

Ignore the EU's laughable claims about the status of its UK staff

*The UK is refusing to grant full diplomatic status to the EU's ambassador to the UK, on the basis that the EU is not a sovereign state. The EU and its supporters are predictably angry, but this move is in our immediate national interests, writes **Dr Lee Rotherham**.*

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Our Foreign Office has touched a very raw nerve. The UK is reportedly refusing to grant full diplomatic standing to the emissaries of Brussels, on the basis that officials from its External Action Service and Commission are not representatives of a sovereign state.

This has quickly triggered an angry protest from the EU's High Representative for Foreign Affairs. The claim is that this will hinder the activity of staff posted here, and that it sets a bad precedent that other states will exploit. Countries around the world will apparently be throwing Eurocrats into jail as soon as their diplomatic immunity is stripped.

Both suggestions are laughable, and Eurocrats are complaining like Renaissance clergy at the loss of unjustified privileges. For starters, it is already up to national capitals to individually decide the status they give to EU officials. It also is perfectly possible to operate in intergovernmental administrative environments without CD car stickers, and nothing is preventing the UK from selectively according higher status to the holder of any specific post that might genuinely

benefit from it.

A lower key approach hasn't stopped SPC, the Pacific Community, from developing; nor NAFO, the Northwest Atlantic Fisheries Organization; nor UNECE, the United Nations Economic Commission for Europe; or for that matter any one of hundreds of other treaty-based organisations.

Perhaps the shock is down to timing. It was President Obama who upgraded the EU's Washington office to full embassy status, and Trump for a short while reversed that. Yet on the very day of Trump's departure Brussels was now seeing its presumptions being challenged afresh – and this time more openly than happened across the Pond where the EU's man in DC merely found his invites got 'lost in the post'.

The reaction is predictable; Hell hath no fury like an ambitious superquango scorned. Especially one whose most ardent supporters spent 2020 on Twitter arguing with each other about whether Priti Patel was right in saying the UK had regained its sovereignty.

You may also remember a BBC documentary from 30 years ago that followed the work of John Major's Europe Minister, Tristan Garel-Jones. This was the minister who was so pro-European his colleagues nicknamed him 'the honourable member for Madrid Central'. Yet even he took immense, indeed open and embarrassingly rude, pleasure at making a point to camera of refusing the simple courtesy of getting to his feet when the Commission delegate to the UK visited him to hand him his credentials.

But there is much more going on here that justifies a robust line from London.

This isn't a settled issue on London's part. The UK only 'conceded' having an 'EU embassy' in the first place because it was in the Lisbon Treaty. The legal standing was an insertion we didn't want and sought to remove. The UK is now

an independent country outside of that treaty, and we can recognise the delegation with a reduced formal status. The corporate EU after all holds an observer status in the UN General Assembly that is less than that of a member state. The fact that other countries treat the corporate EU as a diplomatic aberration amongst multigovernmental systems is up to them.

A diplomatic fudge

How has this fog-masked chimera come about?

The EU's diplomatic status is an expanding sludge of ambiguity because of "ever closer union". Step back and look at how its Common Foreign and Security Policy has developed over time, treat it as a process rather than an event and in cinescope rather than a polaroid, and both its development and direction become clear. Most people don't, and it suits most politicians not to, but for those who want to then this paper explores the context. (More work on it went into the Change or Go project, from p. 268 onwards here).

The point in brief is that the corporate EU has a been developing a massive foreign representation that dwarfs most of its member states. This is happening alongside the quite parallel establishment of a Defence Union. Responsibilities cover an increasing number of competences where powers have been collectivised or policies handed over to be centrally pursued. Its diplomatic budget has been increased.

This has been accompanied by greater direct representation with EU officials sitting in international negotiations in their own right, increasingly supplanting rather than just complementing national diplomats, starting with trade but expanding outwards. That's why two EU officials will get invited to Cornwall shortly and why the G7 now has a different name – because the EU27 individually are no longer fully

sovereign states.

So here's the difficulty. The EU itself is also not a sovereign state, though it does have some sovereign powers. It holds an ambiguous status, like fifth century Rome or 18th century Germany in reverse. It's crypto-federal, and in motion. It calls itself *sui generis* because it can't call itself anything else, and it certainly doesn't yet have the budget or the money raising powers to match its ambitions.

However, you can't – to borrow a phrase – have your cake and eat it. The EEAS has pretensions of being a diplomatic corps but is not properly allowed to be one. That dangerous ambiguity needs to be recognised – and we should keep it the EU's problem and not ours.

From a UK perspective, there's no reason why we should feel a particular obligation to help that game along, by taking this fraud on European democratic accountability at face value. We may be out of the institutions but there are certainly enough Whitehall civil servants keen to sign us back in to parts of the circuitry. We don't have to always go full Blues Brothers nun about it, but a rap with the ruler right now makes the point unambiguously for years to come.

The British interest

More directly, making the point is in our immediate interests. There are lots of elements around diplomatic status that are still unresolved in the Brexit treaty – for example over auditors, police cooperation, the management of extradition, and EU customs officials operating in Northern Ireland (a celebrated sticking point involving both high symbolism and sovereign authority, and where they now have to hot desk). Challenging the status of the EU legation may be blunt, but it plants a prominent fence line across all those talks.

The pretence that this hinders working together is laughable. Representatives from international institutions can include roles with diplomatic status – and lots do. But the task of anyone sent to the UK will not be on a par with the risk faced by, say, Hans Blix. This isn't the sixth century, and Priti Patel isn't going to play the part of a latter-day King Chilperic and lock up the Swabian ambassadors for a year on the basis of some family tiff. The height of conflict is likely to be over parking fines.

If immunities are so important, then also consider this. Europol officers operating as part of a Joint Investigative Team have been specifically exempted from having any. Equally significantly, this only happened after ten years of campaigning by Eurosceptics following on from when it first became a hot issue for MPs when debating the Treaty of Amsterdam. The EU's reverse gear on diplomatic privileges has a worse clutch than my old Renault 6.

The EEAS also might reflect on how staff at, say, the London or Kent European Office in Brussels can somehow make do without diplomatic status. Likewise, if Alberta, Ontario and Quebec can have functioning London representation without being full embassies, I'm sure Brussels too can live with it.

What's really at stake is their ego. These officials are impatient to acquire the full blown status of great ambassadors of a superpower, and are a part of the way there. This rebuff pushes them one step back on the ratchet, against their lazy expectations. I also suspect a number of EU27 capitals are very quietly taking considerable pleasure at this.

A matter of reputation?

If I were really cynical though, I might suggest this is as much about a different sort of protection: reputational.

For a number of years, I've tracked the European Commission's internal disciplinary committee, IDOC. As I've previously written, they publish an annual report, but you need to know it exists before you can FoI it to get a copy.

Most involve cases around not turning up for work (in one case, for a whole year while running their own company), abusive emails or outright fist fights, benefits fraud, sexual harassment, stealing from colleagues, and occasionally corruption or nepotism. But then there are instances such as the EEAS official who "submitted to the national authorities false declarations, infringed repeatedly specific national veterinary legislation, and was in illegal possession of arms". Or the officials posted abroad who held EU funds in a bank account raising interest for themselves to buy cars. Or the Brussels staffer who entrepreneurially ran a brothel on the side. Or an individual found guilty by a national court of 'passive corruption' over contracts managing Commission premises overseas. Or an official put on personal leave who was convicted by a national court of professional extortion and passive bribery. Or the misuse of diplomatic bags to transport alcohol or bikes duty-free.

Perhaps the EEAS really wants to keep its newly acquired diplomatic privileges to better cover up these sort of scandals as and when they break. And that's no defence at all.