

# **Constructive Opposition to the Nice Treaty – the dangers of European integration**

*By Bill Cash, MP*

**3 July 2001**

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## **Prologue: Conservative leadership**

*There was indeed a considerable shouting about what they called  
Conservative principles but the awkward question arose, what will you  
conserve?*

Disraeli, *Coningsby* (1844)

The Conservative Party leadership, despite disingenuous denials, is very much about the European issue. This is because 'Europe' affects both the national interest and the Conservative Party.<sup>1[1]</sup> I wrote a pamphlet in October 1999 which outlined and analysed the vast problems which would face the Conservative Party if it refused to grapple with the question of who governs Britain. I demonstrated the relevance of this fundamental question to the future of the Party.<sup>2[2]</sup>

Kenneth Clarke has made his position quite clear, for which he is to be congratulated but for which he must be defeated. Frankly, I do not recognise Kenneth Clarke's brand of Conservatism. For that matter, I do not recognise Michael Portillo's strand of Conservatism, with its avoidance of the European issue and its refusal even to address the question of who governs Britain. The Treaties are there in black and white. The Treaty on European Union, in particular since Maastricht and Amsterdam, has already created a framework of European integration with its *acquis communautaire*. No one but the most purblind or devious will ignore this reality in the national interest. It was Churchill who said "Country first, Constituents second, Party third".

The European issue is the issue of democracy itself as I argued recently in my editorial in the *European Journal*<sup>3[3]</sup>. Qualified Majority Voting in the arena of European government undermines the democratic nation state; the Nice Treaty does this in a devious way including the use of 'flexibility'. European integration has already gone massively beyond reasonable limits and must therefore be reversed through renegotiation. This includes Nice. As the Conservative Party was responsible for Maastricht and much of Amsterdam, the best it can do now is to repudiate those two Treaties. I wrote my *Blue Paper*<sup>4[4]</sup> showing how the Amsterdam Treaty was wrongly conceived. We must now look instead to sound Conservative principles of democracy and accountability.

There are many examples of the dangerous absurdity currently on offer. We have the spectacle of Romano Prodi impugning the democratic integrity of the Irish referendum. Meanwhile, we see the Belgian Presidency spokesperson calling for a debate throughout the nations of Europe on the fundamental nature of the EU. Both are calling for a new form of Euro-taxation

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<sup>1[1]</sup> See my speech in Parliament in June 2001 enclosed as Appendix I at the end of this paper.

<sup>2[2]</sup> See Bill Cash, MP (1999) *Britain and Europe : Challenging questions for Tony Blair, Kenneth Clarke and Michael Heseltine*. This pamphlet is available at [/pubs/books/pamphlet.htm](#)

<sup>3[3]</sup> Bill Cash, MP (2001) 'Undemocratic Europe', *European Journal* 8(7) : 2 (June)

<sup>4[4]</sup> Bill Cash, MP, (1996) *The Blue Paper : a Response to the Government's White Paper*, London : European Foundation.

to pay for the vast increase in functions which have accumulated in the last few years.

The Nice Treaty is the latest evidence of the legal-political power play being conducted on the European stage with profound implications for European and global democracy and stability. Kenneth Clarke says that he wishes us to accept the Nice Treaty so this pamphlet is dedicated to him with a maximum of goodwill – some light reading matter in case he hasn't read it. This pamphlet is also dedicated to all the other candidates; as an exhortation to the Conservative Party; and to all those members of the Labour Party and Liberal Democrats who have grave misgivings about this Treaty.

**Bill Cash, MP**

3 July 2001

## Introduction

The government launched the ratification process for the Nice Treaty on Thursday 21 June 2001 when the Bill was given its first reading – a mere two weeks to the day after Labour's victory in the June 2001 general election and the day after the Queen's Speech. Readers will recall that the Treaty was agreed after much well publicised argument at the Intergovernmental Conference held in Nice in December 2000.

I have repeatedly argued that we must do all we can to derail this Treaty.<sup>5[5]</sup> Like its predecessors, Maastricht and Amsterdam, Nice would deal another blow to democracy. John Major's government pushed through Maastricht while Amsterdam was largely negotiated under his premiership. When Amsterdam reached the House of Lords after the 1997 general election, no amendments were voted on by the official Conservative opposition – despite the fact that the then unreformed House of Lords could have amended the Treaty and forced a Parliament Act crisis. We must certainly do better this time.

Nice was decisively rejected in the Republic of Ireland, the only country in which it was submitted to a referendum, on the very day Tony Blair's government was returned to office in the UK. I am glad to have contributed to

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<sup>5[5]</sup> See for example Bill Cash, MP, (July 2000 ) *Not Nice At All: IGC 2000, and towards the next treaty*, European Foundation Working Paper 1 (available at </pubs/wp/1wp.htm> ), London : European Foundation, ; Bill Cash, MP, (December 2000) *Not Nice at all revisited: A preliminary analysis of the Nice Treaty* (available at </pubs/wp/5wp.htm> ), European Foundation Working Paper 5, London : European Foundation ; Bill Cash, MP (February 2001), *The camouflage of Nice - a preliminary analysis.*(available at </pubs/wp/6wp.htm> ), European Foundation Working Paper 6, London : European Foundation.

that victory, as the speeches in the Dail and the press coverage in the Irish media relating to my editorial in the *European Journal* indicate.<sup>6[6]</sup> Just as they did when Denmark rejected the Maastricht Treaty all those years ago, the European establishment dismissed the Irish 'No' as irrelevant. In doing so they showed their utter contempt for the will of the people and reinforced even further the need to stop the Treaty by opposing it in Parliament.<sup>7[7]</sup>

This paper is divided into four sections for the purpose of clarity.

*First*, I give a brief introduction to some of the salient features of the Nice Treaty. *Second*, I go through all the changes to the Treaties suggested at Nice and present a bullet point analysis of the most important changes these will lead to. *Third*, I examine the Charter of Fundamental Rights which although not part of the Treaty has great significance. *Fourth*, I demonstrate some of the ways in which the Treaties have impinged on our democracy and outline my proposal for an alternative *Associated European Area* – European trade, yes; European government, no.<sup>8[8]</sup>

## Part I: the Key to the Nice Treaty

1. A brief glance at the text is sufficient to make one realise that the Nice Treaty is firmly rooted in the treaties of Maastricht and Amsterdam. This latest Treaty consists primarily in a set of amendments and modifications to existing Articles – we are essentially *renegotiating* the Amsterdam Treaty, albeit in the direction of ever-closer Union.
2. Britain's influence is on the wane as more vetoes are abolished for the Council of Ministers. Around 43 vetoes have been lost at Nice (this total is necessarily approximate because it depends on how it is tallied). This compares with about 19 at Amsterdam, 41 at Maastricht, 37 in the Single European Act and 38 in the Treaty of Rome. Although

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<sup>6[6]</sup> I enlarged on this in my editorial "The Irish referendum on the Nice Treaty and the New Irish Question", *European Journal* 8(4): 2 (March 2001). The European Foundation and *European Journal* were widely cited in the British and Irish media and in the Dail. See for instance *Independent*, 24 March 2001 ; *Sunday Times*, 25 March 2001 ; *Irish Times*, 24 May 2001 ; *Irish Times*, 5 June 2001 ; *Daily Express*, 25 June 2001 ; *Prospect*, July 2001. See also John O'Dowd 'On the road to Nice', *European Journal* 8(5) : 25-26 (April) ; Bill Cash, MP 'Irish democrats have shown the way', *Daily Telegraph*, 9 June 2001.

<sup>7[7]</sup> For a critical analysis of Nice applied to Scandinavia, see Jens-Peter Bonde, MEP (2001) *The Nice Treaty Explained*, available at <http://www.euobserver.com> ; for an application to France, see Georges Berthu, MEP, (2001) *Contre-Rapport sur le Traite de Nice : l'Europe sans reperes*, Paris: Editions Francois-Xavier de Guibert; finally, for an application to the Republic of Ireland, see The Alternative White Paper (2001) published on <http://www.nationalplatform.org>. The authors of these excellent reports are all members of the European Foundation's European Advisory Board.

<sup>8[8]</sup> Bill Cash, MP (2000) *Associated, Not Absorbed - the Associated European Area: a constructive alternative to a single European State*, London: European Foundation. Available on [pubs/books/index.htm](http://pubs/books/index.htm) . This paper was first published before the most recent Danish and Irish referendums.

all these losses represent a further emasculation of democracy, some are particular bad. Seven of these 43 vetoes are covered by our Schengen opt-out. The standard justification for the proposed massive extension of QMV at the Nice IGC is that the veto would “imperil the single market” in an enlarged EU. The official line from the EU is therefore that those 43 vetoes would somehow prevent enlargement or lead the Union to grind to a halt. It seems in reality that the “single market” has come – quite conveniently, from Brussels’ perspective – to be understood as including virtually every aspect of EU business. The removal of barriers to trade and obstacles to the free movement of people has become a convenient excuse to centralise more and more powers at EU level. Once again, we can see that subsidiarity is a lever to centralisation – I described it as a con trick in the run up to the Maastricht Treaty.

3. The Nice Treaty is not about enlargement. Enlargement to 20 members was already included in Amsterdam. The timetable for enlargement provided is unrealistic: we do not really know when Eastern applicants will join. If this Treaty were really about enlargement it would address the problem of the CAP (especially with the planned accession of Poland which has more farmers than the rest of the EU put together); it would deal with structural funds (there has been much squabbling over “poor region” handouts, by Spain especially); it would consider reform of the budget policy; it would propose derogations to the huge and costly body of *acquis communautaire* that the new members have to incorporate into their statute books by nothing short of blackmail. None of this has happened. The absence of any meaningful reform at Nice shows that the Treaty is about deepening the EU, not widening it. Commission President Romano Prodi admitted as much in Ireland on 21 June 2001 when he said that enlargement didn’t require Nice after all.
4. As I pointed out during my clash with the then Minister for Europe, Keith Vaz, Britain’s influence in the Council of Ministers is seriously reduced.<sup>9[9]</sup> It is not true that Britain’s influence has somehow been increased in the European Parliament and the Council, as the British government has repeatedly stated. Basic arithmetic is sufficient to demonstrate the absurdity of this claim. In the Council of Ministers, Britain’s share of the votes has fallen from 10/87 – equivalent to 11.5% of the votes – to 29/345, equivalent to 8.4% of the votes.
5. Britain’s influence in the EP is also reduced. In the European Parliament, Britain’s share has declined from 87/626 with 15 EU members now – equivalent to 13.9% of the votes – to 74/732 when all applicants have joined (27 EU members), which comes to a paltry 10.1%.
6. Germany’s elite has increased its influence. A new voting system called “Double majority voting” was introduced at Nice which will especially benefit the German government. First of all, it is useful to recall how the qualified majority system worked until Nice. A decision

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<sup>9[9]</sup> Exchange between Bill Cash, MP, and Keith Vaz, MP, in the European Scrutiny committee on 10 January 2001

required a 71.26% share of the vote to be approved i.e. 62/87 votes in the Council of Ministers. This meant that the votes of countries accounting for 58.16% of the EU's population would constitute a majority. Now, at Nice, the new procedures for QMV are much more complex. Whenever a decision goes to QMV in the Council of Ministers a country may demand that Double majority voting be used. "Double majority" voting requires two conditions to be met for a decision to be adopted. *First*, in a 27 member EU, a proposal must garner 258/345 or 74.78% of the votes in the Council of Ministers (i.e. a significantly higher threshold is required, making it easier to block a proposal, although it would be harder for existing member states to block as their share of the vote will be lower). *Second*, the proposal must be backed by countries representing 62% of the EU's population (the so-called population safeguard). Thanks to this second clause, Germany and two other large countries – such as France or Italy – will be able to block anything they do not like, whereas Britain will need more than two other countries to vote with her to oppose undesirable decisions. The blocking minority is 88 votes in the Council, which means that Germany would not have been able to block decisions so easily in the absence of the population requirement. Many EU observers are calling Schröder the 'victor of Nice'. Following Nice Germany will gradually start to lose its traditional deference. This is a fundamental geopolitical shift in the balance of power and in the 'tectonic plates' of Europe.

7. Small states lose out. This is the converse of point 6. Small states will be bulldozed by Germany. Furthermore, their voting shares will go down even in the absence of enlargement. This is one of the main reasons why Ireland voted against Nice.
8. There is a tug of war going on between two different tendencies in the EU. *First*, an increase in the power of the EP and the Commission, leading to more use of the *méthode communautaire*. In particular, the Commission has become more like a government (see point 10). *Second*, an increase in the power of the Council which leads to more intergovernmentalism.
9. There are now three ways the EP is involved. *First*, co-decision is now increased to Articles 11 TEC, 13 TEC, 67 TEC, 137 TEC, 157 TEC, 159 TEC, 175(2) TEC, 191 TEC. *Second*, the assent of the EP is needed for decisions taken with Article 161 TEC and 7 TEU as the Treaty base. *Third*, similar powers are granted to the EP with respect to Articles 214 TEC and 190(5) TEC. That said, changes do not go anything as far as the federalists in the EP would like and many of them oppose Nice because of this – although of course this is no cause for comfort.<sup>10[10]</sup>
10. The commission is turning into a government for Europe with Romano Prodi as Prime Minister – he will have the right to reshuffle Commissioners. Britain and the other large state will each lose a Commissioner. (Each member state will appoint one commissioner

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<sup>10[10]</sup> Earlier drafts of the Nice Treaty included provisions for *inter alia* tax harmonisation. See Allister Heath (2000) 'An update on the Nice Treaty', *European Journal* 8(2) : 10-11 (November/December)

- until there are the number of members reaches 27. After that, some countries will have to take it in turns to have a commissioner.)
11. As such the winners at Nice are 1) the Commission which gains from the institutional changes outlined above 2) the EP which gains co-decision powers 3) the ECJ which further extends its powers 4) the Council of Ministers continues its transformation from a intergovernmental institution to a supranational organisation characterised by QMV 5) The German elites. The losers from Nice are national parliaments, national constitutions, democratic accountability and national electorates, NATO<sup>11[11]</sup>, and economic, political and defence stability in Europe and the rest of the world.
  12. Nice will lead to the creation of a two-speed Europe – re-branded as “enhanced cooperation”. Those who have welcomed this as proof of a “more flexible Europe” couldn’t be more wrong.<sup>12[12]</sup> There is never any going back, just going forward at different speeds towards ever-closer centralisation. In practice, enhanced cooperation will significantly reduce the power of those more sceptical states like Britain – they will no longer be able hold up or veto measures they do not like in exchange of concessions in other areas. The end result will be the creation of a hard core of states around Germany. The European geopolitical problem is about the increasing domination of the German elites (as compared to their electorate), as I have repeatedly argued for the last decade and more. Thomas Mann famously called for a ‘European Germany’ in 1953. The question has always been whether we would get a European Germany or a German Europe.<sup>13[13]</sup>
  13. It was effectively decided at Nice to draw up a European constitution in 2004 at a new IGC. One of the unspoken dangers in the Nice Treaty is the potential use of enhanced cooperation to ram through a European constitution. I have called three times on the Prime Minister in the House of Commons to order a constitutional White Paper on the European issue – to no avail as Tony Blair has rejected the idea out of hand. The point is that the increased power of Germany and the use of so-called flexibility (or enhanced cooperation) as a rocket thrust to the European constitution may well be a defining characteristic of the EU in the years to come. If this were to happen, it would truly be an amazing conjuring trick. Furthermore, although I do not agree with his conclusions about the status of Britain in relation to a European constitution, Larry Siedentop’s analysis should be carefully read.<sup>14[14]</sup> It all comes down Britain: we must stand firm and renegotiate in the

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<sup>11[11]</sup> Iain Duncan Smith, MP, has shown how Nice undermines NATO.

<sup>12[12]</sup> Richard Sage (2000) ‘The dangers of flexibility’ *European Journal* 7(9) : 24-26 (Summer)

<sup>13[13]</sup> See for instance Bill Cash, MP (1991) *Against a Federal Europe : the Battle for Britain*, London : Duckworth; Bill Cash, MP, and Iain Duncan Smith, MP (1996) *A Response to Chancellor Kohl : A European Germany or a German Europe?*, London : European Foundation ; Bill Cash, MP (1998) *British and German National Interests*, London : European Foundation ; Bill Cash, MP, ‘Extending eastwards – the German answer to the German question’, *European Journal* 8(3) : 2-3 (Jan/Feb 2001).

<sup>14[14]</sup> See Larry Siedentop (2001) *Democracy in Europe*. London : Penguin Books

interests of Europe as a whole.<sup>15[15]</sup> As Labour and the Liberal Democrats will not, it is up to the Conservative Party to act – hence the importance of the current leadership contest.

## **Part II: An Article-by-Article analysis of the Nice Treaty**

### ***The Treaty on European Union (TEU)***

#### **Article 7 TEU: Fundamental Rights**

- This Article was introduced at Amsterdam
- Based on the curious and vague definition of human rights given in Article 6(1) and presumably soon based on a judicial interpretation of the Charter of Fundamental Rights.
- The Amsterdam version of the Article was not used during the Austria case as it was deemed too inflexible in its Amsterdam version (sanctions were intergovernmental). That's why it is being changed
- Significantly, the proposal talks of “a serious risk of a serious breach” rather than of “a serious breach” – i.e. a country can simply be assumed guilty. Yet the Charter of Fundamental Rights proclaims the principle of ‘innocent until proven guilty’.
- The importance of this Article cannot be underestimated. It seems to allow states to gang up on another. Victims may be forced to modify their legislation in virtually any area of public policy. The situation is made even graver by the likelihood that the Charter of Fundamental Rights will be used to identify whether or not a member state shows “respect for human rights” (as some of the concepts referred to in Article 6(1) are defined in the CFR) – regardless of the official legal status of that document. The European Court of Justice is certainly not afraid to use judicial activism to promote centralisation, and there is no reason why the situation would be any different this time round. The vacuous and legally unclear language of the Charter will no doubt be twisted to suit the purposes of qualified majorities in the Council of Ministers. Far from simply dealing with “Amsterdam leftovers”, the proposed Nice Treaty will surely have devastating consequences for the future of democracy and individual liberty in Europe.
- The new so-called *Lex Austria* provisions usher in the following main changes:
  1. Sanctions can be imposed on the expectation of a violation of rights rather than an actual instance of this happening
  2. The Council makes appropriate recommendations to the state i.e. informs it in advance of what behavioural modifications it needs to make

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<sup>15[15]</sup> See Bill Cash, MP (2000) ‘Renegotiation : European trade without European government’, *European Journal* 7(4) : 14-16 (January/February). See also my speech on the matter in Parliament in 1995 and my adjournment debate on flexibility.

3. It becomes easier impose sanctions as only 4/5 of the member states are required, rather than unanimity
  4. The process can be launched by 1/3 of the member states, the EP and the Commission
  5. Pretty weak safeguards granted to accused state. There is a right to a hearing and report on the situation is meant to be compiled by “independent” experts (although they are appointed by the Council.)
  6. Effectively this enables the creation of a permanent monitoring process of all those member states suspected of deviating from the rules
  7. Once imposed, it is quite obvious that there will be a temptation to continue the sanctions even when the ‘problem’ is solved
- See also the related Article 46 TEU

### **Article 17 TEU: Security and defence**

- Current moves towards a “rapid reaction force” following the summits at Feira, St Malo and Cologne do not require any treaty modifications – Maastricht and Amsterdam provide a perfectly adequate treaty base.<sup>16[16]</sup> The Declaration annexed to the Final Act of the Intergovernmental Conference, concerning the European security and defence policy, makes this abundantly clear. As I have repeatedly argued, the issue of the “rapid reaction force” is entirely separate from that of Nice and the Council has now officially confirmed this. Nevertheless, there are a number of important changes to the Treaty
- The concept of Petersberg tasks was introduced in Article 17 at Amsterdam; but now the difference is that EU tasks are to *include* Petersberg tasks: apparently they are not limited to them. Anyway, as the conflicts in Bosnia and Kosovo have shown, it is no longer possible to distinguish between conventional warfare and peacemaking. Both now involve the widespread use of bombers, armoured vehicles and heavy artillery. It is thus disingenuous to claim that EU defence capabilities are to be confined to humanitarian tasks rather than military tasks.
- Article 17 is modified in a very important way: all mention of the Western European Union is abolished. That organisation has now been abolished and its functions and equipment transferred to the EU
- The removal of the references to the WEU is a very clever trick which has misled many Eurosceptics. What it actually achieves is to automatically incorporate defence into the Treaties without having to add a single sentence to that effect – the Treaty base may arguably be dubious
- The gradual creation of a European defence force is a massive threat to democracy in Europe

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<sup>16[16]</sup> It is instructive to compare this to the letter Michael Portillo, MP, wrote to me on 4 December 1995 (reproduced as Appendix II). He argued that ‘nothing Malcolm Rifkind and I agreed to in Madrid moved us one jot in that direction.’ [i.e. in the direction of a ‘separate European army’.]

### **Article 23 TEU: Appointment of CFSP special representatives**

- The modified Article 23 of the TEU now provides for the extension of Qualified Majority Voting “when appointing a special representative” (currently Javier Solana) and also when appointing his deputy. This will further reduce the Reaction Force’s accountability and reinforce its autonomy. I wrote about the situation in the *Times* before Solana was appointed Secretary General.
- Nevertheless, this is only a semi-QMV decision: at the end of the day, Article 23(2) preserves the right to move a particular decision back to unanimity if a member state insists.
- Unanimity is required to send the special representative on a military assignment.
- This Article should be opposed in any case as there shouldn’t be a CFSP

### **Article 24 TEU: international agreements in CFSP/JHA with QMV**

- This Article is phrased in a problematic way, probably on purpose
- Article 23 – which retains veto powers as explained above – is invoked in 24(3) but not in 24(2) and 24(4). Why?
- Article 24(5) is subjected to an apparently tiny and hence at first sight insignificant amendment. In reality, a closer look shows that the change is massive. Prior to Nice, those other member states which did not have any constitutional objections could temporarily adopt the agreement. Now, even those countries that object will be forced to accept the agreement temporarily. This change is extremely important and basically forces member states to ride roughshod over their constitutional arrangements – they are forced to act anticonstitutionally!
- Furthermore, Article 24 may conceivably mean that the EU becomes a legal persona with the right to sign international Treaties – at least *de facto*. At present, an agreement signed under the aegis of the EU would legally be 15 identical national agreements. Is this still the case after Nice?

### **Article 25 TEU: Security and defence**

- The political committee introduced at Amsterdam with the stated purpose of monitoring international affairs is now renamed the “Political and Security Committee”
- The committee’s power is substantially increased as it takes on a number of strategic and management tasks relating to military operations – it will direct Euro-soldiers in combat.
- The declaration added to the end of this Article is key because it basically states the existing Treaty base is enough to enable the EU to launch military operations
- It refers to the lengthy presidency conclusions on military affairs which prove beyond a shadow of a doubt the reality of an autonomous EU

army (drawing on national armies' personnel) with an independent control centre separate from NATO.

### **Articles 27A, 27B, 27C, 27D, 27E TEU: Enhanced Cooperation**

- These provide for enhanced cooperation (otherwise known as flexibility) for the CFSP
- 27A introduces enhanced cooperation
- 27B limits it to so-called secondary actions and rules out its application to actual military affairs
- 27C makes it quite clear that member states that wish to take part in enhanced cooperation need to ask the Council for permission. The EP is informed and the Commission asked to state its opinion on the matter
- 27D: this is a procedural Article which explains who is informed of what. The Secretary General and High Representative of the Council is involved. He is supposed to make sure that members of the Council and EP are kept informed of what is happening.
- 27E States that a country that wishes to join the enhanced cooperation club must ask the Council and inform the Commission. QMV is used to determine an application is accepted. The process should take no longer than four months.

### **Article 29 TEU and 31 TEU: Crime – role of Eurojust**

- • Eurojust: this Article takes us a giant step towards an integrated pan-EU police force
- • Developments in the EP show that Eurojust is being used a way of bringing *Corpus Juris* concepts (European Public Prosecutors for instance) into the discussion<sup>17[17]</sup>
- • It is widely recognised that the core functions of a state include defence and law and order. As the European Union gradually turns itself into a fully-fledged state, it is quite naturally seeking to take on these functions and squeeze out member states.
- • The Treaty introduces a new “European Judicial Cooperation Unit”, also known – somewhat strangely – as Eurojust
- The Article talks of coordination of various home affairs issues – EU code for eventual harmonisation

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<sup>17[17]</sup> The *Corpus Juris* project was first revealed as a world exclusive in the *European Journal*: Torquil Dick-Erickson (1997), ‘Towards a European Legal Area’, *European Journal* 4(7) : 3-4 (April); Torquil Dick-Erickson (1997), ‘The *Corpus Juris* proposed by Brussels means the amputation of Britain’s Ancient Liberties’, *European Journal* 4(9) : 6-9 (June). For a more recent analysis including the role of Eurojust see Allister Heath (2001), ‘The European Takeover of Law and Order’, *European Journal* 8(5) : 10-12 (April); Allister Heath (2001), ‘The rise of *Corpus Juris*’, *European Journal* 8(6) : 10-12 (May)

## Articles 40, 40A and 40 B TEU: enhanced cooperation for home affairs

- Enhanced cooperation is introduced for policing and justice
- These Articles slightly increase the influence of the Commission
- In the old treaty, the EP was merely informed of any decision; now its opinion is sought
- The ECJ is automatically involved
- The right of veto is abolished

## Enhanced cooperation: Articles 43 TEU, 43A TEU, 43B TEU, 44 TEU, 44A TEU, 45 TEU, 11 TEC, 11A TEC

- Enhanced cooperation is developed from Amsterdam
- This is a fancy new name for a two-speed Europe – “a certain number of countries will have to get together to show the others the way”, as Jacques Chirac neatly summarised the proposal – otherwise also known as “flexibility”. A subset of member states that wishes to proceed with further integration and to create “an inner core” will be allowed to do so. Other countries will be “relegated” to an “outer core”. “Reverse integration” is ruled out, confirming once and for all that “flexibility” is the antithesis of what some British Eurorealists hoped it would come to mean (including Conservative Party spokesmen)
- Flexibility of this sort will merely induce chaos rather than upholding the right of individual nation states to make their own decisions
- Like subsidiarity, it will promote ever-deeper political centralisation and do nothing for diversity and decentralisation
- Individual nation-states will possess no “emergency brake” or veto to prevent other states from going ahead with further integration (the Council will act under QMV after a referral to it by a member state).
- For the first time it is clearly stated that the whole purpose of enhanced cooperation is to reinforce the process of integration.
- In fact, this is an entirely new mission statement (Article 1 talks of ever-closer Union etc)
- The minimum number of participants is 8 regardless of enlargement
- Policies developed under enhanced cooperation must respect the following guidelines:
- The Treaties, the EU’s single institutional framework and all the *acquis* must be respected i.e. there is no going back, no repatriation of powers to national parliaments. Enhanced cooperation:
  - Remains within the remit of the TEC and the TEU
  - Cannot be applied to areas falling solely within the remit of the Community
  - Cannot undermine the single market (whatever that means)
  - Cannot undermine economic and social cohesion
  - Does not violate obligations, rights and competences of member states that are not participants in enhanced cooperation
  - Respects the *acquis communautaire* relating to Schengen
  - Is a ‘last resort clause’ to be used only when it is not possible to achieve integration by using traditional methods.

- The euro is not part of enhanced cooperation, despite the fact that three countries have opted out of stage III of EMU. Same thing with Schengen.
- Fundamentally, the problem with enhanced cooperation is similar to the problem Britain has with EMU. Although we have an opt-out, we are still subject to European economic government because the British government wishes to join EMU one day. Gordon Brown therefore acts *as if* he were already a full member of EMU when it comes to many macroeconomic rules. The same will happen with policies taken under enhanced cooperation: we will all be bound within a general legal framework. Those national governments that are constrained by sceptical electorates and hence cannot openly take part may well begin to adjust national laws in preparation for the day when opposition abates.
- Enhanced cooperation will also affect incoming member states, thus multiplying the problem.

### **Article 46 TEU: Fundamental Rights**

- This is amended in connection with Article 7 TEU
- The ECJ is banned from interfering in the punishment process of a deviant state
- It will only have powers to intervene in purely procedural matters
- During the Austria case, the Viennese authorities could have taken those countries unilaterally imposing sanction to court to prevent them from banning school exchanges etc. Had the new Article 7 been used, it would not have been possible
- It must be said that the ECJ is a political court and would probably have made matters even worse for those countries foolish enough to reject the EU and/or political correctness.

## ***Treaty on the European Communities***

### **Declaration number 3 on information sharing after Article 10 TEC**

- This was drafted because the Council of Ministers felt it has been undermined by a recent agreement between the Commission and the EP which provides for the sharing of information
- The Council wishes to re-establish the interinstitutional equilibrium
- The problem is that this declaration is much too weak and will prove useless – the Council appears to have been defeated on this issue

### **Article 13 TEC: anti-discrimination**

- Its first paragraph (introduced at Amsterdam) remains subject to unanimity
- A new paragraph is added which talks of incentive measures to promote 'anti-discrimination'

- Although it explicitly rules out harmonisation of laws of member states, one must ask: what is the difference between harmonisation and incentive measures?
- The infamous Article 251 is to be used for the new section i.e. the usual combination of QMV in the Council and co-decision with the EP
- Eurosceptics need to attack the implicit argument that member states will be racist in the absence of EU wide anti-discrimination laws.
- This Article has a quasi-constitutional nature. The idea is to eventually link it to Article 13 of the Charter of Fundamental Rights.

### **Article 18 TEC: freedom of movement**

- Material relating to the free movement of people/residency rights
- Maastricht stipulated that decisions should be taken unanimously to preserve national sovereignty in this contentious area
- Amsterdam introduced co-decision but kept unanimity for the Council of Ministers as a special derogation to the usual practice
- Following Nice, decisions will be taken by QMV by the Council with co-decision from the EP
- Article 18(3) introduces a few exceptions where unanimity will continue to be required (until the next Treaty, presumably)

### **Declaration number 4 after Article 21 TEC: 'good governance'**

- Queries to EU institutions should be answered in an undefined reasonable time: it is hard to understand the point of this given that it is not binding and thoroughly unclear
- The aim may be to give the EU a consumerist image and to ape successful corporate behaviour
- Presumably this has been included so that the EU can claim that it is committed to good and responsive governance in the age of the internet...

### **Article 67 TEC: Visa, asylum and immigration policy**

- The implications of this Article are opaque in the extreme
- 67(5) introduces co-decision with the EP and QMV in the Council of Ministers in a number of areas
- Co-operation on court actions in different EU countries, asylum, minimum standards for granting and withdrawing refugee status and minimum standards for those refugees who cannot return home
- Why add as a caveat "providing that the Council has adopted Community legislation defining the common rules and basic principles governing this issue"? Do they want QMV or do they want vetoes? This Article is basically an extremely messy compromise

- A non-binding protocol (declaration number 5) follows Article 67. It is not actually part of the Treaty – a compromise and a sop to France
- Unanimity voting is to be abolished in 2004 and replaced by co-determination with the EP and QMV regarding travel undertaken by citizens of non-EU states in the EU for periods of under three months; and to illegal immigration and the expulsion of illegal immigrants
- Further areas in which QMV will be introduced but this time for some reason without co-determination include co-operation between public authorities in the member states and controls imposed on individuals who cross external EU borders
- Further areas will lose their veto in 2004 or later
- Once again, the contradictory language and caveats used make one wonder whether or not the negotiators actually wanted anyone else to understand what they meant – or even if they understood themselves

### **Article 100 TEC: community financial assistance**

- Deals with emergency relief for accidents, disasters and supply problems
- Aid can now be given in the case of natural disasters, rather than just in the case of exceptional occurrences
- This increases the possibilities of misinterpretation and EU functional creep
- QMV is introduced without codetermination and the veto is abolished
- A non-binding declaration restricts the amount of subsidies available for the next few years, but this Article is dangerous because it opens the door to extensive intra-EU redistribution of wealth

### **Article 111 TEC: representation of the EU at international level regarding EMU**

- The position and opinions of Euroland on monetary affairs at international level are determined by QMV
- The UK appears to be covered by its opt-out
- This increases yet again the autonomy of the EU in international affairs. The EU sees itself as an actor on the world stage, presumably fighting America and the US dollar for global monetary supremacy.
- The declaration included at the end of the Article is there to allay the fears of those who think that QMV will basically abolish the influence of some members. The problem is that what matters is QMV extension, not the declaration

### **Article 123(4) TEC: special measures for the introduction of the euro**

- This is intended to give the EU the means to push through emergency legislation in Euroland countries – possibly painful measures to ensure that the introduction of the euro isn't too problematic
- This Article is particularly worrying as it is effectively permits these 'emergency' measures to be taken by QMV. What exactly are "other

measures necessary for a rapid introduction” of the euro? The implications could potentially be sinister.

- The fundamental problem with this Article is that it will come too late: the Treaty will only be ratified well after the introduction of euro notes and coins early in 2002
- Interestingly, this Article still uses the term ECU, which remains the official Treaty terminology for the euro.

### **Article 133 TEC: common commercial policy**

- This Article ushers in QMV for international trade agreements
- It is extended to intellectual property in another major innovation
- The provisions on cultural services are a sop to France and its obsessive fears of losing the international culture wars to America
- Some elements of unanimity remain but the gist is clear: the EU is an autonomous (and dangerously misguided) player on the world stage
- Future WTO negotiations will be severely impacted in unpredictable ways

### **Article 137 TEC: social provisions**

- This Article expands the remit of the EU to “the combating of social exclusion” and “the modernisation of social protection systems”.
- Who knows what these vague terms actually mean?
- All the list of functions is subject to QMV with the exception of four areas: the protection of sacked workers, the representation and collective defence of workers and the conditions of employment of third country nationals. These remain for the time being subject to unanimity; but it will be possible for the Council to convert these areas into QMV without changing the Treaty
- Only the areas of social security and the social protection of workers remain firmly subject to unanimity
- Given point k) “the modernisation of social protection systems” the caveat about member states maintaining their right to define the fundamental principles of their social security systems seems rather dishonest. What otherwise would be the point of k)? <sup>18[18]</sup>
- In the final analysis, it is likely that the EU will be able to use QMV to meddle quite extensively in national social security systems, threatening British interests <sup>19[19]</sup>
- This and related articles will probably prove to be the Achilles heel of growth in the EU. The Charter of Fundamental Rights, and in particular Article 34, should also be read in this context.

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<sup>18[18]</sup> On the impact the EU is already having on the UK welfare state, see Bill Cash, MP, (2001) ‘Paradox at the Polls’, *European Journal* 8(7) : 10-12 (June)

<sup>19[19]</sup> See Allister Heath (2001), ‘Unfunded pensions in the EU’, *European Journal* 8(4) :14-16 (March)

### **Article 144 TEC: social protection committee**

- Why a social protection committee? The EU's socialist tendencies keep resurfacing.
- At this stage in its development the committee appears relatively innocuous in practice as it only has advisory status
- Its monitoring role will prove quite irritating for countries such as the UK
- The so-called exchange of information and promotion of good practices is a prelude to harmonisation

### **Article 157 TEC: industrial policy**

- QMV and codetermination with the EP is now introduced for industrial policy
- The consequences will necessarily be of a further increase in old fashioned socialist policies being imposed on countries such as the UK or those with right of centre governments
- The caveats contained in the Article are not worth very much as workers' rights can be introduced through Article 137 TEC

### **Article 159 and 161 TEC: social cohesion and structural funds**

- Following a massive fight at Nice and a rearguard action led by Spain, structural funds will be determined by QMV from 2007 only
- The problem for countries such as Spain is that the enlargement of the EU will automatically reduce their relative poverty thus depriving them of handouts. The money will go to Eastern countries instead – they are truly poor.<sup>20[20]</sup>
- Eastern European elites have effectively agreed to swap self-government for German handouts

### **Article 175 TEC: environmental policy**

- QMV and codetermination is extended to environmental affairs
- There are a handful of exceptions where unanimity remains – relating principally to the choice of energy sources, some aspects of water management and to planning and zoning regulations
- QMV will be introduced for recycling and waste management
- A non binding declaration adds that the EU is to take the lead in environmental issues, including sustainable development
- Will that include the immediate abolition of the CAP and CFP? Of course not.

### **Article 181A TEC: economic, financial and technical cooperation with third countries**

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<sup>20[20]</sup> See Allister Heath (2001) 'The row over enlargement', *European Journal* 8(7) : 16-17 (June)

- Cooperation with third countries
- Some agreements will be by QMV: economic, financial and technical cooperation, measures that allegedly reinforce democracy and the rule of law (a bit rich, coming from the EU) and policies deemed to increase so-called fundamental freedoms.
- Other agreements (in accordance with Article 310) will be by unanimity only. A non binding statement adds that the Article does not apply to balance of payments assistance to third countries

### **Article 189 TEC: number of MEPs**

- Number of MEPs
- Thorny topic. At Amsterdam limitations were pushed through because it was felt that a parliament with 1000 members would be unworkable and would go against the spirit of ever further integration
- At Nice the limit was increased to 732 from 700
- The problem is that complex new rules in other parts of the Treaty mean that by 2004-2009 the number could rise to 850 depending on the extent of enlargement and thus create problems for Article 189 TEC.
- It would also be necessary to rebuild the EP yet again at huge cost to the taxpayer to fit everybody in as the building's maximum capacity is 750 MEPs
- We can thus expect modifications to Article 189 TEC to be introduced in 2004

### **Article 190(5) TEC: statute for MEPs**

- Unanimity is abolished for the determination of general conditions of MEPs
- This means that the regulations and general conditions including salaries of British MEPs will no longer be determined by the UK
- First step towards making MEPs totally independent from member states

### **Article 191 TEC: political parties at European level**

- • EU-wide Political Parties
- • This Article appears to mean that there will be some restrictions on how political parties will be funded, potentially jeopardising free speech. The Article ("regulations governing political parties") might also conceivably be interpreted as giving the Council the powers to ban political parties it dislikes.
- A new paragraph is added
- The original Article was purely declaratory and quite vague about what exactly was meant by European political parties

- The amended Article now gives the Council a role (regulation, funding out of EU funds)
  - Decisions are to be taken by QMV with EP co-decision
  - The wording remains very vague
  - All in all, an important and unacceptable extension
  - He who pays the piper plays the tune...Parties in the EP should be funded by national parties
  - Article 191 is followed by Declaration 11 which is intended to sooth Eurosceptic fears but is legally non binding
  - The first paragraph is factually incorrect. The whole point of the Nice addition is to give more powers to the EU
  - The second paragraph is also wrong – it directly contradicts Article 191
  - The third paragraph would be welcome if it were true but sadly it will just be ignored
- 
- Background: This is what is going on in the EP:
  - As Roger Helmer, MEP, has pointed out, the launch of new pan-European political parties has been discussed since at least 1996, when the Tsatsos report was prepared by the Committee on Institutional Affairs.<sup>21[21]</sup> It is important at the outset to distinguish between political *parties* in the European parliament (EP), and political *groups* in the EP, says Roger Helmer. Most national political parties represented within the EP form part of a parliamentary group. For example Labour MEPs sit with the PSE (Party of European Socialists), while Tories are associate (but not full) members of the EPP/ED (European People's Party and European Democrats) group. As Roger Helmer, MEP, cogently explains, European political parties, on the other hand, exist outside the parliament. Clearly, where both a group in the EP and a corresponding political party exist, there will be close links between the two, as is the case in the UK between Westminster parties and national parties, but they are plainly not the same thing. European funding already exists for both MEPs and political groups in the EP. The proposals now on the table, and especially those outlined in the report prepared by Germany's Ursula Schleicher, MEP, which is currently before the EP, are for European political parties, not for groups in the EP. As Roger Helmer points out, the definition of a European party is clearly set out. Such a party must have representation in the European parliament, or in national or regional parliaments, in at least five member states, or have achieved at least 5% of the vote in at least five member states at the last European elections. The British Conservative Party clearly does not qualify.

### **Article 207 TEC: appointment of the secretary general of the Council**

- The secretary general of the Council and his deputy will be made by QMV

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<sup>21[21]</sup> Roger Helmer, MEP, (2001) 'The Brave New World of European Political Parties', *European Journal* 8(7) : 3-4 (June)

- See Article 23 TEC: we are talking about the same person since Amsterdam

### **Article 210 TEC: salaries, pensions and allowances at the Court of First Instance**

- Officers of the court of first instance will have their salaries determined by QMV

### **Article 214(2) and 215 TEC: provisions on the President and members of the Commission**

- This is one of the most important decisions taken in Nice
  - The Commission is becoming more and more like a government (recall that French Prime Minister Lionel Jospin recently talked of a European economic government. For economic, read political)
1. The president of the Commission will be nominated by QMV
  2. The other commissioners will be nominated by QMV
  3. The combined president and commission will be chosen by QMV after approval by the EP
- There appears at first to be a problem in the second paragraph: how could it be possible to say on the one hand that the Council will choose the list of Commissioners while on the other saying that the list is drawn up in accordance with proposals made by each member state?
  - Presumably this means each member state will suggest several different candidates, and the Council and the President of the Commission will choose from the different proposals. It is possible that the EP may make a yet different choice, thus complicating things even further
  - This Article represents a massive transfer of power away from nation states with the abolition of their veto
  - Why cannot each member state simply appoint one Commissioner of its choice? Such a method would be more respectful of democracy.
  - Article 215 is basically an application of Article 214(2)

### **Article 217 TEC: organising the Commission**

- This Article massively increases the powers of the President of the Commission who becomes more like a Prime Minister
  - It will fuel the tension between the Council and the Commission
1. The President decides on the Commission's internal organisation according to the constraints laid down by the Treaties
  2. He allocates jobs to commissioners/ reshuffles these jobs

3. His previously existing power to nominate vice presidents is further increased by the sentence “after obtaining the collective approval of the Commission.”
4. The Commission can fire a commissioner as long as the other commissioners agree. It is the end of collective responsibility. The reason for this paragraph is the Cresson affair which forced out the entire Santer Commission rather than just the corrupt Mme Cresson.

#### **Article 220 TEC: ECJ and court of first instance**

- These bodies are to set up special judicial panels
- The new judicial panels will be approved using unanimity
- Each time a special court is introduced the Council of Ministers will indicate who will be on it and what its powers will be
- Decisions of these panels can be appealed against to the Court of first instance in certain limited cases only

#### **Article 221 TEC: more on ECJ**

- Enlargement to one judge per country
- Grand chamber or plenary sessions allowed

#### **Article 222 TEC: Advocates General**

- The ECJ is to be assisted by advocates-general
- Luxembourg will allow the appeal boards of the Office for Harmonisation to be based in Alicante, Spain

#### **Article 223 TEC: more on ECJ and CFI**

- Judges and advocate generals are to be appointed by common accord of the member states' governments
- The replacement of the judges is determined by the Statute of the ECJ
- New provision to determine the ECJ's rules of procedure by QMV: this is potentially very dangerous given the body's increasing importance

#### **Article 224 TEC: more on ECJ and CFI**

- Court of first instance
- At least one judge per member state (so there could be more than one) determined by the statute of the ECJ
- This court can also be assisted by advocate generals, just like the ECJ
- Member states will have the right to appoint the judge of their own choosing
- But the rules of procedure determined by QMV: once again this is dangerous

#### **Article 225 TEC: more on ECJ and CFI**

- The aim is to increase the strength of the two courts as well as to speed up the time it takes for cases to be acted upon
- The conditions for appealing to the ECJ are explained in the Article
- The Court of first instance deals with *inter alia* issues of incompetence, procedural infringements, and treaty breaches

#### **Article 225A TEC: more on ECJ and CFI**

- New judicial panels are to be set following unanimous agreement in the Council
- QMV will be used to determine the rules of procedure

#### **Article 229A TEC: more on ECJ and CFI**

- A special patent court is set up
- There are proposals for a EU patent<sup>22[22]</sup>

#### **Article 230 TEC: more on ECJ and CFI**

- The EP now has the right to bring actions to the ECJ
- In practice this will be used to fight Council decisions deemed insufficiently centralising
- We can expect the ECJ to side with the EP against the Council in such cases, thus reducing the influence of national parliaments
- Once again this demonstrates the increasing power of the judiciary in the EU

#### **Article 245 TEC: more on ECJ and CFI**

- The statute of the ECJ can now be amended without it amounting to a Treaty change, with the exception of section I
- This makes change easier

#### **Articles 247 TEC & 248 TEC: court of auditors**

- For once some slight improvements
- Unfortunately, QMV is introduced
- Article 247(1) is changed for enlargement: one national from each member state (as there will be more than 15 member states)
- 247(3): The Council now uses QMV to adopt the list of members after consulting EP from a list drawn up in accordance with proposals from member states. Like 214 TEC (re the commission)
- Why is QMV necessary to choose members? Why cannot each member state simply appoint their chosen member?<sup>23[23]</sup>

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<sup>22[22]</sup> For more on this and other related subjects, see Vaughne Miller, (2001) *The European Communities (Amendment) Bill : Implementing the Treaty of Nice*, London : HoC Library

### **Article 254 TEC: name of the Official Journal**

- Although the change in name of the Official Journal of the European Communities, which now becomes the Official Journal of the European Union, appears trivial, it is quite important psychologically
- It shows that the concept of Union increasingly dominates that of Community

### **Articles 257, 258, 259(1) & 263 TEC: Economic and social committee & the committee of regions**

- The maximum number of members is now 350, up from 222
- QMV is introduced. Once again, the same procedure is introduced. The Council now uses QMV to adopt the list of members after consulting the EP from a list drawn up in accordance with proposals from member states. This is just like 214 TEC (re the commission) and 247 (re the court of auditors)
- Consumers are brought into the economic and social committee
- Members of the committee of regions will need to hold elected office in a regional or local authority electoral mandate or be politically accountable to an elected assembly.
- This would make sense if one were to grant the legitimacy of these two institutions
- Unfortunately the economic and social committee is a useless interventionist and corporatist body which should be abolished
- The committee of regions is a key component of the EU's drive to destroy nation states and replace them by a Europe of regions

### **Article 266 TEC: European Investment Bank**

- The Article deals with procedures for amending the statute of the European Investment Bank
- The statutes can be amended only by unanimity in the Council of Ministers though the Commission and the EP have to be consulted
- The problem is that given the large number of private sector investment banks the EIB appears of limited use and probably harms EU economies by engaging in politically motivated decisions.

### **Article 279 TEC: financial controls**

- From 2007 accounting procedures will be determined by QMV
- This may lead to further reductions in the quality of financial controls in the EU

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<sup>23[23]</sup> For more information on the Court of Auditors see the House of Lords Select Committee on the EU, *The European Court of Auditors : the case for reform – with evidence*, 3 April 2001, London : Stationery Office.

- This change will also lead to further power struggles between the EP, Commission and Council. The effect will be further to weaken the intergovernmental aspect of the EU

### **Article 300(2) TEC: international agreements**

- This Article extends QMV for international agreements
- References to Article 310 are removed

### **Article 300(6) TEC: European Parliament obtaining the opinion of the ECJ**

- This now gives the EP the right to ask the ECJ whether an international agreement is compatible with the treaties
- This change is in addition to the fact that, at present, the Council is compelled to ask the ECJ for its agreement before concluding international agreement
- More powers are thus handed over to the unelected and politicised EU judiciary
- More influence is granted to the EP

### **Article 10 of the statute of the ECB**

- The Maastricht Treaty stated quite explicitly that each country would send its Central bank governor to the council of the governors, and that each governor would have equal voting rights. Thus the governor of the Bundesbank would have the same influence as the governor of the Portuguese central bank and, it was claimed, the euro would serve as a tool to emasculate the DM and to reduce German hegemony. This provision was contained in paragraph 2
- Nice basically introduces the possibility of abolishing this equality by introducing an extra section, Article 10(6). There remains a guarantee in the short run at least: the change to paragraph 2 can only happen through unanimity.
- But a recommendation (number 19) is added to the end of Article 10 – it insists that work will begin speedily on reviewing paragraph 2: the larger countries are in a hurry to grab more power from the smaller ones
- Thus we can expect a major pro-euro argument to collapse soon. Larger economies and especially Germany will eventually gain the most political and economic power in the ECB
- Furthermore, it remains the case that nation states cannot legally instruct the ECB

### **Protocol on enlargement**

#### **Article 1**

- The section introduced in Amsterdam which said that the EU could be enlarged by up to 20 members without any changes to institutions is abolished by Nice
- This old section is important because it shows that the EU could be enlarged to include 5 new applicants without needing a new Treaty – Nice is legally unnecessary for enlargement.
- The old timetable for enlargement is thus repealed and a new much more complicated procedure ushered in

## Article 2

- There is a new allocation of seats in EP
- When every new member joins (27 member EU) there will be 732 members
- Only Germany and Luxembourg keep the same number of MEPs – everyone else loses between 12 and 22% of their representation
- This means that the population represented per MEP varies even more drastically than before: at one extreme, Luxembourg has 6 MEPs for 429000 inhabitants. Smaller countries remain over represented
- In a way this does not matter very much because it shows that the EP is still about nations rather than merely about EU citizens. The peoples of Europe rather than individuals still send MEPs to Brussels.
- On average, we will have one MEP per 701 500 people, up from one MEP per 599 600. This means that MEPs have even greater constituencies and are even more remote from constituents (as well as all the usual problems posed by PR)
- There is a reduction of existing member state's allocations to 535 which will eventually entail a reduction of the number of UK MEPs from 87 to 72
- There are transitional arrangements for 2004-2009 when it is uncertain how many MEPs there will be any one time – caused by unpredictable timetable for enlargement. This Article shows that the EP may temporarily exceed 732 members at some stage – bizarre, to say the least. It may even reach 856. Short term modifications will be decided by simple majority of Council. There may well be no room in the EP as the buildings have a maximum capacity of 750!
- Due to the uncertain enlargement timetable we don't know exactly how many MEPs there will be in 2004 (at this stage we just know that it will be between 72 and 87)
- This will cause problems in the UK. Tory MEPs will come up for reselection 2002.
- Crucially Germany will keep the same number of MEPs – 99, thus increasing its relative power *vis a vis* the UK and France.
- It is my view inevitable that those countries dependent on Germany will tend to vote with her

## Article 3

- There will be a new allocation of votes in the Council from 1 January 2005 regardless of any enlargement. This appears dangerous as by then we will be deep into the arena of a European constitution
- There are many cases of blatant unfairness and favouritism, especially when one compares the allocation of votes of some of the applicants with those of some of the existing member states.
- The gains of the large countries are actually very small: +0.7% (although Spain gets +2.1%)
- Whereas three large countries can now block a decision, two large and one medium will be enough to block by 2005 with Nice. When all applicants join (27 member EU) three large countries will be able to form a blocking minority as long as Germany is one of the three
- New rules are introduced for QMV:
- In the short run (in a 15 member EU) the number of votes required will be 169/237 or 71.30% for a qualified majority (up slightly from 62/87 votes or 71.26%). But as new members join the qualified majority threshold will rise to 258/345 or 74.78%
- In other words immediately after the ratification of Nice 71.3% will be needed; there will then be a gradual evolution to 74.78%
- Whenever a decision goes to the QMV in the Council of Ministers a country may demand that "double majority voting" be used i.e. 62% population requirement
- This is of course a crucial change as Germany is home to 21.9% of the EU's current population. Germany and those member states dependent on her would be able to veto each and every decision in the Council.

#### **Article 4**

- The Commission
- Reduction to one Commissioner per state
- When there will be 27 members there will be less than one Commissioner per state. A rota system will be implemented with due respect for geography and demography

#### **Non-binding declarations**

- Belgium will get 50% of summits until the time when the EU has 18 members
- Belgium will get 100% of the summits after that time
- This last minute deal is a typical example of special interest pleading by a country
- There are a number of simple mathematical mistakes in the final signed version of the Treaty which is up for ratification. Declaration 21 on the future weighting of votes in the Council of Ministers is a case in point.
- An erroneous figure of 73.4% is given (it should be 74.8% for QMV.)

- Furthermore, this section says there would be 255 votes (the actual number is 258.)
- The membership of the social and economic committee, and the committee of regions, has increased without any reduction in current numbers
- No difficulty here

### **Final Act**

- Unsurprisingly, the negotiators deemed speedy ratification desirable
- A new IGC is to be convened in 2004 to discuss the European constitution:
  1. How to delimitate powers between EU and member states. The meaningless principle of subsidiarity is invoked here
  2. The status of the CFR (i.e. presumably making it binding)
  3. A simplification of the Treaties without changing their content. This is highly disingenuous: of course the Treaties will be modified.
  4. A decision on the place of national parliaments in Europe. The whole trend in institutional arrangements is to sideline the national parliaments. Despite the rhetoric, this will necessarily mean a further emasculation of democracy
- In practice the 2004 IGC will be a constitutional convention

## **Part III: The Charter of Fundamental Rights**

The Charter of Fundamental Rights is a time bomb.<sup>24[24]</sup> The British government has claimed that it has only declaratory status. The Charter does not form part of the Nice Treaty and is therefore not included in the present Bill. But when the CFR does become full justiciable, we will find that the language used throughout is so unclear that it will unavoidably be interpreted at the discretion of the European judges. Basically, the CFR represents the abolition of the existing rule of law and the wholesale transfer of powers from individuals, democratically elected politicians to judges. The power they will be vested with is immense and unchecked and will exacerbate tensions at the national level. Whereas the judiciary has immense powers in the America, the US Supreme Court is fully legitimate and its decisions held in high esteem.

There are of course many aspects of this Charter which are unexceptionable. For instance, I fully support the prohibition of eugenics. However, the real question is whether this should be dealt with within the jurisprudence of the EU as a whole or within nation states. The consequences of handing over the power to make these decisions to the ECJ could be dramatic. The Charter could have a huge influence on public spending – have we handed the ECJ a blank cheque? Sovereignty in the UK quite properly included the accountability of the executive in the fields of taxation and public

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<sup>24[24]</sup> See for example Roberto de Mattei (2001) 'The Charter of Fundamental Rights' Totalitarian Spirit', *European Journal* 8(7) : 28-30 (June)

expenditure. Those Eurosceptics who confine their arguments to the euro are missing the immense implications of the nascent European state. It is absolutely imperative that we hold a referendum on the whole of the European issue rather than just on the euro.

## *Preamble*

*The peoples of Europe, in creating an ever-closer union among them, are resolved to share a peaceful future based on common values.*

*Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.*

*The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.*

*To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.*

*This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.*

*Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.*

*The Union therefore recognises the rights, freedoms and principles set out hereafter.*

## *Chapter I - Dignity*

### *Article 1 Human dignity*

*Human dignity is inviolable. It must be respected and protected.*

*Article 2*

*Right to life*

- 1. Everyone has the right to life.*
- 2. No one shall be condemned to the death penalty, or executed.*

*Article 3*

*Right to the integrity of the person*

- 1. 1. Everyone has the right to respect for his or her physical and mental integrity.*
- 2. In the fields of medicine and biology, the following must be respected in particular:*
  - • the free and informed consent of the person concerned, according to the procedures laid down by law,*
  - • the prohibition of eugenic practices, in particular those aiming at the selection of persons,*
  - • the prohibition on making the human body and its parts as such a source of financial gain,*
  - • the prohibition of the reproductive cloning of human beings.*

*Article 4*

*Prohibition of torture and inhuman or degrading treatment or punishment*

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

*Article 5*

*Prohibition of slavery and forced labour*

- 1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*
- 3. Trafficking in human beings is prohibited.*

*Chapter II - Freedoms*

*Article 6*

*Right to liberty and security*

*Everyone has the right to liberty and security of person.*

*Article 7*

*Respect for private and family life*

*Everyone has the right to respect for his or her private and family life, home and communications.*

#### *Article 8*

##### *Protection of personal data*

- 1. Everyone has the right to the protection of personal data concerning him or her.*
- 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
- 3. Compliance with these rules shall be subject to control by an independent authority.*

#### *Article 9*

##### *Right to marry and right to found a family*

*The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.*

#### *Article 10*

##### *Freedom of thought, conscience and religion*

- 1. 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.*
- 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.*

#### *Article 11*

##### *Freedom of expression and information*

- 1. 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
- 2. 2. The freedom and pluralism of the media shall be respected.*

#### *Article 12*

##### *Freedom of assembly and of association*

- 1. 1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of*

*everyone to form and to join trade unions for the protection of his or her interests.*

*2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.*

#### *Article 13*

##### *Freedom of the arts and sciences*

*The arts and scientific research shall be free of constraint. Academic freedom shall be respected.*

#### *Article 14*

##### *Right to education*

*1. 1. Everyone has the right to education and to have access to vocational and continuing training.*

*2. This right includes the possibility to receive free compulsory education.*

*3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.*

#### *Article 15*

##### *Freedom to choose an occupation and right to engage in work*

*1. 1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.*

*2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.*

*3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.*

#### *Article 16*

##### *Freedom to conduct a business*

*The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.*

#### *Article 17*

##### *Right to property*

1. 1. *Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.*
  
2. 2. *Intellectual property shall be protected.*

*Article 18  
Right to asylum*

*The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.*

*Article 19  
Protection in the event of removal, expulsion or extradition*

1. 1. *Collective expulsions are prohibited.*
2. 2. *No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*

*Chapter III - Equality*

*Article 20  
Equality before the law*

*Everyone is equal before the law.*

*Article 21  
Non-discrimination*

1. 1. *Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
  
2. *Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.*

*Article 22  
Cultural, religious and linguistic diversity*

*The Union shall respect cultural, religious and linguistic diversity.*

*Article 23  
Equality between men and women*

*Equality between men and women must be ensured in all areas, including employment, work and pay.  
The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.*

*Article 24  
The rights of the child*

- 1. 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*
- 2. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*
  
- 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.*

*Article 25  
The rights of the elderly*

*The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.*

*Article 26  
Integration of persons with disabilities*

*The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.*

*Chapter IV - Solidarity*

*Article 27  
Workers' right to information and consultation within the undertaking*

*Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.*

*Article 28*

*Right of collective bargaining and action*

*Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.*

*Article 29*

*Right of access to placement services*

*Everyone has the right of access to a free placement service.*

*Article 30*

*Protection in the event of unjustified dismissal*

*Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.*

*Article 31*

*Fair and just working conditions*

- 1. 1. Every worker has the right to working conditions which respect his or her health, safety and dignity.*
- 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.*

*Article 32*

*Prohibition of child labour and protection of young people at work*

*The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.*

*Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.*

*Article 33*

*Family and professional life*

1. 1. *The family shall enjoy legal, economic and social protection.*
2. 2. *To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.*

#### *Article 34*

##### *Social security and social assistance*

1. *The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the procedures laid down by Community law and national laws and practices.*
2. *Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.*
3. *In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices.*

#### *Article 35*

##### *Health care*

*Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.*

#### *Article 36*

##### *Access to services of general economic interest*

*The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.*

#### *Article 37*

##### *Environmental protection*

*A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.*

*Article 38  
Consumer Protection*

*Union policies shall ensure a high level of consumer protection.*

*Chapter V - Citizen's Rights*

*Article 39  
Right to vote and to stand as a candidate at elections to the European Parliament*

- 1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.*
- 2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.*

*Article 40  
Right to vote and to stand as a candidate at municipal elections*

*Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.*

*Article 41  
Right to good administration*

- 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.*
- 2. This right includes:*
  - • the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
  - • the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
  - • the obligation of the administration to give reasons for its decisions.*
- 3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.*
- 4. Every person may write to the institutions of the Union in one of the*

*languages of the Treaties and must have an answer in the same language.*

#### *Article 42*

##### *Right of access to documents*

*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.*

#### *Article 43*

##### *Ombudsman*

*Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.*

#### *Article 44*

##### *Right to petition*

*Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.*

#### *Article 45*

##### *Freedom of movement and of residence*

- 1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.*
- 2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.*

#### *Article 46*

##### *Diplomatic and consular protection*

*Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.*

### *Chapter VI - Justice*

#### *Article 47*

##### *Right to an effective remedy and to a fair trial*

*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*

*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

*Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.*

#### *Article 48*

##### *Presumption of innocence and right of defence*

*1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.*

*2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.*

#### *Article 49*

##### *Principles of legality and proportionality of criminal offences and penalties*

*1. 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.*

*2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.*

*3. The severity of penalties must not be disproportionate to the criminal offence.*

#### *Article 50*

##### *Right not to be tried or punished twice in criminal proceedings for the same criminal offence*

*No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.*

### *Chapter VII: General Provisions*

#### *Article 51: Scope*

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.*
- 2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.*

#### *Article 52: Scope of guaranteed rights*

- 1. Any limitations on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.*
- 2. Rights recognised by this Charter which are based on the Community Treaties or the treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.*
- 3. Insofar as this Charter contains rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.*

#### *Article 53*

##### *Level of protection*

*Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.*

#### *Article 54*

##### *Prohibition of abuse of rights*

*Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.*

## Part IV: Time to renegotiate

'But you can't believe things which are impossible', said Alice. 'Nonsense', said the Queen of Hearts. 'You just haven't had enough practice. I often believe six different impossible things before breakfast.'

*Lewis Carroll, Alice through the looking glass*

Although there were many reasons for the riots at the recent EU summit in Gothenburg in Sweden, those terrible and unacceptable scenes relayed into our living rooms were all too predictable. In my paper *A Brave New Europe* published by Duckworths in *Visions of Europe* in 1993, I predicted that "the forces within this Europe – this artificially created Europe engineered at Maastricht – will darken and destabilise Europe as a whole."

The Nice Treaty will just further fan the flames of discontent throughout Europe. This is because although very few people understand in the abstract what it means for a country to be 'sovereign' they all understand what 'democracy' means: the right for ordinary people to kick out their rulers at regular intervals when, for whatever reason, they get tired of them. People are increasingly realising that each new Treaty is one more nail in the coffin of democracy; and as voting slowly but surely becomes just another meaningless ritual, the polling booth is no longer perceived as a legitimate outlet for discontent. The widespread and unprecedented apathy that characterised the general election on 7 June was a case in point, as was the even more dismal turnout for the European elections in 1999.

We are now seeing the first real rumbling of anger from the disenfranchised electorates and peoples of Europe. They are beginning to realise that they have been conned by the Euro-elites that brought them Maastricht, Amsterdam and Nice. The monumental problem is that the EU will never be democratic. It is well known that the term 'democracy' is derived from the Greek *demos* (the people) and *cratos* (power). Europe has plenty of *cratos* but no single *demos* – its diversity of language, culture, political history and outlook must surely be the European continent's most striking and endearing characteristic. Although there is a concerted movement to use propaganda and cultural policy to create a new European people – an 'imagined community' if ever there were one – such a monumental act of social engineering would at the very least take decades before it bore any fruits. As such, democracy is impossible *by definition* in Europe: the European institutions will never be democratic, however much one tinkers with the European Parliament to imbue it with spurious legitimacy. The absence of a single 'European' culture as compared to the range of its different cultures means that there is no single European media to relay to the people what is happening politically and to help hold politicians to account.

More practically, a large part of the problem is the remoteness of the EU decision-making process. All sides of the European issue agree that there is no forum for holding the European Commission to account. Proportional Representation in the European parliament has almost totally abolished the

link between the electorate and its representatives. The bankers who run the ECB are accountable to no one and cannot be removed – whatever the havoc wreaked by their decisions. The weakening of the Westminster Parliament combined with the excesses of the whip system in the UK mean that increasingly the executive is all powerful – there is no way to hold the Council of Ministers to account either. The arrogant and contemptuous manner the EU has treated innocent people like Bernard Connolly and Paul van Buitenen demonstrates how ruthless the insulated Euro-elites have become.

As the reaction to the Eurorealist victory in Nice proves yet again, the process of European centralisation has thus gone hand in hand with the emasculation of democracy. In my March editorial in the *European Journal*, I predicted that “the message will become clearer to the voters of the Republic of Ireland – that European government will increasingly marginalize the outer sphere<sup>25[25]</sup>” As I explained in the *Daily Telegraph* on 9 June 2001, the Irish democrats have shown the way by saying ‘No’ to Nice. Angry at the outrageous condemnation of their successful economic policy by unelected European bureaucrats, the Republic of Ireland rejected the German-inspired scheme to bulldoze smaller states by creating a two-tier hard core. Or at least they thought they had. In scenes reminiscent of the first Danish referendum on EMU, EU leaders such as Germany’s Chancellor Gerhard Schröder have simply dismissed the results and Prodi said that the result was ‘undemocratic’. Nice is here to stay, they have proclaimed with utter disregard for the will of the people. It is important to recall that Britain took over the rotating presidency of the EU a few weeks after the first Danish referendum which was held in June 1992. It was John Major who disastrously endorsed the idea of a second Danish referendum. It is to be hoped that this time British Eurorealists will unite with the Irish in their struggle for democracy.

At this juncture, some argue that Europe will unavoidably witness ever-increasing strife over the next few years. Many people have said to me that I should not worry about the EU because it will collapse anyway on its own. This would be a dangerous mistake. Any implosion would affect us badly and would be met with increasing authoritarianism by the new pan-European government – with unpredictable consequences. It is precisely to avoid the disintegration of the EU amid severe chaos that Britain should take the lead and act decisively – that is the most powerful argument in favour of renegotiating the Treaties. Furthermore, as I’ve made it clear on many occasions, if they refuse to listen then we would have to steer our own course. It is not enough merely to reject Nice and the euro – we need to reduce the functions of the EU. Even if our European friends do not want to follow us down that route, it is imperative that we remove ourselves from EU jurisdiction in most areas of public policy. These areas would include the whole of the arena of European economic government, the stability and growth pact, foreign policy, defence, social policy, agriculture, fisheries, taxation, and many others besides. Root and branch reform is being called for. The breadth and extent of EU government is there for anyone to read – it’s all in the Treaties. Unfortunately, there are many, including some notorious individuals at the

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<sup>25[25]</sup> See Cash (2001), op. cit.

forefront of the political scene, who have not even been bothered to read the Treaties and even boast about it.

One area of EU interference, which is both unwarranted and particularly damaging, relates to public expenditure. Most people believe that EMU and the euro are synonymous. At the root of the problem is confusion about the “E” in EMU: it stands for *Economic*, not European. Far from being a trivial point of semantics, this goes to the heart of the entire European debate: our so-called Maastricht “opt-out” only applies to the final stage of EMU. We have already “opted-into” a number of little known restrictive fiscal rules (part of the “Growth and Stability pact”) from which we will need to extract ourselves. We are not allowed to determine public spending for ourselves – with direct consequences for the state of our public services such as schools and hospitals. There is a clear link between the domestic agenda and the European question. Government ministers have told me in discussions that the Maastricht criteria and European monetary rules are having an impact on public expenditure, introducing tensions between unions and the government. In addition, all national accounts procedures have been harmonised to make them conform with EU-wide accounting procedures. This is because member states now have to submit their accounts to the EU for approval.

Even the Chancellor’s famous fiscal rules are in fact little more than EU budget rules with a Scottish accent. Why hasn’t it been pointed out that the fiscal rules are similar to the criteria for deficits and debt laid down in the Treaty? If the extent of EU control over our public finances, and its impact on public expenditure, were openly discussed, it would transform the political debate. In addition there is also the related issue of Commission President Romano Prodi’s and Finance Minister Eichel’s £60 billion Euro-tax. This would be used to directly fund the EU. The BBC has a duty to explore these issues – after all, we are talking about a massive scoop.

Foot and Mouth disease is another important example. The trick once again is to make the connection with the fundamental European dimension of all these issues to show that the Treaties are not some irrelevant abstraction – they actually have a massive impact on daily lives.

I have argued in this paper that the EU is inherently undemocratic. And must be opposed at every step – including at program motion. We must hold a referendum on the wider question of who governs Britain rather than on the euro. Rather than the two-speed Europe launched by Nice, I believe in a Europe of different spheres. The countries of Europe should be given the choice between belonging to a sphere ruled by European government; or they could join a *Associated European Area* which would be purely intergovernmental and solely concerned with the promotion of free trade.<sup>26[26]</sup> Following a ‘no’ result in a referendum on the question of European

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<sup>26[26]</sup> Bill Cash (2000) *Associated, Not Absorbed - the Associated European Area: a constructive alternative to a single European State*, London: European Foundation. Available on [/pubs/books/index.htm](#) . This paper was first published before the latest Danish and Irish referendums.

government, I believe that the United Kingdom would be ideally placed to play a leading role in establishing the Association. An emergency Intergovernmental Conference would have to be called following the referendum and we could invite potentially interested countries to discuss the matter. Treaty amendments would be necessary.<sup>27[27]</sup>

### **Treaty Amendment I**

**An amendment allowing the states of the new Associated European Area to be subject retrospectively only to those elements of the *acquis communautaire* dealing with trade and of cross-border environmental policy managed through intergovernmental channels.**

### **Treaty Amendment II**

**An amendment allowing the states in the new Associated European Area freely to conclude trade agreements in the absence of action by the European Union as a whole.**

### **Treaty Amendment III**

**An amendment stating that nothing in the *acquis communautaire* shall be interpreted as challenging the right of member states to withdraw from the European Union under their own authority.**

The first amendment would mean that policies including fisheries, agriculture, macroeconomic management, foreign aid, taxation policy, defence as well as many others would all be repatriated to Westminster. It would not only end the flow of directives that is saddling our economy with uncompetitive bureaucratic rules but actually at a stroke remove thousands of currently existing directives from UK law. The second amendment would require the renegotiation of the EU's protectionist customs unions and would enable the UK to join NAFTA if it so desired. The third amendment clarifies once and for all that member states have the right to secede (just as they currently have the right to leave NATO). It is no good saying that all this is impossible. First, the Irish and Danish have said 'no'. Second, it is a matter of political will in line with Conservative principles.

First of all, we need to fight against Nice. Regardless of the outcome, we will then need a referendum on the whole issue of European integration, a referendum to decide who should control our defence, our taxes, our justice *and* our currency. There must be a reopening of the mistaken policies of the past, a full and proper explanation of what is at stake and finally a clear policy of renegotiation of the Treaties. The debate should not be camouflaged by useless niceties or clouded by hot air. I believe that we must exorcise the ghost of the 1972 White Paper which so misled the British people by claiming that "there is no question of any erosion of essential national sovereignty." To this end, I have called three times for a new White Paper on the full

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<sup>27[27]</sup> These amendments are based on those I suggested in *Associated Not Absorbed*, *op. cit.*

constitutional and political implications of European integration in the last 18 months – so far to no avail as Tony Blair has refused to listen.

We are witnessing a truly new form of political power play: to paraphrase Clausewitz, EU lego-political power play is legal warfare by any other means. The White Paper should be followed by a referendum on renegotiation. It is the only way forward and the only way to save democracy in Europe. The leadership election in the Conservative Party should be seen in this context.

## **Appendix I**

### **Speech by Bill Cash, MP**

© Hansard, 2001

Debate on the address  
7.32 pm

Mr. William Cash (Stone): I intend to address the House on the question of constitutional issues. Taking up the point made by the hon. Member for West Ham (Mr. Banks), I should make it clear that I believe that the most important matter facing the country and Parliament is the restoration of faith in politics.

The constitution is the framework within which we are governed. Given that that framework is becoming increasingly eroded, how does it match up to the requirement that it must permit the British people to make decisions based on true democracy and accountability? That is the key question. For example, I believe that we should reverse the procedural changes that have been introduced to the guillotine procedure. A motion on that subject will be debated tomorrow. The changes will have a major effect on the debates on the Nice treaty.

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We must restore the independence of Back-Bench Members. As I have said in two speeches in the past six months, that will require a reduction in the power of the Whips. In my judgment, such a reduction would have to be achieved by amending the Standing Orders. Anyone who cares to look at the two speeches to which I have referred will see that I made mention of what happened in 1886. I shall not go into that now, but that was when the Speaker's rules were transferred to the Executive. From that moment on, Back-Bench Members ceased to have the degree of control that they had enjoyed for centuries.

I believe that there should be more independence for Select Committees. I am glad to have signed the motion circulating among hon. Members with regard to the report from the Select Committee on Liaison. That is a very important indicator of the direction in which the House has to move.

We should examine, and probably remove, the rule that prevents civil servants from being cross-examined by Select Committees about the advice that they have given to Ministers. That is a difficult and delicate area, but the present rule precludes proper discussion about what is really going on.

That problem is deeply related to another important matter--freedom of information. If we want a radical and proper examination of the interaction between voters and our constitution, we are bound to consider such matters and to arrive at conclusions in the very near future.

We should enhance the power of the Comptroller and Auditor General. The selection of the Chairman and members of the Select Committee on Standards and Privileges should be taken away from the Executive. By definition, all scrutiny Committees should be chaired by Opposition Members. It is outrageous, for example, that the appointment of the Chairman of the Select Committee on European Scrutiny should be in the hands of the Government. The Committee was established in 1972, but only since the beginning of the previous Parliament has that power of appointment resided with the Executive.

We must also reform the House of Lords by making it a far more elected Chamber, although I do not think that its entire membership needs to be elected. Of course, to prevent competition between the two Houses, the House of Lords' electoral cycle would have to be different from this House's, as would the areas represented. The necessary reform of the House and its procedures must be exciting and relevant, because we must bring them up to date. However, we must also maintain the House's essential democracy and accountability.

My next point concerns matters outside the House. I consider it inconceivable that any leader of the Conservative party--the greatest of parties, which has had the honour to serve this country for the best part of two and a half centuries--should not be clear about who governs this country. Anything else is impossible to imagine, but it is clear, from remarks that have been made outside the Chamber, that some people do not understand what is a very simple matter. The question is not whether one is anti-European, but whether one is pro-democracy and pro-accountability.

The problem is clear. After the Irish referendum, Mr. Romano Prodi went to Ireland to lecture people and tell them that they must hold another referendum because the earlier result had been undemocratic. I defy anyone--

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in this House or in the country--to advocate allowing ourselves to be governed by such people. However, the truth is that we are already so governed, which is why the European treaties must be renegotiated. That is the only way to get the balance right. I am pro-democracy, and it is pro-European to be pro-democracy. It is anti-European to be anti-democracy. That message must be brought home to the electorate as a whole.

People must be informed properly. The BBC rules on impartiality and on matters of major controversy, and the broadcasting legislation itself, must be examined. We must be sure that the relevant measures are interpreted and used in a way that benefits the people of this country as a whole. We must ensure, in the public interest, that people have a proper and impartial opportunity to acquire the information that they need. It is also important that the right questions be asked, which means that the necessary research processes in the relevant institutions must be enhanced.

I will defend to the death free speech in newspapers or on radio and television. However, that freedom of speech must be based on the requirement that people be given proper and fair information on all matters.

Furthermore, remarks made outside the House in the past 24 hours suggest that the Nice treaty should be allowed to go ahead. I want all the treaty elements covering the European Union looked at properly, because the EU impinges on the rights and privileges of Members of this House, and on the rights of those who vote for us. As I have said before, Parliament is not ours: it belongs to the British people, and hon. Members have no right to hand it over to anyone else.

The natural consequence of the movement towards Europe that might take place under certain permutations of the policies held by those who want to lead the Conservative party is that Britain would not merely be subject to further integration, but would be absorbed into a European constitution. That constitution is in the offing, and I have predicted it for many years.

In this regard, one has to ask certain constitutional questions about the Conservative party. First, let me quote Churchill on the truth. He said that one should tell the truth to the British people, and continued:

"They are a tough people, a robust people. They may be offended at the moment, but if you have told them exactly what is going on you have insured yourself against complaints and protests which are very unpleasant when they come home, on the morrow of some disillusion."--[*Official Report*, 23 November 1932; Vol. 272, c. 87.]

I believe that that is extremely relevant to what is going on in the Conservative party.

The second point concerns what a political party is. In the words of Edmund Burke, a political party is a body of men--and, of course, women--

"united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed".

It is impossible to reconcile the differences on this European issue and prevent the tensions and conflicts that are bound to follow from it if we try to create a false and impossible coalition. It will not work. To that extent, I agree with what my right hon. and learned Friend the Member for Rushcliffe (Mr.

Clarke) said in his statement yesterday. The issue needs to be brought out into the open. It is essential that we have a proper debate about the principle that Burke identified.

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Disraeli said that the Tory party is a national party or it is nothing. That was the statement of one of our greatest Prime Ministers. It was not nationalistic-- he meant the democratic nation state. That is the point. It is to do with the democracy and accountability that this constitutional arena--this House of Commons--represents. It needs improvement and reform, but that has to be measured and balanced. Only then will respect and faith in the British constitution and in this House of Commons be justified and be demonstrated—

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