the ECJ has assessed the validity of Article 5(2) in the light of these provisions.

The Directive has not provided any expiration date for the derogation. According to the Court "there is a risk that EU law may permit the derogation from the equal treatment of men and women, provided for in Article 5(2) of Directive 2004/113, to persist indefinitely."

The Court held that "Such a provision, which enables the Member States in question to maintain without temporal limitation an exemption from the rule of unisex premiums and benefits, works against the achievement of the objective of equal treatment between men and women, which is the purpose of Directive 2004/113, and is incompatible with Articles 21 and 23 of the Charter." As a result, the Court ruled "Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services is invalid with effect from 21 December 2012." Hence, from 2012, insurers would be no longer able to take a person's gender into account when pricing insurance. There can be, therefore, no difference in insurance premiums and benefits for women and men.

Taking into account that all member states allowed insurers to use sex as a risk-rating factor for life insurance and annuities, obviously, such ruling will have an impact in the insurance industry, and obviously on the consumer. As the Association of British Insurers stressed "insurers will have to make large scale changes including amending all affected policy documentation; contacting customers with new information; updating and changing computer systems; ensuring insurance brokers have the right pricing information; adjusting insurance renewals and updating all sales material." Obviously, this would entail further costs for the industry.

On the other hand, as Michaela Koller, director-general of the European insurance and reinsurance federation (CEA), said the ruling "is bad news for insurance customers." The Association of British Insurers pointed out that premiums paid by under 25 women for motor insurance could increase by 25% and women life insurance could increase by 20%. According to Maggie Craig, ABI's Acting Director General "The judgment ignores the fact that taking a person's gender into account, where relevant to the risk, enables men and women alike to get a more accurate price for their insurance."

The EU Justice Commissioner Viviane Reding stressed that the ruling "underlines the power and importance of our Charter of Fundamental Rights." It is important to recall that the UK has a Protocol on the Application of the Charter, which David Miliband has explained to European Scrutiny Committee is not an opt out from the Charter but "it is a statement of how the Charter provisions will apply in the UK." Moreover, he said "the Charter provides no greater rights than are already provided for in UK law, and that nothing in the Charter extends the ability of any court to strike down UK law". This Protocol states that the UK courts or the Court of Justice may not declare UK law incompatible with the Charter. However, the preamble to the Protocol states "(…) that this Protocol is without prejudice to other obligations devolving upon … the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally." So, the Protocol will not prevent the UK Courts of being bound by the ECJ interpretations of EU law measures based on the Charter. The UK courts are compelled to follow an ECJ ruling interpreting a measure of EU law in a case arising in another Member State. The UK will be bound by the Court of Justice rulings if it interprets Union law as implemented in other Member States in conditions where the same law is also implemented in the UK. The UK courts will not be able to ignore ECJ rulings when considering the interpretation and validity of UK law implementing Union law.

The present case is an example of the ECJ interpreting and assessing the validity of EU law according to the Charter. The ECJ has assessed the validity of Article 5(2) in the light of the Charter provisions, and ruled that the provisions is invalid, hence any Member State's court has to consider this provision invalid. The Commission is very likely to put forward a proposal amending the directive "to rectify the situation."

The UK courts are bound by this ruling, for the reason of the UK obligations under the Treaties and "Union law generally." For this reason, the ESC said that "the only way of ensuring that the Charter does not affect UK law in any way is to make clear (…) that the Protocol takes effect "notwithstanding the Treaties or Union law generally." However, such a provision has not been inserted in the Protocol, with serious consequences for the UK.

Keys to the City of London handed over to the European Union

Syed Kamall MEP

The bankers and fund managers in the City of London have been the perfect scapegoat for politicians wanting to avoid responsibility for the credit crunch and subsequent recession. Never mind that it was the politicians (principally Gordon Brown and Ed Balls) who put in place the tripartite supervisory framework for the City, who let the Bank of England grow the money supply without reaffirming their inflation target, and who ran up a structural Budget deficit which has left the current UK Chancellor having to tread an extremely thin line between restoring fiscal balance and choking back too sharply on public expenditure, and without much room at all to cut tax to promote enterprise.

Having made a scapegoat of the City - and with no willpower to establish a new regulatory framework which would eliminate the moral hazard of banks being too big to fail - the last Labour Government quietly handed over the keys to the City to the European Union. At a crucial summit in June 2009, the UK Government's sovereignty over the regulation of banking and financial services was removed, as EU Member States agreed to establish three new European supervisory bodies (ESAs) for financial services and markets.

In January the new authorities started operations, and it is only now that many in the City are waking up to the fact that their new masters no longer even reside in London. The Chairmanships of all the new authorities have gone to non-British nationals with little or no experience of the working environment of the City. Although at this point the new agencies are small and fledgling, their governance framework gives equal weight to all EU members, despite almost all the major European financial transactions taking place in London.

The ESAs will be able to investigate any type of financial institution, product or activity to assess what risks they believe they could pose to a financial market. They will be able to impose legally-binding supervisory decisions directly on financial institutions and issue instructions to national banking supervisors. A raft of new legislation is now being passed by the EU giving ESAs the powers to temporarily prohibit or restrict what they deem to be harmful financial activities or products. ESAs will also have the power to ask the Commission to introduce legislative acts to prohibit such activities or products permanently.

I sit on the Economic and Monetary Affairs Committee where much of this new legislation is being debated. From my experience as Shadow Rapporteur on the Hedge Funds Directive last year, I have been left in no doubt that the motivation of the continental legislators is resentment of the success of London. They have no idea what the conditions need to be for a financial marketplace to prosper.

This year we face a barrage of new legislation, justified by the Commission as necessary to ensure pan-European supervision of pan-European economic activity. In the spirit of politicians blaming bankers for their own failings, they are currently pushing through a new regulation on short selling and credit default swaps. The French Green MEP taking the lead on this dossier in Parliament wants a full ban on uncovered sovereign CDS and even wanted to extend this to corporate bonds. Little thought is given to the consequences of such measures - such as fewer cross border investments as investors can no longer cover their positions by short selling sovereign debt.

A raft of further measures, from the regulation of custodial banks to investor compensation schemes, deposit guarantee schemes and insurance guarantee schemes, are being introduced in a cavalier fashion. Their proposals reveal ignorance on the part of the bureaucrats writing the new rules of how different industries work, and their attitudes to risk.

Already a new Directive on market infrastructure – which may turn out to favour the Deutche Bourse damaging the pan European trading platforms of London's LCH Clearnet - is being rushed through. Further rules on derivatives trading are planned in the new Market Abuse Directive. A review of the Markets in Financial Instruments Directive is also imminent. No-one in the UK is lobbying me on these matters because they probably have not spotted the threats yet. It is almost as if the Commission wants to get all these new laws introduced before London wakes up to what is going on in Brussels.

The powers of the European Supervisory Authorities will grow over time. A provision has been made for their powers to be reviewed every three years. Some might say that these new rules and institutions are too far removed from people's real lives for them to have any impact. I profoundly disagree. If you do not have right the financial tools to fund a business, a government deficit, or a cross border trade, then you stop wealth creation in its tracks.

It is very easy for continental European politicians to bash finance and tie it up in red tape, but representatives of the UK in EU have a responsibility to defend finance as this a crucial UK industry in the same way German politicians defend its car manufacturing or France defends its farming and agriculture. We must be bold in our defence of the City.

The City is now being heavily regulated by people who do not appear to understand how wealth creation is financed. This is a turning point for capitalism in Europe. Unless we stop this over-regulation, global financial corporations will venture east in search of freer markets.

Which way forward for EU digital data protection policy?

Daniel Hamilton and Dominique Lazanski

Following the entering into law of the Lisbon Treaty on 1st December 2009, the European Parliament gained key competences in the field of intellectual property and data protection laws - namely, Article 16(2) of the Treaty on the Functioning of the European Union (TFEU). Like any child with a new toy, MEPs have indicated that they are more than willing to play with these powers – to both affect legislative change and to demonstrate their worth as politicians to a European populous that grows more and more concerned with data security issues by the day.

Arguably, the most notable example of the European Parliament's new-found focus on privacy issues was the rejection of the SWIFT agreement in February 2010 which would have allowed the EU citizens' bank data to be shared, without reciprocity, with the United States government. While five months later the bulk of the original agreement found its way into law as the rebranded Terrorist Finance Tracking Program (TFTP), the Parliament was able to win key concessions which prevented the mass transfer of financial data to the US.

While far from perfect, the European Parliament's perceived success in relation to SWIFT has given rise to demands for a new EU approach to data protection. Mindful of this, on November 4th 2010 the European Commission outlined its intention to conduct the first overhaul of EU data protection policies since 1995 – a year when less than third of European citizens owned a computer and fewer than one in 20 used the internet on a regular basis.

The 1995 Data Protection Directive put forth two important ideas on personal data, namely, that individuals have rights and freedoms especially associated with personal data protection and that there should be free flow of personal data within the common market. The consultation today, which is designed to provide a new framework for the 'digital age', intends to provide a framework for dealing with new technologies and the realities of globalisation.

At Big Brother Watch, we campaign to fight intrusions on privacy and protect liberties – two considerations the European Commission must take into account when fashioning their new data protection framework.

At the heart of this conviction is the belief that individuals should have all rights to their personal data. As such, we would encourage the Commission to move towards a system by which individuals should 'opt-in' to sharing their personal data rather than the present situation where websites and data protection controllers the default position is to force consumers to 'opt out'. At present, far too many members of the public are simply unaware of how their personal information is shared. Forcing people to 'opt in' would end this problematic situation.

Indeed, the Commission has some prior experience in this field. In the previous Commission, Consumer Protection Commissioner Kuneva outlawed the use of pre-selected boxes on airline websites. Before the ban on websites 'pre-selecting' boxes, many airlines were able to hoodwink their customers into purchasing insurance products or "speedy boarding" products without their prior knowledge. The same principle should be applied to personal data.

The issue of transparency must also key to the Commission's considerations when it comes to fashioning a new framework for data protection. Transparency is the key to any industry where consumers are adopting new technologies wholesale. In order to ensure this important consideration is taken into account while also guaranteeing that firms are not strangled by Brussels bureaucracy, online industries should be encouraged to innovate and find new ways to inform customers of their data collection. This

could happen in a variety of ways including proactive instruction and education by companies, for consumers, on how to protect personal privacy.

According to figures published by the Dutch government, the identity of each of the country's citizens appears on an average of 1,500 databases. While perhaps a pipe-dream, Big Brother Watch supports the 'right to be forgotten'. It can only be right that an individual can require their personal data to either 'expire' and be removed from a computer system or be removed from an online service at a time of their choosing.

From our experience, consumers can often find the process of removing their data from websites such as the UK-based 192.com telephone directory service frustrating and complicated. The Commission should encourage, as an example of 'best practice', websites storing data to display information about how to 'opt out' from their databases in a prominent position on their web pages.

When conducting a wide-ranging review of any piece of legislation, it is vital that a government – or, in this case, the European Commission – do their best to educate citizens about the workings of such a law. As such, any new approach to data protection must take into account recommendations from the Article 29 working group of Member State data protection watchdogs as to how consumers can be better informed of how their data will be stored, used and propagated at the time of submission such as notifications on data capture forms, the aforementioned ban on the 'pre-selection' of tick boxes etc.

Such an approach need not – and should not – require the use of any European taxpayers' money to fund such campaigns. Rather, companies and individual data controllers should be encouraged to take on such obligations on a voluntary basis and in the spirit of good will and best practice.

In the European Parliament, there are increasing calls for the harmonisation of data protection laws across the EU's twenty-seven Member States. Big Brother Watch, while hugely sympathetic to calls for increased Europe-wide attention to this issue, does not believe supranational law-making is the most effective way to achieve this.

The responsibility to uphold industrial standards in the field of data protection should stem from industry itself, with groups companies whose business is data delivery and data management meeting regularly to debate best practices in terms of data standards and delivery worldwide. The Commission, working with the European Parliament, should continue to play an active role as a stakeholder in this field; sharing best practice and maintaining an ongoing dialogue with the business community about data protection issues.

While different laws apply in different territories, it should be the agreement of the companies involved and not the EU to clarify rules across territories. The music and film industries both operate under similar disconnected rules across territories within the EU and internationally, however, music companies and musicians are meeting and seeking better agreement on how to license and manage music across the world. Data companies should be encouraged to do the same first and then resort to the EU for rules clarification as a last resort.

Big Brother Watch recognizes the European Union's existing competences in relation to the "area of freedom, security and justice". As civil libertarians, we are, of course, concerned about the use and potential mis-use of personal data in the name of anti-terrorism or public safety and would thus encourage careful consideration of personal data in criminal cases and across country borders. In cases where a Member State has significant concerns about a) standards of data protection or b) the judicial integrity of another Member State, a respective national minister should be able to place either a block or conditions on the transfer of sensitive information.

Data protection is of the utmost importance to an individual and it is the individual's responsibility to be aware, informed, and in control of their own data. It is also the responsibility of the data collection and other related industries to manage and deal with data in a way that protects consumers and their rights.

Through its decision-making procedures, the European Union has proved itself hugely effective in only one field: increasing the bureaucratic burden on businesses. As such, the European Commission must prove itself able to listen to solutions from the data protection industry itself first and resort to new legislative measures only as a last resort

In Europe, two positives make a negative

How our European freedoms threaten British jobs

Roger Helmer MEP

After eleven years in the European parliament, I rarely come across an entirely new insight into the European process. But I was brought up sharp by a question posed by a sixth-former at Leicester Grammar School.

We were having a debate on February 11th, on the motion "This House believes that the benefits of EU membership outweigh the costs". Speaking for the motion, Lib-Dem MEP Bill Newton Dunn laid great emphasis on the benefits of free movement within the EU. All these young people, he said, would be able to look for jobs and careers not only in the UK, but in 26 other member-states as well.

Of course apologists for the EU always like to point up the benefits of free movement. Young people can study in Strasbourg, Salzburg or Stockholm; Madrid or Milan or Munich. And equally they can work across the EU.

These things are certainly true. But British students also go to Canada and California, to Singapore and Sydney, and last time I checked the trend was for a higher proportion of students going to study overseas to look outside the EU. And on employment, I like to cite my own experience. I've worked in the USA, and in Thailand, Hong Kong, Malaysia, Singapore and Korea, and I never found any difficulty being outside the EU. We live in an increasingly globalised world, and we should not be limited to the EU. As the Norwegian NO Campaign slogan put it, "Europe is too small for us".

Nevertheless, the right of free movement in the EU is generally presented as a plus. And another positive is the increasing hegemony of the English language, which has become the de facto lingua franca of Europe (and much of the world). When I first got to Brussels in 1999, the screens around the parliament building were in French, and spoke of "Séances" and "Réunions". Then after the election of 2004, quietly and with no fanfare, the language changed to English, with Sittings and Meetings. It was a while before I noticed it.

In my eleven years in the parliament I have only once or twice been in a situation where I felt at all limited by language. English has become the second-language of choice for the great majority of continentals. After all if you're born Danish or Finnish or Latvian, you would have serious difficulty travelling without English. The accession of the Eastern Europeans seems to have given a further boost to English.

So on the face of it, two positives. Two hits for British citizens. The right to free movement and job mobility, plus the dominance of our native tongue.

It took a highly perceptive question from the audience to highlight the snag. If most Europeans speak English, then they are well-placed to apply for a job in the UK -- whether as a software engineer, as a doctor, or merely as a waiter. And as EU citizens they are free to do so. Meantime a Brit can only realistically apply for a job in France if he speaks French. And even leaving aside the legendary English reluctance to learn languages, it's unlikely that our English applicant would be fluent in more than one or two languages. If he spoke both French and German, he'd still have access to less than half the EU, whereas at home in England he could face competition for jobs from right across the EU.

The UK could thus become, for linguistic reasons, a magnet for job applicants from across the EU, in a way which would apply to no other single EU member-state. And English job applicants will therefore face much tougher competition in their home jobs market than would otherwise be the case.

The sixth-former set out this idea, and asked "Isn't it so?". Bill Newton Dunn hedged around the question defensively -- I suspect that, like me, he'd never thought about it before. But I said "That's a remarkably perceptive question, and the answer is "YES".

Oh, and in case you were wondering, the Noes won the debate.

The European Parliament comes of age

Charles Tannock MEP

It's time the British public and the media took MEPs and the European Parliament more seriously. I should qualify that remark by saying that I am well aware of the tendency of politicians of all shapes and sizes to assume an exaggerated sense of their own importance. However, my plea is not motivated by personal aggrandisement but by the need to project British national interest. On any objective measure there is no doubting that MEPs' political responsibility has increased markedly in the past 20 years since the Maastricht treaty, when co-decision between parliament and Council was introduced, and particularly so since the Lisbon treaty came into force in December 2009, when its powers were extended. Certainly in almost twelve years as an MEP I have noticed far greater interest in and coverage of my work by my London constituents and the media, although ironically foreign media are often more interested in my work than British journalists.

Many Britons, and particularly those opposed to the UK's membership of the EU, tend to deny the political importance of the European Parliament. They do so for many reasons. In our political system it is assumed that Westminster is the place to be for an ambitious politician, so much so that at the last European election three Conservative MEPs stood down to seek election – all successfully – to the green benches. I am often asked when I am going to make the same switch, as though the European Parliament is simply a staging post for a real political career. I usually take such comments as a compliment from well-wishers!

Some Eurosceptics have a natural visceral dislike of all things EU-related, which makes them dismiss the European Parliament as yet another EU institution that must be exclusively full of dangerous federalists (although being elected by proportional representation it has all shades of opinion and plenty of secessionists, ranging from the democratic wing typified by UKIP to unpleasant extremist communist and fascist parties).

Others denounce it as an irrelevant talking shop because they do not know or prefer to deny that up to two-thirds of UK domestic legislation originates in Brussels and 95 per cent of proposed EU legislation is subject to amendment or even rejection by the European Parliament. Others still deny the European Parliament's significance precisely because they know that it accounts for so much UK legislation, but would rather not know.

This mentality is compounded by the British media, which prefers to maintain the fiction that all powers and influence are located in the Westminster village because such a notion simplifies the narrative and power of the lobby. However, somewhat unbelievably none of the British tabloids bother to maintain journalists in Brussels to cover the work of the EU, relying instead on rumour and hearsay to churn out their anti-EU copy. Most broadsheets, on the other hand, do have staffers or stringers in Brussels but they are extremely stretched by the workload of covering the gamut of EU affairs.

For as long as the UK remains a member of the EU, belittling the institutional role of the European Parliament and the political role of MEPs is a profoundly counter-productive strategy. Equally, it is useless for MPs to bemoan the loss of sovereignty entailed by our membership of the EU because ultimately Westminster is a sovereign parliament in a way that the European Parliament is not, and never will be.

The decision to withdraw Britain from the EU could only ever be taken by the UK parliament (although in reality there would undoubtedly be the need for prior confirmation by a national referendum). Only MPs have the absolute right to amend or repeal UK legislation related to our membership of the EU. MEPs have no legal say whatsoever on the fundamental issue of whether Britain is or is not a member of the EU, a somewhat ironic situation for UKIP given that the party's only elected parliamentarians and entire leadership sit in a legislature whose raison d'être they reject.

Whatever one thinks of the Lisbon treaty, it has increased the legislative powers of MEPs even more

than was the case under the previous Nice and Amsterdam treaties. The European Parliament is co-legislator (co-decision) with the Council of Ministers in almost all policy areas that are dealt with at EU level. The big change post-Lisbon in the past fifteen months relates to trade and agriculture, both of which are managed through common EU policies. Previously these were matters just for the Council and Commission, and subject only to an opinion of the Parliament. Now MEPs have an equal say, which means that the European Parliament can decide whether the EU embraces free trade agreements or protectionism; whether the EU reforms the Common Agricultural Policy or continues to spend 40 per cent of the EU budget on farming. I am currently fighting for the passage of an EU-Colombia free trade agreement, which British trade unions vigorously oppose; recently MEPs approved an EU-South Korea FTA and we are hoping to see a similar deal with India later this year.

In fact, virtually the only policy area in which the Council of Ministers as an intergovernmental structure retains exclusivity is in matters related to foreign policy and defence. It is simply a myth that the EU undermines Britain's sovereign right to exercise its own independent foreign policy. In reality Member States usually manage to craft a collective robust and pragmatic stance on most major foreign policy issues – what's known as a 'common position. In most cases the collective message of 27 countries is a more powerful projection of our national interests so Britain generally benefits from the multilateral rather than the unilateral approach, although sometimes the interests of just one Member State can mean a watered-down 'lowest common denominator' position for all.

However, Britain retains a veto in the Council on foreign policy issues. Some of the more federalist MEPs wanted a more communautaire approach to foreign policy post-Lisbon – or at least qualified majority voting in the Council. But foreign policy, rightly in my view, remains one of the last bastions of member-state prerogative, requiring unanimity and consensus before any formal policy position can be expressed by the High Representative Baroness Ashton. The situation is likely to remain this way for the foreseeable future. Britain is free to conduct its foreign policy as it wishes, including – if the government decided – to propose leaving the EU altogether, a procedure for which is outlined for the first time by the Lisbon treaty.

Nevertheless, the Council's inter-governmental exclusivity on foreign policy does not mean the European Parliament has no influence whatsoever in this sector. In fact MEPs have considerable influence, given the fact that they cover all 27 Member States and all conceivable shades of political opinion. The Committee on Foreign Affairs, on which I sit (known by its French acronym of AFET), comprises several former Prime Ministers and Foreign Ministers of their respective EU countries.

As coordinator on AFET for the European Conservatives and Reformists Group (ECR) I am constantly being lobbied by ministers, ambassadors, think-tank experts and pressure-group campaigners, all arguing for their respective countries and causes. They know that through its parliamentary resolutions, the deliberations of AFET, its parliamentary delegations and other mechanisms such as debates and parliamentary questions, the European Parliament has a powerful voice – not only on foreign policy but also the intertwined areas of trade, aid, human rights, security and defence.

More generally MEPs have many rights and responsibilities with regard to foreign policy, both by treaty and by inter-institutional convention. On an institutional level MEPs have rights and duties enshrined in the Lisbon treaty to exercise democratic oversight and scrutiny of the EU's Common Foreign and Security Policy (CFSP – created by the Maastricht treaty) and the Common Security and Defence Policy (CSDP), which until the Lisbon treaty came into force was called the European Security and Defence Policy (ESDP).

MEPs generally, and those on AFET in particular, are informed and consulted about CFSP and CSDP developments through frequent meetings with Baroness Ashton and her senior officials, and also Stefan Füle, the Commissioner for Enlargement and European Neighbourhood Policy. They approve the initial five-year appointment of the Commission and they can vote to remove the Commission, as they did in 1999. MEPs also have control over the budget and the staff regulations of the new European External Action Service (EEAS); they control the budgets of civilian CSDP missions (such as EULEX in Kosovo) and the administrative costs of military missions (such as the anti-piracy EUNAVFOR/ATALANTA mission off the coast of Somalia). The European Parliament also ratifies – or rejects – all the EU's international agreements and treaties. I am the European Parliament's rapporteur for Montenegro, which was

recently endorsed as a candidate for EU accession. My periodic reports represent the Parliament's view on its progress towards EU accession. Ultimately MEPs can choose in extremis to reject Montenegro's accession by a single vote.

One particularly interesting new function that MEPs now have is to hold de facto confirmation hearings for senior EEAS nominations – EU heads of mission in strategically important countries and EU Special Representatives. This right, which is not formally in the Lisbon treaty and which was conceded in negotiations by the High Representative, is not a right or responsibility that British parliamentarians enjoy, although perhaps it should be a role for a reformed second chamber, drawing upon the US Senate model.

For the European Parliament, this democratic oversight is also important, even if in fact the EEAS is not the dramatic new departure it is sometimes made out to be. The reality is that the EEAS mainly turned the long-standing ubiquitous Commission delegations to third countries and international organisations into EU delegations, in response to the EU's acquisition of legal personality under Lisbon. The only real difference now is that the EEAS includes seconded diplomats from national foreign ministries, giving it a more overtly diplomatic flavour.

Lisbon is not just about enhancing the role of MEPs. The treaty contains important provisions regarding dialogue and cooperation between the European Parliament and national parliaments, in particular with regard to joint scrutiny of the EU's external action. It is essential that Westminster engages with the European Parliament on this issue, just as it is also essential that MPs hold ministers to account for the decisions they take with regard to EU foreign policy in the Council of Ministers.

Under Lisbon, Westminster and the other 26 national parliaments will have new rights of scrutiny of EU legislation, the so called 'yellow card' powers. The European Commission will be obliged to submit draft legislation to national parliaments via the publication of its annual works programme. National parliaments will then have eight weeks to study the legislation and if appropriate submit a reasoned opinion as to why the legislation contradicts the principle of subsidiarity or proportionality. If one third of parliaments raise objections to legislation (one quarter in the case of security, justice and home affairs matters), the Commission will be obliged to review the legislation. All the more reason, therefore, for MPs to forge strong links with MEPs and national parliaments to help shape the EU's policies. As one Westminster MP said to me recently and fairly hostile to the EU- we need the MEPs on board as you are the only elected UK politicians who really understand in depth the complexity of how the EU actually works.

Moreover, national parliaments will have an important role in evaluating the implementation of policies relating to the area of security, freedom and justice. They will have a formal responsibility for the monitoring of the activities of Eurojust and Europol – two bêtes noires of those most opposed to the EU project, but organisations that require our attention rather than our blanket rejection. And they will participate in the inter-parliamentary cooperation mechanisms with the European Parliament, known as COSAC (legislative committees) and COFAC (foreign affairs committees) in their French acronyms, although attendance by MPs has been poor so far.

Those fundamentally opposed to Britain's membership of the EU will undoubtedly dismiss these Lisbon treaty provisions as toothless and cosmetic. But they are only toothless and cosmetic if we make them so. Whether we like it or not, the Lisbon treaty is now the working architecture of the EU and the UK is obliged to work within it. The Conservative-led coalition government is committed to uphold the principle of constructive engagement by the UK with the EU even though the Conservative Party remains deeply critical that the previous Labour government denied voters a referendum on the Lisbon treaty which ceded more powers to the EU. You can be sure that other national parliaments in the EU will take their enhanced responsibilities under Lisbon very seriously. In fact, many of them already do: for example ministers in Denmark must appear before the Danish parliament to set out their negotiating position ahead of EU summits, and the national parliament must endorse this strategy. We should seek to emulate this system at Westminster.

Westminster reflects all shades of the nuanced and complex debate about the EU and Britain's part in it. However, we cannot allow the ideological battle to distract us from the practical realities of our everyday relationship with our partners in Europe. If we are to be a member of the EU – and there is clearly no majority currently at Westminster to withdraw Britain from the EU – then we must surely exploit the system in every way to our advantage. Refusing to engage with the new architecture and with Britain's MEPs will simply leave us isolated and not defend our important national interests.