



What to do about the Lisbon treaty?

Four options for the Conservatives

By Charles Grant

- ★ The Lisbon treaty will be in force long before the next British general election, which the Conservatives seem likely to win. The Conservatives will soon have to say what they will do about the Lisbon treaty.
- ★ One option would be to hold a referendum on the Lisbon treaty. But if the British people voted against a treaty that was already in force, they would probably have to leave the EU. So Conservative leaders have ruled this out.
- ★ A second option would be to hold a referendum on repatriating powers in certain defined areas, such as social policy. The referendum would precede an attempt to opt out of some parts of the EU treaties. In a variation of this option, a referendum would be held after, rather than before, the attempted renegotiation.
- ★ A third option would be to attempt to renegotiate the EU treaties without the aid of a referendum. But this option, like the second, would probably lead to an impasse. Having spent almost a decade negotiating the Lisbon treaty, Britain's partners are unwilling to re-open the existing texts.
- ★ A fourth option would be to avoid trying to unpick the EU treaties. A Conservative government would instead urge its EU partners to make pledges in areas such as the budget, social policy and financial regulation. Conservative leaders could then tell eurosceptics that that they had achieved 'victories' in the EU.

The Conservatives have been clear about what they would do if the Czech Republic delayed ratification of the Lisbon treaty until Britain's general election. A newly-elected Conservative government would hold a referendum on the treaty and lead the campaign for a No vote. Assuming that the British voted No, they would kill the Lisbon treaty.

But the Czech constitutional court approved the treaty on November 3rd and President Vaclav Klaus signed it the same day. The treaty will be the law of the land when the Conservatives take office. So what will they do? They have said they "will not let matters rest". The party has not gone into more detail because it is divided. David Cameron, the Conservative leader, has said that if and when the Lisbon treaty is ratified throughout the EU, he will announce a new policy. That time is fast approaching.

Many Conservative Party members, and some national newspapers, will urge Cameron to take a

hard line on the treaty. Given that he has moderated Conservative policies in a number of other areas – pushing a green, socially liberal agenda, while refusing to promise income tax cuts – he will be reluctant to antagonise party members by denying them the red meat on Europe that many of them crave. A lot of Conservatives, including the party's leadership, are genuinely angry about what they see as the Labour government's renegeing on its promise of a referendum on the constitutional treaty (the government says that the Lisbon treaty is different from the constitutional treaty, but the Conservatives point out that most of the institutional provisions are similar).

The new Conservative MPs who arrive in the House of Commons after the next election are likely to be particularly eurosceptic. According to a survey of 144 prospective parliamentary candidates carried out last July by Conservative Home, a website, 10 per cent would like to keep Britain's relationship with the EU the way it is, 47 per cent would repatriate powers to Britain in some areas, 38 per cent want a

‘fundamental renegotiation’ of Britain’s membership, and 5 per cent would withdraw from the EU.

Pushing the Conservatives in the other direction will be Cameron’s fellow heads of government in the European Council. They will tell him that the EU works through give-and-take and compromise, and that if Britain tries to unpick a treaty that everyone else has spent the best part of a decade negotiating, and which already grants Britain numerous opt-outs, British influence will suffer. British business leaders will also weigh in. Many of them argue that the Conservatives’ break with the centre-right European Peoples’ Party – with which the Tories had had loose links in the European Parliament – has weakened British clout in Strasbourg, making it harder for businesses to lobby for legislation to be amended. The Obama administration, too, will make its view clear. In private, some of its senior officials are already expressing concern about a Conservative Britain distancing itself from the EU. The US has long relied on Britain to steer the EU towards the market-friendly, free-trading policies that it likes, as well as robust attitudes towards security problems and the Atlantic alliance. A Britain that has less influence on EU decision-making is less useful to the US.

In early October I attended the Conservatives’ conference in Manchester, hoping to glean some insight into their policy on the Lisbon treaty. At the start of the conference Boris Johnson, the Conservative Mayor of London, caused a stir by saying that there should be a referendum on the treaty, whether or not everyone else had ratified it. But party managers soon imposed some discipline and senior figures stuck to the line that it would be premature to announce a new policy when the fate of the Lisbon treaty remained uncertain.

The Conservatives have decided that they will do two things as soon as they take office. First, they will pass a law saying that any future change to the EU treaties will require ratification by referendum (presumably this would not apply to accession treaties, since the Conservatives have always been pro-enlargement). Such a law would give the party’s eurosceptics some red meat without – in my view – doing much short- and medium-term damage to the Union, since I do not expect another attempt to change the EU treaties for a generation.

Second, the Conservatives would overhaul the system of scrutiny of EU legislation at Westminster, which is widely recognised as inadequate. They would try to create a new and more powerful committee for overseeing EU laws, modelled on that in Denmark (when Danish ministers attend Council meetings in Brussels they sometimes have to call their parliament’s EU committee in Copenhagen, to obtain clearance for taking a particular line).

But in addition to those two initiatives, the Conservatives will need to decide what to do about

the Lisbon treaty. When one asks Conservatives what a government led by David Cameron should do, one hears four distinct responses.

Option one: a referendum on the Lisbon treaty

The first option – favoured by Mayor Johnson and many activists – is to hold a referendum on the Lisbon treaty. But if the treaty were already in force across the Union, and the British then voted against it, what would happen? Some advocates of this position understand that the other member-states would be unwilling to abandon their treaty, and that the UK would have to withdraw from the EU (helpfully, the Lisbon treaty provides an article that sets out a straightforward procedure through which countries can leave). They are relaxed about that. Others seem to imagine that Britain’s partners would somehow bend over backwards to give it a special deal, enabling the British to remain in the Union but not subject to the Lisbon treaty.

The party’s leaders understand that this would be a legal impossibility: at the heart of the treaty are institutional reforms that cannot work unless they apply to all members. For example, the treaty will introduce the principle of ‘double-majority’ voting for many issues, according to which a measure passes if 55 per cent of the member-states vote in favour, so long as they represent 65 per cent of the EU population (this will increase Britain’s voting weight in the Council of Ministers, since it is one of the most populous countries in the Union). By definition, a member-state cannot opt out of a voting system, any more than it can opt out of new institutions (such as the permanent president and external action service). That is why most Conservative leaders oppose a referendum on a treaty that is already in force.

They also oppose the more radical step proposed by a number of Tory activists, who want a referendum on much more than the Lisbon treaty. Thus Daniel Hannan MEP, speaking at a fringe meeting in Manchester (organised by the CER and Policy Exchange) on October 6th, called for a referendum on repatriating all the powers that Britain had given to the EU under the Maastricht, Amsterdam, Nice and Lisbon treaties. Then on October 9th, David Heathcote-Amory MP (a Europe minister when John Major was prime minister) took the same line at a forum on the future of Europe run by the CER and Business for New Europe. Hannan and Heathcote-Amory acknowledged that if the British people did vote to repatriate those powers, the country could not remain in the EU. Hannan is enthusiastic about Switzerland’s and Norway’s models of association with the EU; those two countries take part in the EU’s single market and have to follow its rules – but, not being members of the EU, have no vote on setting the rules.

Option two: a referendum on repatriating certain powers

During the party conference in Manchester, some Conservative spin-doctors spoke to journalists about a second option: holding a referendum on the repatriation of certain EU powers – in areas such as employment law and judicial affairs – rather than on the Lisbon treaty itself. After this referendum, British ministers would seek to renegotiate the EU treaties. The idea is that if British ministers were strengthened by the mandate of a referendum victory, they would be able to insist on their partners granting them opt-outs. Many party members, as well as some of the party's grand old men, told me this was the most likely scenario: the pressure for a popular vote is so great, they said, that the leadership has to offer a referendum on something.

This option presents a number of problems. If the government said it planned a referendum on a minor and technical question such as opting out of certain policy areas, a lot of eurosceptics would demand the right to vote on a more substantive disengagement from the EU. But if the government resisted such pressure, and limited the question to, say, the repatriation of powers over employment law, the turn-out could be embarrassingly low.

Once the British people had voted, the government would discover that Britain's partners have no intention of restoring the opt-out from the Maastricht treaty's 'social chapter' that John Major negotiated in 1991, and which Tony Blair abandoned in 1997. They believe that Britain's relatively liberal employment laws help it to win foreign investment that would otherwise go to continental Europe. They do not want to give the UK an even bigger – and as they would see it, unfair – advantage in this area (some of the Central European states share Britain's hostility to EU involvement in social policy, but they would not want to change the treaty: they worry that if Britain were allowed to opt out of EU rules on employment, France would ask to opt out of parts of the single market that it dislikes, such as energy liberalisation).

As for co-operation on justice and home affairs (JHA), the Lisbon treaty gives Britain a de facto opt out (technically, the right to opt in) from all new EU laws to do with policing, justice or immigration. Under the Nice treaty, which defines the rules under which the EU currently operates, the British can only opt out of immigration policy, so it is hard to see how Britain would benefit from abandoning the JHA part of the Lisbon treaty. Lisbon also gives all member-states an additional safeguard: an 'emergency brake' procedure that allows any government to block a JHA decision that it believes threatens its national legal system. Perhaps the Conservatives would want to repeal one controversial measure already agreed in this area, the European arrest warrant, which has dramatically speeded up cross-border extradition

within the EU. But they would then have to explain why they opposed a measure that secured the rapid extradition of Hussein Osman from Italy to the UK after the 21/7 attempted tube bombings in London.

If a Conservative government failed to negotiate anything of substance on the repatriation of powers to the UK, what could it then do? Pressure from eurosceptics for a withdrawal from the EU would grow.

Conservative leaders have also discussed a variation on this third option, according to which the government would hold a referendum after, rather than before, an attempt to renegotiate the Lisbon treaty. Sir Malcolm Rifkind, a former Conservative foreign secretary, and a moderate in the party's European debates, suggested this on BBC TV's *Newsnight* on October 29th. Presumably the government would hope to win some sort of deal from its partners, and then offer this for popular endorsement in a referendum. There is a historical precedent: the Labour government which took power in 1974 renegotiated the terms of Britain's membership – winning some real changes, such as the creation of the regional funds – and then held a referendum on Britain's membership in 1975.

But in 2010 Britain's partners would probably be unwilling to give it anything more substantive than non-binding declarations on social policy – and that would not satisfy many eurosceptics. Furthermore, by the time a referendum were held, perhaps in 2011, massive spending cuts might have made the government unpopular. Unpopular governments tend to lose referendums, whatever the question is about. One could imagine eurosceptics voting against the government's package, because it had not obtained much of substance on social policy, and the left of the political spectrum also voting No on the grounds that Britain should not withdraw from EU social policy. The lesson of recent referendums in other European countries is that once a campaign starts, strange things happen and populist politicians come to the fore; governments tend to lose control. And if a Conservative government did lose such a referendum, then what? The other member-states would be unwilling to offer more concessions on substance, and within Britain pressure for quitting the EU would grow.

Option three: renegotiate the treaty without a referendum

The third option would be to avoid having any kind of referendum. With the economy in such a mess, the argument goes, a Cameron government will not want to be distracted by Europe. The government will need to focus on tackling the economic crisis, rather than winning referendum campaigns. I have heard this argument from several members of the shadow cabinet, and from some influential commentators who are viscerally opposed to the Lisbon treaty. Assuming the treaty is ratified everywhere else when the Conservatives

get into power, said *Daily Mail* columnist Peter Osborne at an Open Europe fringe event in Manchester, “we must live with the Lisbon treaty because a referendum on it would be a distraction from sorting out the economic crisis”. Bruce Anderson, who writes for *The Spectator* and the *Independent*, said much the same in Manchester. *The Economist*, *The Daily Telegraph*, *The Times* and *The Sun* all opposed the Lisbon treaty, but now argue that a Conservative government should not hold a referendum on it.

My guess is that this third option is more likely to prevail than the second. The desire of most Conservatives for power is so strong that they will back the leadership if it takes such a ‘moderate’ line on Europe.

But option three will not necessarily lead to a smooth relationship between the UK and the EU. For even if there is no referendum, some sort of attempt to renegotiate parts of the EU treaties, such as the articles covering employment law – which David Cameron is said to oppose viscerally – seems likely. One variant of option three is that the government would keep the threat of a referendum in the background – as a weapon to be brandished if Britain’s partners did not agree to the concessions Britain demanded, or if they acted in ways that could damage British interests.

Any attempt by a Cameron government to unravel parts of the treaties, even unaccompanied by a referendum, would lead to the same impasse as option two. A Conservative government would be taking a path that could lead to defeat and humiliation.

Consider what a British government would need to do in order to amend the EU treaties. First, it would have to propose an ‘inter-governmental conference’ (IGC). Cameron could do so at the Brussels summit in June 2010. Such a conference can be called if a simple majority of member-states is in favour. But it is highly unlikely that 14 member-states would agree to call an IGC, so Cameron would probably return from the summit empty-handed.

But let us suppose that, somehow, David Cameron persuades his partners to convene an IGC. Each government would then appoint a senior diplomat to take part in the conference and discuss treaty revision. Any agreement to modify the existing treaties would require unanimity. Yet there would be virtually no support for a British bid to opt out of social policy – or judicial or fisheries policies or anything else. My guess is that the other governments, led by France and Germany, would say that the Lisbon treaty is a done deal, that it cannot be reopened, and that if Britain does not like the treaty it should consider leaving the EU. There is no prospect of an IGC ending happily for a Conservative government.

Faced with this kind of cul-de-sac, what could a Cameron government do? It could threaten to leave an empty chair, as John Major did in May 1996, in protest

against the ban on British beef at the time of mad cow disease (and as President Charles de Gaulle did in 1965, in protest against the introduction of qualified majority voting). But Major’s empty chair achieved nothing except to block laws and policies that Britain had itself proposed; after three months Britain climbed down without having achieved its objective.

Britain could leave another empty chair in 2010, blocking any EU measure that requires unanimity. For example Britain could thwart Croatian and Icelandic accession, although EU enlargement has been longstanding objective of the Conservative Party. And it could veto international treaties between the EU and other countries, some of which require unanimity. Agreements on the EU’s seven-year budget cycle also need the unanimous approval of every member-state, but the damage that Britain could inflict in this area is limited: if it blocked agreement on the new series of budgets due to start in 2014, the old budget would continue automatically. One consequence of Cameron leaving an empty chair would be to incur his partners’ ill-will, making them unwilling to do the Conservatives favours in areas that matter for Britain.

Option four: accept the EU treaties but seek victories in other areas

As far as one can tell, the Conservative leadership is contemplating options two and three, neither of which would be good for Europe, Britain or a Conservative government. It should consider a fourth option: to accept the treaties but placate the party’s eurosceptics by scoring goals in other areas.

The Brussels institutions are skilled at cooking pieces of euro-fudge, allowing all parties to claim satisfaction. Some euro-fudge could help a Conservative government, so long as it understood that the other member-states would not change the substance of the Lisbon treaty. A compromise could build on the fact that the argument over EU social policy is to a large extent a hangover from the past, when Jacques Delors and Margaret Thatcher used to provoke each other by advocating and opposing the ‘social dimension’. It is many years since the Commission proposed a significant new piece of social or employment law, and there are none in the pipeline. The predominance of economically liberal economic thinking in the Commission, and the accession of the Central and East Europeans, has killed off the idea that the EU should legislate on subjects like minimum wages. The arrival of those countries has reignited fears in France and elsewhere of ‘social dumping’ – the diversion of investment towards countries with lax employment laws. Nevertheless to a large extent the arguments over social policy are now more symbolic than substantive.

Britain’s partners might agree to a declaration stating that social policy should conform to the principle of

subsidiarity – the idea that decisions should be taken at the lowest level of government possible – and that the EU would not propose new laws in this area for a defined period of time. Of course, declarations have no legal force. So if Cameron returned to London with such a piece of paper, it would not satisfy the Hannans and Heathcote-Amorys of his party.

But Cameron might be able to supplement a declaration on social policy by gaining other ‘victories’ in Brussels. For example, in 2010 EU governments are due to discuss a ‘mid-term review’ of the current EU budget cycle, which runs until 2013. Cameron could seek an agreement that the proportion of the budget spent on agriculture would decline by a certain amount. He could demand a root-and-branch review of the Common Fisheries Policy (many experts think the policy needs a drastic overhaul, but the difficulty for the Conservatives is that better conservation of stocks may require greater EU control over national fleets).

Cameron could also focus on safeguarding the interests of the City of London. Rules on financial regulation are subject to qualified majority voting, so Britain does face the potential risk of being out-voted, despite having a much bigger financial services industry than any other member-state. Some other governments might not shed many tears if heavier EU regulations led to financial firms exiting London. A recent piece in *E!Sharp* by David Rennie offered some good advice for a Cameron government: “Sane countries like Sweden say they cannot imagine imposing regulations on the UK against our will, because the impact on us is too big. Get that in writing: a political pledge from the other leaders that Britain has a veto on financial regulation affecting the City.”

And what if Britain’s partners refused to go along with that? Cameron could then threaten to wield the ‘Luxembourg compromise’ to block any attempt to regulate financial markets that ignored the interests of the City. The Luxembourg compromise is an informal agreement concocted in 1966 in order to persuade de Gaulle to abandon his policy of leaving an empty chair. It allows a government to veto a law that is subject to qualified majority voting, if it believes its ‘vital interests’ are under threat. In the 1960s, 1970s and 1980s a number of governments threatened to use this weapon, thereby dissuading the other countries from outvoting them. In 1992 France said it would use the Luxembourg compromise to prevent an agreement in the Uruguay trade round that would have cut subsidies to French farmers – and as a result it won them a better deal. I am not aware of any government using the weapon since then.

Many of Britain’s pro-Europeans might support Cameron in taking some of the above steps. In an effort to persuade Conservative party members to accept the Lisbon treaty, Cameron could point to the several pieces of red meat that he had thrown them.

He has pulled the Conservatives out of the European People’s Party, thereby attracting more criticism than some Tory leaders expected, and annoying Chancellor Angela Merkel and President Nicolas Sarkozy. He could trumpet the new law that will require a British referendum on any future treaty change, and the new system for scrutinising EU legislation. And he could highlight his efforts to thwart Tony Blair’s bid to become European Council president. At the time of writing, the Conservatives’ warning to EU governments that they will view support for Blair as a hostile act appears – alongside other factors – to have stopped him getting the job.

Another idea – floated by my colleague Hugo Brady – would be for Prime Minister Cameron to establish a royal commission on the costs and benefits of Britain’s EU membership. Such a body would have to be chaired by a senior figure whose objectivity was beyond question, and who had no form in taking pro- or anti-EU positions. The commission would have the power to call witnesses and take evidence, and to engage with civil society as well as politicians. Some eurosceptics would be happy to have a chance to explain the damage done by the Common Agricultural Policy, EU red-tape and Britain’s net contribution to the EU budget. Many pro-Europeans would welcome the opportunity to argue the benefits of being in a single market with a common trade policy, such as extra foreign investment. Whatever such a Royal Commission concluded, its hearings would take some of the poison out of Britain’s European debate, and probably add some sobriety to it.

Confronting the hard-liners

Of course, none of these measures would satisfy the more extreme Conservative eurosceptics. But at some point Cameron will have to take stances on Europe that some of his party’s rank and file dislike. When that time comes he will need to educate them on how much the EU has changed since the Tories were last in office.

During the prime ministerships of Margaret Thatcher and John Major, France and Germany could to a large extent set the EU’s agenda on their own. Britain had to fight hard to thwart anti-Americanism within the EU. The EU story was largely about the creation of the euro and whether Britain should join it, rows over social policy, and federalist pressure for stronger institutions.

But the enlargement of the EU – to Austria, Finland and Sweden in 1995, and then to the Central and East Europeans in 2004-07 – has dramatically changed its character. English is the dominant language. Most governments take a no-nonsense, pragmatic attitude to the EU, seeing it as a tool for delivering benefits that member-states on their own cannot achieve. And though France and Germany remain influential, no two countries can on their own

set the agenda in a wider EU of 27 members. Under the leadership of Sarkozy and Merkel, France and Germany are much more Atlanticist than they were, as is the Union as a whole. The question of Britain's membership of the euro has been resolved for the foreseeable future: it is not going to join. EU legislation on social policy is off the agenda, and with the centre-right in power almost everywhere in Europe, it is not going to come back. The ratification of the Lisbon treaty means that the EU will stop talking about new treaties and institutional questions. Federalism is a waning force, confined to the political elites of Belgium and Luxembourg, plus a few German and Italian politicians.

With treaty change off the agenda, EU leaders are likely to focus their attention on pressing challenges such as strengthening the single market, stabilising the Union's neighbourhood, tackling climate change, enhancing energy security, gaining better access to Chinese markets, dealing with Russian power and reinforcing the EU's role in combating organised crime and illegal migration. On all these questions there are big arguments among the member-states but on all of them Conservative Britain will find that it has many allies.

Many Conservative Party members are unaware how much the Union has changed, and for the better, since they were last in power. One of Tony Blair's achievements was to persuade Labour Party activists that the world had changed and that their party needed to accept the market economy; thus the party had to drop clause four of its constitution, committing it to socialist forms of ownership. Can

David Cameron display similar leadership with regard to his party's views on Europe?

I have no doubt that senior Conservatives such as David Cameron, William Hague and George Osborne want Britain to remain in the EU. They will therefore dismiss option one. But options two and three would still be very risky for a Conservative government. A referendum on repatriating certain powers would be a great distraction from the many other problems that the government will have to deal with. And any attempt to renegotiate the substance of the existing treaties – backed by a referendum mandate or not – would be likely to end in failure, even if the government chose to escalate the crisis by blocking other EU measures. In a major clash between Britain and its partners, the eurosceptic forces which wish to drive Britain out of the EU would flourish. Cameron's best strategy would be to avoid trying to unpick the EU treaties, but to persuade the other governments to grant him 'victories' in areas like social policy, financial regulation and the EU budget.

After a few years in power, Conservative politicians will discover the realities of European and global power politics. A middle-sized country such as Britain needs to work with other European governments, and the EU institutions, in order to pursue its international objectives. But the first few years of a Conservative government will be a rough ride for Britain and for Europe.

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