

THE FEDERAL TRUST

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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.

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1. Editorial: The future is another country

Crushing defeats for the governing party in May's local, mayoral and parliamentary elections have led most political analysts to conclude that by mid-2010 at the latest Mr. Cameron and his Conservative colleagues will have become the governing party of Great Britain. On the face of it, this now apparently predictable change of government should also presage a radical change of British policy towards the European Union. During the past six months, the parliamentary debates on the Lisbon Treaty, signed by the Labour government and vigorously opposed by the Conservative Party, have clearly illustrated the emotional and intellectual hostility with which much of the Conservative Parliamentary Party approaches the European Union and all its workings. Many of Britain's partners within the European Union are no doubt already bracing themselves to deal with fractious, unco-operative Conservative colleagues in two years time in the Council of Ministers.

Those relatively few commentators who believe, however, that Mr. Cameron's victory at the next General Election is less certain that it currently appears, often point to the lack of detail and even major themes which they claim to discern in current Conservative policy. Mr. Cameron's supporters indeed have sometimes presented this political evasiveness on his part as a deliberate political choice, whereby to blunt the political assaults of the government. There is good reason to believe that Mr. Cameron has made precisely such a choice in the matter of European policy. It is far from clear that he intends as Prime

continued overleaf

The Federal Trust for Education and Research

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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 distinctive contribution to the study of federalism and federal systems.

Minister to institute the kind of root and branch reassessment of British membership of the Union which significant elements of his party have long pressed him to undertake. The coming months will provide important clues to the European policies he is likely to pursue in government.

Incomparably the most important of these clues will be Mr. Cameron's willingness or otherwise to accept the parliamentary ratification of the Lisbon Treaty. If the Irish electorate endorse the Treaty in their referendum of 12th June, British parliamentary ratification will be concluded soon after and Mr. Cameron will be faced with a difficult tactical decision. He and his colleagues (the latter usually more vociferously than their leader) have denounced in the most categorical terms the refusal of Mr. Brown's government to hold a referendum on the Lisbon Treaty. There is and will continue to be pressure from within Conservative ranks for Mr. Cameron to promise that a Conservative government would either renegotiate the Treaty or hold a belated referendum on its terms. Mr. Cameron has conspicuously fought shy of giving any such commitment, rightly fearing that it would allow the government to present the Conservative Party as simply the linear descendant of the Conservative Party rejected by the electorate in 1997, obsessed with European policy to the exclusion of other problems more politically and economically pressing for the average voter. His current favourable political situation may help Mr. Cameron to avoid giving over the coming months any binding commitment on this issue. It is, however, a question which he is unlikely to be able or willing definitively to resolve in the near future. It would be an act of considerable boldness to tell the Conservative Party at its autumn conference that Mr. Cameron's government would accept without further demur the terms of the Lisbon Treaty and loyally apply them with its European partners.

In parallel with the fundamental issue of the Lisbon Treaty, three other questions will provide further indications of the direction in which Mr. Cameron's Conservative Party is tending in its European policy. They are the Common

Fisheries Policy, the Social Chapter and the Conservative Party's association with the European People's Party in the European Parliament. Theoretically, the Conservative Party is committed to seeking British withdrawal from the Common Fisheries Policy and the Social Chapter, although less emphasis has been laid recently on the first of those demands. It will be open to Mr. Cameron over the coming months either to stress or to say less about these two policy areas. If he goes out of his way to stress their importance for an incoming Conservative government, he will presumably feel bound to pursue as Prime Minister, at least initially, significant changes for the terms of British participation in these two areas of European policy. Reticence on his part will tell a very different story, and might well be Mr. Cameron's preferred option. The Conservative leader knows how divisive and unlikely to be productive would be any demands for renegotiation in these areas from a new Conservative government to its partners.

On the question with whom Conservative Members of the European Parliament will sit in Brussels and Strasbourg, Mr. Cameron will have no option of reticence. Before, during and after the European Elections of June 2009, he will be asked whether and how he intends to implement his pledge to withdraw Conservative MEPs from their common parliamentary group with the European People's Party (EPP.) Mr. Cameron would certainly like to find an alternative home for Conservative MEPs, but is having predictable difficulty in constructing an alternative plausible grouping to that of the EPP. His final choice in this largely self-created dilemma may well reflect the precise domestic political circumstances in which he finds himself at the time. Once again, a generally benign political environment for him and his party in the United Kingdom might make it easier to accept a continuing European Parliamentary association between the EPP and British Conservatives.

Since he became leader of the Conservative Party, Mr. Cameron has generally differentiated himself from his predecessors in that post by speaking less often and with less vehemence about

the supposed iniquities of the European Union. The contrast is particularly stark with the practice of William Hague, Conservative leader from 1997 until 2001, and now ironically Mr. Cameron's spokesman on foreign affairs. Mr. Hague is believed particularly to favour the breaking of the Conservative link with the EPP in the European Parliament. His continuing presence in Mr. Cameron's Shadow Cabinet is a reminder of the difficulty of predicting precisely what may be the conjunction of political forces within the Conservative Party if and when it comes to take over the reins of British policy within the European Union. There is good reason to believe that Mr. Cameron is far from being an ideological Eurosceptic. The same can certainly not be said about all, or even the majority in his parliamentary party. There is currently little political or physical fog to be discerned in the English Channel, but there is a great deal of fog to be discerned in the likely European policy of any future Conservative government.

Brendan Donnelly

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	Both chambers of Parliament have ratified the Treaty. On 9 th April, the lower house (Nationalrat) voted with 151 votes in favour and 27 against. The upper house (Bundesrat) followed on 24 th April, voting with 58 votes in favour and 4 against. Opposition came from two minority far-right groups – the Austrian Freedom Party (FPÖ) and Federal Future Party of Austria (BZÖ).	Ratified in Parliament
Belgium	After the Senate ratified the Lisbon Treaty on 6 March, with 48 votes in favour, 8 against and 1 abstention, the Chamber of Deputies followed on 10 th April, voting with a majority of 116 votes for and 18 against the Treaty, with 7 abstentions. It still needs to be considered by the five regional/community parliaments in order to be fully ratified.	Ratified in Parliament
Bulgaria	Bulgarian parliament ratified the Treaty on 21 March by an overwhelming majority of 199 to 15.	“ ”
Cyprus	The ratification bill was submitted to parliament on 17 December 2007. Ratification requires an absolute majority in favour.	Ratified in Parliament
Czech Republic	On 24 April, the Senate decided to put its ratification procedure on hold while asking the constitutional court for a review of the compatibility of the Treaty with Czech law. The lower house had previously approved the Treaty in a first reading, but the final vote is only due in autumn.	Referendum Abandoned
Denmark	The Danish parliament (Folketing) approved of the Treaty in a vote on 24 th April. 90 parliamentarians voted in favour and 25 against the Treaty.	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	On 23 rd May the upper house (Bundesrat) of the German ratified the Lisbon Treaty with a majority of 15 out of 16 Länder. Only the city-state of Berlin abstained from the vote in a concession to the socialist coalition partner the Left party, who oppose the Treaty. The Treaty had previously been ratified on 24 th April by the lower house of Parliament (Bundestag), with a broad majority of 514 votes for and 58 votes against, against one abstention. Meanwhile a conservative MP has announced a court challenge to the Lisbon Treaty which he claims is in breach of the German constitution.	Ratified in Parliament
Greece	The timetable for parliamentary ratification, requiring a simple majority, has not yet been announced.	“ ”
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	The referendum is scheduled for 12 th June. In the most recent poll (of 25 th May) 41 % of respondents said they would vote in favour of the Treaty, 33 % said they would vote 'no', while 26 % remained undecided.	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	On 8 th May the Latvian Parliament ratified the Treaty with a majority of 70 MPs against 3 opposing votes and one abstention.	“ ”
Lithuania	The Lithuanian Parliament voted on 8 th May in favour of the Treaty, The majority was 83 against 5 no votes and 23 abstentions.	“ ”
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.	Ratified in Parliament
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	The lower house of Parliament ratified the Treaty on 1 April with 384 votes in favour, 56 against and 12 abstentions. The Senate followed on 2 April with 74 votes in favour, 17 against and 6 abstentions. The ratification was made possible by a deal struck between the prime minister and the opposition leader on a resolution to be adopted by parliament making references to Polish sovereignty.	Referendum Abandoned
Portugal	In Portuguese Parliament voted on 23 rd April to ratify the Treaty. 208 MPs voted in favour of the Treaty and 21 against.	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	Despite threats by the opposition to block the ratification of the Treaty in protest over a (unrelated) media law by the government the Parliament ratified the Treaty on 10 th April by 103 votes in favour, 5 against and 42 abstentions.	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.	Ratified after Referendum
Sweden	Sweden intends to ratify the Treaty in parliament, where a simple majority in favour is required.	Abandoned
United Kingdom	The House of Lords are currently debating the Treaty, after the House of Commons approved it on 11 March with 346 votes in favour and 206 against. The decision by the government not to hold a referendum is currently being challenged in the courts (see "UK debate", p. 4).	Referendum Abandoned

3. The UK Debate

The Lisbon Treaty in the House of Lords

Since the House of Commons approved the Lisbon Treaty on 11th March 2008 (see [April Newsletter](#)), the process of parliamentary ratification has moved to the House of Lords. After initial readings on 12th March and 1st April the Upper House held seven further sessions, between 22nd April and 20th May, to debate the Treaty and its implications for the UK. Three subsequent sessions in early June (on the 4th, 6th and 11th) will constitute the "report stage" of the process, to be followed by a third and final reading bringing to a conclusion the House of Lords' consideration of the Treaty. No date has been set for the final vote, but it is expected to take place before the end of June, by which time the result of the Irish referendum, to be held on 12th June, will be known.

During the detailed debates on the Treaty 160 amendments were tabled to the government's European Union (Amendment) Bill. All of them were either withdrawn (before or after a debate took place) or defeated in a vote, and the Bill was in the end returned to the House without amendment. Three at least of the proposed amendments deserve further comment.

The most constitutionally interesting amendment tabled in the House of Lords was from the chairman and two members of the House's Constitution Committee. It called for parliamentary control over any future decision of a British government to opt into proposed legislation in the Area of Freedom Security and Justice (formerly Justice and Home Affairs), as provided for in the Lisbon Treaty. Following a thorough and well informed debate the amendment was however withdrawn with the comment that the House would await the government's full response to the Constitution Committee's report.

In proposing this amendment, the peers were advocating an arrangement of parliamentary control similar to that which the British government has in fact already conceded on the use of the "passerelle" clauses in the Lisbon Treaty,

clauses which allow for the extension of decision-making by qualified majority where the Union's national governments are in unanimous agreement. The European Union (Amendment) Bill commits the government under such circumstances to seek parliamentary approval of both Houses of Parliament before agreeing to any passerelle procedure (see [April Newsletter](#)).

Two further amendments in the House of Lords also aroused some public comment. The first was tabled by a peer representing the UK Independence Party, calling for the government to commit itself to holding, within six month of the Treaty Bill receiving Royal Assent, a referendum on whether the UK should leave the Union, making use of the new mechanism provided in the Lisbon Treaty which allows member states to withdraw from the Union. This amendment was defeated on 20 May by 74 to 7 votes - the low number of participants probably reflecting the late hour (10 pm) at which the vote took place. The second amendment was tabled by four Conservative peers. It called for the inclusion into the implementing Bill of the requirement for any future government to hold a referendum before agreeing to join the Euro, a question entirely unrelated to the innovations of the Lisbon Treaty. The amendment was defeated by 195 votes to 135.

High Court challenge

A millionaire business man, Stuart Wheeler, who has been in the past a donor to the Conservative party, is seeking a judicial review of the government's decision not to hold a referendum on the Lisbon Treaty. On 2nd May the High Court granted him permission to apply for judicial review, and the hearing will take place on 9th and 10th June. Mr Wheeler bases his challenge on two arguments: that the Labour Party's manifesto promise at the 2005 General Election of a referendum on the European Constitutional Treaty should be extended to the Lisbon Treaty, and that the constitutional significance of the Treaty is anyway sufficient to justify a popular referendum. The government argues that the Lisbon Treaty is sufficiently different to the European Constitutional

Treaty that it should not require ratification by a referendum, either on the basis of its contents or on the basis of a manifesto undertaking relating to the Constitutional Treaty. It is worth recalling that a previous legal challenge to the government's decision not to hold a referendum, by a UK Independence Party activist, was unsuccessful. The court ruled in that case that the breaching of a manifesto commitment was a political issue which could not be challenged legally.

[Hansard of House of Lords debate, 20th May 2008](#)

4. The Lisbon Treaty: Institutional issues for CFSP

The Treaty of Maastricht 1992 introduced into the EU's legal order ambitious provisions on defining and implementing a common foreign and security policy for the Union.

Since Maastricht, most agree that the CFSP has only been partially successful in fulfilling its goals. Two factors have hampered its development. The first is the reticence of Member States to grant the EU institutions the competences and powers found in areas such as the single market, environmental law or competition law. Instead, CFSP was confined to its own separate 'pillar' where the binding and enforceable regulations and directives do not apply. With this reticence to pool sovereignty in foreign policy, it should not be a surprise that Member States have failed to fulfil the terms of the Treaty.

The second factor is incoherence and lack of visibility. The multitude of actors who represent the Union on the international stage include the Member State holding the Council Presidency, the Commission through its Directorate-Generals of External Relations, Development and Trade and through the many Delegations of the Commission in third countries. Representing and speaking for Europe within an institutional structure of differing competences and powers quickly became a complex task. These issues were partly addressed by the Treaty of Amsterdam, where the

Secretary-General of the Council, acting as the High Representative for CFSP, has provided a 'face' for CFSP. However, the High Representative may only represent a common EU position on a certain issue if one exists – and in an enlarged EU this could appear to be less likely to arise.

Debate on the CFSP figured strongly in the negotiations for the Constitutional Treaty and the Treaty of Lisbon. The end result continues to reflect the reluctance of some Member States wholeheartedly to endorse the CFSP as a fully-fledged part of the EU's supranational legal order, insofar as its intergovernmental characteristics are still much in evidence. The following analysis covers some of the legally more notable developments in relation to the CFSP which were 'rescued' from the Constitutional Treaty.

The Treaty of Lisbon states that the *Union* shall have legal personality. This replaces the former Treaty provision, which grants legal personality to the *Community* only. This might appear a rather cosmetic change, but it has particular significance for the CFSP. The 'pillars' readily identified since 1992 as forming the structure of the EU disappear from view. The most visible change is that agreements with third states or international organisations will be concluded by the Union, rather than the Community.

This change suggests that the Member States have taken the big step of placing the CFSP under the same legal regime as the 'internal' policy-making sphere. However, the amended Article 11 TEU states that:

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded.

The 'specific rules' are not considered to be 'legislative acts' and thus they lack legally binding characteristics. The principle of CFSP decision-making remains that of unanimity, with very limited scope for qualified majority voting. The collapse of the pillar structure similarly does not entail roles for the Commission, Parliament and ECJ

equivalent to what was previously in the first (Community) pillar. The 'residual powers' article of the current Treaty arrangements will contain a new provision specifically excluding the use of this for CFSP objectives, preventing thus the CFSP from having legal force 'by the back door'.

Putting the CFSP into practice largely remains in the hands of the Council, following the decisions on the 'strategic interests and objectives of the Union' as taken by the European Council. The European Parliament gains a slight boost in its ability to scrutinize the CFSP, with the ability to question the High Representative as well as the Council on CFSP matters. CFSP Parliamentary debate will take place twice, rather than once, a year. The ECJ's jurisdiction over the CFSP provisions of the Treaty continues to be excluded, although the Treaty allows for the ECJ to be the arbiter of disputes over the respective competences of the Union institutions and the Member States - potentially a powerful tool.

The Commission's role becomes fuzzier. Currently, it is 'fully associated' with the representation and implementation of CFSP, but this provision will disappear. The Commission's ability to refer CFSP questions to the Council remains, but through the High Representative of his/her own accord or 'with the Commission's support'. This reflects the role of the High Representative within the Commission, replacing the current Commissioner for External Relations. It should also help to rectify the incoherence between the EU's external policies and internal policies which have an external dimension, such as freedom, security and justice. The Commission and Council are to ensure consistency between these different areas and the creation of a link between the Council and Commission via the High Representative follows the logic of promoting coherence between policy areas.

A role is also open for the new Council President (to be elected for an initial period of two and a half years) who may ensure external representation, 'without prejudice of the powers of the High Representative'. This seems like a

curious provision, but it would be equally strange if the Council President had no authority to speak for the Union as its designated president. In this manner, it would seem no different than the Prime Minister or President of a state representing that state abroad in addition to a Foreign Minister. In the EU context, the relationship between the President and the High Representative in carving out these Treaty-based roles will depend on the incumbents.

The combining of the currently confused and contradictory roles of the High Representative for CFSP and the Commissioner for External Relations under the current Treaty arrangements should facilitate the perception by third states of who can speak for 'Europe'. The new arrangement does not fuse the *subject* areas of external representation, since the Commission is responsible for all external representation except in CFSP matters, but as the High Representative straddles the two institutions this should remove much of the appearance of this division to the outside world. The High Representative sits in the Commission as a Vice-President, but is appointed by the European Council acting by qualified majority. Once again, how this innovation works within the internal dynamics of EU decision-making will evolve over time.

Delegations of the Commission in third countries will be renamed Union Delegations in order to emphasise the unified institutional approach, and they will be under the overall authority of the High Representative. The 'European External Action Service' will assist the High Representative in carrying out his functions and will be defined in a decision following the entry into force of the Treaty of Lisbon.¹

In conclusion, the Treaty of Lisbon represents an important step in developing the capacity of the European Union to act on the international stage. It is regrettable that some of the features of the Constitutional Treaty, such as upgrading the High Representative into a Union Minister did not successfully find their way into the Treaty of Lisbon. Nevertheless, the Treaty opens the door to qualified majority voting a little wider, which is an even more pressing need in

the enlarged EU of the 21st century. If the EU is tested in the same way after the ratification of the Lisbon Treaty by the sort of pressing external crisis which arose in the Balkans soon after the Maastricht Treaty came into force, then we will be able rapidly to see if the CFSP instruments and ability of the EU to act will have been enhanced by the Treaty of Lisbon.

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¹ For more information, see The Lisbon Treaty and the Ongoing Problem of Co-ordination of the EU's External Action by Dr Ana E Juncos, www.fedtrust.co.uk/uploads/LisbonCFSP_Juncos.pdf

5. News from the Federal Trust

Recent papers

Justice and Home Affairs in the Lisbon Treaty: A Constitutionalising Clarification?

By Brendan Donnelly

http://www.fedtrust.co.uk/admin/uploads/Eipascope_Donnelly_JHA.pdf

*This article was published in a special issue on the Lisbon Treaty of the journal **EPASCOPE**, which can be accessed on <http://www.eipa.eu/en/eipascope/show/&tid=1710>*

Conference report: "The European Parliament in an enlarged EU: Beyond the Lisbon Treaty", 25th April 2008: www.fedtrust.co.uk/admin/uploads/EP_report_Apr08.pdf

Events

Debating the State of the Union

Lecture by **Professor Anand Menon**, Director of the European Research Institute at the University of Birmingham

Respondents: **Dr Richard Whitman**, University of Bath and **Brendan Donnelly**, Federal Trust

Chair: **Sir Stephen Wall**

Tuesday, 10th June 2008, 5.00 pm
London Metropolitan University
31 Jewry Street
London EC3N 2EY

The event will be a welcome opportunity to discuss Professor Menon's new book, "Europe: the state of the Union", which he describes as avoiding "the excesses of both ardent Europhiles and sworn enemies of European integration". There

will be ample opportunity for questions from the floor and there will be a reception after the function at about 6.45 p.m.

To register for the event please contact Ulrike Rüb-Taylor on ulrike.rub@fedtrust.co.uk or 020 7320 3045.

Is Globalisation Destroying the West?

Organised by the Global Policy Institute
12th June 2008, 5.30pm

Lecture Theatre
London Metropolitan University
31 Jewry Street
London EC3N 2EY

with **Gabor Steingart** (Senior Washington Correspondent of DER SPIEGEL).

The event marks the publication of Gabor Steingart's latest book *The War for Wealth*.

To RSVP please email rsvp@global-policy.com

What's Wrong with the EU and How to Fix It

Lecture by **Professor Simon Hix**, London School of Economics

Wednesday, 25th June 2008, 5.00 pm
London Metropolitan University
31 Jewry Street
London EC3N 2EY

Further details will be available shortly.

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