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**FACING UP TO BRITAIN'S EUROPE PROBLEMS**

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*Abstract*

The European Union is no longer a problem just to British government; it is now a problem to Europe's governors as well. This paper reviews distinctive ways in which the British government has attempted to address these interdependent problems. It also makes recommendations about what it might realistically do, because much of its content is drawn from the author's written submissions to British parliamentary committees on the 2011 EU referendum lock; the need for the British government to develop an EU policy that can be acceptable to other EU member states as well as to Conservative backbenchers; the challenge to foreign policy if Scotland became independent; and the challenge to the EU's capacity of applying rigorous standards when evaluating countries for further enlargement.

Key words: European Union. British government. Enlargement. Scotland. Euroscepticism.

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## INTRODUCTION

The current confrontation between Britain and the European Union is different: not only does the British government have a problem with what the EU is doing but also the EU's leaders are having problems with the state of the European Union. In his State of the Union address to the European Parliament in September, 2012, José Manuel Barroso declared the best way to meet the current crisis of the Eurozone is to move towards an ever closer Union that became, 'let us not be afraid of the words, a federation'. Concurrently, Labour leader Ed Miliband has joined with Conservative Foreign Secretary William Hague in accepting that the criticisms of Britain's eurosceptics are sometimes well founded.

In response to developments in Brussels and in Westminster, three differently oriented parliamentary committees have been holding hearings about what Britain should do. The chair of the House of Commons European Union Scrutiny Committee, William Cash, succeeded in 2011 in securing the adoption of a European Union Act that will require a referendum on any further transfer of power to the EU from Westminster. The Foreign Affairs Committee has held hearings on what should fill the vacuum in European policy created by the Prime Minister's self-exclusion from deliberations on the euro crisis in December, 2011 and also on the position in Europe of a "rump" UK and an independent Scotland, should it vote for independence. The House of Lords Select Committee, where there is greater expertise on the EU, holds full hearings in a less partisan environment.

Parliamentary committees invite the submission of written evidence from interested groups and experts. It is a good discipline to write for a parliamentary committee because each has both proponents and critics of European integration. Whatever advice one offers, it must be relevant, to the point and accept constraints imposed by the current Conservative-Liberal government. This paper collects four submissions that I have made during the current Parliament on the EU referendum bill; distinctive UK priorities for the EU's future; foreign policy implications of Scottish independence; and further enlargement of the EU. To help readers outside the UK understanding the constraints (or one might even say knots) affecting the British government, this paper also includes an article I wrote

for *Europe's World* on the domestic roots of the government's foreign policy. The framework for analysis is spelled out fully in my forthcoming book, *Representing Europeans: a Pragmatic Approach*, which Oxford University Press will publish in April, 2013.

Professor Richard Rose

BRITAIN'S DOMESTIC FOREIGN POLICY <sup>1</sup>

Almost every European country has two foreign policies; one is a domestic foreign policy suited to its national audience, and the other is suited to dealing with other countries. Britain is different; it has a domestic foreign policy but no policy for dealing with foreigners, especially other governments that it must deal with as a member of the European Union.

Prime Minister David Cameron's government has gone well beyond the traditional British wait-and-see approach to Europe. It now views European initiatives either sceptically or downright negatively. Furthermore, many of its MPs are demanding the return of powers to Britain that its predecessors accepted as part of the *acquis communautaire*. The 'Fresh Start' group of Conservative MPs has produced a report of several hundred pages detailing the powers that it wants returned to Britain and proposes that a referendum be held to approve whatever Brussels will concede. Since there is little likelihood of Brussels agreeing major concessions, this would encourage demands for withdrawal from the EU. A House of Commons motion to hold a referendum promptly on reclaiming powers from the EU has been supported by more than 110 MPs, a sixth of the parliament's members.

Viewed from continental Europe, the strongest proponents of a united Europe might see a British decision to join Norway in the European Economic Area as a welcome way of disposing of a perennially awkward partner. Britain would remain part of the single market but would lose the power to block EU actions when unanimity is required or to mobilizing support to challenge moves toward an ever closer Union.

Cameron's domestic foreign policy has sought to avoid clarifying Britain's relationship with Europe. Doing so would threaten support on which his coalition government depends in the House of Commons. Meanwhile, his Foreign Secretary, William Hague, has launched a detailed audit of how EU policies affect Britain. It is ambitiously intended to find ways to establish a relation with the EU that involves 'less cost, less bureaucracy and less meddling in the issues that belong to nation states'.

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<sup>1</sup> Reprinted from Europe's World, Autumn, 2012, 52-55.

To give in to anti-European demands now would cause Liberal Democrats, the strongly pro-EU coalition partners of the Conservatives, to leave the government. This would force an early general election when the economy is ailing and the Conservatives are trailing well behind the opposition Labour Party. The chances are slim, though, that the prime minister will be able to avoid a domestic clash over foreign policy during his present term of office and the consequences of this would spill over into EU deliberations.

At the forthcoming European Parliament elections in June 2014, the Conservatives will have to defend the 23 seats they won in the last EP election against a strong challenge from the United Kingdom Independence Party (UKIP), which won 13 seats then by campaigning on a platform of British withdrawal from the European Union. Since the survival of the present British government will not be at stake, anti-EU Conservatives will feel free to vote for UKIP so as to send a message in favour of withdrawal. At the same time, pro-EU Conservatives can vote for the Liberal Democrats to support a party that wants Britain to remain in the EU. Those Conservatives who care little either way about Europe may stay home because of their disillusionment with Cameron's leadership.

Since UKIP needs a swing of little more than five percent to finish ahead of the Tories in the EP ballot, there is a real possibility that the Conservative Party might finish third behind a revived Labour Party as well as behind UKIP. The Labour opposition is playing up the government's divisions on Europe and does little to defend the EU in principle or practice. The prospect of winning office in 2015 has made Labour leader Ed Miliband avoid pledging a referendum on withdrawal if he were to become prime minister. This is not only prudent to maintain relations with Brussels but also because it makes it much easier for him to solicit Liberal Democrat support if their votes would be needed to make Miliband prime minister in the next British Parliament.

The Conservative whips are likely to find it increasingly difficult to discipline their backbench MPs. Since so many grassroots Conservative Party members hold anti-EU views, they can put pressure on Tory MPs to vote to return powers from Brussels. Constituency party members can ask aspirants for the party's nomination whether they support a referendum

on the EU. If the answer is yes, this is a gain for the UKIP cause. If the answer is unconvincing, UKIP can threaten to cost the Conservatives the seat by nominating a candidate who campaigns on an anti-EU platform. At the UK's 2010 general election the Conservatives would have won an absolute majority in the House of Commons if they had gained all the votes that were cast for UKIP candidates in 21 marginal seats.

Concessions that the British government has already made to anti-EU sentiment may yet create a crisis affecting the European Union as a whole. Britain's 2011 European Union Act of Parliament requires a national referendum on any transfer of power from the UK to the European Union. The Act was an attempt to soothe the bitterness felt by anti-EU Conservatives who were denied a British referendum that would almost certainly have torpedoed the Lisbon treaty. It does not limit the referendum requirement to treaties; it also applies to 'certain decisions already provided for by the TEU and the TFEU if these would transfer power or competence from the UK to the EU'. In addition, before the UK can vote in favour of specified proposals to the European Council, the government must first have secured approval by both Houses of Parliament.

Whenever in the years ahead a proposal comes before the European Council to expand the EU's existing powers, the British government can point to the 2011 Act as tying its hands. It can propose that the Council either amend the proposal to meet its domestic requirements or give Britain an opt-out. If there is a consensus that British demands cannot be met and a Qualified Majority Vote is sufficient, a measure can be adopted notwithstanding British objections. This would trigger a demand for a British vote to void what was decided in Brussels and a European constitutional crisis that would be welcomed by anti-EU MPs in Britain.

Enhanced co-operation allows member states with common goals to adopt policies that do not bind all member states. This has served as a means for the UK to sit out initiatives it doesn't find to be in its own interest and has allowed other countries to proceed without encumbrance. Jean-Claude Piris, the former chief legal expert at the Council of Ministers, has shown in a carefully argued submission to the House of Commons' Foreign Affairs Committee that this offers Britain an alternative to a strategy of confrontation. It would incidentally give France greater

prominence within EU deliberations and leave Berlin without any other major power as a partner. But the removal of the United Kingdom from major EU developments would offend proponents of European integration who remain deeply committed to a uniform as well as an ever-closer union.

Treaty amendments that require unanimity create still bigger threats of an explosion. So far, the Stability Treaty has been safe from British challenge because the United Kingdom has not signed it. However, Clause 16 of the treaty states that within five years necessary steps shall be taken to incorporate the substance of this treaty into the EU's legal framework. When that time comes, it will doubtless be harder than ever to reconcile the treaty's enhancement of the EU's powers over all member states and the current British opposition to any transfer of powers that affect it.

To describe the British lack of foreign policy for foreigners as an Anglo-Saxon peculiarity ignores the fact that Britons are not the only Anglo-Saxons in the European Union. Germany's Constitutional Court is now hearing cases that claim that the German government has agreed in Brussels to measures that are inconsistent with the democratic principles of the Federal Republic's Basic Law. The Karlsruhe court's recent annulment of an act governing the allocation of seats in next year's Bundestag elections shows that it will not hesitate to take decisions quashing what the Chancellor has approved. Even if the Constitutional Court doesn't bite, its readiness to bare its teeth is enough to justify the German government in joining the British government in emphasising the domestic constraints on any further EU policies that favour European integration over national policymaking.



## THE UK REFERENDUM LOCK ON EU POWERS <sup>2</sup>

The absence of a reference to referendums in the Lisbon Treaty shows the ambivalence of EU member states about the practice of holding national referendums on EU treaty changes. There is no desire in the European Council to add to the existing complexity of expanding EU powers by introducing a referendum. However, the Council cannot object to national referendums being held on EU measures because the choice is covered by the EU's doctrine of subsidiarity, and 18 member states have already done so.

Although most Members of the European Parliament consider referendums an unnecessary or undesirable feature of representative democracy, this view is not shared by Europe's citizens. When the 2009 European Election Study asked--Do you agree or disagree that EU treaty changes should be decided by referendum?--63% voiced agreement, 18% were negative and 19% had no opinion. In every EU country most respondents were positive. In Britain, 81% endorsed the principle of referendums on treaties, 9% opposed and 10% had no opinion (Figure 2.1).

While the expansion of European Union powers in the past 25 years has increased the use of referendums, national referendums on EU matters remain relatively rare occurrences. However, the scope of the pending British bill raises the prospect of referendums dealing with many policy areas and the scope and volume of new EU policies is not in the hands of the UK Parliament. Hence, to avoid the risk of "referendum fatigue", the Committee should consider how to ensure that provisions for securing approval through a Resolution or Act of Parliament may be deemed sufficient to approve measures that are not of major significance.

The co-decision process of the EU involves substantial negotiations between member states to arrive at an agreement. The pending bill will alter the position of the British government in this process. It faces other governments with the choice of adopting a measure that would trigger a British referendum or limiting changes to measures that will not require a ballot or if they do, be reasonably sure of British endorsement. However, the greater the majority in favour of a transfer of powers, the less weight

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<sup>2</sup> Revised version of written evidence submitted 2 December 2010 to the European Scrutiny committee review of the EU bill and parliamentary sovereignty.

that other countries are likely to give to a British referendum.

The bargaining that occurs among 27 countries in the negotiating process leading up to a treaty change can produce a document that bundles together a variety of alterations, some acceptable to Parliament while others are not. However, a referendum ballot reduces choice to a simple Yes or No to the package as a whole.

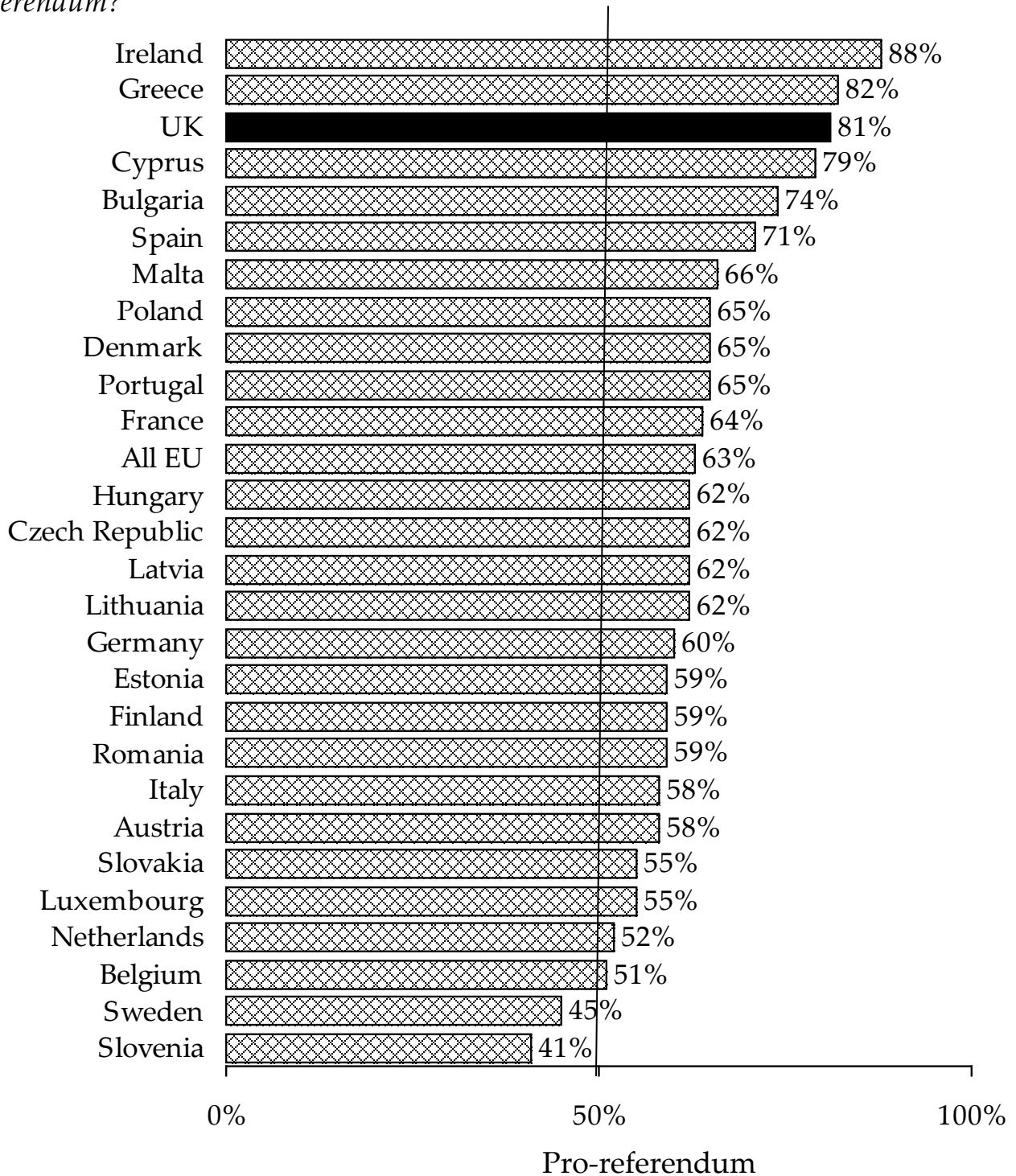
The Committee may want to consider whether a British referendum should be advisory rather than binding. A binding referendum has finality but also eliminates the possibility of re-opening negotiations in order to remove objectionable clauses in an otherwise acceptable policy package. There are precedents regarding Denmark and Ireland for the EU to modify a measure to make it more acceptable to a member state that has initially rejected it. If a referendum result was advisory, provision could be made that, with or without renegotiation, an affirmative vote of Parliament would be required for acceptance.

The political authority of a referendum result depends on the turnout and size of the majority. The Committee may want to consider whether the categorisation of a vote as binding or advisory should depend on the percentage of the electorate voting and/or on the size of a majority.

Because the EU referendum bill is concerned with procedures rather than the transfer of specific national powers to the EU, it is not inherently anti-integration. When the European Election Study asked whether European integration should be furthered or had already gone too far, across Europe the median group, 30%, gave replies that indicated it depended on the issue. In Britain, 24% said integration has already gone too far, 49% were in favour of more integration and 27% had no clear opinion. This indicates that in a referendum on a treaty change, the median Briton is likely to take a view related to what are perceived as the specific aims of the treaty rather than see a treaty referendum simply as a vote for or against EU membership.

Figure 2.1 NATIONAL ENDORSEMENT OF EU REFERENDUMS

Q. Do you agree or disagree that EU treaty changes should be decided by referendum?



Source: European Election Study, 2009. A survey of 27,069 respondents across all EU member states. For details, see [www.piredeu.eu](http://www.piredeu.eu).

DISTINCTIVE UK PRIORITIES FOR THE EU'S FUTURE<sup>3</sup>

The December 2011 European Council meeting from which Britain walked out was a challenge, not a watershed, because it is unclear how eurozone members of the EU will react to future events. The German Chancellor is calling for changes in EU rules that could trigger a British referendum under terms of the 2011 European Union Act. To avoid misunderstandings and possible isolation, HMG should start preparing for such developments.

The European Union notionally endorses diversity as well as Union, but its predominant position favours all member states advancing in unison toward an ever closer union. Thus, the UK's repeated challenges to further European integration are widely perceived as negative. This submission recommends that, consistent with HMG's distinctive position, it should promote institutional diversity as a positive means of managing differences in an EU with 27 member states by such means as:

- Pragmatic experimentation. EU procedures for enhanced cooperation enable willing countries to adopt policies and countries with doubts to observe the experiment before deciding whether to join in. This has been Britain's stance on the euro and the Stability Treaty goes into effect after ratification by 12 countries.
- Give European citizens a say on major increases in EU powers. HMG should promote its 2011 EU Referendum Act as a positive step to address the EU's democratic deficit by testing the commitment of citizens to further expansions of the EU's powers.
- Link enhanced cooperation and referendum endorsement. A coalition of the willing implies that the unwilling should satisfy themselves by opting out. Therefore, future agreements on the expansion of EU powers should have complementary and contingent provisions for enhanced cooperation by countries that favour further integration and opt out clauses for countries that may not do so, e.g. Britain after a national referendum.

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<sup>3</sup> A revised version of a submission to the House of Commons Foreign Affairs Committee inquiry about The Future of the European Union: UK Government Policy. June, 2012.

*Enhanced cooperation.* For decades EU member states have been experimenting ad hoc with enhanced cooperation in different policy sectors and institutional forms. For example, the Schengen agreement promoting easy movement has gradually expanded to affect more countries since its launch in 1985, while Britain and Ireland continue to opt out. Pragmatic experimentation enables governments that consider a policy in their national interest to cooperate with other member states and demonstrate how it works in practice. Simultaneously, it allows governments that think a measure not in their interest to avoid being forced to join and, even worse, being forced to pay the costs of doing so if the experiment is unsuccessful.

Title IV of the Treaty on European Union contains detailed rules for the use of enhanced co-operation to maintain momentum toward an ever closer Union when unanimity is lacking about what the EU should do. The practice is sometimes described by the term 'differentiated integration'. The eurozone crisis pushes EU countries into uncharted waters. In conditions of high uncertainty, trial-and-error policies are being adopted in an experimental search for measures that will work. Since eurozone countries fall into three different groups--members; non-members with a commitment to join at some unspecified future date; and countries not expected to join--it is possible that different policies may be suited to each group. By allowing for differentiation, enhanced cooperation increases the number of countries satisfied with their EU obligations.

Enhanced cooperation can avoid the extremes of Britain vetoing an EU measure favoured by a substantial majority or Britain being compelled to adopt a policy unacceptable to the UK Parliament and citizens. In a 27-country European Union it is unlikely that Britain would be alone in hesitating about being in the vanguard of moves toward closer integration. However, in the absence of leadership from a major country, small states lack the political will and clout to secure major changes in what a predominant majority agrees.

The convention of the *acquis communautaire* prevents "retro-fitting" enhanced co-operation to established measures. Hence, it is rhetorical overkill to suggest that its future use would cause the EU to disintegrate. Where uniformity is required, for example, the admission of new member

states or for basic principles of the single Europe market, enhanced cooperation is not feasible. However, existing EU policies show that the case for uniformity tends to be exaggerated. Key measures affecting the three pillars of the EU are not uniformly applicable across EU member states, e.g., border controls (Schengen); monetary policy (the euro); and defence (NATO).

HMG should promote enhanced cooperation as desirable in principle and invoke it when issues emerge where there are pressures to act but no agreement about what is to be done. Ideally, these issues would include policies where Britain can lead in cooperation, as it did in air support for Libya, as well as those where its distinctive priorities recommend opting out.

Pragmatic experimentation through enhanced cooperation is not a commitment to a two-speed Europe. The dynamic consequence depends on its success. If an initiative is successful, laggards (that is, those who do not initially join) can catch up with leaders subsequently. This is the process by which the UK entered the European Union two decades after refusing to be a founder member. It also provides a firm institutional foundation for flexible integration, in which the member states that join together can differ from one policy to another. This is the basis on which Britain participates in the chief institution for European defence, NATO, while remaining outside the chief institution for European monetary policy, the ECB.

*Giving European citizens a say through referendums.* While the European Parliament has gained in powers vis a vis other EU institutions, its claim to represent EU citizens has fallen as turnout has settled below half the electorate. Moreover, key decisions in the EP are made by multi-national party groups, which research shows are much more in favour of an ever closer Union than are Europe's citizens. Moreover, irreversible decisions on treaties expanding the EU's powers can be agreed in the European Council by national governments representing less than half their country's voters and binding future national governments. This is less than the super-majority normally required to endorse changes in national constitutions; ten member states require referendums on major changes in their national constitution.

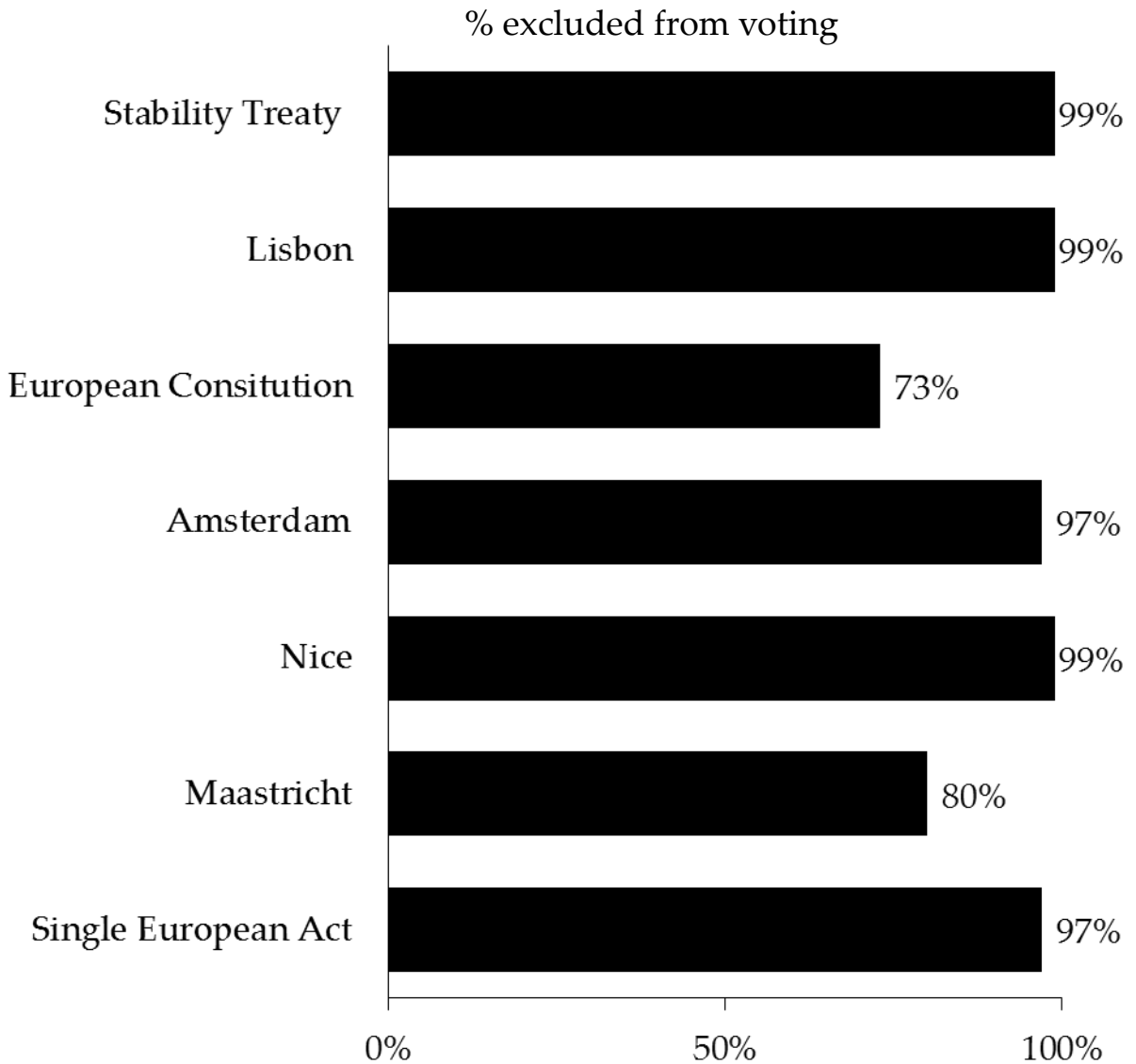
Consistent with the EU principle of subsidiarity, it is open to the government of any EU country to call a referendum on an EU issue. At different times over the years most member states have called a national referendum on an EU issue on grounds of political principle, political prudence or for domestic political reasons. The conduct of a referendum campaign focuses attention on whether citizens want to be committed to further integration. Turnout at EU referendums is normally significantly higher than national participation in a European Parliament election. In three-quarters of referendums, the result is popular endorsement of an EU measure. Public opinion in every EU member state favours a referendum vote on any new EU treaty.

The current practice of referendums on expanding EU powers has major flaws. National referendums have excluded between 72 and 99 percent of EU citizens from voting (see Figure 3.1) and a single EU country's referendum can veto the adoption of an important measure supported by a preponderant majority of countries. Because a free and fair referendum vote risks the rejection of an EU agreement, current EU policy is to expand its powers by adopting "treaty-like" agreements through novel procedures. The new Treaty on Stability, Coordination and Governance in the Economic and Monetary Union is a prime example. It confers new powers on the European Commission and European Court of Justice and national governments are expected to get their parliaments to adopt fiscal measures without further reference to their national electorate.

The UK is now one of three member states with a legal requirement to hold a national referendum on treaties transferring powers to the EU. The Irish court has ruled that the Stability agreement is a Treaty subject to a national ballot. Danish lawyers have been able to finesse referendum requirements. National elections in member states, occurring at the rate of seven a year, present further challenges, as Greece most vividly demonstrates. In addition, the German Federal Court is now prepared to examine cases challenging whether EU measures are consistent with the democratic principles of the German Constitution.

Figure 3.1 EXCLUSION OF EUROPE'S CITIZENS BY NATIONAL REFERENDUMS

(Percent of citizens in member states not holding Treaty referendum)



Notes: Stability Treaty and Lisbon: Ireland voted; 26 countries did not. European Constitution: France, Spain, Luxembourg and Netherlands voted, 21 countries did not. Amsterdam: Ireland and Denmark voted, 13 countries did not. Nice: Ireland voted, 14 countries did not. Maastricht: France, Ireland and Denmark voted, 9 countries did not. Single European Act: Denmark and Ireland voted, 10 countries did not.



HMG should call for European citizens to be given a bigger voice on major EU decisions through simultaneously held national referendums. This is a practical means of reducing the EU's democratic deficit and increasing popular commitment to EU measures that national majorities endorse. Moreover, it does not require a new Treaty to be enacted. National governments that decide to hold a referendum need only co-ordinate the date and wording of a ballot. National governments hesitant about doing so would be under pressure to follow where others led.

The prospect of a referendum on the transfer of powers to the EU should have a significant influence on discussions in Brussels about whether and how integration advances. It should encourage the pro-integration majorities in the Commission and Parliament to pay more attention to securing the commitment of their citizens. It would also remind national governments meeting in the European Council that British concerns with ambitious transfers of power are not a peculiarly insular fixation but one that many of their own citizens may share.

Any treaty approved by all national governments in the European Council is likely to be endorsed by a majority of national referendums. But since all referendums raise the possibility of defeat, a treaty proposal should include clauses for opting out by countries rejecting a treaty and allowing countries to join subsequently if a new policy is successful.

HMG should have a two-pronged strategy for responding to proposals to expand EU powers. It should seek support to modify proposals to make them acceptable in Britain and, if this is not practical, it should emphasize including enhanced cooperation clauses that allow member states to co-operate while Britain opt out. Such a strategy can be justified as consistent with the EU principle of diversity, authorized by the Treaty on European Union. It will also avoid conflict between the UK's 2011 EU Act and commitments that a big majority of European governments endorse.

### WHAT IF SCOTLAND VOTES FOR INDEPENDENCE? <sup>4</sup>

The important questions that the Committee raises are a mixture of known knowns such as the UK's right to a seat in the UN Security Council, and known unknowns, such as specific terms of separation, how amicable or acrimonious negotiations about separation are, and assessments in Brussels and Washington of what is in their respective interests.

The number of unknowns underscores the importance of a diplomatic rather than adversarial handling of any negotiations about the transition to separation. In today's world, the interdependence of policies--what one country does depends on what another does--means that independent states are continuously engaged with many states about policies of mutual interest. Whereas control of services already on the ground in Scotland would merely have to be transferred, independence would require Scotland creating almost from scratch the full panoply of representation currently provided by the UK government.

Scotland's resources match those of many EU or UN member states with one major exception: as a devolved region it does not have the representation abroad that is normal for a 21st century independent state. To confirm its independence, as a matter of urgency it would need to:

- Establish and staff major embassies in up to two dozen national capitals, plus representation at the IMF, UN, etc.
- Assuming admission to the European Union, establish and staff an Office of Permanent Representative in Brussels eight to ten times larger than its existing mission.
- Political parties will need to recruit candidates to meet the likely increase in European Parliament seats from six to twelve.

*Implications for the UK.* Scottish independence would alter the title but not the legal status of the United Kingdom and leave membership of international bodies unaltered. Its international standing would only be affected if negotiations for separation were badly handled. The UK's already difficult relationship with the European Union would be further complicated if it chose to raise detailed objections to an application for EU

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<sup>4</sup> A revised submission to the House of Commons Foreign Affairs Committee review of Foreign policy implications of and for a separate Scotland, September, 2012.

membership from the Scottish government. UK intelligence relations with the US should not be affected but a Scottish government demand for the removal of Trident submarines from Scotland would force a critical review of UK defence policy.

Political negotiations for the departure of Scotland from the United Kingdom must be bilateral. However, the unusual character of negotiated independence in today's world and the international visibility of both the UK and Scotland would attract a large international audience. Diplomatic spectators would not have a prior commitment to one side or the other. Countries would wish to be on good relations with the new Scottish state as well as with the UK. It would be in the UK's interest to take into account relevant third-party reactions as negotiations evolve.

As for the EU, the UK government's current policy is to distance itself from further or existing EU commitments, while the Scottish government takes the opposite position, common to small states, of seeing the EU as offering equal legal status with large states. EU policy favours enlargement. Compared to the eight states that are candidates or potential candidates for EU membership, Scotland rates more highly than seven in terms of commitment to democracy, GDP per capita, population and avoidance of corruption. Thus, Brussels would likely view a Scottish application for membership favourably. Given such unprecedented circumstances as EU laws already applying in Scotland, Scotland could seek exceptional treatment for an application to be recognised as a member state. The process adopted for considering Scottish membership would be a political decision made collectively by EU institutions within its legal framework, albeit one that has never faced the circumstances considered here.

In EU law the UK could veto Scotland becoming a member state, but this would not be to its diplomatic advantage at a time when it is seeking allies in placing curbs on the EU's expansion of its political and economic powers and is endorsing enlargement of EU membership in the Balkans. The UK's position would be weakened if the government was simultaneously seeking to repatriate powers from Brussels to Britain.

The UK's nuclear defence policy would be called into question by Scotland becoming independent. Negotiations about transitional

arrangements for the redeployment of UK nuclear submarines to an English base would re-open the question of what type of military capability Britain requires in future and what military capability it can afford. Insofar as military installations in Scotland are of value to NATO, then the United States would take an interest in the outcome of negotiations and would be free to engage in bilateral negotiations with Edinburgh as well as with London.

*Implications for Scotland.* If Scotland became independent, it would immediately need to establish its own diplomatic representation abroad, since the UK government would no longer provide representation. There is no fixed rule about how many embassies and Ambassadors are enough and countries the size of Scotland do not try to have representation in the majority of UN member states. Nordic states such as Denmark and Finland have several dozen embassies abroad and also some form of representation or consular service in up to two dozen or more countries. By starting from scratch, Scotland could attempt innovative forms of representation. Nonetheless, whatever was done would require a substantial capital investment, recruitment and training of staff, and involve significant recurrent costs. It would have to be done as a matter of urgency concurrently with creating new ministries in Edinburgh to take over responsibilities for powers that are currently not devolved.

The pressure for consensus in European Union decisionmaking and rules for super-majorities when votes are counted mean that individual countries, whatever their size, must form alliances on an issue by issue basis in order to have their positions incorporated in an EU decision. The lack of the "hard" power of military force and a large Gross Domestic Product forces small states to rely on "smart" power, that is, a conscious strategy of engaging with other countries in order to call attention to common interests that may be pursued for common advantage. While Scotland being an internationally known "brand" may help to open doors abroad, this is insufficient to seal deals.

In order to create understanding of its position as an independent state and to establish working relationships on issues of mutual concern, Scotland would need representation in all or almost all of the EU's 26 other member states as well as Brussels; it would want representation in

Commonwealth countries where the Scottish diaspora can be found; in important oil producing countries; and in major trading partners or potential trading partners such as China.

It is a diplomatic truism that to represent a country it is necessary to be present. Whether an EU committee meeting is one in which a country has an interest, it is necessary to monitor Commission preparations of proposals; the reaction of home departments affected by a specific Commission proposal; and the position that other countries are likely to take on an issue that makes them suitable partners in an alliance based on common interests. All of this takes time and skilled staff.

The allocation of seats in the European Parliament disproportionately favours small states; thus, Scotland's MEPs would double in number. However, the work of the Parliament is organised by multi-national Party Groups. At present, Scotland's six MEPs belong to four different Groups doubling the number would not necessarily change this. The extent to which Scottish voices would be strengthened with more MEPs depends less on the number of Scots in a European Parliament of 751 MEPs than on the abilities of the individuals whom parties nominate and Scots elect.

LIMITS TO THE EU'S CAPACITY FOR ENLARGEMENT <sup>5</sup>

When the European Economic Community was founded, the Treaty of Rome declared 'Any European state may apply to become a member of the Community'. However, the boundaries of Europe were not defined. Its six members did not claim to include the whole of democratic Western Europe, let alone the whole of historic Europe. The increase in the number of EU member states since the fall of the Berlin Wall and increased interdependence across Europe and globally has radically altered the context for the future enlargement of a Union that now has 28 members.

The 2004-7 addition of 12 countries has greatly increased the EU's political and economic diversity. The virtual doubling in the number of states has had a big impact on EU proceedings, since every member has an equal right to be represented in all its committees. Since EU decisionmaking favours consensus, bargains and compromises must incorporate far more interests and points of view. The number of official languages has more than doubled from 11 to 23. New member states have brought with them different political legacies than old member states. The median Gross Domestic Product of the new member states is one-third that of old member states. The median rating of new member states on indexes of the Rule of Law is also much lower.

The Copenhagen criteria for admission to the EU are consensual statements of values—but unless they are rigorously applied then enlargement will be at the expense of these values. The EU has not been able to enforce Copenhagen criteria on backsliding member states. Expanding the number and functions of EU member states without the capacity to act effectively will lead to "Brussels overstretch". The UK government should take the initiative in demanding the strengthening of the application of the Copenhagen criteria to potential member states and the development of more effective procedures for preventing backsliding from these standards by member states.

*Evaluating potential EU members.* The political values that applicants for membership are expected to endorse—freedom, democracy, rule of law,

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<sup>5</sup> Revised evidence submitted to the House of Lords Select Committee on the EU call: Enlargement of the European Union.

etc.--are uncontroversial but also unclear (Articles 2 and 49 of the Treaty of the European Union). Everything depends on how they are applied by the Council to candidates for EU membership.

The EU's Copenhagen criteria specify five relatively specific criteria that a candidate country should meet to become an EU member. It should be democratic, adhere to the rule of law, respect minority rights, have a functioning market economy, and have the administrative capacity to administer EU policies. The Copenhagen criteria are consensual statements of values—but unless they are rigorously applied then enlargement will be at the expense of these values. Most of the countries that are seeking membership will need substantial domestic changes and time to meet Copenhagen standards. The EU has not been able to enforce Copenhagen criteria on backsliding member states and absorbing all eight candidates risks imposing costs on existing member states. Expanding the number and functions of EU member states without the capacity without the capacity to act effectively will lead to “Brussels overstretch”. The UK government should take the initiative in demanding the strengthening of the application of the Copenhagen criteria to potential member states and the development of more effective procedures for preventing backsliding from these standards by member states.

Currently there are five candidate countries—Iceland, Macedonia, Montenegro, Serbia and Turkey—and three potential candidates—Albania, Bosnia & Herzegovina, and Kosovo. They are here referred to as potential member states.

The functioning of the economies of six potential members suffered greatly from being non-market planned economies. The GDP per capita of the median country is now only €4,000, barely one-third that of the 2004-7 entrants. Only one candidate has GDP per capita at the level of old EU member states, and one is at the lower range of new member states (Table 5.1).

The strength and durability of the democratic commitment of potential candidates has yet to be confirmed. Freedom House, an international NGO, rates five potential members as only partly free and two have gained a free rating only in the past few years. Only Iceland is a long-established democracy. Moreover, most of the potential members were recently wartorn and in some armies remain significant.

Table 5.1. POTENTIAL EU MEMBER STATES EVALUATED

	Freedom House	GDP/cap €	Corruption
<u>Candidate countries</u>			
Iceland	Free	31,700	8.5
Montenegro	Free	5,114	3.7
Serbia	Free	4,143	3.5
Turkey	Partly free	7,500	4.4
Macedonia	Partly free	3,300	4.1
<u>Potential candidates</u>			
Bosnia & Herzegovina	Partly free	3,467	3.2
Albania	Partly free	2,891	3.3
Kosovo	Partly free	2,405	2.8
<u>Median EU states</u>			
Old EU 15	All free	33,500	7.8
2004-7 entrants	All free	11,000	5.2

Sources: Freedom House rating, 2012, [www.freedomhouse.org](http://www.freedomhouse.org). Corruption: Transparency International 2011, [www.transparency.org](http://www.transparency.org); least corrupt: 10; most corrupt: 1. GDP per capita in euros: Eurostat 2011 and World Bank 2010.

The Rule of Law is weak in most potential member states. On the Transparency International Corruption Perceptions Index, three countries rank below the most corrupt member state currently in the EU, and all but one is below the median rating of the 2004 group of EU entrants.

*Deficits in the EU's capacity.* The EU today has significant capacity to act, but its capacity cannot be infinite. Its influence on potential members depends on their political will and capacity to meet Copenhagen criteria and the EU's capacity and willingness to enforce these standards.

The EU has shown limited capacity to call to account new member states that undermine democracy through the manipulation and/or violation of constitutional rules. It has also shown limited capacity to act against new member states that undermine the rule of law through increased corruption, fraud and tolerance of organized crime. The eurozone crisis has also shown the EU's limited capacity to deal with



economies which are not fully functioning market economies.

An increase in the number of member states to 35 or more would increase the extent to which the EU was an assembly of diverse states rather than a Union of similar states. Adding half a dozen or more cultures could create a Balkan group that would have more members and different experiences than other EU groups. It could create pressures to abandon the inefficiencies of dozens of official languages and confirm English as the *lingua franca* of the EU.

The population of potential members would justify a claim to up to one-fifth of the 751 seats in the European Parliament. This claim could only be met by redistributing seats from large countries such as the UK and from medium size and smaller countries.

The economic conditions of seven of the eight potential members would entitle them to substantial payments from the Structural Fund and Social Cohesion Funds. This would require either significantly redistributing funds away from some middle-income as well as better off EU member states or a major increase in the EU's budget.

Further enlargement would diminish the relevance of the eurozone for EU member states, since most new members would be a decade or more distant from meeting rigorously enforced criteria for eurozone membership.

Consolidating a democracy takes more than a decade—and some potential candidates are only part way to achieving democratic status. A consolidated democracy can only be achieved if all major domestic political groups demonstrate commitment through their behaviour. External democracy assistance and elections observed by foreign missions are of limited importance.

Institutionalizing the rule of law in a state requires much more than new laws and institutions. In countries where there is a tradition of the state tolerating bending or breaking laws, external incentives and pressures are of limited effect, as recent enlargement has shown.

Implications: diversity in institutions. Interdependence between countries creates the need for institutions to maintain a minimum of rules regulating relations. As a member of more than 100 intergovernmental organizations, the UK government accepts this principle—and interdependence increasingly affects Britain's public policies.

The norm for intergovernmental organizations is that form follows function: a postal union will have a global membership while a Nordic union can have half a dozen member states. The EU is unusual in being a multi-functional organization with much broader powers than the great majority of normal intergovernmental organizations.

While the EU belongs to Europe, many institutions that affect Europeans are separate from the EU. These include NATO and Interpol, the European Bank for Reconstruction & Development and, on the political front, the Council of Europe and the Organization for Security Co-operation in Europe. (Table 5.2).

European countries combine their membership in the EU with that in other institutions focussing on European concerns. The expansion of the boundaries of Europe to meet functional needs (e.g. the EBRD and OSCE) can make EU members a minority of those belonging to these institutions and the EU may not be a full member. The one institution that is exclusively European, the European Central Bank, does not include one-third of the EU's member states.

Table 5.2. INTERDEPENDENCE OF EUROPEAN STATES

	<i>Number of members</i>		
	EU countries	Non -EU	EU as % total
ORGANIZATIONS STRETCHING EUROPE'S BOUNDARIES			
North Atlantic Treaty Organization	21	6	78
European Central Bank	17	(10)	(63)
Council of Europe	27	20	57
OSCE	27	29	48
EBRD	27	36	43
INTERNATIONAL ORGANIZATIONS			
World Trade Organisation	27	129	17
International Monetary Fund	27	161	14
World Bank	27	161	14
Interpol	27	163	14
United Nations	27	166	14

Note: European Central Bank: percentage of EU members in ECB.

From a global perspective Europe is a significant region but not the only significant continent. European states are usually a minority of the members of political and economic organisations with a global reach. Equally important, the EU is a member of only one of these institutions, the World Trade Organization. In New York, Washington and other places where international organizations meet, individual countries, especially big states such as the UK, directly represent themselves.

The current policy of the British government is to limit the EU's functions while that of the President of the European Commission is to expand them. Each policy has inherent obstacles. In addition, each is an obstacle to the other, for the EU's Qualified Majority Voting rules can isolate the UK on many issues while the 2011 UK Referendum Act can result in the UK electorate vetoing any treaty expanding EU powers.

Neither the EU nor the UK has an interest in weakening the EU through territorial overstretch by admitting countries that have a lower commitment to democracy, a functioning market economy, and the rule of law. Moreover, there is a common interest in protecting the free movement of goods, services and persons from contagion due to the admission of new member states where corruption, fraud, smuggling, false certificates of origin and other forms of flouting the law flourish.

The European Union has stretched the concept of diversity by accepting inconsistency in the application of Copenhagen criteria in assessing candidates for membership. The UK government should promote stronger application of the Copenhagen criteria to potential member states and the development of more effective procedures to prevent backsliding by existing members.

The EU makes uniformity the norm in applying policies to member states. In doing so it ignores the extent to which this norm has not been adhered to in its practice. It also ignores member states following a horses-for-courses strategy of joining organizations with different sets of members appropriate to the function at hand. The UK government should promote a review of the ecology of institutions to which member states belong and a "form follows function" assessment of the EU's capacity and comparative advantage and what forms of interdependence are better handled by other institutions, including member states.