

Not Nice At All: IGC 2000, and towards the next treaty

European Foundation Working Paper 1

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1 Overview

- Rooted in the treaties of Maastricht and Amsterdam, the Treaty of Nice adds considerably to the provisions of them both. (Section 2)
- The appropriate response of those who object to the federalist proposals under discussion is to renegotiate the treaties from which they spring – not merely to hold a referendum on future transfers of sovereignty. (Section 11)
- Plans have been laid for a European Security and Defence Policy that would at once undermine NATO; alienate Turkey; and further integrate the UK into a European defence agenda at odds with the United States. (Section 7)
- A main IGC agenda item, flexibility, has been described accurately by President Chirac as meaning that “a certain number of countries will have to get together to show the others the way.” (Section 6)
- Germany and France are demanding treaty changes to accommodate the creation of a ‘hard core’ group of states. The UK’s response should be to demand treaty changes of its own – securing by renegotiation what it was promised in 1975: *European trade, not European government*. (Section 11)
- The Government has promised not to allow another agenda item, the Fundamental Charter of Rights, to be included in the Treaty – yet it remains likely that it will be. Even if it is not directly incorporated, it could be attached as an annex and incorporated later. (Section 5)
- Projects already agreed to, over-and-above the Nice provisions (Section 10), include the Convention on Mutual Legal Assistance (CMLA), which enables foreign governments to intercept communications in the UK without even obtaining a Court Order, and the EU Race Directive, which reverses the burden of proof by requiring accused companies to prove their innocence – to be followed by a Gender Directive that will have exactly the same effect.

The Conservative Party must promise to hold a referendum, not only upon future EU measures, but also upon all existing measures to which the UK electorate have yet to give their consent. The retrospective reach of Conservative Party policy on Europe has already been established by our promise to revisit the common agricultural, fisheries, and weights and measures policies – a promise that must now be taken to its logical conclusion.

2 Introduction

The Intergovernmental Conference (IGC) paving the way for the Treaty of Nice in December covers far more than the ‘Amsterdam leftovers’, as the Government likes to claim. Rooted in Maastricht and Amsterdam, the Treaty of Nice will add considerably to the provisions of both of these treaties.

One of the principal matters under discussion, the Fundamental Charter of Rights, is rooted in Title II of the Maastricht Treaty, which states that citizens are subject to rights to be “decided later”. A second major agenda item, flexibility or ‘enhanced cooperation’, is based upon Article 43 of the Treaty on European Union (TEU, *née* Article 52).

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3 IGC Overview

Principal questions for debate at the IGC include:

- i) the institutional changes arising from enlargement, including the re-weighting of votes within the Council of Ministers; the re-allocation of seats in the European Parliament; and the extension of qualified majority voting (QMV);
- ii) the introduction of the Charter of Fundamental Rights and, specifically, the question of whether the Charter should be justiciable before the European Court of Justice (ECJ), as well as changes to the procedure of the ECJ to expedite cases brought before it; and
- iii) the flexibility doctrine and its creation of an inner-core of EU states.

Each of these questions is likely to be decided in a manner that promotes further European integration.

4 QMV

All Member States have agreed that the institutional changes required to facilitate the governance of an enlarged Union include the extension of QMV and thus the scrapping of the national veto in certain areas.

Keith Vaz has told the European Scrutiny Committee that the Government is prepared to relinquish the UK’s veto in five areas¹ and that, *ceteris paribus*, it is willing to forgo one of its two appointments to the European Commission.

The Conservative Government's 1971 White Paper on Europe stated that the UK would not give up her veto because to do so would (a) undermine our vital national interests and (b) "imperil the very fabric of the Community". If Member States are to coexist harmoniously, they must indeed retain and, given the Amsterdam and Maastricht treaties, in some cases repatriate ultimate control over matters effecting vitally their national interests.

5 Fundamental Charter of Rights

The Fundamental Charter project is as the German Foreign Minister, Joschka Fisher described it: "to work on a common constitution to turn the EU into an entity under international law. It is the decisive task of our time."

Keith Vaz assures us that the Charter will not be justifiable before the ECJ. Yet Mr Vaz is the same man who pledged in May that the EU Race Directive would be amended so as not to reverse the burden of proof – only to let it pass, unamended, in June.

Even if the Charter is not placed under ECJ jurisdiction, the Court could come eventually, in a power-grab like those of the supreme courts of America (1803) and France (1971), to cite and incorporate it anyway.

One compromise solution involves the Charter being attached to the Nice Treaty as an annex. Constitutional history around the world demonstrates that annexes, especially "declaratory statements", do not remain outside of constitutions for long. As an annex, the Charter would remain only a jurisprudential leap away from incorporation. Even in the absence of judicial activism, a mere treaty change could at any time render the Charter justiciable.

6 Flexibility

In his speech "From Confederacy to Federation: thoughts on the finality of European integration" on the 12th of May, Mr Fisher called openly for a Franco-German-led "European Federation" with "a sovereign European Parliament". Flexibility would, as Mr Fisher has now admitted, allow the creation of a German-dominated inner-core extending to the Russian border -- precisely the development that the Conservative Government ruled out in its 1996 White Paper on Europe.

Whilst I would not go as far as Jean-Pierre Chevenement, we should at least consider his statement in May that:

[i]t is a German tendency to imagine a federal structure for Europe which fits its own model. Germany still dreams of a Germanic Holy Roman Empire.

Those tempted by flexibility should remember that the UK would not be placed in a slow lane, so much as a feeder-lane on the road to a superstate. As envisaged by France, Germany, and the Commission, flexibility is not designed, as a Commission report made clear last July,

[...] for those who want to advance backwards and reduce integration or extract themselves from certain policies. It was conceived for those who wanted to advance forward.

As President Chirac put it on the 21st of June, flexibility means that “a certain number of countries will have to get together to show the others the way.”

The current version of flexibility is certainly not welcomed by the nations of the former Soviet *bloc* -- Poland’s Foreign Minister, Bronislaw Geremek, having attacked flexibility on the ground that it “is opposite to the way of thinking of candidate states who have just refound their independence and their sovereignty.”

7 Defence

The proposed European Security and Defence Policy (ESDP) will at once drive a coach and horses through NATO; alienate Turkey; and undermine the special relationship.

As I pointed out in the *Telegraph* (22nd of June), the EU Presidency Conclusions released on the 21st of June state that the ESDP will be “autonomous” with a “single institutional structure”. The French Government even claims that the Policy means that “together we can build a new superpower, and its name will be Europe.”

As a NATO member outside of the EU, the ESDP will deny Turkey a rôle in European defence despite it having the second largest army in NATO. In place of intimate involvement in European defence, Turkey will be offered only a “special consultation exercise”—Euro-speak for “nothing at all”.

8 Complications

In paving the way for the Treaty of Nice, the IGC faces many stumbling blocks over-and-above the issues under discussion.

- (i) There may prove to be too much on the IGC agenda to deal with in time for the Treaty. Many Member States have already expressed this concern. France has indicated that during its presidency it would prefer to see no deal at all than (what it would judge) a bad one.
- (ii) Austria has threatened to veto whole agenda items, including the institutional changes necessary for enlargement, if its political isolation by the EU continues.
- (iii) Aware of the Eurorealist majority amongst the UK electorate, Tony Blair may select an agenda item (perhaps flexibility) upon which to stand firm: grandstanding on the European stage for maximum electoral benefit at home.
- (iv) If, as the Greeks proceed to stage three of EMU, the Danes vote in their referendum not to, then market confidence in the euro will have been dealt a double blow -- possibly

realising George Soros' fear that the currency will "disintegrate". The ensuing crisis would certainly subsume both the IGC and the proposed treaty.

Each of these complications has the potential to block in the short term one or two of the federalist projects under discussion. Were they to occur in combination, these complications could scupper the entire treaty.

But don't bet on it.

9 The French Presidency

Any doubt that France would not use its presidency to accelerate the drive toward a federal Europe has been blown away by a spate of grandiose comments by French politicians, of which the following are a selection.

Pierre Moscovici, French Minister for Europe:

- 'It's our turn to rediscover the vision of an empire, but this time a democratic one, without hegemonic aspirations' (Paris, 15 May 2000).
- On the number of commissioners: 'There should still be twenty – or fewer than twenty – even if there are thirty member states, because a government needs to be a close-knit group' (Paris, 5 June 2000).
- 'With the introduction of the single currency and incremental advent of a Defence Europe [*sic*], we are arriving, with these attributes of national sovereignty, at a crucial point in the continual process of transfers of sovereignty which is the European enterprise. In this context, I'm not surprised to see the issue of federalism resurfacing' (Paris, 15 May 2000).
- 'When the [German] Chancellor first came on the scene there was talk of his being tempted by Britain, of his desire to establish a triangular relationship in Europe. At the end of the day there is no triangle, we are rediscovering the Franco-German engine, the Franco-German tandem' (Paris, 5 June 2000).
- 'We must also pursue the efforts towards harmonization of taxes and, eventually, social protection. Our aim is to safeguard the future of the European social model by guaranteeing a high level of social protection, giving workers more say in the running of firms and distributing the fruits of economic growth more fairly. This battle will decide the future of Europe and it will not be fought in a day. But I believe that this vision is now more widely shared by our European partners than it has been in the past' (French European Affairs Minister, French Government web-site).
- 'We don't agree with the "Americanization" of the world... We are saying that together we can build a new superpower... and its name will be Europe' (Warsaw, 14 June 2000).

- ‘On qualified majority voting: steps must be taken to ensure that European decision-making is no longer contingent on unanimity. On this point we want to see something extremely broad’ (French Minister for Europe, Paris, 5 June 2000).

President Jacques Chirac

- ‘We will be able to establish as the first “European Constitution”’ (Berlin, 27 June 2000).
- ‘The European Union is today the world’s leading economic and trading power, it’s a research and innovation giant. Franco-German co-operation, emulation, synergy have been one of its most powerful forces. Today, at a time when we’re seeing the formation of groups capable of outperforming their international competitors, the Germans and French are looking quite naturally to each other’ (Berlin, 27 June 2000).
- ‘But if the European enterprise is to prosper, it is the Franco-German friendship that we must first seek constantly to deepen’ (Berlin, 27 June 2000).
- ‘And I propose that there should be a German-French Conference every year... It would be the great rendezvous of our two nations where Germany and France could together embrace the future’ (Berlin, 27 June 2000).
- ‘Developing a European Union foreign and defence policy is a fundamentally political project. It will happen because Europe is happening, and if it does not happen, the very life force of our continent will ebb away’ (Paris, 30 May 2000).

Prime Minister Lionel Jospin

- ‘By bringing its armed forces closer together and through its continuing commitment to peace and respect for international law, Europe must be able to ensure its own security and take part in conflict prevention worldwide’ (Paris, 9 May 2000).
- ‘The wish to reinforce the European social model will be reflected in the adoption of a European social agenda, which will be presented at the Nice European Council.’ (French Presidency’s Priorities for Action, French Presidency Website, June 2000).

10 Associated developments

In addition to the matters under discussion during the IGC, the Government have *already* signed the UK up to a host of measures which undermine our legal system in a variety of important respects. These measures are, again, rooted firmly in the Maastricht and Amsterdam treaties and are not, therefore, covered by the referendum proposed by the Party.

Cross-border surveillance accord

Jack Straw has signed the UK up to a new EU agreement allowing police in one Member State to intercept and monitor communications in another. The Convention on Mutual Legal Assistance (CMLA) is rooted in the Schengen *acquis* of the Amsterdam Treaty (most of which the Government has now signed up to) and allows foreign governments to monitor the communications of suspected criminals without even, in certain cases, having to apply for a court order to do so.

EU Race Directive

The Race Directive was passed by the Council of Ministers in June and reverses the burden of proof by obliging those accused of racism to prove their innocence.

Keith Vaz said in May that “the burden of proof question” meant “the text [of the Directive] needs to be improved. It is not ready for agreement yet.” The Directive was, however, passed without any such improvement.

EU Gender Directive

The European Commission is drafting another directive to promote gender equality. The Directive would provide for “positive action” to give women “automatic priority” in jobs in which they are under-represented.

Like the Race Directive, the Gender Directive reverses the burden of proof by requiring that employers accused of “unwelcome physical, verbal or non-verbal conduct” prove their innocence. The test of sexual harassment will be whether an action offends “the dignity of women”.

One advocate of the directive, the Greek Commissioner for Social Affairs, Anna Diamantopoulou, admitted that it meant that a person accused of gender discrimination “would have to prove that he [*sic*] was not guilty.”

Economic government gaining ground

A controversial plan is gaining support amongst eurozone countries that would strengthen the body overseeing the Single Currency, the euro-11, and dilute the independence of the European Central Bank (ECB).

The French Government has backed such a plan ever since the euro-11’s creation -- France’s former finance minister, Dominique Strauss-Khan, having described the body as intended to become “an economic government for Europe”. Prime Minister Lionel Jospin built upon this description by calling for greater co-operation between the ECB and Europe’s political leaders in the setting of interest rates. The German Government has in recent statements backed Jospin’s call for political intervention.

Begun as an informal meeting of eurozone finance ministers, the euro-11 has now begun meeting more frequently; taking minutes; and reporting directly to Commission institutions. In sum, the euro-11 is realising the economic government rôle foreseen by Mr Strauss-Khan.

11 A Fresh Start on Europe

The Conservative Party² must debate, prepare, and publicise specific amendments to the treaties that would allow the UK to send a clear message on its relationship with Europe: European trade, ‘Yes’; European government, ‘No’.

Certainly, the current policy of opposing only future transfers of sovereignty has been undermined by the commitment to revisit and revise the Common Agricultural Policy; the Common Fisheries Policy; and EU policy on weights and measures. To revisit these and not other failing policies is bizarre.

Some fear that renegotiation means, or will necessarily be construed as, withdrawal. The appropriate response to this concern is threefold. First, renegotiation would allow us to transcend the binary ‘in’ or ‘out’ question. The second point to be made is that renegotiation is not new: for years the European Union has been renegotiated in a direction that suits federalists. Indeed, renegotiation continues apace with the current demands by France and Germany for treaty changes to accommodate a hard core.

A third point is that it is not in the interests of the EU to eject the UK -- not least because of the large trade deficit that the UK runs with its fellow Member States. Consider: in 1998, the average tariff that the EU placed upon imported industrial goods was 3.6%. Barring retaliatory measures, this tariff would have yielded £3,441 million had it been imposed upon UK goods exported to the EU in 1998 -- an amount £1,748 million less than the UK’s actual net contribution to the EU in that year. (Section 13)

12 Conclusion

The Establishment in the United Kingdom has over the years subjected UK citizens to a body of European higher law -- the *acquis communautaire* -- the manufacture, interpretation, and revision of which occurs beyond our democratic process and, ultimately, beyond our shores.

To dilute the writ of government in this way does indeed require, as William Hague has said, that the incumbent administration seeks the permission of those by whom that writ is awarded: the electorate. Yet, the electorate must be granted a referendum not just upon any further transfers of power to the European Union, but also upon all past transfers to which they have yet to consent.

13 Annex

Figure one: United Kingdom Balance of Trade, 1999 (industrial goods, millions)

Total exports	£165,204
Total imports	£191,815
Total trade deficit	£26,611

European Foundation: the leading Eurorealist think tank

Exports to EU	£96,913
Imports from EU	£103,115
EU Trade Deficit	£6,202

Figure two: Exports and net contributions to the European Union in millions, 1995–1999.

Year	Goods Exports ³	Net Contribution ⁴	3.6% Tariff ⁵	Contribution Minus Tariff
1995	£89,684	£4,774	£3,229	£1,545
1996	£95,965	£3,122	£3,455	£333
1997	£95,908	£2,733	£3,453	-£720
1998	£95,726	£5,189	£3,441	£1,748
1999 ⁶	£96,913	£2,486	£3,449	-£963

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¹ These areas are: appointments to the ECJ; the rules and procedures of the ECJ; transport issues; languages policy; and appointments to the seats of institutions.

² As the party most closely approximating public opinion on Europe, I will confine my analysis of the IGC in this section to how it ought to be incorporated into the foreign policy of the Conservative Party.

³ Data for industrial goods exports only, released by the Office for National Statistics (London: March 2000).

⁴ Balance on current transfers relating to European Union institutions, from the Office for National Statistics' *Pink Book*, p.70. Data excludes payments to the European Development Fund (EDF) to the countries in Africa, the Caribbean, and the Pacific (EDF funding for financial years 1996–7 to 2001–2 is as follows: 1996–97, £151m; 1997–98, £137m; 1998–99, 213m; 1999–2000, 214m; 2000–01, 97m; 2001–02, 219m).

⁵ Figure shown is 3.6% of total industrial goods exported to the countries of the European Union in given year.

⁶ ONS data for 1999 is unavailable until September 2000. The figure in brackets is that forecast in the White Paper, *European Community Finance*, published in June 1999.