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van: het secretariaat

aan: de Conventie

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Betreft: Bijdrage van de heer John Bruton, lid van de Conventie

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De secretaris-generaal van de Conventie heeft van de heer John Bruton, lid van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.

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Thursday, January 31, 2002-04-10

A REPORT FOR THE JOINT OIREACHTAS COMMITTEE ON EUROPEAN AFFAIRS  
BY JOHN BRUTON T.D

Foreword

The Joint Committee on European Affairs is a Joint Committee of the Houses of the Oireachtas. In October 2001 the Joint Committee asked John Bruton T.D. to prepare a report on the Future of the European Union. In his report, Deputy Bruton was asked to address particular issues relating to the European Institutions; the role of National Parliaments; the democratic legitimacy of the Union; the role of its citizens; the Charter of Fundamental Rights; the system of EU decision making; the role of Europol; and the role of the Commission. The full terms of reference are set out at appendix 3 to this report.

Since the report was commissioned, the Laeken Summit has taken place and it adopted a declaration, which considerably elaborates upon the Agenda set at Nice, which was the original basis of the terms of reference. For the sake of completeness, the report has been enlarged to deal with the additional issues raised in the Laeken declaration.

The Joint Committee is very grateful to Deputy Bruton for the work, which he has undertaken as rapporteur in the preparation of this comprehensive report.

Bernard Durkan T.D. Chairman of the Joint Committee on European Affairs

# THE FUTURE OF THE EUROPEAN UNION

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A Report for the Joint Oireachtas Committee on European Affairs by John Bruton T.D.

## 1. INTRODUCTION

At the Laeken Summit on 15th December 2001, a Convention, Chaired by former French President Valéry Giscard d'Estaing, was launched in order to pave the way for an Inter Governmental Conference to further revise the European Union Treaties. Its task is to identify the key issues arising for the union's future development and try to identify the various possible responses.

The Convention will be composed of 15 representatives of Heads of State or Government by the Member States, 30 members of national parliaments (two from each State) 16 members of the European Parliament, and two Commission representatives. Accession candidate countries will also be fully involved in the Convention's proceedings, and will be represented in the same way as member states, but without being able to prevent any consensus, which may emerge among the member states.

The Convention will hold its inaugural meeting on 1st March 2002. Its objective is to draw up a final document which may comprise either different options, indicating the degree of support which each received, or recommendations if consensus is achieved. The Laeken Summit's declaration, agreed by the Heads of State and Government, sets out a lengthy agenda for the Convention, in the form of a series of questions. The full text of this declaration is appended to this paper as Appendix One.

Meanwhile in Ireland, parallel developments have occurred. The Forum on Europe, established by the Government, is meeting in Dublin Castle and will consider an agenda very similar to that set out at the Laeken Summit. The Terms of Reference of the Forum are set out in Appendix Two to this paper. The Forum is chaired by Senator Maurice Hayes.

The Oireachtas Joint Committee on European Affairs has also commissioned this report with a similar subject matter. The terms of reference for this study are set out in Appendix three.

Such an exercise is necessary, not only as a preparation for the next Inter Governmental Conference, but also because the purposes and direction of the European Union are being questioned, especially in the context of the Irish vote on the Nice Treaty. 54% of respondents of the fifteen EU countries said they believed their country's membership of the EU was a good thing in the Eurobarometer poll taken last October. 12% believed it was a bad thing, 28% believed it was neither good nor bad. 7% did not know. These figures were a six point improvement in pro-EU sentiment compared with a similar poll taken in April 2001, but a 14 point disimprovement compared with 1990. Interestingly, 81% of Irish people said they believed Irish membership of the E.U. to be a good thing - well above the E.U. average. The greatest negative sentiment was found in Britain, followed by Sweden and Finland. Denmark has a significantly more positive attitude to membership than have the other two Scandinavian countries, which is of significance to later discussion in this paper.

It is interesting to note that the improvement in public support for EU membership in the October poll, came at a time when there was a significant increase in worry about the threat of war, terrorism and global economic downturn. Between April and October 2001, there were increases of 19, 12 and 15 points in those fearing war, terrorism, and global economic downturn respectively. The coincidence of this with an increase in pro-EU sentiment suggests that people see the European Union as a means of protection against such threats. This underlines the continuing relevance of the reasons, which led to the formation of the E.U. in the first place.

## 2. WHY THE EUROPEAN UNION MATTERS

Forty four years ago, a previous generation of Europeans came together. They were inspired by a determination that their Europe, a Europe that in the previous forty four years had been the source of the two most destructive wars in European history, would never be at war again.

That generation realized that peace could not be guaranteed if it was left of individual European statesmen representing individual European countries, acting only on their own account. They realized that peace required the creation of an underlying structure of interdependence, a structure of interdependence open to all European nations, but one that would bind them irrevocably together in peace.

The lesson learned by that generation of Europeans is one that this generation must never forget. It is one that this generation should guard and enhance. Europe must be able to act globally, if it is to prosper locally.

As the Laeken Declaration put it, "Europe needs to shoulder its responsibilities in the governance of globalisation" adding that Europe must exercise its power in order "to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development".

Only a strong European Union is big enough to create a space, and a stable set of rules, within which all Europeans can live securely, move freely, and provide for themselves, for their families and for their old age. Individual states are too small to do that on their own. Only a strong European Union is big enough to deal with the globalised human diseases, such as AIDS and tuberculosis. Only a strong European Union is big enough to deal with globalised criminal conspiracies, like the Mafia, that threaten the security of all Europeans. Only a strong European Union is big enough to deal with globalised environmental threats, such as global warming, which threaten our continent and generations of its future inhabitants. Only a strong European Union is big enough to deal with globalised economic forces, which could spread recession from one country to another and destroy millions of jobs. Only a strong European Union is big enough to regulate, in the interests of society as a whole, the activities of profit seeking private corporations, some of which now have more spending power than many individual states.

These tasks are too large for individual states.

Only by coming together in the European Union can we ensure that humanity, and the values which make us, as individuals, truly human, prevail over blind global forces that will otherwise overwhelm us.

As the Laeken Summit put it, and as European public opinion has apparently realized, "the eleventh of September has brought a rude awakening. The opposing forces have not gone away; religious fanaticism, ethnic nationalism, racism and terrorism are on the increase and regional conflict, poverty and underdevelopment still provide a constant seedbed for them".

From an Irish perspective, it is vital that the European Union be strong, and that Ireland be at the heart of a strong Union. If Ireland were to lapse into some form of peripheral or associated relationship with the Union, as a result either of a rejection of the Nice Treaty or of opt-outs obtained to secure its acceptance, this would be a huge backward step for the country.

Ireland obtained its political independence of Britain in 1921, but remained, overwhelmingly, strategically and economically dependent on Britain until we joined the European Union. A disproportionate share of our trade was with Britain up to that point. Our currency policy was set up by Britain. We were required, against our interests, to accept Britain's "cheap food" policy in regard to a significant proportion of exports. While Ireland played a role in the United Nations, our political contacts with foreign countries, other than Britain, were quite limited prior to E.U. entry. Ireland was not present when important decisions were being taken affecting our strategic, political and economic interests. We had to accept the consequences of decisions taken by others. European Union membership since 1973 has changed all that.

As a member of the European Union, Ireland now has a voice in important economic, political, strategic and even military decisions that affect us. If we were to opt out of European Union responsibility in any field, as a consequence of a deal made to secure passage of the Nice Treaty, we would lose a corresponding capacity to influence our own future. For example, Ireland was only able to influence the outcome of the recent World Trade talks at Doha through our membership of the E.U. bloc. There are three quarters of a million more people at work in Ireland today than there were when the European Single Market was created. This underscores the importance of full E.U. membership for Ireland.

Culturally and psychologically, full commitment to European Union membership has been liberating for Ireland. Although Ireland is a full participant in the English-speaking Anglo-American World, we have always drawn great spiritual and cultural sustenance from having an alternative world to which we also belonged - namely continental Europe. From the time of Ireland's proselitization of central Europe during the dark ages, through the penal times of the seventeenth and eighteenth centuries, to our involvement with continental Europe through the European Union, Ireland has gained from having a counterweight in continental Europe to what otherwise might be the overwhelming cultural influence of our neighbouring island and of "Anglo-America".

Ireland's ability in 1979 to join the European Monetary System, thereby breaking the link with Sterling, was a practical example of how full European Union membership gave us the opportunity to enhance the political independence we had gained in 1921. Likewise joining the Euro in 1998, even though Britain was not doing so, further emphasized how European Union membership gave Ireland elbowroom that it would not have had without membership.

Ratification of Future Treaty Amendments in Ireland:

The "No" vote to Nice has a potentially corrosive effect on our long-term situation within the Union. Ireland was the only country to decide that it had to have a referendum on the Treaty, and was the only country to say "No" to it. Even if it that "No" is reversed, the subliminal consequences of the original "No" will not thereby be erased. The fact that Irish Ministers, supported by the main Opposition Parties, were not able, despite the best of intentions to speak for, and lead the Irish people on the Nice Treaty, has been noted by other countries.

In any future negotiations of any European Union Treaty, negotiators of each other country will be aware that they are not just negotiating with the Irish Minister across the table from them, but are negotiating with an Irish electorate for whom that Irish Minister cannot speak with certainty. This reality may sometimes corrode the mutual confidence necessary for effective deal making in regard to Treaty amendments. As the Taoiseach recently said, there can be no more important priority on our international agenda then to ensure that we get our role in the E.U. right. If we fail to do this our country "will lose out, and lose out badly", he said.

The origin of the difficulty is in the unnecessarily restrictive wording of the original constitutional amendment to authorize Ireland's original accession to the European Union (then the European Economic Community) in 1973, and from the subsequent interpretation of this by the Supreme Court in the Crotty case.

There is a strong argument for revising this provision of the Constitution. The Irish people, of course, should be required to be consulted, in referendum, before Ireland would agree to a binding Treaty commitment to a new area of activity, or to a qualitative change in the nature of activity within the European Union. Referenda should not, however, be required, to approve E.U. Treaties which just incrementally develop clear commitments already given. The Government and the Oireachtas must be given a greater freedom than they now have to ratify E.U. Treaties that do no more than incrementally develop existing commitments.

One approach would be to have three categories of E.U. Treaty commitment, of ascending order of fundamental importance:

Treaty changes that can be agreed by ordinary majority of the Oireachtas Treaty changes that, in addition to an ordinary majority in the Seanad, also require an extraordinary majority (say three-fifths) in the Dáil,

Treaty changes, which require approval by the people in a referendum. In order to put the work of developing the European Union over the past fifty years in context, this paper will deal with the comparisons between the process of building the European Union and that of building the American Union. It will then deal, in the context of the Laeken Declaration, with four specific problems now being faced by the European Union, namely establishing democratic legitimacy for E.U. decisions, making Europe's new currency - the euro - a success, the development of a European defence policy and, finally, how enlargement of the Union will interact with the Common Agricultural Policy.

### 3. THE EUROPEAN UNION AND THE WIDER WORLD

There are major differences between the European Union and the American Union, but in some important respects, the European Union is modelled on the American one. Both are Federal structures, and deal with distribution of powers between different levels of government, and both operate on the basis of a separation of powers between executive, legislature, and judiciary

At the moment the population of the United States is 278 million. The population of the European Union is 377 million, but by 2008, it is likely that the population of the European Union will have risen to 470 million. The European Union and the United States combined represent only 12.5% per cent of the World's population, but enjoy 40% of the World's income, (GDP).

Both the United States and the European Union face similar demographic problems. The birth rate in the European Union is 1.55, and that in the United States is 2.1. Both birth rates are falling.

By 2050 the European Union will have 28% of it's population over the age of 65, the United States will have 21% and Japan will have 30% over that age. The growing pension bill will slow the economy of both the European Union and the United States in the longer-term. One of the reasons why the United States has a higher birth rate, and is not ageing as fast as Europe, is that it has a more liberal immigration regime. Japan, in its turn, is even more restrictive on immigration than either the European Union or the United States, and is ageing the fastest of all.



## Possible Limits to E.U. Enlargement:

The United States has reached its desired territorial limits. There are only one or two territories left in the World that might conceivably apply to accede to the American Union. The European Union, in contrast, is likely to add ten new member states in the next ten years. It could, over the following 15 years, add a further ten states. It has not yet set a clear limit on its ultimate size. This raises existential questions. What makes us "European"? What are we willing to sacrifice for other Europeans? What is our common allegiance? What are the physical, geographical, cultural and moral boundaries of Europe?

These are genuinely difficult questions. The question of how far the Union should extend is tied up indissolubly with the question of what the Union should do. Members of a geographically large Union would have less in common with one another than Members of a geographically smaller one. It is inherently difficult, for example, to decide what the exclusive competences of the Union would be without, for example, having a concept of whether the Union in question is to extend eventually only as far as the Polish Border, or might instead extend eventually as far as Vladivostok or Aleppo. Yet that is what the Union will be trying to do in its next Inter-Governmental Conference.

The prospect, or even the hope, of eventual EU Membership has, however proved to be a tremendously valuable discipline in emerging democracies as far to the east as the Caucasus. It has provided them with an eventual goal towards which to work. This goal helps achieve popular acceptance of the difficult policies necessary to build up a market economy based on rules, to preserve budgetary moderation, and to respect individual rights and democratic alternance in office. If this goal of EU Membership did not exist, some countries might have strayed from this path or might do so in the future.

Turkey is a potential E.U. member. Its accession would bring the European Union to the borders of Syria. Russia, as a European country, is also eligible to join. As the Laeken declaration put it "Europe's one boundary is democracy and human rights". There would appear therefore to be, no agreed philosophical or conceptual basis for rejecting an application from Russia if it met the economic and democratic tests, even though Russia is a country that is so big that it might appear to swamp the rest of the members numerically and geographically. The question does arise as to whether for example the people of Turkey or of Russia, as distinct from the elites of these countries, "feel" themselves to be European, or feel an emotional allegiance to any viable concept of

"Europe".

Allegiance is built around people sharing a sense, whether it be real or imaginary is almost of secondary importance, of having had a common historical experience that binds them together in a willingness to share sacrifices in the future for an agreed common political concept or identity. It is important to be honest in assessing the degree to which all the countries who might apply to join the E.U. in the future, would actually share such a common concept or identity with all existing members.

While Americans have one single allegiance - to the United States - even the most committed federalist in Europe will have several allegiances. She may, for example, have an allegiance to Flanders, and to Belgium, but also to an idea of Europe. Some Europeans, in Britain for example, may feel an allegiance to England and the United Kingdom but still feel no particular allegiance, as such, to Europe. The European Union is still seen by them as a mere functional arrangement facilitating free trade and mutual co-operation, but not something to which any emotional commitment need be given.

The American Union is sovereign in the sense that, as a union, it reserves to itself the exclusive right to use force by or on behalf of its population. In contrast, the European Union as such has no military power, and does not assert any superior rights over member states in this matter. Nor, for that matter, is there any mutual defence commitment binding EU member states to defend one another's territory in the event of attack, although some EU members do belong to other organizations like NATO and the WEU which do give such commitments. While there are moves to develop a European defence capacity, the right to decide on the actual use of force is still fully retained by the individual member states in Europe. This, of course, is not so for states within the USA.

Unlike the American Union, the European Union has no independent tax raising powers. A European tax was recently suggested by the Belgian Prime Minister but got little support. The European Union's budget is only 1.03% of Europe's GDP, whereas in 2001 general government expenditure of the 15 member states individually comes to some 47% of GDP. In contrast, in the United States, the Union spends 6% of GDP and the states spend 11.7%.

European Union authorities do centrally control trade policies, agricultural policies, aid to industry policies and anti-trust policies. The European Union now has its own currency, the euro, and this is

leading to a closer co-ordination of economic policies within the Union. In the battle against terrorism, the European Union is in the process of adopting a common framework for this important part of its criminal law. There will soon be a common European arrest warrant, abolishing the need for extradition within the European Union for certain offences. Visa, asylum and immigration policies are now the responsibility of the European Union and members are moving towards a common approach on them.

The enlargement of the European Union could be seen as contributor in this continent to a process of organising the world into blocks of countries they can co-operate in a predictable way with one another to manage or minimise conflicts, within a broader context such as the United Nations. If that is the model, the Union should be wary of enlarging its membership into the accepted sphere's of influence of other blocks. On the other hand, enlargement could be seen, in the very long term, as an evolution towards some form of World Government, of which the European Union is a core building block. This model would suggest a more expansive approach to enlargement. These choices merit further discussion.

#### Europol and Border Policing:

In the United States, there is a Federal Bureau of Investigation for investigating federal crimes, and there is an accompanying system of federal courts. There is no equivalent to this in the EU. Europol is confined to arranging information exchange between the police forces in member states. This weakness of EU arrangements is causing problems because many crimes, particularly white-collar crimes, are capable of being committed using simultaneously the jurisdiction of different member states. Criminal organizations can exploit the differences of law, of penalties and of enforcement to minimize the risks they are facing. For this reason Ireland should be supportive of efforts to strengthen Europol and develop common policing arrangements for the Union's external borders. A feasibility study on the latter issue is being undertaken by the Italian Government.

The European Union has adopted a charter of fundamental rights, but this so far is in the nature of a political declaration. It is the parallel charter of human rights of the Council of Europe that is enforceable at law in E.U. member states.

Europe's approach to immigration.

The European Council at Tampere in 1999 decided that the "issue of asylum and migration call for the development of a common EU policy." The European Commission published two separate documents in November 2000, one on asylum policy, the other on immigration policy. Free movement of persons within the European Union is one of the rights granted automatically to EU citizens. Migrants to the EU do not, however, automatically acquire such rights, the rights they have are only those granted to them by the country in which they have settled. From May 2004 onwards, it will be possible for the council of Ministers unanimously to agree that from that point onwards asylum and migration policies may be decided by qualified majority in the council.

Every year since 1985 has seen net migration into the EU 15. This is a reversal of the previous situation. From the early nineteenth to the mid twentieth century, 50m Europeans are estimated to have emigrated to North and South America alone. Immigration to the European Union takes many forms. Many immigrants come here from other developed countries to work, for example, in U.S companies. At the other end of the scale, Spain brings in one million citrus pickers each year from North Africa. Other immigrants arrive in Europe seeking political asylum. Asylum seeking in Europe peaked in the 1989 - 93 period. It has increased again in the past few years. The increase in asylum seeking alone is due to wars in other countries but is also caused by the tightening up of limits on other forms of immigration.

Immigration of some categories of people is deliberately encouraged by some Governments. Germany sought to encourage information technology specialists to come to Germany from India. Individual Irish businesses and hospitals have sought to fill skill shortages through immigration under a work permits scheme. Likewise 47% of nurses in London hospitals were not born in the U.K. This is no cross-over between such special immigration schemes and asylum seeking. An asylum seeker, who may have the requisite skills, cannot change his or her application after arrival from one for asylum to one for a work permit under the other scheme. Selective work permit schemes can cause a brain drain from the countries of origin and prevent those countries recouping the full benefit of investments they may have made in education.

Europe, as stated in paragraph 3.4, faces demographic problems. A falling birth rate has gone hand in hand with an ageing of the population. In Ireland today the ratio of persons of working age to those over 65 is almost 6:1. Eighteen years from now this will have fallen to 41/2:1. All other E.U. countries face an even larger problem than Ireland does. In Italy, this ratio will have fallen to 2.7:1 in 2020, and eventually it will fall to almost 1:1. This has quite radical implications for the dynamism of the European economy, for the pensions burden, for the tax rate, and for infrastructural demands.

Some argue that, if Europe is to maintain a reasonable balance between young and old in its society, it must deliberately facilitate immigration. They would argue that the current economic stagnation of Japan is due to the combination of a high pension burden and a low propensity to spend, arising from aging of its native population, with an unwillingness to encourage immigration. Others would respond to this that consumer driven economic growth does not necessarily add to human welfare and that this "problem" can be safely ignored.

It is important to distinguish between immigration policies and citizenship policies. It is possible to conceive of the European Union deciding on agreed common policies on immigration and on asylum which might cover such issues as the right to work, to social benefit, and to travel within the Union. It is much more difficult to see a common approach being agreed to the grant of national citizenship. In Ireland, for example, Irish ancestry and birth is given preferences in the matter of citizenship. In other countries ethnicity is important. These questions go to the heart of what it is to be "Irish", "British", "German" etc. Nations would find it difficult to agree a common policy on National Citizenship, even though the Maastricht Treaty has already created the concept of European Citizenship and of European citizenship rights. This question is given added point by the existence of a Charter of Fundamental Rights and the question arises as to whether the rights in this Charter are to be for everyone who lives in Europe, or are to be confined only to those who are citizens of an EU member state.

This discussion leads into issues of allegiance and identity in the same way as does the question of EU enlargement. Is the objective to be multiculturalism pure and simple, or should some core element of the national culture of the country in which the immigrant is settled guide the integration process? Should such a "core culture" include European as well as national elements? There is also the question of illegal immigration. Europol estimates that half a million people enter Europe illegally each year and go to work in the black economy, where they are open to exploitation. The traffickers who organise this exploitative trade in people are responding to a real demand that has been created by a radical mismatch between the desire of people to get into Europe, and the willingness of European countries to let them in. A more liberal immigration regime would reduce the amount of illegal traffic, but by how much is not clear.

Investment in the economic development of the countries from which the immigrants come would reduce the "push" factors encouraging them to leave. But the effect is likely to be very slow, and the initial impact of improved local conditions may initially be increased, not reduced emigration because more people will be able to afford to travel.

The European Commission has not proposed that the Union adopt a single central immigration policy. Rather has it suggested that individual countries set their own "indicative targets" for immigration, and that these targets be compared through a consultation, benchmarking and information sharing process. The Commission suggests that the Union help the countries from which the immigrants came to reduce the 'push' factor favouring emigration. It suggests that a co-ordinated immigration policy between member states should be based on certain principles - transparency and rationality, differentiation of rights according to length of stay, clarity and simplicity in application and assessment procedures, and the creation of a "hard core of rights" that would be available to all immigrants on their arrival.

The Commission favours the integration of immigrants into host societies but remarks that this is a two-way process, "involving adaptation on the part of both the immigrant and the host society".

The underlining principles of the Commission's approach seem reasonable and should be actively supported by Ireland. Special investment is needed in the educational, housing and other social infrastructures of the communities - often in the centre of cities - where newly arrived immigrants tend to congregate. The local host community deserves special consideration and partnership structures should be deliberately developed for this.

One should be open enough to admit that there is a difficult ongoing balance to be struck between the legitimate demands for more immigration coming from the immigrants themselves and from the businesses on the one hand, and, on the other, the pace at which host communities can realistically be expected to integrate new arrivals in a welcoming way. None of these factors should be ignored.

Language:

Whereas the United States has, in its administration, only one working language - English - the European Union, of 15 members at the moment, has 11 working languages. This means that, at every formal meeting, there have to be 33 interpreters. This number of interpreters will soon increase further when the E.U. takes in new member states, most of whom have their own separate languages. In practice, however, English is becoming the main working language of the European Union. A majority of Europe's leaders speak English, and when interpreters are not present, English is the language most often used.

It is true that the European Union's economy is more inflexible than that of the United States. One of the reasons for this is that immigrants make up a smaller proportion of the work force in European Union countries, then they do in the United State, and Europeans themselves are less willing to move from country to country in search of work then Americans are to move from state to state. Most European countries have more rigid systems of employee protection, and this slows the pace of industrial change. The result is less competitive if better protected, but fewer, jobs.

After that brief introductory survey, I would like to focus on some specific issues namely:

How can the constitution and working methods of the European Union be altered so that its public is democratically involved in decision-making in the Union and feels a sense of identity with the Union and its work?

How is the European Union's new currency - the euro - going to work now that the global economy is slowing down and budget deficits are beginning to rise?

Can the European Union members develop a European defence capability that will take some of the burden off the shoulders of the United States? To the extent that this involves significant investment in defence capacity by European countries, will they be able to afford it in recessionary times?

How will Europe's Common Agricultural Policy develop and how will this interact with enlargement, community financing and the future revision of EU Treaties?

#### 4. ENHANCING THE DEMOCRATIC LEGITIMACY OF THE EUROPEAN UNION

The issue of the democratic legitimacy of the European Union is a pressing one for Ireland. As stated earlier, the Irish people recently voted, in a referendum, to reject the latest treaty negotiated for the development of the European Union, the Treaty of Nice.

The Nice Treaty is, in fact, a fairly modest treaty. It makes some changes in voting weights to accommodate the enlargement of the European Union (i.e. up to twelve member states). It enhances existing arrangements to allow some members to increase their level of cooperation on particular issues ahead of the rest. This was something that was already happening any way in regard to the single currency and border controls. The Nice Treaty does not mark any very great expansion of the

central power of the European Union. Yet the Irish people, who had accepted more radical European Union Treaties in the past, refused to accept the Treaty of Nice. Why?

The Irish rejection of the Nice Treaty can be partly explained by reference to a problem that exists in all EU member states. This is a feeling amongst citizens that they have little real part in decisions made at European level and little sense of identification with the people making the decisions. On average, about 40% of EU respondents in a recent EU-wide Eurobarometer poll expressed themselves dissatisfied with the way democracy works in the European Union. Interestingly, the least dissatisfaction was expressed in Ireland (only 20%), whereas 60% were dissatisfied in Denmark and Sweden (countries which involve their national parliaments much more fully in EU policy-making than we do!). It is important to acknowledge that, in all countries, popular support for the EU is highest among white-collar workers, and lowest among manual workers (a difference of about 20 percentage points). Obviously the more opportunity people have to travel throughout Europe, the more they will begin to identify themselves as part of a wider European Community. But as the Laeken declaration put it, "citizens undoubtedly support the Union's broad aims, but they do not always see a connection between those goals and the Union's everyday action".

It may also be equally true that citizens feel they have comparatively little part in decisions made by national governments, but they are not regularly asked in referenda to vote for every enhancement of the powers of their own national governments, as the Irish people were in respect of the Nice Treaty. Furthermore, citizens can readily identify whom it is that is taking decisions at national level. But, to an extent, European citizens may be taking out on Europe some of the frustration they feel about lack of accountability in governance in general. In a recent Eurobarometer poll, citizens of all EU states were asked if they trust:

the institutions of the United Nations,

the institutions of the European Union, and

the institutions of their own national government.

It turned out that they trust both the United Nations and the EU more than they trust their national Governments! Specifically, 53% trust the EU institutions, and 32% do not. The equivalent figures for national governments show 48% trusting them, while 47% do not trust. 68% of Irish voters trust EU institutions, which is very high.



That said, there are particular problems, in terms of democratic legitimacy, about the way in which the European Union does its work. The European decision-making process is extremely opaque and complicated, and only those who are very well informed have any idea how to influence it. This gives a big advantage to pressure groups. The European Union is a unique political system, not found anywhere else in the world and it is one that is constantly evolving. Democracy at European Union level must evolve step by step with the evolution of the Union itself. The democratic legitimisation of European Union policies should get just as much thought from policymakers, as do the policies themselves. Otherwise the Union will get progressively out of touch with its citizens.

It is also important to recognise, as far as the development of the Union is concerned, the difference between debate and dialogue. A debate is something that one side "wins". A dialogue is a process in which people persuade one another and eventually reach a consensus. Traditional referenda about Europe often engender sterile "debates". We need consensus-building democratic dialogue about Europe in all member countries.

It could be said that the European leaders, who promulgated the Nice Treaty, recognized the existence of this problem. They decided that the next European Treaty would deal with the following further issues, on which conclusions could not be reached at Nice

The delimitation of power between the Union and the Member States - such a clarification might help citizens hold Government more fully to account because they would have a clearer idea of who was responsible for what

The Status of the Charter of Fundamental Rights - This charter is currently a political declaration. Some of the Member States feel that incorporating it in the Treaty, thereby making it legally enforceable in EU law, would enhance the democratic legitimacy of the Union.

The simplification of the Treaties - The easier it is for the public to read and understand the Union's Treaties, the more readily might they identify and accept E.U. decisions made under those Treaties.

Enhancing the role of national Parliaments in the EU Framework - On the assumption that national parliaments are closer to the citizens, the more they are involved in the Union's work, the more citizens themselves might feel involved with the European project. The Laeken declaration adds significantly to this four point agenda, and elaborates on it.

## The Three Pillar System:

The European Union's existing decision-making system rests on three pillars. The first pillar relates broadly to economic and social policy, the second pillar to common foreign security policy, the third to justice and home affairs, including police and judicial cooperation and criminal matters.

In each of these pillars different approaches and policy instruments apply.

In the first pillar there are also eleven or twelve different forms of actions - broad guidelines, guidelines, incentive measures, coordination initiatives, framework programmes, action programmes, action plans, multi-annual programmes, provisions, arrangements, measures, directives, regulations etc. In the first pillar, the European Commission has the exclusive right to put forward proposals for E.U. legislation. While Commission proposals can generally be accepted, or rejected, by the Council of Ministers by qualified majority vote, they can only be amended by the Council if the Council is unanimous in supporting an amendment. This strong influence that the Commission has in pillar one matters is designed to ensure that proposals are only made if they represent a genuine European common interest, because the Commission, by its nature, is somewhat detached from the politics of individual member states. It is important that this should continue as it is. Suggestions that the exclusive right of initiative of the Commission be shared with the European Parliament or the Council of Ministers should be resisted because they would dilute responsibility and lead to a less coherent European agenda being pursued.

In the second pillar there are five different types of actions - principles and general guidelines, decisions and common strategies, decisions, joint-actions and common positions. Generally speaking, the Commission has little direct input to the foreign and defence policy questions that are dealt with in pillar two. By virtue of the fact that it has a substantial budget for foreign aid, and is responsible for trade and economic policies, which often interact with foreign policy, the Commission does have some indirect influence.

In the third pillar there are four types of actions that can be taken, common positions, framework decisions, decisions, and conventions. Framework decisions are being used by the Council of Ministers in pursuing the justice and policing agenda of pillar three. These decisions bind member states to adopt measures, within a time limit, to conform to the framework.

Whereas the European Parliament has co-decision rights with the Council of Ministers in most pillar one matters, it is merely consulted on pillar two and pillar three matters.

All these complexities arise from existing treaties, agreed by member states, and ratified by them. They are the result of a series of compromises made to protect the individual interests of individual states and their electorates. But they make it very difficult for European citizens to understand what is going on. One of the terms of reference of the report Commissioned by the Oireachtas Committee on European Affairs asks if "the three pillar system of EU decision-making should be simplified, and if so, how". The Laeken Summit declaration also asks whether decision-making should continue to take place in three separate pillars.

The three pillar system originated in the Maastricht Treaty. One of the declared objects of this Treaty was to establish a common foreign and security policy. This Treaty also envisaged the development of a common approach to justice and home affairs. The Dutch Presidency had initially pressed the case that these new subjects be dealt with by the existing Community method (as in the present pillar one with the Commission having the exclusive right of initiative). Member governments proved unwilling to cede the initiative in politically sensitive issues like defence, foreign policy and criminal law to the Commission. The compromise was the creation of the three pillar system. Since Maastricht, there has been movement to transfer some questions on which there is a consensus among member states, into pillar one. Visas, asylum and immigration matters were transferred to pillar one by the Amsterdam Treaty. It is likely that, as consensus develops, other aspects of Pillar Three (e.g. action against organized crime in the single market) will be transferred to Pillar One.

This process should be encouraged by Ireland because the pillar one process is both more efficient and more accountable. It is more efficient because a coherent strategic agenda is more likely to emerge from a Commission, acting in the general interest, than from the individual initiative of individual states. It is more accountable because the European Parliament is more directly involved, through co-decision, in pillar one matters than in pillar three matters. It is easier for national parliaments to follow negotiations in pillar one than in pillar three because of the transparency requirements imposed on the Commission.

Member states may be much more reluctant to move pillar two (foreign and security) matters into pillar one. While such a move would give smaller member states, greater protection from the consequences of unilateral foreign policy initiatives of their bigger neighbours, the bigger states are unlikely to agree to such constraint on their traditional freedom of action in foreign and defence policy.

In summary, the most that could be expected, in the foreseeable future, is that pillar three would gradually merge with pillar one - giving the Union a two pillar rather than a three pillar structure.

The European Commission:

Whereas an American citizen has a clear idea of who is in charge of the executive branch of Government - the President - it is thus far harder for a citizen of the European Union to answer the question "Who is in charge?"

The President of the Commission, Romano Prodi, is the figurehead of the European executive, but his executive responsibilities only extend to first pillar matters. He is not in charge of the execution of policy in regard to the second or third pillars. In the second pillar that job is given to another person, Javier Solana, the Secretary General of the European Council. The third pillar matters are retained by member governments.

Even within the Commission itself, the President of the Commission is not totally in charge. He does not decide who shall be the members of his Commission. He cannot sack individual Commissioners. Commissioners can take individual positions in a way that members of a collectively responsible government at national level could not. And when it comes to implementing agreed European Union legislation, the European Commission has to work through various management committees in which member states continue to have a significant influence through a process known as "comitology". It should be said that the Treaty of Nice will, if it is ratified, remedy some of these defects. It provides that the Commission will act "under the political guidance" of the President and that he / she will allocate responsibilities among Commissioners and may require a Commissioner to resign.

## The European Parliament:

The European Parliament consists of 626 members. Voter participation in elections to the European Parliament is low and falling, even though the Parliament is progressively gaining more influence in the European decision-making system. Unlike the situation in most European parliamentary democracies, where the head of the largest party or coalition of parties becomes Prime Minister, in the European Parliament the Leader of the largest party does not become the head of the Government of Europe after the election. The European Parliament Election result does not therefore have an immediate visible or direct effect on the "Government of Europe", and this means that, as far as voters are concerned, they frequently do not feel they have really got "value for their vote".

It is true that, behind the scenes, the European Parliament election result makes a difference. It influences who will become President of the Parliament, and the new majority preferences of MEP's will imperceptibly influence E.U. policies through the co-decision power on legislation of Parliament over the following five years.

The Parliament has the role of approving, amending or rejecting legislative proposals put forward by the European Commission, including the European budget. The Parliament checks any excesses of the European Commission, and, in the final analysis, can sack the European Commission if it feels strongly enough about something. The European Parliament thus has an important negative role of restraining the European executive, but does not decide who will make up that executive.

The voter does not see the power of European Parliament, and has little or no sense that his / her vote in the Parliament elections has made any real difference. This explains why so few people vote in European Parliament elections. More people voted in "Big Brother" TV polls in Britain than in European Parliament elections!

## The Council of Ministers

It is not proposed to enter into an lengthy discussion here on the work of the Council of Ministers of the European Union. The Council of Ministers' powers and responsibilities include ensuring coordination of the general economic policies of Member States, taking decisions, passing legislation and, in very limited cases, exercising these powers itself. Except where otherwise

provided, the Council acts by majority vote and every Member State is represented at the Council. The Council of Ministers is a fully democratic body, at least in the sense that all the Ministers there have been elected to serve in that capacity by the Parliaments of their States. The voting within the Council is by qualified majority. This reflects the fact that, for example, a German Minister represents a larger number of European citizens than does, for example, a Luxembourg Minister. Even if the changes proposed in the Treaty of Nice are made, smaller countries will retain a much larger vote in proportion to their population than do bigger ones.

For example, Ireland, like Denmark and Finland will increase their vote from 3 to 7 compared to larger countries like Germany, France and Italy whose vote will increase from 10 to 29. It is important to stress that the council of Ministers tries strenuously to avoid putting issues to a vote. If even the smallest member state has a difficulty with a decision favoured by all the other Members, major efforts are still made to find a compromise acceptable to that one Member. The Council's dynamics are based on personal relationships and give-and-take. A skilful Minister from a small country can, in that setting, often exercise greater influence than a less skilful one from a bigger State.

There can be a tendency for Ministers in all Countries to try to have it both ways. They may agree to European decisions directly at the Council of Ministers, or indirectly at COREPER or Management Committee level, only to subsequently try to distance themselves from them by blaming them on "Europe". This should be avoided, as it distorts reality and promotes a misplaced hostility towards the European Union.

There are moves afoot to enhance the effectiveness of the Council of Ministers. There is a particular concern that the General Affairs Council (of Foreign Ministers) does not work as well as it should, partly because Foreign Ministers cannot afford to give it the time that it deserves. This is one of the reasons why there are increasing tendencies towards having specialist "Ministers for Europe" in some countries, but those Ministers will only be effective if they have full powers to bind their Governments. Ministers who are in the position of having routinely to refer back to their capitals during Council meetings do not serve the interests of their own countries or of the Union effectively.

The Laeken declaration asks questions about the work of the Council of Ministers such as "Should this role of the Council be strengthened?" and "Should the public have more access to Council

documents?" Ireland should be wary of any strengthening of the role of the Council, particularly in an enlarged Union, because of the risk that a small "directom" of big countries might emerge within such a Council, ostensibly in the interests of efficiency, but with the practical effect of diminishing the role of other States. A strong role for the Commission is the best guarantee of the interests of smaller states. Greater public access to Council documents would, however, be very welcome.

#### Enhancing the E.U. Democracy:

In contrast to the situation in the European Union, in the United States power and responsibility are fused in one person - the President of the United States. No similar fusion of power and responsibility exists anywhere in the European Union. Under existing institutional arrangements, everyone has the capacity to pass the responsibility over to someone else. It is no wonder, therefore, that Europe's citizens become frustrated, as the Irish did, when they voted "No" to Nice.

There are other explanations for concern about Europe's democratic legitimacy. As long as the Soviet Union was there, the external threat of Soviet expansion provided a form of "emotional cement" that drew all West Europeans together. They knew that, if they separated from one another, they would be more vulnerable than if they acted together as a community in the European Union. It could be argued that the removal of the Soviet threat removed some of the "emotional cement" that kept the Union united. The increased need to manage global threats like global warming and underdevelopment could, on the other hand, be said to compensate for that.

But the removal of that emotional cement coincided with a rapid expansion of the field of activity of the European Union. Whereas the European community had functioned as a simple common market up to the early 1980's, it has since then expanded its field of activity quite rapidly. It has established a single market and now a single currency. It is moving to establish elements of a common criminal law. It is developing a European security and defence policy. It has become much more active in stopping mergers between individual companies on competition grounds. In the context of the single currency, it is issuing recommendations about the economic policy of individual countries, of a kind that it never had to do before.

In light of these developments, a reasonable view would be that the emotional cement previously supplied by the external threat of the Soviet Union, must now be replaced by a new emotional cement, derived from an enhancement of democracy at the level of the European Union itself, and

the consequent development of European patriotism, a shared European identity to go along-side national identities. This is an urgent matter, and involves going much further than the four point agenda set out at Nice and referred to in Paragraph 4.7 of this paper.

The development of a supranational democracy in Europe is one of the great constructive political challenges facing the western world in the twenty-first century. There are some, such as the noted American political scientist Robert A. Dahl, who question whether democracy is possible at supranational level. Others argue that politics and democracy do not matter as much as they used to. It is claimed that the triumph of market liberalism, combined with rising living standards, has ended ideological conflicts and made politics a mere a question of administrative efficiency and managerial competence. Media "analysis" of politics certainly reflects this in the trivialization and personalization of politics. The real underlying choices are rarely put before the electorate, whether at European, national or local level, either by the politicians themselves or by the media.

Yet, when all the froth that passes as political commentary is pushed aside, the fact remains that from global warming to personal privacy, from potential genetic discrimination to financial instability, from population movement to the problem of ageing societies, the twenty-first century presents mankind with a set of challenges which will only be met by politics and political decisions. For smaller countries, and increasingly for bigger ones too, the political decisions that can master these problems have to be at a level higher than that of a nation state. That is why enhancing European democracy is so important.

The democratisation of the European Union should be based on a realistic appraisal of what politics can achieve. Political action, for centuries, was based on the idea that politicians had special know-how that could provide progress for the whole of society. Religion, ideology, science and the market have each in turn been seen by some as the exclusive source of political wisdom, on which politicians could draw. There was a fallacy that active politics could deliver a better life to a people who themselves remain passive. This proved to be a mistake. Politics can only change society if it persuades people to change the way they live their lives. Health and education can be changed much more fundamentally by people's own choices about life style, than by more public spending.

Thus, while asserting that further democratization of the European Union is essential, one must be modest in the claims made about the short-term difference it will make. A renewal of democracy at national and local level will also be necessary. Electorates need to be presented with real choices with real balances between costs and benefits, and with realistic statements about the balance to be struck between short-term pain and long-term gain. This rarely happens at any level of politics, and a reform of the structure of European politics will not, on its own, change that.



There is recognition of the democratic deficit in the Laeken declaration. The Laeken declaration speaks of the "democratic challenge facing Europe". It says that European institutions must be "brought closer to citizens". It claims that citizens want European institutions to be "less unwieldy and rigid and, above all, more efficient and open". The declaration does not, of course, reflect on whether national or local governments might also be accused of being unwieldy, or rigid, or in need of being made more efficient and open.

The very structure of the Laeken declaration seems to take a rather limited reductionist approach to the democratic challenge facing the Union. It highlights a "better division and definition of competence of the European Union" and a "simplification of the Union's instruments" by making them the first topics it deals with under the heading of the democratic challenge. A more neat and simple legal structure for the EU would be more easily communicable to Europe's electorate but it would not, other than in a very passive way, "bring citizens and primarily the young closer to the European design and the European institutions", as the Laeken declaration's authors hope.

#### A Catalogue of Competences:

At Nice in December 2000, the heads of State and Government said that the next inter-governmental conference (I.G.C.). Treaty should reflect, inter-alia, on drawing up a distribution of competences between the member states and the E.U., in accordance with the principle of subsidiarity.

Such a list or distribution of competences might make things a bit clearer but it would not be enough on its own. In fact, it could become more of a problem than a solution because of disputes about its interpretation, especially if interpretation were to be a matter for courts.

One can easily envisage unproductive conflicts growing up. All human institutions have a tendency, while proclaiming that they are serving the general interest, to aggrandize power and responsibility to themselves, almost as if that is an end in itself, and any such list or catalogue of competences to gain advantage over other institutions.

One could also envisage commercial interests, making full use of the catalogue or list in legal disputes with the authorities and with their competitor. One could also envisage countries, who felt they were contributing too much to the E.U. budget, using an interpretation of the catalogue to seek to undermine certain common policies that they said were too costly e.g. the Common Agricultural Policy.

The European Union has not reached its final form. A rigid catalogue of competences devised now could soon become an anachronistic straight jacket. The reality is that all levels of Government - local, regional, national and Union - are nowadays in practice involved, directly or indirectly, with almost every area of government to some degree or other either in a consultative, an executive or a legislative role. Will it really be intellectually or semantically possible to devise a list of exclusive competences of the Union and of Member States that will be robust enough to encompass this very complex and evolving reality? It is very doubtful.

Rather than attempt to create two exclusive lists of competences, one for the Union and another for Member States, a more nuanced approach might be attempted. This would be to have a number of categories of competences;

exclusive competences,

conditional competences,

supplementary competences and,

coordinating competences.

Exclusive competences are self-explanatory. Conditional competences would be ones where the Union's role would be precisely delimited in the Treaty and it could not go beyond those limits. Supplementary and coordinating competences would be ones where the Member States would have primary power, but the Union would have a power to supplement or co-ordinate what the States might do. In this approach, the competences of member states would not be set out, and it would be assumed that all powers not exercised by the Union remained with member states.

Given that any such list will be very difficult to finalise, and should not become too rigid, it would be important, wherever there is a dispute about whether the Union is going beyond its competence, that the "Court of Appeal" should, be political rather than legal. One could envisage such an appeal role being exercised by the European Council (Heads of State and Government) who could be asked to look again at a decision, which had been agreed jointly by the Commission, the Parliament and the Council, but where a significant interest still argued that it had gone beyond the appropriate Union competence.

The question arises as to what size of interest would be required to trigger such an appeal to the European Council? There could be a role here for national parliaments in this. The Treaties could provide that a petition signed by at least forty percent of the members in each of at least a quarter of the member states could trigger a valid appeal to the European Council. Confining the initiative to elected representatives, and requiring that several states would have to be involved, would be necessary safeguards against an abuse of the appeal provision by vested interests. Any more rigid type of catalogue of competences should be resisted. It is important to make the point all countries would have themselves participated in the original EU decision now being appealed against. The 40% threshold would allow the Opposition Parties in a number of countries, acting together to trigger an appeal.

The next question that arises is what the European Council would be expected to do with the appeal. It is suggested that it have the option of asking the Commission to prepare a report on the matter for consideration at the next following European Council meeting i.e. about three months later. It could at this subsequent meeting either reaffirm the decision, or acting by Qualified Majority, it could, if it had received separate legal advice through the Council Secretariat that there was a good case for saying that competence had been exceeded, suspend the original decision and ask the Commission to submit a new proposal. This appeal petition procedure is necessarily cumbersome and it could create an ongoing doubt hanging over existing Union policies. Therefore an appeal should only be capable of being lodged in regard to a decision taken in the previous two years, otherwise long-standing parts of the "acquis communautaire" could be re-opened.

Incorporating the Charter of Fundamental Rights in the Treaties:

At Nice, the European Council also asked the next I.G.C. to reflect on the possibility of incorporating the European Charter of Fundamental Rights into the Treaty of the Union, making it a sort of constitution of Europe. This charter was promulgated at Nice on a political declaration and it is, to some degree at least, already being taken into account by the European Court of Justice in its judgments.

The Laeken Summit has weakened the language used at Nice in regard to incorporating the Charter. Laeken referred to it as something to which "thought would also have to be given", but did add that "the question ultimately arises as to whether this simplification and re-organisation (of the Treaties) might not lead in the long-run to the adoption of a constitutional text in the Union".

Incorporating the Charter of Fundamental Rights into the Treaty could, in certain circumstances, mean that its specific provisions could be used in court cases in any area where European Union law applied. It could provide a new field of activity for lawyers pursuing special or commercial interests on behalf of clients. There is a particular risk that the European Court of Justice, interpreting social rights in the Charter, might become involved in making legal interpretations of rights on issues that more properly belong to the field of politics. The German Supreme Court has followed a particularly activist line, and this could be taken up by the European Court of Justice. Incorporating the Charter could also mean that there would be two competing, and potentially conflicting, supranational human rights codes operating within the European Union - namely the European Union's own Charter and the longstanding Council of Europe Convention on Human Rights. This could lead to confusion, particularly in cases that were in a gray area between E.U. and non-E.U. law.

Unless it is made clear that the incorporation of the Charter would only be in respect of EU institution's actions, or the action of member states on behalf of the Union, it could be argued that the incorporation of the Charter in the Treaties would operate in the opposite direction to any delimitation of the powers of the Union vis-à-vis member states of the kind referred to in paragraphs 4.41 to 4.50 of this paper.

There is, however, a substantial justification for the pressure for the incorporation of explicit human rights provisions in the E.U. Treaties. This is the need to ensure that fundamental rights are respected in every member state of the Union. The bigger the Union gets, the more important this is. Some countries will be entering the Union in the near future who have had a comparatively limited recent history of parliamentary democracy, and the rule of law of the independence of the judiciary.

It is argued that incorporating the Charter of Fundamental Rights in the EU treaties would tie these countries more fully into a system of democracy and the rule of law independent of the judiciary. The Nice Treaty will, if it is ratified, do this, without necessarily incorporating the Charter in the Treaties. It provides a mechanism to allow the Union to respond where there is a clear risk of a serious breach by a member state of basic principles on which the Union is founded, including those of "democracy, respect for human rights and fundamental freedoms, and the rule of law". A "reasoned" proposal of one third of member states, or the European Parliament or the Commission will be necessary to activate this. The Council may then, by a four fifths majority of its members and with the assent of the European Parliament, decide that there is a clear risk of a breach and

make recommendations to the member state in question. This proposal in the Nice Treaty, supplements the provision of the Maastricht Treaty whereby the Council may decide to suspend certain rights, including voting rights, of a Member state it has deemed to be in "serious and persistent breach" of the principles mentioned above. Does this go far enough, and if not, is incorporating the Charter in the Treaties the appropriate next step to take?

The first point to make is that the incorporation of the Charter in the Treaties will not necessarily affect the conduct of member states in matters not coming within E.U. law. Most who argue for the incorporation of the Charter in the Treaties do so on the assumption that it would ensure that fundamental rights were respected by Community institutions, and by member states "acting within the scope of Community law". It might well be that a breach of fundamental rights by a member state was within the exclusive scope of its own national law, not of Community law. In that case, the incorporation of the Charter in the Treaties would make no difference.

There are, other arguments in favour of strengthening the fundamental rights of individuals vis a vis the European Union. The traditional E.U. economic policy activities in pillar one did not greatly impinge on fundamental rights of citizens, although the enforcement of sanctions for breaches of competition policy did more significantly in that direction. More recently, the European Union has, however, extended into areas where fundamental rights are very much in question, such as visa, asylum and immigration policy under Title IV of the EC Treaty and policy and judicial co-operation in criminal matters under Title VI. Whereas all member states of the EU are parties to, and are bound by, the Council of Europe's European Convention on Human Rights (ECHR) which was put in place in 1950, the EU itself is not a party to, and is not in the same sense bound by, this Convention. As a result an individual's ability to challenge a measure on fundamental rights grounds is more restricted where the measure is taken by an EU institution or under E.U. law, than where such a measure is taken by a member state under national law. This is not, in principle, acceptable.

In fairness, the European Union's own Court - the European Court of Justice (ECJ) in Luxembourg - has applied the ECHR norms in practice. But, this form of protection of human rights in the EU lacks visibility to the general public.

There are a number of options to dealing with this situation. These are incorporating the EU's own Charter of Human Rights, as promulgated at Nice, in the EU Treaties,

incorporating the ECHR text of 1950 in the Treaties, and making it a part of EU's own internal law applicable to EU actions and to actions on the EU's behalf by member states

having the EU become a party to the ECHR, in the same way as its member states have done.

The difficulty with options (a) and (b) above is that they could lead to divergences of interpretation between the EU's European Court of Justice (ECJ) in Luxembourg and the Court in Strasbourg whose job it is to decide on alleged breaches of ECHR.

The best solution would appear to be for the EU to adopt option (c) above, and itself, as a Union, adhere to the ECHR. This would involve an amendment to the EU's own Treaties and to the Council of Europe Treaty of Governing the ECHR. But that is not an insuperable obstacle. This course would mean that there would be a single and indivisible code of human rights governing all of Europe - both the EU part and the non-EU part. It would mean that the EU as far as human rights was concerned, was putting itself in the same position as its member states. The E.U. itself would submit to a superior and external institution (the ECHR) to judge its compliance with human rights. This is the best approach.

The Simplification of the Treaties:

The simplification of the Treaties is another task entrusted to the next IGC by the European Council of Nice. Simplification of the Treaties could enhance the democratic legitimacy of E.U. decision-making - making it more comprehensible and transparent. Valuable work has been done in this area by the European University Institute at Florence.

One possible outcome of a simplification process would be a hierarchy of provisions within the Treaty, with the highest place going to treaty provisions that encompass certain fundamental principles of Union action, and a subsidiary place going to the many technical provisions now included in the Treaties, which are merely consequential to the acceptance of the fundamental principles. Such a hierarchy could be helpful, but it could, of course, provide a cover for surreptitious attempts to dilute existing policies, or to alter the "acquis communautaire". This would not be welcome. A distinction between fundamental and technical Treaty provisions would be helpful to Ireland if we were to alter our procedure for ratification of Treaty provisions along the lines suggested in paragraph 2.17 of this paper. Only changes to fundamental principles might have to be ratified by referendum.

## The Question of a European Senate:

The possible enhancement of the role of national parliaments in the E.U. Framework is the fourth issue, which the Nice Council asked the next IGC to examine.

Some have suggested, for example, that we should have a European Senate, consisting of people appointed from member parliaments, who would legislate alongside the existing, directly elected, European Parliament. The Laeken declaration mentions the possibility that such a "Senate" might have a role "in areas of European Action to which the European Parliament has no competence". This is presumably a reference to pillar two and pillar three matters - foreign affairs, defence, justice and home affairs. There are, however, strong arguments for saying that having members of national parliaments, double jobbing Brussels on a part time basis, would provide little additional necessary emotional cement or democratic legitimacy for the European Union. If they were doing their work properly at home, they would have little time to do a thorough job at E.U. level as well.

The Laeken declaration raises the possibility that such a European Senate, if it were to be established, would "focus on the division of competence between Union and Member States, for example through preliminary checking of the principle of subsidiarity". This would appear to be a very unproductive, limited, overwhelmingly and negative purpose for which to establish a wholly new institution. It would cast the "Senate" in the role of institutional antagonist of the directly elected European Parliament. That would not be good.

Rather than establish a wholly new institution to deal with matters "in which the European Parliament has no competence", it might be better to confer a special role in European Union affairs on the existing Parliamentary Assembly of the Council of Europe. This assembly in which all European countries are represented (including Russia) could act as a useful sounding board for consulting all of Europe on initiatives the Union might be considering in areas like Foreign Affairs, and Human Rights. There are matters that would be of special interest to the Council of Europe member countries who are not currently in the European Union. By associating all of Europe in this way with some aspects of European Union decision-making, any sense of exclusion, felt by some non-member countries, would be mitigated. In any event, it would be rational and efficient to bring the Union and the Council of Europe closer together as they share many of the same goals and have overlapping membership.

There is another role that might usefully be performed by an assembly of representatives of national parliaments, such as the Parliamentary Assembly of the Council of Europe. This is the work, being undertaken in the current case by the Convention chaired by Valéry Giscard d'Estaing, of preparing the ground for future IGC's to revise the Treaties. By giving the representatives of national parliaments an early input, alongside member government representatives, to the process of Treaty revision, through a pan-European parliamentary assembly, type role, one could reduce subsequent difficulties in securing ratification of Treaties. While it is to be hoped that the revision of the Treaties to be proposed in 2004 will be comprehensive, there will be a continuing need for an ongoing vehicle to ventilate suggestions for further revisions to the Treaties and an assembly of national parliaments could perform that role, without intruding in the field of work of existing EU institutions.

#### Other Methods of Enhancing the Role of National Parliaments:

There is merit in a suggestion made by Commissioner Michel Barnier that representatives of national parliaments should sit in at the Council of Ministers' meetings when the Council of Ministers is acting in legislative mode, co-deciding European Union legislation along with the European Parliament. This formalisation and politicization of the legislative role of the Council of Ministers, hitherto operating more or less behind closed doors, would help give citizens a greater sense of involvement in the process.

There are, however, some difficulties with Commissioner Barnier's suggestion. Much of the legislative work of the Council is done on the basis of what are known as "A points". "A points" are items of legislation that are nodded through without debate, having been the subject of exhaustive negotiation and agreement first at level of the working groups, of senior officials of member states and the Commission, before being agreed finally in the Committee of Permanent Representatives (C.O.R.E.P.E.R). C.O.R.E.P.E.R. consists of the Ambassadors to the EU of national governments and it meets in private. Bringing national parliamentarians all the way out to Brussels just to observe a succession of "A points" being nodded through in a few minutes would not create much sense of democratic involvement!

The best approach would be to involve national parliaments, through their specialist committees at national level, in the E.U's legislative process from a much earlier stage, through their own governments. In Ireland, the Joint Committee on European Affairs, which meets every week,



receives reports from a firm of private consultants on draft directives and regulations proposed by the Commission to the Council. The consultants summarise the content and attempt to indicate the ones that have a locally important political content that would merit the attention of the Committee. These reports have been considered by the Committee over the past four years. The Committee has decided to go further. It tabled the reports by the consultants before the Dáil in 1999 and 2000, but did not single out any particular proposals as being of special concern, and did not make any particular recommendations.

None of these reports have been debated by the Dáil. There is no formalized reporting back arrangement by Government to the Committee, so it is impossible to say what influence if any the Committee's reports have had on subsequent Government action at the Council of Ministers. Subsequently the Committee asked Ministers to supply them with a comprehensive tabulation of proposals currently before the Council of Ministers. While a great deal of information was supplied, this was not differentiated on grounds of political sensitivity and did not provide the Committee with the focused and prioritised information it needs to conduct enquiries that would have real relevance and effect. It is understood that the government is considering proposing improvements to this process, but these have not yet been made public. It is hoped that the contents of this report will be of assistance to all concerned.

There is much room to improve on the existing process. Apart from procedural change the European Affairs Committee needs substantially improved in-house resources if it is to do its job properly. The Committee currently has the assistance of only two and a half people at Executive level. This should be increased to 10 executive level people. The Committee should also be formally charged with the role of alerting other specialist Committees of the Oireachtas (e.g. the Agriculture Committee, or the Finance Committee) to EU Commission proposals that deserve their attention. Committees could then decide jointly or separately to examine particular Commission proposals.

An improved procedure should be put in place to alert the Joint Committee on European Affairs to proposals that it should consider. This job is too important to be left to private consultants, however diligent. Responsibility should be placed by law on each Minister and each Department of State to provide, within one month of its publication by the Commission, an advisory note, on each Commission proposal. This advisory note should be signed by a Government Minister. It should set out the legal, financial and policy implications of the proposal and give an estimate of the likely timetable for its adoption by Council and by the European Parliament. The Minister would be obliged to state in his advisory note whether the proposal has, in his view, no significance for Ireland, moderate significance for Ireland, or considerable significance for Ireland.

In order to prevent such a process having the effect of narrowing the perspective to a purely national one, the Minister would also be obliged to deal in his advisory note with the merits and demerits of the proposal from a broader EU perspective, taking account of such considerations as efficiency, the strengthening of the single market, subsidiarity and proportionality. The note would also have to be comparatively brief, if it were to be useful. The Minister should be obliged to indicate the Government's general negotiating position in regard to the proposal. The Government might be obliged not to agree to any proposal of "considerable significance to Ireland" unless it had been the subject of a discussion between the Joint Committee on European Affairs, or another Oireachtas Committee designated by the European Affairs Committee, and the Minister responsible. This procedure of advisory notes signed by Ministers would ensure that the Committees of the Oireachtas had timely, and politically accountable, advice on the matters to which they should give attention.

An obligation should furthermore be placed on the relevant ministers to inform the Joint European Affairs Committee every time a legal action is initiated against Ireland by a European Union Institution, and to indicate the action that the government is taking in regard to the matter and to keep the committee updated thereafter.

The Chairman of the Joint Committee on European Affairs should be given the power to summon a Minister before the Committee to explain why any proposal is designated by him as of "no significance to Ireland", or only of "moderate significance". The Joint Committee would be free, of its own accord, to hold hearings on any proposal. It would continue to use the services of private consultants, but their work would be focused on the comparatively small proportion of proposals that were of real significance.

The Joint Committee could, if the changes suggested above are made, make a considerable impact on policy-making in Pillar One i.e. where the Commission has the exclusive right of initiative. Other arrangements would have to be made for Pillar Two and Pillar Three questions. In the case of pillar two matters, the Minister for Foreign Affairs could be given responsibility to brief the Joint Committee of Foreign Affairs by means of advisory notes, on proposals emerging. In pillar three matters, these roles could be performed by the Minister for Justice and the Oireachtas Committee dealing with his brief.

If the Joint Committee on European Affairs is to have a significant input, through measures of the kind outlined above, to the negotiating stance of the Irish Government at EU Council meetings, there are a number of practical matters to be considered:

The Irish Government might not wish to disclose its detailed negotiating position on a particular proposal publicly, so there could be a need for a provision for private briefing of the Committee in some circumstances. In Denmark, all European Affairs Committee meetings are closed to the public for this reason, even though their agendas and papers are published.

The workload of the Joint Committee would substantially increase if the Committee were to become involved in detailed monitoring of Ireland's negotiating position at all Council meetings where important issues were being considered. Amendments to proposals may be tabled late by the Commission and it would be necessary to timetable Joint Committee meetings as close as possible to the time of the scheduled EU Council meetings. In practice, this would mean the Committee meeting every Friday. In Denmark, 50 such Friday meetings take place, each lasting 2 - 5 hours. This time commitment would have to be taken into account in selecting members. Of the Joint Committee on European Affairs.

This involvement by the Committees could be supplemented by having E.U. Commissioners appear before the relevant committees in all Member Parliaments, by videoconference link, on a regular basis. Selectivity would have to be exercised in regard to which E.U. Commission proposals would be subject to this sort of scrutiny. Most Commission proposals are technical and limited in scope. Member Parliaments would have to select and notify in advance the proposals they wished to discuss with a Commissioner.

One approach might be to designate the first five working days of each quarter to be "Europe days" in all national parliaments of the Union. Commissioners would be required to make themselves exclusively available, during those five days, for briefing national parliaments by video link. In order to give media prominence to the European work, the national parliaments might agree, as a general rule, not to conduct any other parliamentary business at all during those five days.

Almost all the work of national parliaments is, in some way or other, now intertwined with the workings of the European Union. There is no formalized system for giving members of national parliaments, particularly newly elected ones, a basic grounding in the structure, workings and constitutional basis of the European Union. Such grounding, in the form of an induction course, should be provided after each general election. It could be argued that such a system would impose an unduly heavy work burden on the Commission, and that 15 or 20 Commissioners could not cover all 28 or 30 national parliaments. This problem could easily be overcome by reversing the decision made at Nice, not to continue allow the number of Commissioners to enlarge beyond 27.

While there may not be sufficient executive portfolios for 30 Commissioners, there would be plenty of work for all 30 Commissioners in the field of communication and consultation with the national parliaments, the electorates, and civil society of states.

#### Election of the President of the Commission by the People of Europe:

While it would be useful to associate national parliaments more closely with the work of the European Union, it is even more important to associate Europe's citizens themselves directly with the Union. To achieve this, it is the argument of this paper that the people of Europe should elect the President of the European Commission, in the same way that the people of the United States elect the president of the United States. In such an election, people all over Europe would have to think about their choice with care. The merits of respective European Presidential candidates would be debated in cafes in Palermo, in wine-bars in London and in pubs in Killarney. To some degree at least, the same conversation would be taking place all over Europe. This would create what is described in the Laeken declaration as a "European public area", a single European political society.

This proposal is advanced because it is important that all the citizens of the European Union should, at least once every four or five years, have a similar discussion about the same topic. Such a discussion would be a uniquely useful way of building a sense of common European identity and of building a common European political space, leading to a common European allegiance alongside national allegiance. It could be persuasively that the United States would not have held together as well as it has, were it not for the fact that, every four years, the citizens of Alaska have to make exactly the same decision as the citizens of Florida.

Of course, the election of a President of the European Commission would engender controversy and, to some degree at least, false expectations. Alternative visions of Europe would be put forward by alternative candidates. Some would be unrealisable others would be exaggerated. But the debate itself would have an educational function. It would require European citizens, in assessing the programmes of the various candidates for President of the European Commission, to educate themselves about both the potential, and the limitations, of the European Union. It would require member governments, who have reservations about particular aspects of the programme of particular candidates for the Presidency, to be open about these concerns before the election, rather than just to seek to frustrate the Commission's ambitions surreptitiously at the Council of Ministers after the event.

There are, at least, two ways of allowing the people of Europe to choose a President of the European Commission. One is to have a direct election of the President, on a separate ballot paper to the one used for the election of the European Parliament, but on the same day. This is the system used in the United States. It preserves the separation of powers between the Commission and the Parliament. One election is not dependent on the other.

The other way is to allow the European Parliament itself to elect the President of the Commission, but to have the European Parties contesting the Parliamentary Elections indicate in advance their choice for President of the Commission. Thus, by voting for a member of the European Parliament from a particular party, a voter would be indirectly choosing the nominee of that party for the President of the Commission. This latter system is close to the one that applies in the election of Governments in most European countries (except France), and would have the merit of familiarity.

There are some perceived difficulties with the latter alternative.

Under our present system, the European Parliament acts as a check on the Commission. There is a separation of powers. If the President of the Commission were to be the product of a whipped majority in the European Parliament, there would be a tendency for the Commission and the Parliamentary majority to cease to be independent of one another and to merge their interests in opposition to those of the minority in the Parliament and of member governments who disagreed with their policies. Parliament and Commission might become more partisan and less inclined to look dispassionately at the interest of the Union as a whole. There would be a particular difficulty in areas like competition policy, where the Commission exercises a quasi-judicial role. One would not want decisions on individual cases to be dependent on the preferences of transient parliamentary majorities.

For this reason, it would be better to retain the formal separation between Parliament and Commission by having the President of the Commission elected separately by the voters on a separate ballot paper.

Obviously a directly elected President of the Commission, with a mandate of his or her own directly from the people of Europe, would be seen not only as a threat to the influence of the European Parliament, but also to that of the Council of Ministers, and particularly of the European Council (of Heads of Government). The European Council has grown significantly in power and influence in

recent times, especially in setting the European agenda. Prime Ministers might not welcome an alternative power centre in the form of a President of the European Commission elected by all the people of Europe. This rivalry might arise even if the formal powers of that President of the Commission did not impinge on particular issues with which the Prime Ministers were dealing, like foreign affairs, security policy and issues reserved for member states.

In order to overcome this difficulty, it would probably be necessary, before electing a President of the Commission, for an inter-institutional political agreement to be reached on a delimitation of functions as between the directly elected Commission President, the Parliament, the Council of Ministers and the National Governments. It is important, that this should be a political agreement, rather than a legal one. A legal formula would frustrate normal political interaction, and freeze the European Union in a particular form. In any event, member states retain control over Treaty amendments and this would check any excess by an elected President.

The present Commission is, as eurosceptics never tire of pointing out, "unelected". This does, however, give it certain strengths. It is not bound by election promises. It can act in the general and long-term interest of Europe, and independently of any national or regional voting blocs. It would be wrong to assume, however, just because a Commission President had been elected by all the people of Europe, that he or she would act in a demagogic way, without regard to the general and long-term interest of Europe. One way of overcoming these concerns about the general or long-term interest being neglected, would be to provide that a President of the Commission could be elected for one term only, without a right to stand again for that post.

If the President of the Commission has been elected by the people, what would be his influence relative to the other members of the Commission? Could he send the agenda?

At the moment the members of the Commission, other than the President, are selected by National Governments, on a one Commissioner per country basis, and approved in office by the European Parliament. Some have suggested that the entire Commission should be elected by the Parliament, or selected by the President himself if he has been directly elected. This would go too far. The present system of selecting Commissioners should continue, but a directly elected President of the Commission would need to have some extra power. He would find it very frustrating if he were forced, for example, to accept, as members of his commission, nominees of member Governments who were radically opposed to the policies on which he had himself been elected by the people of the European Union.

A solution to this difficulty could be found by establishing internal standing orders for the European Commission which would enhance the authority of the President of the Commission allowing him, for example, either to have in his own hands the nomination of three of four additional commissioners not linked to any member state, or to have more votes in decision-making than other commissioners.

Some might fear that a directly elected President would always tend to come from one of the big countries, like Germany, because of the larger number of voters in such countries. This possibility cannot be excluded. All political change involves a step into the unknown. But it is equally arguable that a politician from a smaller country, with a good command of languages, would have a better chance of being elected because he or she would encounter less opposition. A candidate from an English speaking country would also have an advantage because English is the most widely understood language in Europe

Another complementary approach would be for it to be understood that the President of the Commission could reject or sack individual members of the Commission, on political grounds as distinct from on grounds of suggested misconduct or personal unsuitability, thereby requiring the Member States to put forward an alternative candidate for Commissioner. Such a power exists in the proposed Treaty of Nice. Its very existence enhances the authority of the President, and will ensure that member governments in nominating Commissioners, and Commissioners in the work they do, will respect the electoral mandate of the President. There is indeed an argument for saying that the Treaty of Nice, by proposing to grant these substantial extra powers to a President of the Commission, who is not elected, has created an anomaly that should be removed. Providing that the President of the Commission would be elected by the people, this would remove that anomaly.

Many of those who are wary of European integration might be suspicious of the idea of electing the President of the Commission, fearing that it would accelerate the pace of European integration. The opposite could be argued. The fact that candidates for President would have to seek support, through policy options that would be thrashed out in public before the Presidential election would create greater public knowledge of EU affairs. To be elected, candidates might have to promise not to use certain powers or to trim the use of existing powers. European integration would no longer take place behind closed doors. Everything would be out in the open. This would probably lead towards conservatism in the development of the European agenda, rather than the reverse. One thing is certain; electing the President of the Commission would give all European citizens a much greater sense of involvement in the European project.

European Electoral Constituencies: A number of other possibilities for democratizing the Union are raised in the Laeken declaration. These include the Council of Ministers meeting in public when it is passing legislation. Given that much of this legislation is in the form of "A" points, they would probably add little. Another suggestion is that of having, in addition to the territorial constituencies within member states, a "European electoral constituency". This would presumably be a single constituency for the whole of Europe, within which voters would choose between competing lists of candidates. While this would break down some barriers between national electorates, the candidates on the list would probably be quite remote from citizens. It is doubtful if such a system would add much to the democratic legitimacy of the Union.

#### The Rotating Council Presidency:

There is one remaining issue that ought to be considered under the heading of "enhancing the democratic legitimacy of the European Union". This is the suggestion that the six month rotating Presidency of the Council of Ministers should be changed in favour of some more superficially efficient system of preparing the agenda for, and of Chairing, Council of Ministers meetings. The Laeken declaration puts the question neutrally by asking "what of the six monthly rotation of the Presidency of the Union?"

4.103 There are disadvantages to the present six month rotation system, particularly in an enlarged Union.

National presidencies, in a Union of 25 or more members, will be so infrequent and the interests of some countries so narrowly focused, that some countries may not be able to deal impartially with the entire range of EU business when it eventually comes to their turn to hold the Presidency for six months.

To the extent that the rotating Presidency acts as the democratic voice of the Union in Common Foreign and Security Policy issues, there may be discontinuities between one six monthly Presidency and another when dealing with sensitive foreign policy questions. An initiative of one Presidency may not be carried forward properly by the incoming one.

The enlargement of the EU will bring in some very small countries, with small civil services and small budgets, which may not have the personnel to competently Chair all the meetings in which they will be involved. Malta is an example.



There are, on the other hand, some very substantial advantages to the rotating Presidency.

These include:

Holding the Presidency requires every country, through its public administration as well as its political leadership, to think in European terms and to seek "European" solutions to "European" problems, rather than simply European solutions to national problems. The educational value of holding the Presidency is enormous, as the present writer can testify.

The holding of the Presidency of the Council, and the national pride it engenders among the general population, helps bring national public opinion into greater harmony with the European ideal.

The fact that small countries hold the Presidency just as often as big countries, helps mitigate any political imbalance that may arise from the greater weight of big countries have in other areas of European activity.

Changing the rotating Presidency, before any of the new member countries have a chance to exercise it, would have a singularly negative and pejorative effect on public opinion in those countries, and could jeopardize enlargement.

One possible improvement in the rotating Presidency system, that would mitigate some of the disadvantages in Paragraph 4.96, would be the following. The six monthly rotation could be retained as at present for the European Council (i.e. the Council of Heads of Government). But for ordinary Council of Ministers meetings, a new eighteen month Presidency, involving three countries, could be initiated. These three countries would be the ones that would otherwise have had six monthly Presidencies in succession to one another. Instead they would act jointly for eighteen months. They would hand over to three new countries for the following eighteen months. They would each, in principle, Chair an equal number of Councils for the full eighteen month period. This would allow for specialization by topic. One country might Chair Ecofin for 18 months, another the Agriculture Council, and so on. The division of Council Chairs between the three countries would have to be agreed between them at least a year before their eighteen month Presidency would begin. No country would have a presumed right to any particular Council and, in the event of disagreement, the Councils would be allocated equally between them by lot. This proposal would allow smaller countries to specialize in particular areas, and the eighteen month period would give all a better opportunity to complete business in a coherent well-informed way.

## 5. MAKING THE EURO WORK

We now move on to the second challenge facing the European Union. This is that of managing the single European currency, the euro. This project was launched by the Treaty of Maastricht of 1991, and came into full and final effect with the issue of European notes and coins this month. As will become evident, the issues of political legitimisation of economic and monetary policy co-ordination thrown up by the Euro have relevance to broader constitutional questions discussed in this paper. In particular, the Laeken declaration asks the question "How can economic policy co-ordination be stepped up?" As will become evident, this question is a central one as far as the Euro is concerned.

The first thing to say is that the establishment of the European Single Currency is a political project. Rather than have German policy priorities dominate the European agenda through the influence of the Deutschmark, France and the other countries pressed for a substitute European currency, whose management would reflect the concerns and needs of all European countries. Through the mechanism of the Euro, smaller member states now have some influence over forces, which they would previously have had blindly to accept. The Euro enjoys fairly wide popular support. The latest Eurobarometer poll shows an overall level of support of 61% for and 30% against. Support is up six points in the last year, and opposition down seven points. Only in Britain is there a significant majority against the Euro.

The Euro is intended to be a major benefit to consumers facilitating them in travelling, shopping and carrying out their normal activities. It is important in this context that problems such as the lack of a European cheque clearing system be resolved at the earliest opportunity, so that consumers can gain the maximum benefit from the creation of this single currency.

The euro has been described as "a currency without a state". Every other currency in history has been backed by a state. The euro has been launched by an entity, the European Union, which some would say is not even yet a federation, let alone a state. It is thus a unique development in economic history.

The euro is backed by an independent monetary authority, the European Central Bank, (E.C.B.), which is overtly federal in nature. The difficulty facing the euro is that the other side of the equation, the management of economic as distinct from monetary policy, is decentralised and lacks a single entity with clear responsibility to achieve results.

The European Central Bank, (E.C.B.), as the monetary authority, has adopted a deliberately conservative approach since the launch of the currency. It has not cut interest rates to inhibit recession to the extent that many commentators wished it to do, or to the extent that the U.S. Federal Reserve has. This is understandable, given that the E.C.B. wishes to establish its credentials as a prudent manager of a new, and unprecedented, currency.

Whereas power in regard to monetary policy is centralized in the E.C.B., power in regard to economic policy in Europe is dispersed between European Commission, the Council of Finance Ministers, the European Council of Heads of State and Government, and a new entity known as the "Euro Group".

Why does this matter? Why does the euro currency area need a common economic or fiscal policy to go alongside its common monetary policy?

The Euro needs a common economic policy, because if one member country were to over-stimulate its economy by borrowing, spending or tax cuts, this could cause inflation that would spill over into other countries using the common currency. If that happened the E.C.B. might then be forced to raise interest rates to curb inflation to an extent that would unnecessarily and avoidably damage the economic development of those other countries. That is exactly what happened before the Euro was established, when Germany ran big deficits in the early 1990's to pay for German reunification. Other European countries, whose currencies were linked to the Deutschmark, had to pay some of the cost of German reunification through inappropriately high interest rates. Ireland was one of the countries to suffer from this in the 1991 - 1993 period.

Part of the difficulty in establishing a coherent economic policy for the euro currency area is that only 12 members (including Greece) of the European Union are in the euro, and three are outside it.

The formal agent in the European Union for making fiscal policy is ECOFIN - the Council of Finance Ministers. But it includes Britain, Sweden and Denmark, the three countries that are not in the euro, and these countries should hardly have the same say in economic policy for the euro currency area, as the countries that are actually in the currency.

The "Euro Group" was set up to deal with this problem. It is an informal gathering of Finance Ministers, which is confined to the E.U. countries that are actually in the euro. But it is a purely informal body and has no formal decision-making capacity. It cannot bind its members, and has to rely on ECOFIN to formalize any decisions it makes. This is awkward. There is an added difficulty. While the Council of Finance Ministers is the place where taxation and public expenditure policy is discussed, the employment aspect of economic policy have increasingly been taken on by the Prime Ministers, working through the European Council. At their Lisbon summit, the heads of Government in the European Council set themselves an ambitious agenda of economic reform to promote employment, innovation, and technological advance.

The only hard guideline for economic policy within the euro area is in the Stability and Growth pact, agreed at the European Council summit in Dublin under the chairmanship of the then Taoiseach Deputy John Bruton in 1996, on the basis of the provisions of the Treaty of Maastricht. This pact provides that member countries of the euro should run a conservative fiscal policy, aiming to keep their budget always in balance, with a preference for a slight surplus.

In the pact, member states also undertake that they will not allow their Government deficit to get above 3% of GDP. There are formal provisions for sanctioning countries whose deficits go above that level, starting with an obligation to introduce corrective measures, then followed if that does not happen, by a requirement to lodge a non-interest bearing deposit and, if the deficit is not then corrected, for the conversion of that deposit into a fine within two years.

Whenever there is a recession, this 3% overall limit is likely to be particularly difficult for some member states. Most European countries have run deficits well in excess of 3% of GDP at some time or other in the last 30 years. In the next 30 years, however, they will not be allowed to do so. If they do, they face penalties.

The prospect of a number of countries going close to, or above, the 3% limit is now real and immediate. For instance, there are forecasts that Germany, Italy and possibly France and Belgium will go close to or above a deficit of 3% of GDP during 2002. Their budget plans for this year will, I have no doubt, provide for staying within the 3% limit. But it is quite likely that during the year, if revenue falls below expectation or uncontrollable expenditures like unemployment compensation increase, some or all of these countries will break through the 3% deficit ceiling.

This will pose a real test for the authority of European Union institutions, as far as economic policy is concerned. If the sanctions provided for in the Stability and Growth pact are not imposed, the credibility of the currency will be adversely affected. If, on the other hand, fines were eventually imposed, the effect would be to worsen the actual economic situation of an individual country, which is already in difficulties. Will the country, which is already borrowing too much, end up borrowing more to pay a fine as well? That might seem perverse!

#### Amending the Stability and Growth Pact:

I believe that these problems could be overcome if the Stability and Growth pact was amended to provide for several growth scenarios, identifying the margins for budgetary policies which would apply in response to variations in the level of activity at particular points in the economic cycle. This would be a difficult mathematical and political exercise but it would make it possible to respond to genuinely unexpected cyclical developments within an agreed framework, but without deviating from the long term programme in a way that would cause a loss of credibility. The stability programmes agreed by individual member states under the Stability and Growth pact should also be extended to include a more long term perspective, taking into account likely future costs such as the pension burden arising from ageing. A country with a low deficit, which is not providing a fund for future pensions, could be in a worse situation than a country with a larger deficit, which had fewer pension commitments.

A Stability and Growth pact amended along those lines would be likely to be more acceptable politically, and if sanctions had to be imposed, there would be a better understanding for the reasons for them, and less of a sense of injustice. I recognise, however, that making adjustments to the wording of the Stability and Growth pact to take into account of the economic cycle would involve difficult judgments. There is no agreement on the precise nature of the economic cycle, and some unexpected events, like the 11th September, could completely overturn, accelerate or decelerate any movement in the economic cycle.

There is also the question of what would happen if there is what is known as an asymmetric shock affecting only one or two countries. An asymmetric shock occurs when there is a change in economic conditions that affects one part of the currency area very differently from another.

If, for example, one of the member countries of the euro relied for 30% of its income on agriculture, and the other members relied on it for only 2% of theirs, and agricultural prices fell by half, the economic and monetary policy response that would be suitable for the majority of members might not be suitable for the one that had the disproportionate reliance on agriculture. In a state with its own individual currency, the way that this sort of problem would be looked after would be for the Government of the state to give extra financial help to the particular part of the state that is most severely affected by a particular change in economic conditions. But the European Union is not a state and its budget is not large enough to do this sort of thing.

The only mechanism in place for dealing with asymmetric shocks is the provision in the Stability and Growth pact, which asks countries to run budget surpluses when times are good so that they will have the resources of their own without aid from others, to deal with these shocks. This is not very realistic. A mechanism for defining asymmetric shocks might usefully be included in the Stability Pact. Adherence to Economic Policy Guidelines: There is another difficulty worth mentioning. This is the unwillingness shown by one member of the euro - Ireland - to act on formal recommendations made to it on economic policy.

In Broad Guidelines for Economic Policy for 2000, agreed to by all Euro member countries including Ireland, Ireland was recommended to pursue a counter-cyclical fiscal policy in its budget for 2001, to counter risks of overheating in its economy. Ireland was advised not to reduce its expected budget surplus for 2001. Contrary to the advice of the Council and the Commission, the Irish budget for the year 2001 proposed both an increase in spending and a reduction in taxation, leading to a consequent planned reduction in the budget surplus. Following this budget, in February 2001, the ECOFIN Council, on the proposal of the Commission, formally recommended that Ireland go back on its 2001 budget and take steps, through spending cuts or tax increases, to avoid any reduction in its otherwise expected budget surplus.

Ireland, through its Minister for Finance, Charlie McCreevy, rejected this very formal recommendation.

This approach was contrary to the Treaty commitments with which Ireland entered at Maastricht, where under Article 103, Ireland agreed to treat its economic policies as a matter of "common concern" with other members, and agreed to the formal treaty-based system of guidelines and recommendations with which Mr. McCreevy is now having difficulty.

It can be argued that the particular European recommendation to Ireland for 2001 was in fact mistaken, that the Irish Economy was growing fast enough, that inflation was falling naturally anyway, and that any possible overheating could be overcome by infrastructural investment. Ireland's impact on overall euro zone inflation would, in any event, be tiny.

But that is not the point. If Ireland ignores formal ECOFIN recommendations, under the Treaty, why cannot Germany, France or Italy do the same in future? And if those countries could do so, what control at all would remain be on fiscal policy in the euro-currency area? It should not be forgotten that the system of European control of economic policy-making protects smaller countries from unilateral and detrimental actions by bigger countries. These are issues that will be discussed in the forthcoming IGC and they relate closely to questions of democratic legitimacy discussed in the previous part of this paper.

## 6. EUROPEAN DEFENCE

Concerns about EU defence policies played a significant part in the Irish "No" vote to the Nice Treaty. The latest Eurobarometer poll shows 73% support in the E.U. as a whole for the development of a common security and defence policy for Europe. In Ireland, on the other hand, while there is majority support, it only stands at 50%, and has fallen slightly over the course of 2001. Only Finland, at 48%, shows a lower level of political support for a common defence policy than Ireland. Given that Irish public opinion support for common EU policies is generally above average, this data suggests that further dialogue on the need for a common European defence is needed in Ireland.

Defence questions will be brought up when Ireland again votes on the Nice Treaty, even though the Nice Treaty makes little change to the existing position. Among the questions for the next IGC posed in the Laeken declaration are the following - "Should a more coherent common foreign and defence policy be developed?" and "Should the Petersberg tasks be updated?"

The North Atlantic Treaty Organisation, involving most European Union countries as well as the United States, Canada, Turkey and others has been the main vehicle for collective territorial defence of Europe since the beginning of the Cold War. From the beginning, however, there were efforts to develop a separate European defence capacity as well. The Western European Union was founded for this purpose in 1948, but did not develop much beyond being a political forum. An attempt to form a European defence community, similar to the European Economic Community, was launched in the 1950's but it failed.

France has been the driving force in favour of recent renewed efforts to develop a separate European defence identity. These efforts had their first success in the European Union's Maastricht treaty of 1991, which committed the Union to "the long-term perspective of a common defence policy within the European Union, which might in time lead to a common defence". This commitment was approved democratically by the Irish people in a referendum.

In 1992, at Petersberg, near Bonn, Western European Union Ministers went further and identified a number of tasks, which they believed were suitable to a collective European defence capability; separate from but not in competition with, the United States capability. The Petersberg tasks included "humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peace making". The tasks did not, however, include any commitment on the part of one EU state to come to the aid of any other EU state in the event of attack. While "peacemaking" by military means is one of the Petersberg Tasks, and may come close to war making, it is something that all members of the United Nations, including Ireland, have already subscribed to under Chapter 8 of the Charter of the United Nations. The Amsterdam Treaty of 1997 affirmed that the Western European Union was the means whereby the EU would elaborate and implement decisions, which would have defence implications.

While the Petersberg tasks were accepted on paper, Europe did not have the capacity to perform them. This became very obvious when genocide threatened in Bosnia. NATO undertook the major tasks in Bosnia, and later in Kosovo in enforcing the no-fly zone, in conducting the air strikes and in commanding IFOR and KFOR. The WEU's only roles were to co-ordinate the naval blockade and to police the Danube and Mostar. The WEU was dependent on NATO command and control structure and communications systems. Access to these NATO assets required the consent of the United States and of the seven other non-EU members of NATO. Europe, on its own, could do little.

The long-term viability of such an arrangement had to be questioned. The United States was and is showing increasing reluctance to commit ground troops in dangerous situations in Europe, and the United Nations lacks the financial means to mount peacekeeping operations. If situations arise close to the boundaries of the EU, as happened in Bosnia, they could get completely out of hand if no peacekeeper was available to intervene. This could lead to genocide and to mass movements of population, which would directly affect the security of all EU countries, including Ireland. At the moment, the EU has no autonomous means of dealing with such a situation. This is the background to the steps taken in 1998.



A breakthrough in giving substance to Europe's defence identity came as a result of a meeting between the British Prime Minister Tony Blair, and the French President Jacques Chirac, in December 1998 at St. Malo in Normandy. They agreed that in future, the European Union itself, rather than the WEU, should be the focus for the European Union's common defence efforts, and that the E.U. "must have the capacity backed by credible military forces in order to respond to international crises".

Once the French and the British had reached agreement, the European Union itself could begin to implement the decisions in principle on common defence policy taken at Maastricht and Amsterdam, but largely unimplemented by the WEU. At a European Union Summit in Cologne in June 1999 all the Prime Ministers of the European Union, including those from neutral countries like Ireland, agreed to go forward on the basis of the St. Malo communiqué. They agreed that the European Union should be able to act, in defence matters, "without prejudice to actions by NATO". This phrase caused some difficulties, because other NATO members, like the United States, were worried that NATO defence capacity might be used by the European Union to go off on a solo run, without regard to United States interests. The language was subsequently watered down at a summit in Helsinki to take account of this. Helsinki envisaged that the European defence capacity would only act on its own "where NATO as a whole is not engaged".

The Helsinki declaration set "headline goals" for member states. These were, inter-alia, that:

Co-operating voluntarily in EU operations, member states must be able, by 2003, to deploy within 60 days and sustain for at least one year, military forces of up to 50,000 - 60,000 persons capable of the full range of Petersberg tasks. This is the Rapid Reaction Force.

New political and military bodies and structures would be established within the Council to give strategic direction to such operations, if they proved necessary.

The mandate of the Rapid Reaction Force does not extend to territorial defence. Defending ones own territory is entirely left to individual members acting on their own in the case of neutral countries, like Ireland, and acting through NATO in the case of NATO members.

The Helsinki declaration also makes it explicit that the policy "does not imply the creation of a European Army". Instead it aims to create a capacity - a pooling of resources - to allow the EU members to act intergovernmentally, and thus voluntarily, to deal with security threats. As the European Union Committee of the House of Lords put it: -

"The headline goals outlined at Helsinki are at first sight quite modest. The EU does not seek to challenge the national sovereignty of its member states by the creation of a European army, navy or air force, and it has been made clear that EU-led operations are to be undertaken with the voluntary co-operation of member states acting on an inter-governmental basis".

A complex institutional apparatus has now been put in place to back up this Rapid Reaction Force. It includes a military staff, a military committee meeting at either Chief of Defence or permanent military representative level, and a political and security committee of senior national officials for civilian oversight, guidance, or liaison.

It could be said that this common European defence initiative is fairly modest. Total army strengths in the European Union come to almost two million personnel. But only 60,000 are to be involved in common European tasks. This is so because most member states are unwilling to commit all their forces to an untried common institution. States are anxious to retain their own margin of manoeuvre. Individual countries have their own defence needs, over and above the common defence needs of the Union as a whole. For example, the 850 Irish troops committed to the Rapid Reaction Force are also committed to the United Nations, as well as being available for the support of the civil power in Ireland itself.

The big weakness in armed forces of the countries of the European Union is their lack of ability to move troops and equipment over long distances. The sea-lift and air-lift capacity of the United States has always been essential, and remains essential, for any European action involving moving forces any distance.

There are also concerns as to whether some countries such as Germany, because of its financial position after reunification, will be able to afford to make the increases in spending on defence capacity necessary to live up to the commitments it has given to European defence policy.

A number of countries, like Ireland, are unwilling to become involved in European defence operations unless these operations are specifically sanctioned by the United Nations. Given existence of the veto in the United Nation's Security Council, this is a substantial limitation.

We should be realistic about all of this. It will be difficult in practice to persuade member states of the European Union to submerge their individual military freedom in a common European defence policy. There have been, for example, particular difficulties within the European Union as a result of attempts by the British Prime Minister, Tony Blair, to call a meeting of a select group of military powers, like Britain, France and Germany, which excluded other European countries like Italy and Spain. Countries with a record of making their own military decisions quickly, like Britain, are going to find the delays and compromises involved in a common European defence policy quite frustrating.

The decision taken at the Laeken summit in principle to encourage the participation in an international force of troops from EU countries to assist it in peacekeeping operations in Afghanistan is important. However, as has been pointed out by Ireland and others, this has first to be agreed by the United Nations and probably would only involve some EU states in the first year of operation.

Revising the Common Foreign and Security Policy and the Petersberg Tasks:

There will also be differences of opinions within the European Union about the extent to which any European initiative must depend first on full hearted American consent. Some countries, like France, might envisage the European Union taking initiatives in accordance with the Petersberg tasks, without active United States support. Others, like Britain, are more likely to insist on a prior 100% United States commitment.

Defence and Foreign Policy also involve some institutional questions, which were raised in the Laeken declaration. The leadership role in foreign policy in the Union is taken by the member states themselves and by the High Representative of the Union, Javier Solana who is also Secretary-General of the European Council. When it comes to spending EU money on aid in support of foreign policy objectives, however, the responsibility rests not with the Council, but with the European Commission. This could lead to unproductive rivalry. The Laeken declaration recognized this problem and asked the question "How is the synergy between the High Representative and the competent Commissioner to be reinforced?" An obvious solution to this difficulty would be to make the High Representative an ex-officio Vice President of the European Commission as well as being an official of the European Council.

It should be clear from the foregoing discussion that the development of a European Defence Policy and capability is at a very early stage. Therefore it is premature to consider altering the common foreign and security policy or updating the Petersberg Tasks as suggested at Laeken. Europe has enough on its hands to fulfil the existing tasks without going further at this stage.

It is important in all of this discussion to recognize the damage that can be done in 3rd countries by arms that have been exported from Europe to those countries. The EU affords vehicle where by countries may seek to encourage in limitation on such exports of arms and it is important that Ireland should use its influence within the European Union in favour of such limitations. Ireland's role in Peacekeeping and Peacemaking:

It is time to have a realistic discussion in Europe and in Ireland about our actual defence needs. While territorial defence and support for the civil power remain the primary purposes of our defence forces, it has to be accepted that peacekeeping operations overseas are much more than mere altruistic gestures in favour of world peace. Circumstances will arise when it will be in Ireland's national interest, and in the interest of the EU, to be able to intervene in a peacemaking or peacekeeping role in conflicts. Even as far away as Africa, a prolonged conflict would have national interest implications for Ireland. Huge flows of refugees towards Europe could be one result of a prolonged conflict. Ireland cannot expect other countries to bear the entire burden of responding militarily to such situations. We have shown willingness to play our part and that is right.

Stretching back for forty years Ireland has an unsurpassed record in relation to peacekeeping duties with the UN. Our defence forces have a deserved reputation for fairness, impartiality and effectiveness in peacekeeping missions for the UN. In the past number of years they have been joined by the Garda Síochána, who play an equally important role in helping, on the civilian side, to administer police work in transition situations and in training police forces to protect communities which are usually emerging from conflict. In the short space of time, in which they have carried out this humanitarian work for the UN, the Gardai, like their colleagues in the Defence Forces, have gained for themselves a reputation for professionalism, in all its aspects, allied with courtesy and friendliness. The Irish public has acknowledged and approved the positive international peacekeeping role played by Ireland over the years. There exists a desire to maintain this international service and so the assistance of our forces, where they are needed by the UN in conflict situations, should continue and even expand, where appropriate.

There are, of course, financial limits to what can be done. Ireland spends 0.7% of its GDP on defence. Sweden, also a neutral country, spends 2.2% and Finland 1.3%. There is a need to get better value for defence expenditure. Conscription is not an issue. Conscription needs to be abandoned in the countries, which still have it. It is bad value for money. Conscription means that too many resources are devoted to large, semi-professional armies that can only be deployed locally. The present trend, throughout Europe, is towards smaller, volunteer-only armies, which are properly trained and equipped. So fears of Europe-wide conscription being imposed on Ireland are groundless for more than one reason.

## 7. AGRICULTURE AND ENLARGEMENT

The Common Agricultural Policy plays a central role in the EU. Attitudes to the enlargement of the EU are affected by concerns about the effect enlargement might have on the Common Agricultural Policy. Institutional changes indirectly affect the Common Agricultural Policy. Agriculture is one of the few areas in the first pillar, where the European Parliament does not have co-decision rights with the Council of Ministers. The Laeken declaration raises the question of extending the right of co-decision. This issue cannot be realistically discussed without addressing the concerns that prompt some to resist co-decision because they fear it might undermine the Common Agricultural Policy.

The Common Agricultural Policy dates from the 1960's. Under it the European Union has moved from being a net importer of food, to being a net exporter. European consumers now enjoy a variety of food and a level of food security that they never had before.

Different products are supported in different ways. In the sugar and dairy sectors there is a system of production quotas which limits supply, keeping prices relatively high for those fortunate enough to have quotas. Quotas freeze the pattern of production and are not conducive to long-term efficiency or to social fairness. Milk quotas, for example, have a distorting effect on the whole livestock sector. The extra income guarantees enjoyed by milk quota holders leads to a dominance of dairy breeds in the cattle herd and damages the beef industry. Quotas have, however, been very effective in reducing surpluses.

In cereals and beef the situation is different. Support prices are being progressively lowered; market intervention progressively reduced and producers are being compensated for the income loss by direct income payments related to the size of their enterprise.

Commencing in 2005, the milk sector will begin to move in this direction too, with lower prices and compensating direct payments. The Berlin Summit decided also that the milk regime would be reconsidered in a mid-term review in 2003 "with a view to eliminating quotas after 2006". Removal of quotas would be an exceptionally difficult exercise politically, because quotas, although officially created, have become a form of private property, which will not be given up without a fight.

Those who would gain from the removal of quotas are a disparate group of consumers, young farmers, and food processors, all of which are uncertain in advance of how much they would gain. On the other hand, those who would lose are a tight and well-organised group who has a very clear idea of what they might lose.

Expenditure on the Common Agricultural Policy represents about 40% of the European Union's budget, and this budget may not exceed 1.27% of the Union's overall GDP. When the European Union enlarges to bring in the countries of Central and Eastern Europe this will, of itself, reduce the overall average GDP per head of the enlarged Union. This will make the 1.27% overall limit more restrictive in terms of absolute money amounts, per capita, available for spending by the European Union. This writer did, however, hear a senior EU Commissioner official say at a meeting recently that, even if the EU 15 system of direct payments to farmers is extended to the new countries, expenditure can still stay within the 1.27% limit up to 2013.

Enlargement raises some contentious political issues. At the moment regions qualify for maximum structural fund assistance (Objective One Status) if their GDP per head is 75% or less of the EU average. On that basis, for example, ten of Spain's 17 regions between them obtained 63% of the EU structural funds budget of Euro 31.5 billion in 2001. If that 75% rule is unchanged, and if the EU's average GDP per head is reduced by enlargement, only two of Spain's poorest regions would then continue to qualify for aid. That is not easy for Spain or for the Spanish Government.

While it is true that the Common Agricultural Policy uses up 40% of the EU budget, it is important to point out that this still is less than 3% of all public expenditure by all Governments throughout the Union. Spending on the Common Agricultural Policy tends to get undue negative publicity because it is one of the few areas of public expenditure, which takes place at Union level, rather than at the level of the nation-state or of the province. It is also worth pointing out that agriculture is subsidized in practically every country in the world. India, hardly a rich country, subsidizes its agriculture to the tune of 2.5% of its GDP.

The United States has recently increased the level of aid it is giving to its farmers. The Bush administration announced a \$5.5 billion farm rescue package in August, and some would argue that United States farmers are now getting more subsidization than EU farmers. There are three main areas from which pressure for the reform of the Common Agricultural Policy is coming.

These are:

The World Trade Negotiations recently launched at Doha, and other bilateral trade commitments the EU has. Food Safety concerns. The Enlargement of the EU includes ten or more new members.

World Trade Issues:

The European Union is under pressure in the World Trade Talks to make progress in three areas of agriculture - opening up its market to imports, reducing the aggregate support to production, and reducing export subsidies.

Domestic payments to farmers, that in any way distort trade, are under pressure. So also are closed market systems like those applying in the dairy and sugar sectors.

Export subsidies are particularly important to some countries - such as France and Ireland - as they are relied upon to dispose of production that cannot be absorbed inside the EU market. The existence of such subsidies does, to some extent, distort the pattern of production insofar as it encourages the production of types of product that can only be sold with the aid of subsidy.

There is no long-term assurance of a secure income for farmers from that approach. Export subsidies also inhibit the development of domestic agriculture in the countries in receipt of the subsidized exports.

Food Safety, the Environment, and possible Treaty Amendments: Food safety crises have had a very high profile in Western Europe recently. The BSE and foot and mouth problems in Britain, and the dioxin crisis in Belgium, led to trade restrictions within the European market itself, something that goes against the whole spirit of the Common Agricultural Policy. Those crises have been used by some to attack the whole philosophy of the CAP. Others have said that those food scares emphasise the need to switch to wholly organic or to less intensive forms of production.

There is not very strong scientific evidence for these concerns. Neither foot and mouth, nor BSE, can be blamed on the CAP. Either could have happened whether there was price support for agricultural products under the CAP or not. Nor is it valid to say that a move towards larger farms increases danger to the environment or to animal welfare. These sort of problems can arise on farms of any size, and there can be infection problems on organic farms, just as there can be on non-organic ones.

Food safety is, however, a key issue that will have to be faced in the accession negotiations. Article 33 of the Consolidated Treaties sets out the objectives of the Common Agricultural Policy as being enhancing productivity, ensuring a fair living for farmers, stabilizing markets and, assuring supply to consumers. There is a good argument for considering new amendments to the Treaty, in the context of the next Inter Governmental Conference, to add further objectives, which would emphasise the multi-functional role of agriculture, such as:

Preserving the aesthetic, recreational and amenity value of the countryside,

Protecting the environment through agriculture's role in providing publicly useful services such as soil formation, nutrient recycling, wildlife preservation, carbon sequestration and other environmentally helpful processes.

Such a Treaty amendment would provide a solid Treaty basis for schemes such as the Rural Environment Protection Scheme (REPS) and would give credibility to the Union's negotiating position on those issues in the forthcoming WTO round. The reference in Article 33 (i)(e) of the existing Treaty to food reaching consumers "at reasonable prices" might also be amended to include a reference to food safety.

Enlargement Negotiations:

Given the level of consumer concern, it is hard to see how any applicant country, wishing immediately to send agricultural goods into other parts of the EU, could expect a transition period in regard to the application of EU laws on sanitary issues, on food safety or on GMO use.

EU enlargement itself is the third area of pressure on the CAP. The CEEC's have improved their agricultural productivity considerably since 1990, partly with the aid of foreign investment. Accession to the CAP would lead to substantial local price increases in beef, sugar and coarse grains.



It would be administratively very difficult to extend the existing milk or the dairy quotas regime to the CEEC's. Restricting CEEC producers to quotas based on historic levels of production would permanently prevent CEEC's from catching up with the other EU existing members, by freezing their pattern of production in its historic, post-Communist, shape. A solution would be to give new EU members extra quota to take account of the previously underdeveloped state of their industry, but this will not be easy to agree.

The extension of direct income payments to farmers in the CEEC's under the CAP would be questioned by some on the basis that these payments were originally only introduced in the first place in the EU 15 to compensate for a fall in farm prices, but farmers in the CEEC's will not be experiencing any fall in prices. It will also be claimed that bringing in these direct payments would introduce serious distortions in rural incomes between those in the CEEC's who would qualify for them and those who would not, and that some of the beneficiaries would even be city dwellers who own rural land. This sort of problem is not, of course, confined to Central and Eastern Europe. One of the biggest recipients of EU headage payments is Her Majesty Queen Elizabeth II of England, who lives in the centre of London!

The introduction of direct income payments in the enlargement countries would change the distribution of income within their societies quite markedly in favour of those in agriculture relative to those outside agriculture and this could inhibit the normal structural adjustment that would otherwise take place. In any event, direct payments to farmers have evolved from their original price compensation role towards a wider role of protecting the rural environment and lifestyle.

The problem is this. If the Common Agricultural Policy is difficult to reform in an E.U. of 15 members, how much more difficult will it be to reform in an E.U. of 25 members, especially if all the benefits of the unreformed system are initially to be extended to all the new members?

Modulation:

This brings us back to one of the more difficult issues concerning the move in the reform of the CAP away from supports for farm prices, towards direct income support for farmers.

Should there be, "modulation"? "Modulation" means placing, on social equity grounds, an upper limit per farm on eligibility for direct payments. And if there is to be such a limit, should it distinguish between fulltime farmers with no other income and part-timers who do have another income?

Obviously a farmer with a small farm, but a big income outside agriculture, does not need the direct payments, as much as does a full-timer with a bigger farm but a smaller overall income. It could be argued, that a person who spends most of the working day away from his farm, and is only there full-time at the weekend, does not make quite the same contribution to rural life as someone who is working in the rural area seven days a week.

If we move away from direct payments to farmers, related to the number of stock they have, and relate the payments instead to good farming practice on issues like animal welfare, landscape management, and environmental enhancement, some questions arise. If animal welfare, landscape management and environmental enhancement are things that we really value in themselves, it would be difficult to justify putting an upper limit on the amount any one farm can receive so long as that farm is meeting the welfare and environmental criteria.

Likewise, if we want to encourage efficiency and economies of scale, and wish European agriculture to compete internationally without subsidy, we should not introduce payment systems that put artificial barriers in the way of amalgamating farm units and of using manpower more efficiently.

From a farmer's point of view, there are a number of other worries about the trends of reform in the CAP.

Degressivity:

As we move away from price supports towards direct payments to farmers, there has to be a worry that, if money runs short, other citizens will question whether payments should be made to people just because they are in a particular occupation. And if these payments are related to countryside maintenance, there will be increasing public insistence on public access to all parts of the countryside in a way that could interfere with good farming practice.

This introduces an argument about what is known as "degressivity". "Degressivity" means gradually reducing direct payments, even by as little as one or two percent a year over a long timer period, in order to release money for other purposes such as rural development. This was raised at the Berlin Summit. The Commission wanted degressivity, but it was not agreed to. If degressivity were introduced agriculture would begin to move, albeit gradually, towards an economic context that would be less dependent on politics. This would have some advantages, as well as disadvantages.

### Young People in Farming:

There is a real worry about whether a politically vulnerable direct payment system will ever attract sufficient young people into fulltime farming as a career. This worry springs from two considerations.

Firstly, young people, with exciting job opportunities outside agriculture, will be unwilling to invest their lives in an occupation where their income will be dependent on direct payments continuing to be available from a fickle taxpayer under a Common Agriculture Policy that appears to be in a state of "perpetual reform", with little long-term stability.

Secondly, young people wishing to enter full time agriculture, who want to buy or lease extra land, will continue to face artificially high purchase and lease prices as long as direct payments are still being made to landowners, not dependent on agriculture for their main income who will be using those direct payments to increase supplies and to bid up land prices and lease values. This competition from subsidized part-timers could undermine the long-term economics of full-time farming altogether.

### Rural Development:

There is a trend in Commission thinking towards substituting support for "Rural Development" for conventional agricultural support under the Common Agricultural Policy. The Commission has accepted 68 rural development programmes submitted by member states, and these will run up to 2006 with the support of E.U. funds. There is room for debate as to what activities constitute rural development. Rural Development activities should be ecologically sustainable and consistent with the character of the area, but these are cultural questions upon which there is room for value judgement and debate. It is important that rural development programmes do not generate bureaucracies, which will be difficult to sustain. The objectives of rural development should be specific and capable of objective monitoring.

### Land Sales Restrictions:

To conclude, it is clear that there are worries in some applicant countries, notably in Poland, about EU membership leading to the purchase of Polish farms by so-called "foreigners" from other EU countries. Obviously such purchasers would not be "foreign", as they would be fellow EU citizens.

But, apart from that, these fears are probably groundless.

Most of us will remember the time before Ireland joined the European Union. There was a big concern then that, once they were free to do so, the Germans and other continentals, with greater resources, would buy up the Irish land we had fought so hard to wrest from the "British" landlords during the nineteenth century. It did not happen. Irish land prices rose very quickly after EU membership. But few farmers were willing to sell, and most of those who did sell, sold it to other Irish farmers. In fact, within a very short time, Irish land prices were higher than in neighbouring countries and some Irish farmers started buying land in Britain!

That is the way to look at it. EU enlargement is an opportunity, not a threat! A bigger market offers scope for everyone. This is an issue that the Committee intends to explore in more detail in a future report.

## 8. CONCLUDING REMARKS

The European Union is undergoing a process of rapid change. It is expanding its membership dramatically, while taking on new responsibilities in areas such as currency, defence and crime. The pace of change is bewildering for many European citizens. This paper does not argue for any slowing down the pace of change. But it does argue that mechanisms must be put in place to give all Europe's citizens a much greater sense of democratic and personal involvement in what is going on. This is all the more important as the Union enlarges and incorporates countries, some of whom have only limited recent experience of democratic government.

### Implications of Ireland's vote on the Nice Treaty

This paper deals with the challenges faced by the European Union in simultaneously enlarging its membership, expanding its functions and democratising its operations. The enlargement of the Union now envisaged is one that would bring in up to ten extra member states. This could not happen without Treaty changes, of the kind proposed in the Nice Treaty. There is no evident willingness on the part of other member states to renegotiate the terms of the Nice Treaty. Changing the terms of that Treaty, or adding a protocol to it, would require the convening of a new inter-governmental Conference, and the resubmissions of whatever changed treaty might emerge to be ratified by each state all over again. There is real difficulty in this for some other states, especially for ones for whom the compromises made at Nice, may have been painful.

A political declaration of the European Council is a possible way of assuaging the concerns that led to a "no" vote in Ireland to the Nice Treaty. Such a political declaration could not change the terms of the Treaty, but it could give non legally binding political guidelines as to how these powers would be exercised in practice. The possibility of a declaration to the effect that Ireland would not be forced into a European Army has been canvassed. As has been pointed out in paragraph 6.12 of this paper, the Helsinki Summit has already stated that the creation of the Rapid Reaction Force "does not imply the creation of a European Army". There is no commitment to mutual defence in the Treaty of Nice, or in any other EU Treaty. Member States, like Ireland, retain complete freedom of action in defence matters and there is no proposal, either on the table or in prospect, that would change that. While it would not change anything, a declaration that reaffirmed all this might be helpful and reassuring.

It would be unrealistic to conclude this paper without asking what might happen if the Nice Treaty is never ratified by the Irish people, either because they are not given an opportunity to revisit the question, or because they reject it a second time. It is not possible to answer this question with any certainty. The European Union would face a number of choices. It could then seek to make changes in overall voting weights etc. on a country by country basis in individual accession Treaties, and push the other issues in the Nice Treaty into the next Inter-Governmental Conference to be dealt with in the next Treaty. This could, however, be represented by some as an undemocratic circumvention of the Irish "no" vote. If that view was taken, EU enlargement would then have to be confined to just five countries, and all other applicants, who might otherwise fulfil all the criteria for Membership, would have to be told that their applications were being indefinitely postponed.

In the event that Irish resistance proved to be a continuing obstacle to any Treaty changes to facilitate enlargement beyond that permitted in the Amsterdam Treaty, some people would say that one would have to contemplate the possibility that the other member states might agree to a new enlargement treaty for a parallel Union incorporating the *acquis*, but which did not include Ireland. The relationship between such a new parallel Union and the old one of which Ireland would continue to be a Member, is a matter on which one can only speculate. Such a scenario, either in reality or in contemplation, would pose huge economic and political difficulties for this country, especially for sectors of society that are especially reliant on having a strong and guaranteed Irish input to European Union policy processes and/or to European markets.