

**THE
STRANGULATION
OF BRITAIN
&
BRITISH
BUSINESS**

*Europe in
our daily lives*

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and
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29th March 2004

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Introduction

A RECENT POLL produced the alarming result that only 9 per cent of the British public think that ‘Europe’ affects their daily lives. The British Chambers of Commerce recently produced another alarming statistic: that the costs of extra red tape in the UK since 1997 had spiralled to £30 billion.¹ This was accompanied by an article in the *Sunday Times*, which broke down the costs of over-regulation.² Of the top ten red tape burdens, every one of the top six was European in origin, with a combined cost of £23 billion – a disproportionately high figure considering that European regulations account for 40 per cent of all regulations affecting British business.³ EU legislation clearly carries a very high cost to the UK economy.

It will no doubt be argued that negotiators do their best when EU legislation is being formulated. The scale of the problem, however, shows that this is not good enough. In an article in *The Times* in 1986, Bill Cash made the point that under the Single European Act, European legislation would become oppressive unless much more was done to counter it by way of ministerial involvement and extra information to Parliament from business.⁴ The oppression is becoming acute. The question now is why there is such a refusal to acknowledge its source. Perhaps it is the fear of accusations of ‘europhobia’, or a belief that the national interest is not worth rocking the boat for. Either way, the conspiracy of silence is itself a significant example of the effect Europe has on our daily lives. Later on, this pamphlet will deal with how the problems caused by EU legislation can be precisely identified and tackled.

Negotiations on a Constitution for Europe, which would constitutionalize the whole EU legislative system, collapsed in December 2003, but the political momentum has been sustained behind the scenes and was recently buoyed by the new Spanish government’s stated determination to accelerate the process.⁵ The current, Irish Presidency of the EU is keen to re-start talks as soon as possible on the basis of a back-room deal, which could be reached even before the end of the Presidency in June. Resistance to the Constitution must therefore be maintained if we are to avoid taking chances with the most crucial fundamentals of our national democracy.⁶

Meanwhile, the UK remains committed to the EC/EU Treaties up to Nice. The case for their reform is overwhelming – fundamental reform that addresses the realities facing the nation-states of Europe today on a treaty basis; not a new, all-encompassing Constitution that strengthens, reinforces and entrenches existing policy failures.

European politicians regularly pay lip-service to the need to create conditions friendly to small and medium-sized businesses as the engine of future growth in Europe, but the European Commission's recent action plan for enterprise has already been dismissed as “*a damp squib...lacking in focus and actual recommendations*”.⁷

The central problem is the absence of political will to tackle over-regulation. At his “*Advancing Enterprise*” Conference on 26th January, Gordon Brown, with the finance ministers of Ireland, Luxembourg and the Netherlands, announced a plan for each EU Member State to draw up a list of European legislation that should be amended or abolished. Like so many previous announcements on cutting red tape, this sounded bold, but on examination, the Joint Initiative for Regulatory Reform is a weak document. The measures it proposes consist of generating more work for committees, extending review clauses in European regulations, beefing up EU competition policy and speeding up the “*simplification*” of EU regulations through consolidation and codification: processes which entail further European integration.

Here is the phrase which covers the ‘*red-tape hate list*’:

“*Member states could be asked to provide examples of legislation that their companies experience as particularly burdensome in order to allow the Commission to consider these issues in its simplification programme.*”⁸

In other words, the consultation, which may not go ahead at all, will be passed through a filter of government spin, then proceed before the Commission on the basis of the lowest common denominator, only touching areas where there is political agreement, with the focus on specific regulations and directives in those areas which *may* then be consolidated and codified, but not radically reformed. Whatever else this initiative may be, it is not a panacea for British business.

Nowhere in the joint initiative is the principle of amendment⁹ or repeal of regulations suggested. This is because serious reform of any aspect of the *acquis communautaire*, the body of EU law, is unacceptable to the EU –

the ten countries joining the Union on 1st May have been obliged to implement the *acquis* in its entirety, while Valéry Giscard d'Estaing's draft Constitution outlined a clause whereby the entire *acquis* would be deemed to have been adopted (retrospectively) under the Constitution.¹⁰ Whilst, under current arrangements, it remains within the power of the UK to repeal or amend aspects of the *acquis*, it is unlikely that this power would survive the Constitution without a clause in any European Constitutional Bill expressly reaffirming the sovereignty of Parliament.

For decades, all political parties have ducked this issue, allowing problems to accumulate. Successive governments have relied on inadequate negotiations rather than admit that the system isn't working in Britain's national interest. There has been a host of de-regulation committees, but none has ever worked. There is, however, a simple solution: to set up an independent De-regulation Commission, with statutory powers of investigation, that would carry out a legislative audit of the statute book, encompassing both domestic and EU-based legislation in relation to each government department, and make recommendations for simplifying reform based on amendment and repeal. The Commission would call on lawyers and senior civil servants in each department to justify existing legislation, maintain constant liaison with business representatives and the Public Accounts Committee, and report to ministers on the basis of a statutory timetable.

In the European Commission's recent report on implementation of the Lisbon Agenda for economic reform, *Delivering Lisbon* (in which the Commission makes clear that it still expects the Constitution to have been adopted by the 2005 Spring European Council¹¹), Member States are heavily criticised for failing to implement domestic reforms, but no suggestion is made of the need for reform of the *acquis*. The underlying reason for this is that the *acquis* locks in deals brokered on the basis of perceived national interests, irrespective of how they affect the UK and other Member States today. This is why the facility to use Parliament's sovereign power to amend or repeal EC legislation is essential to our continuing national interest – as a negotiating tool and, in the last resort, as a practical option. With the progressive loss of the veto in negotiations, it is essential that we retain and acknowledge the powers that we can still rely on.

This pamphlet addresses the extent of the influence of EU legislation, showing how it affects the daily lives of the British people and British business. This analysis is in two parts: the large but unseen hand of the Union in the way we are governed and the failure of its economic policies. The final chapter deals with the dangers of the proposed Constitution, partly by reference to the European Foundation pamphlet of October 2003 by Bill Cash,¹² with updates, and examines realistic ways in which the current problems could successfully be addressed.

CHAPTER I

The Unseen Hand

POLLS SUGGEST that only a very small proportion of British people think that Europe has an impact on their daily lives.¹³ Yet the proportion of UK legislation derived from European legislation was set to grow from current levels of around 60% to about 80% even before the appearance of the draft European Constitution, which will add fuel to the fire.¹⁴ The “*exclusive competences*” proposed for the Union by the draft Constitution are nothing new – there are already areas of policy in which the UK Parliament and the devolved bodies are forbidden from legislating under the Treaties, and many more in which the EU (and in particular the European Commission, the unelected body that initiates European legislation) has an increasingly powerful influence. The current, Labour government unnecessarily exacerbated this trend by reversing the previous, Conservative government’s policy of declining to commit the UK to the EU’s Social Chapter.¹⁵

The government’s general approach to European legislation has been to embrace rather than resist it, often dovetailing it with its own “*social market*” policies. “*New Labour*” sound-bites such as “*the knowledge economy*” and “*social inclusion*” have been culled from the EU’s social market lexicon and the EU’s political methods are reflected in New Labour’s power strategy: creating a stream of soothing rhetoric about modernization, enterprise and fairness whilst pursuing an outdated, unsustainable and (to the UK) fundamentally alien “*social market*” model of society, and quietly, constantly extending governmental power at citizens’ expense. The pursuit of the “*social market economy*” is built into the European Treaties and the draft European Constitution – making it a legal requirement for all EU countries to deliver an unworkable economy that will produce high unemployment and low growth for years to come.

Impact on Daily Lives

THE BULLET POINTS OPPOSITE show some areas in which the daily lives of British people are adversely affected by EU policies and legislation:

- **EU BUDGET** Even with our rebate, UK taxpayers made a net contribution of 11.5 billion euros in 1998-2000¹⁶ – and the rebate is now under threat.
- **TAX** The European Court is increasingly interfering with national tax laws – its rulings on corporate taxation have cost the UK Treasury an estimated £10 billion so far.¹⁷
- **MONETARY UNION** Interest rates in euro zone states have been taken over by the European Central Bank – they are no longer right for individual countries and the impact has damaged UK exports to our biggest overseas market.
- **INDUSTRIAL SUBSIDIES** Selective but huge. The EC authorised over 7.7 billion euros in state aid to the French and German coal industry in 2001-2002,¹⁸ hampering the UK coal industry's ability to compete.
- **REGIONALISATION** Part of the Europeanization of government, this unwanted extra tier already costs UK taxpayers the equivalent of 1p on income tax.¹⁹
- **HEALTH** European Court of Justice rulings such as the case of Kohll are moving decisions about the funding of healthcare from national control to the European Commission.²⁰
- **FOREIGN POLICY AND DEFENCE** Despite the rhetoric against the USA, EU spending was around just 60% of the US defence budget²¹ - even before the US increased it following 9/11.
- **INTERNATIONAL RELATIONS** The UK's global trade position is negotiated by the EU as a whole.
- **INTERNATIONAL DEVELOPMENT** EU funding is misallocated – only 44% went to poor countries in 2001.²²
- **AGRICULTURAL POLICY** Benefits only big farmers and costs each UK household an extra £20 per week on average.²³
- **FISHERIES POLICY** The UK fishing fleet used to land 80% of fish in EEC waters when the UK joined - now it has the right to land only 25%.
- **RAILWAYS POLICY** Compelled the separation of railway infrastructure from services during privatisation.

Impact on Business – the Burden of Red Tape

THE ADVANCE of the *acquis communautaire* is not only stealthy, but opaque – so it is not generally appreciated that most legislation now introduced is European in origin and that much of it is having a damaging impact on business.

On 7th March 2004, *The Sunday Times* published a report by David Smith on the burden of bureaucracy under Labour.²⁴ It concluded that; “*far from making life easier for entrepreneurs, [Gordon] Brown has been strangling enterprise.*” The report set out the top ten red tape burdens under the present government, based on figures provided by the British Chambers of Commerce on the accumulated cost of those burdens by July 2004.²⁵ Although this went unremarked in the article, the top six all have a European origin:

- **Working Time Regulations 1999** These regulate working time and create new employees’ rights. They have been expensive for certain sectors to implement, have closed off the principal means of boosting the incomes of young people and are contrary to the EU’s supposed goal of flexible labour markets. Their extension to junior doctors later this year is expected to trigger a staffing crisis in the NHS. They are based on the EU’s Working Time Directive²⁶ and also incorporate the Young Workers Directive.²⁷ The UK’s voluntary opt-out from the maximum 48-hour working week is due to be reviewed by the European Commission in November 2004, and is widely expected to be declared illegal under EU law. Cost: £11.1 billion.
- **The Data Protection Act 1998** Based on the Data Protection Directive.²⁸ Businesses and employees are subject to fines for breaching the rules on data protection. Teething difficulties were exacerbated by conflicts between the draft Data Protection Code, designed to assist businesses in complying with the Act and the DTI’s “*surveillance rules*”, which came into effect in the same month as the draft Code was issued. Cost: £4.6 billion.
- **Vehicle Excise Duty (Reduced Pollution) (Amendment) Regulations 2000** EU Member States have been subject to a Directive

“approximating” their laws relating to measures to be taken against air pollution from vehicle emissions, since 1970.²⁹ This Directive has been *“amended”* (consolidated) many times: in 1987, 1993, 1994, 1998 and 2002. The British Chambers of Commerce cite EU Pollution Directive 98/69/EC as being responsible for the 2000 regulations. Cost: £4.3 billion.

- **Control of Asbestos at Work Regulations 2002** New regulations covering repair, dismantling and inspection were introduced in December 2002. About 500,000 business premises in Britain contain asbestos. The EU regulatory framework for preventing exposure to asbestos at work had last been tightened in 1997.³⁰ Cost: £1.4 billion.
- **Disability Discrimination (Providers of Services) (Adjustments of Premises) Regulations 2001** Followed a European Council Resolution³¹ on equal opportunities for people with disabilities. Cost: £1 billion.
- **The Employment Act 2002** Provides for 26 weeks of paid maternity leave, increased maternity payments and two weeks of paid paternity leave for new fathers. These measures were a direct response to a European Council Resolution on the balanced participation of women and men in family and working life.³² The Act also implemented the Fixed-Term Work Directive³³ in a way which the Institute of Directors thinks is liable to cause further discrimination against fixed-term contract employees, rather than ensure their equal treatment, as intended.³⁴ Cost: £565 million.

Chapter II

Economic Policy Failure

THE ECONOMIC GOVERNANCE that was designed to pave the way for full political union in the EU is failing. A country's being locked into a low growth, high unemployment, supranational system of economic management is a dangerous state of affairs that is bound to lead to increasing social unrest. The Irish EU Presidency's focus on the Lisbon Agenda, the ambitious aim of which is to make the EU's economy "*the most competitive knowledge economy in the world by 2010*", will be fruitless as long as the EU remains committed to a sclerotic "*social market economy*" that is systemically incompatible with competitiveness in the 21st Century.

The Lisbon Agenda (full title: "*The EU Social Policy Agenda agreed in Lisbon in March 2000*") is itself an example of EU social policy spun as tough reform to spur economic growth.³⁵ When it was approved for the next five years at the Nice Summit of December 2000, the following priority areas had been identified:

- More and better jobs: including gender equality and a better Work-Life Balance.
- Change, balancing flexibility and security: including worker consultation.
- Combating poverty and social exclusion.
- Modernising social protection: social protection systems "*must underpin the transformation to the knowledge economy*".
- Promoting gender equality.
- Social policy in the international arena.³⁶

The four presidencies' joint initiative announced by Gordon Brown on 26th January³⁷ is just the latest EU intergovernmental exercise in making empty gestures to the business community. The European Small Business Alliance's website has this to say about the EU's claims to be advancing entrepreneurial society:

“Although SMEs (Small and Medium-Sized Enterprises [sic]) are largely recognised as the backbone of the European economy, their expectations for less red tape and a fair and incentivising [sic] fiscal treatment have consistently being [sic] neglected in Europe.

“Whereas the EU has launched a wide debate on entrepreneurship in Europe this year, there is not a single EU decision-makers [sic] who can clearly explain what have been the results (10 concrete changes) of the past 15 years of SME Policy at EU level ...

“The level of regulatory and fiscal burdens continues to raise [sic], affecting entrepreneurs and their motivation to do more business. Without any concrete changes, innovative European entrepreneurs will continue to start their business outside [the] EU, would-be entrepreneurs will never start, older entrepreneurs will not find anyone to transfer their business [to] and maintain jobs and activities.”³⁸

The EU’s economic policy, like its other policies, such as subsidiarity – which has never been implemented, is full of fine words masking the reality of diverging national interests. At the Franco-German-British summit on 18th February 2004, President Chirac suggested a loosening of competition policy to permit the emergence of “*industrial champions*” (a phrase that disappeared from UK political discourse in the 1970s) whilst the UK government stressed the need for market liberalisation. *The Independent* remarked that the meeting “*illustrated the different emphasis in the type of economic reform pioneered by France and Britain*”.³⁹ One measure concerning economic reform that was agreed on at the summit, the creation of a Brussels super-commissioner to oversee it, was, *The Times* remarked, “*barely plausible. The Commission cannot even manage its own budget with competence, let alone Europe’s economic future.*”⁴⁰

In a recent pamphlet,⁴¹ Bill Jamieson suggested that the poor overall economic performance of the EU is due in large part to the interplay of two factors: the EU’s commitment to a high level of government integration and regulation, and the European federal model, with no clear lines of responsibility between tiers of government, causing constitutional logjam. This process has been classically exposed through the German government’s difficulties in implementing its “*Agenda 2010*” programme for economic reform, and threatens to become writ large in a European Constitution.

The EU's recent economic record has been disastrous. Growth has been consistently poor and unemployment high, reflecting among other things productivity under-performance, a low rate of business investment and poor rates of business formation. Meanwhile, the 3 per cent deficit spending limit – an artificial rule made in pursuit of unworkable political and social objectives, as Bill Cash pointed out in Parliament during the Maastricht unemployment debate – has acted as a straight-jacket on public spending (and on the amount of public spending that Member States can admit to: some has been taken off the books, in Enron-style accounting ploys).

Euro zone figures speak for themselves. The German economy, the EU's largest, was in recession in 2003. German unemployment on the ILO measure remains stuck at 9.3 per cent. In France it is running at 9.5 per cent. (The comparable figure for the UK is 4.9 per cent.) Without radical economic and fiscal reform, the euro zone will stagnate further; according to HSBC's forecasts, annual growth will be 1.6 per cent in 2006-09, 1.3 per cent in 2010-19 and just 0.8 per cent in 2020-2029.

Economic and Monetary Union

THE EURO HAS NOT BEEN A SUCCESS. From its launch in 1999, its exchange rate fell, only to rise to dangerously high levels by January 2004 as it see-sawed against the falling dollar. What has effectively happened is a reversal of the EEC's dollar-pegging policies of the 1970s: as the only major rival reserve currency to the US dollar, the euro effectively counter-balances it on the markets. The response of euro zone politicians to the euro's recent highs has been to try to "talk it down"; some have suggested new currency controls. The European Central Bank has refused to act by cutting the euro zone's interest rate because its statutory aim is to try (in vain) to keep euro zone inflation below two per cent. There is an overall lack of strategy, foresight and control.

A major aspect of the euro is the "one-size-fits-all" interest rate set by the European Central Bank for every country in the euro zone. This has created dynamics of "asymmetric shock" within the zone, worsening the plight of contracting economies such as that of Germany, which would benefit from a loosening of monetary policy, whilst stoking up inflation in expanding economies such as that of Ireland, which would benefit from monetary tightening. Furthermore, the ECB's monetary policy has not worked for the euro zone as a whole, having failed to provide effective monetary stimulus during the recent global economic downturn.

The ECB's task of keeping euro zone inflation below two per cent is easier if the budgetary policies of euro zone countries are kept tight. This is the purpose of the Growth and Stability Pact, which stipulates that national budget deficits should be kept below 3 per cent of gross national product. Yet the European Commission is currently taking the Council of EU Finance Ministers to the European Court of Justice for disapplying this rule when faced with the prospect of fining France and Germany for being in breach of it for several consecutive years. Other euro zone countries, notably the Netherlands and Portugal, have endured considerable hardship reigning in their spending to comply with the rule. The breaking of the Pact in the national interest of two big (and closely allied) countries exposed a dangerous lack of moral unity in the EU. Whatever the past achievements of the European project, it has not ended *Realpolitik* in Europe.

In addition, the euro has failed to deliver on even its more modest ambitions. Price transparency has been only partially achieved, with euro zone consumers complaining of retail mark-ups at the currency changeover, and significant price discrepancies remaining between euro zone countries. Also, transaction costs within the euro zone have not disappeared, as they were expected to.

The UK is signed up to Economic and Monetary Union under Maastricht – our opt-out relates only to joining the final stage, in which the pound sterling would be replaced with the euro. The fiscal policies of New Labour, whilst more flexible than those of many euro zone countries, have been designed to keep the UK within the stipulations of EMU, including the Stability and Growth Pact and its 3 per cent deficit spending limit. Whilst public spending must be subject to fiscal discipline, individual nations should be free to set their own criteria for achieving this, based on the national economy and domestic social and political circumstances. (It is worth noting that, despite the creeping Enronisation of government, “*the outlook for the public finances [in the UK, based on official figures] remains bleak*”.⁴²)

It is too early to observe the renewed relative economic decline of Britain that will inevitably result from the squandering of Labour’s inheritance of a low-tax, low-regulation economy, thriving enterprise culture and flexible labour market, as the effects have yet to bite. Several things are certain, however: the UK is heading for higher taxes and lower spending, with the Chancellor’s “*Golden Rule*” having to be statistically re-defined due to the Maastricht Criteria; UK exports have already been hit by the economic doldrums of the euro zone (our largest export market); and our economy would suffer much further from the loss of control over monetary and fiscal policy entailed by joining the euro.⁴³

CHAPTER III

The Constitution for Europe: Greater Dangers Ahead

THE STREAM OF REGULATIONS AND DIRECTIVES from the EU is constant. Under our present constitutional relationship with the EU, however, the UK Parliament retains the power to repeal or amend any legislation, including measures implementing EU law. This fundamental power would be crucially compromised, however, by the enactment of the draft Constitution for Europe.⁴⁴ As things stand, a change of government could result in legislative action to stem or modify the tide of EU law. Under the Constitution, the lapdog role that New Labour has adopted for the British government in relation to the EU would be impossible to change without the UK leaving the EU altogether. It goes without saying that a referendum on the European Constitution is essential; even after ratification in the UK, if that happens.

In looking for the likely effect of the European Constitution on the Constitution of the UK, a natural starting place is written Constitutions adopted in other common law jurisdictions. In *Gairey v Attorney-General of Grenada*⁴⁵, the judicial Board of the Privy Council decided that the Caribbean island of Grenada, by its Constitution, had established a new supreme law.⁴⁶ The provisions of the Constitution therefore had primacy over historic common law doctrines restricting the liability of the Crown and a particular clause in the Constitution could therefore be interpreted as giving the court a broad power to give effective relief for any contraventions of protected constitutional rights even, where necessary, by creating a new remedy. Giving judgement for the Board, Lord Bingham said:

“The Constitution has primacy...over all other laws which, so far as inconsistent with its provisions, must yield to it. To read down its provisions so that they accord with pre-existing rules or principles is to subvert its purpose. Historic common law doctrines restricting the liability of the

*Crown ... cannot stand in the way of effective protection of fundamental rights guaranteed by the Constitution.*²⁴⁷

In an earlier case, *Hinds v The Queen*,⁴⁸ the Privy Council noted that the written Constitutions which it interpreted had all been negotiated and drafted by people nurtured in English common law and familiar with the doctrine of the separation of powers, and that all conformed to “*the Westminster model*”. The European Constitution would be a very different animal, drafted by civil lawyers, based on the European Treaties, and to be interpreted in line with European Court of Justice jurisprudence, with its integrationist agenda. Its impact on the British Constitution and legal system is potentially far greater, therefore, than the (considerable) impact on former colonies of their Westminster-style Constitutions.

Even without the fundamental, constitutional power-shift implied by Article I-10 codifying the primacy of European law, which would prevent the repeal or amendment in the UK of European law-based legislation, the draft Constitution would be bad news for the British economy. There are two chief reasons for this: the Constitution would bind the UK more tightly to the failing project of Economic and Monetary Union and the obsolete European social market model; and the Constitution incorporates, as Part II, the Charter of Fundamental Rights, a document with Constitutional force which would be better described as a socialist wish-list.

European Economic Governance: Tightening the Noose

THE DRAFT CONSTITUTION contains a number of measures strengthening the procedures of Economic and Monetary Union. It proposes easier censure of Member States for failing to comply with EU economic policy and government deficit guidelines, by making such censure subject to the new “*double majority*” system of qualified majority voting,⁴⁹ and removes the veto for adopting economic measures to apply to Member States.⁵⁰ It also confers on the Council of Ministers a mandate to lay down fresh, detailed rules and definitions for the application of the Protocol on the excessive deficit procedure.⁵¹

The British government, which was complicit in disapplying the Growth and Stability Pact in relation to France and Germany, has (along with Sweden) opposed the re-draft of Article III-88(1) of the draft European Constitution on the adoption of measures for the euro zone to refer to economic policy co-ordination and excessive deficits.⁵² This is because both governments know that they will not be able to win a referendum on joining the euro under the current, discredited, EMU framework; yet they will not admit that the framework is fundamentally flawed. There is general acceptance that the Growth and Stability Pact must be reformed,⁵³ but it is hard to see how Member States will agree on how to reform it, since their national economies have increasingly diverging priorities due to asymmetric shock.⁵⁴ The European Court of Justice has now been charged with providing the answer to this deeply political issue - in a trial in which there can be no winner.

The Charter of Fundamental Rights: An ECJ Judge's Power Fantasy

ONE of the government's most glaring capitulations on Europe is the incorporation of the Charter of Fundamental Rights into the draft Constitution. Shortly after the Charter was agreed in 2000, Keith Vaz MP, then Minister for Europe, said that it would have “*no more legal significance than a copy of the Beano or the Sun*”. He was trying to allay concerns that the Charter's original status as a political declaration would be augmented to that of a legally binding document, justiciable by the European Court of Justice. Yet, at the Convention on the Future of Europe, it was incorporated as an integral part of the Constitution. The CBI has spelt out some of the concerns of British business relating to the Charter:

“... there is a real risk that incorporation of the Charter would result in the transfer of legislative competence to the European Court of Justice on matters which are, and should remain, the responsibility of national governments. For example, Member States specifically excluded issues such as the right to strike from the European Treaty, because the differing systems of industrial relations that exist across Europe mean that it is more appropriate for these issues to be decided at national level. However, these issues are included within the Charter and therefore incorporation could tend towards responsibility on these issues developing within the EU. The business community is particularly concerned that this is a radical change being introduced through the back door - as a side effect of incorporation of the Charter rather than through discussions between democratically elected Governments.

The CBI is also concerned that as the Charter combines inalienable civil rights with more qualified social rights, incorporation would undermine many existing directives which have been carefully negotiated between democratically elected governments. For instance, the Charter's article on non-discrimination prohibits unfair treatment without allowing for the widely recognised principle (an integral part of current EU law) that 'indirect' discrimination is sometimes justifiable on objective grounds. This could lead to EU and domestic discrimination law being challenged.

More broadly, incorporating the Charter into the Treaty would also effectively transfer jurisdiction over core fundamental rights from the

*Human Rights Court at Strasbourg and national courts to the ECJ. This raises the possibility of conflicting judgements, which would create legal uncertainty, and also threatens the body of experience the European Court of Human Rights has built up in balancing pan-European rights with the individual needs of Member States.*²⁵⁵

The UK government insists that the impact of the Charter would be minimal due to the insertion of “horizontal articles” into the text. *The Economist* thinks this confidence is unjustified:

*“...the British, Irish and others like to think they have safeguarded their position in two ways. First, the charter makes clear that its provisions apply only to European law, not to domestic law. But since European law is constantly widening its scope, and since social laws are made by majority vote, this still leaves a chink in the armour. So the British, backed by the Irish and Dutch, have worked in a change to the charter’s preamble. This says that the European Court must pay “due regard” to an interpretive text, underlining that the charter creates no new rights. However, many lawyers doubt that a reference as weak as that will have any impact on the court.*²⁵⁶

The 'New Labour' Government and the European Treaties

UNDER THE “RESERVE” RULE OF PARLIAMENT, UK government ministers may not make a decision in the EU Council of Ministers on a matter on which the European Scrutiny Committee of the House of Commons has demanded a debate, until the debate has taken place. The present government has frequently declined to hold debates, and even when a debate is held, the government will reverse any vote rejecting an EU measure. It is an example of the contempt with which it treats Parliament – a bad and dangerous thing in itself, but particularly so regarding treaties like the European Treaties, which are made under prerogative powers and can be changed or abrogated by Parliament.

In a debate on 16th September last year, the Foreign Secretary, Jack Straw, suggested that treaties have primacy over national laws.⁵⁷ Through a series of written questions, Bill Cash eventually ascertained that the government did not consider the UK to be a “*monist*” state, as Straw had implied. The process was somewhat tortuous (see Appendix I) and illustrates the government’s ignorance of the British state. As a cure for their constitutional illiteracy, members of the government could do worse than to read the section of the European Commission’s ABC of Community Law on legal primacy, which points out the difficulty that arises from the (self-proclaimed) supremacy of European law – and the result it is intended to achieve:

“... a conflict between Community law and national law can be settled only if one gives way to the other. Community legislation contains no express provision on the question. None of the Community treaties contains a provision stating, for example, that Community law overrides, or is subordinate to, national law. Nevertheless, the only way of settling conflicts between Community law and national law is to grant Community law primacy and allow it to supersede all national provisions that diverge from a Community rule [otherwise] the construction of a united Europe on which so many hopes rest would never be achieved.

“No such problem exists as regards the relationship between international law and national law. Given that international law does not become part of a country’s own legal order until it is absorbed by means of an

*act of incorporation or transposition, the issue of primacy is decided on the basis of national law alone.*²⁵⁸

The reason why European law claims primacy over national law in all Member States whereas international law does not is that European law, unlike international law, is designed to achieve political union. But as long as the European Union is treaty-based, the Member States remain masters of the Treaties and the primacy of European law rests on their political will. Once the Treaties are replaced by a Constitution, however, the supremacy of European law will be constitutionally guaranteed. This is why a UK government should never agree to an irrevocable treaty such as a treaty establishing a European Constitution, to which the British Constitution would be subordinate. It is inimical in principle to serving the national interest - not just now, but forever.

Rather than a Bill enacting a European Constitution, that threatens to overturn the sovereignty of Parliament in favour of the supremacy of European law, a Bill should be introduced that reaffirms the sovereignty of Parliament by spelling out the current law on the fundamentals of the British Constitution. As Appendix I shows, the government acknowledges the legal position, but only reluctantly and after some evasiveness. If it were set out in an Act of Parliament along the lines of the Bill set out in Appendix II, which Bill Cash has introduced into Parliament, the existing power of the UK Parliament to amend or repeal European legislation would be given statutory force and the potential of Article I-10 of the draft European Constitution to extinguish that power would become clearer.

The Future of Europe Debate

THE CONVENTION ON THE FUTURE OF EUROPE, which produced the draft European Constitution, was an egregious exercise in political fixing disguised as transparent, democratic decision-making.⁵⁹ The fixing has been continuing behind the scenes since the collapse of negotiations in December, with the focus on striking a back-room deal that will enable the adoption of a Constitution on the basis of the Convention draft.⁶⁰ What is really needed is not some shabby fix, but a re-evaluation of the European project, drawing on the realities of global trade and on other regional organizations as to how a large and expanding group of nations can best co-operate in the era of globalisation. As shown below, there is a fast-developing variety:

- Arguably the most important trading agreement is the World Trade Organisation (WTO) Agreement (formerly GATT). This global body is based on a number of free trading principles, the most important of which is the relationship between its industrialized members of non-discrimination between goods produced domestically and goods produced by other members (known as “*Most Favoured Nation*” status, or MFN). As its name suggests, the WTO is principally a trade body: its remit does not extend to politics and every one of its decisions is ratified by the national Parliament (or equivalent body) of each member.
- The North American Free Trade Agreement of 1992 (NAFTA) was designed to create a free trade area by 2009, with the elimination of all trade and investment restrictions between its members, and a Development Bank to fund projects and soften the social impact of opening up markets. There are also side agreements on labour and the environment. In a detailed and balanced review of its first ten years, *The Economist* concluded that NAFTA had clearly been an economic success, having stimulated trade and investment for all its members.⁶¹
- Mercosur, created by several South American countries in 1991, was designed as a customs union with a common external tariff (CET) as well as a free trade area, involving legislative harmonization and economic co-ordination, like the EU. This substantially political union has been significantly less successful than NAFTA. Trade between Mercosur

nations decreased from 1998 and in 2001, Argentina sought to suspend the customs union and CET to counter its economic depression, leading to significant concessions by the other members. Chile is an associate member, enjoying free trade but opting out of membership of the customs union, and has also negotiated independent free trade agreements with NAFTA members. In an effort to add fresh impetus to Mercosur, in June 2003 Argentina and Brazil made a commitment to create a Mercosur parliament.

- The Association of Southeast Asian Nations (ASEAN), begun in 1967, is the largest agreement in that region. In 1992, it launched the ASEAN Free Trade Area (AFTA). AFTA does not include a customs union, and its members continue to deal individually at WTO meetings. ASEAN has political as well as economic purposes, but these are pursued through declarations and (ordinary) treaties rather than supranational government.

- The European Economic Area (EEA) came into effect in 1994. Its members include all the Member States of the EU. Members that are not also EU members, such as Norway, join the single market but are not obliged to implement the common external tariff. The European Free Trade Area (EFTA) was established in 1960 in response to the foundation of the EEC in 1957. It is based on free trade, without a single market or CET. Switzerland is a member of EFTA, but not the EEA or EU.

Globalisation is the most significant trend in the 21st Century world economy, and the aim of regional groupings should be to maximize its advantages. The EEC was formed during an era when the terms of trade increasingly favoured the concept of a single European market. Its political nature was a response to the devastation of World War Two, with Franco–German rivalry being blamed, and it was a focus for Western democracy’s effort to demonstrate unity in the face of the Soviet threat. Globalisation and the end of the Soviet era should have prompted a re-evaluation of what the *‘European Project’* was for; what its aims should be and what form it should take. *‘The New Europe’* should be more than rhetoric. Unfortunately, however, the ideas and the grand plan of the project’s founders have been treated as holy writ, while vested interests have become heavily intertwined with the development of the whole

artifice. Meanwhile, the EEC's past successes have emboldened representatives of the project to seek geopolitical power.

The EU is a dangerously outdated model in its current form, and would be set in stone once the last, great stage of the plan for European integration, a Constitution for Europe, was put in place. As Bill Jamieson has said:

“The pressure for European integration and in particular monetary and political union, flows from a belief in the entity of Europe as a bloc to challenge and contain the hegemony of the US and to meet the challenge of Asia. This bloc-ist view is also seen as the only means to protect the centralized and highly politicized dispensary of state welfare and ‘social solidarity’. This is the cosmology that has dominated the thinking of the constitution’s leading author Valery Giscard d’Estaing and the officials and advisors who contributed to the drafting.”⁶²

The bloc-ist world view has been rendered largely redundant by the process of globalisation, and the failure of Europe's policy-makers to accept this has been the principal cause of the continent's recent economic underperformance and relative decline. Fantasies of geopolitical equality with the US are vain in the light of economic, demographic and local, political realities on the ground. Initiatives like the Lisbon Agenda are presented in the language of globalisation, but beneath the surface, they are based on the old, bloc-ist thinking. The high-tax, high-regulation, market interventionist system of governance must be radically reformed if Europe is to flourish in the 21st Century. The European Constitution would enshrine it, with disastrous consequences for Britain and Europe.

What we can do

IF the European Union continues to fail to recognize the need for its radical reform, but persists in its present course towards ever greater integration within a failing economic framework, the case for remedial measures at national level will become increasingly urgent in the face of dangerous circumstances. Fortunately, Parliament (in the absence of a European Constitution) remains sovereign, even, ultimately, in respect of European law.

In his article in *The Times* in 1986,⁶³ Bill Cash said that more information needed to be provided to Parliament much earlier. Trade associations could be more active in reporting their concerns regarding draft European legislation to the European Scrutiny Committee of the House of Commons, which can demand a debate on the floor of the House under the 'reserve' rule.⁶⁴ This could supplement existing lobbying activities. Many UK trade associations are currently reluctant to point out the damage being caused by existing European legislation, concerned that criticism will be misinterpreted as 'europhobia' and thinking that nothing can be done to change the legislation. Something can, however, and should be done, and they have the potential to assist in the process.

At present, government Regulatory Impact Assessments of domestic legislation (RIAs) are conducted, but these do not break down in detail the causes of burdens on people's daily lives and on business. A more active system of legislative analysis geared towards reform could be established to monitor the impact of legislation in detail and recommend changes on the basis of a legislative audit.⁶⁵ Such a system would create a stream of recommendations to ministers to improve the laws that bind the British people and raise the cost-effectiveness of the national economy.

Recommendations concerning European law would be formulated into proposals for European Council meetings, or sent to the European Commission for its consideration. Political efforts towards achieving acceptance of the recommendations at EU level should be proportionate to the benefits that would accrue from their adoption. Where European law was not involved, a fast-track amendment procedure could be adopted to implement recommendations without clogging up the Parliamentary timetable.

Where efforts at EU level concerning a recommendation on a matter of particular importance failed, the government would need to consider biting the European bullet. This means using the sovereignty of Parliament, where necessary, to enact legislation expressly conflicting with European law. This would be effective if such legislation contained a general clause enabling European provisions to be amended or repealed by way of statutory instrument subject to affirmative procedure and a clause stating that it was to take effect notwithstanding the provisions of the European Communities Act 1972.⁶⁶ In addition, the 1972 Act could itself be amended to facilitate the easier passage of legislation that conflicted with European law.

As well as the ensuing benefits to the UK, such action would bring home to the European Union the limits of its authority and act as a spur to reform now long overdue. It could not shatter the moral unity of the EU, as that has already been exposed as a sham by the suspension of the Growth and Stability Pact in the case of France and Germany. It would be a more honest way of refusing to accept measures than an administrative failure to implement them. Furthermore, the UK would not be expelled from the EU for its actions because there is no mechanism for doing so and even if there was, our strategic and trading alliance is too valuable to be sacrificed. In addition, our membership is of too much benefit to other EU members through our net budget contribution and trade deficit with them.

It has been argued for many years that Europe is “*going in our direction*” but the evidence continues to suggest otherwise. Legislative acts as described above are possible with political will, and would constitute a bold re-assertion of democracy for Britain and, ultimately, for Europe. If they were to generate unsustainable political tensions within the EU, then the Treaties should be renegotiated. This might be difficult, but in those circumstances absolutely necessary – what is at stake is our entire social, economic and political life.

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- ⁴ *Warding off the EEC Steamroller*, *The Times*, 16th June 1986
- ⁵ See *Chirac and Schroeder call to speed up EU deal*, FT.com, 16th March 2004
- ⁶ See *The European Constitution – A Political Time-Bomb*, by Bill Cash, 8th October 2003
- ⁷ Ben Butters, of Small Business Europe; see *The Daily Telegraph*, 8th March 2004
- ⁸ *Joint Initiative on Regulatory Reform: An Initiative of the Irish, Dutch, Luxembourg and UK Presidencies of the European Union*, 26th January 2004
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- ¹⁰ *Draft Treaty Establishing a Constitution for Europe*, Article IV-3. The Protocol setting out conditions for legal continuity under the proposed new Union has never been published.
- ¹¹ *Delivering Lisbon: Reforms for the Enlarged Union*, EC Commission Report COM(2004) 29, p26
- ¹² *The European Constitution – A Political Time-Bomb*
- ¹³ See *Introduction* above, first paragraph
- ¹⁴ See *Contract Journal*, 18th November 1998
- ¹⁵ As David Smith’s article in *The Times* says; “*The growing burden reflects both measures deliberately enacted by this government and a wave of new rules – including those blocked by the previous Tory government – emanating from Brussels.*”
- ¹⁶ Europa website (the EU online)
- ¹⁷ *EU Law and British Tax: Which Comes First?* Centre for Policy Studies pamphlet by Alistair Craig, 2003
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35 Although it is nevertheless too tough for the new Spanish
government, which has announced its opposition to Lisbon Agenda
reforms (continuing the Socialist Party's policy in opposition)
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Parliament, the Economic and Social Committee and the Committee
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39 18th February 2004
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Speech, *Hansard*, 4th December 2004
44 Article I-10 of the draft codifies the principle of the primacy of
European law, thus effectively extinguishing the power of Parliament
to legislate contrary to EU law, unless the principle of Parliamentary
sovereignty and the UK courts' recognition of it is reaffirmed in any

European Constitution Act which may be passed.

45 [2001] UKPC 30

46 Cf. Article I-10 of the draft Constitution for Europe

47 Paragraph 19(2)

48 [1977] AC 195

49 Arts III-71, currently EC Art 99; and III-76, currently EC Art 104

50 Art III-72, currently EC Art 100

51 Art III-76(13)

52 Under Arts III-71, currently EC Art 99; and III-76, currently EC Art 104

53 According to the CBI; “This is critical if the architecture of Europe’s economic governance is not to become a barrier to, rather than a supporter of, growth and prosperity” - *Delivering a more Competitive Europe: The CBI’s View of the Convention on the Future of Europe*

54 EU finance ministers have said that they do not want even to discuss reforming the Pact during 2004, *FT.com*, 1st February 2004

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56 *The Economist*, 19th June 2003. Before the introduction of the “horizontal articles” Richard Plender QC had made clear to the European Scrutiny Committee that the ECJ would give full effect to the Charter of Fundamental Rights.

57 See *Hansard* and *The European Constitution – A Political Time-Bomb* by Bill Cash

58 *The ABC of Community Law* by Dr Klaus-Dieter Borchardt, pp 100-101

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60 The European Parliament has adopted a resolution calling for the Intergovernmental Conference of EU Member States to conclude its work on the Constitution by the accession date of 1st May 2004

61 *Ten Years of NAFTA: Free Trade on Trial*, 30th December 2003

62 *A Constitution to Destroy Europe* by Bill Jamieson

63 *Warding off the EEC Steamroller*, see *Introduction* above

64 See *The ‘New Labour’ Government and the European Treaties*, above

65 See the De-regulation Commission in the *Introduction* above

66 See Appendix II

APPENDIX I

Written Questions and Answers

Mr. Cash: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to his statement of 16 September, *Official Report*, column 794, when it became Government policy that all international treaties take primacy over national law; and on what evidence he bases the statement that under the draft constitutional treaty for the first time provision is made whereby Parliament can legislate to repudiate a treaty. [131821]

Mr. MacShane: It is an established principle of international law that a state may not plead its national law to escape its international law obligations, including its treaty obligations. As a matter of UK constitutional law, international treaties have effect in UK national law to the extent that they have been implemented in national law.

Article I-59 of the draft EU Constitutional Treaty states that any member state may decide to withdraw from the Union in accordance with its own constitutional requirements. The Government believe it is highly unlikely that any member state would wish to withdraw, but sees a case for stating the political and legal reality of what would happen in such exceptional circumstances.

16th October 2003

Mr. Cash: To ask the Prime Minister pursuant to his Answer of 14 October 2003 to the honourable Member for Aldridge-Brownhills (Mr. Shepherd), *Official Report*, column 60W, on international treaties, on what evidential basis he relied in his statement that a State may not plead its national law to escape its international law obligations, including its treaty obligations. [132934]

The Prime Minister: The principle referred to in the answer of 14 October 2003, *Official Report*, column 60W, is well established. The Permanent Court of Arbitration, the Permanent Court of International Justice and the International Court of Justice have produced a consistent jurisprudence upholding this principle.

20th October 2003

Mr. Cash: To ask the Secretary of State for Foreign and Commonwealth Affairs on what occasions since 1973 the UK has asserted its national law as against its obligations under the European treaties. [132935]

Mr. MacShane: The jurisprudence of the European Court of Justice since the case of *Costa v. ENEL* (case 6/64) has clearly established the principle that no provision of national law may be invoked to override Community law. In *Costa v. ENEL* the Court ruled that:

“the law stemming from the Treaty...[cannot] be overridden by domestic legal provisions...The transfer by the states from their domestic legal systems to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.”

21st October 2003

Mr. Cash: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to his answer of 20 October 2003, reference 132935, what discussions he has had with EU institutions in the relationship of sections 2 and 3 of the European Communities Act 1972 and the jurisprudence to which he refers of the European Court of Justice since the case of *Costa v. ENEL*; and what assessment he has made of the judgements of the United Kingdom courts in (a) *Macartheys Ltd. v. Smith* and (b) *Thorburn [sic] v. Sunderland City Council* in relation to the principle that no provision of national law may be invoked to override Community law. [135482]

Mr. MacShane [holding answer 3 November 2003]: The UK has given effect to its obligations under the EU treaties through the European Communities Act 1972. *Costa v ENEL* set out the clear principle that its obligations under the treaties cannot be overridden by domestic legal provisions.

In *Thorburn v. Sunderland City Council [sic]*, Lord Justice Laws said as part of his judgement:

“All the specific rights and obligations which EU law creates are by the 1972 Act incorporated into our domestic law and rank supreme...”

The ultimate guarantee of parliamentary sovereignty lies in the power of Parliament to repeal all or any of the Acts which give effect to the EU treaties in this country. As Lord Denning made clear in the case of *Macartheys Ltd. v. Smith*, it is within Parliament’s power to legislate

contrary to the UK's treaty obligations. The result of so doing, however, would be to put the UK in breach of its treaty obligations.

5th November 2003

Mr. Cash: To ask the Secretary of State for Foreign and Commonwealth Affairs, if he will make a statement on the implications for the United Kingdom (a) Parliament and (b) Courts of the Declaration at Annex 2 of the proposals agreed in Naples on the primacy of European Union law as set out in Article I-10(1) of the draft European Constitution. [142612]

Mr. MacShane: The proposed Declaration provides confirmation that the provisions of Article I-10(1) reflect existing European Court of Justice case law. If agreed it would state the common intention and understanding of all the participating States that Article I-10(1) has this meaning and should be interpreted accordingly.

8th December 2003

Mr. Cash: To ask the Secretary of State for Foreign and Commonwealth Affairs, what discussions he plans to have with the foreign ministers of (a) Denmark, (b) Germany and (c) Italy regarding the declaration in the draft proposals agreed in Naples, relating to the primacy, under Article 110 [sic] of the draft European Constitution, of the Constitution over their respective constitutions. [142429]

Mr. MacShane: The Presidency has proposed a 'Declaration for incorporation in the final Act with regard to article I-10(1)'. It states that, 'The Conference notes that the provisions of Article I-10(1) reflect existing Court of Justice case law.' The proposal has not been agreed, but will be discussed at the European Council on 12-13 December, in which the Foreign Minister of all the States mentioned will participate.

8th December 2003

Mr. Cash: To ask the Secretary of State for Foreign and Commonwealth Affairs, if he will place in the Library a copy of the text referred to in the Declaration of the President of the EU as a negotiating *acquis*; and whether it is regarded by the Government as a negotiating *acquis* not open to further discussion. [145498]

Mr. MacShane: We have placed copies of all the documents produced by the Presidency during the IGC in the Library of the Houses. These include a compromise text tabled for the Naples Conclave on 28/29 November

2003 and a further text tabled in the week preceding the European Council. Yet another compromise text, promised for the second day of the European Council, was not in the event tabled, though the President of the European Council, Mr. Berlusconi, drew on it when summing up at the end of the meeting.

Until the negotiations are completed, all aspects are potentially open to further discussion. But the Italian Presidency went through the normal negotiating process of successive refinements and approximations of a text, in the search for consensus, and we would expect the next Presidency to want to draw upon this work.

5th January 2000

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APPENDIX III

Impact on Daily Lives

How the draft European Constitution would affect you

The Constitution says ... Its direct impact on you

Article 1(1) “Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union...”

No referendum equals no will of citizens – you are ignored.

Article 2 “The Union is founded on ... respect for ... democracy...”

Undemocratic – EU more remote.

Article 3(1) “The Union’s aim is to promote peace, its values and the well-being of its peoples.”

Consider Iraq. Member States have different values. Since 1945, peace has come from NATO, not the EU.

Article 3(3) “The Union shall work for the sustainable development of Europe based on balanced growth, a social market economy ... and with a high level of protection and improvement of the quality of the environment.”

A “social market economy” equals low growth and high unemployment.

Article 9(3) “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be achieved by Member States ... but can rather ... be better achieved at Union level.

The EU calls the tune and subsidiarity has never worked.

The Constitution says ...

Article 10 “1. The Constitution, and law adopted by the Union’s Institutions... shall have primacy over the law of the Member States. 2. Member States shall take all appropriate measures ... to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions’ acts.”

Article 11(3) “The Union shall have competence to ... coordinate the economic and employment policies of the Member States.”

Article 11(4) “The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.”

Article 12(1) “The Union shall have exclusive competence ... in the following areas: ... common commercial policy, customs union, the conservation of marine biological resources under the common fisheries policy”

Article 12(2) “The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable it to exercise its internal competence, or affects an internal Union act.”

Its direct impact on you

The Union will be Master. General election manifestos and freedom and choice of voters will be overridden.

French and German unemployment and low growth come from economic and employment coordination. Blair cannot meet challenges on health, education, pensions, transport and public services – stability and growth pact a dead letter.

Foreign policy and defence govern our relations with the world and NATO – all undermined. NATO guarantees our independence – the European Constitution would end it.

Control over commercial policy, customs union and fisheries policy will be locked into the Union.

Together with legal personality, the Union would take away most treaty making powers, and foreign policy undermined.

The Constitution says ...

Article 13(2) “Shared competence applies in the following principal areas: internal market, area of freedom, security and justice, agriculture ... transport ... energy, social policy ... economic, social and territorial cohesion, environment, consumer protection, common safety concerns in public health...”

Article 16(2) “The areas for supporting, coordinating or complimentary action shall be, at European level: industry...health, education, vocational training, youth and sport, culture, civil protection.”

Article 17(1) “If action by the Union should prove necessary ... to attain one of the objectives set by the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers ... shall take the appropriate measures.”

Article 31(1) “The European Parliament, the Council of Ministers and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.”

Article 43(1) “... Enhanced cooperation shall aim to further the objectives of the Union...and reinforce its integration process. Such cooperation shall be open to all Member States ... at any time”

Its direct impact on you

In the internal market, justice and home affairs, agriculture, transport, energy, social policy, environment policy and consumer protection etc. etc., national governments would only be able to do what the EU decided not to. Energy policy, including guaranteeing “security of energy supplies” to the EU would be a new power. Vast range of activity handed over.

The EU would interfere by directing policy over British industry, health, education, sport and culture and civil protection (terrorist measures).

EU will do whatever it wants to achieve its aims, with common action.

The Committee of the Regions, with regional assemblies, will undermine your local government in counties, towns and parishes. The Economic and Social Committee will undermine national trade unions.

Inner core will drive other Member States to deeper integration in red line areas including defence, tax etc..

The Constitution says ...

Article 46(2) “The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.”

Article 52 “1. All items of Union revenue and expenditure shall be included in estimates drawn up for each financial year and shall be shown in the budget...
2. The revenue and expenditure shown in the budget shall be in balance.”

Article 53(1) “The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.”

Article II-11(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.”

Article II-12(2) “Political parties at Union level contribute to expressing the political will of the citizens of the Union.”

Article II-18 “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention...”

Its direct impact on you

The Union will primarily listen to multinational trade associations, at the expense of small business.

The EU budget has not been signed off for many years. “A massive enterprise of looting” from it. Much spending is not on the balance sheet.

This will lead to European tax by the back door.

The right is not absolute – must be balanced by duties and responsibilities.

European political parties moving to state funding – marginalizing national political parties.

Common asylum policy goes beyond Geneva Convention, leading to a huge increase in asylum applications - the British government would be powerless.

The Constitution says ... Its direct impact on you

Article II-23 "... The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex."

This underwrites political correctness in employment.

Article II-28 "Workers and employers, or their respective organisations ... have 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."

The right to strike would reverse British labour reforms that have made us competitive. This right never accepted before by any Labour government. The Charter of Fundamental Rights would also forcibly restrict working hours.

Article III-171(1) "... European laws ... shall establish measures to: (a) establish rules and procedures to ensure the recognition throughout the Union of all forms of judgements..."

This would prevent any judgement from the courts or authorities of another EU Member State from being challenged in the UK courts – with grave consequences for individuals, business and our legal system.

Article III-172(1) "European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions..."

The EU will define certain criminal offences – and set minimum sentences for those found guilty of them, overriding our criminal laws and sentencing policies.

Article III-175(1) "In order to combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union, a European Law ... may establish a European Public Prosecutor's Office."

Proposals for a European Public Prosecutor have been condemned by the House of Commons Scrutiny Committee as threatening an "engine of oppression".

The Constitution says ...

Article III-194(1) "... the European Council shall identify the strategic interests and objectives of the Union."

Article III-195 "1. ... the Union shall define and implement a common foreign and security policy... 2. The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity... They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council of Ministers and the Union Minister for Foreign Affairs shall ensure that these principles are complied with."

Article III-206(2) "... Member States which are also members of the United Nations Security Council will ... defend the positions and the interests of the Union... When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position."

Its direct impact on you

This puts the national interest at risk where we disagree with EU.

This obligation of loyalty as defined and implemented would subordinate our national interest in matters of foreign policy and defence.

Despite denials by the government, Britain would be on the UN Security Council primarily to represent the EU.

The Constitution says ...

Article III-212(1) “The European Armaments, Research and Military Capabilities Agency ... shall have as its task to: (a) contribute to identifying the Member States’ military capability objectives and evaluating observance of the capability commitments given by the Member States; (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;”

The Protocol on the Role of National Parliaments in the European Union states that it aims to “encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals...”

The Constitution will make Qualified Majority Voting the general rule in EU legislation.

All agreements between EU Member States that are not in the Constitution will have to be renegotiated.

Repeal of existing treaties and re-application of laws.

Its direct impact on you

This bureaucratic gobbledegook means that an EU weapons institute would decide the shape of our armed forces and tailor them to a European army.

In practice, the national Parliaments, including Westminster, will be made second-class. Nothing will enable them to veto proposals where there is Qualified Majority Voting.

Over 60% of new legislation in Britain comes from the EU. The veto has been largely abolished, which is very damaging to our influence and to business.

The British rebate, negotiated by Margaret Thatcher so that the UK didn’t pay so much into the EU, will be lost. The British taxpayer will be paying more and getting less.

New constitutional wording will create confusion. Unless we assert our Parliamentary supremacy and negotiate accordingly, we would not change laws such as the European Arrest Warrant, the Working Time Directive and a host of other laws which are harmful and restrictive to individuals and businesses.