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Enlightening the Debate on Good Governance

**The European
Convention:
progress and
prospects**

GRAHAM WATSON MEP



European Essay No.25

A Definition of Federalism

Federalism is defined as 'a system of government in which central and regional authorities are linked in an interdependent political relationship, in which powers and functions are distributed to achieve a substantial degree of autonomy and integrity in the regional units. In theory, a federal system seeks to maintain a balance such that neither level of government becomes sufficiently dominant to dictate the decision of the other, unlike in a unitary system, in which the central authorities hold primacy to the extent even of redesigning or abolishing regional and local units of government at will.'

(*New Fontana Dictionary of Modern Thought*)

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European Essay No.25

© The Federal Trust for Education and Research, 2003

ISSN 1468 9049

ISBN 1 903403 58 8

Publication of this essay is supported by the European Commission as part of the PRINCE programme
'From the European Convention to Public Discourse: Debating our Common European
Future' (EUCON)

Foreword

This year's series of the Federal Trust's *European Essays* begins with a forthright statement by the leader of the European Liberal Democrat Group in the European Parliament. Graham Watson has very clear views of what he thinks the European Convention can and should achieve. He sees it as an open question how far in the event the achievements will match the opportunities. The bite and persuasiveness of this essay are enhanced by the clear intellectual and political background against which it operates. Graham Watson leaves in no doubt on which side of the dividing-line he stands. For him, the best future prospects for the European Union lie in the development of its federal aspects, and in particular of its federal institutions. There will not be many among the Federal Trust's friends and sympathizers to disagree with him.

Two aspects of this essay are particularly striking, the author's discussion of the recent Franco-German proposals to the Convention, and his concluding remarks. The author is far from enthusiastic about the proposals of the French President and German Chancellor, rightly pointing to the dangers of confused and overlapping competences which the 'double Presidency' of the European Union might engender. The mode of election and relations between the Commission and Council Presidents will certainly be a major bone of contention in the institutional debates of the coming months. Convention and Intergovernmental Conference may well come to different conclusions. But it is worth pointing out that some federalists will regard the European Parliamentary election of the President of the European Commission, a central part of the Franco-German proposals, as being so important a step forward as

to compensate for any untidiness or inefficiency in the allocation of competences between Council and Commission.

The essay's concluding paragraph is as challenging as what precedes it. While anticipating a 'battle royal' on which the final outcome of the Convention will depend, Graham Watson points out that this battle of ideas is being fought largely on federalist terms. This is a vital, but not always noticed aspect of the Convention. As the discussion has developed, so it has become clearer that in the long term the European Union will only become more democratic, more efficient and more transparent by developing its federal aspects. How far this development will go in the Convention itself is not yet clear. But already we can say that the European Union will come out of Giscard d'Estaing's Convention a distinctly more federal institution than it went into it.

Brendan Donnelly
Director of the Federal Trust
February 2003

The European Convention: progress and prospects

Graham Watson MEP

Introduction

When the Convention on the Future of Europe began its work in February 2002, many feared (and some hoped) it would not live up to its billing. The Convention's elderly President, Valéry Giscard d'Estaing, was widely regarded as an eccentric choice of chairman for a body intended to look to Europe's future. Critics predicted that the Convention would be no more than a 'talking shop,' incapable of reaching consensus and anyway likely to be ignored by the subsequent Intergovernmental Conference. Early meetings of the Convention, dominated as they were by procedural wrangling, seemed to justify these gloomy predictions.

A year later, the picture is a very different one. Giscard has chaired the Convention with charm and skill, and provided plenty of evidence of vision as well as not shying away from controversy. The Convention has moved beyond its 'listening phase' to a decision-making stage and blueprints for radical reform are present in abundance. Propositions which seemed highly controversial a few months ago are now a matter of broad consensus, and several foreign ministers have been appointed to the Convention. The heads of state and government will find it much more difficult than they might have hoped if they feel any inclination simply to ignore the recommendations of the Convention. The months leading up to the Convention's conclusions in June now look likely to be full of controversy and incident.

The purpose of this essay is threefold. First, it will review the progress already made by the Convention. Second, it will consider some of the key institutional controversies still before the delegates. Finally, it will speculate about the likely success or otherwise of the Convention, and the terms in which that success needs to be judged.

1. Progress and achievements in the Convention to date

First of all, it is important to emphasise the historic nature of the Convention: the fact that it is taking place at all marks a major and wholly positive departure from previous practice. The Convention method, long-advocated by the Liberal Group in the European Parliament, proved its worth in drafting the Charter of Fundamental Rights. Its use to prepare a new constitution for Europe in the twenty-first century closes the book on the secretive, unaccountable and elitist approach of Intergovernmental Conferences of the past.

We are now debating the future of Europe in public, with the active participation of well-known personalities from national political life, and this has brought into the open debates which were previously held behind closed doors. National governments are forced to make their case in public and justify their stances to the media, which means that poorly-thought through proposals, such as Valéry Giscard d'Estaing's idea of a Congress of national parliaments, are less likely to see the light of day.

Although some concern has been expressed that the Convention was failing to 'connect' with the wider public, this may be because it got bogged down initially in procedural matters and a lengthy 'listening phase' provided a moving target with which the media found it difficult to grapple. However, once the Convention established working groups to debate the issues and these began to report, and especially when Giscard presented his outline of a future European Constitution, the Convention became much more 'real' and its debates have become front page news across Europe.

Of the eleven working groups of the Convention ten had reported their findings by the end of last year, and some solid progress has been made.

First and foremost, the idea that the Convention's role should be to draw up a Constitution for Europe, once anathema to the British government, quickly became the consensus objective. The Convention has also reached an early and broad consensus on giving the EU full, single legal personality, merging the treaties into a single text and bringing to an end the pillar structure.

There is also agreement that Europe's new constitution needs to be considerably simplified and made easier to understand, with a reduction in the number of decision-making procedures from thirty to just three: laws, framework laws and executive regulations.

In the area of subsidiarity, there is general agreement that documents should be transmitted to national parliaments, but these should not be given the power to block the legislative process. A suggested 'early warning system' which would allow national parliaments to require the Commission to re-examine a legislative proposal if one third of them demand, it has raised concern.

Proposals to give national parliaments a formal role in the EU decision-making procedure alongside the European Parliament, notably Giscard's idea of a Congress of MEPs and MPs, have met with large scale opposition. If such a Congress had a formal role in the decision-making process we would create a third chamber to rival the Parliament and Council. Without such a formal role it would be a mere talking shop without any real added value. Instead, the focus is, rightly in my view, on opening up the Council to greater scrutiny so that national parliaments can hold their ministers to account more effectively. The importance of involving national parliamentarians in reform of the treaties through the Convention has already been acknowledged through recognition that this method should be institutionalised for future treaty change.

Another welcome development has come in an area which is close to my own heart - the Charter of Fundamental Rights. There is now widespread consensus, even encompassing the UK, that the Charter should be incorporated into the new constitutional treaty. This will end

the absurd current situation, instigated at the insistence of the UK, and make the Charter legally binding. A debate continues about whether to integrate the full Charter into the constitution, or refer to it in an appendix.

Welcome progress has also been made in the third pillar, Justice and Home Affairs. According to the working group, codecision and qualified majority voting should be applied to policy areas already transferred to the first pillar, such as asylum, visas and immigration, while police and judicial co-operation should be governed by laws or framework laws rather than conventions. Europol and Eurojust should be given a legal base in the constitution to facilitate their future development, and external borders should be policed within an integrated system by a European border guard corps.

Perhaps unsurprisingly, consensus was harder to find in the area of economic governance, reflecting the differences of political opinion within the Convention and the European Parliament. This working group was largely confined to restating the current situation, which is that monetary policy is an exclusive competence of the Union, and economic policy remains in the hands of national governments. On the vexed issue of taxation, a small but vocal minority seems likely to block the introduction of qualified majority voting. The working group on a social Europe is due to report in February.

Sadly, the progress in the field of Justice and Home Affairs has not been accompanied by a great leap forward in foreign policy. The intergovernmental nature of foreign policy has been confirmed by the Convention's work so far, although co-ordination should be enhanced to give the Union a genuinely common policy and there should be greater recourse to majority voting. The big area of disagreement remains whether foreign policy should be managed by the Commission or by the Council, and whether the roles of External Relations Commissioner and High Representative for CFSP could be merged. A majority of *conventionnels* and the French and German governments in their recent joint paper favour an intermediate 'double-hatted' approach, with a single person exercising both functions, who would be based in the

Council but would also be a Vice President of the Commission, appointed by the European Council with a dual mandate.

Concerning defence, a broad majority favour extending the so-called Petersberg tasks to cover other matters involving the use of military resources: conflict prevention (early warning, confidence and security building measures etc.), joint disarmament operations, military advice and assistance and support for third countries in the fight against terrorism. The defence working group also recommended giving a right of initiative to the High Representative and greater recourse to constructive abstention in policy-making. In response to new threats, such as international terrorism, a solidarity clause should be established, and a European Armaments and Strategic Research Agency should be set up.

The other highlight of the Convention process so far was the presentation of Mr Giscard's skeleton constitution, which was widely welcomed because it showed the scale of his ambition. It is now clear that a single, constitutional Treaty will emerge from the Convention. This will be in two parts: a constitutional part and a section on policies. This will greatly simplify the current morass of Treaties and appendices, and opens the way for the policy section to be amended without further Intergovernmental Conferences. Although the draft constitution has not yet been filled out, it leaves the door open to a more federal approach to the governance of the European Union, which is welcome.

A less felicitous development was the presentation on the same day of two documents emanating from the European Commission: one, with the approval of the Commission, was the College's second formal contribution to the Convention; the other, prepared in secret for President Prodi and disavowed by the other Commissioners, was baptised 'Penelope' and was an illustration of what a fully fleshed-out draft constitution could look like. The controversy and confusion over the status of the two documents and some of the more radical federalist ideas in Prodi's draft constitution overshadowed what had been expected to be a major development in the Convention's work.

As we enter 2003, the Convention is entering its final, crucial, phase. In January, the Convention debated the institutional architecture of the Union, including the Franco-German proposals. Mr Giscard then intends gradually to roll out in three stages a draft constitution for consideration by the Convention, beginning in January and ending in March/April. In areas where there is broad consensus, points will be dealt with by amendment. In areas of substantial disagreement, technical working groups will be set up in order to make progress. The Convention has been invited to conclude its work in time for the European Council of 20 June.

If the Convention fulfils its goal of adopting an ambitious, single proposal for a Constitution for the European Union, it will be very difficult for the heads of state and government to reject its conclusions, especially given the participation in its work of such senior figures as the Foreign Ministers of France, Germany, Spain and Belgium and soon Greece. I hope that the gap between the end of the Convention and the start of the IGC will be short, and that the IGC itself will rapidly review and adopt the new constitution by the end of this year.

2. Prospects for the successful conclusion of the Convention

Although the Convention already has a number of considerable achievements to its name, its ability to deliver on certain key institutional reforms will determine whether it should be judged a success. Time is short for the Convention to conclude its work in time for the Thessaloniki European Council, which is why Giscard is stepping up the pace and the French and German governments are entering the fray. The institutional power-play is now entering a critical stage, notably with the question of creating a powerful President of the European Council as proposed last week by President Chirac and Chancellor Schröder.

When the Chirac-Schröder deal was first announced, I commented that the proposal raised more questions than it answered, and the answers to those questions would determine whether the proposal was workable. Now that we have the details of the proposal, it is clear that it is unacceptable. It is proposed that the European Council President would be a full-time appointment, for up to 5 years. This means that the

President will be a former President or Prime Minister, who will have full-time responsibility for implementing the European Council's decisions and representing the Union on the international stage. This is a recipe for disaster, a meddler's charter.

Appointing a full-time European Council President can only lead to institutional conflict with the President of the European Commission and the proposed European Foreign Minister. Such a President will inevitably demand a substantial bureaucracy which will gradually expand and help him or her to interfere in all the activities of the Union. It will represent a substantial strengthening of the intergovernmental component of the European Union and a weakening of the position of the Commission and the small states, whose interests are best defended by a strong Commission and a rotating Council Presidency. The Liberal Group is strongly opposed to this proposal and we will be working in the coming months to prevent it from seeing the light of day.

There are alternatives. Our representative to the Convention, Andrew Duff, has like Joschka Fischer proposed merging the role of President of the Commission and President of the European Council when the Council is acting in its executive capacity. When the Council is acting in its legislative role, there is no reason why it should not have a chairman elected from its membership like any Parliament or parliamentary committee. The danger lies in appointing a strong President to the Council when it is exercising its executive functions, for example in foreign policy.

Another option would be to retain the system of a rotating Presidency for part of the Council formations, including the European Council and Foreign Affairs and General Affairs Councils, while allowing other Council formations to appoint a chairman from their membership for a longer period of time. No doubt these and other alternatives will be put forward by members of the Convention in the coming weeks.

The Liberal Group has not campaigned for so long for a strong President of the Commission elected by MEPs only to see that position emasculated by a Super-President of the European Council. We of course welcome the proposal that the President of the Commission should be elected by MEPs. This would give the President and the Commission

as a whole greater legitimacy and would defuse claims that the Commission is an unelected and unaccountable bureaucracy.

As the new constitutional treaty will not enter into force before the next European elections, I hope that each political group will put forward a prominent candidate for the Presidency of the European Commission at the 2004 elections. This would also give a greater purpose and transnational dimension to the European elections, which at the moment are the only elections to a Parliament which have no consequences at all for the election of the executive.

I further hope that the European Parliament which emerges from the constitutional Treaty will be a stronger and more democratic institution. This means in particular extending codecision to all areas where qualified majority voting applies, and I think in particular of the common agricultural policy. It also means giving the Parliament equal powers to the Council over the budget, and granting Parliament the same power as Council to 'call-back' secondary legislation adopted by the European Commission when it diverges from the intentions of the legislature.

The role of the regions in the Union's new constitutional settlement is also likely to prove controversial. The Liberal group has been one of the most consistent advocates of a stronger role for the regions in both the Convention and the European Parliament's deliberations on this. In the January plenary session we tabled an amendment to the Napolitano report on the role of the regions which would have allowed regions with legislative powers a right of appeal to the Court of Justice. Sadly, we were outvoted. However, thanks to our support Parliament did approve proposals for radical decentralisation of the management of much common policy, including better consultation of regional and local authorities by the EU institutions before laws are made. We will continue to press for greater recognition for the regions in a reformed Union.

How to ensure a coherent and unified voice for European foreign policy will also be a major preoccupation of the Convention in the months ahead. Here too, the Franco-German proposal risks complicating matters. With so little else to do, a European Council President will inevitably seek to interfere more and more in foreign policy matters, thereby undermining his newly created European Foreign Minister.

While we would like to see the roles of External Relations Commissioner and High Representative for Common Foreign and Security Policy merged, if this European Foreign Minister is based in the Council while also making him a Vice-President of the Commission, we risk seeing the virus of intergovernmentalism contaminating the Community method. The Liberal Group would prefer to see the gradual extension of the Community method to foreign and security policy with the European Foreign Minister based in the Commission but appointed by the common accord of the Commission President and the European Council and accountable to Council and Parliament.

Aside from the institutional power struggle, two other controversial questions will have to be addressed by the Convention in its constitution. These both concern the relationship between Member States and the refounded Union. Should a procedure be instituted so that a Member State has the possibility to leave the Union voluntarily? And if a current Member State does not ratify the constitutional treaty which looks set to revoke and replace all the existing treaties, would it thereby exclude itself from the new Union and fall into a new category of 'associate membership'?

Both possibilities have been envisaged in Giscard's draft constitutional treaty and in the submissions made by Andrew Duff MEP to the Convention. The ELDR Group in the European Parliament favours the introduction of a formal 'secession clause' which would allow any Member State which wishes to leave the Union to do so in an orderly manner. This withdrawal would take effect either if approved by a three quarters majority of the Council, a two thirds majority of the European Parliament and ratified by Member States according to their own constitutional requirements, or if approved by a referendum of the citizens of the Union and approved by the Parliament and Council.

Such a secession clause would answer the criticisms of the eurosceptics in existing and incoming Member States that membership of the European Union is irreversible. Rather, it is an undertaking which countries enter into voluntarily, and should they wish to withdraw there should be a procedure in place for them to do so. The possibility of a secession clause would also keep up the pressure on our institutions to

make themselves more user friendly, and encourage the governments of Member States continuously to make the case for their membership of the EU.

The question of what happens if an existing Member State does not ratify the constitutional treaty agreed at the next IGC is also a difficult one. The direction in which the Convention is going at the moment is towards scrapping the existing Treaty of Rome and the subsequent treaties amending it, leading to one integrated constitutional treaty, refounding the European Union on a new basis which Giscard hopes will last for fifty years. If the next treaty revokes the existing texts, any Member State which did not ratify it would by definition be excluding itself from the refounded Union.

This idea is likely to prove particularly controversial in countries such as the UK and Denmark, whose governments are fearful that they could not persuade their citizens to vote to join a new and much more explicitly integrated Union, rather than simply a modified version of the common market they joined in 1973. Another complicating factor for the UK is the current speculation that whatever the outcome of the Treasury's five economic tests, any euro referendum will not now take place before 2004. If this happens, there is a strong possibility that ratification of the new constitutional treaty would overlap with a euro referendum campaign, and the government would therefore be risking a debate on these two very different issues at the same time. That would just lead to confusion and give the eurosceptics something akin to a red rag to a bull. Tony Blair would face a herculean task to battle simultaneously on two European fronts - John Major's Maastricht misery would pale by comparison.

Although it might indeed be difficult in some countries, at least this would be more honest than to pretend that the changes likely to be agreed at the next IGC are simply a modest extension and tidying up of the current European Union. If the Convention fulfils the expectations that we have for it, the next treaty will represent an ambitious step forward towards a far more integrated European Union, with most of the attributes of a federal state, even if it will undoubtedly retain elements of intergovernmental co-operation. It may therefore be better for our citizens

to opt to enter such an arrangement with their eyes open, and force governments to make the case anew for membership of the European Union, rather than face the inevitable subsequent lamentations from eurosceptics that the electorate was conned into a further step in European integration for which they did not vote.

The choice could be made less stark by offering countries which choose not to ratify the new treaty the possibility of 'associate membership', which would offer fewer of the responsibilities but also fewer of the advantages of full membership of the Union. But again, this possibility is likely to raise fears among governments that their citizens might opt to vote for a 'Union Lite' rather than the full strength version.

Conclusion

While the Convention has clearly already achieved much more than many expected, the solutions which it puts forward to these controversial issues will determine whether the new constitutional treaty really marks a great leap forward towards a federal European Union. The Convention as a method of working has certainly established itself for the future, by facilitating debate and agreement on issues which proved too difficult for heads of state and government to agree on at Nice. However, inevitably the most difficult decisions will be left to last, and the requirement to operate by consensus may be tested to the limit in the coming months. Rather than presenting lowest common denominator proposals for the most contentious unresolved issues, it might be better to set out the alternatives and leave a choice to the heads of state and government.

The Greek Presidency of the Council will play the role of midwife at the birth of the new constitutional treaty when it is presented at the European Council in Thessaloniki in June. By building a consensus for a short interval between the end of the Convention and the start of the ensuing Intergovernmental Conference, and by persuading Member States not to seek to unpick the consensus which will by then so arduously have been reached, the Greek Presidency could do the cause of European integration a great service.

The role to be played by the Union's incoming Member States will also need to be resolved. If the IGC is to conclude its work under the Italian Presidency of the Council in the second half of 2003, thereby enabling a new Treaty of Rome to be agreed, the candidate countries will have to be given *de facto* equal rights with Member States in the decisions as well as the discussions. The alternative would be to delay the formal adoption of the new treaty until the day of their accession on 1 May 2004, which would add to the historic nature of the occasion and would be an appropriate way to mark the widening as well as the deepening of the European Union.

So in conclusion, there is plenty of food for thought in the current debate, and much scope for a battle royal in the coming months between the federalists and the intergovernmentalists. Those of us who favour a federal Union can be satisfied that the battle of ideas is being fought largely on our territory, and significant victories have already been achieved. Perhaps the counterattack from the defenders of the nation state has already begun, with the proposal to create a strong President of the European Council. However, I remain optimistic that the outcome of the Convention will represent a major step forward for European integration which would have seemed inconceivable only a year ago.

CHOICE AND REPRESENTATION IN THE EUROPEAN UNION

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WITH NOTES AND COINS now in use in all twelve countries that make-up the euro area, the euro is now a fully-fledged currency. Gradually, too, the policy-making machinery is being refined, but awkward questions remain about whether the different strands of macro-economic policy should be co-ordinated. And if some form of co-ordination is desirable, should it be explicit and formal or merely tacit?

These questions will be central to the policy-making process in the euro area as EMU is consolidated. Although there are rules governing fiscal policy, embodied in the Stability and Growth Pact, and the European Central Bank has explained the rules it tried to follow in setting monetary policy, the policy mix, that combines the two is much vaguer. The advent of EMU has also seen greater willingness by EU member states to develop common approaches to employment policy and structural reforms. The essays in this book are written by policy-makers who have day-to-day responsibilities for key policy areas, practitioners and academics specialising in the analysis of EMU.

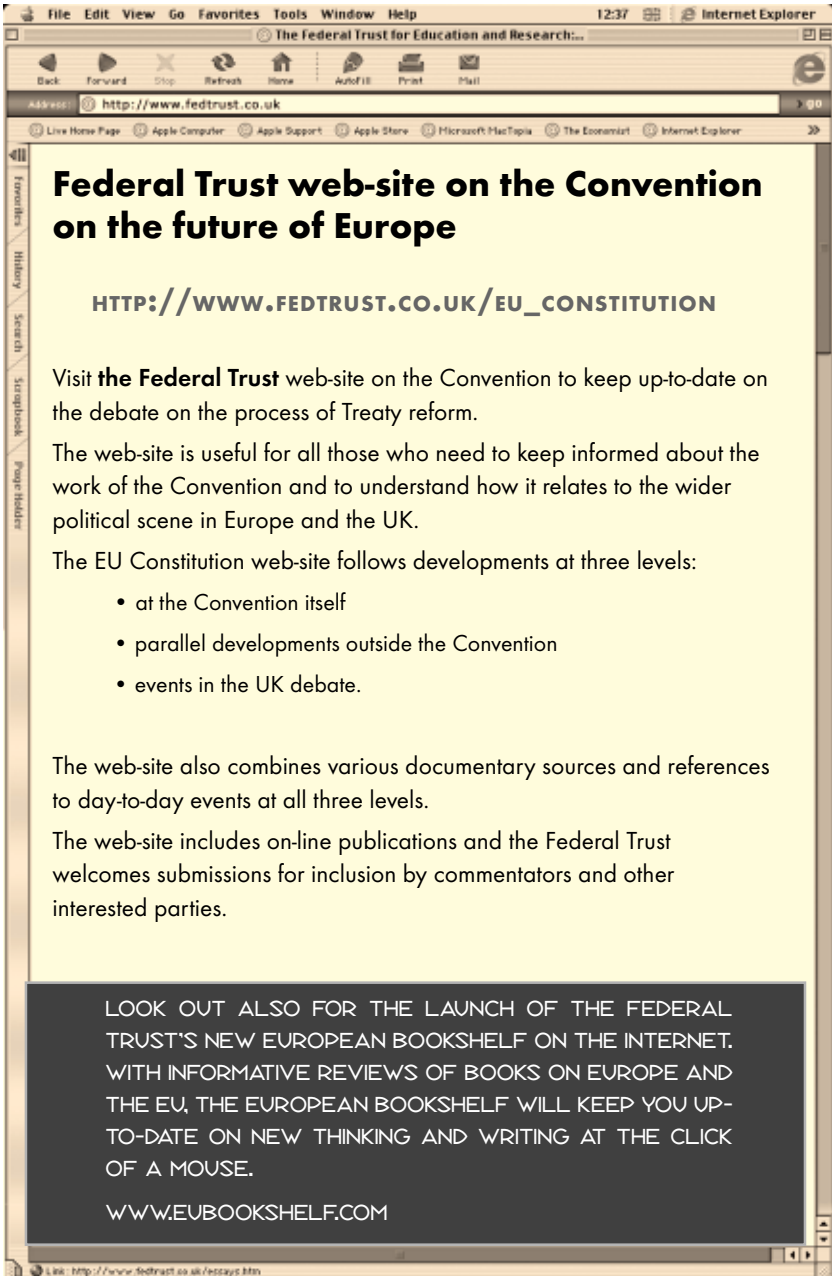
This book will be an invaluable guide for all those with an interest in how EMU works in practice. The essays it contains, by authors with first hand experience of policy-making and advice, reflect a formidable depth and breadth of experience.

Andrew Crockett (The Bank for International Settlements)

A virtue of the book is that it not only contains incisive analyses of the challenges of securing an appropriate mix of monetary and fiscal policy, but also confronts supply-side matters and the international representation of the euro area. I am sure that many of the topics covered in the book will surface in the discussions of the Eurogroup and Ecofin over the next year, and that my fellow finance ministers and I will soon be trying to resolve many of the issues raised in this book.

Nicos Christodoulakis (President of the Eurogroup)

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The Trust conducts enquiries, promotes seminars and conferences and publishes reports, books and teaching materials. It is the UK member of the Trans-European Policy Studies Association (TEPSA), a grouping of fifteen think-tanks from member states of the European Union.

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ISSN 1468-9049
ISBN 1-903403-58-8

Published by:

The Federal Trust, 7 Graphite Square, Vauxhall Walk, London SE11 5EE.
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