

THE FEDERAL TRUST

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European Newsletter

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This monthly Newsletter monitors and analyses institutional and political developments in the European Union. Regular features will focus on the rotating EU Presidencies, any developments relevant to the future of the European Constitutional Treaty and other news from the European Union's institutions. This Newsletter follows earlier series which have offered UK perspectives on the debate about the EU Constitutional Treaty. It is designed to offer contrasting views on a number of different policies and questions. Back issues are available at www.fedtrust.co.uk/european_newsletter.

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1. Editorial: Crisis, what crisis?

It is generally (but not necessarily correctly) believed that the then Prime Minister James Callaghan lost the 1979 General Election for the Labour Party when shortly before the election he returned from an international summit meeting to the strike-torn United Kingdom and proclaimed 'I see no crisis.' No General Election is pending within the Federal Trust. No electoral disaster therefore should arise from the central argument of this article, that the much-touted talk of the European Union's current 'crisis' is at best over-stated, and at worst maliciously destructive.

Nobody can deny that the rejection of the European Constitutional Treaty by the French and Dutch electorates was a setback for the process of European integration. The Treaty would have made the European Union somewhat more efficient, rather more democratic and definitely more transparent. The loss of these cumulative improvements, at least for the short term, is highly regrettable. But even enthusiastic advocates of the Treaty accepted that it represented an often awkward compromise between radically different conceptions of the Union's nature and future evolution. Peter Hain's remark that the Treaty was a 'tidying-up' of the existing treaties was rightly criticised as politically inept, but it contained a germ of truth.

The European Union envisaged by the Constitutional Treaty is in most respects very similar to the Union we have today. Indeed, the absence of demonstrable and compelling innovations in the Treaty was one reason why it was so difficult to commend it to the French and Dutch voters. The day to day workings of the Union are not grinding to a halt in the absence

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...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 powerful contribution to the study of federalism and federal systems.

of the Constitutional Treaty and show no signs of doing so. On a purely technical level, the Union's recent enlargement has proceeded more smoothly than some observers feared. The argument for substantial reform of the Union's decision-making structures has not yet been made noticeably more urgent or cogent by the presence of twenty five rather than fifteen voices at the table. The European Union can certainly survive and probably flourish in at least the short term without the Constitutional Treaty.

The referendums in France and the Netherlands certainly contain stark warnings for all Europe's governments. It is not possible indefinitely to blame national problems and controversial national decisions on the European Union, without general support for the Union and its aspirations suffering thereby. Particularly in France, the Union has been made a scapegoat for all the ills, real and imagined, deriving from economic and social globalisation. The rejection of the Constitutional Treaty was a direct consequence of the laziness and opportunism of successive French governments in their discourse to the French people about Europe.

But Mr. Chirac and his predecessors are not alone to blame. The Treaty itself was pre-eminently a document conceived and negotiated between technocratic elites. To the Brusselocracy (which of course is not only to be found in Brussels) the Constitutional Treaty was a thing of beauty and a joy for ever. When subjected to the brutal and demanding scrutiny of a referendum campaign, its carefully-balanced ambiguities and sophisticated incrementalism left the electorate confused, bored and vulnerable. There is no reason whatsoever to believe that the French and Dutch electorates this summer were voting against European integration or the European institutions in general. They were however registering their protest against the vision of Europe which (not always rightly) they thought they saw incorporated in the Constitutional Treaty. There is much talk today of the need for 'reconnection' between the European Union and national electorates. In reality, the

'reconnection' needed is that between national political classes and their national electorates, on European as well as on other issues. Advocacy of the European Union and the promotion of its underlying values is not exclusively or even primarily a task for the European Commission, or the European Parliament. It is a task for national governments, and they have notably failed to carry it out over the past decade.

The first European Council after the French and Dutch referendums was soured by the Council's inability to agree on the European budget for the years 2007 to 2013. Ironically, the Council President had brought forward this issue in the hope that its speedy resolution might act as a counter-weight to the setback represented by French and Dutch rejection of the Treaty. Adequate time remains for the solution of this difficulty, even if it is necessary to wait for the Austrian Presidency in the first half of next year. The over-hasty attempt to agree the European budget in June was demonstrably an inappropriate reaction to concerns arising from the French and Dutch referendums. It should serve as a deterrent and warning for the future.

By its nature, the European Union is a forum for wide-ranging and sometimes painful negotiation. When we consider the full agenda of the Union's continuing activities, we certainly do not see an organisation in existential crisis. Whether we look at the consolidation of the single market, at world trade negotiations, at internal security questions or at classical foreign policy, we see a Union, the member states of which sometimes represent a broad spectrum of attitudes, but fully understand that they all benefit from standing on as much common ground as possible. These member states moreover make vigorous use of the European institutions which they have given themselves to develop and extend this desirable common ground. This general approach is by no means controversial among national electorates. Its usefulness and necessity are widely recognised throughout the Union, not least in those countries which have recently taken up membership. The

work of European integration continues with all deliberate speed. Underlying it all is the single European currency, the integrative effects of which will increase dramatically over time. In practising European integration, the European Union is strikingly successful. It is only in writing a new Treaty about this integration that it has lost its way.

James Callaghan is not the only former Labour Prime Minister worth quoting in this context. Clement Attlee was once asked how worried he was by the prospect of nuclear war. He replied that the question was 'certainly one to keep an eye on.' His measured reaction should be that of Europe's leaders today to the demise of the Constitution. Something has been lost, but probably not irretrievably. Skilful politicians are defined by their ability to turn setbacks to good account. There is no reason why the next generation of European leaders should not do just that.

Brendan Donnelly
Director
The Federal Trust

2. After 7/7: Counter-terrorism in the EU

On 7 September, the Home Secretary Charles Clarke met with his European counterparts in Newcastle for a series of 'informal' talks on EU counter-terrorism activities, among other things. As he did so, he published a paper entitled *Liberty and Security: Striking the Right Balance* in which he evinced frustration with the EU's progress on various measures and proposed measures for fighting terrorism. The EU, the Home Secretary wrote, 'does not appear to give sufficient priority to offering practical solutions which make a difference to ... issues of the great concern'. While he commended the broad panoply of existing agreements for police and judicial co-operation in the EU, most notably the Hague Programme and the Counter-terrorism Action Plan, he argued that the EU still lacked effective co-operation on the use of intelligence and sharing of data

between law-enforcement bodies and that this seriously inhibited 'their ability to protect us'. In particular, Clarke chided the EU Parliament for its failure to recognise that the 'legal framework within which we currently operate makes the collection and use of this intelligence very difficult and in some cases impossible'. To investigate 'criminals and terrorists' without knowledge of their use of communications was like 'fighting them with both hands tied behind our backs'.

While the meeting did not deliver for Clarke the agreement that he had plainly hoped for, it would be highly premature to assume that the specific proposals he highlighted that day will not eventually come to pass (not least because they are still on the table for the formal JHA meetings in October). Although agreement foundered on the most high-profile proposal – the plan backed by the UK, France, Ireland and Sweden to establish EU-wide standards on the retention of communications data – there has already been considerable EU movement on other proposals: i.e. the use of biometrics in identity cards and passports, and using passenger name records from commercial flights. In this sense, Clarke's public failure to gain agreement only serves to obscure a broader range of EU counter-terrorism measures and proposals that have thus far received relatively little press attention and yet have a significant impact for the protection of fundamental rights.

Since the 9/11 attacks in 2001 and especially since the Madrid bombings in March 2004, the EU's involvement in counter-terrorism activities has grown in size and complexity. The Council's Madrid Declaration on Combating Terrorism formed the basis for many of the current measures, e.g. the creation of the post of EU Counter-terrorism Co-ordinator. At the same time, the renewed threat of terrorism also served to stimulate and inform existing proposals for police and judicial co-operation between EU member states: e.g. the European Arrest Warrant. One particular instance of this gathering momentum has been the movement towards establishing an EU mechanism

for exchange of information held on databases by the law enforcement bodies of the Member States. A flurry of proposals produced different principles for governing data exchange: 'interoperability', 'equivalent access', and 'the principle of availability'. From these various proposals, the Commission has begun to draft legislation to enable national police forces (and other law enforcement bodies) to access data held by one another on a direct and unmediated basis. What is deeply problematic is that there is currently no EU data protection regime covering Third Pillar activities and, indeed, that specific responsibility for drafting such a regime has now been passed from the DG Internal Market to DG Freedom Justice and Security. As the House of Lords EU Committee noted in its March 2005 report on EU counter-terrorism activities:¹

Simply encouraging the exchange of more information will not necessarily help the counter-terrorism effort: it could even be counter-productive if it led to agencies being submerged in a mass of irrelevant material. It is important to ensure that as far as possible the information exchanged is reliable, relevant and timely [I]t will be essential to ensure that the multilateral exchange of information is subject to suitable safeguards; and that it incorporates the idea contained in the principle of equivalent access that information exchanged with other Member States should be subject to the same restrictions as would apply nationally.

The progress of specific measures on data sharing without an attendant emphasis on ensuring effective data protection reflects a more general problem that seems endemic to EU counter-terrorism measures: the enthusiasm of Member States to establish common standards for police and judicial Cupertino seems rarely to be matched by an equivalent interest in common safeguards that are effective in protecting basic rights. Indeed, it seems unfortunate that, despite the principled resistance offered by MEPs against Charles Clarke's data retention proposals on grounds of safeguarding the right to privacy, the resistance that seemed to most have most derailed the

proposals were the economic arguments offered by the national telecommunications industries. As grave as the threat of terrorism may be, there needs to be less credence given to the phoney idea of a 'balance' to be struck between liberty and security and a greater attention on the part of Members States, the Commission and Council to the idea that human rights cannot be traded off against one another. As the US Supreme Court once warned, following President Lincoln's suspension of *habeas corpus* during the Civil War, 'it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation'. What is true for one country is undoubtedly true for a Union.

Dr Eric Metcalfe
Barrister and
Director of Human
Rights Policy,
JUSTICE

¹ *After Madrid: the EU's response to terrorism, 5th Report of Session 2004-05, HL Paper 53, 8 March 2005 at para 23.*

3. News from the EU Presidency

When the United Kingdom took over the rotating Presidency of the European Union on 1st July 2005, it emphasised its aim to concentrate mainly on two challenges: achieving progress in the fields of economic reform, and on the European Union's position on the global stage.

In relation to the former of these two aims an informal ministerial meeting on competitiveness was held in Cardiff this July, where member state ministers discussed the preparation for the formal competition Council meetings later this year. Especially high on the agenda was the issue of better regulation, as a top priority for achieving the aim of increased growth and jobs in the EU.

At the Gymnich meeting of the EU Foreign ministers in early September, an important topic of discussion was the

dispute about the conditions relating to the beginning of entry negotiations between the European Union and Turkey. The British presidency had declared it one of its goals to reach a compromise on a joint declaration regarding the EU's position on Turkey's recognition of Cyprus. France, supported by Greece, Cyprus and Austria, had demanded full Turkish recognition of Cyprus as a precondition for starting the entry negotiations set for 3rd October. The Turkish Prime Minister Erdogan stressed that his country had done everything it was asked to do and threatened to turn its back on the EU if the Union failed to keep its promises and demanded further requirements. He also expressed his disappointment about 'a few countries' risking a delay in the start of entry negotiations for domestic political reasons. EU Enlargement Commissioner Rehn called the recognition of Cyprus a clear 'red line', however, both the Commissioner and the British Foreign Minister Jack Straw were 'reasonably' confident that this dispute would not provoke any vetoes which could delay the beginning of talks beyond the planned date. It seems as though a compromise will be found, calling upon Turkey to recognise all 25 member states as a requirement not for starting negotiations, but rather for joining the European Union.

Another major point on the EU's agenda were EU-China relations. Tony Blair has put considerable efforts into resolving the trade dispute between China and the EU regarding import quotas. A solution had to be found allowing millions of blocked garments made in China, which are stockpiling at EU customs warehouses, into the Union. The deal that was reached and approved by the member states on 7 September specifies that China will count 50 per cent of the blocked merchandise as part of its 2006 export quota, the other 50 per cent being allowed into EU territory.

In light of the July bomb attacks in London, the British Presidency has raised the question of curbing civil rights in the fight against terrorism. Addressing the European Parliament on 7 September ahead of the informal Justice and Home

Affairs council, UK home secretary Charles Clarke proposed reforming the European Convention of Human Rights and adapting it to 'today's reality'. The opinions on the trade-off between assuring the security of citizens and of protecting their fundamental rights vary considerably. While the responsible Justice Commissioner Frattini supports Clarke's call for urgent reform, the leader of the Liberals in the European Parliament, Graham Watson, disagreed with the proposals. He claimed that 'the human rights of the victims of terrorism' were not 'more important than those of the terrorists', calling for the EU to protect both security and liberty proportionately. At the informal Council meeting of ministers for justice, the British Home Secretary Charles Clarke failed to find an EU agreement on his plan to retain certain communication data records as an anti-terror measure. This was due to both privacy concerns and the question of who would pay for the high costs involved in this initiative.

Claudia Brinkmann
The Federal Trust

[EU Gymnich 2005: Press conference with Jack Straw and Javier Solana \(02/09/05\)](#)

[Joint Statement of the 8th EU-China Summit](#)

[Speech by Charles Clarke, UK Home Secretary, to the European Parliament - 7 September 2005](#)

[European Parliament Debate: Justice and Home Affairs, 07/09/2005](#)

4. The European debate in the UK

Since the acrimonious June summit in Brussels, British discussion of European issues has resumed its marginal (if sometimes rhetorically vitriolic) position within the country's political life. This is despite the fact that Britain has been the President of the European Union since 1 July. Indeed, until Prime Minister Tony Blair's visit to China and India on 5 - 8 September, the UK Presidency was largely ignored by the mainstream British media. However, the topic that

dominated the annual EU-China summit - the trade dispute surrounding EU quotas on textile imports from China - received widespread attention in Britain and was the basis for criticism both of Peter Mandelson, the British EU trade commissioner, and of the UK's role in resolving the dispute.

Although the so-called 'bra wars' may have ended with an agreement at the EU-China summit on 5 September, Mr Mandelson's handling of the crisis was widely portrayed as inept in the UK. A report in *The Observer* even argued that he had not managed to adapt to the working environment in Brussels and did not have the technical expertise necessary for the trade portfolio. The EU's quotas also drew the ire of retailers across Europe. In a letter to *The Guardian* on 3 September, Peter Simon, founder of the two large British retail chains Monsoon and Accessorize, accused the Trade Commissioner of having 'a basic ignorance of the complex but very fruitful relationship between European retailers and their far eastern suppliers'. In Mr Simon's view, Mr Mandelson's handling of the dossier had been 'arrogant' and 'naïve'. As a consequence, commenting on this letter, *The Observer* went so far as to claim that Mr Mandelson had now lost his role as a close advisor of Tony Blair, with relations between the two men having cooled significantly. *The Financial Times*, however, argued on 24 August that Mr Mandelson was being blamed unjustly as he had initially resisted the ill-fated EU textile quotas but had given in to pressure from textile-producing EU member states and Commission President José Manuel Barroso.

David Willets, the Conservative shadow trade and industry secretary, chose to attack the British government instead of Mr Mandelson. On 1 September, in an open letter to Alan Johnson, Secretary of State for Trade and Industry, Mr Willets said that the UK had not been pulling its weight as President of the EU in order to bring about a speedy resolution of the dispute. He suggested that an emergency meeting of European ministers should have been called to discuss the 'bra wars' and claimed that the UK's

handling of the crisis showed the government was insufficiently committed to safeguarding free trade and, in consequence, protecting British retailers and consumers.

The UK finds itself subject, however, to competing pressures. As EU President, It needs to represent the interests of all member states and be able to reach agreements acceptable to all. EU members were split on Chinese textile quotas, with textile-manufacturing countries such as Italy, Spain and Portugal taking an opposite stance to countries such as Sweden and the Netherlands, home to the large clothing chains H&M and C&A respectively. More thoughtful commentators in this country have accepted that the UK's role in the 'bra wars' perhaps illustrates how difficult it can be for EU Presidents to take strong standpoints on controversial issues.

In the race to become the next leader of the Conservative Party, Kenneth Clarke, one of the Tories' most europhile MPs, threw his hat in the ring in August. One of his first moves as a leadership candidate was to distance himself from his pro-European past. In an interview with the little-known journal *Central Banking* in August, Clarke said that the Euro had a 'mixed record' at best: 'fine from the point of view of the bankers, poor from the point of view of its impact on the economic policy and performance of member states'. As a means of forcing EU countries to reform their economies, the Euro had thus been a 'failure'. The UK, he added, should not join the Euro for at least another ten years. He also argued that the European Central Bank (ECB) should take on a more political role than it has so far by 'speaking on macroeconomic conditions more generally'. The ECB should see the Bank of England and the US Federal Reserve as a model and aim

to contribute to the broader public debate on the state of the economy in Europe. Finally, he stressed that in his view the EU Constitution was now 'dead' and best forgotten. His carefully-phrased criticism of the Euro and the ECB has been widely seen as a tactical move by Clarke in order to make his potential leadership of the Conservatives more palatable to Eurosceptic members of the Party. He may well in any case be hoping that the EU is becoming weaker as a defining issue dividing the Conservative Party. With both major constitutional reforms and the single currency off the table for the foreseeable future, many commentators predict a gradual retreat from Euroscepticism as a central feature of the Conservative political platform.

Markus Wagner
The Federal Trust

[The Observer, 4 September: Blair refuses to support Mandelson in bra wars](#)

[Kenneth Clarke's interview in Central Banking](#)

5. News from the Federal Trust

Forthcoming publications

European Essay No. 36:
Markus Wagner, Claudia Brinkmann

Global Environmental Governance: A European Perspective

This essay discusses Europe's role in global environmental governance, in particular its role in shaping international environmental institutions and in influencing the global environmental agenda.

Available for download from <http://www.fedtrust.co.uk/uploads/Essays/Essay36.pdf>

Forthcoming Events

For further information on any of these events please contact ulrike.rub@fedtrust.co.uk.

29 September 2005: **Social Europe: Myth or Reality?**

Jointly organised with Chatham House.

Panellists: **Christopher Smallwood** - Director, Lombard Street Associates; **Professor Stephen Haseler** - Director, European Research Forum, London Metropolitan University; **Brendan Donnelly** - Director, The Federal Trust

To register for this event, please contact Iwona Newton on INewton@chathamhouse.org.uk

12 October 2005: **The EU and Bulgaria**
A joint event hosted by the Bulgarian Embassy in London.

3 November 2005: **Enlarged Europe, 'Fortress Europe?' - Migration and Labour Mobility in the EU27**
Hosted by the Romanian Embassy in London.

7 November 2005: **EU enlargement - where next?**

Organised in co-operation with Chatham House.

12 December 2005: **The Lisbon Agenda**

Organised in co-operation with Chatham House.

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