THE EUROPEAN CONSTITUTION: NO REPRESENTATION WITHOUT TAXATION?

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The Treaty establishing a Constitution for Europe was submitted by Valéry Giscard d'Estaing to the European Council meeting in Thessalonika on 20th June 2003. A substantial number of amendments were filed on 4th July 2003. The final text was published on 29th October 2004. This text has been signed by the Member States, and has been subject to referenda in Spain, France, Luxembourg and the Netherlands, with two in favour and two against.

The fiscal issues within the document are of so great a number that it would be impossible to reduce them to an article otherwise than by giving certain practical indications.

However, one of the more disturbing outcomes of the debate, illustrated by the present disagreement between Paris and London, is that the definition of budgetary finance appears to have become distorted, and for purely political purposes, the self financing structure of the Common Agricultural Policy misrepresented.

One of the aims of this article is to question the semantic and conceptual drift which has led to misrepresentative statements on the financing of the Union's budget, and the budgetary sources allocated to it and within it.

The current shift in the description of the CAP mechanism toward single Farm payments does form part of the present Presidency's negotiations with the United States on the reduction of State Aids to exportation of agricultural produce. Whether this is or is not a good idea is not within the scope of this article. The drift taken on this point is in contradiction with the foundations of the present

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system, and this article seeks to highlight the structural implications of this for the price support system currently in place.

There is no doubt that some of the criticisms laid at the door of the price support system are sustainable, in particular the effect of the sale of CAP surpluses which lower world prices by increasing supply. This has been an issue since the CAP was introduced. What is less frequently advertised is that the so-called mountains, in fact rarely represent more than a two or three month reserve, a reserve which the EU is required to provide.

EU law itself has as a principle the defence of the standard of living of farmers and farm workers, and a stable supply of food for the EU. The economic effects of a change in the system from a price support mechanism to a centrally financed Farm subsidy system could result in a huge reduction in the standard of living of farmers, already indebted in order to mechanise in order to avoid employment and social charges. Europe is in danger of placing itself in the same position as the British Isles, namely of being unable to ensure a significant part of its own food requirements. What is as serious is the risk of reducing the countryside economy to third world levels of income. The reallocation of economic resources which this would entail may be at a cost which has yet to be fully measured in public debate.

In this case where would the EU budgetary resources come from? Centralised Funding? That can only mean a general tax, and a moving away from the highly specific price support mechanism currently in place.

It is clear that the price falls caused by the increase in supply by the sale of surpluses can be catastrophic for the third world agriculture That serious problem is beyond the scope of this article, which is designed rather to enquire how any substitute for the CAP can be funded within the new Constitution.

Let us start with the issue of whether or not the CAP can be considered to be an allocation of Public Funds, which could otherwise be diverted elsewhere. In other words, does it constitute an allocation of an existing fiscal resource?

The initial principle of the Common Agricultural Policy was an income support mechanism tailored for each separate agricultural market. In effect, the principle adopted, but to a greater or lesser extent in each market, was that there would be a form of community preference for European produced products. Then, where products were imported from outside the European Communities, the importer would pay a tariff which was designed to bring the imported product up to a determined price in Europe. The income from this was then used to provide rebates for European farmers exporting European agricultural products abroad,

and to provide subsidies for the Farming industry. This form of levy was therefore limited in scope and object to a specific budgetary purpose and discipline.

Following from that, a system of income support was implemented which enabled farmers making losses to receive support in order to continue to supply products within the European Community. At the time of the United Kingdom's entry into Europe, the United Kingdom used a different system of capital subsidies, which in effect recapitalised farms working at a loss and provided them with a greater flexibility as to crop choices and markets. In effect this enabled the United Kingdom to take the benefit of lower market prices on the world markets, in particular from the Commonwealth.

The change the United Kingdom underwent on its entry into Europe was compensated to a degree at the National level by the rebate accorded to the United Kingdom, which was also designed to compensate the United Kingdom economy for the difference in the VAT tax base caused by the greater horizontal spread of activity as opposed to the more vertically integrated economies of Germany and France. However, this had nothing to do with Agriculture. The Fontainebleau Decision implementing the Rebate made this extremely clear. The Rebate is from the VAT contributions made by all Members States, not from the CAP or Common Commercial Tariff levies.

The other European economies at the time produced less VAT on a similar GNP. There were therefore valid reasons for the rebate, whose justification lay not in the European structures concerned, but rather in the adaptation of the more horizontally organised United Kingdom economy to those structures. Indeed from a purely legal structural viewpoint the rebate had no legal justification. However, it had an economic motivation, and given the structural differences which remain between the more vertically integrated German and French Economies, and that of the United Kingdom, despite the recent improvement in the United Kingdom economy, it may still be justified. That is a question for economists, it is unfortunate that it has now become an issue between politicians, and is in danger of provoking emotional, not rational reactions.

The Common Agricultural Policy is funded by a system of levies. As a system, it is not funded by the VAT contributions or by the percentage of GNP negotiated between Member States. In its conception, it is intended to stand alone

The following description of the Organisation and funding of the Common Agricultural Policy serves to bear this out. I have reproduced without alteration the SCADPlus document on the Communities Website, as I do not believe that it

can be improved by further summary:

"Market organisations consist of the rules laid down by Community decisions to regulate production of and trade in agricultural products in all the Member States of the European Union (EU). Since the introduction of the common agricultural policy (CAP) they have gradually replaced national market organisations in those sectors where this was necessary.

The market organisations seek primarily to achieve the objectives of the CAP, in particular market stabilisation, a fair standard of living for farmers and increased productivity in agriculture. They cover about 90% of final agricultural production in the Community.

The following are covered by a common market organisation: cereals, pig-meat, eggs and poultry meat, fruits and vegetables, bananas, wine, milk products, beef and veal, rice, olive oil and table oils, sugar, flowers, dry fodder, processed fruit and vegetables, tobacco, flax and hemp, hops, seeds, sheep meat and goat meat and other agricultural products for which there is no specific market organisation.

Because of the particular location of parts of the Union, special arrangements existed for products from the outermost regions (Madeira, the Azores, the Canary Islands and the French overseas departments) and the islands of the Aegean. Special account has been taken of their individual situations since the 2003 reform of the CAP.

There are no market organisations for alcohol or potatoes. The establishment and implementation of market organisations is the responsibility of the Council of Ministers and the European Commission.

Although a number of common mechanisms govern their operation, it varies depending on the product.

Establishment and implementation of the market organisations

The Council, acting by a qualified majority on a proposal by the Commission and after consulting the European Parliament, sets up the market organisations (Article 34 of the Treaty establishing the European Community). It also decides on some implementing rules for the various market organisations.

The Commission, assisted by a committee, takes the implementing measures required for the operation of the market organisations. Each organisation is run by a management committee, comprising representatives of the Member States

and chaired by a representative of the Commission, which gives its opinion on draft measures. If the Commission does not wish to accept the committee's opinion, it falls to the Council to take a final decision.

Operation of the market organisations

The main tasks of the market organisations include fixing single prices for agricultural products on all European markets, granting aid to producers or operators in the sector, establishing mechanisms to control production and organising trade with non-member countries. It also encourages farmers to form producer organisations. Other provisions regulate state aids for these products and relations between the Member States and the Commission.

Prices

The Council, acting by a qualified majority after consulting Parliament and on a proposal by the Commission, or the Commission, fixes three different notional prices for products at the beginning of each marketing year: the indicative price, the threshold price and the intervention price. Marketing years, which begin on different dates depending on the product, last for twelve months.

- ***The indicative price** (basic price or guide price) is the price at which the Community authorities consider that transactions should take place. Although it is artificial, the indicative price is close to the price which the products would normally command on the Community market.*

- ***The threshold price** (sluicegate price) is the minimum price at which imported products may be sold. It is higher than the intervention price and encourages Community economic operators to buy within the Community, so respecting the principle of Community preference.*

- ***The intervention price** is the guaranteed price below which an intervention body designated by the Member States buys in and stores the quantities produced. In order not to burden the Community budget, the Council encourages private storage by granting a premium to producers who store products themselves. Since the 1992 reform, in some sectors higher direct payments to farmers offset lower guaranteed prices. The products stored may be denatured, used for humanitarian purposes or sold by the Commission. Sales are by tender and the Commission decides in advance on the destination of the products. If it sells on the internal market, it ensures that markets will not be disturbed.*

The types of aid and premiums granted

The types of aid have been simplified and harmonised. A new system of direct aid was introduced after the 2003 reform of the CAP. Direct aid to holdings will eventually replace the multiplicity of direct aid schemes that currently exist under the different CMOs. The transitional period for the changeover to the new arrangements varies depending on the product concerned, but direct aid to holdings can be paid under most of the CMOs from 1st January 2005. Each Member State may decide to postpone application of the new arrangements until 2007 at the latest for particular agricultural reasons.

*Eligible farmers who apply for aid must meet a number of **cross-compliance conditions** . Aid is based on a reference period (2000-03), except in the case of the **new Member States** .*

*Direct payments will be reduced progressively for large holdings until 2012. This reduction, known as "**modulation**" will not apply to the outermost regions or to the islands of the Aegean. The savings made from modulation will go to financing the new rural development policy.*

*To offset the loss on income suffered by the producers of certain sensitive crops with the move to the system of single farm payments, a **new aid or supplementary premium** has been introduced.*

Controlling production

Systems of quotas and national guaranteed quantities permit the control of agricultural production and the limitation of surplus production and storage. The setting aside of land and the allocation of compensatory payments also prevent over-production.

- *Quotas are the maximum production quantities allocated to farmers. Over-production results in financial penalties.*

- *The national guaranteed quantities allocated to the Member States are maximum production quantities. If they are exceeded, producers must pay a co-responsibility levy. The intervention price for the following marketing year is then reduced.*

- *Set-aside and diversification into non-food products are intended to take agricultural land out of cultivation or diversify production (production of raw materials for biomass fuels for example) in exchange for financial compensation.*

Trade with non-member countries

Trade with non-member countries involves imports of products into the Community and exports of Community products to other countries. Adjustments have been adopted to encourage the export of processed products and to take account of the ***accession to the EU of the new Member States*** *.*

Imports

Importers may be asked to produce an import licence and to pay an import levy. If the Community market is severely disturbed, the Commission has the power to take safeguard measures.

- ***Import licences*** *are issued by the competent authorities of the Member States after a security has been lodged. The security is returned to the importer only after he demonstrates that he has fulfilled his obligations.*

- ***A single levy system*** *on entry into the European Union has been introduced for most products to ensure that import prices are not less than those in the Community. Some products are simply subject to the rates laid down in the common customs tariff while others are exempt. There are also mixed systems. Taxes having an effect equivalent to customs duties and quantitative restrictions on imports or measures having an equivalent effect are prohibited in trade with non-member countries.*

  As a result of the EU's international commitments in the World Trade Organisation (WTO) or its relations with non-member countries or groups of countries, the import of certain products may be subject to quotas or preferential tariffs may be granted on imports. Imported products are partially or completely exempted from all customs duties. Tariff quotas which fix the quantity of products subject to exceptional arrangements may be granted using the first come/first served method, simultaneous examination, traditional operators/new operators or other non-discriminatory methods.

- ***Safeguard measures*** *going as far as the suspension of imports may be taken if there is a danger that the Community market will be seriously disturbed by imports or, in certain cases, exports (for further information see RAPEX). The Council, acting by a majority on a proposal from the Commission and after consulting Parliament lays down general rules on the safeguard measures which the Member States may take. The*

Commission fixes these measures on its own initiative or at the request of the Member States.

Exports

The European Union pays refunds to all Community producers who export to the rest of the world in order to subsidise European exports so that their prices are brought to the level of world prices. In principle the amount of the refund is always the same but it may vary depending on the destination of the product or economic conditions. The issue of an export licence may also be made compulsory and a condition for granting the refund.

Processing

The European union has the right to forbid use of inward processing arrangements under which a product imported from a non-member country may be processed in the EU without payment of customs duties provided that it is re-exported. Outward processing, under which goods are temporarily exported to a non-member country for processing prior to re-import without levy, may also be forbidden.

Producer organisations

So that producers can make best use of the resources allocated to them and achieve the objectives of the market organisations (improved productivity and marketing and greater attention to the environment), they may on a voluntary basis group themselves in producers' organisations. The Community provides financial incentives for the establishment of such organisations.

State aids

*Unless there is provision to the contrary in the regulations establishing the market organisations, the rules on **state aids** contained in the EC Treaty apply.*

Notifications and checks

The Member States and the Commission provide each other with the information required to implement the various regulations. The Member States and the Commission have also taken steps to allow checks on compliance with the rules in the market organisations.

- ***Classification of the market organisations***

  There are four types of market organisations. Some organisations involve mechanisms for production premiums and intervention, others use a simple intervention system, some merely provide production aid or just provide the products concerned with customs protection.

Types of market organisation	***Products concerned***
*Single farm payments**	*All the CMOs*
Supplementary aid	*Durum wheat, protein crops, rice, nuts, energy crops, starch potatoes*
*Intervention and production aids**	*Milk and milk products (from 2005), beef and veal, rice, olive oil, cereals, sheep meat, oils and fats, raisins*
*Intervention**	*Sugar, milk and milk products, wine, pig meat, fresh fruit and vegetables*
*Production aid**	*Flax and hemp, processed products based on fruit and vegetables*
*Customs protection**	*Poultry meat, eggs, live plants and flowers, products for which there is no market organisation*

** There are special arrangements for some products from Madeira, the Azores and the Canary Islands, the islands in the Aegean and the French overseas departments."*

Source: http://europa.eu.int/scadplus/leg/en/lvb/l11047.htm

It is entirely misleading to describe this as if it were within a national budgetary context, namely a form of national budget in relation to roads, armament, social security and the other national budgetary preoccupations. It is a specific market structure which is self financing. It is not financed out of general tax revenue. To make a statement that it comprises 40% of the Communities budget, and is attributed to 4% of the European population is intellectually dishonest and conceptually delinquent. It is a specific measure designed to fund 100% of the need of 100% of the activity concerned. To remove it is without general budgetary significance, as it is self financing, to replace it by something else implies a general fiscal measure, which implies a further tax, not levies. Can the Constitution handle this?

If European we are, if that notion actually exists, it implies a degree of rational discipline and clarity of expression of thought and concept.

The underlying point is that to use the word "tax" in the European budgetary context as it stands is to employ a misnomer, under the present system. It does not accurately describe the system of levies by which the Union is financed. The term generally used is fiscal, for this reason.

The difficulty is that the current trend in British thinking is to muddle the term levy and tax. A levy, such as the Common Customs Tariff or Common Agricultural Tariff is a specific budgetary issue and tool, not a general tax on general revenue, the GNP. When an illustrious body proclaims on its website that European farming is being subsidised by the taxpayer with the effect of exterminating certain species of wildlife, its implication is that this is being subsidised by VAT, and by other taxes, which it is not: "*The Common Agricultural Policy is financed by the taxpayers of the European Community and half of the total budget of the EU is devoted to it - over £30 billion each year. Each taxpayer pays £80 to contribute to its existence.*" This is misleading to the point of irresponsibility, and its fallacious tendency demonstrates to what extent the muddling of a term can lead to emotively misleading irrelevance. Had it contented itself with the term "consumer", its intellectual position would not have been compromised.

The point of this historical analysis is to reposition the debate. It is clear that the decoupling measures taken in 2003, with the avowed aim of improving the consumer's, not the "taxpayer's" position, whilst providing the farmer with something resembling the old British capital subsidy in its idea is proof that the specific CAP mechanisms are adaptable. Whilst seeking to appease the United States' administration's tunnel vision in these issues, is there any point in attempting to overload the mind by imagining or worse inventing further extension of the Union's budgetary competences? Would the present Government propose to introduce European taxation on a supra-national level to bring down the percentage of the overall Community budget attributed to farming? One would hope not.

That the Community Agricultural Policy is funded out of food prices is the most acceptable method of funding those agricultural sectors of countries which have the resources to produce food for the Union. The idea that the United Kingdom, which has chosen to industrialise and to provide services, with high added value should attempt to wrest budgetary control of this fundamental need is to be feared, particularly as it has chosen to import food rather than produce its own needs.

When the British Government talks of putting the Union's budget on the table, the ordinary man in the street has not be given the entire picture, which is a good deal less alarmist under the present structure than it appears.

The current "politically correct" version, economically incorrect, is that the percentage of the Union's budget allocated to agriculture and produced by agricultural levies is excessive in relation to the remainder of the Budget. It is not. It is there for a specific purpose, that for which it was designed. The attempted percentage comparison is entirely misleading, as the inference is that the comparison should be made to a global national budget rather than to the extremely specific and limited European one. Europe does not intervene in the same areas as a Member State does. It is dangerous to imply, as the present government is doing, that it could be used for something else. The straight reply is for what? The correct presentation would be to that in order to achieve further improvement in the common European good, by the extension of European Union competences, further budgetary resources are required. That would however require a different form of European levy, which in this situation would require a new tax, or an increase in the size of the Members States contributions from their own budgets or in VAT. The last and politically most dangerous solution would be to extend the taxing capacity of the Union by a further contribution from stamp duty on corporate transactions or from income or corporation tax. The aim of this article is therefore to remain within the current budgetary allocation, and discuss what possible issues are available for such a potentially alarming proposition.

One of the main issues faced by the constitutional analyst of the current position is working out how the Budgetary Requirements of the European Union, which are self allocated by a unilateral decision, can influence the collection of VAT, and other national taxes. The various methods of legislating for the collection of Customs Duties under the applicable regulations is one issue. However the use of the Sixth Directive, defining the common basis of VAT, as a legislative basis for introducing principles of Community law into other areas of national law, such as collection and compliance, remains a rich area of debate and litigation.

This is where the technical distinction between "direct" own resources, CAP and CCT tariffs, collected by the Member States as agents, and the indirect own resources, the VAT percentage and the GNP percentages paid out of Members Sates' budgets becomes important, particularly in relation to the Funding of the new competences conferred on the Union, following Maastricht and Nice. The distinction was clearly made in the Fontainebleau decision, and has not since lost its pertinence or relevance.

The issue has been clouded by the Budgetary Correction granted to the United Kingdom after the Meeting of the European Council at Fontainebleau in 1984.

The Fontainebleau agreement introduced a reduction in the United Kingdom's contribution to the budget, which was implemented by a Council Decision of 7th May 1985. Under the agreement, a Member State can benefit from a budget correction if it is sustaining an excessive budgetary burden in relation to its relative prosperity, i.e. the wealth of this Member State in relation to the EU as a whole. Hitherto a budget correction of this kind has been granted solely to the United Kingdom. However, according to the Commission, several other Member States can legitimately claim to be currently in a similar situation to that of the United Kingdom at the time of Fontainebleau. The Fontainebleau decision was implemented by Council Decision 85/257/EEC, Euratom of 7th May 1985. The Decision was published in the Official Journal number L 128 of 14.5.1985, p. 15-17. It is available in the database EUR-LEX.

The Situation was reviewed again in 2000, and had to be in the light of the Windfall benefit to the United Kingdom of the increase in the VAT basis throughout the Communities through the New Members adhesion.

The Rebate was not granted to the United Kingdom alone but, as a general basis, could be extended to other Member States having structural difficulties in meeting the level of VAT payments due to the Communities, which were incidentally capped in the same decision.

The Commission’s findings are set out in *COM (2004) 501* final, which is available on the Website, but not printed in the Official Journal.

Footnote 3: on the EU's server Europa, which can be found at the following address:

http://europa.eu.int/eur-lex/lex/en/index.htm

Taking account of the Member States' current situation

In this proposal the European Commission examines the current situation of the UK in relation to that of the other Member States that are "net contributors" (i.e. Member States that contribute more to the Union's budget than they receive through Community programmes). The table below summarises the current situation of the UK as regards its relative prosperity:

Gross national income per capita expressed in purchasing power standards (Europe-15 average = 100)

Member State	*1984*	*2003*
UK	*90.6*	*111.2*
Denmark	*104.0*	*111.1*
Austria	-	*109.8*
Netherlands	*95.0*	*106.6*
Sweden	-	*104.6*
France	*104.0*	*104.2*
Germany	*109.6*	*98.6*
Italy	*92.9*	*97.3*

In 2003 the UK was top of the league with relative prosperity of 111.2%, in sharp contrast to its situation in 1984. In view of the spectacular improvement in the UK's position in relation to the other net contributors, the Commission considers that the current correction system should be re-examined in the light of the Fontainebleau principle, according to which the net balance of a Member State should be considered in relation to its relative prosperity.

The Commission notes also that if there is no change in the current system, the average net budgetary balances (i.e. the difference between the amount contributed by a State to the Community budget and the revenues received by it in return) of all the net contributors would deteriorate over the period 2008-2013 due to the cost of financing enlargement.

This issue has very little to do with the Common Agricultural Policy. One can argue that the historic difference in vertical integration between the more horizontally organised British market and their German or French Counterparts is still the case, but these issues are already dealt with in the correcting mechanisms of the GNP contributions. One could equally well argue that the notion of per capita indebtedness should also be included, given our current propensity to purchase rather than save, thus fuelling the economies' performance, perhaps artificially. Here we are well away from the main purpose of the CAP which is to guarantee food production and supply in the EU, with increased access to world markets and to enable its farmers to compete. To allege that the British taxpayer is subsidising the French farmer is conceptually misleading and below the belt of relevancy. The British consumer is paying a price that enables the European farmer, including the British farmer to continue to make a living and to supply the market with food.

The Commission's proposal was as follows:

> ***Introduction of a generalised correction mechanism for all EU Member States***
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> *The Commission proposes introducing a generalised correction mechanism which would be triggered for all Member States beyond a certain threshold, expressed as a percentage of each State's GNI. It represents the acceptable degree of unlimited financial solidarity within the Union and constitutes a kind of reasonable net contribution. Net positions over this threshold benefit from a correction involving a partial refund of the contributions to the Community budget. The measures the Commission proposes include setting the threshold level at 0.35% of GNI, refunding 66% of the net contribution over this threshold and capping the maximum available refund volume at EUR 7.5 billion.*
>
> *Technically, the correction can be financed in three different ways:*
>
> - *Member States that benefit from a correction do not participate in its financing;*
> - *all Member States participate in the financing of all the corrections except for their own;*
> - *all Member States participate in the financing of all the corrections.*
>
> *After studying the three alternatives the Commission favours the third option (all Member States finance all the corrections) in the interest of feasibility, transparency and simplicity. It also points out that the UK would still be by far the largest beneficiary of the proposed generalised correction mechanism, receiving on average net compensation in excess of EUR 2 billion a year, approximately twice as much as Germany.*

Again, these issues are still removed from Tax as such, but their financing may give rise to further tax, rather than simple fiscal issues, if the current financing out of GDP is replaced by something else of a more European nature at a European level. What is a matter of concern is that the direction in which the public debate is heading is towards a more general European Budget impliedly taking over certain responsibilities that are those of Member States at a European level, therefore requiring European Financing. The ensuing responsibility in the hands of the European Parliament would place that institution in a position where its members will frankly be unable to meet it without fears of incapacity or

corruption. The Parliament is there to control budgetary spending within a pre-determined budgetary context, not to invent it.

An economist would be better placed to say whether the Member State's economies are still so different that the Member States would be better placed to decide from which internal budgetary resources, in other words domestic taxation, the contributions are to be financed.

In the light of the recent *abus* (*de droit*) issues, to what extent can European issues, of such a different nature, give rise to a change in domestic legislation and practice in relation to assertions of fraud, evasion in relation to commercial conduct, which may be perfectly legitimate under the laws of one Member State, but not correspond to the commercial practices of other legal systems, based on entirely different constitutional definitions of what is law, and therefore lawful.

There is therefore room to ruminate on what follows next.

The signed but yet unratified Constitution

The main thrust of this Instrument is the definition of sovereign competences, their allocation between retained and potentially conferrable competences, and the manner in which the latter are conferred on, not transferred to, the EU or shared with it, by the Member States.

The funding of this consolidation of existing competences is done through the traditional funding mechanisms: as a percentage of GNP or as a proportionally invoiced levy on the GNP of each Member State. There is nothing new, but potential for change.

The notion of conferral is linked into the notions of proportionality and subsidiarity, and the rôles of these two principles within the new institutional structure are also defined. Note that the European Parliament will have a joint legislative rôle with the Council of Ministers, and that National Parliaments also have a say in whether Community laws are in accordance with these principles. Theoretically, there would now be rather more "democracy" than in most Member States, with what at times is a tri-cameral system, rather than a bi-cameral system. Whether there is sufficient unpoliticised information available to the average European or his parliamentary representatives to make a sufficiently informed judgement in such a situation is another matter. There is a specific Protocol on the application of the principles of Subsidiarity and Proportionality in Part IV A. 2.

A useful 15 page summary of the Constitution was produced by the European Parliament Delegation to the Convention; which reproduces the political and institutional changes in short form. However; the soul is in the structure and the details.

There are extensive changes in the Institutional structure and position, for which budgeting has been made under what appear to be the Nice and Maastricht principles.

The Constitution is divided into Four Parts, subdivided into Titles and Chapters:

The referencing for Articles therefore commences with the number of the Part of the Constitution, and then the number of the Article within that Part, without reference to Titles or Chapters.

Part I sets out the organic structure of the Constitution in general form, laying down the basic principles which will be developed in the Parts specifically dealing with the implementation of the principles expounded.

Part II sets out the Charter of Fundamental Rights of the Union.

Part III sets out the Policies and the Functioning of the Union.

Part IV sets out the General and Final Provisions. The Treaty is for an Unlimited Duration, and will enter into force on 1st November 2006, provided that all the Instruments of Ratification have been deposited, failing that the first day of the second month following the deposit by the last signatory State.

The main bulk of the document lies in the attached Protocols and Annexes I and II

Given the French “non”, confirmed by the Dutch, and the support for the constitution from the remaining 2/3rds of the States concerned, the bringing into force of the Constitution will not be immediate. The reasons for the French and the Dutch “non” may be different, but there is a legitimate concern in the background about the creation of the function of a European President and Foreign Minister who will find themselves facing the Heads of State of Russia, China and the United States with the need to make clear the basis of their sophisticated mandate and its limitations. The creation of these functions may in fact be a significant democratic and functional improvement on the position of their counterparts, the continuing explanation that they represent an entirely different political system, a democracy of sovereign nations with no common language, working in a different manner could perhaps bring a further balance to

International relations by the dilution of power, rather than its concentration in the hands of one or a few persons, tempted to exercise delegated authority in a non-accountable manner.

From the Legal Position, what are the Basic Changes?

1. The substitution of the following instruments for the present legal provisions:

Proposed	Replaces and is based on
A European Law	Extends and reinforces the notion of a Regulation European Parliament now included in the legislative drafting process
A European framework Law	Extends and reinforces the notion of a Directive European Parliament now included in the legislative drafting process
A European Regulation	Takes over the executive part of the present regulation. Can be employed by the Commission and the European Central Bank
A European Decision	Equivalent to a present Decision
Recommendations and Opinions	Extends and limits the scope of Recommendation and Opinions in the sense that the European Council can only act by these.

2. The maintenance of the case-law of the European Court as a source of interpretation.

3. The reinforcement of the notions of proportionality and subsidiarity within the framework of the conferring of competences, which in itself becomes a notion of law.

4. The iteration and reiteration of the current Community legal order as the basis for the developments proposed.

Firstly, there is no new "European" tax instated as such. However, it is clear that any extension of certain of the EU competences will require funding, and that may need to be by other means than by direct invoicing to Member States, which is an option reserved to the foreign policy and international aspects of the Constitution.

Taking the issues of the EU's Budget as being the source of fiscal change in the Constitution, the foreign policy issues appear to be dealt with by direct contributions out of Member States domestic budgets under the current principle of the proportions laid down in relation to contributions from Member States GNP[2]. This follows the current funding process of the amendments contained in the Maastricht and the Nice Treaties, called the Three Pillars.

Aside those specific areas, it appears that the proposed European Law on the own resources of the EU will be based on the current position, barring proposals from the present administration during the Prime Minister's chairmanship of the Council of Ministers[3]:

The Current Budgetary Structure

At the risk of repetition, two categories of levies are collected directly for the account of the EU by the Member States, that is:

a) Common Customs Tariffs and Common Agricultural Policy Levies;

(These are specifically allocated for specific and limited Community purposes, which are not those of the Member States. They cannot, under any stretch of the linguistic imagination be graced by the term taxes.)

and two items are collected indirectly by the Member States within their own budgetary procedures, namely:

b) The percentage of national VAT collected, and the percentage of GNP earned by the State in question.

Here the EU notion of taxation has to be clearly understood. EU "taxation", to deliberately underline the semantic fallacy, historically, is no more than a collection of levies on the movement of goods over the Communities' frontiers with the outside. VAT as such is a harmonised national tax of which part is paid

2 *Council Decision 29th September 2000 OJ L 253/42, which lays down the Budgetary contributions.*

3 *See note 2.*

to the EU. The adjective fiscal is generally employed to cover both levies and the VAT percentage.

What will happen under the Constitution is that VAT will and Corporation Tax may, whilst not becoming European taxes as such, become increasingly subject to European Laws and Framework Laws on a statutory basis, rather than being under the sole jurisprudential analysis of the European Court. Whilst this possibility might appear innocuous, there could be increased indirect harmonisation of the corporation tax base, and that may mean in time that corporation tax could become a third item in category b), subject to a percentage contribution from National Budgets in the same manner as VAT.

However, whilst the "fiscal" items are supposedly subject to unanimous vote, this does not apply to certain items within the scope both of the taxes mentioned; VAT and corporation tax, and the EU's own resources. Qualified majority voting in relation to administrative co-operation or in combating tax fraud will not be applicable both in corporation tax and VAT matters. Indeed, one issue which the European Court may well find itself asked to decide is whether this treatment of these issues is in fact Constitutional, when the Community Budget, composed of "Own Resources" is not affected, and to the extent where there has been no "conferral" by the Member State to the Union.

Article I-53

Budgetary and financial principles

....

7. *The Union and the Member States, in accordance with Article III–415, shall counter fraud and any other illegal activities affecting the financial interests of the Union.*

Article I-54

The Union's own resources

1. *The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.*

2. *Without prejudice to other revenue, the Union's budget shall be financed wholly from its own resources.*

3. *A European law of the Council shall lay down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. The Council shall act unanimously after consulting the European Parliament.*

That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

In other words, the Constitution could theoretically enable an extension of the Resources of the Union by for example, taking a percentage of any given tax of a Union wide nature, or the introduction of a new tax.

Section 5 - Combating Fraud

Article III-415 [ex Article 280 & 317]

1. *The Union and the Member States shall counter fraud and any other illegal activities affecting the Union's financial interests through measures adopted in accordance with this Article. These measures shall act as a deterrent and be such as to afford effective protection in the Member States.*

The EU's financial interests are to be protected by the EU and by the Member States against fraud and any other illegal activities. This is an obligation, but the deterrent aspect raises questions of subsidiarity and proportionality, and whether such effective protection may be given in each Member State, particularly where there may be different attitudes and legal definitions as to what constitutes fraud and illegal activity. The issues may be resolved in the following section.

2. *Member States shall take the same steps to counter fraud affecting the Union's financial interests as they take to counter fraud affecting their own financial interests.*

It would therefore appear that there is no ground under this part of the Constitution at least for standardisation, or even approximation, at least as yet, in such areas as sham, *abus de droit* etc. Member States shall use the same steps to counter fraud as they do for their own financial interests in other words, the fiscal and excise capability that they have under their own legislation. The *Halifax* and *BUPA* ruling will perhaps cast further light on the scope of this provision.

3. *Without prejudice to other provisions of the Constitution, the Member States shall co-ordinate their action aimed at protecting the Union's*

financial interests against fraud. To this end they shall organise, together with the Commission, close and regular co-operation between the competent authorities.

4. *European laws or framework laws shall lay down the necessary measures in the fields of the prevention of and fight against fraud affecting the Union's financial interests with a view to affording effective and equivalent protection in the Member States* ***and in all the Union's institutions, bodies, offices and agencies****.*[4] *They shall be adopted after consultation of the Court of Auditors.*

European laws or Framework laws shall lay down the necessary measures in the fields of prevention and fighting fraud, with a view to providing equivalent protection. It may only be possible for the Member State concerned to achieve this by a modification of its own legislation. This could take the form of a general anti-avoidance measure in the United Kingdom. This raises questions as to any extension of the notion of own resources beyond those collected directly for the account of the EU. The Union's institutions are subjected to an equivalent discipline.

5. *The Commission, in co-operation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures and provisions adopted for the implementation of this Article.*

Section 6 - Fiscal Provisions

Article III-171 requires the Council to act unanimously in relation to indirect taxation, provided that such harmonisation is necessary for the functioning of the internal market and to avoid distortion of competition (The slight difficulty in the draft was a drafting error whereby the Council would have acted on a proposal from itself rather than from the Commission!):

Article III-171 (amended Articles 93 & 59)

1. *A European law or framework law of the Council shall establish measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition. The Council*

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4 Underlined phrase inserted in Draft prior to signature of Final Text.

shall act unanimously after consulting the European Parliament and the Economic and Social Committee.

The amended Article requires unanimity. The previous drafting included a second paragraph allowing qualified majority voting in relation to administrative co-operation or combating tax fraud, which could have prevented the UK and Ireland from voting against modifications introducing such foreign concepts as *abus de droit*.

The European Court has yet to pronounce any indication of what constitutes fraud, other than to indicate that it is a generic and pragmatic concept of European law rather than a point of constitutional principle. It may or may not be possible to restrict this definition by reference to the actual scope of EU taxation, which technically is limited to CCT duties and CAP levies. The types of fraud involved in these matters are not the same as those in the fields of VAT and Corporation and Income Tax [5]. However, the somewhat elusive linguistics in the Sixth Directive will probably be tightened up in any Framework Law to establish a common thread between the various provisions which mention fraud and abuse, if it is intended to give a European definition rather than a generic reference to the laws of the individual Member States.

This provision effectively provides for the upgrading of the current EU VAT provisions into European Laws, whether Laws or Framework Laws. This will give the present VAT Regulations and Directives greater legal status that they enjoy at present, in that a framework law, irrespective of what is said, is no longer an instruction to place national laws and practice in conformity, it is a law in its own right.

However, one important consequence of that change is that paragraph 2 of Article III-172, the approximation of laws provision previously employed in relation to the legal basis of VAT, specifically excludes "fiscal provisions", presumably including VAT and other forms of direct and indirect taxation. For example, Article III-172 in itself cannot therefore now serve as a basis for stamp duty harmonisation in its present form. Article III-171 could, although for clarities sake, it is a pity that this was not generically specified.

Articles IV-60 of the Draft Constitution has been deleted. This read:

5 The *Halifax* and *BUPA* ruling by the ECJ will certainly cast further light on this area. The Opinion of the Advocate General on this issue is clinically European and was delivered on 7/4/2005 Case C-419/02

Article III-60 (new)

Where the Council, acting unanimously on a proposal from the Commission, finds that measures on company taxation relate to administrative co-operation or combating tax fraud, it shall adopt, by a qualified majority, a law or framework law laying down these measures, provided that they are necessary for the functioning of the internal market and to avoid distortion of competition.

The law or framework law shall be adopted after consultation of the European Parliament and the Economic and Social Committee.

Given that this falls within Section 6 Fiscal, the previous assertion by the Government that all fiscal matters would have been dealt with by unanimous voting, appeared a trifle partial.

Section 4

This contains provisions which either specifically or implicitly relate to Income Tax, Stamp duty and Corporation tax, and any other fiscal disposition presenting a restriction on the freedom of movement of capital and payments. The freedom of payments has been elevated to its correct position as a fundamental freedom, which is a correction of a presentational point in the previous Treaty of Rome. In itself, the legal rights arising from this freedom are underexploited in tax matters.

Capital and Payments

Article III-156

Within the framework of this Section, restrictions both on the movement of capital and on payments between Member States and between Member States and third countries shall be prohibited.

This Article is subject to a specific proviso in Article III-158

Article III-158

1. Article III-156 shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to

their place of residence or with regard to the place where their capital is invested;

(b) *to take all requisite measures to prevent infringements of national provisions laid down by law or regulation, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.*

2. *This Section shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Constitution.*

3. *The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article III-156.*

4. *In the absence of a European law or framework law provided for in Article III-157(3), the Commission or, in the absence of a European decision of the Commission within three months from the request of the Member State concerned, the Council, may adopt a European decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the Constitution insofar as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.*

This article will considerably modify individual and corporate taxpayers' rights in relation to offshore jurisdictions, whether tax havens or not, and the effect that this will have on CFC and offshore arrangements is considerable, and difficult to predict. The more formalised tax legislations will certainly need revision, and Inland Revenue practice in relation to this article will be a considerable area of interest and debate.

Certain Specific Items

Part III

Here there is a specific drafting formalisation of the link between the Charter of Human Rights, and the other provisions relating to the Internal Markey. The numbering of the articles is continuous between Part II and Part III. This is no

error, it is designed to ensure that the Charter forms part of the developing European legal *acquis*. The Cover Note on the initial draft specifically reminded the Convention that amendments to Part III must not be designed to modify existing provisions on policies, except those which have been discussed at Convention level (*i.e.* foreign policy, economic governance, freedom, security and justice). In other words, there was also preservation of the *acquis industrial, commercial, économique et politique* within the internal market, and that provides the basis for development.

To summarise, the Constitution lays down certain fundamental principles which constitute rights, in addition to and in liaison with what is recognisable as the existing Union laws and practices. The Charter of Rights in Part II, which may have certain tax consequences. For example:

Article II-81 lays down that there shall be no discrimination on grounds of sexual orientation, in other words, it may be possible to argue that under the combination of rights to non-discrimination under article I-7.1, referring to Charter Right II-1 and the rights to a family, Charter Right II-67, single sex couples could be entitled to tax benefits and family allowances on the same basis as married or unmarried dual sex couples.

In other words, there is fiscal matter within the Charter of Fundamental Rights, which should not be underestimated. If the previous development of European law from that at the level of the Founder Members through to the second and third set of new members is t followed, there will be interesting developments in eth New Member States which will probably overtake and override habits and prejudicial thinking in the older Member States. For example the issues of Direct Effect have forced certain more sclerosed social contract constitutions such as France and Italy to allow directives and regulations to take effect without specific reiteration in implementing legislation. The new Framework laws would probably provide more Member States with a possibility of using similar mechanisms if these were required. The Jurisprudence of the European Court will probably be at its most fertile in this area.

However, the field of application of the Charter is circumscribed to the scope of the Constitution, and Member States are not bound to implement charter provisions in legislation or regulations outside the scope of the Constitution, or the realm of subsidiarity. In other words, the Union is not attributing to itself any further powers than those defined in the Constitution itself. Any issue outside the scope of the Constitution will therefore need to be addressed through the European Convention of Human Rights and the European Court of Human Rights in Strasbourg.

It is worth resting a little upon the final provisions of Part II.

Article II–112: Scope and interpretation of rights and principles

1. *Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.*

2. *Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.*

3. *Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.*

4. *Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.*

5. *The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.*

6. *Full account shall be taken of national laws and practices as specified in this Charter.*

7. *The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.*

The actual application of the Charter is therefore circumscribed to the essential body of the proposals, and will develop from that circumscription. The idea of a *lex universalis* or natural European Law does not appear to have been taken up as

such, although there is no doubt that the European Court's jurisprudence will be modelled on its previous policies.

Article II–113

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II–114: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

A comment on the attempted over-extension of the definition of this concept by Customs and Excise in the *BUPA* and *Halifax* cases[6] would not be superfluous. There is no similarity between what Customs are presently alleging to be an existing concept within European Law, and the far narrower pragmatic and generic concept enshrined here. If this is the limit of *abus de droit* in the new extended Constitution, it is hardly surprising that the ECJ has refused to be drawn on it by the Commission in Common Customs Tariff matters in the past. The concept is defined here and is limited to the destruction of rights or freedoms in the Charter or their limitation to a greater extent than is provided. This is a pure social contract principle of Constitutional interpretation and the manner in which rights can be used. The concept as defined in this provision certainly does not extend to cover the matter in dispute in *BUPA* and *Halifax*. That does not however mean that the concept of "abuse" as such does not exist within the context of European law as developed by the ECJ in relation to "Own Resources", and the Advocate-General appears to have taken this line in the *Halifax*, *BUPA* and *University of Huddersfield* joined cases.

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6 *BUPA Purchasing Ltd and Others v.CCE [2003] EWHC 1957 (Ch) , Halifax Plc; Country Wide Property Investments Limited; Leeds Permanent Development Services Limited v C & E Comrs [2001] V & DR 73*

Conclusion

This space should be watched, there is more than ample potential fiscal matter within the Constitution and the Charter.

Whilst the present fiscal balance between the Community levies, and the indirect contribution collected by Member States from their own budgets appears to be respected, there is, in the Company taxation field, an opening for a harmonised basis of taxation, and therefore for a further budgetary extension in a similar manner to that of VAT.

Any harmonisation of the Corporate tax basis will inevitably engender questions of fiscal consolidation, or group income and group relief, and the issues of discrimination will again come to the forefront. Until recently, the ECJ has felt unable to tackle the issues of bilateral Tax Treaties, as it does not feel able to take an indirect jurisdiction over these. The question will arise as to whether the jurisdiction of the ECJ will change as a result of the Constitution, and as a separate issue, whether the Commission may propose, and Member States be prepared to back provisions in a Pan-European Framework law which would alleviate distortions of competition resulting from certain bilateral Treaties.

This article does not seek to address the other extremely important issues relating to the Freedom of establishment, eroded as it has now become to a mere right for certain professions, which themselves have indirect implications.

The effect of the Constitution as an interpretative gloss over certain existing issues should not be under-estimated. The definition of *abus de droit* given in the Constitution is not that alleged by Customs and Excise in *BUPA* and *Halifax*.

Finally, the transformation of Community legal instruments into laws and framework laws will increase the National Courts interest in applying these directly. There has been an increasing tendency in certain member States, Italy and France for example, simply to introduce Community legislation into their national legislations without re-enacting them in national form.

The main issue is whether the major and largely unnoticed creation of a highly innovative political and economic Europe which has in effect transcended the now outdated federal institutions such as Russia and the United States, will be accompanied by a realisation by the Member States concerned that cooperation and the spreading of responsibility within this flexible framework can continue to be financed without attempting to create a new form of supra national taxation. There is no doubt that depending on the perspective, and the prejudices adopted, Europe is either Old, or very renewed. The author believes that it is time for new tools of

political and legal analysis to be developed to counter the extremely negative positions taken by our international competitors in relation to what is now a potential for a highly flexible, and extremely efficient method of allocating resources between independent states.

The political challenge is whether the unfortunate removal of the quotation from Thucydides contained in the initial draft Constitution has political, administrative or fiscal significance:

> *Our Constitution … is called a democracy because power is in the hands not of a minority but of the greatest number. Thucydides II, 37*

The Greek term employed was not the actual power in the form of its exercise, but the legislative and decision making power. The Athenian voter was able to take significant decisions, because of the information and facility for debate available to him. He had enough information to enable him to decide between for example, the rant of Alcibiades, and the reasoning of Socrates on the proposed destruction of one of the member Islands of the Delian league[7]. The issue now is whether the individual in the European Member States is being given the information necessary to enable him to take a clear and informed view, without the debate being clouded by inaccuracies such as those currently influencing public opinion. This in itself may be a reason for maintaining the current budgetary position and discipline: specific limitations on budgetary competence, and application of funding generated by one activity for its own financing. The idea of giving power to tax in matters of Corporation Tax and VAT and other implements influencing economic activity to politicians using this language is one which should be thought through carefully. There are better places from which to start than bland assertions that the CAP takes up 40% of the Community Budget.

When the character of the European Court's jurisprudence is observed closely, it concerns itself with the disposition in question and the situation in hand, not with attempts to force it to conform to pre-existing nationalistic models of thought The reader will be left to consider what the implications for supposed Europeans are in terms of identity, having a notion of nationality thrust upon them, together with a President, and a Foreign Minister. Whilst there may be formal representation of the peoples at a European level, it is legitimate to query whether the forms of democratic representation contained in the Constitution are sufficient to enable any form of European taxation in the form of income taxation or corporation taxation, let alone social security contributions to be dealt with democratically at a European level. This was not in the Drafting author's mandate; otherwise, provision would have been made for it in the draft. The financing of the proposed defence

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7 *which incidentally contributed to feed Athens during the war with Sparta.*

cooperation and closer cooperation is achieved through existing budgetary funding, in particular through the GNP and direct invoicing, in a similar manner to an EEIG.

The fiscal or budgetary issues are therefore settled in the same theme. The Union's budget is limited to its mandates: one mandate is for the Common Agricultural policy, which is financed, as it always has been out of the import and export of food. The second is the Common Customs Tariff, the third the VAT contribution from the Member States' VAT takings, which although subject to a common basis, and under restrictions as to rates, can hardly be said to be a Community Tax in the full sense of the term as it would be used in a national context, and the last, a percentage of GBNP, which in a sense is the contribution out of the Member States for part of the considerable advantages they have through the common market in goods and services, and the revenues generated through this. The Federal taxes in the United States are of an income tax and corporation tax variety, and it is only the larger States and cities which attempt to raise taxation through such types of taxes rather than sales taxes and municipal taxes on property. To start to think in terms of creating a European supra income or corporation tax under these circumstances would be idiotic, in the Athenian sense of the term. That the Prime Minister felt able to say that Mr. Chirac called him pathetic and tragic, when his reasonable command of French would have required him to report that Mr. Chirac had in fact said that the situation, not Mr. Blair, had become pathetic and tragic, using the terms of Greek drama to describe this impasse, is hardly cause for hope.

The fiscal issues raised in the Constitution are therefore the elevation and reframing of VAT within a European Framework law, in itself a significant shift, as that does have potentially democratic implications, and the continuing indirect harmonisation of the Corporate tax base and territorial applications, either through the caselaw of the European Court, as it uses the various tights and freedoms guaranteed now by the charter and by the rules governing the internal market, or through legislative initiatives. This initial position may be changed if the Constitutional powers given in certain areas are developed by Conferral, in which case there may be a tendency to acquire resources through extensions of the budgetary powers of the Institutions over what have been hitherto specifically national resources.

So, will the debate on the CAP remain within its bounds, or will it raise the spectre of an extension of the budgetary powers of the European Union, and a centralisation of power? Will emphasis on relations with the United States, lead to a strategic error in underestimating the capacity of the Chinese within the field of Food exportation, and an unfortunate choice of a different refinancing mechanism out of general resources, rather than specific price support levies. The agricultural

communities of the New Member States may have been banking on the current price support system, would these newcomers be prepared to accept such a change?

European history, and indeed an analysis of the jurisprudence of the Court of Justice may show that more has been achieved by a deliberate specific definition and dilation of power, and by analysis of why it was given and how it should be exercised, than its artificial concentration in the hands of one body or person. May the debate continue.

(The author's opinions and views are his alone, and do not reflect those of any other member of Clerksroom Chambers)