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Hague's Handbag: Conservative Party policy after the ratification of Lisbon

By Dr Lee Rotherham

With the ratification of the Lisbon Treaty, the renamed EU Constitution has now become law. The next Prime Minister, whoever that may be, has an obligation to correct major fault lines in the EU treaties. Given Labour and the Liberal Democrats' support for Lisbon, the Conservatives may be most open to that idea. This paper will show that only by delivering on a clear set of objectives will the United Kingdom's position with the European Union ever be firmly settled, and that this requires a new treaty structure with a looser form of association.

Key points

The proposed terms for a lasting treaty would need to include solutions to the following:

- The UK avoiding clauses pushing ever-closer union, with UK law supreme in any showdown
- CAP restored to national control for domestic reform
- CFP restored to national control for domestic reform
- UK contributions to EU budget to be massively cut as trade rather than social platforms take centre stage
- Opt out to the Social Chapter
- End UK share of International Development aid and reform its spending
- Defence through NATO and only multilaterally via Brussels on an ad hoc basis
- Limits in many other named areas
- UK to regain full control over taxation, particularly VAT
- Domestic reforms that can be achieved at a stroke
- Remit confirmed by an enabling referendum

Given the irrefutable trend of the past half century, accelerated since Maastricht, failure will condemn the country to membership of a federal European superstate.

Those who actively changed the instructions from the Laeken Conference from December 2001 are in large part responsible for the current problems. If that mandate had been followed, the pain of failed referenda, an unpopular Brussels, and an unsatisfied British public could have been avoided.

Lee Rotherham, leading EU expert and a former adviser to one of the delegates on the Convention on the Future of Europe that drafted the EU Constitution, said:

"With a problem comes an opportunity. The EU Constitution was the wrong answer to the question posed by governments, about how to bring Europe closer to its citizens, and how to make voters appreciate the Brussels project more. But with Lisbon now ratified, Cameron's pledge to renegotiate the treaties gives the British people a chance to finally find a happy position within Europe's political arena. It is perhaps this country's last chance to remove the great Damoclean blade above British politics. He has to think big, because this time Whitehall finally has to get it right."

About the author:

Dr Lee Rotherham is a graduate of the University of London and holds an MPhil and PhD from the University of Birmingham. Dr Rotherham is one of the most experienced researchers on EU issues working in British politics, having been a researcher for the "Westminster Group of Eight" Eurorebels and an adviser to three successive Shadow Foreign Secretaries, a role part-based within the European Parliament. This expertise led to his appointment as Chief of Staff to the Rt Hon David Heathcoat-Amory MP, a British parliamentary delegate to the Convention on the Future of Europe. Dr Rotherham played a central role assisting delegates opposing the European Constitution, and the drafters of the Minority Report. A reservist with service in both Iraq and Afghanistan, he has been extensively published internationally, with his latest work, *Ten Years On: Britain without the European Union* available now.

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1. Introduction

In December 2001, the European Union's Heads of Government agreed at a meeting in Laeken to address the key problems facing the institution. Some of these centred upon issues relating to the democratic deficit, and a lack of public confidence that led to plummeting participation in MEP elections, poor poll showings, and repeated rejections of EU referenda.¹

It is one of Europe's great ironies that by a highly circuitous route, the consequence of this appeal to restore confidence led not to the restoration of powers to local and national democratic institutions, but to an increased union, and to further humiliation in referenda in three EU states as the electorate demonstrated once again their alienation.

With the withdrawal of the Czech veto, the Lisbon Treaty now passes into law. However, the Conservative Party has a declared policy of opposition and reform. This applies not only to the treaty as it stands, but to at least part of the existing structure of EU competences.

This paper briefly reviews what could and should be on the table to effect meaningful and lasting change.²

In practise, this means the UK taking a step back from its current type of membership.

Failure to address this issue will result in UK participation in the process of ever-closer European Union, and the end delivery of a federal EU structure in which the UK body politic is a component.

2. On the Table

We assess that the following clauses will be critical:

A. End to "Ever Closer Union"

The new treaty terms would have to be set out in a way that is fixed rather than fluid. The EU is an entity designed to motor towards ever-closer union. Federal structures tend to centralise in any event, particularly in times of crisis or evolving technology. Unique to the EU, however, is that as an emerging federal state from a low threshold of shared power, the idea is one of a long-term or generational power grab rather than a defined federal position.

¹ The text today is hard to locate, but can be viewed at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/68827.pdf. Ideas for reform rejected during the Convention itself have been collated in the publication *Plan B for Europe*, online at <http://www.brugesgroup.com/Plan-B-For-Europe.pdf>: these could form the starting point for reinvigorated debate

² Many of these principles devolve from an earlier set of proposals, set out in *The Bottom Line*, published by the Bruges Group: <http://www.brugesgroup.com/news.live?article=3968&keyword=16>

A Conservative Government would need to remove this long-term aspiration from the treaties. It would in particular need to ensure that the “passerelle” clause (French for a ‘corridor bridge’ or also, appropriately, a ‘gangplank’) no longer applies to agreements including the UK. This aspect of the Lisbon Treaty allows for changes to be made to the treaties behind closed doors and beyond parliamentary objection or popular protest, without formal ratification.

Another flaw lies in the “rubber articles” 94, 95 and 308, which are open to wide interpretation in what they authorise: such clauses would also need to be expunged.

A clear example of gradual integration is set out in our recent paper looking at the steady development of an EU diplomatic corps, long denied by the FCO, but now running a £3.4 billion budget and quickly set to expand further.³

B. Nationalise the CAP

The TaxPayers’ Alliance paper on the CAP, *Food for Thought*⁴, reveals the astonishing waste, cost and mismanagement behind the Common Agricultural Policy, not least over the bizarre recipients of such aid. Reform can only ever be meaningfully achieved if national governments paid for it and ran it. The UK should withdraw from the CAP, and by extension paying for it. Reforms suitable both for farmers and for consumers can then be made at a national level.

C. Nationalise the CFP

The TaxPayers’ Alliance paper on the CFP, *The Price of Fish*, sets out the astonishing disaster behind this policy.⁵ Hundreds of thousands of tonnes of fish annually get dumped dead back into the sea because the policy machine is an unreformable behemoth. The monster has a price tag to the UK of £2.8 billion a year through the wreck of our coastal communities and the pillaging of Britain’s national waters: a fact recognised by Greenland when it was driven to quit the EU, by the Faroes, and explicitly by Norway and Iceland when they voted to stay out. Previous Conservative leaders have built upon excellent work undertaken by spokesmen such as Owen Paterson, John Hayes, Patrick Nicholls and Ann Winterton to call for an end to the CFP. Power should be restored over UK waters, to be devolved downwards to the local communities.

D. Cut the Contribution

The United Kingdom has to date paid an estimated £81 billion in net contributions to the EU budget. The current deficit is estimated to run at £6.5 billion as the problem is exacerbated under the new terms that were reached at the close of the Blair Government, reducing the

³ <http://www.taxpayersalliance.com/EUDiplomats.pdf>

⁴ <http://www.taxpayersalliance.com/CAP.pdf>

⁵ <http://www.taxpayersalliance.com/CFP.pdf>

British rebate. This is an excessive price; £1 billion of this alone goes in subsidising non-UK farmers. The UK should not be paying other governments to become more competitive. It is outrageous in particular that more money is going in UK aid to first world EU countries than towards the empty-bellied through DFID. This means that the UK should adopt a looser form of association agreement rather than full EU membership. Removal of UK largesse will also carry the added benefit of kickstarting reform in Brussels.

E. Social Chapter Opt-Out

Astonishingly, this hard-negotiated opt-out was surrendered without any bartered return as the first act of a new EU minister on arrival in Brussels in 1997. This objective is already identified as a Conservative priority: but see below.

F. Supremacy of UK law

Opt outs can only be guaranteed by maintaining the supremacy of the UK Parliament, in much the same way that reservations have been made in France and Germany about reserved rights to supersede Luxembourg law. Previously, the supremacy of the Luxembourg Court (ECJ) was assumed by the Luxembourg Court rather than by international agreement. The Lisbon Treaty has changed that to an explicit acknowledgement. Negotiators would need to revoke that clause inasmuch as it relates to the UK, otherwise by definition UK lawmakers are subservient to EU judges. This is even more important with the introduction of the UK Supreme Court and questions over where it takes its instruction from. In practise, Parliament may rarely choose to invoke this right; but it must at least have it in reserve. After all, NAFTA countries do.

G. International Development

This has previously been identified by the Conservatives as an area of exceptional waste when managed at EU level, and meriting being run by different hands. A recent paper by the TaxPayers' Alliance has highlighted key failings.⁶ There is no evident reason why such a budget should be run at EU level – other, of course, than to present a collective EU face to the world associating largesse with Brussels rather than nation states.

H. Defence

As developments here generate a direct menace to NATO, the UK should take a step back. This includes procurement policy. Matters have clearly progressed beyond an option to form coalitions of the willing, and now threaten to dislocate the UK from its privileged Pentagon links.

⁶ <http://www.taxpayersalliance.com/EUDevelopmentAid.pdf>

I. Space

The Lisbon Treaty clearly expands upon an area where the UK should declare it sees cooperation as being intergovernmental through the European Space Agency. Otherwise more white elephants like Galileo will follow.

J. Justice and Home Affairs, Asylum and Immigration

These Home Office areas should be designated areas where the UK may opt in **and subsequently opt out again** on bilateral terms. Indeed, this is a principle that should be broadly applied, allowing for the kind of flexibility that the Laeken Mandate envisaged.

K. Other Directorates General

There is little evident cost-benefit in the UK contributing to several areas to have a portion of the money redirected back with strings attached. These include: regional aid, education, culture, and some aspects of research. International aspects of health could be retained, excepting where such applies to NHS provision. Consumer protection could also be retained with caveats relating to excessive use of the 'precautionary principle'. There would no doubt be a divergence of opinion within the Conservative Party over aspects of environmental policy on the same grounds. Precisely which areas and which competences should be matters for the new treaty can be expected to be the subject of lively debate, with existing third party treaties useful case studies.

L. Taxation

Outside of a unified fiscal structure, the UK could set its own tax rate to compete at a world level. This means that a number of controversial VAT rates could be modified or abolished. Past examples that campaigners have sought to address or avoid threatened ends of opt outs have included VAT on church roof repairs, suntan lotion, food, clothing, newspapers, and hygiene items. Each could be examined on their individual merits.

M. International Agreements

As a partner rather than a full member, the UK could enter into trade negotiations with other parties – or, if it so chose on a particular area, elect to find a common position with the EU. The expectation is that the UK would be under an obligation not to 'trojan horse' goods by rebranding them as made in the UK.

N. Encouraging Further Reform

It will probably be beyond the powers of a British negotiator to clear up the systemic faults of Brussels, specifically the fraud, the treatment of whistleblowers, the generic loss of the veto, the abuse of the press offices and youth programmes for propaganda purposes, the costly needless advisory committees, the role of the European Investment Bank, and the

accruing of powers by (and indeed method of selection and election of) MEPs. The best he could hope for would be to highlight these failings as reasons why the UK taxpayer should not pay for them.

3. Domestic Action

Some reforms and actions could be undertaken unilaterally pending the outcome of negotiations.

A. A Cost-Benefit Analysis

All government departments should be given a month to provide a cost-benefit analysis of current terms of EU membership. There have been two attempts at least by the Treasury in the past, but Ken Clarke and later Gordon Brown both reportedly pulled the plug when figures started to emerge.

This analysis should be full, frank and fair, and include all costs and benefits both concrete (red tape, impact on domestic market not trading with the EU, Single Market value, net EU contributions) and abstract (effect on stability in Europe, democratic deficit, culture of fraud, Common Law vs Napoleonic Code conflicts).

The assessment itself thus sets the terms of the renegotiating mandate, and strengthens the hand of the team sent to Brussels.

B. Supremacy of Parliament

The Government should be prepared to pass items of legislation including the phrase "Notwithstanding the European Communities Act 1972" if negotiations are stalled, signalling a clear intent to unilaterally change the terms of the UK's relationship with the EU if there is gridlock in Brussels.

Coupled with a massive fortnightly net contribution to the EU treasury, and an economy receiving significantly more from the EU in trade than it exports, the negotiating hand is strong.

C. Review Acquis Communautaire

A Cabinet minister should be appointed to review unnecessary regulation in the context of the change in treaty terms.⁷

⁷ An area explored in the past by Lord Pearson, amongst others.

D. End Gold Plating

Even pending the outcome of negotiations, change is possible. Regulations implanting EU laws should go no further than the basic text itself. All laws should carry appropriate cost-benefit analyses: at present, the application of this is haphazard and occasionally inventive.

E. Colour Code Laws

Long argued for by MPs, the paper itself upon which EU regulations are passed into UK law should be printed on different coloured paper to facilitate monitoring, and assist in calculating what proportion of laws are sourced from abroad. Simple, but effective: this is why it has been repeatedly blocked.

F. Transparency

European Scrutiny Committees should meet in public, not as presently in secret. The reasons for this current practise are self-evident. There should also be greater opportunity to refer legislation to the floor of the House, possibly through regular sessions, or even weekly Westminster Hall events. The review of such laws should also be slowed down in Committee, even if this creates a backlog, as too many go through on the nod by sheer dint of numbers, which suggests more committees are needed for the present.

G. Scrutiny Reserve

Parliament would be brought closer to the law making process, and ministers more cautious about agreements. The Danish and Swedish systems provide a number of different examples of best practise.

4. The Mechanics

Two excellent pieces of research deserve mention, both of which explore many of the modalities and add extra insight into the options: a research paper from Global Vision, shortly to be released, authored by Ian Milne; a policy paper from Lord Blackwell, which includes the first ever draft legal text for a new UK/EU Treaty⁸

Both deserve close attention on release and need not be expounded upon here. Readers may also be interested in a new book published by the TaxPayers' Alliance, *Ten Years On Britain without the European Union*, which is available from www.greateudebate.com.

5. Viability

Some argue that such a treaty change is not possible. Yet critics of the options on the table overlook two salient points.

In the first place, there already exists a massive variety of types of treaty arrangement between Brussels and nation states:

Table 1: Forms of Communities Treaty

Type of Agreement	Example
Full EU member	France
Full EU member with some opt outs	Denmark
Internal market association outside of the EU	Norway
Customs union	Turkey
Symmetric free trade agreement	Switzerland
Asymmetric free trade agreement	South Africa
Partnership and cooperation agreement	Georgia
Non-reciprocal trade preference agreement	Macedonia
Most favoured nation (MFN) treatment	Japan
'Less-than-MFN' terms	North Korea

In other words, there is no reason why the UK has to have full membership terms or none at all. Nor is there any obligation to assume the form of arrangement criticised as the "fax democracy" such as Norway has assumed.

As a major net contributor to the EU budget and with more imports from the EU than exports, the UK negotiating hand is strong. As a member state which has EU red tape running even on the Commission's own figures at twice the benefits of the Single Market, affecting all of the UK economy for the benefit of just the nine per cent that makes up exports to the UK, the British Government's space for change is vast.

⁸ <http://www.global-vision.net/files/downloads/download948.pdf>

A bold reflection of negotiation options is doubly vindicated when reviewing the Lisbon Treaty itself. In that document's greatest paradox, under *Article 7a* (formerly i-56), we expressly read:

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

This means that the Lisbon Treaty itself, in an article from Giscard d'Estaing's own pen, specifically caters for countries that do not wish to be full members of the EU but do wish for trade and friendship agreements.

Finally, on the Conservative Party's own position on the viability of restoring powers from Brussels back to national control, it is worth highlighting two points. In the first instance, the Laeken Declaration expressly instructed delegates to the Convention on the Future of Europe to review what powers could be so restored, and not just those that should be transferred centrally:

*Citizens often hold expectations of the European Union that are not always fulfilled. And vice versa - they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential. Thus the important thing is to clarify, simplify and adjust the division of competence between the Union and the Member States in the light of the new challenges facing the Union. **This can lead both to restoring tasks to the Member States and to assigning new missions to the Union, or to the extension of existing powers, while constantly bearing in mind the equality of the Member States and their mutual solidarity.***⁹

Consequently, Conservative renegotiation is merely an extension of the Laeken Mandate, and so cannot in principle be objected to by supporters of Lisbon. Furthermore, it is an aspect of Laeken that the future Conservative negotiators themselves have themselves consistently been fulfilling. William Hague, for example, was a backbench signatory to one paper that called for powers to be restored to national control.¹⁰ Consequently, there is an integrity of policy continuity in a strong Tory position.

⁹ http://ec.europa.eu/governance/impact/background/docs/laeken_concl_en.pdf (our emphasis)

¹⁰ <http://www.brugesgroup.com/Plan-B-For-Europe.pdf>, *A Voice for Millions: An Alternative Model for the Future of Europe*

6. Withdrawal from the EU

Meaningful reform is only possible upon accepting the following principles:

- The UK financially gets a bad deal out of EU membership, just how bad to be determined by the cost-benefit analysis.
- The EU is destined to become a federal superstate over time.
- The UK will never be able to do more than slow such a trend from within the current treaties, acting as a slipped anchor rather than stopping it dead.
- The British electorate will never be inclined (at least in the foreseeable future) to reverse centuries of independence, and would be unhappy in such a provincial relationship.
- The UK needs to be in a relationship that falls considerably short of full membership as a result, focusing instead on a trading treaty with scope for ad hoc cooperation.
- If such moves are blocked by countries that wish instead to benefit from Britain's billions in contributions, the UK must be prepared to withdraw from the European Union and settle new terms from the outside.
- A timeframe and deadline is required to make this happen.
- The two year deadline for states to give notice of withdrawal set out under the Lisbon Treaty can be plausibly declared to have been invalidated under clauses 49, 50 and 51 of the Vienna Convention on Treaties, since it can be argued that the Treaty had been passed fraudulently. The British Government could legitimately set it at one year.¹¹
- A popular vote is also much to be desired. This could be incorporated as an enabling referendum to be passed before negotiations begin: *Do you approve of the British Government's decision to renegotiate its terms of membership of¹² the European Union? Yes or No.* The Commons would ratify the end treaty, perhaps even on a free vote.

¹¹ During the Convention, an amendment was made to allow for one year's notice. It was not even voted on.

¹² Or alternatively: *terms of association with*

7. Basic Timeline

Timing	Event
Immediate	Internal Expert Advisory Group set up to assist EU Spokesman Mark Francois MP on aspects of renegotiation
	Government Departments notified of Conservative policy to carry out cost-benefit analysis on entry into office
General Election	Departments instructed to begin cost-benefit analysis. Transparency and anti-red tape reforms initiated.
GE+1 month	Departments report; swift collation of findings. Figures released. Review and assessment.
Before 2010 Brussels summer holidays	Commission and Presidency formally notified of UK intent to seek new terms of EU association, within a deadline of one year, to rectify membership deficit. Other countries likely to seek renegotiation, or accession on similar terms, themselves separately kept apprised.
Before SEP 2011	Bill #1 drafted amending the terms of UK association with the European Union. Bill #2 simultaneously drafted repealing the 1972 European Communities Act, depending upon events. One Bill goes forward.

8. Consequences of Failure

If it was the Foreign Office's intent to join the EEC in order to stop it becoming a federal superstate, that intent has signally failed. Britain remains forlornly tugging on the rope attached to the elephant. It is at that a pachyderm with an expensive upkeep.¹³

The end destination is inevitable. The EU operates on the basis of compromise of absolutes, a gradualism which by definition is a slow victory each time for one side and a slow defeat for the other. Since the compromise between handing over sovereignty and not handing over sovereignty is to always hand over part of your sovereignty, the only victory ministers can ever claim is to have delayed to a constant trickle the surrender of the whole.

This failure accelerates with the Lisbon Treaty. Consequently, even winning a couple of opt-outs in a couple of policy areas will not suffice. The game rules have changed too much since 1973: under Tony Blair alone, more than 100 vetos were given up, more than under all preceding British governments combined.

¹³ Explored in the TPA publication *The Great European Rip-Off*



The only option is to radically change the way Britain does business in Brussels, which means changing the nature of Britain's association.

That means a massive change in the UK's treaty terms, taking the country from full member to a form of associate membership.

Successfully achieved, the benefits will be massive, as our pending book explores.¹⁴

Failure to adopt a bold course on the other hand will be strategically disastrous.

Many may not like it, but the blame for that lies with those who ignored the message from Laeken, and kept rebuilding an unwanted constitution over the charred wreckage of popular referenda.

¹⁴ *Ten Years On: Britain Without the European Union*