PEOPLE'S NEWS

News Digest of the People's Movement

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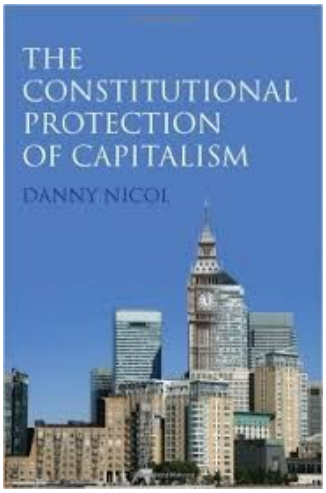
Why a vote for Brexit is a progressive act

The People's Movement is urging Irish people in Britain and Northern Ireland to vote "leave" in the referendum on 23 June. Here is a link to the case for a vote to leave the European Union: *Exit 6: Northern Ireland, Democracy, and the EU Referendum* outlines the Brexit case from the democratic and internationalist viewpoint that is central to the People's Movement's opposition to the EU.

The European Union now has its own government, with a legislative, executive and judicial arm, its own political president, its own citizens and citizenship, its own human and civil rights code, its own currency, economic policy and revenue, its own international treaty-making powers, foreign policy, foreign minister, diplomatic corps and United Nations voice, its own crime and justice code and Public Prosecutor's office. It already possesses such state symbols as its own flag, anthem, motto, and annual "Europe Day."



The constitution of the EU—the Treaty of Rome and its amending treaties—is in reality the first state or quasi-state constitution in modern history to be drawn up without the slightest democratic element, entirely in the interests of transnational Big Business.

The EU process is for shifting a myriad of government functions from the national level, where they have traditionally been under the control of democratically elected parliaments and governments, to the supranational, where the bureaucrats of the EU Commission have the monopoly of legislative initiative and where technocracy rules. It gives explicit primacy to EU law over national law.

In most years nowadays arguably the majority of laws that are put through the national parliaments of the EU member-states come from Brussels, although most people do not realise this.

Most cases before the EU Court of Justice are concerned with enforcing the EU's foundational "four freedoms": free movement of goods, services, capital, and labour. These erect the basic principles of classical laissez-faire into constitutional imperatives. No government or elected parliament may legally violate or change them, regardless of the wishes of their voters.

Any move entailing changes to the EU treaties requires the unanimous agreement of the governments of all twenty-eight EU member-states. Any changes to the other rules require either unanimity or a qualified majority. This is the practical problem facing those who contend that "another Europe is possible" by reforming the EU at the supranational level in the hope of making it more democratic, or who think that the EU can be transformed into a so-called "Social Europe."

Successive EU treaties have also laid down a deeply right-wing economic agenda. This has resulted in the interests of the banks and big corporations being put before those of the people. The most glaring examples of this have happened in the Republic and in Greece.

Thinking strategically about TTIP and CETA

There is widespread opposition throughout the EU and the United States to TTIP and CETA. Both trade agreements could open the way for business corporations based in the EU to take legal action against entire states whose national regulations on health, labour or environmental standards are regarded as "barriers" to trade, or affect corporate profitability, and would amount to a takeover of fundamental powers of government by representatives of corporate capital, operating, in the European context, in conjunction with the EU bureaucracy.

The negotiation of trade agreements is an "exclusive EU competence" under the EU treaties.

Logically, there are only three ways to get rid of TTIP and CETA.

Firstly, the EU could abandon the negotiations. The People's Movement is firmly of the view that a vote for "Brexit" in the UK referendum would create a major obstacle to the continued negotiation of TTIP and CETA, because Brussels would be forced to recognise that to push ahead with a major aspect of the EU project in the face of such a popular rejection would be an act of political suicide.

But once they are agreed by Brussels and Washington, TTIP and CETA would be practically irreversible. Assuming that withdrawal is permissible, there is no provision in the EU treaties specifying how the EU goes about withdrawing from a treaty. Would it have to create such a power for itself? It might then have to fall back on article 352 of the Treaty on the Functioning of the European Union, with its unanimity requirement, once again allowing a single neo-liberal government to save the EU's adhesion to TTIP or CETA.

Secondly, if TTIP and CETA are "mixed agreements," there is a possibility of a national parliament's veto coming into play. The Anti-Counterfeiting Trade Agreement (ACTA), rejected by the EU Parliament in 2012, was a mixed agreement.

The crucial distinction between mixed agreements and exclusive agreements lies in the content of the agreement to be concluded. If it governs only regulatory matters falling within the sole jurisdiction of the EU, it is an exclusive EU agreement. If the agreement also concerns individual regulatory matters that remain within the jurisdiction of the member-states, it is a mixed agreement.

Although there have been various pronouncements on this question, given the secrecy about the content of the two agreements, they cannot be clearly categorised in legal terms as "exclusive EU agreement" or "mixed agreement" (although this inability speaks volumes about the lack of transparency of negotiations on these agreements).

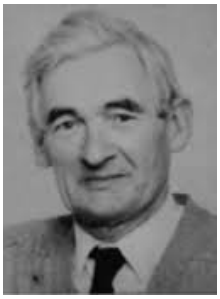
The "common commercial policy," the area of EU jurisdiction under which TTIP and CETA fall, establishes a far-reaching external jurisdiction on the part of the EU. Only the conclusion of agreements under EU jurisdiction gives rise to legally binding effects under international law. TTIP and CETA would not come about without being concluded under EU jurisdiction.

TTIP and CETA can only be concluded on the primary legal basis of article 207, paragraphs 3 and 4, in conjunction with article 218, of the Treaty on the Functioning of the European Union.

In the final phase, the EU Council must decide whether to conclude the agreement at the proposal of the Commission and with the agreement of the EU Parliament (article 218, paragraph 6) where this determination is preceded by a Council decision on the signing and, where appropriate, provisional application of the agreement taken at the proposal of the Commission (article 218, paragraph 5).

The consequence of this is that the Commission may, after the negotiations, exercise its competence and make an EU-only proposal for adoption by the Council (after consent by the Parliament). The Council would decide, with a qualified majority, to ratify. No member-states' ratification is needed, no strong role for national parliaments.

Basically, if the Commission negotiates some goodies for German industry, and some goodies for some other big EU member-states (having most votes in the Council and the Parliament), a majority for the proposed agreement is as good as certain, however bad it might be for the interests of smaller EU member-states, for the public interest, democracy, and human rights. So there are serious weaknesses in this option.



What about a demand for a referendum on the principles established by the Crotty case? Matthias Kelly SC, former chairperson of the Bar Council of England and Wales, said that the proposed investment court would "certainly infringe" the Constitution of Ireland in two areas and possibly three. In his opinion it would

• possibly infringe article 15.2.1, which vests the sole power to make laws in the Oireachtas,

• certainly infringe article 34.1, which vests the power to dispense justice in the Irish courts, and

• certainly infringes article 34.3.2, which makes the High Court and the appellate courts above it the sole courts in which a law may be questioned.

It may be that this option shares the same potential weakness as the second option, namely that the decision to ratify TTIP or CETA will ultimately be made by qualified majority vote of the EU Council, and that no member-state will have a veto in the end!

Those who insist that TTIP or CETA will be defeated by a spontaneous upsurge of popular activism, without the need for any strategic thinking about such fundamentals as the totally undemocratic nature of the EU, the interaction between bureaucratic and corporate power, and the continuing importance of struggling for national democracy and independence as the only real alternative, do the anti-TTIP and anti-CETA cause no service.

The "court with a mission"

The mission of the EU Court of Justice is to continually interpret the treaties in such a way as to extend the legal powers of the EU to the utmost.

The ECJ is not just a court but is a constitution-maker. It has powers similar to

what some parliaments have. Its judges are appointed by the governments—not the judges—of their home countries. They do not need to have practical judicial experience, and many of them have not. As they depend on the good will of their home governments for reappointment, they are not politically independent.

Various judgements of the ECJ have moved the EU in directions that were not envisaged by the people who drew up the treaties. The ECJ has had a revolutionary role in the development of the EU, as the following judgements show.

Van Gend en Loos, C-26/62: EU treaty rules have direct effect inside member-states. *"Member States' courts … were bound to apply Community Law. It could not be overridden by domestic legal provisions however framed without being deprived of its character as Community Law."*

Costa v. Enel, C-6/64: EU law has primacy over national law, a principle reaffirmed in the Lisbon Treaty (declaration 17): *"The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights … against which a subsequent act incompatible with the concept of the Community cannot prevail."*

Internationale Handelgesellschaft, C-11/70, and ***Simmenthal***, C-106/77: EU law has primacy over national constitutions.

AETR, C-22/70: The EU may enter into common international agreements instead of member-states in areas where EU powers are internally exercised, bolstering the EU's external powers.

Van Duyn, C-41/74: EU directives have direct effect inside member-states, and national courts must enforce them.

Dassonville, C-8/74, and ***Cassis de Dijon***, C-120/78: The lowest national standards for product standards can apply throughout the EU—a principle widely applied after 1987 in implementing the rules of the internal market by means of qualified majority voting.

Hauer, C-44/79: Fundamental human rights form part of the supranational EU legal order.

Les Verts, C-294/83: The EU treaties have the character of a constitution.

Frankovich, C-6/90: Member-states are financially liable for violations of EU law within their borders.

Kohll, C-158/96: Internal-market rules entitle national citizens to get medical treatment in other member-states and to be reimbursed on the same basis as nationals of those states.

Environment verdict, C-176/03: The EU may decide on criminal sanctions for breaches of EU law.

Laval, C-341/05, ***Viking***, C438/05, and ***Luxembourg***, C-319/06: These judgements limit the scope of trade unions to defend national labour standards in the case of foreign workers posted to their national territory.

Melloni, C-399/11: Because of the primacy of EU law over national law, the provisions of the Charter of Fundamental Rights prevail over the human rights provisions of national constitutions, even where the latter provide a higher standard of human rights protection.

Pringle, C-370/12: The establishment of a permanent bail-out fund for the euro zone, the European Stability Mechanism, did not violate the ban on government and bank bail-outs in

the EU treaties.

In this highly political judgement the ECJ implied that the twenty-eight EU member-states and their parliaments and governments, which had come together to amend the EU treaties to permit the establishment of a permanent bail-out fund for the euro, had essentially been wasting their time. They had been amending the treaties "for fun," as it were, because the presumed permission of all twenty-eight was not legally required at all. The ECJ ruled that the euro-zone sub-group of states had the right to make such a treaty among themselves anyway. This was despite the fact that the whole thrust of the court's previous treaty interpretation had been to regard the Monetary Union as an integral part of the 28-member EU and subject at all times to its institutions, rather than as primarily a matter for the euro zone.

The Pringle ruling on the "intergovern-mental" character of the ESM Treaty for the euro zone opened the way for a whole series of further treaties for the countries using the euro, which do not require unanimity, as EU treaties do. They can therefore be pushed through by the bigger euro-zone states, regardless of objections from the smaller ones.

This opens the prospect of the permanent division of the EU between euro and non-euro countries, something that is likely to have major implications for the future development of both.

EU member-states are constitutionally required to implement EU law in their national legislation. Failure to do so makes them liable to fines, which can run into hundreds of millions—typically between €25,000 and €300,000 a day—so long as they are in breach. These are imposed by the ECJ in cases that the Commission or other parties bring before it.

Being liable to such fines is a vivid expression of the loss of sovereignty of member-states.

We ignore these naked power grabs at our peril

The most secret of the international "free trade" agreements being negotiated around the world is the Trade in Services Agreement (TiSA), which also might be the most draconian yet.

If TiSA were to go into effect, regulation of the financial industry would be virtually prohibited, privatisation would be accelerated, and social welfare systems would potentially be at risk of privatisation, or elimination.

The Trade in Services Agreement is transnational corporations' back-up plan in case the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership are not brought to fruition. It is being promoted as protecting the right to hire the accountant or engineer of your choice, but in reality it is intended to enable the financial industry to ride roughshod over countries around the world.

TiSA is being negotiated in secret by fifty countries, with the unaccountable EU Commission representing the twenty-eight EU countries. Among the other countries

negotiating are Australia, Canada, Japan, Mexico, New Zealand, Norway, Switzerland, Turkey, and the United States.

Earlier leaks have revealed that internet privacy and internet neutrality would become things of the past. Rules on privacy would be eliminated. Furthermore, any rule that in any way mandates local content, or provides any advantage to a local technology, would also be illegal, so locking in the dominance of a handful of American internet companies.

The latest snapshot of the continuing TISA negotiations is provided by Wikileaks, which released several chapters on 25 May.

Say goodbye to your retirement

Among the portions of TiSA published by Wikileaks is the financial services annexe. There are no limits on what constitutes covered "financial services." Article 2 specifically refers to central banks, social security systems, and public retirement systems. It is not clear how these would be affected, but it is possible that TiSA could be interpreted to mean that no public or other democratic check would be allowed on central banks, and that public systems such as social welfare might be judged to be illegally "competing" with private financial enterprises.

Financiers around the world would dearly love to get their hands on social welfare systems—a privatisation that would lead to disaster, as has already happened in Chile, also a TiSA participant. Chilean people retiring in 2005 received less than half of what they would have received had they been in the old government system.

Some of the provisions in TiSA's financial services annexe include:

• requirements that countries must make their laws conform to the annexe's text (the United States and the EU are proposing the most draconian language) (annexe, article 3);

• a prohibition on "buy local" rules for government agencies (article 7);

• a prohibition on any limitations on the activities of foreign financial firms (articles 9 and 12);

• a ban on restrictions on the transfer of any data collected, including across borders (article 10);

• a prohibition on any restrictions on the size, expansion or entry of financial companies and a ban on new regulations, including a specific ban on any law that separates commercial and investment banking, such as the equivalent of the provisions of the Banking Act (1933) (the Glass-Steagall Act) in the United States; only one country (Peru) opposes this (article 14);

• a requirement that any government that offers financial products through its postal service must lower the quality of its products so that they are no better than what private corporations offer; it is possible that this measure could also threaten social welfare systems, in that such public services compete against financial companies (article 21);

• a provision that purports to allow protection for bank depositors and insurance policy holders but immediately negates this protection by declaring that such duties "shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement" (article 16).

The standard language on dispute settlement: "A Panel for disputes on prudential issues and other financial matters shall have all the necessary expertise relevant to the specific financial service under dispute." The effect of

this rule would be that lawyers who represent financiers would sit in judgement on financial companies' challenges to regulations and laws (article 19).

Rules designed to force privatisation

Some of those article numbers have changed since the leak of the earlier financial services annexe. One change is the disappearance of an article that would have required countries to "eliminate … or reduce [the] scope" of state enterprises. But that may be because there is a chapter with more stealthy language devoted to the topic: the annexe on state-owned enterprises.

This annexe would restrict the operations of state-owned enterprises, requiring them to be operated like a private business and prohibiting them from "buying local." Furthermore, governments would be required to publish a list of state-owned enterprises, with no limit on what information must be provided if a corporation asks.

Article 7 of this annexe would enable any government to demand new negotiations to further limit state-owned enterprises, which would give the United States the ability to directly attack other countries' state sectors, or to demand privatisation in countries seeking to join TiSA.

The replacement of language unambiguously requiring the elimination or shrinking of state-owned enterprises with less obvious language may be a public-relations exercise, so that the spectre of forced privatisation will not be so apparent.

Targeting domestic regulations

Another portion of TiSA that has been published by Wikileaks is the annexe on domestic regulation. This annexe is so far-reaching that it would actually eliminate the ability of governments to regulate big-box retailers. This is one of the goals of corporate lobbyists, as a Wikileaks commentary points out. Referring to an American business group, the commentary says:

The National Retail Federation not only wants TiSA to ensure [that] their members can enter overseas markets but to ease regulations "including store size restrictions and hours of operation that, while not necessarily discriminatory, affect the ability of large-scale retailing to achieve operating efficiencies." The National Retail Federation is therefore claiming that a proper role for the public servants negotiating TiSA is to deregulate store size and hours of operation so that large corporations can achieve "operating efficiencies" and operate "relatively free of government regulation"—completely disregarding the public benefit in regulations that foster liveable neighbours and reasonable hours of work.

In other words, behemoths that are indifferent to the lives of their employees, such as Walmart, would have an even freer hand.

The annexe on domestic regulation would also require governments to publish in advance any intention to alter or implement regulations so that corporations can be given time to be "alerted that their trade interests might be affected." The ability of a government to quickly issue a regulation in response to a

disaster would be severely curtailed. Environmental rules, even requiring performance bonds as insurance against, for example, oil spills, would be at risk of being declared unfair "burdens." The Wikileaks commentary says:

This draconian "necessity test" would create wide scope for regulations to be challenged. For example, the public consultation processes that are required for urban development are about ensuring [that] development is acceptable to the community rather than "ensuring the quality" of construction services. They would fail the necessity test as more burdensome than necessary to ensure the quality of the service. Environmental bonds that mining and pipeline companies are required to post in case of spills and other environmental disasters are another licensing requirement that would not meet the test of being necessary to ensure the quality of the service.

There are secrecy protocols for handling TiSA documents, similar to those of the Transatlantic and Trans-Pacific agreements. These protocols include the following requirements: *"Documents may be provided only to (1) government officials, or (2) persons outside government who participate in that government's domestic consultation process and who have a need to review or be advised of the information in these documents."*

What this means in practice is that only the corporate lobbyists and the executives on whose behalf these "free-trade" agreements are being negotiated can see them. Consider that the public-interest group Corporate Europe Observatory, on successfully petitioning to receive documents from the EU Commission, found that that of 127 closed meetings preparing for the talks on TTIP at least 119 were with large corporations and their lobbyists.

Perusing the web sites of government trade offices for useful information on TiSA (or any other "free-trade" agreement) is a fruitless exercise. The EU Commission claims that "the EU will use this opportunity to push for further progress towards a high-quality agreement that will support jobs and growth of a modern services sector in Europe."

This is the same sort of nonsense that we hear about other secret agreements. What reads as bland bureaucratic text will be interpreted not in ordinary courts, with at least some democratic checks, but by unaccountable and unappealable secret arbitration panels, in which corporate lawyers alternate between representing transnational corporations and sitting in judgement on corporate complaints against governments.

Almost 1,800 local authorities have declared themselves opposed to the various "free-trade" agreements being hammered out, including TiSA. The conference on "Local Authorities and the New Generation of Free Trade Agreements" in Barcelona, attended by municipal and regional governments and civil society groups, concluded with a declaration against TiSA, TTIP, and CETA. In part, the declaration says:

We are deeply concerned that these treaties will put at risk our capacity to legislate and use public funds (including public procurement), severely damaging our task to aid people in basic issues such as: housing, health, environment, social services, education, local economic development or food safety. We are also alarmed about the fact that these pacts will jeopardise democratic principles by substantially reducing political scope and constraining public choices.

That is the very goal of "free-trade" agreements. TiSA, like its evil cousins TTIP, CETA, and TPP, are a direct threat to what

democracy is left to us. It promises a corporate dictatorship that in theory raises the level of corporations to the level of national governments but in reality raises them above governments, because only corporations would have the right to sue, with corporate "rights" to guaranteed profits trumping all other human considerations.

How to win friends and influence people

It has recently been revealed that a vice-president of the EU Commission, the Bulgarian economist and administrator Kristalina Georgieva, briefed a meeting of the Bilderberg Group. Michael Noonan was among the attendance. Georgieva is affiliated to the European People's Party, with which Fine Gael is linked.

No big deal, you reply.

But also discussed were Georgieva's career plans, which include her becoming a candidate for secretary-general of the United Nations, to replace Ban Ki-moon, whose second term expires on 31 December. The financier George Soros backs Georgieva for the position. With such support her appointment would seem to be a walk-over.

But no. Talk about a "security dossier" on the aspiring secretary-general has raised eyebrows among members of the Bilderberg circle.

José Manuel Barroso, the former president of the EU Commission, reportedly proposed Georgieva at the annual meeting of the Bilderberg Group, held in Dresden earlier this month. Her name appears in the list of participants in the Bilderberg gathering, alongside such VIPs as Mark Rutte (prime minister of the Netherlands), Christine Lagarde (managing director of the IMF), Thomas de Maizière (German minister of the interior), Kyriákos Mistotákis (leader of Greece's New Democracy), Henry Kissinger (former US secretary of state), Barroso, and others, including Michael Noonan.

Speaking to the Bulgarian media, Georgieva said she attended the Bilderberg meeting in her private capacity but "presented the position of the Commission." The Commission confirmed that she participated, and that she did so in a private capacity. Such revelations confirm a widespread suspicion that the Bilderberg crowd really do have the "in" on policy-making throughout the world.

The Commission's weekly programme mentions that Georgieva was in Germany, where she delivered a speech at the "Europe in a Changing World" conference in Berlin, and also had a meeting in Dresden with Stanislaw Tillich, minister-president of Saxony. Georgieva tweeted from the Berlin conference, and from her meeting with Tillich in Dresden, but not from the Bilderberg gathering.

According to the Commission's programme, Georgieva was indeed in Germany. However, the Bilderberg event is not mentioned, though the official list of participants includes her name.

Attendance at Bilderberg gatherings does one's career no harm. A former president of

the EU Council, Herman Van Rompuy, hosted a Bilderberg event in Brussels in order to secure his appointment in 2009, and Barroso has attended Bilderberg gatherings without making a secret of it. In 2015 the Commission authorised his plan to become a member of the Steering Group of the Bilderberg Conferences.

It is believed that Barroso organised the Bilderberg gathering to lobby for Georgieva's nomination for secretary-general of the United Nations. On a visit to Bulgaria on 7 June, Barroso asked the country's prime minister, Boyko Borissov, to change the Bulgarian candidate for the top job.

On 8 February the Bulgarian government announced that Georgieva will continue with her duties, putting an end to speculation that she would run for secretary-general. On the same day Borissov confirmed the nomination of Irina Bokova, who at present heads the UN's largest agency, UNESCO, as Bulgaria's candidate for secretary-general.

Strangely, the following day, 9 February, Georgieva contacted Comdos, the service that deals with access to and disclosure of documents revealing the affiliation of Bulgarian nationals with the former State Security Service. Borissov is reported to have told Georgieva that he cannot nominate her, because she had a "dossier." The head of Comdos, Evtim Kostadinov, sent a letter in which he says that his services have contacted the intelligence agencies with respect to all Bulgarian nationals who work in international institutions, but has not received answers from all of them.

"Up to now, 20 April 2016, in the answers received from the competent institutions, the name of Ms Kristalina Georgieva doesn't appear," Evtimov writes.

Georgieva sent a former Portuguese member of the EU Parliament, Mario David, to lobby for another country to nominate her for the UN job. He reportedly contacted the governments of Hungary and Albania.

A last hearing with new candidates for the UN post could be held about 10 July.

If another country nominates Georgieva, this would be a precedent in the UN's practice of selecting secretary-generals. There is no legal barrier to such a move, although a candidate who is not supported by their own country does not appear to have a strong chance.

Supporters of Georgieva in Sofia, who are close to George Soros's "Open Society Foundations," are putting pressure on Borissov to withdraw Bokova's candidacy, but Borissov is reported to have no intention of making such a move.

It is highly unlikely that most UN members, including permanent members of the Security Council, would appreciate the way in which Georgieva is being promoted. In the meantime, nine of the fifteen Security Council member-countries have reportedly already expressed support for Bokova.

The “elastic no”

In a referendum on 6 April the Netherlands gave a clear No to the EU-Ukraine Association Agreement. The government now appears to be interpreting this clear negative as offering a great deal more room for manoeuvre.

On 6 April, 61 per cent of voters gave the thumbs down to the association agreement between the EU and Ukraine. One day later, supporters of the agreement announced that the prime minister, Mark Rutte, “must be given the space to negotiate.”

During a parliamentary debate on 14 April, Rutte informed the parliament that in his view the definition of the word “no” is elastic. “There’s an opportunity indeed to do something with that ‘no,’ and for that reason I’m saying cautiously not that a ‘no’ isn’t in the interests of the Netherlands but that a ‘no’ isn’t at this moment in the interests of the Netherlands.”

With this reasoning, he explained his wish to postpone a decision not to ratify the agreement on behalf of the Netherlands.

Clearly Rutte wants to wait first of all until after 23 June, the day on which the United Kingdom holds its referendum on whether or not to stay in the EU. But he wants to drag it out even longer. The Netherlands at present holds the six-month rotating EU presidency. Rutte is on record as noting a “discomfort in Brussels” over the effects of a possible British withdrawal, compounded by the failure of the Netherlands to ratify the Ukraine Agreement. Such a result would lead to a “chronic loss of vision.” Surely an understatement!

There is a general election in the Netherlands next year, and Brussels perhaps hopes that this might produce a government prepared to ride roughshod over the clearly expressed will of the Dutch people.

In the meantime, “no” will be treated as an elastic concept by Rutte.