



## Federal Trust Policy Commentary

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### The Reform Treaty: Small Step or Giant Leap?

A striking feature of discussion about the European Reform Treaty agreed by the European Council in Lisbon earlier this month has been the ability of commentators, confronted with exactly the same text, to disagree radically over the document's significance. For some, it is a mildly disappointing document, lacking in focus and ambition; for others it is a springboard for exciting and far-reaching future developments; for yet others, particularly in the United Kingdom, it is a gigantic step towards the European superstate. To some extent, these different assessments are matters of conscious political positioning. Those eager for further institutional reform in the Union do not wish to accept Mr. Brown's conclusion that no further institutional changes can be entertained for at least ten years. The Treaty's godfathers, such as Mrs. Merkel and Mr. Sarkozy, are naturally bent on stressing its wide-ranging significance. Those eager in the United Kingdom to provoke a referendum on the Reform Treaty predictably paint its provisions in the most lurid possible colours.

But there are deeper reasons than those of rhetorical opportunism why views of the Reform Treaty are so divergent. It is psychologically impossible for any commentator to assess the Reform Treaty without being influenced by his or her pre-existent view of the European Union and in particular the way it has developed in recent years. There will not be many commentators content with the recent evolution of the European Union who will find the Reform Treaty wholly unacceptable. Equally, there will not be many wholly dissatisfied by the Union's present state who find their underlying

discontent cured by the Treaty. Moreover, the Treaty contains within its provisions much that is tentative, incipient and facilitatory. Any general view of its impact depends crucially upon both the likelihood and desirability, from the point of view of the commentator, of the options and pathways opened up by the Treaty's innovations. Ironically, the Treaty's most enthusiastic supporters and critics are sometimes able to agree on the likelihood of particular consequences flowing from the new provisions. Where they disagree is on the desirability of these consequences. The scope for such radically different analyses of the Reform Treaty's provisions is well illustrated by its clauses on the Common Foreign and Security Policy.

Under the Maastricht Treaty of 1992, the European Union undertook to develop a Common Foreign and Security Policy (CFSP), an enterprise on which it has made limited progress since that date. The Reform Treaty is an explicit attempt to inject new momentum into that endeavour. In the United Kingdom, the goal of a Common Foreign and Security Policy is one wholly rejected by influential sections of the press, by many parliamentarians and the well-funded Eurosceptic lobby groups. They are horrified by such innovations of the Reform Treaty as the possibility for the High Representative to speak on behalf of the Union at the United Nations, the introduction of some majority voting into procedural and urgent questions of the CFSP, the establishment of a European diplomatic service or the (circumscribed) right of initiative given to the High Representative. They are understandably unimpressed by such restrictions as the

requirement for unanimity in the Council before the High Representative on the Union's behalf can speak at the United Nations or by the "emergency brake" for individual member states when they are outvoted on a proposal made by the High Representative. For them, the Reform Treaty represents a significant step along a road which they would like utterly to shun. That the step might have been a yet greater one is of little reassurance to them. *C'est le premier pas qui conte.*

The British government and certain sections of British public opinion have a different starting-point. The general concept of a European foreign and even defence policy is one which opinion polls over the years have suggested evokes less hostility among British public opinion than many other aspects of the European Union's activities. The British government for its part believes that it will be able to shape decisively the content and procedures for an evolving European foreign policy; it does not wish to exclude itself from another area to the Union's future development, as it has with the European single currency, the frontier-free element of the Schengen area and certain aspects of Justice and Home Affairs. For the British government, the provisions of the Reform Treaty are largely acceptable as they stand, partly because they are mainly intergovernmental in character and partly because the government believes that it will be protected by the "emergency brake" on the (probably rare) occasions when it may be outvoted. The British government has even taken some pleasure in robustly contradicting the clearly exaggerated claims of some critics that the Reform Treaty might jeopardise

the United Kingdom's permanent seat at the UN. Indeed, it has sometimes seemed that the British government is only comfortable in talking about the Reform Treaty when defending it against clearly unsustainable criticism.

This essentially defensive posture on the part of the British government has had and will inevitably continue to have an impact on the British political debate concerning the Reform Treaty, not least in the field of CFSP. The Reform Treaty makes, as did the European Constitutional Treaty, a number of symbolic and practical changes in the Union's Common Foreign and Security Policy, changes at least potentially pointing towards greater sovereignty-pooling in this area. On occasion the British government has been so eager to deny exaggerated claims about the extent of this sovereignty-pooling that it has come near to denying that any such sovereignty-pooling would, should or could take place as result of the new Treaty. This in its turn is an exaggerated claim at the opposite end of the spectrum to the critique it is intended to rebut. Both those whose hope is for a rapidly-evolving European common foreign policy and those implacably opposed to such an evolution are objective allies in reminding the British government that the Reform Treaty's provisions on CFSP are incompatible with a purely and exclusively national foreign policy for the United Kingdom, unconstrained in any circumstances or in any fashion by Britain's membership of the European Union. These constraints are not nearly as burdensome or far-reaching as is frequently asserted, but they exist nevertheless and are being freely assumed by the signatories of the Reform Treaty because they are judged to be in the long-term and global interests of the signatories.

It now seems highly unlikely that there will be a referendum on the Reform Treaty in the United Kingdom. The political cost to Mr. Brown of not holding this referendum will probably not be negligible, but is unlikely to be as high as the referendum's most vocal supporters believe. The political cost of now changing his decision not to hold a referendum and running the real risk of losing that referendum would be very high indeed. For the long-term future of the European debate in the United Kingdom, the question of whether Mr. Brown holds a referendum is, however, not necessarily

decisive. At least as important are the terms in which the government and its advocates choose to discuss and recommend the Reform Treaty, whether or not in the context of a concurrent referendum.

Those governments and individuals within the European Union most committed to its underlying integrative and institutional structure have made clear their disappointment that this structure was not further developed in the Reform Treaty. Their disappointment is the mirror image of that consternation properly felt at the terms of the Treaty by radical Eurosceptics in the United Kingdom and elsewhere. But it would be wrong to conclude from these contrasting reactions that the Treaty represents in some way an uncontroversial midway point of equilibrium between the integrationist and radical Eurosceptic approaches to the European Union. The Reform Treaty, which increases the scope of qualified majority voting, which acknowledges, however cautiously, the concept of majority voting in CFSP, which increases the powers of the European Parliament, which consolidates the legal personality of the European Union, which finally abandons the intergovernmental "pillar" structure for the Union, stands squarely in the tradition of the integrative European treaties which have preceded it. Reasonable debate can be conducted on whether the pace and even the quality of this integration have been maintained in the Reform Treaty as compared to other preceding treaties, but the new Treaty emphatically does not represent a change of integrative direction. The British government is treading dangerously in its more than occasional pretence that it does. Mr. Miliband, for instance, recently claimed in the "Daily Telegraph" that the Reform Treaty marked the end of the "federalist vision" for the European Union. If Mr. Miliband believes that before the Reform Treaty the European Union was correctly described as being animated by a "federalist vision", a highly pejorative description in the current impoverished British debate on the European Union, then it is very difficult to see what it is that could be fundamentally changed in that analysis by the Reform Treaty. For Mr. Miliband to associate himself with such vague and polemical rhetoric to describe the present European Union, while apparently claiming that the Reform Treaty purges the Union of its supposedly

unacceptable federal elements, is strange indeed. The European Union has a number of central elements in its structure which can properly be described as "federal" in character, such as the directly elected European Parliament, the supremacy of European over national law, its system of qualified majority voting, its independent European Commission and its central budget. Far from abolishing these characteristics, the Reform Treaty reinforces them. Given the uncertainty of the term's meaning in British public discourse, Mr. Miliband would perhaps anyway be well-advised to avoid the use of the term "federal" in his public statements on European policy in future. He would certainly be well-advised to avoid suggesting that the Reform Treaty marks any substantial regression in the integrative evolution of the European Union. As the late President Eisenhower once nearly put it, the Reform Treaty in fact makes the European Union "more like it is now than it ever was before." As always, how much more like itself than before lies primarily in the eye of the beholder.

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