Terms of Endearment

What powers would David Cameron need to repatriate to make EU association work?

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tpa The TaxPayers' Alliance

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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. He is one of the most experienced writers 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 him advising the Rt Hon David Heathcoat-Amory MP, a British parliamentary delegate to the Convention on the Future of Europe, further assisting the group of delegates opposing the European Constitution. More recently, he held a central role on the No team during the AV referendum. A reservist with service in both Iraq and Afghanistan and lately at NATO during the Libya campaign, he has been extensively published internationally.

Executive Summary

In many past papers, the TaxPayers' Alliance has repeatedly highlighted examples of EU policy and treaty law where taxpayers in the United Kingdom – and in many cases, across Europe – get a bad deal.

The Eurozone crisis looks set to potentially trigger a treaty change. This provides a broader opportunity for reform. The Prime Minister must ignore the squeamishness prevalent in some quarters about playing hard ball with his European partners, and seize this rare opportunity to negotiate a radically improved set of treaty terms for this country.

We identify twenty pieces of the jigsaw that it would be in the national interest to slot together to form that new deal. Several can be instigated unilaterally tomorrow, improving the way the UK operates in respect to EU regulations. But merely toying with one or two pieces will not solve this country's enduring problems or stop an ambiguous relationship from turning unendurably sour.

1. Introduction

Renegotiation is on the agenda, whether British politicians like it or not. The flaws in the Eurozone may well trigger a limited treaty change before the end of the year (at the EU Council meeting on 9th December, if the markets will allow it so late), to be followed by a broader adaptation of the EU structures in the New Year.

There are some Westminster politicians who like that prospect very much. Renegotiation in their eyes provides an opportunity to correct major imbalances in the country's terms of association, and a rare moment when some gutsy dealing could achieve a result in the national interest rather than just another concessionary compromise. The issue of the exact timing over when to spring this may be undecided, but the renegotiation principle appears to have been seized by the Prime Minister, who observed in late October,

> *"I don't think this is the right time to legislate for an in/out referendum. This is the right time to sort out the eurozone's problems, defend your national interest and look to the opportunities there may be in the future to repatriate powers back to Britain. Obviously the idea of some limited treaty change in the future might give us that opportunity."*

It is perhaps useful to put the current push to sort out the failures into the context of past missed opportunities to fix them. In December 2001, the European Union's Heads of Government agreed at a meeting in Laeken to address the key problems facing it. Many 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. In summary, voters had lost faith in Europe.

It is one of Europe's great ironies that the end result of this appeal to restore confidence was not the restoration of powers to local and national democratic institutions, where they could be more accountably managed, but to an increased union; and to further humiliation in referenda in three EU states (France, the Netherlands and Ireland) as the electorate bluntly demonstrated once again their utter alienation.

An opportunity to make meaningful change to the direction of European integration did exist in the Convention. A number of papers were put into the arena, and remain still today in the public domain. A Minority Report was even accepted and put before heads

of government.[1] The problem was that most of the delegates, none of whom had a direct popular mandate for the job, were simply neither interested, nor up to it.

Since a solution was not found, the underlying problems remained. The inevitable emergence of the Eurozone crisis, predicted by Eurosceptics at the time of the Euro's foundation, will now exacerbate them. In order to make the Eurozone work, desperate EU leaders will push for more integration and greater central control. This will come at an obvious cost for those countries who do not wish to see the emergence of a European superstate, but want just the 'free trade and friendship' aspects of the treaty. There is a clear risk of the development of a Eurozone bloc that is (with forthcoming QMV changes) capable corporately of outvoting the 'stay-outs' on areas of significant national interest, which in the UK's case would likely start with the City.

In practice, this means the UK will need to take a step back from its current type of membership as the reality underpinning it changes. Ironically, even adopting the often-criticised EEA status would turn out to be a massive democratic and economic advance on EU membership under Eurozone domination.

Since treaty changes need to be made through unanimity; since treaty change is so desperately wanted by other EU leaders; and since treaty change in the other direction is so patently in the British national interest; the British Government (and, crucially, others) has a rare opportunity to seize the initiative, to set the terms of Britain's relationship with the EU that – finally - suit it.

The threat by Germany to go it alone and bypass a poker-playing Britain is shallower than first appears. The Eurozone countries could, of course, at any time set up a new treaty arrangement that covers their needs. But they would have to do it without using the EU buildings, EU staff, EU budgets, or EU paperclips. Excluding the Commission from any arrangement would be a massive practical complication. It also makes the club look less European and decidedly more German.

The choice is not today whether to extract favourable terms. It is whether we get those terms now, or negotiate terms after we are obliged to unilaterally withdraw later. Failure to address this issue at all 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. It also means that total British withdrawal from the EU structures becomes utterly unavoidable as the only other solution possible. It may well already be too late.

[1] The alternative text can still be viewed on the Bruges Group website (see: *Plan B for Europe*, http://www.brugesgroup.com)

2. Is ‘handbagging’ the right way forward?

There is a reticence across parts of Whitehall to adopt a hard-line approach to negotiating over the EU, a position that frequently extends to the UK Permanent Representation in Brussels itself. To be fair, the Treasury as the guardian of the public purse has a better reputation than most. But across the British civil service, there has been a shift in acquired wisdom since the 1970s. As the pace of integration has accelerated, and as the number of civil servants who entered the system after British accession has increased, the old Gaullist policy of obstructionism has given way to ‘concessionism’. This means that a compromise agreement is reached that is merely half as bad as the original proposal. The issue, however, remains on the table, so that subsequent proposals some years down the line split that compromise again and again.

This practice has increased exponentially in recent years thanks to the massive growth in qualified majority voting, which has both reduced the number of areas where the UK holds an outright veto, and strengthened the principle of barter where a point may be given ground on in area A in order to preserve a blocking minority in area B - and possibly then only in order to achieve a derogation, merely delaying the negative impact on the UK economy.

The end result is that ground is given way on, often at cost to business and jobs, which is then press released as a triumph of diplomacy rather than as a temporary and partial holding action.

So a bigger solution is required. Other states have recognised this. While Whitehall may be reticent to raise the stakes, there have been many occasions across EU history where other countries have played diplomatic hardball in order to achieve what they saw as a critical vital interest.

Table 1: Ten examples of states playing hardball in treaty talks

Spain and the Irish Box	The Irish Box is a stretch of water off Britain and Ireland over which access was restricted when Spain joined the European Community. As a price for agreeing to the 1995 expansion of the Community to include more free market former EFTA states, Spain demanded accelerated access to its (larger) vessels as a prerequisite, despite its declared support for a wider community.
Norwegian Waters	Ireland wasn't the only target. Both Spain and France openly threatened to veto Norway's accession to the Community, unless it was more generous within its own negotiation terms in allowing greater access for their fishing vessels to the country's territorial waters. Given that this very threat had proved key in scuppering Norway's previous attempt to enter the EEC in 1973, this was an astonishingly uncommunautaire act. Indeed, as it proved, fisheries again played a key role in defeating the Norwegian government's plans during the national referendum.
Belgian votes	During the negotiations underpinning the treaty of Lisbon, Belgium went to the wire on demanding closer parity with the Netherlands in terms of votes at the council of ministers and in number of MEPs. This was despite its northern neighbour being a larger country.
Poland and the Constitution	Poland actually vetoed the EU Constitution over a shared concern with Spain over voting strengths for second tier states. It relented after four years' obstructionism only when the treaty had been ratified by other countries. The Czech President Vaklav Klaus meanwhile fought a long personal rearguard battle against the treaty on broader ideological grounds, which (despite a threatened constitutional crisis relating to his role) in turn at least bought an amendment limiting second home rights for German nationals.
Greece and Macedonia	Athens effectively began its campaign, to prevent the Former Yugoslav Republic of Macedonia from shortening its name to Macedonia, in the Council of Ministers. It has rigidly maintained this position since, threatening to veto any third party agreement that did not respect its own historical claims to this title.
Greece and Turkey	Longstanding disputes with its eastern neighbour affected Greece's attitudes towards Turkish EU accession, with Athens long linking resolution with a successful bid.
The Cyprus Question	A Greek Cypriot veto on Turkish membership has also been in play in parallel to Ankara's veto on Cyprus participating in other international fora.
Non	De Gaulle famously twice vetoed attempts by Britain to enter the EEC, in 1963 and 1967, partly on the basis of self-interest over retaining the CAP against Commonwealth imports. This in turn halted all other applicant bids.
The CFP	The introduction of fisheries into the treaties was essentially a 'rush job' by the Founding Six in the interests of their Atlantic ports, to the clear detriment of the countries that were seeking to join. It forced at least one Prime Minister to lie about the impact, and directly triggered the resignation of the Norwegian fisheries minister and thus a rejection of the terms by the Norwegian electorate.
The Fontainebleau Rebate	The terms reached were perhaps not so great in retrospect, since a rebate on the rebate was triggered whenever Britain tried to put in for many grants. But it demonstrated that British diplomats could get a better deal if they tried, and it has saved billions for the Exchequer.

3. Viability

Some argue that a major treaty change in Britain's interests is not possible. Yet critics 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 2: Forms of communities treaty

Terms	Example of Country
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'	North Korea

There is no reason why the UK has to choose between full membership terms or none at all. Nor is there for that matter a Hobson's choice of just being able to pick the form of alternative arrangement criticised as the "fax democracy" that Norway has assumed – even if the terms of that agreement are in reality vastly superior to those sometimes claimed, and the arrangement based along consenting bilateral lines with national vetoes in play.[2]

Secondly, as a major net contributor to the EU budget and with more imports from the EU than exports, the UK negotiating hand is strong. It is stronger still when you consider that, even on the Commission's own figures, it is a member state which has EU red tape costs potentially running *in excess of the actual benefits* of the Single Market. This because costs affect one hundred per cent of the UK economy, since regulations are implemented uniformly across the economy, yet operate for the benefit of just the fraction that makes up exports to the EU. With the burden of regulations growing each year with the growth of the *acquis*, while world markets are increasingly opening up in spite of regional trade blocs, the threat that drove the UK to joining the EEC in the first

[2] Norway's terms, alongside those of Iceland and separately Switzerland, are one item explored in this author's collection of essays *Controversies*, published by the EU Referendum Campaign in 2011.

place no longer exists. So a very strong renegotiating bid is justifiable, rational and reasonable.

A bold reflection of negotiation options is doubly vindicated when reviewing the Lisbon Treaty itself. The consolidated Lisbon text holds a new Article 8, which was carried over from the EU Constitution. It runs as follows:

> *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 specifically caters for countries that do not wish to be full members of the EU but do wish for trade and friendship agreements. Topmost in the mind of the drafters were the cases of the Ukraine and Turkey, but the application works equally well operating in the opposite direction for a United Kingdom seeking a looser arrangement with its neighbours.

Ultimately therefore, the issue is one of political will. There has been will in the past, for instance in the run up to the 1974-5 renegotiations, so it is rather a question of finding it rather than inventing it. Take, for example, the express instruction generated by Heads of Government (including the then-Prime Minister of the United Kingdom) to delegates to the Convention on the Future of Europe. The Council of Ministers told them to review what powers could be so restored, and not just consider those that should be transferred centrally:[3]

> *"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*

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

constantly bearing in mind the equality of the Member States and their mutual solidarity."

Nor is there any excuse for the Conservative Party not to take up the opportunity. During the Convention on the Future of Europe, the current Secretary of State for Foreign and Commonwealth Affairs was one prominent European politician amongst many from across the continent invited to lend support to the Eurosceptic campaign. William Hague was a backbench signatory to one paper that called for powers to be restored to national control:[4]

> *"Many policies now run from Brussels have demonstrably failed when run as part of a collective. These must be repatriated. […] Fisheries is a prime example, and both CAP and development aid stand little chance of meaningful reform while collectivised. As a rule of thumb, matters which do not cross borders or affect the single market for other countries should be left for the local authorities to deal with. Brussels must become less of a government, and more of an arbiter."*

Speaking from the Front Bench, the Conservative Party has, moreover, had a run of several Fisheries spokesmen whose position has specifically been to seek to restore that competence to national control, even if that policy was subsequently watered down into an attempt to negotiate reform of the CFP and CAP.

Its last manifesto in any case carried this specific pledge:

> *"The steady and unaccountable intrusion of the European Union into almost every aspect of our lives has gone too far. A Conservative government will negotiate for three specific guarantees – on the Charter of Fundamental Rights, on criminal justice, and on social and employment legislation – with our European partners to return powers that we believe should reside with the UK, not the EU. We seek a mandate to negotiate the return of these powers from the EU to the UK."*

Nor could the Liberal Democrats in all honesty object. As a party in favour of a federal Europe, their concerns should lie rather with establishing an enduring *modus vivendi* rather than one which will continually aggravate public opinion and propel Britain directly outside of the Union. Nick Clegg himself in 2000 wrote a pamphlet for the Centre for European Reform.[5] Entitled *Doing Less to Do More*, and carrying

[4] http://www.brugesgroup.com/Plan-B-For-Europe.pdf, *A Voice for Millions: An Alternative Model for the Future of Europe*
[5] http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/e173_less_to domore-2209.pdf

acknowledgements amongst others to Vince Cable and Chris Huhne, the principle underpinning the work was that that "the time has therefore come to identify those areas in which EU action is neither logical, justifiable or workable," and that "such a trimming of EU activity will help free up the overburdened institutions and re-establish their political credibility, so that integration can proceed in those areas which clearly merit collective EU action." This was particularly argued with respect to working time, Social Chapter, animal welfare, road safety, and broad brush technical standards issues.

Consequently, there would be policy integrity if the Coalition Government were to demand major treaty change.

4. Honourable continuity at the top

Prior to becoming Party Leader, Iain Duncan Smith was an active Vice President of the campaign group Conservatives Against a Federal Europe (CAFE), along with a significant number of current Conservative Front Benchers. CAFE – which went into deep freeze as a direct consequence of Mr Duncan Smith's successful election as leader – had amongst its stated core aims the repatriation of the CFP and the CAP to national control. Furthermore, UK participation in EMU was to be categorically ruled out, and Parliament's sovereign supremacy over European Court rulings was to be marked out. If these could not be achieved, then withdrawal was stated as a legitimate route out of a federal Europe.

Duncan Smith's successor was Michael Howard. In 1997, the year in which he became Shadow Foreign Secretary, Howard wrote a booklet for the Centre for Policy Studies called *The Future of Europe*. Here, he argues for the possibility of repatriation: "Instead of continuous centralisation, powers would pass up and down between Brussels and the Member States as necessary," and indeed repatriation makes up a dedicated section of the paper in which he flags up a personal interest:

> *"The first specific attempt by a Member State to repatriate powers was the proposal which Britain tabled in 1996 to reassert national control over civil defence and emergencies: that is, over how governments respond to disasters like floods and fires. The initiative came from the Home Office, which is responsible for civil defence at a national level. As Home Secretary, I could see no reason why we needed to have common European policies on volcanic eruptions – something hardly relevant in Britain. It struck me as absurd that these matters should be dealt with by the European taxpayer. British negotiators were therefore instructed to press for the removal of the provisions relating to civil defence and emergencies from Title II of the Treaty.*
>
> *But my fellow European interior ministers took a different view. Interestingly, none of them argued that there was some compelling interest in how we should respond to burst dams. Rather, their concern seemed to be that* any *diminution of Brussels' role would be a betrayal of the European ideal. This is a matter which goes to the heart of the European debate, and has implications well beyond the narrow field of civil defence."*

He continued:

"The rejection in principle of any devolution of authority from Brussels amounts to a commitment to an irreversible centralisation of power. That would run contrary to every British instinct and to every dictate of common sense. European civilisation, after all, has always valued pluralism and diversity."

Mr Howard specifically explores several areas as worthy of repatriation. While indicating that this would be an issue for future Parliaments to decide, he did point to Health and Safety and environmental protection as areas where there had been excessive central interference and where there was no obvious common interest, but where huge regulatory burdens and costs had been imposed. The CFP was an outright case of 'craziness', so fishing grounds could be brought back under national control with sensible bilateral agreements to recognise historic rights of other countries. The CAP was also something that could be ended in the longer term, given its obvious economic, social, environmental and third world failings. Here the author suggests a phased restoration of policy to the Member States might be in order, switching from price-fixing and intervention to direct support administered (if they so elected) by national governments. Direct applicability of ECJ law would also be lifted as part of any change package.

In September 2004, Michael Howard as Conservative Leader was sent a review of party policy on the European Union. In the wake of the EU Constitution, the issue was becoming a philosophical and political issue of the moment. The report set out where the leadership's position should be, and it recommended seeking a new overall direction in which the repatriation of powers would play a significant part, set out in terms that might run as follows:

"Our prosperity and security also depend on transforming our relationship with the EU, which is stuck in the past and unfit for this new Century. British citizens must be able to change laws by voting out British politicians. The EU already sets over half our laws and costs every household £1,000 per year. It suffers high unemployment and the auditors have rejected its accounts for a decade because of fraud. We should not give European politicians and courts more power, especially over the rights of criminals, policing, and civil liberties. Britain will be more prosperous and secure if we keep the pound, say no to the Constitution, and take back powers over trade, work and civil rights. Britain should be working with America and others in Europe and around the world to create a new global trade and defence alliance to expand trade and strengthen security."

The report noted that public polling supported (by a massive margin) the following statement compared with the idea that Britain should be influencing the EU club from its heart as a fully-signed up member:

> *"Giving away power in the hope of influencing the EU has been tried for decades and the EU just gets more power over British life and uses it badly. We should be taking back power, not handing more over."*

According to the author, this meant that one of the key pillars of Conservative policy should be to:

> *"Change our relationship with the EU so that crucial powers are brought back, such that we are better able to adapt to the new Century and out political culture stops atrophying in proportion to its irrelevance."*

These views are as (if not more) important now as they were seven years ago, and there is every reason to put them into action as official policy today.

The propagator of the 2004 report was an adviser to the Conservative Party leader: his name was David Cameron.

5. Tinkering is not enough

There is a danger that the Government will identify a small number of current priorities, and consider that stifling a couple of directives and winning a couple of opt-outs or derogations will constitute a triumph.

It may be that a negotiating package could be under consideration that consists of something like the following terms:

- A commitment under the existing CFP to hold more meetings at a regional level.
- A UK opt-out from a couple of the most damaging directives threatening the City.
- Restoration of a form of the Social Chapter opt-out, though possibly with some limiting caveats as to its application, and subject to a Labour Party later reversing it.
- Reiteration that the UK will not have to pay for more Eurozone bail outs through EU membership.
- A national veto on the UK adopting any new pan-European taxes specifically associated with Eurozone harmonisation (though not other measures).
- A pledge to undertake more extensive costings on the impact of future EU legislation, particularly on the City.

This would be a petty victory and a negotiating hand sold short. Opt-outs engender bitterness from others who have sado-masochistically forced themselves and each other to endure the costs and damage to jobs and business, and the loss of competitiveness that follows. History shows that enduring changes can only be achieved through major treaty reversal. Otherwise, the temptation amongst the aggrieved is to subvert the treaty wording. A further complicating factor is the role of the European Court of Justice, which is capable in its own right of re-interpreting agreements away from the intent and back into the bigger framework of the integrationism of the treaties as a whole.

Table 3: Five examples of 'false dawn' British negotiating triumphs

Example	Note
The Social Chapter	Despite winning a specific opt-out, the British Government found legislation being brought in via the back door under Health & Safety grounds, for instance over Working Time
Reform of the CFP	Britain's opt-out from loss of its inner waters is based on derogation and has required renegotiation (at a new price) every ten years. Meanwhile, the deal to address Spanish trawler owners buying up British licences – itself a perversion of the agreed quota system - has failed to halt the decline of the UK fleet
Reform of the CAP	Tony Blair surrendered a major portion of the UK Rebate in return for a pledge to revisit the CAP. No such review has even taken place – an example of successful French hardball.
Euro bailout	Despite not even being in the Eurozone, the UK was co-opted into supporting the first Eurozone bailout through use of the 'natural disasters' clause of the Lisbon Treaty, which patently did not apply. A separate (re-) opt-out was again negotiated afterwards
Charter of Fundamental Rights	Both the Commission and the House of Lords have questioned whether Britain's latest opt-out is sufficiently strongly worded. The courts have yet to test it

We don't know what FCO negotiators, left to their devices, would ask for. To help people judge for themselves the value of whatever a government might put on the table, we suggest, as initial principles, a **'Scale Test'**.

The Treaty of Lisbon is, of course, the current basis for the EU's list of competences. A simple test of the big picture impact of changing a single competence is to consider what proportion of the treaty is under negotiation. There are around 73,000 words in the Lisbon Treaty, in 358 articles plus numerous protocols. Modifying one sentence will not, one suggests, make for a substantial change in direction.

Nor would focusing on a couple of directives create the broad-reaching change needed. At the last count, already several years ago now, there were an estimated 110,000 pages of *acquis communautaire*. The 2003 text of the Working Time Directive runs to just 11 pages. The European Parliament votes on that volume of legislation in a matter of seconds. Simply removing a couple of particularly vexatious directives from the equation will not correct the imbalance.

It may further be worth recalling, as a third 'scale test', the example of the compiled list of EU regulations. The *Directory of Community Legislation in Force and Other Acts of the Community Institutions* provided a print compilation of Brussels' regulations by subject matter. Each page carried the name of the law plus a sentence describing it. It ran to 1042 pages – and printing was discontinued after 1996 as it had become too big

for any bindings. Changing a couple of major directives would be equivalent to cutting merely a fifth of one page of that volume.

We could also do a separate 'scale test' comparison of negotiated savings seen by cost. A minimalist negotiating hand would probably raise an assessed cost saving that would arise from a negotiation, say £500 million from assessed savings for small businesses or the City arising from particular burdens. This might initially look appealing. But the red tape costs arising across the current terms of EU membership dwarf that. Suggested figures vary, exacerbated by the lack of official data (which is why we propose an official study, see later). A very reasonable lower-end figure, which has even been endorsed by the responsible Commissioner, ran several years ago at £40 billion. However, that figure is now out of date with new EU regulations in the UK for the last financial year estimated by a Business Minister at running between £8.6 and £9.4 billion. A saving of under a billion could therefore be lost again thanks to new EU red tape within a month (and as red tape is static, lost again every subsequent year).

Under the 'scale test' principle, if at first glance the proposed terms of negotiation would only affect a tiny percentile of the existing treaty clauses, would fail to scrape even a page off the Community Directory, and would claw back only a fraction of annual red tape burdens, then the plain maths itself suggests that the deal would be futile. It would be a sticking plaster on a surgery case. The problem is far bigger and needs wider renegotiation to solve.

6. The jigsaw solution

Our assessment is that a meaningful solution comes in twenty parts, each providing a key piece of the jigsaw. Merely coming up with one or two pieces of the jigsaw won't produce the mosaic effect needed. Several pieces can be put in play tomorrow as they relate to how the UK itself operates beyond the remit of the treaties.

Jigsaw Piece One: An 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 founding idea has always been one of a long-term or generational power grab rather than a defined federal position.

The Prime Minister recognised the need for this in his 2011 Mansion House Speech, describing ever closer union as an old assumption that was collapsing.

The Government would need to remove this (and any associated) long-term aspiration from the treaties that affect it. 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 that include the UK.

Another flaw lies in the traditional old "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 showing how the integration process works was set out in our paper looking at the steady development of an EU diplomatic corps, a process long denied by the FCO, but now running a £3.4 billion budget and set to expand further.[6]

Jigsaw Piece Two: Nationalise the CAP

The TaxPayers' Alliance paper on the CAP, *Food for Thought*, reveals the astonishing waste, cost and mismanagement behind the Common Agricultural Policy, not least over the bizarre recipients of such aid.[7]

[6] http://www.taxpayersalliance.com/EUDiplomats.pdf. Trends have further been confirmed with recent reporting of the FCO's rearguard action in blocking Brussels-inspired documents at the UN, which drop reference to EU member states in lieu of a corporate identity.
[7] http://www.taxpayersalliance.com/CAP.pdf

The 2010 Conservative manifesto contained a commitment for major reform. 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.

Jigsaw Piece Three: Nationalise the CFP

The TaxPayers' Alliance paper on the CFP, *The Price of Fish*, sets out the astonishing disaster behind this policy.[8] Hundreds of thousands of tonnes of fish annually get dumped dead back into the sea because the policy machine is an unreformable behemoth. A quarter century of discussions prove it.

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 in keeping out, and explicitly by Norway and Iceland when they voted to stay out. Following an outstanding awareness campaign by Save Britain's Fish, previous Conservative leaders have built upon excellent work undertaken by spokesmen such as Owen Paterson, John Hayes, Malcolm Moss, 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.

Waters running up to the twelve (nautical) mile limit remain today under national control, albeit with certain restrictions applying to Britain. This, however, is based on a derogation that has to be renewed – by unanimity – every ten years. This offers up a regular (and regularly-used) bartering chip for states to lever concessions out of those countries with most to lose, and applies as much to those countries that would benefit from increased access (those with Atlantic fleets that aren't Britain and Ireland) as much as it does to those countries with no local fisheries interests but with a vote on the issue at Council that can be bought off on other votes affecting their national interests.

The derogation runs out at the end of 2012. As of just after midnight on New Year's Day 2013, the default is that those inner waters are opened up under the CFP.[9] This means that the CFP is *already* a renegotiation agenda for this Government, and has a tight timeframe to be fixed, even if only partially and on a temporary basis - which would in any event not be satisfactory.

Jigsaw Piece Four: Cut the Contribution

[8] http://www.taxpayersalliance.com/CFP.pdf
[9] As demonstrated in the Kent Kirk case (q.v.)

The United Kingdom is only a couple of years away from crossing the £100 billion threshold in terms of its net contributions to the EU budget to date. The current deficit has been estimated to run at £9.2 billion as the problem is exacerbated under the new terms that were reached at the close of the Blair Government, disastrously reducing the 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 starving through DFID. Removal of UK largesse will also carry the added benefit of kickstarting reform in Brussels across many wasteful and pointless policies that could no longer be afforded.

Jigsaw Piece Five: Re-establish the Social Chapter Opt-Out

Astonishingly, this hard-negotiated opt-out was surrendered without any bartered return as the first act of a new Minister for Europe despatched to Brussels in 1997. This objective has already long been already identified as a Conservative priority, and further as a Lib Dem concern.

The opt-out was gained by a Conservative government during the Maastricht Treaty negotiations, the consequence of a threat to resign from Michael Howard (David Cameron's later patron) if such an opt-out were not obtained.

Jigsaw Piece Six: 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 case 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 treaty acknowledgement. Negotiators would need to revoke that clause inasmuch as it relates to the UK, since otherwise by definition UK lawmakers are subservient to EU judges.

This problem has been identified by the current Government. In the EU Sovereignty Bill, there was a specific clause asserting the supremacy of Parliament. However, the legitimacy of this has not been tested in the European Courts. Nor have the UK Courts been invited to pick a side. This discrepancy is even more important given the introduction of the UK Supreme Court and questions over where it takes its instruction from. In practice, Parliament may rarely choose to invoke this right; but it must at least

have it securely in reserve. After all, NAFTA countries do. So when this test comes, the Government must be committed to maintain its stance.

Jigsaw Piece Seven: International Development

This has previously been identified by the Conservatives as an area of exceptional waste when managed at EU level, and which needed to be run by different hands. A past paper by the TaxPayers' Alliance has highlighted key failings, and these need not be repeated in depth here.[10] 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. Andrew Mitchell did threaten to withdraw from the UN's Food and Agriculture Organisation if improvements were not made within a two year deadline, proving radical approaches on aid reform are possible. An independent commission on aid spending was meanwhile launched by DFID in May, conducting an audit that predicted it could recommend cutting UK funding to specific EU aid programmes.

Jigsaw Piece Eight: Defence

As developments here generate a direct menace to NATO, the UK should take a step back. The Libyan crisis demonstrates that European countries do not possess the necessary budgets, assets, capabilities, or in many cases intent, to fulfil the ambitions of their political masters.

This includes procurement, and the European agency that has emerged to coordinate it.

More details on the background to this dangerous state of affairs can be found in our paper looking at the development of European defence, *Engaging with the Enemy?*[11] 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. The UK should wish participants well in their dangerous experiment, but from a distance.

A Conservative manifesto pledge was already made to re-evaluate UK membership of the European Defence Agency, a key plank of EU Defence integration. No announcement has yet been made.

Jigsaw Piece Nine: Justice and Home Affairs, Asylum and Immigration

These Home Office areas should be designated areas where the UK may opt in and

[10] http://www.taxpayersalliance.com/EUDevelopmentAid.pdf
[11] http://www.taxpayersalliance.com/eudefence.pdf

subsequently opt out again on bilateral terms, at any time. Indeed, this is a principle that should be broadly applied, allowing for the kind of flexibility that the Laeken Mandate envisaged.

The UK has failed to take the opportunity offered by the changes arising from the Stockholm Process to opt out of areas that have proved unsatisfactory. This is itself unsatisfactory.

Jigsaw Piece Ten: Pointless and Damaging Roles

There is little clear benefit in the UK contributing funds in 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. The 2009 manifesto for the Conservative European Parliament elections noted this as an issue, indicating (p.21) "we will target an ongoing reduction and progressive repatriation of EU regional and social funding."

International aspects of health could be retained, expressly excepting where such apply to NHS provision so as to exclude health tourism. Consumer protection could also be retained predominantly in relation to guarantees over safe products, but with caveats relating to excessive use of the 'precautionary principle'. There would no doubt be a divergence of opinion within the Government 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 (see Table 1) providing useful case studies. Proscriptive elements of trade policy, such as are today the main areas of regulatory burdens, should be excised following a careful study of the key administrative triggers.

Jigsaw Piece Eleven: Taxation

Outside of a unified fiscal structure, the UK should set its own tax rate to compete in a world market. This means that a number of controversial VAT rates could be modified or abolished.

Past examples that campaigners have sought to address have included actual or threatened VAT on church roof repairs, suntan lotion, food, clothing, newspapers, and hygiene items. Each could in future be examined on their individual merits.

A single currency naturally attracts with it pressures for a common taxation system in order to alleviate regional distress, so this issue will get considerably worse in time. It is

better to clarify where Britain stands from the outset of fiscal Eurozone union: completely outside of it.

Jigsaw Piece Twelve: International Agreements

As a partner and associate rather than a Rhine-core country, the UK could enter into trade negotiations with other parties – or, where it so chose on a particular area, elect to find a common position with the EU.

The reasonable expectation in return would be that the UK would be under an obligation not to 'trojan horse' essentially foreign-made goods by rebranding them as made in the UK and exporting them to the EU market.

Jigsaw Piece Thirteen: 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. The cost for the satellite system is currently projected at €5.3 billion, €1.9 billion up from the original forecast.

Jigsaw Piece Fourteen: Encouraging Further Reform

The best long-term guarantor of long-term national interests would be that the Commission adhered to a principle of one in/one out for all future legislation, including approximate parity in document size. As this does not follow Commissioners' self-interest or support the principle of ever-closer union to which many in Brussels aspire, we do not sadly consider this to be an achievable negotiable end.

Generally speaking, the UK is in a strong position to settle issues that relate to it specifically (namely its bilateral terms of association), but in a weak position to affect change multilaterally across the EU as a whole. This is a reality long overlooked by those sent to deal in treaty change.

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 for all states across the basic treaties, the abuse of the press offices and youth programmes for propaganda purposes, the costly needless consultations with 'Brussels talking to Brussels', the role of the European Investment Bank, and the accruing of powers by (and indeed broad 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. The actions of the United Kingdom, and likely other

states, in seeking a measure of distance from the institutions in which these can be found may prove spur enough for long-awaited reform.

Essential Domestic Action

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

Jigsaw Piece Fifteen: A Cost-Benefit Analysis

All government departments should immediately be given a tight timeframe to contribute to a cost-benefit analysis of current terms of EU membership. There have been at least two attempts 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 the domestic economy that doesn't trade 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).[12]

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

Jigsaw Piece Sixteen: Supremacy of Parliament

The Government should be prepared to begin 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. Some may need reminding of this from the outset.

Jigsaw Piece Seventeen: Review the Applied *Acquis Communautaire*

A Cabinet minister should be appointed to review unnecessary regulation in the context of the change in treaty terms.[13]

Jigsaw Piece Eighteen: End Gold Plating

[12] The author of this paper has even suggested a specific formula to achieve this. See *Controversies*, op cit.
[13] An area explored in the past by Lord Pearson of Rannoch, amongst others.

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 imaginative.

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, though apparently something similar has been trialled in the Cabinet Office – to the reported consternation of the individuals interested in the effect.

Jigsaw Piece Nineteen: Transparency

European Scrutiny Committees should never again meet in secret. The reasons for this practice 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).

Jigsaw Piece Twenty: Scrutiny Reserve

Parliament would be brought closer to the law making process, and ministers more cautious about agreements, if any agreement were dependent upon domestic approval after the event. The Danish and Swedish systems provide different examples of best practice. We advise not providing for advance clearance, however, as this weakens the negotiating hand.

The mechanics

Much of the work has already been done. 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, authored by Ian Milne; and a policy paper from Lord Blackwell, which included the first ever draft legal text for a new UK/EU Treaty. It is also of significance that the Conservative Party several years ago reportedly conducted a major policy review along not dissimilar lines; an analysis of that work could also bear useful fruit, if it is released for more public consumption.

7. 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, and just how bad should be officially established by a 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 (on established trends) 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 act to settle the issue notwithstanding such obstructionism.
- The mechanism to do this would be to withdraw from the European Union and settle new terms from the outside.
- Even if never actioned, the genuine existence from the outset of such a threat (whether implied or stated) creates the dynamic for real and major reform. Its absence removes the likelihood of an enduring and significant change being reached by the negotiating parties. The UK team therefore needs to accept it as a real option in order to begin with the strongest credible negotiating position.
- A timeframe and deadline is required to make reform happen.
- The Commons would ratify any treaty; a free vote would improve the quality of the debate and public faith in the outcome.
- Given the importance of the matter, 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 significantly renegotiate its terms of membership of the European Union? Yes or No. The other option is to hold a referendum on any end deal, which would act as a spur for a major treaty change since negotiators would recognise the need to sell a good and clear agreement to the public.

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.

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 reduced to a constant trickle the surrender of the whole.

This failure accelerated with the Lisbon Treaty, and becomes an issue of major national concern with Eurozone pressures. Consequently, even winning a brace 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. QMV has become the norm.

The cost is already being paid by British businesses, British workers, and British taxpayers. It is a cost in jobs and taxes that is growing every year.

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.

The Eurozone crisis creates an opportunity it would be mad to miss. Other member state leaders in our shoes would leap at the chance, as their past track record shows. For once, let's not act the gentleman on the sinking ship.