



# **A Blueprint for Renegotiating The UK's EU Relationship**

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## A Blueprint for Renegotiating the UK's EU Relationship

Commitments made by the current Opposition make it clear that there is likely to be a significant renegotiation of the UK's position within the European Union after the next general election if they are elected to government.

- Having opposed the Lisbon Treaty that aims to give effect to the draft European Constitution, the Opposition have called for it to be put to a referendum.
- Furthermore, if the Treaty has been ratified without a referendum by the time they are in government, they argue that it will not have democratic legitimacy and that they “*will not let matters rest there*”.
- More specifically, and separately from the Treaty of Lisbon, they have also committed to negotiate a roll back of the earlier provisions of the ‘social chapter’ as they apply to the UK, and from which the UK originally had an opt-out under the Maastricht Treaty. Since the former social chapter has now been woven into the fabric of the EU Treaties, this commitment on its own implies a major change to the UK's position under current Treaties.

However it is not yet clear how a future administration would seek to go about achieving the renegotiation implied by these commitments, or how radical a restructuring of the UK's relationship within the EU it would be able to achieve.

Polling conducted by Global Vision has consistently shown that a substantial majority of the UK population would favour a restructuring of that relationship to maintain the ideals of free trade and cooperation across Europe, but to allow the UK to opt out of the project of political and economic integration.<sup>1</sup> Since it seems unrealistic to believe that the UK alone could convince the remainder of the EU to reverse course and rewrite the Treaties as they apply to the EU as a whole, the more plausible scenario is one in which the UK negotiates special terms for a new, looser status of EU membership for itself as a first step – and in so doing establishes an alternative model that some other member states might then choose to follow. This is in essence the ‘variable geometry’ model of Europe first proposed by the Major administration in the aftermath of Maastricht.

This paper therefore aims to set out a working blueprint for the process a new administration might follow in order to negotiate such new terms of UK membership, and illustrates a possible form for the new Treaty terms that might deliver that. It assumes the plan is put into effect after the Lisbon Treaty has been

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<sup>1</sup> See [www.global-vision.net](http://www.global-vision.net) for poll results

ratified by all member states. If it has not yet come into effect, the programme set out below would be the same, but easier to carry through.

### **Step 1: Election mandate**

The starting point, already in place, is that the Opposition has declared before the General Election that it does not recognise the legitimacy of the process by which the Lisbon Treaty has been passed by the UK without the prior commitment to a referendum on the Constitution having been fulfilled. It has also given notice that it “*will not let matters rest there*” – i.e. it will reopen negotiations post-election.

To ensure a clear mandate to pursue these matters after the election, the Opposition would need to make clear in its manifesto that this position remains unaltered, as does its commitment to negotiate a roll-back on the provisions of the Social Chapter. It should also commit to hold a referendum during the next parliament to allow the people to have their say on any changes to the current Treaties that a new government sought to make before they were enacted.

It would be important to emphasise that the approach is about renegotiating to preserve the aspects of the EU that the UK values, rather than simply ‘leaving’. It would be difficult for others to argue that the UK should not seek a relationship that better suited its needs, particularly if it was clear that that was supported by the majority of the population and (unlike recent Treaty changes) had been endorsed in a referendum.

### **Step 2: Immediately after the election**

In its first days in office the new Government would formally notify the EU that it had a mandate to reopen the terms of the newly adopted EU Treaties (the amended EU Treaty and the amended Treaty on the Functioning of the European Union) as they applied to the UK, and would wish to agree a process and timescale for reaching agreement on new Treaty provisions for the UK at the next Council meeting. While the UK respected the wish of other Member States to proceed with these Treaties, the recent election has demonstrated that they are simply not acceptable in the UK – and the Government has a clear mandate to negotiate a special position for the UK.

In the meantime, since the Lisbon Treaty – if it has come into force – will still be at most a few months old, the UK would request that the EU ‘put on ice’ the implementation of any new provisions arising under the Treaties – with the clear understanding that, if that were not granted, the UK would use our veto where we still had one, or force them to overrule us in a majority vote on every other issue (which we would regard as an unfriendly attempt to coerce us).

It is possible that the EU Commission might seek at this stage to invoke the new clause in the Treaty on the conditions for a member state withdrawing from the EU – which enables other EU members to impose conditions on the withdrawing member. The UK would need to reject this, remaining clear that we are not seeking to withdraw but rather to correct the position where the latest Treaty changes lacked democratic legitimacy in the UK. The Government therefore sought to reopen this unfinished business and negotiate a special position for the UK.

More confrontational options should be kept in reserve. For example, the Government could consider repealing the Act that gave effect to the new Treaty or introducing new UK legislation to block specific Treaty provisions. However, such measures would create a legal mess and might precipitate a crisis that could get in the way of sensible negotiation.

### *An early referendum?*

One question the UK Government would need to decide at this stage is whether to move immediately to hold an early referendum, or to wait until after negotiations have taken place. It could decide to hold a ‘pre-negotiation’ referendum if it felt it would be helpful to reinforce its election mandate. The simplest form of this would be to ask people to confirm whether or not they agreed with the Government seeking to renegotiate the terms of the Lisbon Treaty as they applied to the UK. However, coming soon after the election and without a clear ‘outcome’ to present, the risk is that the debate might lack content and end up dominated by the extreme positions – with the negotiation proposal more easily portrayed as a frightening option of ‘leaving the EU and entering into the unknown’.

Unless the Government has a small parliamentary majority and needed a referendum to help win parliamentary support, it might therefore prefer to go to the country only once after the negotiation process has concluded – at which stage there would be a clear proposition to present for approval.

### **Step 3: The negotiating agenda**

Within a few weeks of taking office the Government would announce in Parliament a brief formal agenda of issues which it intended to present to the EU as the agenda for negotiations. While the parliamentary debate would allow discussion about where the UK might seek to settle, the Government would at this stage not attempt to define the final position. Following parliamentary approval, the agenda would be formally presented to the EU.

The agenda, and possible objectives, could cover:

- **The UK's independent Foreign and Defence policy.** The UK would aim for all aspects of foreign and defence policy to revert to an intergovernmental agreement so far as the UK was concerned.
- **Protection of the UK's separate legal and judicial system.** The UK would intend to opt out of all elements of the new Treaty that brought Justice and Home Affairs into EU competence.
- **Repatriation of legislative and regulatory authority to the UK Parliament.** The intent would be that no new EU legislation (including directives and regulations) would have effect in the UK unless specific legislation was introduced and passed in the UK Parliament, and no proceedings could be taken to require the UK to adopt such legislation. In future the UK would participate in cross-EU legislation at its own choice, where it agreed with what had been negotiated. The UK Parliament would also regain power to repeal or override existing EU regulations, although in practice most existing regulations would remain in place until systematically reviewed. (Note this would apply to Single Market legislation and all other areas of both 'shared' and 'exclusive' EU competences as currently defined.)
- **Curtailement of the Role of the ECJ,** so that it was unable to rule on any matter where the UK Parliament had passed a law which conflicted with EU law. The UK Courts would have ultimate authority to interpret the will of Parliament in overriding EU legal processes.
- **The ability to opt in or out of specific EU programmes,** and to adjust our budget contribution to reflect whether or not we participated. Programmes on which we would certainly wish to opt out would include CAP, Fisheries, and various cross-EU cultural and educational initiatives. We might wish to continue to engage in programmes concerned with areas such as the environment, transport networks and cross border security – although since these would be subject to the condition that no regulations could take effect in the UK unless passed by Parliament, they would essentially become intergovernmental so far as the UK was concerned.
- **Restoration of the UK's freedom to set its own trade policy.** The UK would make clear that it was firmly committed to the maintenance of a free trade area in Europe, and would generally wish to support a common EU negotiating position in external trade negotiations. However, we would reserve the right to take a separate position and negotiate separate agreements if we thought it necessary to do so.

- **Protection of the free market.** The UK would wish to ensure that free movement of goods, services and capital was upheld; however, we might wish to move to a reciprocal basis for free movement of labour that allowed us the option to curtail high volumes of migration.

It would be evident from this agenda that the negotiations would go far beyond simply reverting to the status quo, and would imply replacing the existing Treaties as they applied to the UK with a completely new framework – possibly as a new protocol which defined the UK position. The UK can make it clear that, since it is now impossible to simply unscramble the latest Treaty changes and revert to the pre-Lisbon position for the EU as a whole, the only way of changing the position is to define a UK specific Treaty protocol that better reflects our objectives.

The UK would not need to put on its own agenda the issues of institutional adjustment – e.g. the UK’s position on the Council, in the Parliament, etc. They will certainly be raised by the rest of the EU, and consequential changes are inevitable. The UK can afford to ‘concede’ that there will need to be adjustments without volunteering them.

#### **Step 4: The negotiating process**

At this stage it would become clear to all that the UK Government is set on a fundamental shift in our relationship with the EU, and negotiation can begin in earnest. The Government would be likely to reinforce UKREP to ensure this message is fully communicated. After a few weeks of context setting discussions on this agenda with the Commission (when they say in amazement ‘do you really mean x’ and the UK says ‘yes we do’), the UK Government would table an outline agreement that is based on amending Article 1 of the Treaty on the European Union to say that the UK shall have its own terms of membership as defined by a new protocol, and that none of the other provisions of that Treaty or the Treaty on the Functioning of The European Union shall apply to the UK except as defined in the protocol.

An amendment and protocol in this form would underline that the UK had no desire to leave behind the beneficial aspects of being part of a ‘European Club’, but wanted the terms of our association to be tailored to our own requirements. It would also leave open the prospect of leading the way to wider reform of the EU by defining a relationship that some other members might wish to follow.

The UK’s draft of the new protocol could then start from scratch by defining the maintenance of EFTA-type free trade arrangements, and the ability of the UK to opt in/out of specific EU programmes (on mutually agreed terms), while setting out unambiguously the limitations of EU legislative powers and ECJ judgements in

respect of the UK. It would essentially define a new form of association where we participated by choice in selected activities on an intergovernmental basis, but retained the supremacy of the UK Parliament and UK Courts as the source of UK legislation and law. We might describe this as ‘Nation State’ membership, or ‘Associate Membership’, or some alternative name that makes it clear that we see it as a model that other EU members might choose to follow. A possible draft of Treaty amendments that might achieve this is set out in the Appendix.

Initially there may be scepticism over whether an agreement can be reached. However, once the other EU countries realise the alternative is that the UK electorate might be driven to support leaving, they have a common interest with us in agreeing sensible arrangements which preserve as much as possible of our common interests within an amicable framework. Our European partners have huge investments in the UK, and have more at stake in trade with the UK than we do in reverse. Many would also recognise that a settlement that allowed them to proceed with EU integration without the UK continually acting as a break also had some advantages.

In addition, the UK can make life difficult within the EU if other countries seek to be obstructive – and if it became clear to the UK public that the EU was attempting to frustrate the UK Government in carrying out its mandate there would inevitably be growing support for the UK to take the ultimate option of leaving the EU as a last resort. The Government would not have to make this threat openly, but if it were committed to putting the results of the negotiation to a referendum it could reserve judgement during the negotiations about whether or not it would be able to endorse the terms that emerged.

## **Step 5: Parliamentary approval and the referendum**

When such a new protocol has been agreed, the process would be completed by the terms being approved in a referendum and by the UK Parliament passing a new Act that repeals all existing EU Treaties and adopts the new Treaty with the protocol as the ongoing basis for our relationship with the EU. It would be up to other countries to decide whether they then needed to ratify the Treaty changes themselves.

Even if the Government had held a referendum prior to the negotiations, it would be desirable to confirm democratic support for such fundamental changes and reduce the risk of any subsequent backtracking. Approval in referendum cannot of course be taken for granted. In practice, however, the UK would have built up such a head of steam for changing our relationship that it is unlikely that the idea of simply staying as we were would still be credible.

## **Step 6: Finalising and implementing the UK arrangements**

The framework outlined above would leave open for separate agreement which specific programmes the UK continued to participate in, and which aspects of the Single Market we continued to participate in.

On the Single Market, the starting point would be that all existing legislation remained in force unless repealed, but new legislation would need to be specifically endorsed and adopted. The existing Single Market legislation is currently part of our UK legal base, and so will not suddenly cease to have effect because of a change in our relationship with the EU. The Government should set up working groups (firmly under ministerial control) to consider on a sector by sector basis which existing Single Market regulations/legislation should be maintained or repealed, and to consider whether the UK should participate in adopting proposed new measures into our UK legal framework. (It is likely that, as part of the new arrangements, the UK would no longer formally participate in framing and voting on new measures. However, in markets where the UK was an important player and was inclined to adopt equivalent regulation where satisfactory proposals were agreed, the UK is nevertheless likely to continue to exercise an important influence on the shaping of those regulations.)

It would not be realistic for the Opposition to attempt to define which sectors the UK did or not participate in prior to the election – they could make a virtue out of involving business in a pragmatic process, and stress the importance of being able to stop the flood of future regulations which were acting as a huge burden on business. There are also a number of areas of legislation brought in under the ‘Single Market’ – for example the Working Time Directive and other labour market laws – which we can make a prime case for early repeal.

On other programmes, the Government should similarly involve knowledgeable participants in providing proposals to Ministers on where and how we should seek to participate – but in many cases encouraging open public debate to counter the presumption that EU programmes are necessarily ‘a good thing’. The starting point would be that we would remain in these programmes and the relevant budget until we gave notice to opt out, but for some – such as CAP – the Government might want to give early notice of a phased withdrawal.

Our annual budget contribution would become a clear forcing point for bringing to a head which programmes we were committed to support over the following year – and the Government should commit to this being a major UK parliamentary debate.

Finally, arrangements would need to be made to reflect any changes in the UK's participation in EU institutions that were agreed in the course of negotiations. Some of the possible changes are outlined in the draft protocol set out in the Appendix. In practice these are likely to have more significance within the EU than they do for the UK.

## **Conclusion**

Undertaken in this way, there is a very straightforward process to be followed that can deliver on commitments to materially change the UK's relationship within the EU. It is likely that the process could be completed within a single parliamentary term, allowing a government that took this course to go to the following election with the results on the record.

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**APPENDIX :**  
**Draft Treaty Amendment and UK Protocol**

**Outline for the New UK Treaty Relationship with the EU**  
**(assumes base Treaties as amended by Lisbon)**

**Treaty on the European Union**

Article 1 amended as follows (italics added):

1. By this Treaty, the high contracting parties establish amongst themselves a EUROPEAN UNION, hereinafter called ‘The Union’ on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union amongst the peoples of Europe, in which decisions are taken as closely as possible to the citizen.

The Union shall be founded on the present Treaty and on the treaty on the Functioning of the European Union. Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

*The terms of membership for the United Kingdom are set out in the accompanying protocol ‘The position of the United Kingdom’. The other articles of this Treaty and of the Treaty on the Functioning of the European Union shall not apply to the United Kingdom.*

**Treaty on the functioning of the European Union**

Add to Article 1.

*(3. The provisions of this Treaty shall not apply to the United Kingdom, whose relationship with the European Union is defined in the accompanying protocol ‘The position of the United Kingdom’.)*

## **Outline ‘Protocol on the Position of the United Kingdom’**

### **Legal Base**

1. Subject to its international Treaty obligations, responsibility for the laws of the United Kingdom will rest solely with the UK Parliament and UK Courts acting on the authority of the Crown. No European Institution – including the Council, Commission, Parliament and Court of Justice – shall have jurisdiction to apply or interpret laws and regulations in respect of the United Kingdom.
2. Existing laws applicable to the UK as a result of EU legislation shall remain in force in the UK unless repealed by the UK Parliament, but all references to EU jurisdiction shall be deemed to be superseded by this Protocol.

### **Economic Cooperation**

3. The United Kingdom shall participate in a free trade area comprising the European Union, the EEA and other members of EFTA, the objectives of which shall be free movement of goods, services and capital under the rules governing EFTA. (*The current Swiss EU agreement provides a useful starting point.*)
4. The United Kingdom may cooperate with the EU Commission in developing common policies and regulations for the development of the Single Market, for the advancement of European Trade interests and for the coordination of other aspects of financial and economic stability. The adoption of any agreed actions in the United Kingdom shall be the sole responsibility of the United Kingdom Government and Parliament.
5. The United Kingdom shall not be a member of the Euro under this Treaty, and shall not participate in the institutions of the Eurozone including the European Central Bank.

### **Other areas of cooperation**

6. The United Kingdom may agree to participate in any programme or activity undertaken by the European Union on terms agreed between the United Kingdom and the European Commission, and subject to approval by the Council and European Parliament where applicable. The agreement for any such participation will set out the basis for the budget contribution which the UK will make to that activity, and the structure for the UK’s participation in the governance of that activity.
7. If following this Treaty the UK wishes to withdraw from any common programme or EU activity in which it has previously participated in shall give the Commission formal notice, following which agreement will be reached on a transition period and financial arrangements. If no agreement can be reached within 2 years from the point

of notification, the UK will cease to participate in the programme and will no longer be liable for budget contributions.

### **Common Foreign and Security Policy**

8. Areas of cooperation shall include the Common Foreign and Security Policy, where the UK undertakes to consult with the President of the Council and other Member States on significant policy initiatives and will seek to reach agreement at the European Council on a common position which the UK can undertake to support. However, the UK retains the right to maintain an independent Foreign and Security Policy, and failure of the UK to agree a common position – or withdrawal from a common position – shall not prevent other Members of the European Union from adopting a common position under the provisions of the TEU to which they are party.

### **Justice and Home Affairs**

9. The UK shall not participate in the Area of Freedom, Security and Justice on the terms set out under the Treaty on the Functioning of the European Union. It may agree to adopt a common position in matters concerning cross border crime, justice, immigration and security; however, the legal basis for any such common policy to apply in the UK shall be an Act of the UK Parliament as interpreted by the UK Courts.

### **The Charter of Fundamental Rights**

10. The applicability of the Charter of Fundamental Rights to the UK shall be a matter for the UK Parliament.

### **International Agreements**

11. The European Union will not have any authority to enter into any international Treaty or Agreement that is binding in any way on the United Kingdom. Where the UK agrees to be party to a new international Treaty or Agreement to which the European Union is a signatory, the UK's participation shall be as a direct signatory in its own right as approved by the United Kingdom Parliament.

12. Where existing agreements have been made by the European Union that include the United Kingdom, those agreements from the date of this Protocol shall be deemed to be transferred to agreements between third parties and the United Kingdom, and any future amendments or revocation of those Treaties so far as they affect the United Kingdom shall be a matter for the United Kingdom alone.

### **Institutions**

13. The United Kingdom shall participate in general meetings of the European Council to discuss overall development of common policies relating to the whole of Europe. However, it shall not be a voting member of the European Council or the

Council of Ministers except where provided for as part of a common initiative to which the UK is party; and it shall not have a right to provide members of the Commission or the Court of Justice.

14. UK representatives shall have status at the European Parliament consistent with our terms of membership. They may request the right to speak on general issues of European concern or specific matters relating to UK interests, and may serve on committees including those governing the financial arrangements for budget areas where the UK is contributing. They will not have the right to vote on EU legislation which does not apply to the UK.

### **Contribution to the Union Budget**

15. The UK's contribution to the Union's Budget shall consist of a limited general membership contribution (the basis of which shall be defined in the appendix to this Protocol) together with specific amounts for each programme or activity the UK has agreed to participate in.

16. The UK shall participate in budget discussions on the specific programmes and activities in which it is involved, and will signal annually whether it is prepared to continue on that basis or seek to withdraw according to the rules outlined in Article 7 above.

17. The UK shall make payments to the European Union according to the sum of these obligations on the same terms and timing as other Members.

### **Ending this agreement**

18. This agreement may be ended by the UK giving notice that it intends to withdraw from its relationship with the European Union. Unless agreement is reached on the terms for ending or revising this agreement, such notice will take effect after a period of 2 years.