

# CHALLENGE EUROPE

## Britain and Europe: A new settlement?

April 2016



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Robert Cooper	Brendan Donnelly
Andrew Duff	David Edward
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EUROPEAN POLICY CENTRE

In strategic partnership with the  
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Issue 23

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## Foreword

The decision of the British people on 23 June is of the utmost importance – not only for the UK but for the rest of Europe too. The formal question is should the UK remain in or leave the European Union. But such a binary choice clouds the real debate about what kind of European country Britain is.

While the alternatives to EU membership presented by the pro-Brexit campaign seem, at best, lacking depth and credibility, the 'remain' camp has equally been unable to set out how the UK can make the most out of its continued membership – relying mainly on arguments about the (highly probable) economic and political costs of Brexit. While these costs are undoubtedly pertinent for the referendum, it is not enough to focus on costs alone – there should also be a more positive vision of Britain's future in Europe.

Fortunately, we can draw on the past to construct a more positive case for engagement with the EU. This book does that by drawing on the expertise of a range of highly experienced and knowledgeable practitioners within British and EU institutions<sup>1</sup> – those who have not only thought about the UK's EU engagement but who have put it into practice.

The result is an impressive collection of essays, providing important fresh insights into a wide range of topics and events which have shaped our history. This book is a contribution to the referendum debate, but the hopes of the publishers and the authors are that it will also serve as an impetus for a more constructive mutual engagement between Britain and EU.

**Fabian Zuleeg is Chief Executive of the European Policy Centre.**

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<sup>1</sup> The authors are writing here in a personal capacity.

## Britain's European problem

*Stephen Wall*

It starts – and continues to this day – with the unavoidable consequences of geography. Surrounded by sea, we Britons learned to thrive almost as much on water as on land. The sea was also our survival, our best and ultimate defence until the 20<sup>th</sup> century. When you can only cross a foreign frontier by taking to ship, your horizons widen: why stop at Calais when you can sail to Cathay?

It is almost a thousand years since the British Isles were last conquered from continental Europe. If England later played continental power games, it was largely with the goal of resisting continental encroachment. Henry VIII embraced the Reformation, not because he cared one jot about dogma, but because he wished to assert, not only his claim to the bed and body of Anne Boleyn, but to an England secure from papal temporal interference. The English devised their own brand of Protestantism and, when the grandson of the king who gave us the Bible in matchless English prose sought to reassert Catholic ascendancy, the English establishment despatched him unceremoniously into exile and invited a Protestant foreigner to take his place. Forty years before James II was despatched by rowing boat into exile, Parliament had cut the head off his father, Charles I, to assert its power over taxation. You need look no further to understand why the idea of European tax harmonisation gets short shrift from modern British Parliamentarians.

*"Je me suis toujours fait une certaine idée de la France"*. So wrote Charles de Gaulle in the opening sentence of his memoirs. If, in France, national identity was rooted in the soil of France and in the notion that, while its people might fail, the country itself would remain true and strong, the same was not true of England. English identity was rooted in institutions such as the monarchy and Parliament, in an evolving class system and in a sense of island apartness, not to be mistaken for isolationist insularity. A centuries-long rivalry between England and France straddled the globe from India to the American colonies, to the Heights of Quebec, to the mouth of the Nile, to Trafalgar and to Quatre Bras.

The struggle between England and France resolved itself through colonial conquest into 19<sup>th</sup> century English imperial supremacy, in both economic and military power. It was for the English, indeed for the British, a largely peaceful century in which Lord Salisbury, with pardonable exaggeration, could describe English foreign policy as akin to floating downstream in a boat, occasionally stretching out to fend off an unwelcome obstacle. And it was as an imperial power that Britain entered the 20<sup>th</sup> century and fought two world wars. King George VI, well within living memory, could sign himself 'RI' – Rex Imperator.



And so Britain emerged from World War II with her institutions, not only intact, but vindicated. The lion with her lion cubs (the empire and Commonwealth) at bay had been a vivid Churchillian wartime image. The idea that the lion's roar could still be heard, loud and powerful, was emotionally appealing. And Churchill's overlapping circles of influence: Empire and Commonwealth, the English speaking world and united Europe, with Britain having a foot in each, was compelling. It was to all this that Labour leader Hugh Gaitskell was referring when, in 1962, he described Britain's possible accession to the European Community as "the end of a thousand years of history".

## **Anglo-French rivalry**

That emotional legacy coloured the attitudes of politicians and civil servants alike as they wrestled with Monnet's post war vision of a new Europe. "Britain's interest certainly does not lie in this direction and we should not be led astray by the kind of mysticism which appeals to European Catholic federalists and occasionally, I fear, to our Foreign Secretary". The author of that statement, in 1955, was the then permanent secretary at HM Treasury, Sir Edward Bridges, and the foreign secretary in question was Harold Macmillan, the most European minded of Churchill's ministers. But Macmillan too was suspicious of European federalism. And Britain's trade was massively more with the United States and the Commonwealth countries of Canada, Australia and New Zealand than with her continental neighbours. Australia, with a population of ten million, was Britain's largest export market.

By 1956, Macmillan was chancellor of the exchequer and was turning the tables on Bridges. "What then are we to do?" wrote Macmillan to Bridges. "Are we just to sit back and hope for the best? If we do that, it may be very dangerous for us; for perhaps Messina will come off after all and that will mean Western Europe dominated in fact by Germany and used as an instrument for the revival of power through economic means. It is really giving them on a plate what we fought two wars to prevent".

So, as the post-war world resolved itself into super power confrontation between the United States and the Soviet Union, and as the countries of the newly formed European Community started to outstrip the United Kingdom economically, the government of Prime Minister Macmillan faced up to the fact that Britain could not go it alone if she was to exercise political and economic influence in the world. Neither a special relationship with the United States, nor an attempt to 'grow' the European Free Trade Association as a rival to the EEC, offered viable alternatives. The Macmillan government, and its Labour successor under Harold Wilson, both with heavy hearts and much intra-party and wider domestic controversy, applied

for membership of the European Community and were, in turn rejected by President de Gaulle.

Britain missed the European train by some five years due to her own indecision and by sixteen years because of French opposition. Because of French self-interest, when she did join in 1973, she was forced to do so on unfair terms and to spend the first ten years of membership renegotiating those terms to put them on a financially equitable basis. The history of Britain and her European neighbours for three decades from 1960 is primarily one of Anglo-French rivalry. It is written on almost every page of the British official documents of the period. Both countries continued to define their own identity in opposition to each other.

Those British officials who, as young men (and they were nearly all men at the time, not least because female British diplomats were obliged to resign on marriage) who had witnessed their elders resist the creation of the European Community, were determined that Britain should not be left behind yet again. David Owen, the youngest British foreign secretary since Anthony Eden, found that Foreign Office officials in the late 1970s tended to regard their own views, rather than those of ministers, as representing the national interest. This was not, Owen later argued, a partisan point. "The evidence points", he wrote, "to Mrs Thatcher, as Prime Minister, encountering the same resistance from officials in the Foreign Office as I did as Foreign Secretary when demanding a tougher negotiating stance with the EEC".

### **Franco-German leadership**

Insofar as this tendency on the part of civil servants was accurately assessed by David Owen, it perhaps reflected an unconscious desire to offer a counterweight to the domestic pressures which politicians, even Edward Heath, the most European minded of British leaders, felt themselves to be under on Europe. Both Labour and Conservative parties have been divided over the issue of membership. The Labour party promised, and, in 1975, held, a referendum on the issue, largely to prevent a divisive split in its own ranks. Margaret Thatcher, so the records show, felt herself under pressure to deliver for Britain, especially in battling to secure a budget rebate, from the press, the Labour opposition and from her own back benches. One of her constant fears, often reiterated in private, was that failure to resolve the issue of Britain's budget contribution would reopen the whole existential question of whether Britain should remain in the EEC at all. If Foreign Office and Cabinet Office officials wanted a less combative approach, it was not that they were disloyal; far from it. A succession of Cabinet Office and Foreign Office officials dealing with European negotiations had Mrs Thatcher's respect

and confidence and negotiated with toughness and ingenuity. But they were also conscious of the growing Franco-German leadership in Europe from which the United Kingdom was excluded, at least in part because domestic politics made it unthinkable for the UK to be part of an institutional vanguard on issues ranging from the Exchange Rate Mechanism to moves to political union. Throughout the twenty years in which I dealt continuously with European issues, there was never a time when ministers did not find it domestically difficult to take, and defend, action at EU level. Even Tony Blair found it hard to change the European weather and his own pro-EU policies foundered when Gordon Brown used Europe as a Murdoch-edged weapon to prise open the leadership of the Labour party in his own self-interest.

If Britain had not been a brake, could the European Community of the 1980s and 1990s have evolved into a political and economic union on a recognisably federal basis? The evidence is mixed. The impact of De Gaulle's two vetoes was far-reaching, both in fuelling adverse British sentiment and in forging a Franco-German hegemony from which Britain was perforce excluded while De Gaulle remained in power. Under German Chancellors Brandt and later Schmidt, and French President Giscard d'Estaing, it might have been different. But, for much of the 1960s, and all of the 1970s, the British economy lurched from crisis to crisis. One reason why, in 1967, De Gaulle's second veto on British accession was tacitly accepted by his EEC partners was because they were secretly relieved not to have to carry the burden of a new member (the United Kingdom) whose economy would need urgent support. So, even a willing Britain might have been incapable of delivering, indeed was incapable of delivering when Schmidt and Giscard invited Prime Minister Jim Callaghan to join with them in establishing the Exchange Rate Mechanism in 1978. Callaghan believed that his battle to stabilise the UK economy would be jeopardised by the pressures of ERM membership on a volatile pound and that, in any event, he could not carry the Labour party, which then had no overall majority in the House of Commons. When Britain did eventually join the ERM in 1990, it proved unsustainable and Britain's humiliating exit from the system adversely coloured British public attitudes to the subsequent evolution of the European single currency.

With Margaret Thatcher came an economic vision that was radical and reformist. In leading the campaign to make a reality of the European single market, she was repairing a failure by the founding members of the EEC to implement one of the first and essential requirements of the founding Treaty of Rome. Her famous Bruges speech of 1988 today reads as both as shrewd in its judgments and self-evident in its analysis. It was not at the time so regarded in the rest of the European Community. There, it was seen as an attack on the vital principles of the EEC. Paradoxically, the biggest difference between Mrs Thatcher's approach and that of her successors in government is that she never for a moment considered that Britain would opt out of

core Community policies. It is one of the great ironies of Britain's membership of the European Union that the willingness of her successors to compromise in ways she would not have tolerated, has taken Britain from the centre of an admittedly often querulous stage, to the sidelines on a number of issues.

Our own working methods in Whitehall breed efficient uniformity, rather than flexibility. We micro manage. We find it hard to make deals because we find it hard to treat any British interest as other than vital. When, in the early 1950s, the British Ambassador in Rome called on instructions on the Italian foreign minister, to persuade him of the undesirability in British eyes of the proposed Coal and Steel Community, Count Sforza listened politely. "My dear Ambassador", he said, when the British envoy had finished, "there are times at the opera when you should enjoy the music and forget about the words". When in Rome. But never in London.

If we vote to remain in the European Union, then the day-to-day management of European controversies in British domestic politics will become for a time marginally easier. But, it will, like the original decision to join, be a vote of the head and not the heart. The Liberal Democrat party has been eviscerated; Labour under Corbyn is at best, indifferent to the EU. The Conservative Party will remain highly sceptical. Britain will remain strong on those things where we have always been strong: pressing for liberal, open market economic policies; outward looking and liberal on both aid and trade; a big fish on foreign and security issues. These are not insignificant in terms of the role of the EU both in serving its own citizens and in contributing to global prosperity and security. They will not, however, be critical to the future of the EU insofar as it is centred on the future of the eurozone.

But at the core of the British constitution is one principle: no Westminster parliament can bind its successor. So long as we remain inside the European Union, we can adapt our policies to suit and promote our interests within the EU Council of Ministers and the European Parliament. We are not condemned to be on the sidelines if we choose not to be. Only outside would we have our noses pressed to the European glass, gesticulating, unheard, to those inside.

***Stephen Wall spent 35 years as a British diplomat, more than 20 of them working on EU policy. He was the UK Permanent Representative to the EU 1995-2000, and EU adviser to Prime Minister Tony Blair from 2000-04.***

## **Britain's contribution to the EU: an insider's view**

*David Hannay*

From the very outset Britain's relationship with the European Communities (now the European Union), has been a fraught and troubled one. Its belated accession in 1973 was overshadowed by two sets of events: one a strategic misjudgement of its own making, the decision not to join as a founder member in the 1950s, the other the humiliation of the vetoes by General de Gaulle in the 1960s. Those two sets of events burdened Britain with a whole range of negative consequences, both material (budgetary and agricultural policies which it had no say in shaping), and political and psychological. Add to that the fact that Europe as a domestic political issue has come close to destroying each of the two main parties in succession; and the raucous handling of European policies by a press nurtured on the adversarial politics of Westminster which tends to present everything done in Brussels as the work of 'faceless bureaucrats' who habitually ride rough-shod over British interests. One has there a witch's brew which will no doubt come to the boil during the referendum campaign.

That is enough by the way of excuses. What is the reality about Britain's contribution to the EU since it joined? I can do no better than quote the Director of the German employers' federation Markus Kerber who said to a British audience at a recent symposium: "Much has changed since you joined in 1972; much of it for the better; and much of it because of you". That too is the reasoning of the leaders of all the other member states as they join in a chorus of support for Britain remaining in the EU, frequently citing the beneficial influence Britain has had and will continue to have on the shaping of EU policies.

### **Developing common policies**

It is true that Britain came relatively slowly to the position of champion of the single market project, which transformed the EU from a customs union still festooned with innumerable non-tariff barriers to trade into something increasingly closer to a level playing field; and which has brought substantial benefits to all of Europe's citizens. But, from the early 1980s onwards, when Margaret Thatcher took up the cudgels on its behalf, and with the notable leadership in the Commission of Arthur Cockfield and in the European Parliament of Basil de Ferranti and his Kangaroo Group, there has been no flagging in that support for single market reforms and much success in bringing them about. There is still much to be done, in completing the single market in services, by far now the largest sector of our and the rest of Europe's economies, in creating a barrier-free framework for the digital economy, in building an energy union and a capital market union. All that will require perseverance and time to

achieve; and it will require Britain's presence at the negotiating table in Brussels if the forces of inertia and protectionism are not to win the day.

Enlargement to take new member states into the EU was another cause to which Britain warmed. The UK had its doubts about admitting Greece too precipitately and without the necessary domestic reforms in place to enable it to take on the responsibilities of membership – and who now would say that it was wrong – but it did not press them. Thereafter Britain became an active and effective leader of those member states which favoured enlargement – to take in first Spain and Portugal, then Austria, Finland and Sweden, then the twelve countries of Central and Eastern Europe following the collapse of the Soviet empire, and lastly Croatia.

Margaret Thatcher's Bruges speech in 1988 is best remembered for its critique of an over-centralised Europe, and less for its moving reminder that Warsaw, Prague and Budapest were as European cities as Berlin, London and Paris. Enlargement to admit those formerly communist and Soviet dominated countries was an astonishingly powerful and successful geo-political move which brought prosperity and increased security to a part of Europe which had only in recent history known occupation and drab economic stagnation. The enlargement challenge remains, with the incomplete business of the Balkan wars of the 1990s needing the sheet anchor of EU membership; the aspirations of Serbia, Kosovo, Montenegro, Macedonia, Albania and Bosnia-Herzegovina need a positive response if that region on the European Union's doorstep is not to risk slipping back into nationalist and ethnically-fuelled instability and even conflict. Nor should Turkey be abandoned even if its current record on press freedom and human rights makes its actual accession only a distant prospect. Without Britain's continued support the EU's enlargement agenda is all too likely to languish.

From the outset the European Communities were committed to freer trade on a worldwide basis. But Britain's accession provided an important and sustained boost to that policy. British trade policy commissioners like Christopher Soames, Leon Brittan, Peter Mandelson and Catherine Ashton made full use of their negotiating powers under the treaty to provide effective leadership. The Kennedy, Tokyo and Uruguay rounds of multilateral trade liberalisation brought about a massive increase in international trade from which Europe, including Britain, generally benefitted. Now that further progress on a multilateral basis has faltered (one hopes temporarily), the EU is focussing more on the agenda of bilateral free trade deals. Agreements with South Korea and Canada are already negotiated; others with the US, Japan, India, Australia, New Zealand and Mercosur are in the offing. In this field too, the UK gives strong support, and a continuing British involvement in shaping the EU's negotiating mandates will be of critical importance.

When Britain joined the European Communities in 1973, Europe's official development aid budget was modest and limited to the former colonies of its six original member states. That rapidly changed as Britain pressed successfully for a wider perspective. Now Europe and its member states are by a long way the largest aid donor in the world, with Britain's commitment to allocating 0.7% of its Gross National Income to aid earning it a leadership role. If the UN's Sustainable Development Goals, adopted in 2015, are to be successfully implemented, it will depend to a large extent on Europe's contribution.

The same is true of the commitments on climate change agreed at last year's UN climate change conference in Paris. From the very outset of the negotiations over climate change at the Earth Summit in Rio de Janeiro in 1992, the European Union has, with strong British support, given a lead and set an example in adopting policies to limit carbon emissions. But everyone knows that the Paris commitments fell short of what is needed to contain global warming and will need to be re-visited. That will require European leadership again, with Britain working inside the EU to resist those who would rather do less.

The European Union's common foreign and security policy is often mocked for under-achievement. But it has had some modest successes. The successful negotiations with Iran to roll back its nuclear programmes were conducted on a European-sponsored template and in the face of initial US resistance. The response to Russia's seizure of the Crimea and interference in Ukraine may have been slow and hesitant, but Europe's economic sanctions remain a key element in quelling Russia's new assertiveness. Democracies are invariably slow off the mark when dealing with authoritarian rulers but they do not always end up on the losing side. In both these cases Britain played an important role.

If one looks at the challenges which Europe has handled less well – Syria, the surge of refugees and economic migrants, the wider threats from instability in the Middle East including the rise of the so-called Islamic State – it is hard to see how any of these, and many challenges which still lie just over the horizon, can be successfully handled without a concerted European response. And that concerted European response will be weaker and less effective if it does not have the backing and involvement of one of the very few member states which has a global diplomatic outreach and of only one out of the two which has a capacity for the projection of power through its armed forces.

So much for grand policy. But there are plenty of other, more mundane and less obvious ways in which Britain has made a positive contribution to the EU's development. Support for the Commission's competition policy is one, where a combination of single

market legislation and competition powers often brings about major change – think only of roaming charges, of cheaper air fares and of a less compartmentalised energy market. Championing consumer protection and animal welfare are other areas where British advocacy has brought benefits to all, not just to Britain. The Commission can often feel pretty lonely when it is taking on monopolies, anti-competitive practices and government subsidies. But over the years it has been able to count on virtually unfailing British support in all these fields.

The reform of the Common Agricultural Policy (CAP) is usually portrayed in the UK as a complete failure and an on-going disaster; and this despite the moves away from production support and the accumulation of butter mountains and wine lakes and the fact that the CAP now absorbs about half as much of the budget as it did two decades ago. Just how much of that progress would have been made if Britain had not been consistently and unremittingly pressing for reform and supporting the Commission when it made reform proposals? The Common Fisheries Policy is a similar story: ill-conceived and too centrally managed at the outset, it has recently been radically reformed, with Britain leading the reforms. The miserable practice of discarding fish caught accidentally over quota should soon be a thing of the past.

### **Parliamentary scrutiny**

No analysis of Britain's contribution to the EU would be complete without a glance at the parliamentary dimension. Here there is a tale made up of two sharply contrasting parts.

The European Scrutiny Committee of the House of Commons, constrained by a very narrow mandate (it can only recommend that an EU policy or proposal be debated by the whole House), and dominated from the outset by eurosceptics, has focussed its efforts mainly on harassing the government of the day – with hardly any noticeable effect. It has done little to reach out to EU institutions such as the Commission or the European Parliament or to cooperate with the national parliaments of other member states.

In contrast the European Select Committee of the House of Lords, with a much wider and more flexible mandate, has set to with a will over the years to influence the shaping of EU policies and legislation. By creating six thematic sub-committees (for economic affairs, external affairs, home affairs etc.) it has mainstreamed and professionalised its consideration of the main sectors of EU policy making. Many of its reports are studied and valued in Brussels and in other national capitals; they are often described as the best and most constructive of



those emanating from national parliaments. The Committee has reached out to the European Parliament and to fellow committees in other capitals, building up a climate of trust and cooperation. To give examples of only two of its recent reports (both from 2014), one sets out the case for EU-wide action to reduce the appalling amount of food wasted across Europe, and the other sets out a wide menu of measures for increasing the role of national parliaments in shaping EU legislation and policies, including several which found their way into the reform package adopted by the European Council on 18/19 February of this year.

Should Britain vote to remain in the EU on 23 June, a high priority should surely be to strengthen the impact the House of Commons makes on EU policy making and to mainstream European work across the whole spectrum of its departmental committees. The role of national parliaments in filling the perceived democratic deficit in the EU's institutions must not be neglected.

### **Constitutional differences**

No-one setting out to analyse Britain's contribution to the EU can, in all honesty, duck the question of its attitude towards institutional change, which has fluctuated over the years between hesitancy and hostility. This infuriates many in Brussels and in the other member states who advocate a federal or quasi-federal structure for the EU and who often regard the best response to any problem or challenge as being an institutional one, conferring more powers on the EU's institutions, rather than a policy one to be achieved by using existing powers more effectively and by first answering the difficult question: 'But will it work?'. There is even a tendency to regard the British approach of favouring pragmatic, incremental solutions as in some way a heretical one, as being 'un-European'.

And yet the British approach is as embedded in the UK's own European history as the continental approach is in theirs. After a somewhat dodgy start in the 17<sup>th</sup> century the British managed to make a relative success of pragmatism and incrementalism. Is it really surprising that we brought that legacy with us into the EU? And surely it cannot be wished away as if it did not exist? The European Union has found, and is still finding, ways of accommodating those two traditions: it is known as variable geometry, and it does work. With reasonable trust and flexibility on all sides it is possible to avoid a black and white choice, as was successfully done in February when the European Council adopted a new package of reforms in response to the British government's concerns.

Since I first became involved in European matters in the run-up to and during Britain's accession negotiations I have from time to time examined my conscience

and asked myself whether Britain should not be ashamed of the amount of trouble it has given its partners over the years, asking them to make space for British exceptionalism. I do genuinely regret some things: the way in which the vagaries of our domestic party politics have imposed two renegotiations and two 'In/Out' referendums; the raucous and disrespectful tone towards the EU and its institutions in our press; the lack of interest in and understanding of the workings of the EU which matter so much to us. But I do not regret, nor am I ashamed of, the contribution Britain has made and is still making to the European Union, of which I have attempted to give some account in this essay; and I am very sure that we would all be worse off without it.

***Lord Hannay of Chiswick was a member of the UK negotiating team for accession (1970-72). He served as an official in the European Commission 1973-77 and became UK Permanent Representative to the European Communities 1985-90. He was a member of the House of Lords EU Select Committee in 2002-06 and 2009-14.***

## 'Foreign judges' and the law of the European Union

*David Edward*

The British have always been ambivalent about the Court of Justice of the European Union. There are two main reasons. The first is that, until recently, we were not used to the idea that judges might play an active role in reviewing the work of government, still less that they might overrule legislation passed by Parliament. The second is that the working methods of the Court of Justice, and the style of its judgments, are unlike those with which we are familiar in our own courts. So it is felt to be a 'foreign' court whose judgments are imposed upon us, rather than a court in which, since 1973, British lawyers have played a full part both as judges and as advocates.

The sovereignty of Parliament at Westminster – what A.V. Dicey called "the power to make or unmake any law whatever" – is embedded in our national consciousness as the cornerstone of the British constitution: the courts are there to give effect to the will of Parliament. But Dicey also said that the courts are there to control the executive: "Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen". By the mid-1950s, however, the role of the courts had become so limited that the Lord Chief Justice of England said their role was to be "the handmaiden of the administration".

Although the 'common law world' comprehends most of Britain's former dominions and colonies as well as the United States, the doctrine of the sovereignty of Parliament has not been a major export. In many of these countries the courts can strike down legislation as being incompatible with the constitution – very often a constitution that was drafted in London by British lawyers.

While Parliament was supreme within Britain, the Judicial Committee of the Privy Council, largely composed of British judges sitting in London, was the supreme court of the Empire. Because travel was slow and expensive, the parties were usually represented by English lawyers with no personal experience of the country concerned. Until 1966, the Committee delivered a single judgment and no dissenting opinions were allowed.

The jurisdiction of the Judicial Committee was immense, ruling on the constitutions of Canada and Australia, interpreting and applying the native laws of the Indian States, and defining the New Zealand government's obligations towards the Maoris under the Treaty of Waitangi. Some of its judgments gave rise to vehement protests against the rulings of judges in a far-away country who had no knowledge or

understanding of local values, traditions and circumstances. The language used by the critics was just as hostile as the language used by some British politicians and media about the European Courts in Luxembourg and Strasbourg.

Meanwhile, much has changed in the British legal landscape. The historic link between the judges and Parliament through the office of Lord Chancellor and the Judicial Committee of the House of Lords has been swept away. We now have a Supreme Court which already acts as a constitutional court in relation to Scotland, Wales and Northern Ireland. Some government ministers have recently suggested that it should assume the same powers in relation to EU legislation as those claimed by the German Federal Constitutional Court.

Nowadays British citizens rely on the courts, through the process of judicial review, to control the way they are treated by the government and other administrative agencies and to hold them to account – to such an extent, indeed, that the government has tried to make it more difficult for citizens to get access to the courts for this purpose. Meanwhile, the Human Rights Act and the devolution acts for Scotland, Wales and Northern Ireland have made it less acceptable to say that the law places no restrictions on the power of Parliament to do whatever it wants.

With a fuller knowledge of our own legal history, the British attitude to the European Court of Justice is rather surprising, since its jurisdiction is both less extensive and less intrusive than that of the Privy Council. But we should not be entirely surprised because we were not there when the Court of Justice came into existence, and we had no share in its development until we joined the EEC twenty years later and the first British judge, Lord Mackenzie Stuart, went to Luxembourg with the first British advocate general, Jean-Pierre Warner.

## **What the Court of Justice does**

The task of the Court of Justice, laid down in all the Treaties, is to "ensure that in the interpretation and application of this Treaty the law is observed". Lord Mackenzie Stuart put it simply: the task of the Court is to hold the member states to the bargain they have made. The European treaties are bargains negotiated between the member states for the benefit of themselves and their citizens. Part of their bargain is that the Court of Justice should rule on what the Treaty means, and review the lawfulness of what is done by the other institutions and the member states.

For the British the most important aspect of the bargain has always been the creation of the single market – in the words of the Court, "a market approximating as closely as possible to a domestic market". This means far more than a free trade

area since it opens up all the forms of economic activity we would regard as a normal and natural part of our own economy. As well as dismantling obvious barriers to trade such as tariffs, quotas and other charges levied when goods cross a frontier, it involves the elimination of hidden obstacles to free movement of products, skills and assets from one country to another. These 'non-tariff barriers' include product standards that favour domestic products and discriminate against imported products, non-recognition of specialist professional skills and qualifications, and unreasonable language requirements.

A high proportion of the cases with which the Court of Justice has had to deal are concerned with these hidden barriers to the right of free movement. The essential problem is whether they can be justified by genuine reasons of public interest which are the legitimate concern of national governments or are, in reality, protectionist measures, often introduced or maintained to satisfy the demands of lobby groups. For example:

- Were the German authorities justified in firing a German architect DM2000 for employing a Dutch firm to lay composition flooring because the firm was not registered in the official German register of skilled floor-layers and was therefore to be considered 'black market labour'?
- Was the Prado justified in refusing to recognise the professional qualifications of an art restorer who had obtained (with a grant from the Prado) an English MA in the conservation of fine art and had worked for several years in the Prado and other museums and galleries in Spain and Italy, on the ground that her British qualification was not recognised by the collective agreement between the Prado and its staff representatives?
- Was a British supermarket debarred from slicing and packaging ham imported from Parma and selling it as Parma ham on the ground that it had not been sliced in Parma?

It is through cases such as these, referred for guidance by the national courts of the member states, that the Court of Justice has provided the legal criteria that unlock the day-to-day problems that bedevil the practical realisation of the single market. Without a number of key decisions of the Court, it is safe to say that the single market would have been dead in the water.

Ten years before the United Kingdom joined, the Court had established two fundamental legal principles. First, the European Union Treaties are not, like other treaties, just about relations between states: where the Treaty rules are clear, they confer rights on individuals (including commercial firms and companies) which they

can vindicate directly before the courts of the member states. Second, if those courts are faced with a national law that conflicts with a Treaty rule, then they have to apply the Treaty rule.

These rulings have been fundamental to the success of the single market. As a result, many British individuals and companies have been able to secure their rights in the courts, and British lawyers have been particularly active in relying on the Treaty rules for their clients. This was particularly important in the long battle to achieve equal pay for equal work without discrimination on grounds of gender, nationality or ethnic origin.

Two of the problems in establishing the single market have been, first, that the legislative process envisaged by the Treaties is cumbersome and slow and, second, that the treaty makers did not allow for the manifold complications of deciding whether a measure that has the effect of restricting free movement is justified or not. Taking the three examples given above, should the member states enjoy some latitude in laying down the qualifications for undertaking skilled work, whether floor-laying or conservation of paintings? If so, how much latitude and how should we decide whether the line has been crossed? And what guarantees are consumers entitled to expect when they buy packaged goods in a supermarket? How are they to know that they are truly what they claim to be?

From the later 1960s through to the 1980s, the already slow legislative process had almost ground to a halt. Meanwhile, new concerns had come to the fore that had not figured at all when the Treaties were written in the 1950s – notably consumer protection and environmental protection. How could progress be made without legislation, and how was account to be taken of these new and important public concerns?

In a series of judgments the Court traced a workable solution to these problems. First, although national rules may be different, it is reasonable to start from the assumption that they offer an equivalent degree of protection against incompetence or dishonesty, so freedom of movement should be the rule rather than the exception. But, second, rules that restrict free movement may be legitimate if they serve a genuine public interest and are no more restrictive than is necessary and proportionate for that purpose.

These criteria provided the framework for the 1992 Programme to complete the single market which was developed by the British Commissioner, Lord Cockfield. But even where legislation has been put in place, the questions that arise are not

easy to answer since there are so many possible variables in the factual and legal context. There are said to be 5,500 'regulated professions' in the EU and it is not always clear which regulations should apply to any particular activity. One of the latest problems to be referred to the Court (by a judge in Barcelona) is whether the Uber taxi service falls under the rules for transport companies or for digital services. In both cases the legislation is already there: the question is, which applies, or if both apply, which is to take precedence?

The single market is still not complete and the work of the Court continues, greatly assisted by the very experienced British lawyers who practise regularly before it, representing private clients or the UK government. The governments of the member states are entitled to intervene in all the cases before the Court and the United Kingdom frequently does so.

### **How the Court of Justice works**

It is true that the Court's procedures and working methods are unlike those with which we are familiar in our own courts. This has led to a number of misunderstandings. The Court is said to be 'continental', applying Roman law or the law of the *Code Napoléon*, rather than the common law. It is also said that, because the Court issues a single judgment, the judges have to be unanimous and pressure is put on the minority to reach a consensus, rather than express their own view. Dissenting opinions are allowed in the European Court of Human Rights and the history of the common law shows that a powerful dissent can lead in the long run to reform of the law. Why should the Court of Justice of the EU be different?

It is true that the procedure of the Court is based on the procedure of the French *Conseil d'État*. This is hardly surprising since the administrative courts of most of the original six member states (not including the UK) have the same procedure. But EU law owes virtually nothing to Roman law or the *Code Napoléon*, since it is concerned with 20<sup>th</sup> and 21<sup>st</sup> century problems to which they offer no answer: cross-border trade in goods and services; non-discrimination on grounds of gender, nationality or race; restrictive commercial practices, control of monopolies and public procurement; consumer and environmental protection and a host of other things that are equally new to the common law and the civil law.

Precisely because traditional law offers so little guidance, the case law of the Court of Justice has been developed through precedent in the same way as the common law. Indeed, some critics say that the Court is too respectful of precedent. At any rate, there is no 'code' of EU law other than the Treaties.

The way in which the Court works, issuing a single judgment with no dissenting opinions is certainly unlike the way judges work in the common law world. But it is the way in which the courts work in most of the member states, and it is well adapted to a situation where the Court is asked to interpret the law to be applied in 28 member states (31 where the law applies in the European Economic Area, including Norway, Iceland and Liechtenstein as well) using 24 languages.

When all the parties, including the member states, have presented their arguments in writing and at the oral hearing, the advocate general delivers an independent and impartial Opinion on the issues and merits of the case. This is a very important step in the process, and the British advocates general have played an outstanding role in the development of EU law. The Court then deliberates in private on the basis of drafts and notes exchanged between the judges. The process of deliberation may last several hours, weeks or even months, and there can be much argument between the judges (sometimes quite forceful and even, occasionally, bad-tempered).

The aim is not to arrive at a judgment that is unanimous, but one that is a legally acceptable solution to the problem raised by the case. Where there is fundamental disagreement, the result is decided by majority vote, but that is rather rare. The fact that judgments of the Court are signed by all the judges does not mean that they all have to agree, but simply to confirm that the required quorum was present when the decision was taken.

My own personal experience over 14 years in Luxembourg is that the chief concern of the judges is not some form of judicial imperialism, seeking to impose alien law on the hapless judges, governments and citizens of the member states. Their aim is simply to ensure that the system works. I would go further and echo the words of Professor J.D.B. Mitchell, one of our great but undervalued thinkers about constitutional and European law:

"The role of courts has, or should have, something to do with the realities of democracy. Properly organised, it is through them that the individual can play a larger and more significant part in government while gaining a greater sense of security."

***Sir David Edward is Professor Emeritus of the University of Edinburgh. He was a Judge of the European Court of First Instance 1989-92 and of the European Court of Justice 1992-2004.***



## The United Kingdom and the Charter of Fundamental Rights of the EU

*Peter Goldsmith*

One of the paradoxes of the campaign to leave the European Union has been the emphasis placed by the 'Outers' on the wish by leaving the EU to escape the operation of 'European Human Rights Law'. There are several sides to this paradox. First, European human rights law does not derive from the EU or its predecessor the European Communities at all, but from the quite separate Council of Europe. Second, the development of human rights law in the European Union has been to promote controls on the power of the EU institutions rather than to expand their power, so it is paradoxical to complain about it. And above all it is paradoxical, if not shocking, that the United Kingdom should be engaged in such a fundamental struggle to cut the ties with Europe so as to reduce the rights our citizens have when throughout history we have been in the forefront of developing and upholding individual rights.

At the heart of these arguments has often been the EU's Charter of Fundamental Rights, which has been depicted as a novel innovation of the European Union creating new rights for the courts to develop and enforce. Others however complain that rights in the UK are inadequately protected because of a protocol (Protocol 30) secured by the UK. So on the one hand it has been argued that a legally binding charter has run the risk of opening up our employment laws to new and damaging legal challenges. On the other hand it is argued that UK workers have fewer rights than those in other member states because of the protocol. As the UK's negotiator in the Charter deliberations, I have watched with dismay the misinformation with which the Charter has been greeted.

The fundamental purpose of the Charter was not in fact to create new rights at all. It was not to impose a new set of obligations on our government and public bodies, nor to write a new set of obligations to be written into our laws. It was actually to do something that every citizen should applaud: to recognise that the institutions of the European Union are constrained when they act to respect our fundamental rights and freedoms, and to make clear what those rights are.

This is important – just as it is important that member states and their public bodies respect the citizens' fundamental rights when they exercise their powers subjecting them, for example, to a legal regime which can scrutinise the way those powers are exercised so that they are only exercised for proper purposes and in a proportionate manner.

## The need for EU fundamental rights

Yet when the European Communities were first created there was nothing explicit in the Treaties requiring respect of fundamental rights from the Community bodies. That left a gap in our protection. In their domestic legal orders all EU states and their public bodies were obliged to respect human rights in what they did – generally by the European Convention on Human Rights (the centrepiece of the Council of Europe) and often by national constitutions too.

However, despite the fact that the EU institutions and the Community institutions before them had from the outset the powers to legislate or act in ways that affected the rights and legal position of individuals and companies, the founding treaties were silent on the issue of when and how the institutions had to respect those fundamental rights when performing their tasks. It was left to the European Court of Justice to fill this gap by case law. In its famous judgment in the *Internationale Handelsgesellschaft* case in 1970, the Court established fundamental rights as part of "the general principles of Community Law".

Over time, and in successive EU treaties, the obligation to respect these rights was recognised: anticipated in the Preamble to the Single European Act, the Maastricht Treaty for the first time imposed in the text a clear obligation on member states to respect fundamental rights. The terms in which it was done, however, was not to list the rights protected, as is the common technique in national constitutions, but to make reference back to other formulations of rights. What became Article 6(2) of the Treaty on the European Union identified these rights as being "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community Law".

The principle that fundamental rights apply as part of Community law – and apply to states when implementing that law – is now therefore long established. Yet this did not solve the problem of identifying what those fundamental rights were. EU citizens remained without a clear, accessible catalogue of those fundamental freedoms which the Union institutions are to respect.

Against this background, at its meeting in Cologne in June 1999, the European Council commissioned the EU institutions and national governments and parliaments, working together in a Convention, to draw up a declaration of existing rights in order to make those rights, freedoms and principles which the Union ought to respect more visible, and so to provide an accessible

catalogue of rights as they already applied under Community law. This was the birth of the Charter.

None of the rights in the Charter are in fact new rights. They all come from three sources of existing rights: the rights in the ECHR; rights which were largely derived from EU law such as the rights to parental leave or equal pay between men and women; and other standards recognised by the member states whether from other international instruments or in their domestic law, such as right to carry on trade or business. The source of each article is made clear in a document that is now an integral part of the Charter, the Explanations. A failure to understand that, whilst all the rights in the Charter reflect existing rights, they do not all derive from the ECHR has led to some of the errors about the Charter.<sup>2</sup>

The Explanations provide an essential gloss to the Charter provisions tying them back to their sources in the ECHR, Union laws and elsewhere. They distinguish between guiding principles and justiciable rights and make clear the limits on rights. Although the Explanations were drafted alongside the Charter and published at the same time, it was not until the 2004 Intergovernmental Conference that a binding obligation was secured by the UK government to the effect that, when interpreting the Charter, the courts of the Union and member states were to have due regard to the Explanations. These safeguards were carried over into the Treaty of Lisbon when the Charter was given legal force.

It is the third category of source material which gives rise to most misunderstanding. One of the rights that often makes the headlines is the right to collective bargaining and action (Article 28 of the Charter). But the inclusion of this right in the Charter is intended to recognise such rights as may exist already in member states law. That is why it is clearly expressed in the Charter itself that such rights are in accordance with national law and practice. So the Charter does not provide the Union with power to interfere with national legislation in this as in other sensitive areas, as some of its detractors suggest. As the Explanations clearly state: "The modalities and limits for the exercise of collective action, including strike action come under national laws and practices".

Nor are all of the rights in the Charter justiciable rights at all. Rather than being rights that a court can enforce, they are principles intended to guide the EU institutions when acting within their powers under Union law – notably, when legislating.

Many of the misunderstandings about the Charter arise from the failure to take into account the binding limitations and safeguards. These are to be found in two places: the so-called horizontal articles to be found in the latter part of the Charter and in

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<sup>2</sup> For example, the decision of Mr Justice Mostyn in *R(AB) v Secretary of State* (Co/11191/2010).

the Explanations. The horizontal articles are essential to the package of Charter safeguards: they make clear what the Charter is and what it is not. It is difficult to overstate their significance. They decode the Charter, setting out and limiting the scope and application of the Charter.

Article 51 makes clear that the Charter is addressed primarily to the Union institutions and affects member states only to the limited extent that they implement EU law – which, as the Court of Justice has long held, is already the position. Article 51 makes clear that the Charter does not extend the powers of the Union or give the latter any new power or task.

Article 52 makes clear that rights derived from the ECHR and EU law must be interpreted and applied subject to the limitation on those rights. The Charter cannot then be used to extend existing rights. Charter provisions which draw upon the common constitutional traditions of member states must be interpreted "in harmony" with them. It underlines that full account must be taken of national laws and practices as specified in the Charter. Finally, Article 52(5) sets out the vital distinction between the rights and principles in the Charter, in particular in relation to social and economic rights. In the language of Article 51 principles must be "observed" but can only be enforced in very limited circumstances.

## **The British Protocol**

Let me now say something more about Protocol 30, the so-called 'opt-out'.

Specifically to address the need for reassurance, the UK secured a Protocol which has been the source of much misunderstanding. As I have explained, the UK's position has always been that the Charter affirms existing rights – it does not create any new justiciable rights in any member state and does not extend the powers of the courts. Moreover where, as in many cases, Charter rights are based on national laws and practices they must mirror the extent and content of those national provisions.

The Protocol's intention therefore is simply to confirm these points for the UK (and for Poland, which also became a signatory) – and to have it in black and white for all to see. The recitals to the Protocol make explicit that the Charter simply reaffirms existing rights:

"WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles,"

It also underlines that the Courts must have strict regard to the Explanations:

"WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article,"

Let me then take the three operative provisions of the Protocol in turn. Article 1(1) expressly confirms that the Charter "does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms". As I have explained, the Charter was always intended to simply set out existing rights more clearly – thus it clearly cannot extend the rights of the Courts to strike down UK laws and practices.

Article 1(2) of the Protocol explains in more detail the limits of the provisions in the Charter with particular reference to the social and economic rights in Title IV of the Charter. These have been the principal source of concern on the part of those worried about the potential impact on UK law. As all the provisions in this title are either existing rights in UK law, tied back to national law, or are guiding principles, it clearly follows that they cannot create rights except insofar as they are provided for in national law. Article 1(2) states that: "In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law". All this clearly follows both from Article (1) and from all the safeguards set out above. As such this provision does nothing new and is expressed as being for the avoidance of doubt. But sometimes, as we all know, it is necessary for reasons of clarity and reassurance to reiterate points provided for elsewhere.

Finally, Article 2 of the Protocol confirms that where a Charter provision "refers to national laws and practices, it shall only apply to Poland and the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland and the United Kingdom". So, for example, in Article 27 of the Charter we read: "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 Union law and national laws and practices". Again this is simply confirming that the rights concerned do exactly what they say on the tin.

From this it will be clear the UK Protocol does not in any way constitute an 'opt-out' in the sense of trying to disapply certain rights to UK citizens. That would be neither

necessary nor desirable given that the UK fully accepts the rights reaffirmed in the Charter. As the Charter reflects only existing rights, the underlying rights will continue to have effect in the UK, as in all member states, as they always have done.

The Charter effectively sets the bar for human rights protection within the EU – and the UK is already well above that bar. We should put aside the hyperbole and welcome the Charter for what it is – a clear, accessible statement of our rights and of the limits on the EU's powers to legislate. The Charter will not impose new obligations on member states. It will not create new rights. The Charter instead provides a clear and valuable statement of the rights, freedoms and principles which the Union's institutions should respect.

Of course, the courts will be able to interpret the rights in the Charter. If the meaning of a right underlying a right in the Charter – for example in the ECHR – is given a more extended interpretation then this will equally be reflected in the interpretation of the Charter. There is nothing new or radical in this. At present the Court of Justice would do exactly the same in applying the ECHR as part of the fundamental rights in Community law. Indeed, it might be argued that in setting out such rights clearly in one document that the Charter will constrain the addition of new rights.

In brief, the Charter Protocol is not an opt-out but a guarantee. An explicit confirmation that in relation to the UK and UK law, the limitations and constraints on what it is and what it will do will be strictly observed.

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## European foreign policy: five and a half stories

*Robert Cooper*

Foreign policy is not an optional extra. The pattern of 2016 is that turmoil in a place we have hardly heard of yesterday is on the front page today, and on our door step tomorrow. By that time it may already be too late. Not getting to that point is the task of diplomacy.

But it is not easy. Persuading foreign countries to do things they don't want to do – to make peace, to handle minorities better – is one of the most difficult jobs in the world. Each country has its own imperatives and its own politics. If you want to influence others you need to bring every possible pressure to bear. That usually means acting together with your friends.

Here are five stories of people trying to do that for Europe: some failures and some successes.

### **The Balkans**

The Balkans in the early 1990s was Europe's biggest foreign policy failure. We were not ready for it. Just as the Cold War was ending peacefully, Yugoslavia, the most open of all the communist countries and the closest to Europe, tore itself apart in horrifying violence. At the time few of us understood that other people's wars also mattered to us. We were too late to stop the war between Serbia and Croatia; we were too slow in Bosnia-Herzegovina and not decisive enough until Britain and France deployed artillery and until the US, even later than Europe, decided to get involved. In Kosovo we, in the shape of NATO, acted as the trouble was starting: first a long attempt at a peaceful solution through diplomacy, and when that failed, military action. In the former Republic of Macedonia, we finally got it right: Britain persuaded NATO to put a tiny force in to reassure the population while Javier Solana – the new EU High Representative negotiated a settlement for the ethnic question with the support of NATO secretary general, George Robertson.

As the story of Macedonia in the last few years illustrates, we are still far from a happy ending in the Balkans but the work goes on. Catherine Ashton, as Javier Solana's successor, wrote the latest chapter with an agreement between Belgrade and Pristina which, if implemented, promises to deal with the affair of Kosovo – one of the difficult problems left over from the conflict. This was a remarkable personal achievement; but she could not have done it without the collective weight of the European Union.

After its failure in the Balkans, the EU began to give itself the tools for foreign and security policy: the office of High Representative and a permanent staff, including a military staff, the beginnings of a jointly owned EU diplomatic service, the European External Action Service (EEAS). A small EU force still provides reassurance in Bosnia.

## **Somalia**

Another EU force operates in the Indian Ocean off the coast of Somalia against pirates. Why do we hear so little about this? Because it and other joint operations have been successful in reducing piracy to low levels. The EU has no permanent military headquarters and this operation is run out of the Multinational Headquarters at Northwood (including when there are no British ships on patrol, as is often the case). The EU operation was one of the first on the spot. It has more robust rules of engagement than most of the others and is the only actor to have made a shore raid to destroy pirate equipment. Unlike others the EU has been able, alongside the naval operation, to assist littoral states: in building up alternative livelihoods for Somalis, such as fishing, or in improving justice and prisons in other countries so that pirates can be tried and sentenced locally.

## **Iraq**

Iraq, however, should be seen by the European Union as a failure. This failure has multiple owners, and the EU is one of the less obvious. But had the EU taken a collective position on Iraq, its members would have had more influence. The failure to take a common approach meant that, when the crunch came in 2002, each country dealt with the US separately. The UK thought it could influence the US by offering support; France thought that they could make the US look again by refusing to collaborate; Germany stayed away. There was no common position among the three, and no European policy. The result was that neither those who, like Britain, Italy and Spain, went along with Washington, nor those like France and Germany who refused to, had any worthwhile influence on US policy.

Now try a thought-experiment. Suppose there had been a common European approach – perhaps on the basis that European countries would support the United States intervention but only if the International Atomic Energy Agency inspections were allowed to run their course and they proved that the Iraqi government had an active nuclear programme. There must be at least a chance that the US would have hesitated to launch the war on its own – not because it



needed military support, but because it might not have wanted to go it alone. There would have been a crisis in transatlantic relations; and the problem of Iraq itself would not have gone away; but many deaths and much damage in the region might have been avoided.

## **Iran**

That is speculation. What we know is that France, Germany and Britain acted to ensure that they did not repeat the mistake when they launched an initiative in 2003 to seek a negotiated solution with Iran on the question of its nuclear programme. They did this independently of the EU (my then boss, Javier Solana, learned of it from the newspapers). But later the three brought Solana into the team as EU representative. This group reached an agreement in 2004 under which Iran suspended its programme; but we were unable to persuade Iran to make this permanent, and they resumed what was then a small-scale pilot enrichment programme after a few months. At this point the question went to the UN Security Council, and the negotiating team was enlarged again, so it now included Russia, China and the United States (although the last did not participate fully in the meetings with Iran until the Obama administration took office). In the meetings with Iran all of the '5+1' spoke, but when they wanted to express a collective view this was done by the EU High Representative.<sup>3</sup>

When the negotiations reached a stalemate after the discovery of secret Iranian nuclear facilities under construction, the UN imposed sanctions. These were not, however, adequate for the scale of the problem. The EU decided to take the logic of the UN sanctions further and, with a lot of persuading from Britain, France and Germany, added some much more far-reaching sanctions. Many like-minded countries such as Japan, Korea and Switzerland followed the EU's lead and imposed similar sanctions. In practice it was these (and US) sanctions rather than those imposed by the UN that brought Iran back to the negotiating table. When Hassan Rouhani was elected President of Iran in 2013 on a promise to reach a settlement a real negotiation became possible. And after two years of talks, a solution was achieved – 13 years after the original British, French, German initiative.

## **Burma**

Sanctions also played a part, though a smaller one, in policy towards Burma. For most of the EU this is a far-off country of which, until recently, they knew little. For Britain, history brings greater familiarity, as well as bipartisan support for the democracy movement led by Aung San Suu Kyi. The UK led the group in the EU arguing for

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<sup>3</sup> '5+1' refers to the five permanent members of the Security Council plus Germany.

sanctions, but this was never a large group, except occasionally when some fresh atrocity brought public attention. Other EU states argued that change would come rather with engagement than with sanctions. In some cases commercial interests played a part – sanctions never touched the energy sector, for example – but the case for engagement was also legitimate. (Margaret Thatcher had made the case for engagement forcefully in respect of South Africa.) In practice, in the case of Burma EU sanctions were limited: visa bans on a few individuals in the military regime, and import bans on products such as timber and gemstones in which the military had financial interests. The EU also started limited programmes of humanitarian aid in the health sector. (The US, having imposed tougher sanctions than the EU, had stopped the World Health Organization from operating in Burma).

From the UK point of view it was an achievement to persuade the EU to maintain sanctions over a long period, when the majority of EU members were less than enthusiastic. This illustrates the point that EU foreign policy is not (as is often alleged) based on a lowest common denominator. It would be more accurate to say that policy is based on give and take. Those member states which did not share the British commitment nevertheless recognised that this was a politically important subject in Britain, and they were prepared to go along with sanctions provided large economic costs were not imposed on their own countries.<sup>4</sup> The result was messy: sanctions that did not have a big economic impact, plus humanitarian aid. But the sanctions did send a message that the Burma regime was not an acceptable partner, and the humanitarian aid registered a continuing wish to help the people. In retrospect it was not a bad policy, neither so harsh as that of the US, nor so weak as that of most Asian countries.

We do not know why the Burmese military decided to change the way their country is governed. It was certainly not just because of Western sanctions; but they may perhaps have wanted to end the international isolation that sanctions represented. Getting the sanctions lifted was important to the new government in 2011. The EU's sanctions had the merit of being comparatively easy to lift (unlike the US sanctions, which were imposed by Congress). All the government needed to do was to release all political prisoners and allow Aung San Suu Kyi's NLD party to participate in the political process. If they did this, we said, there was no limit to the ways in which the relationship might change. This has proved true. Burma is now at the top of the list of recipients of EU development assistance, and the EU has set up training programmes for the police to learn how to operate in a democratic environment.

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<sup>4</sup> This is not a unique case. For years the question of East Timor was a major feature of the EU's relationship with Indonesia. The other member states understood that this was a major issue in Portuguese domestic politics.

## Russia

Finally, a third case of sanctions: Russia, following its illegal annexation of Crimea and its intervention in eastern Ukraine. Some say that, before the crisis, the EU was naïve in its dealings with Russia; but the Association Agreement with Ukraine that was the proximate cause of the disturbances in Kiev was negotiated in the open over seven years. Russia failed to raise it at any of its many summit meetings with the EU. When President Yanukovich told the High Representative that he was not going to sign the agreement, Catherine Ashton said that the EU would live with whatever decision he made, but also that he should be aware that this might bring him domestic difficulties. Russia's accusations of EU pressure on Ukraine or of acting behind Russia's back are not true. If anyone put pressure on Ukraine it was Russia which imposed sanctions on imports from Ukraine in a failed attempt to have it join its own Eurasian Union.

Nor can the disorderly process by which Yanukovich left his office provide any grounds for the actions by Russia that followed. These are in breach of the UN Charter, to the Helsinki principles, the Budapest Memorandum, and any number of bilateral treaties with Ukraine. As in the case of Burma, the EU felt that words alone were not enough to express its outrage – although no-one wished to respond in kind to Russia's use of force. If they are sustained, sanctions may at some point become part of a solution. But this is a big 'if'. The costs to European countries of sanctions against Russia are of a different order from those against Burma. It was a shock to Russia when the EU agreed on sanctions; and since then Russia has been working on different countries to stop the sanctions being renewed.

It is not a foregone conclusion that sanctions always fail. The price of a joint foreign policy agreed by consensus is an unrelenting effort by those who want Europe to have an influence. Agreement among European countries is not a guarantee of success – success never comes easily in foreign affairs – but failure to agree, as in the Balkans or Iraq, is always a guarantee of failure.

## The case for partnership

Two features shared by these different stories are worth noting. First, in most cases the initiative came from one or more of the member states; policy originated in national capitals or in Brussels rather than on the ground. This is to be expected for large strategic issues such as the Iranian nuclear programme. On the other hand the business of improving relations in important but unspectacular ways, or of helping weak states repair themselves, requires people on the spot, who understand particular countries and their culture, to take the lead. One day, a

well-staffed, well-run external service – the EEAS still has a long way to go – could contribute much here.

The second point is that in none of these five and a half cases was there a ready-made consensus. On Burma/Myanmar, the Council was sharply divided on strategy and even on the country's name; on Kosovo the question of recognition divides member states to this day. This means that these policies, all of which succeeded in some degree, were the product of compromise – and probably gave rise along the way to 'Europe split' headlines in the newspapers. In real life, which is messy itself, messy compromises that take account of opposing points of view are not necessarily bad. Virtue, Aristotle tells us, is about avoiding extremes. The examples of EU foreign policy outlined here suggest also that the thought-experiment postulated in the case of Iraq is not as fantastic as it might seem; if the EU had had the confidence to try it might well have succeeded.

There is something else to note. A hundred years ago, an essay on European foreign policy would have been about the threats that Britain faced from different countries in Europe, and the possible alliances to counter them. In Western Europe those concerns have gone – thanks in part, to the European Union and the constant interaction it brings among European governments. Instead we face today a more difficult and diverse world; more chaotic but also more connected. The clear lesson of the last two decades is that these circumstances are better faced in partnership with other European countries.

***Robert Cooper worked for two EU High Representatives, Javier Solana and Catherine Ashton, on foreign policy issues.***

## **External relations and the transformative power of enlargement**

*Heather Grabbe*

The United Kingdom is well positioned to be a leader of EU foreign policy in the future, as it has often been in the past quarter-century. The aims of EU external policy – peace, security, prosperity through engagement and trade – match British foreign policy goals. As an active foreign policy player with military assets, the UK is a major shaper of EU foreign policy, particularly in security and defence. Over the first two decades of EU collective action, the UK has pushed other EU members towards collective responses, and British politicians have taken a leading role on many issues.

This was the case at the beginning of the common foreign and security policy, which was forged by attempts to stop the Balkan wars in the 1990s and reconstruction thereafter, with Paddy Ashdown in the prominent role of High Representative in Sarajevo. It was also the case when William Hague played a leading role in the Foreign Affairs Council in forging a common EU response to Russia's invasion of Crimea in 2013. The EU's first High Representative for Foreign and Security Policy was a Briton, Catherine Ashton. She became the EU's lead negotiator with Iran and forged a historically significant agreement between Kosovo and Serbia on behalf of the whole EU.

In these cases and many others, EU membership not only helps the UK to achieve far more in its foreign policy than it could have done as one country, but it allows the UK to shape the responses of many other European countries, some of which would have been passive or non-contributory otherwise. It also provided opportunities for British politicians (of all parties) to lead the whole continent, and to direct the much greater collective resources of all EU members towards common goals that were also the aims of UK policy. If the ambition is revived, the outlook for the UK to reassume a leading role in EU foreign policy is bright.

### **Sources of UK influence in EU external action**

The relative influence of the Foreign and Commonwealth Office (FCO) and the UK government depends heavily on the relationships it builds with other EU members. Most foreign policy decisions are taken by unanimity by the 28 foreign ministers in the Foreign Affairs Council, so the persuasive power of the UK Foreign Secretary is vital. When s/he is respected and listened to by the other 27, the UK can achieve its goals with greater heft than provided by its national resources alone.

As an EU member, the UK has gained many influential posts in which British diplomats and officials are serving as ambassadors or representatives of the whole EU. The presence of British officials in many parts of the world, as well as in foreign policy making in Brussels, gives London an extensive network globally. If the UK wanted to maintain such influence outside the EU, the FCO would have to spend considerably more on its own embassies and representations.

Indeed, the UK government as a whole would need to allocate significant resources to managing its relationship with other EU members and the EU institutions. Much of the Foreign Office's work would have to be re-directed towards relationships with other EU members and the EU institutions to find out what their positions are and what is happening in EU foreign policy, and then how to influence it. As an EU member, the UK has privileged access to all the decision making on EU external policies at every level, both in terms of information and influence. As an outsider, the UK would have to make major efforts to keep up with the business going through the European Council, Foreign Affairs Council, COREPER and so on. Bilateral embassies, trade representations and security cooperation in all the 27 other EU countries would need to be considerably reinforced. The scale of the redirection of resources required needs more investigation when considering the overall costs and benefits of UK membership for foreign policy.

If it were outside the EU, the UK would be a consumer rather than a producer of EU foreign policy. It would be in a position akin to those of Norway, Switzerland or Canada, which expend a substantial proportion of their foreign policy resources on getting information about the EU and trying to make their voices heard in Brussels.

## **Moving beyond the transactional approach**

There is a widespread perception among other member-states and the EU institutions that, over the last decade, the UK has taken an increasingly transactional approach to many policies at EU level. London seems to consider the costs and benefits of engagement on each issue rather than seeking to contribute to a common institutional and policy infrastructure that would enable the whole EU to play a greater role in the world. If the UK were to re-engage in a leading position in EU external action, it could replace the transactional approach with a wider and more ambitious agenda – more like its approach to EU foreign policy in the 1990s and first half of the 2000s, when it sought to partner with France and other willing member states to build common security and defence policies.

A more ambitious agenda would require the UK to see foreign policy as an area where the whole is greater than the sum of the parts. The transactional approach looks at individual foreign policy questions one by one, rather than considering the benefits of the EU developing joined-up external policies that allow it to address cross-cutting international issues such as climate change, migration, energy security and conflict management. In a globalised world, foreign policy is about the connections and interactions between geo-political and geo-economic issues, and it is about many external challenges that traditional diplomacy alone cannot address because they require multiple forms of engagement.

Among regional organisations and international bodies, the EU is uniquely powerful in having many forms of engagement to achieve common goals for its members, from trade and aid to regulatory power. Indeed, other regional organisations from ASEAN to Mercosur have modelled themselves on the EU's achievements. The EU does not always achieve its goals, and the search for unanimity is sometimes long and fruitless, but it is rare that the UK would have greater influence on such issues if it acted alone.

More specifically, foreign economic policy depends on the development of relationships with other countries and regions that are much more attractive when a trading partner can offer a large market. It is difficult to imagine that India, Japan or South Korea would have been interested in negotiating a trade agreement with the UK's population of 65 million, whereas the EU's single market of more than half a billion people is very attractive. Would the US have bothered to initiate talks on a Transatlantic Trade and Investment Partnership with the UK, as it has done with the whole EU?

In particular, the transactional approach overlooks three important aspects of foreign policy. The first is that foreign policy is about relationships with other countries, whose views of the UK's value to them depend on its influence in Europe. They perceive the power of EU members not just in terms of their individual economic size or military strength, but also in terms of their ability to bring the rest of the EU along with them. The EU's collective trade power, aid budget and other foreign policy instruments are much bigger than the UK's, so their interest in building relationships is greater when it is part of that whole. For example, President Obama has stated clearly that having the UK in the EU gives Washington much greater confidence about the strength of the transatlantic alliance.

The second aspect overlooked by the transactional approach is how the collective weight of the 28 EU member states gives them more punch in multilateral organisations. The UK has a privileged position in the UN as a permanent member of the Security Council, but there are many other international institutions in which the

UK's role is enhanced by its EU membership. Would the national interest be served by action taken in foreign policy at a different level – for example, regional, national, UN, NATO, OECD, G20 – either in addition or as an alternative to action at EU level? Each of these international organisations is dysfunctional in its own way, and their spheres of action are more limited than that of the EU. Moreover, to have greater influence in any of these organisations would not require the UK to disengage from the EU. British influence in setting agendas in these other forums is often directly connected to its influence in the EU.

The third aspect is that much of foreign policy is about preventing conflicts from emerging and managing them, not just about reacting once they have already erupted. In the past, the UK has sought to encourage the development of EU capacity to act earlier to limit the scale and impact of violence elsewhere in the world. If the UK were to re-engage with the rest of the EU in a spirit of common endeavour in external policies, it would be able to shape conflict management strategies that ensured that EU responses are not only reactive but intervene much earlier in the cycle of instability and violence that characterises conflicts.

The EU also runs security missions of various kinds (both military and civilian) which limit the damage caused by armed conflict and instability in causing flows of refugees, security vacuums that allow crime to flourish, and other problems that have direct or indirect effects on the UK. As an EU member, the UK is involved in the design of these missions at the drawing-board, and has been a very active participant in their implementation. In the absence of the UK, the level of ambition in the rest of the EU for such missions would be likely to fall. At the same time, it would also be difficult for the UK to launch such initiatives by itself.

### **From the transactional to the transformational**

A purely transactional approach to foreign policy also has limits in terms of projecting soft power. Through its enlargement and neighbourhood policies, as well as other aspects of external relations, the EU has had a significant influence on the regions surrounding it – often a transformational effect in the countries that sought to join it. The capacity to shape its milieu makes a significant difference to the kind and scale of foreign policy problems that the EU now faces. The UK would not have been able to shape Eastern Europe or the southern Mediterranean following changes of regime over the past 25 years to anything like the same extent as the EU has done.

As a foreign policy actor, the EU specialises in soft power, that is, persuasion, normative influence and the shaping of governance institutions that help to



maintain stability and rule of law outside its borders. The UK has long supported the promotion of democracy, human rights and the rule of law in many parts of the world; for example, it supported the EU's vital role guiding and assisting transition to democracy after the fall of communism in 1989, and continues to do so now in assisting efforts towards better governance, for example in Ukraine. The EU has long been one of the largest organisations globally for directing aid, technical assistance and many other foreign policy instruments towards these goals, with a greater collective effect than any individual country can achieve.

This EU influence is vital to UK interests in improving governance in regions that are actual or potential sources of organised crime, armed conflict and other problems that also affect Britain. For example, the EU is by far the most influential external actor in the Balkans, where the EU has invested heavily in efforts to improve rule of law, strengthen institutions, reduce corruption and protect ethnic minorities in that region. The Balkans is a region where the UK has been a strong supporter of the EU's agenda to transform former arenas of conflict into better governed countries with economic and social sustainability.

The aim of the EU's enlargement policy is not just to manage relationships and contain conflicts, but the much more ambitious goal of using the incentive of membership prospects to raise standards across a wide range of policies and domestic institutions. Among the member states, the UK has been one of the most keen on using the accession conditionality and pre-accession assistance to raise standards of governance, rule of law, human and minority rights protections and economic development. By re-engaging in EU foreign policy with its considerable assets, including its political leadership, the UK could serve national interests by raising EU ambitions in external policy.

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## Recalibrating British European policy in foreign affairs

*Fraser Cameron*

British foreign policy would be seriously weakened as a result of a Brexit. The economy, the essential base for a sound foreign policy, would be damaged and the protracted negotiations for a UK withdrawal would mean that leaders had little time to concentrate on foreign policy. In the past two decades UK foreign policy has become more and more intertwined with EU foreign policy as it recognises its own national interests are better protected and promoted from within the 28 member Union. Although it sometimes quibbles about institutional aspects, the UK has been a reasonably strong supporter of the EU's common foreign and security policy (CFSP) which is largely based on inter-governmental procedures and over which the UK has a veto. The Iran and Serbia-Kosovo negotiations plus sanctions against Russia and Zimbabwe are a few examples of the UK leveraging the EU for its own benefit. Britain has also benefited from the EU's common approach on trade, climate change and human rights.

There is no doubt that Britain could 'go it alone' outside the EU but as many world leaders have made clear, its prestige and influence would be severely diminished. Not a single Commonwealth leader has supported Brexit. In a BBC interview in July 2015 President Obama said that "we very much are looking forward to the UK staying part of the EU because we think its influence is positive not just for Europe, but also for the world". During his state visit to Britain in October 2015 President Xi also added his voice stating that "China hopes to see a prosperous Europe and a united EU, and hopes Britain, as an important member of the EU, can play an even more positive and constructive role in promoting the deepening development of China-EU ties". In February 2016 Christine Lagarde, head of the IMF, said that "Brexit is bound to be a negative on all fronts" – a view echoed by the G20 finance ministers meeting in Shanghai.

This chapter reviews how EU foreign policy is made, examines the impact of the UK on the CFSP, discusses the UK's reluctance to support a European defence effort, and argues that it is time for the UK to play a stronger leadership role in the EU, especially on foreign and security policy as this would be eminently in Britain's national interest.

### **How EU foreign policy is made**

EU foreign policy is based on the consensus principle. Quite simply neither the UK nor any other member state can be outvoted as is possible, for example, with

legislation relating to the internal market. There are provisions for minor issues to be decided by qualified majority vote but they have almost never been used. Under the Treaty of Lisbon, the High Representative (currently Federica Mogherini) chairs the monthly Foreign Affairs Council and represents the EU when there is an agreed policy, as in the Iran nuclear negotiations. She also conducts political dialogue meetings with the EU's many partners around the world. She is supported by the EU's external action service (EEAS) which is composed of a mix of European Commission and Council officials plus diplomats on secondment from member states. The EEAS works closely with the Commission, especially on dossiers like climate change, refugees and terrorism. The High Representative has a second hat: she is also a vice-president of the European Commission and chairs a group of Commissioners (trade, finance, development, environment, etc.) who also have major responsibilities in the field of external relations. The rationale for the creation of this double-hatted post was to try and make EU foreign policy more coherent, more consistent and more visible – a goal that has been achieved to some extent even though the EEAS has only been in existence for six years.

The major actors in EU foreign policy, however, remain the 28 member states. An ambassadorial Political and Security Committee meets twice a week in Brussels to monitor and control foreign and security policy, including the increasing number of EU peacekeeping operations. They report to their capitals and prepare decisions for the Foreign Affairs Council. Clearly some member states are more influential than others. The UK and France are the strongest military powers with permanent seats on the UN Security Council. Germany, because of its economic power, cannot be excluded from any major decision. Other member states tend to concentrate their interest and influence on certain regions. For example, Spain and Portugal closely follow developments in Latin America, Belgium in the Congo, the Baltic and Nordic States in Russia, Italy and Spain in North Africa. Suffice it to say that when the Big Three agree on an issue it is usually the case that they can persuade the other states to follow.

Given the nature of the bureaucracy and the number of actors it is not surprising that the EU's foreign policy tends to be rather reactive. The Union has been taken by surprise by the Arab Spring, Russia's annexation of Crimea and the refugee crisis. Its approach to foreign policy is also rather legalistic. It has ten strategic partners with whom it engages in close political dialogue. It has numerous association agreements or partnership and cooperation agreements with neighbouring countries that form the basis of the relationship and spell out the number and regularity of meetings and at what level. Unlike other major powers it has no autonomous armed forces to order into battle at a moment's notice. It does, however, bring armed units from the member states together to support crisis management operations, mainly in the

Western Balkans and Africa. It has a military staff and a modest intelligence capacity – but no James Bond figures yet!

## **The impact of the UK**

The UK has always taken a close interest in EU external relations including foreign policy structures and policies. It has provided a number of highly-rated Commissioners such as Christopher Soames and Leon Brittan, who dealt with external trade. Soames was responsible for the establishment of diplomatic relations between the EU and China in 1975; Christopher Patten was an effective external relations Commissioner; and Catherine Ashton was the first occupant of the double-hatted EU High Representative post. The UK has also sent top officials like Brian Crowe and Robert Cooper to work in the Council secretariat and in the EEAS, a move that reflects the added value provided by the EU to UK foreign policy. Until recently, the UK has also been generous with its sharing of political reporting to the EEAS.

This is not to say that the UK has an uncritical view of the CFSP. Along with most other member states, Britain tends to regard the common policy as a means to increase its national influence and push its partners towards its own views. When it comes to major relationships with the US, China or India then the UK prefers to plough its own furrow. For example, Britain did not consult its EU partners before deciding to become a founding member of the Chinese-led Asia Infrastructure and Investment Bank.

Overall, the UK has encouraged the EU to take a more global perspective and helped ensure that foreign policy aspects were considered in other external policy areas such as trade and development. The UK has pressed successfully to reduce the protectionist aspects of the common agricultural policy thus allowing greater access for food exports from developing countries. It has pushed for trade deals with the BRICS and other partners such as Japan and Korea. And it has been a front-runner in lobbying for stronger action on climate change.

## **Defence suspicions**

One area where the UK has been less supportive is defence. During the negotiations of the Maastricht Treaty, Prime Minister John Major, worried about the impact on NATO, vetoed proposals that the EU should develop its own modest defence capacity. On taking office Tony Blair, shaken by the EU's lack of capabilities in the Kosovo conflict, changed track and signed a landmark agreement with France at St Malo in order to pave the way for an EU rapid

reaction force. This move was criticised by many conservative politicians as potentially undermining NATO's primacy for European security. At the 1998 NATO summit, US secretary of state Madeleine Albright spelled out her '3Ds' dictum: "no diminution of NATO, no discrimination and no duplication". In the following decade, however, the US gradually moved from a position of suspicion about collective EU defence efforts to one of encouragement. But this did not lead to any further softening of the UK position, which remains hostile to proposals for joint defence procurement and for the establishment of a modest EU defence headquarters. Today, there is more contact between the EU and NATO but little joint activity. These two major organisations located in the same city of Brussels, with overlapping membership and aims continue to exist as if in a parallel universe.

Whoever becomes President of the US in January 2017, the pressure on Europe to take on more responsibility for its own security and play a greater role in regional security will continue. Europe has more men and women in uniform than the US and spends about two-thirds of what the US spends on defence. But few European armies are combat ready and much of this money is spent on costly duplication. Facing continued austerity, the UK and its European partners will face huge pressure to rationalise their resources in coming years. In the event, finance ministers may do more for collective action in foreign and security policy than foreign or defence ministers.

### **A stronger UK role in EU diplomacy**

Radek Sikorski, the former Polish foreign minister and confirmed anglophile, has suggested that after a successful referendum the UK should assume a stronger leadership role in EU foreign policy. On paper this would seem a reasonable proposition. But despite having an efficient foreign service, the record of British foreign policy over the years begs a number of questions about the rectitude of a number of its key decisions. One only has to recall the failure in the 1950s to recognise that the EU project was serious, the debacle over the invasion of Suez, the coup against the elected government in Iran, and, later, the attempts to sabotage German unification, and engagement in the wars in Afghanistan and Iraq.

There is then the question of whether other member states, many of which also have excellent foreign services, would be willing to stand back and allow Britain to take on such a leadership role. Britain's abstention from the Minsk negotiations dealing with Russia and the EU discussions on the refugee crisis raise doubts about any claim it might make to European leadership. Many member states are also unlikely

to forget David Cameron's tough tactics in the Brexit re-negotiation at a time of critical trial for rest of the Union.

However these points are valid, a change in British attitude could not only give the EU a much-needed boost but also offer the UK scope for a real leadership role in foreign and security policy. A clear victory for the Yes campaign in the referendum should provide the platform for a recalibration of the UK's policy towards Europe. It would be too much to expect an end to Euro-bashing in the media, but one could expect the British government and parliament to adopt a more serious and positive approach.

This could start by insisting on issues raised in the Brexit renegotiations, namely completion of the internal market and the need for a more competitive European economy in the face of increasing global competition. An effective foreign policy depends on a stable domestic political environment and a healthy economy. So the UK should focus on proposals to strengthen the European economy. Although membership of the euro is not on the agenda, the UK has a major interest in a stable and growing eurozone. It should therefore become more positive towards completion of the banking union and the EU's efforts to stabilise countries in difficulty such as Greece.

The UK should continue to advocate free trade agreements with Japan and in the medium-term with China. Britain was one of the first European countries to understand the rise of Asia. This knowledge should be used to develop a stronger EU-Asia relationship. The UK should also build on its genuine leadership role in development assistance, being one of the few EU states that have met the UN's target of 0.7% GNI. Another area where the UK has played an important role and should continue to do so is climate change. And the UK should drop any pretence that it maintains a 'special relationship' with the US: no-one in Washington believes this to be the case. Instead, the UK should press for closer transatlantic ties across the EU as a whole.

## **Defence cooperation**

The United Kingdom could and should make a real difference in the field of defence, not leading alone but in conjunction with France. There is already close cooperation between the armed forces of the UK and France. Too often, however, British and French forces have been used to support US-led operations, as in Afghanistan and Iraq, or in pursuit of national interests in Africa. What is now required is a European defence white paper that would be a logical follow up to Mogherini's new global strategy paper, already due in June 2016. London and

Paris could take charge of drafting the EU defence white paper assessing threats to European security and outlining capabilities to meet them.

Such an exercise would have to be done in quiet yet close cooperation with NATO so as not to undermine the Atlantic Alliance. There already exists a so-called Berlin Plus formula whereby the EU can draw on NATO assets (mainly AWAC planes) for operations. The defence white paper should go further and sketch out a clear division of labour between NATO and the EU's common security and defence policy. It would review under what circumstances NATO or the EU should be involved in tackling particular threats; and what new capabilities might be required to deal with terrorism, hybrid warfare, cyber or space attacks. It would assess the hugely wasteful duplication of several national defence procurement systems. And it would discuss what changes might be required to set up an effective European command and control headquarters.

The US, with its heavy domestic agenda including repairing outdated infrastructure and healing social and racial divisions, will be looking for the EU to play a larger security role. Unlike the mid-1990s, Washington would greatly welcome an increased EU defence effort and would be reassured if the UK (and France) were to take the lead. If there is not the necessary change of mind-set in London, there is a danger that the US will retreat into a quasi-protectionist mode.

Such a change of British mind-set means that the UK's role in the EU should no longer be postulated on a 'them and us' basis but, rather, as a partnership in a shared endeavour to make Europe and its citizens more prosperous and secure in an increasingly dangerous global environment. Rhetoric matters in the EU: the UK needs belatedly to speak of its partners in a more positive tone and recognise the underlying principle of solidarity on which the EU was built. It will not be easy to claim a leadership role in any domain given the manner in which the British government set about its renegotiation in order to protect British interests. But a touch of humility and modesty combined with a changed mind-set would be very helpful. Is it too much to ask?

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## The European Union and the wider Europe

*Graham Avery*

Since the creation of the first European Community in 1952, European integration has expanded in an extraordinary way. Its neighbours have progressively joined the European project, the number of member states has increased from six to twenty eight, and the European Community has become the European Union; with 500 million citizens the Union now functions on a continental scale, interacting politically and economically with other European countries and with Europe's neighbours.

I should explain my involvement in the story. I worked for 40 years as a planner and strategist, at the intersection of politics and administration, in London and Brussels. When I joined the British public service I was sent to the Ministry of Agriculture, Fisheries and Food, soon to be at the centre of the European debate. As a junior member of the British team negotiating accession to the EC, I took part in the first round of enlargement, and contributed a few words to Britain's Treaty of Accession. Then I went to Brussels to join the European Commission where I worked 'in Europe's kitchen', grappling with the complexities of the Common Agricultural Policy as an official in the Directorate-General for Agriculture and as an adviser in the cabinets of a Commissioner for External Relations (Christopher Soames), a President of the Commission (Roy Jenkins), and three Commissioners for Agriculture. In 1990 I escaped from agriculture to work in the Commission's departments for external affairs, serving in a variety of fields such as relations with the USA and Canada, management of the European Economic Area and relations with the EFTA countries, foreign policy planning, and strategy for EU enlargement. I was one of the architects of the expansion that brought the countries of Central and Eastern Europe into the EU, and my last task in the Commission was as Director for Strategy, Planning & Analysis in the Directorate-General for External Relations.

During my professional career I took part, in one way or another, in the first five rounds of EU enlargement, and I hold the all-time record for handling Opinions of the Commission on applications for membership – I drafted Opinions on 14 countries.

### **Enlargement policy**

Although the EU Treaties have always included an accession clause saying 'any European state may apply', that formula is reactive rather than pro-active – it



leaves the initiative to the non-members. No missionaries have ever gone from EU institutions to seek new members; indeed, the message from Brussels has often been 'don't apply yet, we still have problems to solve among ourselves'. Enlargement policy has not been driven by imperial expansionism: it results from the magnetism of the integration process and the wish of outsiders to join.

Countries apply to join the EU because they consider membership to be in their political and economic interest. The balance between these factors has been different, according to the country, but both the political and the economic have always counted. The idea that Britain applied to join an economic club, not a political grouping, is false. When Harold Macmillan made his application for membership, Britain's leaders understood very well that the Six with their common market were on the way to creating a European system from which the UK could not afford to be excluded. Edward Heath, who negotiated Britain's membership, made no secret of its political importance.

Clearly Britain, not having been occupied and defeated in war as the Six had been, approached European integration from a different historical experience. For the British, the underlying motive for joining the club was 'if you can't beat them, join them'. This approach was echoed by Margaret Thatcher, who said in 1975: "The European Community is a powerful group of nations. With Britain as a member, it is more powerful; without Britain it will still be powerful. We can play a leading role in Europe, but if that leadership is not forthcoming Europe will develop without Britain".

The applications for membership from Greece, Portugal and Spain were different in nature: after freeing themselves from totalitarian regimes, they wanted accession as a guarantee of their return to democracy; for them, acceptance of their return to the European family was as important as access to the market and the budget. Austria, Sweden and Finland applied for membership not only because their access to the European market through the European Economic Area obliged them to accept EU rules which they had no say in deciding, but also for motives of security: the collapse of the Soviet Union created a new political situation in which their traditional neutrality was no longer appropriate. When the Central and East European countries escaped from Soviet domination, they turned to the EU both for economic aid and for political and strategic reasons. They wanted not only to re-join the European family and consolidate their return to democracy, but also to underpin their national security; uncertain of Russia's future role, they needed EU membership as a complement to NATO membership. After the break-up of Yugoslavia, the Western Balkan countries chose EU membership both for economic reasons and as a way of resolving the deep-seated conflicts that had erupted in war in their region: the prospect of EU membership offers a means of reconciliation as well as a path to

prosperity and stability. Turkey's application for EU membership, on the table for many years, is motivated by its long-held aspiration to be recognised as European, as well as by political and economic arguments.

## **British attitudes to enlargement**

Since the United Kingdom became a member in 1973, it has consistently supported the EU's enlargement. Arguably, it is the only field of EU policy to which successive British governments have given unreserved backing. Why has that been the case? For many commentators, British support of enlargement results from a desire to weaken and dilute the European project: 'widening' has been pursued because it was seen as an antidote to 'deepening': with the addition of new members the intergovernmental method would defeat the supranational method. This idea was certainly common in the past among British politicians, but it has begun to lose its force as experience shows that enlargement has not led to a paralysis of EU decision making. Although meetings of representatives of 28 countries take a long time, and solutions to pan-European problems are complicated, 'more' has not led to 'less'. If anything, new members have been less prone than old members to create obstacles to integration: it was referendums in France, the Netherlands and Ireland that killed the European Constitution and delayed the Lisbon Treaty.

But members of the British government have rarely been so undiplomatic as to voice in public the idea that enlargement would hamper the EU's future development, and in any case it is unlikely that British ministers ever received such advice from their experts in the Foreign Office. The main argument propounded in Whitehall in favour of enlargement has been that bringing neighbouring countries into the EU offers a better chance of promoting their security, stability and prosperity than leaving them outside, and this enhancement of European security is in Britain's geostrategic interest. After the collapse of the Warsaw Pact and the Soviet Union, the transformative power of EU membership was seen as the best way of ensuring stability and prosperity for the countries of Central and Eastern Europe. British foreign policy experts understood that to leave these countries in a no-man's land between the EU and Russia would lead to insecurity for Europe as a whole.

Another element in the debate on the accession of the countries of Central and Eastern Europe was that Robert Schuman, one of the founding fathers of European integration, intended them to have the chance to join. In 1956, during the Cold War, he declared: "We must make Europe not only in the interest of the free countries, but also to be able to welcome the peoples of the East who, freed from

the subjection that they have suffered until now, will ask to join us and request our moral support". The outward-looking character of the European project was underlined by the European Commission in its report in 1992 on *Europe and the Challenge of Enlargement* which argued that the "Community has never been a closed club, and cannot now refuse the historic challenge to assume its continental responsibilities and contribute to the development of a political and economic order for the whole of Europe".

I can reveal that the phrase 'not a closed club' came from an impeccable British source; it was borrowed (by me, the author of the Commission's report) from a speech made by Queen Elizabeth II. The phrase soon became a common-place of the rhetoric of EU enlargement, and this in turn contributed to the theory of 'rhetorical entrapment' according to which the historic promise of peace and re-unification induced EU member states to accept the accession of Central and Eastern Europe, despite their doubts about its implications.

## **Neighbourhood policy**

One consequence of the enlargement of 2004 was that the EU acquired new neighbours. It was not in the interests of Central Europe to erect new barriers towards the countries to the East with which they had economic and social links; at the same time the southern member states wished to develop their links with the countries of the southern Mediterranean. This led to the creation of the European Neighbourhood Policy, encompassing 16 states around the EU from Belarus to Algeria: its aim – supported by Britain for geostrategic reasons – was to improve European security by creating a circle of friendly neighbours. The means of doing so was to encourage further economic integration and the adoption of European standards and norms, using many of the instruments of enlargement policy but without the prospect of accession. But, alas, the neighbourhood policy has been upset by a veritable storm of problems: state failure, popular protest against bad governance, civil war, jihadi terrorism, Western intervention in Iraq and Libya, and Russian intervention in Ukraine and Syria.

The success of the EU's enlargement policy has been widely acclaimed, for example by the award to the EU of the Nobel Peace Prize. In the United Kingdom, although the post-enlargement inflow of migrants from EU countries has provoked popular concern, it continues to contribute to the successful performance of the British economy. By contrast, the flow of refugees and asylum-seekers into Europe as a result of the failure of the neighbourhood policy is a problem that threatens the stability of EU member states – a problem which is now compounded by the security threat posed by jihadi terrorist attacks in European capitals.

## Future prospects

If the UK remains a member of the EU, it will be able to resume a leading role in the development of Europe's relations with its neighbours. For this it can expect American support: the next administration in Washington, like its predecessors, will want Europeans to take more collective responsibility for affairs in their neighbourhood. The fact that most members of the EU are also members of NATO is a positive factor, but in reality military action is not a priority in the European neighbourhood. What is most needed is civil assistance for state-building, political and economic reconstruction, and better governance; and these are areas in which the EU has important experience and assets.

For the EU's enlargement policy, the most important task is to bring lasting peace and prosperity to the countries of the Western Balkans, which obtained the promise of EU membership at Thessaloniki in 2003. Their progress in fulfilling the criteria for membership has been slow, and the risk of a return to intra-community conflict is still present, but there are grounds for optimism. The best chance of reform and reconstruction in the Balkans is and will continue to be the path to EU membership.

In enlargement policy the most problematic case is that of Turkey. Although Turkey has pursued political and economic reforms, the underlying problem remains that several EU members are not committed to Turkey's accession. When this was stated publicly at the opening of accession negotiations in 2005, it already undermined the credibility of the process; since then the EU's leverage has progressively diminished as the people of Turkey and their leaders have begun to doubt the possibility of membership; more recently the promise made by the EU to Turkey in the deal on migration has accentuated the ambiguity of the situation.

In the past, British governments have supported Turkey's membership application: during a visit to Turkey in 2014 Prime Minister Cameron declared that he very much supported it. But with the prominence of immigration in the debate on Britain's EU membership, British political and public opinion has changed. 'If Turkey is in, we're out' was the recent headline in a popular newspaper. Turkey's accession, despite the arguments in favour of it, is simply not a realistic possibility for the foreseeable future: France and Austria are committed to referendums on it, and the results would not be positive.

The time has now come for British and European policy-makers to re-think the question of the EU's relations with Turkey. We need a close relationship with our big neighbour, but it no longer makes sense to conduct it in the framework of

enlargement policy; it would be better to design a new partnership in order to handle our common problems effectively. After the British referendum, when Britain's relationship with the EU is resolved, would be a good moment for a re-think of the EU's relations with Turkey.

What influence can Britain have on neighbourhood policy? Here the challenges are multiple, so I focus on the case of Ukraine. With a population of 44 million it is the biggest country in Europe (after Turkey) not yet a member of the EU: its location between Russia and the EU gives it prime geostrategic importance. The Ukrainian revolution of 2014 showed that many of its people look to the West for better governance: they see how their neighbour Poland has found prosperity within the EU, and they want the same; their government has turned to NATO for security. Russia's response has been aggressive: as a result of its military intervention, the Ukrainian state is in semi-collapse. The questions that Ukraine poses for Europe and for Britain are not only strategic but moral – questions of which Britain has had global experience – and answers to these questions will require collective European action.

### **Non-membership of the EU**

If Britain leaves the EU how is it to exercise influence on developments within the EU, or in the wider Europe? As a non-member Britain would no longer have a direct voice in EU decisions; it would be a 'third country', transmitting its views to the EU and its member states by petitioning and lobbying from outside, not from a seat at the table.

In the case of EU enlargement policy Britain, having left the Union, would have no influence on the Union's decisions concerning future members. The EU has been rather immune in the past to pressure on this matter from third parties such as the US – in fact, it has tended to be counter-productive. This does not mean that Britain could have no role in assisting countries to join the EU: probably it would join the international consensus that the countries of the Western Balkans should continue on their path to EU membership, and it could, like Norway, provide financial and technical assistance for that purpose.

In the case of European neighbourhood policy, the situation would be similar. Important decisions on these matters would continue to be taken by the EU. Naturally Britain would have influence in its bilateral relations with countries in Eastern Europe, the Middle East, and North Africa. But would it choose to follow different policies from those of the EU? I doubt it. In the case of Ukraine, for example, would it take a weaker line, or a stronger line, in response to Russia? Probably neither: it would devote intense diplomatic efforts to obtaining a concerted

line with the EU, an activity that would be more difficult to conduct from outside the EU than inside.

When I was a foreign policy planner in the Commission, I was asked more than once to design an 'associate membership' that would satisfy applicant countries without admitting them to full EU membership. The advice that I gave was two-fold: first, there is an existing model – the European Economic Area, the EU's closest form of relationship with its neighbours; second, there is a key distinction between membership and non-membership of the EU. If you are a member, you have a vote and a seat in the EU institutions; if you aren't, you don't. To put it another way, the most important asset that you obtain by joining the EU is a seat and a microphone; and that is the most important asset that you lose by leaving.

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## **From Common Market to Single Market: an unremarked success**

*Malcolm Harbour*

The European single market is the world's most ambitious approach to creating a trading arena ensuring the free movement of goods, people, services and capital. The achievements of the single market have a remarkably low public profile across the EU. There is light engagement with single market rules by national parliaments. The contribution by British ministers, Commissioners and MEPs in shaping the single market is widely recognised in EU capitals – except in London. A new initiative to boost the single market could reassert British political leadership when the UK takes over the rotating presidency of the EU's Council of ministers in 2017.

### **The evolution of the single market**

The common market was one of the bedrock principles of the European Community. The Treaty of Rome in 1957 set down the principles of eliminating trade barriers between member states. A larger marketplace would generate economic growth, improve productivity and encourage entrepreneurial activity. A dynamic marketplace would encourage innovation, keep consumer prices low, and stimulate investment in globally competitive products and services. It would be based upon a common legal framework within which a high level of mutual recognition of trading and co-ordination of market regulations could be achieved.

This has enabled the EU to progressively promote and extend the common market through a series of legal and political initiatives. An important new treaty, the Single European Act of 1987, introduced the concept of the European 'internal' market whose objective was to achieve "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured".

The goods market remained the main area of EU policy until 2006, when a major directive on services was agreed. Single markets for energy and financial services also developed, the latter especially as a response to the financial crisis in 2008. The rebranding to 'single market' appeared in 2010 with a series of political initiatives to tackle the remaining barriers and make the existing rules work better. Reflecting the advances of digital technologies and seamless communications, the 'digital single market' is one of the flagship projects of the 2014 Commission.

In no other economic grouping is there direct engagement by elected politicians and ministers in agreeing new measures to maintain and enforce barrier-free markets. In a recent OECD working paper analysing mutual recognition in global trade

agreements the authors observed: "the EU system of removing existing and pre-empting new technical barriers to trade internally amongst its 28 Member States is a radical and highly ambitious approach for providing market access".

The European Court of Justice has played a major role in pushing member states to remove obstructive legislation. In a number of seminal judgements, the Court has interpreted the single market provisions of the Treaty as prohibiting member states from applying national legislation that blocks market access to EU goods and service providers unless there are clearly defined reasons to do so, bounded by the conditions of safety, health, environment and consumer protection.

### **Thatcherism on a European scale**

In the first years of British membership under a Labour government, when Roy Jenkins was President of the European Commission, there was little activism towards boosting market opportunities. The Jenkins Commission was preoccupied with plans for economic and monetary union. The UK government was preoccupied with domestic economic problems.

The UK's strong backing for the single market started to blossom following the election of Margaret Thatcher in 1979. In the first direct elections to the European Parliament, also in 1979, Conservative MEPs dominated, many with extensive business experience. Basil de Ferranti, a leader in industry and government, was well placed to take a crusading role. De Ferranti and other members toured the European capitals to persuade ministers of the need for a fully functioning internal market. He went on to jointly found the Kangaroo Group, a leading and influential campaigner for a truly border free Europe.

This advocacy bore fruit with the arrival in 1984 of Jacques Delors as Commission President, and the nomination of Lord Cockfield as one of the two UK Commissioners. With the settlement of the UK Budget contribution out of the way, Margaret Thatcher's government could focus on other European priorities. Arthur Cockfield rose to the challenge and produced a white paper identifying 297 proposals to underpin a single European market, with a timetable to compete by 1992.

However, it was clear that the Cockfield project would make no progress unless European level decision making could be dramatically accelerated. The Single European Act achieved this with the move away from unanimity in Council voting on single market rules to a system of qualified majority voting. The European Parliament was given the right to have its amendments to single market proposals



considered by the Council, and to open negotiations to secure compromises. The impact was immediate. In the first six months of 1988, the Commission took more decisions than in the previous decade – and in 1992 the birth of the single market was duly proclaimed. Progress continued under the Commission of Jacques Santer. In 1988 Mario Monti, the Commissioner for competition and the internal market, introduced a new five-year plan which addressed the problems of inadequate application and effectiveness of the existing rules. The Commission proposed for the first time a single market scoreboard where the performance of member states could be properly monitored.

In 1999 the Commission under Romano Prodi proposed a wide-ranging economic growth and competitiveness initiative, known as the Lisbon strategy. This set out the ambition of making the European Union "the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion". And the Commission moved quickly with a first range of proposals to provide a legal framework for an internet-enabled economy, and to establish telecoms as an open market place, encouraging new entrants alongside former state monopolies.

### **The battle to open the services market**

A crucial dossier was the proposal to open up the services market. Commissioner Frits Bolkestein produced a report in 2002 exposing the restrictive legislation embedded in the national codes of every member state. The Commission introduced its very ambitious and wide-ranging proposal for a services directive early in 2004.

The new Commission under José Manuel Barroso came under severe pressure from some EU states to withdraw the proposal. In France in particular, antagonism to 'Bolkestein' was seen to be one of the factors contributing to the rejection of the Constitutional Treaty in the 2005 referendum. But as the first major new initiative on the internal market since the big enlargement of the EU in 2004, the draft law had strong support across the spectrum from MEPs in the new member states. To move the proposal forward, Parliament reduced its scope by excluding controversial areas such as health services and gambling. It also introduced a 'freedom to provide services' provision to replace the 'country of origin' formula, which had attracted heavy criticism. After many close votes and conciliation meetings, Parliament approved an amended proposal at first reading by a substantial majority. The legislative process was helped by a positive attitude from Commissioner McCreevy, who declared that, if Parliament found a compromise position supported by a two-thirds majority of MEPs, this would be used as the basis for a fresh Commission proposal. Following an informal meeting of

the Council at which MEPs were invited to make their case, the Austrian presidency brokered a final agreement which was subsequently accepted by Parliament in November 2006.

## **'Europe 2020' and the single market acts**

In 2009 the second Barroso Commission developed a follow-up to the Lisbon process entitled 'Europe 2020: a strategy for smart, sustainable and inclusive growth'. The new plan was more tightly focused on a small number of projects, but it was criticised for not continuing the drive towards a full single market. Barroso invited Mario Monti to produce a personal report on the state of the internal market and to recommend ways of ensuring its continued health and development. MEPs undertook their own political initiative on moving the single market forward. But Parliament went further than Monti in proposing a political initiative for a new Single Market Act. Commissioner Michel Barnier was enthusiastic, and persuaded his Commission colleagues to support the idea, which was implemented by the end of 2012.

The current Commission led by Jean-Claude Juncker is continuing the implementation of the key competitiveness initiatives of Europe 2020. The organisation of the Commission now reflects the need for stronger co-ordination and political advocacy for these major projects, with vice-presidents now heading project teams. Responsibility for the single market for goods and services has been brought together under one Commissioner, Elzbieta Bienkowska. This will allow common strategy development and enforcement mechanisms, and reflect the structural changes in many enterprises. A new single market strategy paper in 2015 shows the value of this integrated approach, advancing important proposals to improve the effectiveness of existing rules.

Commission Vice-President Anders Ansip has also proposed a project for a 'connected digital single market'. This is a welcome move. But it is important for the future of the single market that 'digital' does not become a fashionable obsession. Digital tools are powerful enablers of a strongly constructed single market and not a separate ghetto.

## **An unremarked success**

Despite its global ranking, its wide scope in goods and services, its single rule book and enforcement mechanisms, and its effective regulatory co-operation across 28 countries, the successes of the European single market have a remarkably low political and public profile.

A very light engagement with the EU legislative process by national politicians contributes to this low visibility. This is not surprising, given that single market rules are often highly technical and require significant attention to detail, sometimes over an extended period. The most effective MEPs involved in single market legislation have often specialised in their subject for five years or more. With the exception of the House of Lords, few parliamentary assemblies engage in depth with the EU's pre-legislative single market proposals. Strategy papers are very rarely discussed. There needs to be new ways to involve national parliaments at the inception of new EU proposals, at a time when their policy input can be properly considered.

The transposition of EU rules into national law can often give rise to anomalies, 'gold plating', or failure to include permitted exemptions for SMEs. Many national parliaments do not look at the detail of the enabling legislation, which often passes without any serious examination. Because single market legislation is developed in something of a parallel universe, the extent of that legislation and its impact on consumers and businesses is totally underestimated. Taking the digital economy as an example, all the legislation related to the evolution of the liberalised communications market and the development of e-commerce has been developed at a European level.

Despite the low parliamentary profile, the UK has been very successful in influencing single market policy making. The 2013 Review of the Balance of Competences between the UK and the EU, the biggest and most comprehensive investigation ever undertaken, highlighted "the strong influence UK has had on the development of the single market, driving it in a broadly liberalising direction". This perception of British influence is widely shared among our European partners. Ministers and officials concede that the single market has been distinctively shaped by the UK's approach. Most feel that Europe is the better for it, and that the single market would not have been so wide ranging, so open and so competitive without the UK contribution. This is not a view regularly expressed in the House of Commons by UK Ministers.

## **Reasserting British leadership**

The single market remains a highly credible platform on which the UK can sustain European political leadership. It should be a central part of the UK's programme when it assumes the presidency of the Council in July 2017.

The UK is already leading like-minded countries in implementing Commission recommendations to enhance the enforcement mechanisms for single market rules. There is a need for speedy and effective alternatives to the cumbersome mechanism of infringement procedures. The procedures under which member states have to

notify their intention to resile from single market obligations and apply national restrictions on products or services, need to be far tougher. Any proposed derogations should be subject to proper impact assessment and consultation.

Far more attention must be paid to the full implementation of the services directive and the realisation of cross-border service provision. After an encouraging transposition period in 2007-09, the impetus to drive the service market forward seems to have slowed. This has been confirmed by the results of a recent examination by the EU Court of Auditors which sets out the many problems. The UK should insist that the Auditors' report is fully discussed by the competitiveness Council, and action taken. Major reforms in the matter of public procurement are now being transposed from EU into national law. Competitiveness ministers should be taking formal notice of these important new opportunities to open public markets and to drive more innovative approaches. Innovative forms of procurement should be better integrated into innovation policy.

Far more resources should be put into public information tools. All member states have been asked to set up integrated single market help-desks (one stop shops) for citizens and businesses. The services directive mandated member states to provide a portal where service companies could find out about the local requirements they have to meet to establish activities. As the Court of Auditors report demonstrated, these new portals are not functioning satisfactorily and there is a very wide variation in performance from country to country.

The consumer gains from the single market ought to be promoted. Citizens tend to feel that the single market is largely a technical matter for business, whereas it clearly generates more choice and better value for consumers. It also allows for mobility of professionals and the mutual recognition of qualifications. As on-line business expands, cross-border cooperation in dealing with consumer complaints will become more significant, and needs to be reinforced.

In taking a single market initiative at European level, the British government could also step up engagement with its own MPs. Select committees could be encouraged to examine single market proposals. When sending new legislation originating from EU directives to the Westminster Parliament, ministers should explain more fully Britain's active engagement in EU negotiations. In their accompanying presentations, Whitehall departments should be required to spell out the European single market basis for the new rules.

There is a larger reform that the UK could promote at the level of the EU Council of ministers. The existing competitiveness Council has a very broad remit and it

is difficult to focus ministers' attention on priority topics. Reinstating a single market Council would encourage all EU governments to assign the responsibility to one specific minister charged with giving a strong and consistent impetus behind the project to complete the European single market. Such a reform would be a prominent and realisable objective of the upcoming British presidency of the Council – so long, that is, as the UK decides to stay a part of the Union.

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## Lost in translation: Britain, Germany and the euro

*Quentin Peel*

There is a word in the German language much loved and regularly used during the eurozone crisis by Angela Merkel, the German chancellor, to describe both the European Union and – at its heart – economic and monetary union (EMU). The word is *Schicksalsgemeinschaft*, and it defies any easy translation into English. Literally, it means 'community of fate'. A more natural English choice of words, but slightly less accurate, would be 'common destiny'.

Merkel used the expression most famously in the German Bundestag in May 2010 to explain and defend her extraordinary agreement to finance a massive 500bn stabilisation fund for Greece, and any other eurozone member driven close to sovereign default in the financial crisis. "The euro is much more than a currency," she said. "Monetary union is a *Schicksalsgemeinschaft*. This is our historic task. If the euro fails, then Europe will fail."

That word sums up a deeply held German attitude about the cardinal importance of the EU and the common currency to the country's identity and its place in the world. It also neatly encapsulates a double dilemma that has haunted the UK throughout its EU membership of more than 40 years: an inability to conceive of the European adventure in the same sweeping terms as its continental neighbours and, in particular, a constant misunderstanding of what is driving the Germans, and the depth of their commitment to closer European integration in an essentially federal system.

Economic and monetary union, and its offspring, the euro, is not the only big idea embraced in Berlin that the British have found difficult to swallow in their fractious relationship with the rest of the European continent over the past four decades.

The very concept of federalism is another term that bedevils Anglo-German understanding. It is regarded as a very good thing in Berlin, but treated almost as a term of abuse in London. In Germany, where the federal system was installed and reinforced by the victorious Allies after the Second World War, it is seen as a guarantee that power will be shared between the national capital and the federal states, avoiding excessive centralisation. As Merkel likes to say, her powers as chancellor are far more circumscribed by the German constitution than those of David Cameron in London, or François Hollande in Paris.

Thanks to the success of its own federalism, Germany is largely at ease with a European system which simply adds another level of authority – and democratic

accountability – to its own federal structure. But most UK politicians and commentators, accustomed to a centralised system, tend to see any sharing of power with Brussels institutions as an existential threat to their national sovereignty, and in particular, the sovereignty of their parliament at Westminster. In London, the European Parliament tends to be seen as at best an irrelevance, and at worst, a direct threat to Westminster. In Berlin, it is regarded as an essential pillar of democratic control on Brussels institutions, even if it is yet to become fully effective.

## **Genesis of EMU**

The British came late to the Common Market, and have struggled ever since to relate to European institutions designed by others. The same goes for many of the fundamental policies installed at the outset, such as the common agricultural and fisheries policies. As Tony Blair realised, refusing to engage at the outset and then complaining when others set the rules of the game has regularly characterised British engagement – or lack of engagement – with the rest of Europe.

Even before the UK joined the European Community in 1973, the subject of economic and monetary union was on the agenda. It was put there at the Paris summit in October 1972, drawing on a report by Pierre Werner, the Luxembourg prime minister, on how to map the way to monetary union by 1980. "It was put there, believed in by some, doubted by others, but arousing terminal hostility hardly anywhere," as Hugo Young wrote in *This Blessed Plot*, his lucid history of Britain and Europe. "It may not have seemed real; and very soon, turbulence in the exchange markets, together with the quadrupling in the price of oil, put paid to it for the duration."

EMU was accepted, but never taken very seriously, by the UK governments of the day, headed first by Edward Heath and then Harold Wilson. Wilson reported back to the House of Commons in 1974 that the ambition had been "tacitly abandoned" by the other European leaders, even though they had just reaffirmed at another summit meeting that on the subject of EMU, their will "has not weakened, and their objective has not changed".

Amongst the member states, the most enthusiastic backer of monetary union in those early days was France's Georges Pompidou, who was acutely aware of the rising economic power of Germany, and the influence of the German Bundesbank in effectively setting European monetary policy. He wanted a system of currency fixing, and pooling of reserves, to control the domination of the Deutsche Mark.

Germany, on the other hand, was determined to see economic convergence first, with strict control of inflation. No system would be acceptable without tight controls on

public borrowing and restrictive monetary policy controlled by an independent central bank. In London, it was simply assumed that the ideological division between Germany and France would block any progress. The UK Treasury concluded that the Werner plan was highly theoretical, and took no real account of political realities. Not least, Germany would never be persuaded to abandon the mighty DM, the symbol of the country's post-war *Wirtschaftswunder*. It was a miscalculation both of the political impetus behind Franco-German co-operation, and of the German readiness to make a supreme national sacrifice in pursuit of a European vision. For Germany, building Europe was its national interest. It was something the British simply did not understand.

## Europe and Thatcher

When I arrived in Brussels as FT correspondent in 1984, UK relations with its European Community partners were frosty. Margaret Thatcher's single-minded determination to negotiate a UK budget rebate had brought all other decision making to a virtual standstill. Eurosclerosis was the way it was described, and the British were seen as to blame.

François Mitterrand, elected French president three years earlier, was the man who managed to broker a budget compromise at the Fontainebleau summit in 1984. Helmut Kohl, the German chancellor, paid for most of it. That was the way the double-act usually worked. As far as Thatcher was concerned, she respected and admired Mitterrand, in spite of the fact that he was a socialist. But she never understood or liked Kohl, a fellow conservative, and never made much effort to improve relations. Her mistrust of German behaviour came from her wartime memories as a schoolgirl growing up in Grantham. The same attitude is shared to this day in many eurosceptic British circles, where a suspicion of the EU as a 'German Europe' is coupled with anxiety about the loss of national sovereignty.

France and Germany saw their alliance as the essential motor of any revival of European momentum. The UK regarded their relationship with a mixture of envy, suspicion and disdain. British diplomats would dismiss the regular Franco-German initiatives before each European summit as mere hot air, designed to talk up their European credentials rather than achieve substantive action. They implied that only if the UK were involved would anything happen.

And so it was to begin with. The first big initiative – completion of the single market – came from the unlikely combination of Jacques Delors, newly-appointed French president of the European Commission, and Arthur Cockfield,



the senior UK member of his Commission. Because it was about realising the main thing the British liked about Europe – the common market – it had enthusiastic backing from Whitehall.

That remarkable story is told in the previous chapter. But if completing the single market was enough for the British, it did not meet the needs or aspirations of Germany and France. The mid-1980s saw renewed turbulence in the foreign exchange markets, with capital flows from the dollar to the DM putting the relationship between the French franc and the German currency under huge strain. The British and Germans wanted to liberalise capital movements as part of the plans to complete the single market. Delors saw that, to avoid ever greater strains between the European currencies, it was an ideal opportunity to put the dormant plans for EMU back on the table, and make the case for a common currency.

Margaret Thatcher was instinctively hostile. In her memoirs, she talks of how "a Franco-German bloc with its own agenda ... re-emerged, to set the direction of the community". She had been persuaded to make one huge concession to European integration in approving the Single European Act, which introduced majority voting into decisions to implement the single market programme. It amounted to an abandonment of the national veto across a swathe of legislation which she came bitterly to regret. It was as far as she would go.

But Nigel Lawson, her chancellor of the exchequer, wanted to go further: he had no interest in a common currency, but in 1985 he wanted to bring sterling inside the European exchange rate mechanism (ERM) to bind it to the DM, slow a sharp drop in value (caused in part by a slump in the oil price) and bring UK inflation under control. He was backed by the Treasury, the Bank of England, and Sir Geoffrey Howe, the foreign secretary. Thatcher flatly refused to move. It opened up a split in her government from which it never recovered.

Personal chemistry so often complicates the best laid plans of politicians. So do events. In the British mythology over Europe, those three letters – ERM – came to symbolise for many eurosceptics the perils of abandoning national sovereignty to Europe. But that was mixed up with nostalgia for Thatcher's right-wing populism, and the feeling of betrayal in the grassroots of her Conservative party after she was overthrown by the pro-European faction for blocking the path to the ERM.

On the European side, agreement to proceed with EMU – cautiously designed by a committee of central bankers chaired by Delors, with considerable misgivings from the mighty Bundesbank – was greatly accelerated by the geopolitical shock of the

fall of the Berlin Wall in 1989, and the rush to German re-unification in 1990. Chancellor Kohl was already committed to EMU and the euro after the European Council he chaired in Hanover in 1988. But President Mitterrand persuaded him to press ahead with the process – and abandon the DM – as the price of French support for German re-unification.

The split over ERM in the Thatcher government came to a head before the Madrid summit in 1989, when Howe and Lawson teamed up to insist that she commit herself to "the UK's intention to join the ERM". She did, but she never forgave them, nor they her.

Sterling joined the mechanism on 5 October 1990 – just two days after German unification – at the wrong time, and at an inflated value, but with the well-nigh universal backing of the political and civil service establishment. One month later, Thatcher was forced to quit, fatally wounded by an attack on her European policies by Howe. Before she quit, she denounced Delors's plans for the euro to be launched by 2000, with a famous, raucous cry across the floor of the House of Commons: "No! No! No!" Two years after that, on 16 September 1992, sterling crashed out of the ERM again on so-called Black Wednesday, after massive intervention in the currency markets – to the tune of some \$20bn – failed to stem its collapse.

In British eyes, Germany got much of the blame for the meltdown in the markets, for two reasons. One was the action of the Bundesbank in pushing up its interest rates to unprecedented levels, to counter what it saw as inflationary spending to cope with the cost of re-unification. The other was an ill-judged interview by Helmut Schlesinger, then president of the Bundesbank, in which he speculated that Italian devaluation alone would not be enough to calm the exchange markets on Black Wednesday (the very next day). Although his remarks were never authorised for publication, they got published by default.

The other consequence of German re-unification came with the Maastricht summit in December 1991, which set in train an inexorable if by no means smooth process towards the launch of the euro in 1999. Helmut Kohl declared that the Maastricht Treaty had "laid the foundation stone for the completion of the European Union" which would lead to the creation of what Europe's founding fathers had dreamed of, "a United States of Europe". Within a couple of years, he had stopped using that phrase, admitting that a "United States of Europe" sounded too like the European "super-state" so feared by eurosceptics. But his immediate reaction simply confirmed precisely what those British sceptics dreaded.

## The third way?

So often in the past three decades, the UK and Germany seem to have been marching determinedly in opposite directions on Europe, even when they thought they had much to agree about – such as free trade, strict competition rules, fiscal discipline, and the like.

Certainly that was true when conservatives ruled in both places. Would mutual understanding not get better under the centre-left? When Tony Blair came to office at the head of a Labour government in 1997, he was the first truly pro-European British prime minister since Heath lost office in 1974. A year later, Gerhard Schröder won power at the head of a red-green coalition in Germany, and the two leaders launched a cross-border movement they called the 'third way'.

By 1997 the Conservative party led by William Hague had become overwhelmingly eurosceptic. But Labour had been persuaded – not least by Jacques Delors – that the EU could be a 'social Europe'. Centre-left governments were in power in all but two of the member states, and 'neo-liberals' were in retreat.

Blair was widely expected to take the UK into the euro, if not from the start in January 1999, at least after a decent pause for preparation. Powerful voices in British business, including the Confederation of British Industry, argued in favour – provided the 'conditions' were right. Yet it never came to pass. The time was not ripe, the economy was not ready, but above all, the political climate was too hostile, on both right and left. Blair had agreed that no such move would happen without putting it to a referendum. In that he was certain to face the open hostility of the Tory party. But memories of the ERM catastrophe were still too raw on both political sides, and in the civil service. Moreover, the UK economy appeared to be doing better than the European continent: opinion polls suggested that 60% would oppose such a move in a promised referendum.

Popular wisdom was that personal chemistry intervened again: British entry to the euro was effectively blocked by Gordon Brown, chancellor of the exchequer and the man who wanted to be next prime minister, to demonstrate that he called the shots in power. But government insiders insist it was more complicated – that the economic advantages were too slight, and the political risks too great, to justify such a fundamental move. With deeply indebted countries such as Italy and then Greece given the green light to join, the whole project was seen as too risky. Britain's deep-seated, cross-party hesitancy about European integration prevailed. In Berlin, government reaction was disappointed – but not surprised.

In the light of the eurozone crisis that broke out in 2009, the prevailing wisdom in the UK today is that it was very sensible to stay out. The sheer size of the British banking sector that had to be rescued would very possibly have forced the UK to withdraw from the eurozone entirely, because the cost would have been politically impossible for other states in the eurozone to shoulder. "It would not have been possible for the European Central Bank to bail out RBS, as the UK government did," according to one senior government figure from that time. "We would have ended up having to leave (the eurozone) in order to re-establish the Bank of England as the lender of last resort." Moreover, the banking crisis would have been compounded by an even greater property bubble than actually occurred, stimulated by the lower interest rate regime of the ECB. According to the calculations of the UK Treasury, fiscal adjustment of an additional £25-30bn would have been necessary to compensate for setting interest rates at the eurozone level – a degree of fiscal tightening that would have been politically suicidal.

Yet not all economists agree that it would have been an unmitigated disaster. Martin Sandbu, a Financial Times economic commentator and author of *Europe's Orphan* on the mishandling of the eurozone crisis and the future of the euro, argues that the participation of UK finance and central bank officials would have been beneficial. As far as eurozone crisis management was concerned, he argues that the UK would have argued in the Eurogroup against bailing out creditors "that had foolishly lent to politicians in Athens". The governor of the Bank of England sitting in the ECB governing council would have been more activist than the Frankfurt institution proved in reality.

In the longer term, Sandbu warns that if the City of London is outside the eurozone (or even, if there is a vote for Brexit, outside the EU itself) it will for ever be subject to regulation decided by the eurozone – "out of the euro, but run by the euro". In spite of the best efforts of the UK government to protect the fundamental principle of the single market, it would be increasingly likely that "a decade or so from now, euro non-membership will leave the UK's financial industry at the mercy of rules set ... by a group with little reason to care about its interests".

So what realistic political prospect is there of a big change in UK attitudes towards the eurozone, if the June referendum votes to remain in the EU? And what prospect of a UK government that is more whole-heartedly engaged in European policy making, and more alert to the priorities of its partners – not least, Germany?

The outcome of the recent UK general election has left the Conservative party with a very narrow absolute majority at Westminster, and a Labour party in disarray. But the Conservatives are fighting bitterly in the referendum campaign,

and if Cameron wins, he will have to bend over backwards to reunite his rank and file. That militates against any big change in European engagement that might threaten his parliamentary majority.

Working harder to understand his EU partners, however, is not a strategy that would necessarily alienate his own supporters. One of the UK prime minister's more surprising achievements has been to forge good personal ties with the German chancellor. She has made big efforts not to complicate his position in the referendum campaign, and not to make politically damaging demands for more support, for example in tackling the refugee crisis.

It would be too much to expect any UK government to undergo a dramatic conversion to join the euro in the near or even medium-term. But a change in tone, and a change in the constantly negative narrative about the benefits of EU membership, would already be an improvement – and one that would increase British influence in Europe, not reduce it.

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## After Cameron's EU deal

*Kirsty Hughes*

As the debate has got under way over the UK's future membership of the European Union, rather little attention has been paid to the reforms David Cameron achieved at the February 2016 summit. Instead, the debate has focused more on economic costs and benefits, democratic issues, and security. Cameron himself insisted that key reforms were vital before he would campaign for the UK to stay in the EU – reforms he declared he had achieved satisfactorily at the close of the European Council on 19 February. But the current debate does not seem to reflect Cameron's view of the vital importance of the reforms.

So were the much-touted reforms merely a smoke and mirrors cover to allow Cameron to tell the British public that the UK's relationship with the EU has fundamentally changed for the better? Or are there genuinely important changes, for better or worse, in the UK's future position in the EU – if it decides to stay in – as a result of his reform package?

The deal takes the form of a Decision of the 28 heads of state or government annexed to the conclusions of the European Council.<sup>5</sup> The conclusions state clearly that if the UK votes for Brexit, then the Decision will fall. If any other EU member state wanted to keep some of the reforms, they would have to argue the case anew in future European Council deliberations.

Meanwhile, the British public is asked to choose between staying in the EU with the changes Cameron negotiated or leaving the EU. There is no chance to vote for the *status quo* – that is, to reject Cameron's reform package while voting to stay in the EU.

A number of opposition party leaders – from the SNP's Nicola Sturgeon to Jeremy Corbyn for Labour – have criticised elements of Cameron's deal, while arguing that the bigger issue is the overall case for staying in the EU. Eurosceptics such as Michael Gove for the Conservatives or Nigel Farage of UKIP have, predictably enough, dismissed the deal as irrelevant.

Yet this all leaves open the question of whether, in the case of a vote to remain in the EU, the Decision will have helped the UK's position in Europe ("the best of both worlds" as Cameron claims) or, on the contrary, will have pushed the UK to

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5 European Council Meeting Conclusions, 18-19 February 2016, EUCO 1/16, Brussels.

the sidelines, with less influence and clout than ever before. In this chapter, we first consider the main elements of the deal Cameron achieved, and secondly, what impact this deal would have on the UK's role in the EU, should the referendum vote be in favour of remaining.

## **The UK's new deal with the EU: substance or pretence?**

In some of his early speeches about the need for EU reform, David Cameron emphasised that the EU as a whole needed to change: "I want a better deal for Europe too" he proclaimed in his Bloomberg speech on 23 January 2013. In the event, the reforms the leaders agreed at their February summit are much more significant to the UK's future position in the EU, than to the Union as a whole. This is not surprising – any genuine, major reforms to EU goals, policies and decision making would need to go through a full Convention, intergovernmental conference and treaty reform process. They would not focus on the specific demands of one member state, but on the concerns and strategic goals of all 28.

Nonetheless, although most of the changes agreed do have a potential impact beyond the UK, they are of rather little significance or relevance to the major challenges the EU currently faces – the refugee crisis, the challenges from Putin's authoritarian Russia, the continuing high levels of unemployment across many southern member states, and the concerns about democracy in some of the newer, eastern member states.

Ahead of Cameron's negotiations on the reform package, the coalition government in 2012 launched some major research, and consultation, on the UK's current position in the EU in a review of the balance of competences, assessing how powers were split between the UK and the EU across most of the EU's areas of activities. This wide-ranging and in-depth assessment found the division of powers to be essentially appropriate and positive for the UK. The House of Lords' European Union Committee welcomed the Balance of Competences Review, considering that it provided valuable information and insight. But the Committee regretted that the government failed to draw together the analysis of the 32 individual reports into one overall assessment and criticised it for burying the Review: the peers argued that the Review deserved to have an impact on the wider public debate on the UK-EU relationship.

## **The main elements of the deal**

There are five main elements of the Decision of 19 February. First, it gives the UK a specific, new opt-out from one of the founding goals of the EU. The UK is no longer committed, unlike the other 27 member states, to the goal of building an 'ever closer union among the peoples of Europe'. The language in which this deal is set out is

telling – under the heading 'Sovereignty', the Decision states that the UK "is not committed to further political integration into the European Union" and "references to ever closer union do not apply to the United Kingdom". Some see this as a purely symbolic opt-out since it is not a phrase that commits the EU to becoming a federal state (the fear of the eurosceptics who have criticised this goal down the years). Yet in fact, it risks – as we discuss further below – placing the UK, given all its other opt-outs, in the most outer-tier, semi-detached relationship relative to the rest of the EU. It is an opt-out that symbolises only too well, the UK's wish to get benefits from the EU without – currently – playing any major strategic role in the Union.

The other main demand agreed under 'Sovereignty' was the introduction of a new 'red card' procedure whereby national parliaments can club together and block a draft legislative proposal (if they can get 55% of the votes allocated to national parliaments). For some this is a measure that will help make the EU less remote and more democratic. However, the EU already has 'yellow' and 'orange' cards to allow for concerns over proposed laws to be expressed and discussed. These cards have rarely been used, so it may be unlikely that the red card will be used very often, not least since, if a majority of national parliaments oppose a new law, it is likely that their respective governments would already oppose it in the Council of Ministers.

Third, the Decision sets out at some length a set of principles whereby those member states not in the euro will not be disadvantaged by decisions taken by the eurozone; equally, non-euro members commit to not "impeding" or "jeopardising" laws and processes directly linked to the effective functioning of the euro area; and the level playing field of the single market is guaranteed for all member states. The deal includes a clear statement that non-euro states do not have to contribute to any emergency measures taken to ensure the stability of the euro area, and it allows for an emergency brake, whereby any non-euro state concerned by a eurozone decision can escalate a discussion of that decision to the European Council. This latter point covers some of Cameron's concerns that the eurozone might outvote the UK on issues that affect the City of London, although the UK – or any other non-euro state – will not have a veto over eurozone decisions (something France was very concerned should not happen).

Overall, this part of the deal is balanced. How necessary it was to have such a deal, given the existing protections of the EU treaties, is an open question but the Decision spells out a sensible set of principles ensuring the eurozone can continue to develop and integrate, while not creating major barriers or inequality between eurozone members, those 'pre-ins' not yet in the euro, and those two states (the UK and Denmark) with formal derogations.



Fourth is the question of welfare benefits and free movement. Given the neuralgic impact of immigration, including from other EU states, upon the UK political debate, Cameron was determined to get some deal that might limit or reduce the number of EU citizens coming into the country. In the event, quite predictably, the other 27 EU leaders were not prepared to compromise in any way the fundamental principle of freedom of movement. The Decision allows a relatively minor 'emergency brake' on in-work benefits where there are exceptional circumstances (as assessed by the European Commission) in terms of numbers of EU mobile workers impacting sharply on public expenditure. The deal allows a limitation of in-work benefits over a four year period, but it has to be gradually reduced over that period, and only applies to workers newly arriving in the UK. It also indexes child benefit sent abroad to the wealth of the home country rather than that of the UK. And a tightening of rules for marriages between EU citizens and third country spouses is promised.

These changes are hardly likely to impact significantly on the flow of workers into the UK from other countries. Despite the limited nature of these measures, they do represent an unwelcome introduction of discrimination in labour markets – one that contradicts the principal of treating all workers equally (a principle that is surely desirable whether the UK is in the EU or not). This is something that has clearly concerned the European Parliament which will have to vote these changes into law, should the UK public vote to remain in the EU.

Fifth and lastly, we have motherhood and apple pie. Competitiveness is one of those concepts that most agree is a good thing, while rarely stopping to define it. The Decision continues along these lines, insisting the EU "must enhance competitiveness" and that it will do so by various means including better regulation. There is nothing new in these few woolly paragraphs – the EU already has processes under way to limit and reduce unnecessary regulation, and the concern with competitiveness goes back many decades.

Overall, the Cameron reform deal is a slight affair. It is hard not to agree with the conclusions of the recent in-depth inquiry on the EU referendum by the Scottish Parliament that the provisions secured by the UK in the settlement were rather limited.

### **Less engagement means less influence**

The main concern about the impact of Cameron's reform deal, if the UK votes to remain in the EU, is that it will firmly underpin a trend clear in the last few years of the UK becoming a more marginal, more mercantilist, less strategic and influential player in the EU.

It is notable, in looking at the several major challenges and crises facing the EU today, that the UK is not playing a major role in helping to resolve any of them. Germany's Chancellor Angela Merkel has played a leading role in dealing with Russia's intervention in Ukraine, and on the refugee crisis and the eurozone crisis. It is not necessary to agree with all Merkel's policy choices to ask where else leadership is coming from in the EU currently – and very little indeed is coming from the UK.

David Cameron instead is keen to emphasise to the British public that the UK is not part of the Schengen border-free zone, will not take any significant number of refugees, and will not contribute in any way to the resolution of the major challenges facing the eurozone. At a time when many are deeply concerned at the EU's failure to uphold its core values, including solidarity and human rights, the UK is adopting a 'Little England' stance that does it no credit; and it is an attitude which makes it harder to influence other countries, such as Poland, Slovakia and Hungary to behave with more decency and solidarity in the refugee crisis. Back in the 1990s, despite the major divisions in the Tory party over the EU, Britain was a strategic and influential player in Europe: together with Germany, the UK drove much of the strategy for enlarging the EU eastwards after the fall of the Berlin Wall. Today's approach to the EU shows a UK little inclined to share that sort of strategic leadership in any way.

While in many ways, the February reform package is a minor side-show compared to the current major tensions, challenges and dynamics in the EU, what the package does do is underline the exceptional, disengaged status of the UK. The symbolic opt-out not just from 'ever closer union' but, as the Decision puts it, from "further political integration", clearly accentuates the side-lined status of the UK.

### **The bar is set higher for a future government**

In the light of the Decision of 19 February, could a more progressive and strategically inclined government rebuild Britain's influence and strategic role in the EU? A future UK government that had creative ideas on how to tackle the deep challenges in the EU's neighbourhood, or, for instance, that had combined together policy proposals to tackle climate change and unemployment in a 'green new deal', would still be in a position to build strategic support in the EU.

Yet the risk after the February deal, if the UK votes to stay in – perhaps in a very close vote – is that the eurosceptics (whether in political parties, the media or the wider public) may argue that any strategic, influential and active behaviour by the UK in the EU runs counter to the opt-out on further political integration. A new

approach to the EU's neighbourhood or to tackling unemployment may or may not involve more political integration but many in the UK, including some of those who vote to stay in the EU, may well be sensitive to, and critical of, the strategic choices of a future, more pro-EU and more progressive government. This does not mean a new government could not take up this challenge, but it does mean it will have to be highly persuasive and influential at home on the direction of its EU policies if they are not to come under major attack.

Ultimately, David Cameron's February deal is mostly a rather shoddy affair. It is a deal that will neither much help the Remain side make the referendum case for the EU – the real arguments are much broader; and nor will it help, rather perhaps undermine, a new, non-eurosceptic and progressive government in trying to rebuild the UK's strategic influence in the EU at some point in the future.

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## Re-imagining the European Union

*Caroline Lucas*

The European Parliament in Brussels is an imposing building. It looms over the Place Luxembourg, and its dark grey exterior and highly reflective windows give the impression of an impenetrable fortress. Indeed when I worked in Brussels as an MEP, representing millions of people in South East England, I was often struck by the contradiction between the somewhat intimidating structure on Rue Wiertz, and the inspirational cause upon which the European Union was built. Inside those buildings something remarkable – and historically anomalous occurs every day: Europeans resolve their differences with debate and discussion, rather than bullets and bombs.

### **The EU is worth defending**

Despite the image that some wish to project, the EU is not an abstract project born of idle philosophising in continental think tanks. In fact the sharing of sovereignty in Europe, designed to ensure that economic competition does not again spill over into conflict, was built on the blood and bones of Europeans killed in the disastrous first half of the 20<sup>st</sup> century.

Indeed, the European Union was founded on the profound mistakes of Europeans: a pragmatic response to our failure to manage the disruptive forces of nationalism and industrialisation. The incentive of EU membership has been the most powerful driver of peace and stability the world has ever seen. It truly is a remarkable story: after centuries of warfare countries with different histories and cultures coming together, choosing to share some degree of sovereignty whilst keeping their own identities and traditions, in order to work together for the common good. This troubled continent, historically so prone to conflict, is now in the remarkable situation where a war between the member states is utterly unthinkable.

Of course arguments for Britain's continued membership of the EU cannot solely be based on the noble nature of the organisation's beginnings – and we must not get trapped into believing that the EU is perfect simply because it has achieved its original purpose. That is why it is important for those of us who believe in the EU to make a case not just for staying in, but for doing so in order to make it function better for European citizens.

Having been a member of the European Parliament for ten years I know all too well just how frustrating a political process which involves 28 different countries

can be. But I am more convinced than ever that the European Union is essential for dealing with the cross-border challenges we face today.

The refugee crisis is just one symptom of these longer term problems. The EU should, and could, deal with this humanitarian disaster on our shores, but it is failing to do so well. Such failure is not a result of too much 'Europe' but of too little cooperation. Indeed the European Commission outlined a detailed and workable proposal to share responsibility for the refugee crisis – but it was thrown out by Britain and other EU countries which preferred to act alone.

In recent months we have also seen the continued saga of the world's biggest corporations avoiding tax on a colossal scale. This shirking of their duties matters to all of us as funding is funnelled from our welfare states into the hands of shareholders. And it is a problem that simply cannot be dealt with by any single country: it needs urgent international action. Fortunately, the European Union is already taking more far-reaching action on this scandal than the UK government.

Then there is the looming threat of climate change. Surely there is no better reason to work with our neighbours than the need to tackle this complex cross-border catastrophe in our midst. If Britain joins forces with other countries, strengthening the EU-wide rules on carbon emissions that are already in place, then we have a chance of keeping future generations safe. Going it alone simply is not an option for a challenge of this magnitude.

### **The EU is worth reforming**

Of course no one can credibly say that the European Union is not in need of reform. Much like those in London, the institutions in Brussels are often opaque, unaccountable and swayed by vested interests. Changes are needed to better equip the EU to meet the challenges of the future head on – both in terms of the policies coming out of Brussels, and of the policy-making process itself.

A good place to start would be to give the directly-elected European Parliament more powers in relation to the Commission and the EU Council. MEPs should be able to initiate legislation, to amend and veto all Commission proposals and, obviously, to decide on its own geographical location.

The other EU institutions clearly need reforming too. The Council, which brings together ministers elected in each country, should become fully transparent. In practice that would mean giving much wider publicity to Council voting records and minutes of meetings, with more live-streaming too, allowing the electorate to hold

to account the people who purport to represent it. These are changes that could and should happen almost immediately, with British support.

In fact the British government, if it so chose, could transform the UK's relationship with the EU overnight to make it more accountable. Imagine, for example, if the British parliament was given the chance to debate the government's negotiating position before ministers set off to EU Council meetings. At present the House of Commons merely gets a minister giving a report on the meetings after they have occurred. And as the House of Lords has suggested, the UK could argue for the introduction of a 'green card' system whereby national parliaments could be given the power to propose European draft laws and not simply to object to them. There are several ways to strengthen participatory democracy in order to make citizens' voices heard at the EU level. An obvious starting point is bolstering the European Citizens' Initiative, for example by allowing 16 and 17 year olds to take part in the process, by simplifying the onerous online process, and by allowing petitions to be open for 18 months for the gathering of signatures.

It is corporate power, not political power that all too often holds sway in Brussels (and Westminster too for that matter). To curb the power of private vested interests the EU urgently needs to introduce a compulsory and legally binding EU lobby register requiring lobbyists to be fully open about their activities. It is also crucial that the citizens of Europe are given oversight of the international trade deals being negotiated on their behalf. At present deals like the Transatlantic Trade and Investment Partnership (TTIP) take place almost entirely behind closed doors, and even elected politicians are only given limited access to the documents. That clearly must change – and people should be allowed to form their own view about the potential of such treaties.

## **Bolder EU policies**

Beyond further democracy and accountability, the EU needs a larger capacity to bring about bold new policies that transform people's lives in Europe. For example, I would like to see the EU investigating the possibilities of bringing in a minimum wage for every single worker in the 28 member states. The wage rate would vary between countries of course, but the EU could provide the base-level guarantee that everyone gets a fair wage for their work. As a country that already has a minimum wage, there is no reason why Britain could not lead the campaign at the EU level to make this measure cross-continental.

Serious work needs to be undertaken to move the EU towards a Europe-wide 'green new deal'. Such a package would re-regulate the financial industry and

channel resources into green investment to fund renewable energies, energy efficiency, sustainable industries and infrastructure, protect natural resources, and related research, innovation, education and training. Jobs would be created – and Europe's economy would be put on a more sustainable footing.

These are just two, relatively simple, suggestions for EU common policies that could really make a positive difference to people's lives. It is ideas such as these, building on existing EU laws on rights at work, environmental protection and caps on bankers bonuses, which would keep Europe relevant for generations to come.

### **How do we get reforms?**

There are some who will say that the reforms outlined above are far-fetched and impossible to realise. But the evidence suggests that the opposite is true.

First, the EU has, already, reformed quite substantially. The powers of the European Parliament have been steadily increased, meaning that MEPs get a chance to veto key laws and trade deals like TTIP. Some EU Council meetings are being live-streamed already and a voluntary transparency register has been introduced to keep a check on lobbyists. These reforms do not go as far as many would like – but they clearly expose as a myth the idea peddled by eurosceptics that the EU can never change.

The second positive sign is the blossoming of the pro-European democracy movements which are growing across the continent. The DieM movement, set up by the ex-finance minister of Greece, Yanis Varoufakis, has brought together thousands of people under the slogan of 'The EU will be democratised. Or it will disintegrate'. Similarly a group called 'Plan B' will hold regular conferences with politicians and activists from across Europe to build the movement for a different kind of Europe. No one country can change Europe – which is why these movements from every corner of the continent are so timely, and so exciting.

Of course the greatest contribution that Britain can make to progressive reforms in the EU, aside from remaining a member state, is electing a government and a set of MEPs who favour changing Europe for the better. We know that what comes out of the EU is a product of what is put in – so the major task of progressives across the EU is winning elections in our respective countries.

The European Union is not perfect but it represents the best of our collective cultures. Only by working within and reforming the EU can the British people be well placed to continue to live in this corner of the world both in terms of security and in line with our values.

There is a better way, but that way is only to be found by working practically with Europe and not through the fantasy of trying to flee our geography. But winning the referendum by a whisker and sticking with more of the same is not going to be good enough. It will be down to those of us who believe in a better Europe not solely to concentrate on staying in the EU but also to use the opportunity of the referendum campaign to make the case for doing things differently. To work for deeper reform is the right thing to do, and will inspire people to get involved with the European debate. I am especially concerned that young people – though in general 'pro-European' – are not hearing any positive messages about what a better Europe might be like. That might explain why two thirds of young people are said to be planning not to vote in the referendum.

When I think back to my time in Brussels and my work inside those tall grey buildings, I remember just how distant the whole process could feel from my constituents. Re-imagining the European Union would bring the voices of people across Europe into the debate behind those walls. But in order to change the way things work in the future, the UK first has to decide to remain a member of the EU: it is as simple as that.

Above all this referendum matters because it is about the kind of country we want to be, the kind of people we are, and the kind of future we want for our children and grandchildren. It matters more than any single general election – and it is vital that the national conversation about our place in Europe does not end on 23 June.

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## Britain and European federalism

*Brendan Donnelly*

It is sometimes claimed by those advocating a federal future for the European Union that debate on this topic in the United Kingdom is skewed by a fundamental misunderstanding of what 'federalism' means. Federalism, these advocates rightly point out, is not an intrinsically centralising political philosophy, as is standardly assumed in British diatribes against the 'federal European super-state'. It is rather one of the structured sharing of decision making between differing levels of government: federal political systems such as those of the Germany and the United States typically guarantee in their constitutions a high degree of decentralised power to state and regional governments. If this basic point were better understood, so the argument runs, much British hostility to the federal elements of the European Union would disappear like the snows of yesteryear.

There is certainly some truth in this analysis. For example, at one conference of the Federal Trust last year about the European Union a prominent commentator told us that she was "definitely not a federalist, whatever that might mean". Sloppy use of language is usually an indication of sloppy thought, and there has been plenty of both in the British discussion of European issues in recent years. But it would be an over-simplification to claim that the widespread rejection of European federalism in Britain is only based upon a semantic misunderstanding. There are important and genuine elements of European federalism which are highly contested in this country. Those wishing the United Kingdom to play a part in a federal future for the European Union will need to convince and reassure their fellow citizens at a level much more profound than that of linguistic precision.

It is often forgotten, or worse denied in British public debate that the European Union has in its basic structures significant federal elements. The primacy of European law, qualified majority voting, the European Court of Justice and a directly-elected European Parliament co-existing with national parliaments – all these are typical building-blocks of a federal political system. By its voluntary accession to the Treaty of Rome, the United Kingdom has become part of this federalising system and will remain part of it as long as it is a member of the European Union. That is not to say that the European Union can properly be regarded as a federation, much less a United States of Europe. The powers and resources which remain vested in the member states of the European Union are so great that any such nomenclature would be wholly inappropriate. But it does make unsustainable any general rejection of federalism as a political philosophy by those arguing in favour of continued membership of the European Union. The federalist elements of the Union's

construction are integral to what it is. Some of those criticising the prime minister's 'renegotiated' terms of British membership of the European Union are today criticising him precisely for failing to extirpate these federal elements. Any such extirpation was however never remotely a realistic prospect for David Cameron. It was misleading on the part of some ever to suggest that it might have been, and disingenuous on the part of others to link continued British membership of the European Union to such an unachievable goal.

## **The central institutions of the Union**

Properly understood, the central question of the forthcoming European referendum in this country will be whether the majority of the British electorate are willing to continue to accept British participation in the at least partly federalistic decision-making structures of the European Union and the pooling of national sovereignty which these structures imply. Some voters will vote for an exit from the Union because they regard as unacceptable any participation in British sovereignty-pooling structures. Others will vote for exit, not because they are hostile to sovereignty pooling as such but because they believe that the European Union is not a body within which British sovereignty should be pooled. Yet others will vote for Britain to remain within the Union despite its institutional structures and perhaps with the vain hope of subverting these institutions from within the Union. Very few in the United Kingdom will be voting for the United Kingdom to remain within the Union because they admire and approve of its sovereignty-pooling institutional structures. Yet these institutional structures, with all their federal characteristics, are fundamental to the successes the European Union has achieved in the past and their further development is a precondition of further successes in future. In recent years, the Union has attempted to solve its most pressing problems, those of the eurozone and migration, predominantly through the intergovernmental mechanism of the European Council. It is difficult to argue that this intergovernmentalism has shown itself capable of providing sustainable responses to these systemic crises.

It is indeed true, as is frequently observed in this country that elsewhere in the European Union the standing and perceived legitimacy of the European institutions has declined in recent years. But nowhere in the European Union have its institutions been subjected to as relentless a campaign of vilification and misrepresentation over the past fifteen years as they have in the United Kingdom. This campaign has proceeded on two levels, the simply abusive and the philosophically dismissive. For many years, it has been difficult to pick up a British newspaper without finding in it (frequently inaccurate) stories about the supposed wastefulness, corruption, incompetence and megalomania of the

'Brussels bureaucrats'. This incessant repetition of a flawed stereotype has left its mark in the British popular consciousness. Few national politicians in the United Kingdom, even those who know better, have the courage to contradict the tsunami of prejudice and outright lies visited daily upon the officials of the European Commission in particular. But even more significant for British perceptions of the European Union has been the oft-repeated and rarely contradicted claim, not merely in the mass media but in mainstream British political discourse, that the European institutions are by their nature remote and undemocratic, and that it is the proper role of the British government to rein in their tyrannical pretensions. When British voters describe themselves as hostile to federalism, it is typically some such a set of attitudes to which they are giving expression.

Hostility to the institutions of the Union was a major driver of the prime minister's attempt to renegotiate the terms of British membership of the European Union. The incoherence to which such hostility can lead is well exemplified by the course and outcome of this renegotiation in regard to the so-called 'red card' available to national parliaments to put an end to new proposed European legislation; and to the supposed British exemption from commitment to "ever closer union" in the EU. It is almost inconceivable that the 55% majority of national parliaments necessary to trigger the red card would ever be achieved. Far from imposing self-generated diktats on unwilling governments and national parliaments, the Commission is deeply solicitous of their wishes and expectations in the proposals it puts forward for their approval. If the Commission misjudges the acceptability in national capitals of a proposal it puts forward, member states already have ample opportunity to mobilise a blocking majority in the Council of Ministers. The red card is a misconceived attempt to solve a non-existent problem.

Similarly, any future change of European treaties concerning the United Kingdom's commitment to "ever closer union of the peoples of Europe" will make no objective difference to the UK's situation within the Union. On the one hand, Britain's partners have again and again made clear in the past twenty years that the UK could remain a member of the Union without joining central elements of the Union's development such as the Schengen area and the single currency. Claims that a future British government might be forced by its partners to join either Schengen or the euro are fanciful in the highest degree. On the other hand, as long as it is a member of the Union, the United Kingdom will continue to feel the integrative effects of those policy areas in which it is engaged, notably the single European market. The integrative effects of the single market are significant, even if less pronounced than those of the borderless Schengen area and the single European currency. If those who advocate a vote on 23 June to remain in the EU deny these integrative effects, they will be storing up grounds for future accusations against them that they have deceived the electorate.

It will be important, therefore, that those on both sides of the debate articulate the real choice put before the electorate on 23 June. It is simply whether the United Kingdom wishes to remain in the European Union participating as it now does only in some of the Union's integrative activities, or to leave the Union entirely. The agreement arising as a result of the prime minister's renegotiation enshrines this ambiguous status for the UK within the Union. He characterises this status as "having the best of both worlds". Others may be less sanguine, either because they find unacceptable any continuing participation in the Union and its activities; or because on the contrary they fear that the UK may find itself having the "worst of both worlds" bound by the common decision-making structures of the Union, but ever less able to influence this decision making because of its self-willed exclusion from central policies of the Union.

### **Britain and a more federalist European Union**

Different expectations and predictions legitimately exist about the pace and extent over the coming years of further integration within the EU for those countries that are members of the eurozone. If this integration does continue apace, it will undoubtedly reinforce the federalising elements of the European Union. Some commentators have claimed that this reinforcement, even if the United Kingdom decides this year to remain on the present basis within the European Union, will make it over time increasingly difficult for the United Kingdom to remain within this Union. Britain, it is claimed, could never participate in a European Union in which the need to make a success of the single currency had forced the members of the eurozone to embrace such a high level of federalising integration.

In this context, it is worth recalling that it is the clear British national interest that the European single currency should be a success. This may well involve a much greater depth of political and economic integration than Germany in particular has been willing to countenance until now. If this creates for Britain's position within the Union new difficulties and challenges, then these are problems that the United Kingdom should be pleased to have. It is impossible to predict today what the most appropriate policy response from the British government might be in those circumstances. Maybe the United Kingdom would wish after all to join the euro; it might wish to try to maintain its present equivocal situation inside the European Union but outside the eurozone; it might conclude that cutting itself off from the European Union entirely was the best way of advancing British interests faced with a more integrated European Union. To reach the last of these conclusions would be to disavow entirely the assessment of British national interest adopted by every successive British government, of every political colour, since the 1960s.

All these governments have believed since the 1960s that by participating in the European Union's decision-making structures the United Kingdom was in all circumstances better placed to defend and advance its vital European interests than outside. These decision-making structures were never the purely intergovernmental arrangements of such organizations as the United Nations or NATO. They were rather based on the insight that if national governments were to be compelled to cede in the common good their national egoisms and vulnerability to domestic populism, central institutions were necessary, and that those central institutions would facilitate and implement shared decision making. Far from being the remote and undemocratic juggernauts of popular misrepresentation, the European institutions are simply the usually consensual expression of the will of European governments and European electors, the British government and British electors being prominent among them.

To describe this institutional structure of the European Union as a federalist structure is not incorrect. There are flaws and incoherence in the debate in this country concerning European federalism, but they lie elsewhere than in definitional questions. The flaws lie in the belief even of many who support continuing British membership of the European Union that the Union can continue to function, perhaps even function better by the suppression of its federal elements; that the deepening of the Union's central and federal institutions is of itself inimical to the British national interest; and that Britain's membership of the Union might be threatened by the Union's probable further federal development. None of these propositions deserve anything like the status of unexamined and self-evident propositions usually accorded them by the mainstream of British debate on the European Union. Indeed, the axiomatic status often accorded to such dubious claims renders the European debate in this country much more confused and confusing than it need be. If the debate until and after 23 June serves to clarify rather than further obscure the debate about European federalism in this country, it will have rendered at least one service to the British people. Those who live longest will know most.

***Brendan Donnelly is the Director of the Federal Trust. He is a former Member of the European Parliament and worked in the cabinet of Lord Cockfield on the 1992 single market programme.***

## Europe's British problem

*Andrew Duff*

If the United Kingdom votes to leave the European Union on 23 June, Britain's problem with Europe will not be over. Nor will Europe's British problem.

As opinion polls tighten, incipient panic has already seized the British government – not only amid the majority of ministers who choose to remain in the EU but also, paradoxically, in the ranks of the minority who are fighting to leave. It has become evident that the Leavers have no single prospectus for the country should voters choose to follow their advice at the referendum. While some Leavers, like MEPs Nigel Farage and Daniel Hannan, dream of departure on a flight to a worldwide Anglo-sphere, others, such as MPs Michael Gove and Boris Johnson, take refuge in the fond belief that the EU would be ready to offer a departing Britain a good deal. The Leave.eu organisation wants out tomorrow morning. But its rival Vote Leave campaign claims that a referendum victory will not automatically trigger formal secession negotiations (under Article 50 of the Treaty on European Union), but rather, that a new EU treaty can be agreed retaining for Britain some choice features of the single market. While many Brexiteers are anti-immigration on grounds of race or religion, others make an economic case for continued immigration. David Owen, a former Labour foreign secretary, wants to stay in the EU's single market but to get out of its common foreign, security and defence policy. Some Leavers favour the Norway option for Britain; others prefer Switzerland; yet others Canada – or just the WTO: but the difficult truth is that there is no single, simple existing template for Brexit.

The Leavers are not alone in having slipped into the narcissism of small differences. Some of those who are voting Remain, like former Tory party leader William Hague, hanker after a form of EU associate membership for Britain. Hague's successor as foreign secretary, Philip Hammond speaks of a two pillar Europe (with the UK as the second pillar). Hammond is typical of those government ministers advocating Remain yet basking in eurosceptic credentials. David Cameron himself has spent years criticising the EU, often contemptuously, before suddenly urging that voting to stay in is the lesser of two evils. The prime minister's case is highly equivocal: he does not care to focus much on the Decision for a 'new settlement' that he brought home from the European Council on 19 February, beyond saying that it gives Britain "the best of both worlds". The unmistakable appearance of wanting to be in but not of Europe is hardly inspiring, least of all to the young.

The more obviously 'pro-European' opposition parties (Labour, Liberal Democrats, SNP and Greens) monitor the bizarre spectacle presented by the ruling Tory party with something approaching incredulity: they are campaigning to stay in the EU but are doing so largely on their own distinct terms – all equally concerned not to become complicit in saving the skin of David Cameron and his Chancellor George Osborne. In the past, Jeremy Corbyn, Labour's leader, has availed himself of every occasion to vote against the EU. Whereas in Scotland and Wales the nationalist parties want to leave the UK but to stay in the EU, in Northern Ireland the unionists want in and out and the republicans want out and in, respectively.

Stronger In, the official cross-party Remain organisation, is chaired by an avowedly eurosceptic businessman, and has stuck, like the CBI, to Cameron's defensive line, albeit manicured by innumerable focus groups. Academics have been mobilised on behalf of the European science effort, and representatives of the police and military have been arguing the case for European security. The Governor of the Bank of England has uttered about the risks of financial instability. But the churches seem plagued with doubt, and the judges remain taciturn: the moral and constitutional case for European integration goes largely unheard in Britain. If the British vote to Remain it seems they will do so only half-heartedly. In fact, the most positive case for staying in appears to be made by foreign leaders, notably President Barack Obama, but including, to the evident distress of those Leavers nostalgic for lost Empire, many Commonwealth leaders and the Irish Taoiseach.

Voters have an invidious choice. The *status quo*, leaving things as they are, is not an option. On the one hand people can plump for what European Council President Donald Tusk dubbed Britain's new 'special status' and staying in an EU which nobody seems much to love. Or, on the other hand, they can take a risky leap towards a future ill-defined. In this context, the result of the prime minister's tortuous and lengthy renegotiation of the terms of EU membership is not helpful. Whichever way one regards the Decision of 19 February, the deal falls way short of Cameron's much-vaunted ambition to 'reform' the EU. Staunch pro-Europeans cannot be blamed for lamenting the damage done by the prime minister to the European project, while robust anti-Europeans are equally justified in making light of his achievements.

## **Brexit – hard or soft?**

Meanwhile, the rest of Europe looks on aghast at the impending denouement of what they regard as the UK's cynical and divisive referendum campaign. There is already a sense of betrayal, particularly in Germany. A British decision to secede would convulse the Union at a time when it can scarcely afford yet another blow to

its stability and cohesion. If there is a No vote on 23 June, there will be precious little sympathy elsewhere in Europe for the British in what will be generally considered to be a self-inflicted disaster. The chances that Britain's erstwhile EU partners will be ready to make an offer of an *à la carte* version of the single market are negligible. In the event of a No vote, the Decision of 19 February will immediately lapse – and one assumes that its progenitor Cameron will be hustled quickly out of Downing Street in disgrace. The most the new British government could expect at the end of the Article 50 process would be to join the customs union, like Turkey, together with an agreement on some form of intergovernmental cooperation in foreign and security policy. But even that package would pose difficulties for the Tory party. Customs union means accepting to be bound into the common commercial policy of the EU that the more zealous Leavers abhor.

In the short term at least, in the aftermath of a No vote European politics will be upturned. Business and investor confidence will be rocked. The two million or so EU citizens resident in Britain and the similar number of Britons who live elsewhere in the EU will have to worry about their future status. Sterling will bounce around like a ping-pong ball between the two tennis balls of the dollar and the euro. And a tsunami of legacy litigation will swamp the European Court of Justice. That much is fairly clear. Hard Brexit is bloody.

What is much less obvious is what will happen if Britain votes Yes. The EU institutions will have to try to apply immediately the terms of the Decision of 19 February. In terms of primary law, this means changing the EU treaties to exempt Britain from the Union's basic goal of 'ever closer union' and attempting to secure special rights for the non-euro states in eurozone legislation. In terms of secondary law, the Decision means introducing some element of discrimination in welfare benefits against EU citizens living and working in the UK on the grounds of their nationality. The implementation of the Decision will be very complex, controversial and protracted, requiring the complicity of the European Commission, the consent of the European Parliament and the permission of the Court of Justice in order to succeed. It also presupposes no backsliding from any of the other 27 governments in the Council.

The exercise in giving life to Britain's new 'special status' in the EU will compound the sense of deviation from mainstream, mainland integration. The UK already has opt-outs, for as long as it wants, from joining the euro, from integration within the Schengen border-free area, and from the developing corpus of EU law in justice and home affairs. It has a generous rebate from the EU budget. It claims special treatment under the Charter of Fundamental Rights. It



has excluded itself from the banking union. It will not be a participant in the common effort to accept refugees from Syria, Iraq and Afghanistan. Depending on the outcome of the referendum, the Decision of 19 February will entrench in constitutional terms the UK's status as a deviant member state. Technically speaking, indeed, its formal exemption from political union will put the UK in breach of the Copenhagen criteria on which a candidate country's eligibility for EU membership are judged.

In fact, it is difficult to avoid the impression that a Yes vote, especially if close, will amount to little more than a soft form of Brexit. On the basis of the quality of the referendum campaign on the Remain side, a pessimist could be forgiven for expecting the UK to continue to be a reluctant and detached member state of the Union, seeking more often than not to weaken the drift of common policy, dilute the force of EU law, and then dissemble about the outcome. The combination of the European Union Act of 2011, which imposes continuing EU referenda on the hapless British voter, and the Decision of 2016 will certainly narrow the room for manoeuvre of any future more 'pro-European' British government.

### **A fresh start for British Europeans**

In a more optimistic spirit, however, this book offers elements of an alternative approach for the future of British European policy. The contributors make clear that, despite hesitations about membership, the UK has been an influential player in EU affairs for over forty years. But we are also left with a sense of unfulfilled potential, of opportunities missed, of a relationship not properly consummated. Indeed, the many opt-outs from mainstream integration that have deprived the British people from enjoying the fruits of full membership must have contributed to the EU's startling unpopularity in Britain. Now, if we vote to stay in, we will have a 'special status' – but surely that does not condemn us to be relentlessly eurosceptic. It would be a tragedy if a vote to remain turned out in practice to amount to little more than a soft Brexit. Is it too much to hope that a positive outcome of the referendum will spark a significant change of British attitude towards the EU? Could a future government in London begin to turn the tables so that the UK stops being a perennial part of Europe's manifold problems and starts to be a reliable part of the solutions to Europe's problems?

In his essay for this book, Stephen Wall traces the historic roots of Britain's problematic European relationship, especially with France. David Hannay recalls Britain's contribution to the development of the EU and pleads for more continental understanding of British exceptionalism. David Edward explains and justifies the powerful pragmatic role of the Court of Justice. Peter Goldsmith explains what the

Charter is and is not. Brendan Donnelly looks at Britain's tussle with the concept of federalism. Quentin Peel links Britain's constant misunderstanding of Germany with its refusal to accept the single currency. In her critique of the government's recent renegotiation of the UK's terms of EU membership, Kirsty Hughes wonders how Britain's reputation can be restored without a reversal of the new opt-out from political integration. Caroline Lucas calls for progressive forces to 'reimagine' Europe on the basis of a more popular democracy. Malcolm Harbour argues that the UK can capitalise on its support for the single market as and when it takes over the rotating presidency of the Council in July 2017.

Robert Cooper writes that a more self-confident European Union in global affairs would be in the British national interest and would attract a closer British engagement. Fraser Cameron has practical proposals, such as an EU defence white paper, on which the UK (with France) should take the lead. Heather Grabbe argues that the UK would be wise to stop treating its Union membership as a continual transaction and begin, instead, to deploy the EU for strategic goals. Graham Avery hopes that the UK will continue its support for enlargement to the Western Balkans but drop the pretence that Turkey can be a full member. These authors agree that a stronger and different British contribution to the EU would lead to better results in terms of foreign, security and defence policy, and enhance Britain's standing in the world.

## **The future of Europe**

In his Bloomberg speech in January 2013, David Cameron said it would be wrong to hold a referendum on continued British membership of the EU before we knew what kind of Europe we were choosing to stay in or leave. He was right then – and wrong later to change his mind under pressure from his party's nationalist wing. If the prime minister had held to his original position he would not have had long to wait before the beginning of a new round of constitutional talks, involving all member states, aimed at defining more clearly the future of the Union. Put in that wider context, and faced as we are with so many and great dangers, the need to pull the EU more closely together is remorselessly logical. The Lisbon Treaty is being stretched to its limits. The euro crisis, although tempered, is still unresolved; the refugee crisis gives rise to the question 'who's in charge?'; Russian irredentism demands a concerted response in terms of foreign and military policy; and the rising problem of terrorism and organised crime without frontiers suggests at the very least that a review of EU competences and procedures is overdue. On top of all these challenges, the UK has suddenly added, unprompted, the demand to breach its treaty obligations and the threat to break up the Union.

It would be ironic if the Brexit scare acts as a spur to propel Britain's EU partners into quicker and deeper integration. If so this will take the form of a further shift in competences upwards from the states to the Union level, along with a reshuffle of powers between the EU institutions. The banking union needs to be completed with the backstop of a truly federal bank deposit guarantee scheme. Fiscal union, involving the progressive mutualisation of a portion of sovereign debt, is the next step to take, already outlined in a roadmap written by Commission President Jean-Claude Juncker and Central Bank President Mario Draghi.<sup>6</sup> The sharing of the burden between taxpayers of the eurozone requires, of course, full democratic legitimisation in terms of a much strengthened executive authority concentrated in the Commission, with full treasury powers. The ECB will become the lender of last resort. Fiscal legislation for the eurozone, including tax laws, will be enacted only by ministers and MEPs from those countries that have adopted the euro, excluding those from the UK.

So whatever the outcome of the British referendum, the EU is headed for a new constitutional settlement of a federal type with a closely united group of states at its core and looser confederal arrangements for other states. One option, which Cameron and his colleagues seem to have toyed with in their 'renegotiation' but then rejected, was for the UK to ask for a new form of EU membership short of full membership. Affiliate membership may well come back as part of a general revision of the EU treaties the central tenet of which Britain refuses to accept for itself. Importantly, the famous Decision of 19 February obliges the UK not to impede deeper integration as and when the rest of the Union agrees to take such federal steps.

## **A British Europe**

In their admirable variety, all our authors would agree that the British nation as a European nation has a moral duty to care for the state of Europe as a whole, and not simply to be driven by some narrow (and frequently contrived) definition of national interest. Many Britons of earlier generations, including many in our own families, have died in Europe's wars in which Britain was a combatant because it feared that a shift in the balance of power on the European mainland would damage its national interests. World War II and the long Cold War thereafter were not just another struggle over national sovereignty but also a war of ideology, in which the forces of liberal democracy and human rights were pitched against those of racism and totalitarianism. The European Community created in the immediate post-War years, evolved since into European Union, is the prize of

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<sup>6</sup> *The Five Presidents' Report: Completing Europe's Economic and Monetary Union*, June 2015.

victory. Its vocation from the outset was to unify Europe's states and peoples in a new polity where the rule of law and democracy would underpin a "destiny henceforward shared".<sup>7</sup>

Not for nothing is Winston Churchill, war hero, also known as one of the founding fathers of the European Union. For Churchill, as he told the Commons in 1950, sovereignty was not inviolable and "may be resolutely diminished" for the greater European good. For us today, the sharing of Britain's sovereignty with its EU partners is a natural and logical reflection of mutual interdependence: losing national sovereignty is more than adequately compensated for by gaining European influence.

It is true that the UK was a latecomer to the business of European integration. But as Empire dwindled the majority of the subsequent generations of British leaders, across party divisions, came to see their country's destiny in membership of a united Europe. The economic benefits of a common and then a single market helped the UK prosper; the social and cultural benefits of common EU policies helped to improve the quality of life of the British people who became, almost without noticing, EU citizens too. Once fascism was driven out of southern Europe and the Soviet empire collapsed in Central and Eastern Europe, the enlargement of the EU and the projection of its values outside its borders was a moral cause to which the UK also became committed.

British critics of the EU are, of course, right to say that island Britain is a bit different from our mainland neighbours. But all European countries are a bit different from each other – and if the rest of them can combine in a single constitutional effort to help each other out and to try to build the best new polity on earth, why should the British alone stand aside? Just because we were latecomers to the party does not give us the right to leave early. The job of uniting Europe is not yet done. European integration is an inevitably complex, controversial and protracted exercise, and it will not be properly complete if the British people walk away from doing their duty as a European people.

Many of the contributors to this compendium feel that the present government's European policies fall short of what is right. We would not wish to harm the European project by undermining the historic mission of an "ever closer union of the peoples of Europe". Nor would we wish to introduce discrimination on the grounds of nationality into the making of EU law and policy. David Cameron's 'new settlement' will not be, for us, a final destination. All of us, without doubt,

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<sup>7</sup> From the preamble to the Treaty of Paris (1951).

reject Brexit as a serious option and may wonder how on earth we have come so close to risking it. For us, British membership of the European Union works across the political spectrum and between generations.

A better Britain will be a European Britain, just as the European Union will be all the better with the continued membership and closer engagement of the British state and its people.

***Andrew Duff is a Visiting Fellow at the European Policy Centre and a former Director of the Federal Trust. From 1999-2014 he was a Liberal Democrat Member of the European Parliament (East of England).***

*"This book offers an accessible and authoritative overview of the UK's role in what the EU has achieved, and how the UK has steered the EU towards its own national interest. The prominent authors shed light on the inner workings and leadership behind the EU-UK relationship as well as correcting many misconceptions of the role the UK has played. It provides a timely rebuttal to those calling for a distancing of the UK from European decision-making, which would leave Britain on the sidelines, and encourages the British people to realise the full potential of their European heritage."*

**Herman Van Rompuy**

President Emeritus of the European Council  
Former Prime Minister of Belgium  
President of the European Policy Centre

*"This collection of elegant and forceful essays by people who actually know what they are talking about should raise the level of debate as we make a fateful decision in June on the future of Britain and Europe. If reason and evidence still count for anything in politics this book demonstrates clearly why the sane answer this summer should be to remain with our friends in the EU."*

**Chris Patten**

Chancellor of the University of Oxford  
Former European Commissioner for External Relations



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