

THE FEDERAL TRUST

for education & research

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European Newsletter

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Note from the editor

This monthly newsletter monitors and analyses institutional and political developments in the European Union, with a particular interest in any developments relevant to the Lisbon Treaty. It will regularly feature contributions from expert commentators on current European issues, providing a platform for differing opinions. Views expressed are those of the authors and are not necessarily shared by the Federal Trust. The Newsletter is available at www.fedtrust.co.uk.

Contents

1. Message from the Chairman, <i>Sir Stephen Wall</i>	1
2. Ratification in 27 member states: An Overview	2
3. Editorial: What happens after ratification? <i>Brendan Donnelly</i>	3
4. The UK Debate on the Lisbon Treaty, <i>Ulrike Rüb-Taylor</i>	4
5. The British and JHA: Semi-detached or semi-attached?, <i>Jonathan Church</i>	5
6. News from the Federal Trust	6

1. Message from the Chairman

At the beginning of this year, I was honoured to be asked to succeed John Pinder as Chairman of the Federal Trust. John's contribution to the European debate in this country has been for many years an inspiration to all of us who believe in Britain's central place within the European Union, through his knowledge, intellectual rigour and optimism. The Federal Trust is for its part an organisation which has carved out for itself a distinctive and important niche in the spectrum of those who think and write sympathetically about the European Union and the United Kingdom's role within it. Nor have the Trust's interests been confined in recent years to the European continent. The governance of the United Kingdom, the World Trade Organization and the African Union have also engaged the interest and research of the Trust. Given its limited resources, the range of its interests, publications and conferences have reflected great credit on the Trust's staff and supporters.

As the Treaty of Lisbon passes through the Houses of Commons and Lords, the Trust has decided to reinstitute the series of Newsletters which it suspended after the French and Dutch referendums made clear that the European Constitutional Treaty would never be ratified in its previous form. These Newsletters will appear monthly and review the progress of ratification of

continued overleaf

The Federal Trust for Education and Research

Brendan Donnelly, Director

Newsletter Editor: Ulrike Rüb-Taylor

ulrike.rub@fedtrust.co.uk

Further copies available from:

31 Jewry Street

London

EC3N 2EY

Tel: +44 (0)20 7320 3045

www.fedtrust.co.uk

...is a think tank that studies the interactions between regional, national, European and global levels of government.

Founded in 1945 on the initiative of Sir William Beveridge, it has long made a distinctive contribution to the study of federalism and federal systems.

2. Ratification in 27 Member States: An Overview

<i>Member State</i>	<i>Progress Towards Ratification of the Lisbon Treaty</i>	<i>The Constitutional Treaty</i>
Austria	Austria is planning parliamentary ratification of the Treaty. A two-thirds majority is required in both chambers of parliament, the Nationalrat and the Bundesrat.	Ratified in Parliament
Belgium	Parliamentary ratification will require a simple majority in each of the seven regional and federal parliaments.	Ratified in Parliament
Bulgaria	The government presented the bill on ratification of the Treaty to parliament on 31 January 2008. The chamber will vote by simple majority.	Ratified in Parliament
Cyprus	The ratification bill was submitted to parliament on 17 December 2007. Ratification requires an absolute majority in favour.	Ratified in Parliament
Czech Republic	The ratification procedure is planned to be by parliamentary vote. No timetable has yet been released.	Referendum Abandoned
Denmark	The government decided against a referendum on the Treaty and presented the ratification bill to parliament on 9 January 2008. The parliamentary vote is expected to take place in the spring. There will also be a referendum on giving up Denmark's opt-outs, but no timetable has been agreed. This question will not be considered until after the Treaty's ratification.	Referendum Abandoned
Estonia	The ratification bill was presented to parliament on 31 January 2008 and requires a simple majority to be passed.	Ratified in Parliament
Finland	Parliamentary ratification procedure requires a two-thirds majority in favour.	" "
France	The Treaty was ratified in the parliamentary sessions of 7 and 8 February 2008. The Chamber of Deputies voted in favour by 336 votes to 52, while the Senate's majority was 265 in favour, with 42 in opposition and 13 abstentions.	Rejected in Referendum
Germany	The government submitted the bill for ratification of the Treaty on 19 December 2007. It will need to be approved by both chambers of parliament, the Bundestag and the Bundesrat, by a majority of two-thirds. The process is planned to be completed before the summer recess.	Ratified in Parliament
Greece	The timetable for parliamentary ratification, requiring a simple majority, has not yet been announced.	Ratified in Parliament
Hungary	Hungary was the first country to ratify the Treaty, on 17 December 2007. The parliament voted in favour by 325 votes to 5, with 14 abstentions.	Ratified in Parliament
Ireland	Ireland is likely to be the only country to hold a referendum on the Treaty's ratification. It will probably take place in May or June 2008.	Referendum Abandoned
Italy	Italy's timetable for parliamentary ratification has not yet been announced. A simple majority in both houses will be required.	Ratified in Parliament
Latvia	Parliamentary ratification will be by simple majority.	" "
Lithuania	Parliamentary ratification will be by simple majority.	" "
Luxembourg	Luxembourg intends to ratify by parliamentary vote, in which a simple majority is required. (A consultative referendum was held on the Constitutional Treaty in 2005; 56% voted 'for').	Ratified after Referendum
Malta	The Maltese parliament unanimously ratified the Lisbon Treaty on 29 January 2008.	" "
Netherlands	The Dutch government intends to ratify the Treaty by parliamentary vote, a decision based on the opinion of the Council of State. Both houses of parliament need to achieve a simple majority. The opposition has tabled a referendum bill in parliament, but it is expected to fail.	Rejected in Referendum
Poland	Poland intends to ratify the Treaty in parliament. The majority required (one half or two thirds) will depend on whether the Treaty is deemed to constitute a "transfer of powers".	Referendum Abandoned
Portugal	After a debate on how to ratify the Treaty, the Portuguese Prime Minister announced in January the decision to ratify by parliamentary vote. On 7 February 2008, parliament rejected a motion tabled by opposition parties calling for a referendum to be held.	Referendum Abandoned
Romania	Romania's parliament ratified the Lisbon Treaty on 4 February 2008, by 387 votes to 1, with 1 abstention.	Ratified in Parliament
Slovakia	The parliamentary vote on ratification had been planned for 7 February 2008. It has however been postponed due to the absence of opposition party delegates who were protesting against a domestic media law. The required 3/5 majority could therefore not be achieved.	Ratified in Parliament
Slovenia	Slovenia, currently holding the EU Presidency and keen to be seen as one of the first countries to ratify the Treaty, did so by parliamentary vote on 29 January 2008, by 74 votes to 6.	Ratified in Parliament
Spain	Spain is planning to ratify the Treaty by parliamentary vote, which requires the approval of both houses of parliament. No timetable has yet been announced. (A consultative referendum was held on the Constitutional Treaty in 2005, in which 77% voted 'for' and 17% 'against').	Ratified after Referendum
Sweden	Sweden intends to ratify the Treaty in parliament, where a simple majority in favour is required.	Parliamentary Vote Abandoned
United Kingdom	The Government intends to ratify the Treaty in parliament, where it requires a simple majority in both the House of Commons and the House of Lords. The ratification bill was presented to parliament on 17 December 2007.	Referendum Abandoned

the Treaty, particularly in the United Kingdom, but throughout the rest of the European Union as well. The Newsletters will also offer an opportunity for the Trust to bring you up to date with its other activities and publications. The Trust welcomes comments and contributions from all its readers. We also enjoy seeing and meeting as many of you as possible at our regular events, advertised in the Newsletters and on our website.

I hope you will enjoy and find useful this new series of Federal Trust newsletters. If you wish to pass them on to your colleagues, please do so. We should be happy to put them on our mailing list for future editions if they so wish.

Sir Stephen Wall
Chairman, The Federal
Trust

2. Editorial: What happens after ratification?

Although the British ratification of the Lisbon Treaty will not yet be completed for several months, few commentators now doubt that by the summer the British government will have succeeded in its goal of securing the Treaty's ratification by a purely parliamentary procedure. The vote in favour of the Treaty at its first major consideration by the House of Commons last month was an overwhelming one, with many fewer votes against or abstentions from the governing Labour Party than the Treaty's opponents had hoped. When the House of Lords comes to consider the Treaty (probably starting in early March), it would be surprising if it were willing to try to overturn such a substantial majority in the directly-elected lower house. Many British politicians are probably hoping that after the ratification of the Lisbon Treaty, they will be able in the latter half of 2008 to turn their attention away from European questions. For Mr. Cameron and Mr. Brown at least, this is likely to prove a vain hope.

Mr. Cameron and his Conservative colleagues have over the past six months

been vocal in their calls for a referendum on the Lisbon Treaty. They have argued that the Treaty implies substantial further pooling of British sovereignty, which can only be legitimised by a direct appeal to the electorate; and they have been insistent in recalling that the Labour Party promised a referendum on the European Constitutional Treaty, many substantive provisions of which are very similar to those of the Lisbon Treaty. At the prompting of the more radically-minded among his colleagues, Mr. Cameron has promised that, if and when the parliamentary ratification of the Lisbon Treaty is completed, the Conservative Party will "not be willing to let the matter rest." Later this year, Mr. Cameron will have to make clearer just what he means by this vague assertion.

Within the ranks of the Conservative Party's membership, there is probably a majority, and within its Parliamentary ranks there is certainly a vocal minority calling upon Mr. Cameron to promise, in the event of a Conservative victory at the next General Election, that his government will hold a referendum on the Lisbon Treaty, a referendum in which the newly-elected Conservative government would campaign for the Treaty's rejection. Mr. Cameron is clearly unwilling to give any such promise. He fears, probably rightly, that such a promise, effectively to reverse a European treaty negotiated and ratified by all member states of the Union, could plausibly be presented by the Labour government as another example of the Conservative Party's unhealthy obsession with European issues, an obsession which in the mind of many Conservatives is not far if at all removed from the desire to leave the European Union. Although Mr. Cameron is hardly an admirer of the European Union, he is well aware that the prospect of leaving the Union, whatever its perceived faults, is one which frightens most British voters. Since assuming the leadership of the Conservative Party, Mr. Cameron's unmistakable tactic has been to talk as little as possible about European issues. A clear promise now to hold a referendum on the Lisbon Treaty after the General Election of 2009 or 2010 would ensure that European questions would be central to the electoral campaign at that

time. If and how Mr. Cameron is able to avoid in the coming months giving such a promise will say much about his ability to guide the Conservative Party along towards what he regards as more electorally promising themes than Europe. Although opinion polls suggest that many voters have some sympathy for the Conservative Party's current hostility to the European Union and most of its works, this is not a sympathy which in recent times has translated itself into electoral success for the Conservative Party at General Elections. Many in the Conservative Party still remember with a shudder of horror the conspicuously unsuccessful General Election campaign of 2001, the central and unpersuasive message of which was the urgent need to "save the pound."

Mr. Brown by contrast will have a European decision to take this summer which is probably in the long term less significant for his party's future, but which may well cause him considerable personal uncertainty. It is the decision how far, if at all, to encourage and support the candidature of his predecessor, Mr. Blair, for the Presidency of the European Council established by the Lisbon Treaty. The issue is far from straightforward. It is not entirely clear if Mr. Blair wants the post. It is certainly not clear that Mr. Brown's support would guarantee him the job. If Mr. Blair were elected President of the European Council, it can only be a matter of speculation what the impact of his election might be on the functioning and external perception of this new post, both in the United Kingdom and in the rest of the European Union.

When the House of Commons had its first general debate last month on the Treaty of Lisbon, the former Conservative leader William Hague caused great amusement by speculating that Gordon Brown might find himself confronted at future European Council meetings by his unloved predecessor, Mr. Blair, even though he himself had been against such an appointment. The image was amusingly evoked, but is far from the reality. Mr. Blair has no chance of becoming President of the European Council without Mr. Brown's backing. There may well be sufficient opposition within the European Council to block his

candidature anyway*. There would certainly be individual members of the European Council ready to oppose his nomination. If Mr. Blair is elected, with Mr. Brown's support, it will be because a sufficient majority has been assembled to overcome national vetoes in the Council. Mr. Hague conceived his elegant speech last month as a warning against the "dangers" of qualified majority voting for the Presidency of the European Council. In the case of Mr. Blair, however, Mr. Brown ironically retains a British veto on his predecessor's candidature, and that candidature can only succeed, if it does, as a result of the qualified majority voting system for the post introduced by the Treaty of Lisbon.

In a recent interview with a Sunday newspaper, Mr. Blair strongly hinted that he might be interested in the post of President of the European Council, but made that interest conditional upon the post's being one endowed with what he regarded as appropriate powers. It is difficult indeed to see how any meaningful assurances could be given to Mr. Blair in this regard. The Lisbon Treaty is vague on the subject of the President's powers precisely because the signatories had very different views about the new post's workings. An argument can certainly be made for the proposition that a well-known, prestigious international figure such as Mr. Blair would be a suitable first occupant of the European Council's Presidency. At least as powerful an argument is that the imprecise and limited objective resources given to the Presidency of the European Council by the Treaty of Lisbon dictate that the first holders of the office should be men or women, perhaps from smaller member states, who understand and sympathise with the workings of the European institutions and whose experience of the Union has not simply been, like Mr. Blair's, that of high level intergovernmentalism in the European Council. To make a success of the Presidency of the European Council, it will not be necessary merely to agree a common approach with Mrs. Merkel and Mr. Sarkozy, it will be necessary for the President to consult and conciliate a whole range of other European actors as well. Whether the former Prime Minister of a large member state with a

long tradition of intergovernmentalist thinking can do that must be at least doubtful.

Leon Trotsky was fond of encouraging and intimidating his audiences in the early twentieth century by saying that "if they were not interested in the revolution, the revolution was certainly interested in them." The perplexing European problems with which they are now confronted allows something similar to be said about Mr. Brown and Mr. Cameron. Even if they are not particularly interested in the European Union, it will always continue to have the means of forcing them to take an interest in it.

Brendan Donnelly

*For public opposition see:

[Petition against the nomination of Tony Blair as "President of the European Union"](#)

4. The UK debate on the Lisbon Treaty

After the (belated) signing of the Lisbon Treaty by Prime Minister Gordon Brown in December last year the British government rapidly began the process of ratifying the Treaty in Parliament. The European Union (Amendment) Bill was presented to Parliament on 17 December 2007 and a first reading held on 21 January 2008. The first, preliminary vote cast at that session returned a convincing victory for the government, of 362 votes for and 224 against the motion to approve the Bill in principle. Foreign Secretary David Miliband promised "at least 15 days of debate" on the Treaty in Parliament over the coming month, during which the text will be discussed in greater detail. At the conclusion of this process, expected to be in March, there will be a final vote on the floor of the House. Once this process is completed in the House of Commons, the Bill will move on to the House of Lords, where the EU Select Committee and its sub-committees are currently undertaking inquiries into various aspects of the Treaty.

The debate on whether a referendum should be held in addition to parliamentary ratification still rages on. The Conservative opposition is calling for a referendum on the Lisbon Treaty, arguing that a referendum had been pledged on the comparable European Constitutional Treaty by the previous government under Tony Blair. The Conservative leader, David Cameron, has implied that the Conservatives might hold in government a referendum on the Treaty, particularly if they took power before all other member states had ratified the Treaty (see editorial). The government however insists that a referendum is not necessary since the new treaty no longer represents a "constitutional concept", and it has anyway secured further opt-outs for the United Kingdom in the negotiation process leading up to the Lisbon Treaty.

This view is however not shared by all Labour MPs. At the first reading of the Treaty, 18 Labour MPs, together with some nationalist MPs, signed an amendment calling for a referendum. The Speaker decided that there should be no vote on this amendment. In early February four Labour MPs were told at a meeting of the parliamentary Labour Party that they might face disciplinary action for campaigning for a referendum against the government line. The MPs are part of the cross-party "I Want A Referendum" campaign, which intends to hold unofficial mock referendums in ten parliamentary constituencies, including the seat of Europe Minister Jim Murphy.

The government's reasoning for not submitting the Treaty to a referendum has been discussed in recent reports of two separate Parliamentary committees. Both reports were widely cited in the press as evidence for the equivalence of the Lisbon Treaty and the abandoned Constitutional Treaty, despite containing rather more nuanced analyses. In October 2007 the European Scrutiny Committee published its report on the EU Intergovernmental Conference, concluding that "the new Treaty produces an effect which is substantially equivalent to the Constitutional Treaty [...] for those countries which have not requested derogations or opt outs from the full range of agreements in the Treaty". Considering that the UK had

secured wide-ranging opt-outs in the negotiations on the Lisbon Treaty, in particular in the area of Justice and Home Affairs, this report would support the government's view rather than damage it. A second report, by the Foreign Affairs Committee, examines specifically the foreign affairs aspects of the treaties and concludes that "there is no material difference between the provisions on foreign affairs in the Constitutional Treaty which the Government made subject to approval in a referendum and those in the Lisbon Treaty on which a referendum is being denied." Those arguing that no British referendum need be held on the Lisbon Treaty have not been slow to point out that, as the Committee itself notes, neither the Constitutional Treaty or the Lisbon Treaty make significant changes to the intergovernmental nature of decision-making in CFSP. CFSP was not in either document an area of new sovereignty-pooling through the European institutions which could plausibly have been held of itself to justify a referendum on the Lisbon Treaty.

Ulrike Rüb-Taylor

Links

- [European Union \(Amendment\) Bill](#)
- [House of Lords EU Select Committee](#)
- [I Want A Referendum campaign](#)
- [Thirty-fifth report of the European Scrutiny Committee: "European Union Intergovernmental Conference"](#)
- [Foreign Affairs Committee report on Foreign Policy Aspects of the Lisbon Treaty](#)

5. The British and JHA: Semi-detached or semi-attached?

Like the European Constitutional Treaty which preceded it, the Lisbon Treaty lends itself to a number of contrasting, even contradictory interpretations. To some extent, these various interpretations derive from the differing starting-points of those doing the interpretation and in particular from differing assessments of the integrative path the European Union has taken over the past twenty years. It is hardly surprising that Jean-Claude

Junker from Luxembourg and David Miliband from Westminster should differ fundamentally in their approaches to the new Treaty. There is, however, much in the Lisbon Treaty that might have been deliberately designed to encourage differing assessments of the document. Justice and Home Affairs is pre-eminently one of those areas.

For most of the Union's member states, the Lisbon Treaty realises something akin to the culmination of a process started by the Maastricht Treaty in 1992; the 'communitarisation' of the Justice and Home Affairs policy area. The 'intergovernmental' JHA pillar of the Union was first diminished in 1997 by the Amsterdam Treaty, when some of the less sensitive JHA areas (visas, asylum, immigration) were transferred to the first, 'Community' pillar, characterised by the increased involvement of the European Parliament, European Commission and ECJ. In 2004, QMV and co-decision were extended to many of those areas which had retained intergovernmental characteristics to various degrees within the Community pillar. The Lisbon Treaty will transfer the areas remaining in the third pillar - Police and Judicial Cooperation in Criminal Matters - to the Community pillar, where decisions will (with limited exceptions) be taken by co-decision between the European Parliament and Council of Ministers, with QMV operating in the Council and the ECJ coming in time to have full jurisdiction.

The complexity of decision-making in the area of Justice and Home Affairs has been until now a serious impediment to citizens' understanding of decisions taken at the European level. By effectively harmonising decision-making procedures throughout JHA the Lisbon Treaty promises to enhance accessibility and transparency in this area, while the expansion of QMV, co-decision and the role of the ECJ should bring a greater degree of democratic oversight and a more effective decision-making structure to an area previously the exclusive domain of national Ministers.

For British citizens however, JHA does not become obviously simpler as a result of the Lisbon Treaty. In relation to the United Kingdom, the general 'communitarisation' of Justice and Home

Affairs accepted by most member states of the Union is far from a fait accompli. The extension of Qualified Majority Voting in the Council envisaged in the original Constitutional Treaty had in that document been 'compensated' by the inclusion of an "emergency brake" procedure, operable by any country which considered a proposal would "affect fundamental aspects of its criminal justice system". In the Lisbon Treaty however, the British government has *in addition* to this limited procedure secured a generalised opt-in/opt-out from all newly-communitarised JHA areas. This change constitutes one of most striking objective differences between the Constitutional Treaty and the Lisbon Treaty, a difference of which British politicians and commentators are understandably more conscious than many of their continental counterparts.

It is on the face of it difficult to understand why for the British national interest what was not deemed necessary in the Constitution, namely a generalised opt-in/opt-out on JHA, has since become so in the Lisbon Treaty. It is instructive to note how the UK has operated its existing JHA opt-in/opt-out arrangements. While in the areas of legal migration, visas and borders it has opted-in and out on an apparently pragmatic basis, it has *opted in to all* asylum and civil law measures. In the context of the Lisbon Treaty's extended opt-out, it is a particular irony that the British government is currently pleading before the ECJ to opt *in* to certain JHA areas relating to the Schengen arrangement, where the United Kingdom's automatic involvement is not guaranteed by existing agreements. It is expected too that the UK will be excluded against its will, with potentially substantial practical implications, from two forthcoming European-wide data systems, the Schengen and Visa Information Systems.

The British government certainly claims that the Lisbon Treaty incorporates greater 'safeguards' when compared with the Constitutional Treaty, in order to protect real British national interests. Indeed the differences between the Constitutional Treaty and the Lisbon Treaty in this regard form one of Mr. Brown's strongest arguments against the need for a referendum on the latter text.

But given the absence of these 'safeguards' in the Constitutional Treaty, the way in which existing opt-outs have only patchily been invoked in the past, and the likely constraints on their free use in the future, it is easy to conclude that the government has been motivated in its approach to these questions at least as much by considerations of its own internal political positioning as by any coherent perception of the national interests of the United Kingdom. Viewed from Brussels, the Treaty of Lisbon may well appear "the same in all but name" as the Constitutional Treaty. Viewed from London, it is important for the British government to be able to say that, at least in its appearance for the short term, the "British" version of the Lisbon Treaty is a quite different beast from the Constitutional Treaty. Only time will show the real substance of this claim.

Jonathan Church

6. News from the Federal Trust

European Essays

Essay No. 41: **Fog in Westminster, Europe Cut Off**, by Peter Sutherland

In this European Essay, Federal Trust President Peter Sutherland, a former European Commissioner and Director General of the World Trade Organisation, warns that the United Kingdom is now "nearer to systematic 'semi-detachment' from the European Union than it has ever been since 1973." In a review of British policy towards the European Union over the past fifteen years, he argues that the "continuity of European policy between New Labour and its predecessor in government has been remarkable." Neither party, in Peter Sutherland's view, has had the "courage to explain to the British electorate that political integration within the European Union is central to the way the Union works, that the European institutions are a necessary part of this integration...and that political integration is beneficial to those who participate in it."

On the euro, on institutional questions, on Britain's place in the world, Peter Sutherland accuses successive British governments of failing to give a "positive and realistic" account of the European Union and the way it works. These governments have in effect accepted the radical Eurosceptic analysis, whereby continuing European political integration is "equated with the ill-defined nightmare of a European super-state." The negative rhetoric of "opt-outs achieved, red lines secured, and national interests defended against the supposed threat posed to them by the European Union" has been the inevitable result.

Peter Sutherland believes, however, that more British voters than is sometimes realised by their political leaders recognise the need for "European solutions to pressing contemporary problems such as global warming, international terrorism, trade negotiations, energy security and the application of new technologies." A British politician who spoke to this audience might be "surprised at the ease with which the construction of a new, less complex-ridden British approach to the European Union could advance." Anti-European feeling in the United Kingdom is "frequently superficial, based on a lack of interest and information rather than genuine hostility."

The Essay can be downloaded from the Federal Trust website on www.fedtrust.co.uk/admin/uploads/Essay41_Sutherland.pdf or ordered for £5 in hard copy from the Federal Trust at info@fedtrust.co.uk.

Essay No. 42: **Regionalism and the Conditions for a New International Organisation**, by Dr Thomas Lane

www.fedtrust.co.uk/uploads/Essay42_Lane.pdf

Policy Commentaries

A New Organ of the European Union: "National Parliaments Jointly", by Dr Davor Jancic, February 2008

www.fedtrust.co.uk/uploads/Parliaments_Jointly.pdf

A Tale of Two Referendums - The EU as a Model for the 'British Union', by Dr Mark Corner, February 2008

www.fedtrust.co.uk/admin/uploads/2_Refs-EU_BU.pdf

The Reform Treaty: Small Step or Giant Leap?, by Brendan Donnelly

www.fedtrust.co.uk/uploads/Commentary1_October_07.pdf

Perspectives for the European Union after the Lisbon European Council, by John Palmer

www.fedtrust.co.uk/uploads/Commentary2_October_07.pdf

Recent events

Conference Report: The EU Reform Treaty - Small Step or Giant Leap? 10 December 2007

www.fedtrust.co.uk/admin/uploads/Reform_Treaty_report.pdf

Other recent material

Constitutionalisation without a Constitution, Speech by Brendan Donnelly in Sofia, December 2007

www.fedtrust.co.uk/admin/uploads/Const_without_Const.pdf

Submission on the EU institutions after the Lisbon Treaty for the House of Lords EU Select Committee

www.fedtrust.co.uk/admin/uploads/Lords_Institutions.pdf

Recommended reading

Contemporary Chinese views of Europe, by Karine Lisbonne-de Vergeron

www.chathamhouse.org.uk/publications/papers/view/-/id/578/