European and External Relations Committee

Agenda

13th Meeting, 2008 (Session 3)

Tuesday 24 June 2008

The Committee will meet at 11.00 am in Committee Room 1.

1. **Items in private:** The Committee will consider whether to take items 6 and 7 in private.

2. **EU Budget Review:** The Committee will take evidence by video conference from—

   Gary Titley, MEP, North West of England

3. **Inquiry into the transposition of EU directives:** The Committee will consider a response from the Scottish Government to its report.

4. **Transposition Report from the Scottish Government:** The Committee will consider an update from the Scottish Government.

5. **Brussels Bulletin:** The Committee will consider the Brussels Bulletin.

6. **Inquiry into the Services Directive:** The Committee will consider a summary of evidence.

7. **Work Programme:** The Committee will consider a paper from the Clerk.

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The papers for this meeting are as follows:

**Agenda item 2**

EU Budget Review

**Agenda item 3**

Transposition inquiry

**Agenda item 4**

Transposition update

**Agenda item 5**

Brussels Bulletin

**Agenda item 6**

Services Directive (Private Paper)

**Agenda item 7**

Work Programme (Private Paper)
European and External Relations Committee

13th Meeting, 2008 (Session 3)

Tuesday 24 June 2008

EU Budget Review

Background

1. At the Committee’s meeting on 2 October 2007, the Committee considered a paper on the Scottish Government’s EU priorities including its key EU political objectives. Of these six political objectives the Committee agreed to focus on the Lisbon Treaty and the EU budget review. Members will recall that on 12 September 2007 the European Commission issued a Communication launching a public consultation on the 2008/2009 Budget Review to stimulate an open debate on EU finances.


2. The closing date for submissions was 15 June 2008.

Correspondence with the Scottish Government

3. At its meeting on 13 November 2007 the Committee considered a paper from the Clerk on the EU Budget Review. The Committee agreed that, as a first step, it should write to the Scottish Government seeking an update on its progress in this area, including:

- Details of its proposals to ensure that Scottish interests would be effectively represented, including the nature and extent of its discussions with the UK Government and consultation with stakeholders and;

- Whether it intended to respond to the Commission’s consultation.

4. The Committee considered the Minister’s response at its meeting on 22 January 2008. Members will recall that the Committee agreed to seek further detail from the Scottish Government, including:

- Details of the Scottish Government’s position on the EU Budget Review;
• An update on the progress of the Scottish Government in ensuring that the UK Government’s position “fully and properly reflects Scottish EU interests”;

• Details of the timetable to which the Scottish Government is working for delivery of this objective, including the key relevant dates.

5. The Scottish Government has indicated it plans to send a response to the review but has yet to make its submission.

Evidence session with John Bachtler

6. Members will recall that at its meeting on 5 February 2008 the Committee took evidence from Professor John Bachtler on the implications of the EU Budget Review for Scotland. In particular, Professor Bachtler provided evidence on the following issues:

• the purpose of the EU Budget Review
• the keys aspects of the EU Budget
• the implications for Scotland
• the options for parliamentary engagement in the Review

7. Professor Bachtler emphasised that under the terms of the Lisbon Treaty the European Parliament would have a much more important role in the next round of the financial framework negotiations. Professor Bachtler advised that, ultimately, the intention was to reach agreement by late 2010 so that the review provided the basis for the next financial framework.

8. Given the increased involvement by the European Parliament in the next financial framework negotiations (as provided by the Lisbon Treaty) the Committee agreed to invite appropriate MEPs to give evidence to the Committee on the EU Budget Review at some point in the future.

9. The purpose of this session is to take evidence from Gary Titley, MEP who is a member of the European Parliament’s Committee on Budgets. Gary Titley will provide evidence on the changes to the role of the European Parliament in respect of the EU budget procedure as envisaged by the Lisbon Treaty, the implications of the Budget Review and the next steps. He has submitted written evidence and this is attached at Annexe A.

Changes to the EU Budget process – the Lisbon Treaty

10. Under the current process, the Commission, Parliament and Council of Ministers have different roles and powers in deciding the EU budget. As a first step, the three institutions conclude a binding agreement “to ensure budgetary discipline, long-term planning and to enhance cooperation in connection with annual budgets”. This binding agreement is known as the multi-annual financial framework and it establishes
annual upper limits per heading which must be respected by the annual budgets.

11. There are two types of budget expenditure: compulsory and non-compulsory expenditure. Compulsory expenditure covers all expenditure resulting from international agreements and the EU treaties (including agriculture). All other expenditure is classified as non-compulsory. The Council of Ministers has the final word on compulsory expenditure and the European Parliament on non-compulsory expenditure.

12. Under the Lisbon Treaty, the European Parliament’s powers in relation to the budget process would be significantly increased. This is because the current distinction between compulsory and non-compulsory expenditure will be abolished. At present the European Parliament has an advisory role in respect of the compulsory expenditure. Under the Lisbon Treaty, the European Parliament and Council would be required to come to a final agreement on the whole budget, which would include agricultural spending.

Purpose of the Budget Review

13. The Commission’s communication launching the EU Budget Review makes it clear that the purpose of the review is not to propose a new multi-annual financial framework for the period from 2014 recognising that this is the task of the next Commission. Nor does the Budget Review consider the overall size and detailed breakdown of the EU Budget. Rather, the review will consider “the structure and direction of the Union’s future spending priorities, assessing what offers the best added value and most effective results.”

14. The communication indicates that the consultation will form a basis for the Commission’s work on the review. The consultation will be complemented by “preparatory action in key spending in areas where the EU has made a major investment and where effective use of the budget is particularly important to the success of the policy”. The Common Agricultural Policy (CAP) is undergoing a “health check” and the Fourth Cohesion Report adopted in May 2008 looked at progress in reducing regional disparities and evaluated the results of Cohesion Policy to date. Both of these developments are considered further below.

15. The communication sets out the way in which the allocation of the Budget has changed over time. In particular, it points out that, for the first time, policies specifically geared to growth and jobs will take the largest share of the EU Budget. For example, in 1985 CAP absorbed 70.8% of the total EU budget while by 2013, the share of traditional CAP spending (excluding rural development) will be 32%. By contrast, in 1988 amounts allocated for structural funds stood at 17.2 %, while in 2013 will represent 35.7% of the Budget. A SPICE Subject Map for the EU Budget can be found at the link below.
16. The communication addresses a number of separate elements which form the basis of the review. One element considered is how the Budget should be shaped for the future. This includes looking at the balance between European and national spending and the delivery of EU policies.

17. The review will also consider the way in which the EU Budget is financed. As Members will be aware, the main source of finance for the EU Budget is the resource based on Member States’ gross national income (GNI). The remainder of the EU Budget is made up from customs and agricultural levies (Traditional Own Resources) and VAT-based resource. The Commission’s communication states that in 1988, the GNI resource made up less than 11% of the EU financing while in 2013 the GNI will provide about 74% of the Budget. The communication indicates that while the current system has succeeded in providing sufficient resources there is continuous debate about whether the source of funding could be improved in order to better comply with the financing principles. These include economic efficiency, equity, simplicity and financial autonomy. The communication comments:

“Member States often tend to judge EU policies and initiatives in terms of returns compared to their national contributions, rather than looking first at the overall value of pursuing certain policies at European level.”

18. Finally, the review will consider the various corrections that have emerged in respect of contributions from individual Member States. Since the 1984 Fontainebleau agreement, Member States “sustaining a budgetary burden which is excessive in relation to its relative prosperity may benefit from a correction at the appropriate time." The review will “take a close look on whether and to what extent the various correction mechanisms which have emerged and their underlying principles are still justified.”

19. A SPICe briefing on the Budget Review is attached at Annexe B.

The CAP “Health check”

20. As stated above, the Budget Review is to be complemented by action in key spending areas. An important initiative in this regard is the CAP “Health Check”. As Members will be aware, in 2003 the CAP underwent a major reform. Member States were given a significant amount of choice in deciding how to implement the reforms. The key elements of the reform were:

- Decoupling (i.e payments were no longer linked to the number of animals kept or the area of crops grown);
• Cross-compliance, which made Single Farm payments (SFP) conditional on observing statutory management requirements (SMR) in respect of the environment, food safety, animal health and welfare;
• The distinction between “Pillar 1” of the CAP (support payments made directly to farmers and crofters) and “Pillar 2” (payments to land managers and others in rural Scotland funded through Rural Development Programmes).

21. The 2003 reform provided for a review of the reforms in 2008. The Commission has always made it clear that the 2008 review would not be another full scale reform of the policy but would rather make modest changes. As a result, it became known as the CAP “Health Check.”

22. The Commission published its initial proposals for the Health Check on 20 November 2007. Subsequently, the Commission published its draft legislative proposals on 20 May 2008. The key elements are:
• Abolition of 10% set aside rule for arable farmers;
• Phasing out milk quotas by 2015;
• Refinement of the cross compliance rules whereby aid is linked to environmental criteria. New requirements are to be added to retain the environmental benefits of set aside and improve water management;
• Shifting money from direct aid to rural development. Currently 5% of direct payment funds are transferred to rural development. This will rise to 13%. Additional cuts will be made for bigger farms;
• Abolition of intervention mechanisms for certain commodities, including pork, with the feed grain rate to be set at zero. Introduction of tendering for bread wheat, butter and skimmed milk powder;
• Refinement of criteria for assistance to sectors with special problems;
• Abolition of energy crop premium;
• Full decoupling of support (with the exception of suckler cow, goat and sheep premiums) and movement away from historical payment system across the EU.

Key issues for Scotland

23. On 13 June 2008, in the light of the Commission’s proposals, the Scottish Government launched a consultation on the future implementation of the CAP in Scotland. Two particular developments were highlighted. These are:
• The move away from the historic model for SFPs towards flat rate payments;
• The transfer of money from Pillar 1 (SFPs) to Pillar 2 (Rural Development Programmes).

24. A link to the consultation document can be found below.
Consultation on the Fourth Cohesion Report

25. A further relevant development is the Fourth Cohesion Report and the subsequent public consultation on this document launched by the Commission on 27 September 2007 (closing date 31 January 2008). The Commission indicated that the purpose of the consultation was “to collect ideas and contributions on the question of how the Union’s cohesion policy should adapt to new challenges and how its delivery can be improved in order to maximise its impact in the future.”

26. The consultation is based on a list of questions contained within the Fourth Cohesion Report which can be found at the link below:

http://ec.europa.eu/regional_policy/conferences/4thcohesionforum/questions_contrib_en.cfm

27. These include:

- Given wide differences in birth rates, death rates and migratory flows at regional level, what is the role of Cohesion Policy in responding to demographic change?
- How can cohesion policy further develop an integrated and more flexible approach to development/growth and jobs in this new context?
- What are the key future skills that are essential for our citizens in facing new challenges?
- How can cohesion policy better promote harmonious, balanced and sustainable development taking into account the diversity of EU territories, such as least favoured areas, islands, rural and coastal areas but also cities, declining industrial regions, other areas with particular geographic characteristics?

28. In addition to the UK Government’s submission, the Scottish Government submitted its own response to the Cohesion Policy consultation. The Scottish Government indicated that cohesion policy should be considered not only in respect of Structural and Cohesion Funds but as a principle that should underlie all EU policies. It therefore considered that cohesion “will be a central issue for debate in the Budget Review consultation.”

29. The Scottish Government made a number of key points in its response. In particular, the Scottish Government emphasised:

- Cohesion Policy should add value;
- The importance of greater spatial and thematic targeting;
- A more flexible and joined-up approach to EU policy. The Scottish Government pointed out that EU cohesion is dependent on other key policy areas such as State Aids, R&D and agricultural policy;
That the focus should be on an outcome based approach rather than specific, often unintegrated goals of individual funding streams.

30. The Committee considered the Scottish Government’s response at its meeting on 4 March 2008. A link to the Committee papers, including the Scottish Government’s response can be found below:

http://www.scottish.parliament.uk/s3/committees/europe/papers-08/eup08-05.pdf

Gary Titley - Biography

31. Member of the Labour Party; born 1950; Member of Labour Party National Executive Committee (2002- ); West Midlands County Councillor (1981 – 1986); Member of the European Parliament (since 1989); Leader of the British Labour Group (since 2002); Commander of the White Rose of Finland; Austrian Gold Cross; Order of Lithuanian Grand Duke Gediminas.

Recommendation

- The Committee is invited to consider the above information during the evidence session with Gary Titley MEP.

Committee Clerk
June 2008
Written submission from Gary Titley MEP

The main changes to the budgetary procedure under the Lisbon Treaty

N.B. Given Ireland’s "No" vote in the referendum held on 12th June, it is highly unlikely that the Lisbon Treaty will be implemented in its present form, in any case, not in January 2009. Since it is not possible to predict the results of future discussions on the Treaty, this paper will outline what would have happened, had the Treaty been ratified by all member states this year.

The budgetary decision making process:

1. Under the Lisbon Treaty the budget as a whole must be adopted jointly by the European Parliament (EP) and the Council: the annual budget cannot be adopted without EP's agreement, so the budgetary power of the EP has been strengthened.

2. The current distinction between "compulsory" (mainly agricultural) expenditure on which the Council used to have the last say and "non-compulsory" expenditure (on which the EP had the last say) is abolished. This will bring the EP on to an equal footing with the Council in all areas.

3. Under the Lisbon Treaty, there will only be one reading of the budget, so very close cooperation between the budget committee and all specialised committees will be essential to define the EP's political priorities for that one reading of the budget.

4. There will be a new budgetary conciliation procedure, lasting for up to 21 days. This will involve intensive dialogue between the Council and the Parliament- with the Commission acting as facilitator- based on the positions negotiated within their respective bodies.

5. The likely consequence of the "one reading only" procedure is that the budgetary decision making process will start earlier, and that specialised committees will play a stronger role in determining the EP’s position.

EU Budget Review

Key Message:

The EU budget should reflect the EU’s policy priorities: competitiveness in the face of globalisation (Lisbon Agenda), promoting growth and job creation, social cohesion, energy security, the EU as a global player, combating climate change and providing security for its citizens.
Expectations for the Budget Review.

The financial framework has been set for 2007-2013, so the budget review exercise cannot be expected to have a drastic impact immediately. However, when the Commission launched the public consultation phase of the Budget Review in September 2007, it stated that its approach would be "one of openness and no taboos: it will prepare this review with no preconceptions". In doing so, the Commission was inviting participants to engage in blue skies thinking: providing an opportunity to say what the EU budget should and could look like might help overcome some of the barriers to reform encountered in the past.

Resources.

The EU budget is currently financed by three sources: traditional own resources (TOR), VAT and a resource based on gross national income (GNI).

- **Traditional own resources** (TOR) mainly consist of duties that are charged on imports of products coming from a non-EU state. They bring in approximately €17.3 billion or 15% of the total revenue.

- The resource based on **value added tax** (VAT) is a uniform percentage rate that is applied to each Member State's harmonised VAT revenue. The VAT-based resource accounts for 15% of total revenue, roughly €17.8 billion.

- The resource based on **gross national income** (GNI) is a uniform percentage rate (0.73%) applied to the GNI of each Member State. It accounts for 69% of total revenue or EUR 80 billion.

- Studies\(^1\) have shown that the current financing of the budget requires reform, because it is inefficient and complicated. The UK would prefer a system based almost solely on GNI contributions, because the VAT calculating mechanism is complicated and overly bureaucratic. Some other member states would prefer an EU level tax, but this is unlikely to materialise, given widespread opposition to it.

- It is unlikely that the review will lead to an overall budget level increase (which is currently set at a maximum of 1.24% of GNI), given opposition by the richer member states who are currently net contributors. Therefore any increases in funding for existing or new projects will have to come from redeployment or reform of existing policies (e.g. cutting CAP spending).

- Problems with the own resources system derive from problems with expenditure, which should be addressed first (ie the CAP). A generalised correction mechanism (ie a form of rebate for any country that "deserved" one, due to disproportionate net balances) would distort the system further, and would act as an excuse not to reform expenditure, so is not advised.

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\(^1\)"The EU Budget Review: Mapping the Positions of Member States". SIEPS, Tamas Szemler and Jonas Eriksson.
Decision making

- Changing length of financial framework from 7 to 5 years, would bring it in line with the Parliament and Commission terms of office, and in doing so, might introduce more flexibility in to the system. Currently a new political mandate does not automatically give scope for real change because the budget has already been fixed, which doesn't give much scope for adaptation to fresh challenges.

The UK Rebate and CAP reform.

The UK's rebate has always been unpopular amongst other member states and has come under increasing pressure in recent years given that the economic circumstances under which it was negotiated in 1984 have now changed for the better: the UK is now one of the most prosperous member states. Other member states also have similar net balances, ie they are net contributors to the budget, so if the system was fair, they should qualify for a rebate too. As mentioned earlier, a generalised correction mechanism would be undesirable, although it has actually been discussed during the budget review process, so it could be an option.

If EU expenditure is left as it is (ie the CAP continues to consist a significant proportion of EU spending-currently 35%), the UK would be the largest net contributor to the EU budget (in absolute terms): in 2006 it would have paid €9.33 billion more to the budget than it received. Therefore, it is unlikely that the UK will let go of the rebate unless expenditure on the CAP reduces drastically.

Other Expenditure

Apart from the rebate and the CAP debate, is the EU budget being spent efficiently and effectively? Is it directed towards achieving the EU's political and economic objectives, or is a fundamental shift in expenditure allocations required?

The principles on which the EU budget should be based:

1. The EU should only intervene where it is evidently more beneficial than if individual actions are taken solely by Member States; (Subsidiarity and Additionality)
2. Where EU level action is appropriate, it should be proportionate, flexible and use the most suitable policy means- which may or may not be spending; (proportionality)
3. For all EU spending there should be the highest level of financial management and administration.
4. Expenditure from the EU budget should focus on European public goods, more specifically those that are under-funded and deemed to provide European added value.
5. Sufficiency of resources: if member states decide to pursue a policy, there needs to be enough money to finance it effectively.

6. EU expenditure must demonstrate value for money.

Using these principles as a framework for evaluating expenditures, EU policies often score very badly. They are ineffectual even in achieving their own objectives, so reform is needed.

**Policy Areas.**

Is the right amount of money being spent on the right areas? If not, what should change?

**CAP:** The CAP market support policies fail to address their objectives in a cost effective way and the distribution of support is distorted and unjustifiable. With respect to adding value, the policy wastes resources to such an extent that it may be considered negative. The same could be achieved with fewer resources- or much more with what is available. The added value for the EU of having an agricultural policy in the first place is an issue of debate.

- Payments should be more specific, reflecting particular circumstances and costs. Farm income support should be tied to farm household income, and other payments to the costs of achieving the objectives. It is debatable whether farms with a high turnover should be supported for mandatory good farming practices.

**Climate change:** only €353 million was allocated to "the Environment" in 2007. This situation has supposedly improved in the 2009 budget, which is reported to focus more on climate change, with up to 10% of the total budget being allocated to cross-cutting mitigation measures. In many policy areas, such as rural development, agriculture and research and development, funding has in fact been made available for measures that should assist climate change mitigation. However, much more could and should be done in these and other policy areas. For example, consistent efforts should be made to incorporate climate change criteria in to development funding-which should involve clean technology transfers. Cohesion policy funding also needs to be closely examined to ensure that infrastructure projects are designed to keep climate change effects to a minimum.

**Cohesion/ Regional policy:** Regional policy has been generally in line with its goal of promoting cohesion. Its performance, however, has been uneven and some of its objectives have evolved for political or net balance reasons rather than economic ones. In any case, performance of the regional development funds depends largely on the merits of the strategy and programmes of the member states, which have varied considerably.

- The eligible activities for expenditures under regional policy should be revisited and more closely tied to the competitiveness and cohesion criteria. Conditionalities should be strengthened and regional fund

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2 "The UK Rebate and the CAP: phasing them both out." Nunez Ferrer.

3 2007 figures from the Commission website

4 The UK Rebate and the CAP, Nunez Ferrer
allocations should include performance related criteria that are stronger than the present performance reserve, which is based on the absorption of funds rather than the quality of execution or the actual achievement of results.

**Rural Development:**
- It is important that rural development policies are improved and their scope broadened. They should support the entire rural economy, and not just agriculture. This recommendation does not exclude support for agriculture and food, but the scope of the policies and the eligibility criteria should be revisited. Policies not aiming at agri-environmental actions should focus on areas in need. A territorial approach should be developed in which poorer areas receive the bulk of support. This is a concept already applied in regional policy. The policy also has to be freed from the CAP and the links to the distribution of direct payments must be completely severed.

**Enterprise and competition:** Given that competitiveness is a key priority for the EU, the budget does not seem to reflect this. However, other measures, other than financial ones, are being used to achieve this goal (control of regulatory burden, but regulation where necessary), so this doesn’t necessarily represent a deficiency.

**Research and Development:** Innovation is recognised as a key factor for the growth and future sustainability of the European economy. The European Commission has proposed a substantial rise in funds for research and investments which should lead to increased competitiveness. The US and Japan spend more overall on R and D, but less is financed by public funding than in the EU, so perhaps the problem is a lack of the right incentives for private R and D investment.
- The EU and its member states should review the tax and regulatory frameworks for R and D, and consider whether these make the environment too hostile for stimulating private investment and private initiatives. It is also important that the new competitiveness heading does not soon become a tool to redirect funds deducted from the CAP towards protecting net balances. Competitiveness funds should be allocated according to needs and the search for excellence and not by net balance considerations.

**External Relations and Development:** Given the importance for the EU of ensuring security of its citizens, increasing its presence abroad and helping to foster stability in the EU’s neighbourhood, the amounts allocated to these budget headings are far from sufficient. Development spending is dispersed across many different sections of the budget, whilst the European Development Fund (EDF), which focuses on ACP countries, remains outside the EU budget, as it is funded solely by member states.
- Bringing the EDF into the EU budget and a consolidation of these budget lines could help improve coordination of development policies, and make the EU better able to act effectively in this field.
- Funds for external actions should be increased significantly.
Annex

Below is a breakdown of expenditure on existing policy areas in the 2007 budget:

- Economic and financial affairs €495 million
- Enterprise €368 million
- Competition €72 million
- Employment and social affairs €1 1439 million
- Agriculture and rural development €55 910 million
- Energy and transport €1 809 million
- Environment €353 million
- Research €3 565 million
- Information society €1 435 million
- Direct research €348 million
- Fisheries €945 million
- Internal market €56 million
- Regional policy €34 638 million
- Taxation and customs union €110 million
- Education and culture €1 223 million
- Press and communication €201 million
- Health and consumer protection €545 million
- Area of freedom, security and justice €671 million
- External relations €3 575 million
- Trade €72 million
- Development and relations with ACP countries €1 244 million
- Enlargement €1 065 million
- Humanitarian aid €750 million
- Fight against fraud €73 million
- Commission’s policy coordination and legal advice €169 million
- Administration €922 million
- Budget €519 million
- Audit €9 million
- Statistics €121 million
- Pensions €997 million
THE EUROPEAN UNION BUDGET REVIEW

Introduction

As with all international organisations the European Union requires a budget. The budget pays for the EU’s running costs and more importantly finances the EU’s strategic policy programmes such as structural funds and research and development funding.

SPICe subject map 07/04 provides a summary of the way in which the European Union budget is agreed and then how it is calculated. In addition, it also provides a summary of the budget for 2007-2013.


Background

Since 1988 the European Union budget has been agreed on a multi-annual basis which is often known as the financial perspectives. The previous European financial perspective was agreed for the period 2000-2006. The current budget will run between 2007 and 2013. As part of the agreement reached for the 2007-2013 budget in December 2005, it was decided that a review of the European Union budget should take place.

The review of the budget was demanded by the United Kingdom Government, specifically, the then Prime Minister, Tony Blair’s aim was to see changes to the Common Agricultural Policy. France, one of the main beneficiaries of the CAP was keen to resist any review:

“Paris is resisting British demands that a review of EU spending in 2008-9 should lead to concrete changes to the EU’s Common Agricultural Policy before 2013.

“The real issue between Britain and France remains the UK insistence that a mid-term review of spending should lead to cuts in farm subsidies before 2013 as the UK wants.

“British officials said the proposed review would put the future of the UK rebate on the table as part of a sober, sensible discussion about the CAP. 'That would be much better than the current game of chess,' one said.”

5 “France puts EU enlargement on the line in bid to save farm subsidies” The Independent newspaper. December 13 2005
The European Council in December 2005 agreed the financial perspectives for 2007-2013. Included in the agreement was a commitment to review the EU budget.

“Europeans are living through an era of accelerating change and upheaval. The increasing pace of globalisation and rapid technological change continues to offer new opportunities and present new challenges. Against this background, the European Council agrees that the EU should carry out a comprehensive reassessment of the financial framework, covering both revenue and expenditure, to sustain modernisation and to enhance it, on an ongoing basis.

The European Council therefore invites the Commission to undertake a full, wide ranging review covering all aspects of EU spending, including the CAP, and of resources, including the UK rebate, to report in 2008/9. On the basis of such a review, the European Council can take decisions on all the subjects covered by the review. The review will also be taken into account in the preparatory work on the following Financial Perspective.”

The European Commission Communication

In May 2006 the European Parliament, European Council and the European Commission agreed that the Commission should undertake a fundamental review of the EU budget. The Commission was invited:

“to undertake a full, wide ranging review covering all aspects of EU spending, including the CAP, and of resources, including the UK rebate, to report in 2008/9.”

The Commission’s review began with the publication of a Communication on 12 September 2007. “Reforming the Budget, Changing Europe A Public Consultation Paper in View of the 2008/2009 Budget Review”. According to the consultation paper, the aim of the review is to:

“set out the structure and direction of the Union’s future spending priorities, assessing what offers the best added value and most effective results. It will also examine how the budget works, how to get the right balance between continuity and responding to new challenges, and whether it should be managed differently. Finally the review will take a fresh look at the best way of providing the resources necessary to fund EU policies.”

6 Council of the European Union Financial Perspective 2007-2013 paper 15915/05. 19 December 2005
8 Ibid
The European Commission’s consultation paper was designed to “stimulate an open debate on EU finances” at a local, regional and national level. The results of the consultation are intended to feed into the Commission’s review.

The Commission raised the following questions in its communication:

• Has the EU budget proved sufficiently responsive to changing needs?
• How should the right balance be found between the need for stability and the need for flexibility within the multi-annual financial frameworks?
• Do the new policy challenges set out here [i.e. in the Communication] effectively summarise the key issues facing Europe in the coming decades?
• What criteria should be used to ensure that the principle of European value added is applied effectively?
• How should policy objectives be properly reflected in spending priorities? What changes are needed?
• Over what time horizon should reorientations be made?
• How could the effectiveness and efficiency of budget delivery be improved?
• Could the transparency and accountability of the budget be further enhanced?
• Could enhanced flexibility help to maximise the return on EU spending and political responsiveness of the EU budget?
• What principles should underpin the revenue side of the budget and how should these be translated in the own resources system?
• Is there any justification for maintaining correction or compensatory mechanisms?
• What should be the relationship between citizens, policy priorities, and the financing of the EU budget?

The closing date for submissions to the Commission Communication was 15 June 2008.

Iain McIver
SPICe Research
31 January 2008
Background
1. The Minister for Europe, External Affairs and Culture wrote to the Committee on 6 June 2008 providing the Scottish Government’s response to the Committee’s report on an inquiry into the transposition of EU directives. The correspondence is attached at Annexe A.

2. As members will be aware, the Committee published its Report on an inquiry into the transposition of EU directives on 2 May 2008.

3. Members will note that the Minister indicates that she hopes to put the draft EU obligations handling guidance out to formal consultation in the Autumn 2008 and that the Committee would see the substance of much of these recommendations included within. The Minister indicates that she looks forward “to receiving additional comments on the content of the draft.”

4. While the Committee may wish to welcome the response, it may consider that there are several recommendations that the Scottish Government has not explicitly addressed and/or indicated that the issue will be covered in the draft guidance. The Committee may therefore wish to write to the Scottish Government at this point, while the guidance is still being developed, and highlight the following issues whose status in respect of the draft guidance currently remains unclear:

- While the Minister indicates that it is important that the Government and Parliament work closely together, the response does not confirm that the new guidance will set out explicitly how the Scottish Government intends to engage with the Scottish Parliament throughout the EU legislative process including at transposition stage, as recommended by the Committee;

- While the Minister indicates that the Scottish Government will consider producing internally a transposition plan, it is not clear
whether the Scottish Government on being notified of each obligation to implement EU legislation, will provide a transposition plan as a method of formally notifying the Scottish Parliament, as recommended by the Committee;

- Finally, while the Minister indicates that the Scottish Government is currently considering its advice for officials on the use of section 57(1) it is not clear whether the draft guidance will set out the role of the Scottish Government in those cases where transposition takes place on a UK-wide basis and how it intends to ensure that Scottish interests are still effectively represented, as recommended by the Committee.

Recommendation
5. Members are invited to consider the Scottish Government’s response and agree:

- To write to the Minister for Europe, External Relations and Culture highlight the points as set out in paragraph 5 above.
Text of letter from the Minister for Europe, Culture and External Affairs to the Convener dated 6 June 2008

In my letter of 20 May 2008, I advised you that I was in the process of considering the findings of the Committee’s inquiry into the transposition of EU Directives, and pledged to provide a response to those in due course. This letter now sets out my response to the Committee’s findings.

For information, you will wish to be aware that I hope to put the draft EU obligations handling guidance out to formal consultation in the autumn of this year. I believe that the Committee will see the substance of much of these recommendations included within, and look forward to receiving additional comments on the content of the draft.

Inquiry Recommendations and Scottish Government response

The Committee recommends that the Scottish Government’s transposition guidance should explicitly recognise the importance of early engagement and the direct connection with effective implementation.

- I agree with the Committee on the importance of early engagement in the process and the need for direct engagement with the EU. The draft Action Plan on European Engagement emphasises our commitment to engaging proactively and constructively in the EU law process, which includes actively tracking new and existing policy proposals of relevance to Scotland’s interests and engaging directly with the EU institutions where appropriate. Within the draft EU obligations guidance, we are considering how best to frame advice on the Scottish Government’s role in developing EU legislation. Within the framework of discussions on the draft Action Plan with stakeholders, we are also discussing how to maximise Scottish influence through adopting a ‘Team Scotland’ approach to early engagement with the EU institutions.

The Committee recommends that the Scottish Government should continue to develop the presentation of its EU priorities to the Parliament to include a detailed summary of the early engagement it has undertaken in relation to its EU priorities and political objectives.

- I agree with the Committee’s recommendation that the presentation of the Government’s EU priorities to the Parliament should continue to develop and have asked officials to work closely with the Committee Clerks to take this forward. We will give consideration to how information on engagement undertaken by the Scottish Government can be usefully presented to the Committee.

The Committee recommends that the Scottish Government considers the use of secondments to the EU institutions as one method for promoting Scottish interests at EU policy development stage.
• I agree that secondments to the EU are a vital part of ensuring a Scottish presence in Europe and promoting Scotland’s interests. The Scottish Government does currently operate an interchange system which encourages staff to work within the EU institutions. We will give further consideration as to how we can maximise the benefits from such secondments, both in terms of exerting influence in Brussels and making best use of the expertise they have gained on their return to the Scottish Government.

The Committee recommends that the Scottish Government’s transposition guidance should explicitly recognise the importance of early stakeholder engagement and emphasise that this engagement should start during the EU policy development stage; and the Committee recommends that the Scottish Government procedures recognise the clear role for the Government in coordinating the activities of stakeholder groups in promoting Scottish interests during EU policy development stage.

• I agree that strong, coordinated stakeholder engagement throughout the process is vital; this will ensure that any Scottish-specific concerns within draft legislative proposals are identified sufficiently early in the process for them to be addressed effectively. The ‘Team Scotland’ approach in the draft Action Plan will provide a more systematic framework for such engagement, something which we will elaborate on in the draft guidance.

The Committee recommends that the Scottish Government should consider the development of durable social partnerships in order to facilitate stakeholder engagement throughout the EU legislative process.

• We believe that durable social partnerships already exist within Scotland insofar as the Scottish Government works closely with stakeholders to develop and implement policies and legislation. We are currently reviewing the methods by which we engage with stakeholders.

The Committee recommends that the Scottish Government should consider the creation of Strategic Advisory Bodies involving “civil society” as developed by the Flemish Government to assist during the EU legislative process.

• We do not intend to create Strategic Advisory Bodies to look at EU legislation. The Scottish Government may bring together groups of stakeholders to consider EU policy and legislative proposals where appropriate; we believe this to be a more flexible and cost-effective approach in an environment where proposals are being developed that may affect a broad variety of interests.

The Committee recommends that the guidance should emphasise consideration of the purpose of the directive and what could be achieved for Scotland, preferably in close liaison with relevant stakeholders.

• Within the guidance, we are considering how best to emphasise the need for officials to give full consideration to all the relevant issues at an early
stage and throughout the process, including consideration of the purpose of a directive and what could be achieved for Scotland.

The Committee recommends that the Scottish Government should consider providing a single point of contact that could supply information on forthcoming directives and the likely timetable for transposition.

- I do not think a central point of contact for implementation would be useful. Such a unit could not maintain a sufficient level of expertise in terms of the broad range of EU policy areas, nor would it have the extensive network of contacts with interested parties that policy leads have. It will be more useful to ensure that all policy areas of the Government take the correct approach towards handling EU obligations. Officials in Europe Division act as a central point of contact on matters of overall coordination in relation to EU obligations, and they are more than happy to assist stakeholders who are looking for advice in this area or direct them to the appropriate source. They can be contacted on 0131 244 0706 or emailed at eulegislation@scotland.gsi.gov.uk.

The Committee recommends that the Scottish Government guidance should set out explicitly how it intends to engage with the Scottish Parliament throughout the EU legislative process, including at transposition stage.

- I believe it is important that Government and Parliament work closely together at the earliest possible stage in the formulation of EU law and that we carry that through to its subsequent transposition. The subsidiarity mechanism within the Lisbon Treaty will also offer a route for the Parliament to become involved in consideration at an early stage, and we are keen to support the Parliament in its role.

The Committee recommends that the Scottish Government, on being notified of each obligation to implement EU legislation, should formally notify the Scottish Parliament through the submission of a transposition plan which should include a summary of any specific Scottish interests to be addressed during the transposition process; the Scottish Government's plans for consultation with stakeholders during the transposition process; the Scottish Government’s plans for engagement with the parliament during the transposition process; an indication of whether the Scottish Government intends to use section 57(1) and the reasons why; whether primary or secondary legislation will be used for transposition; and the likely timetable for transposition.

- We will consider introducing a requirement internally to provide such a plan. In the event we decide to adopt this approach, a prospective template will be included in the draft guidance.

The Committee recommends that the Scottish Government guidance should incorporate criteria by which the Scottish Government will decide in each case whether to transpose alone or whether to elect to rely on section 57(1); and the Committee recommends that the guidance should set out clearly the role
of the Scottish Government in those cases where transposition takes place on a UK-wide basis and how it intends to ensure that Scottish interests are still effectively represented.

- Directives are implemented under Section 57(1) where this is in Scotland's best interests. Such an approach is considered on a case by case basis, but is generally the preferred option only where there is a complex mixture of reserved and devolved policy areas which are not easily separated. The standard presumption in this Government will be against the use of these provisions, unless they deliver a significant benefit to Scotland. Within the guidance, we are considering how best to provide advice for officials on this.

The Committee recommends that the Scottish Government guidance should provide detailed guidance on the provision of transposition notes.

- We are considering how best to include advice within the guidance on the provision of transposition notes.

The Committee recommends that the guidance should explicitly recognise that early stakeholder engagement can address legitimate concerns about “gold plating” and “under plating”.

- As the Action Plan makes clear, we are committed to ensuring that the implementation of any EU obligation places the least possible regulatory burden on Scottish businesses and stakeholders. I believe that stakeholders can and do play a key role in ensuring high quality implementation. Within the draft guidance, we will consider how best to emphasise the message contained within the Action Plan.

The Committee recommends that the guidance should address specifically those cases where the Scottish Government considers that the directive provides scope for a “Scottish solution” and the process that will be followed by the Scottish Government in such cases.

- We are considering how best to set out within the guidance advice on when a separate Scottish policy approach would be appropriate.

The Committee recommends that the guidance should provide for regular review and evaluation of transposing legislation, including the role of regulators.

- We are considering how best to include information within the guidance on our approach to post-monitoring of implementation.
I hope you find this response useful. The work of this Inquiry has proved very helpful to the Government in the development of its revised handling of EU obligations.
European and External Relations Committee

13th Meeting, 2008 (Session 3)

Tuesday 24 June 2008

Scottish Government’s report on the transposition of EU legislation

Background

1. The Minister for Europe, External Affairs and Culture wrote to the Committee on 20 May 2008 to provide an update on the Scottish Government’s ongoing transposition of EU Directives. The report attached at Annexe A is current as of 31 March 2008. It sets out each Directive’s transposition deadline, the responsible Cabinet Secretary or Minister, the lead official within the Scottish Government, and a summary of the action required to implement the Directive.

2. Members will recall that the Committee receives a regular report from Scottish Ministers providing the latest information on the transposition of EU directives.

Recommendation

3. Members are invited to note the Scottish Government’s latest transposition report.

Committee Clerk
June 2008
REPORT ON SCOTTISH GOVERNMENT'S TRANSPOSITION OF EU DIRECTIVES

I am writing to update you on the Scottish Government's ongoing transposition of EU Directives. The attached report provides further information, and is current as of 31 March 2008. It sets out each Directive's transposition deadline, the responsible Cabinet Secretary or Minister, the lead official within the Scottish Government, and a summary of the action required to implement the Directive.

You will note from the report that a total of 16 Directives are currently in the process of being transposed. In cases where transposition is outstanding and the deadline has passed, I should emphasise that the Government is working to ensure that such Directives are transposed as a priority.

I hope you find this update helpful. On a separate point, I was pleased to see the Committee publish its report of the inquiry into the transposition of EU Directives on 2 May. I am considering the recommendations made in that report carefully and will of course respond in due course.

Yours,

LINDA FABIANI
<table>
<thead>
<tr>
<th>Directive</th>
<th>Transposition Deadline</th>
<th>Lead Minister</th>
<th>Lead Official</th>
<th>Action required</th>
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</thead>
<tbody>
<tr>
<td>Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage</td>
<td>31/12/2004</td>
<td>Minister for Environment</td>
<td>Kevin Philpott, Environmental Quality Directorate</td>
<td>Consultation has been ongoing and has led to the policy requiring further refinement. Furthermore, we are taking a significantly different approach to transposing the Directive from England and Wales. Following more detailed work, a further public consultation on draft regulations and supporting guidance will be launched shortly, leading to anticipated transposition by 31 December 2008.</td>
</tr>
<tr>
<td>Directive 2006/123 on services in the internal market</td>
<td>01/06/2005</td>
<td>Cabinet Secretary for Finance and Sustainable Growth</td>
<td>Andrew McConnell, Energy Enterprise &amp; Tourism Directorate</td>
<td>The Directive is a significant one and cuts across a number of policy areas. Officials in various parts of the Scottish Government are checking legislation and identifying the action required. We have arranged for the UK Government to deliver a presentation to 'competent authorities' outlining impact and action required by them.</td>
</tr>
<tr>
<td>Directive 2003/105 amending Council Directive 96/62/EC on the control of major accident hazards involving dangerous substances</td>
<td>01/01/2006</td>
<td>Minister for Transport, Infrastructure and Climate Change</td>
<td>Alan Cameron, Built Environment Directorate</td>
<td>Planning Directorate are keen to minimise the disruption and economic impact to industry and to ensure consistency across the UK. A number of issues arose during consultation around transitional arrangements and deemed consents. We are currently working with the UK Government and Devolved Administrations to resolve outstanding issues and align, as far as possible, the timescales for bringing regulations into force. These have yet to be agreed.</td>
</tr>
<tr>
<td>Directive 2003/35 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to Justice Council Directives 85/337/EEC and 96/61/EC</td>
<td>30/04/2007</td>
<td>Cabinet Secretary for Rural Affairs</td>
<td>Trevor Owen, Europe External Affairs &amp; Culture Directorate</td>
<td>This is a complex Directive affecting 14 regimes across Scotland. Public consultation raised a number of complex issues which took time to be resolved across the UK. Work on additional definitions continues in respect of a revised version of Electricity Regulations (the last set of implementing regulations) and these are not expected to be laid until the summer of 2008 at the earliest.</td>
</tr>
<tr>
<td>Directive 2004/41 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending council directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC</td>
<td>01/01/2008</td>
<td>Cabinet Secretary for Rural Affairs</td>
<td>John Peerless, Rural Directorate</td>
<td>Directive 2004/41 repeals a number of earlier Directives that were implemented by the Products of Animal Origin (Import and Export) Regulations 1996. Plans to overhaul these Regulations have been badly affected by the diversion of resources to deal with the recent outbreaks of Foot and Mouth Disease (FMD) and Bluetongue. At present it is not possible to be any more definite than that we hope to amend the 1996 Regulations by summer 2008.</td>
</tr>
<tr>
<td>Directive 2007/10 amending annex II to Council Directive 92/119/EEC as regards the measures to be taken within a protection zone following an outbreak of swine vesicular disease</td>
<td>24/03/2008</td>
<td>Cabinet Secretary for Rural Affairs</td>
<td>Alistair Douglas, Rural Directorate</td>
<td>Resources transferred to the Bluetongue crisis caused a delay in transposition across the UK. We are currently working with the UK Government and devolved administrations to develop a common approach, and hope to have the Directive transposed as soon as possible.</td>
</tr>
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## EU Directives for Which Transposition is Outstanding (as at 31 March 2008)

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<tr>
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<tr>
<td>Directive 2006/21 on waste</td>
<td>01/05/2008</td>
<td>Minister for Transport, Infrastructure and Climate Change</td>
<td>Iain Mitchell, Built Environment Directorate</td>
<td>A UK Transposition Working Group was set up to consider the various options. This has resulted in delays in taking forward concrete proposals since UK Government Departments could not agree on the most appropriate implementation route. These matters have now been resolved and work is now being taken forward with some priority. The Scottish Government issued a consultation paper in April 2008 on how it intends to transpose the Directive in Scotland. The closing date for the consultation is 7 July 2008, and thereafter it is hoped to lay Regulations as soon as possible.</td>
</tr>
<tr>
<td>Directive 2006/7 concerning the management of bathing water quality and repealing Directive 76/160/EEC</td>
<td>01/05/2008</td>
<td>Minister for Environment</td>
<td>Ian Morrison, Environmental Quality Directorate</td>
<td>Solicitors require to complete unexpected additional work on the implementing regulations. Implementation is being concluded as a priority.</td>
</tr>
<tr>
<td>Directive 2006/88 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquaculture animals</td>
<td>31/05/2008</td>
<td>Minister for Environment</td>
<td>Dave Wyman, Marine Directorate</td>
<td>Consultation on the implementing regulations has now been concluded. However, additional work is still required on these and transposition is not expected until the end of May 2008 at the earliest.</td>
</tr>
<tr>
<td>Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators</td>
<td>18/01/2009</td>
<td>Cabinet Secretary for Rural Affairs</td>
<td>John Convery, Environmental Quality Directorate</td>
<td>This Directive is being partially transposed under Section 57(1) of the Scotland Act. It covers a mix of reserved and devolved matters. For the most part, the devolved elements cannot be addressed coherently by Scotland-only Regulations. Therefore, BERR (UK Government) will, at the request of Scottish Ministers, transpose all but one element of the Directive. Scotland will transpose Article 12, on the treatment and recycling of waste batteries. A first stage consultation concluded on 13 March 2008 and the responses are currently being assessed. After this, there will be a consultation on draft regulations.</td>
</tr>
<tr>
<td>Directive 2006/118 on the protection of groundwater against pollution and deterioration</td>
<td>26/11/2009</td>
<td>Minister for Environment</td>
<td>Frances Brewis, Environmental Quality Directorate</td>
<td>Options are currently being developed for implementation. This is likely to require amendment to the Controlled Activities (Scotland) Regulations.</td>
</tr>
<tr>
<td>Directive 2007/60 on the assessment and management of flood risks</td>
<td>20/12/2009</td>
<td>Minister for Environment</td>
<td>Frances Conlan, Environmental Quality Directorate</td>
<td>The Directive is being transposed through the proposed Flooding Bill, the consultation period for which concluded on 23 April 2008. We are proposing that the Bill be introduced to Parliament this year. We are working closely with DEFRA on ensuring parallel interpretation and transposition of the Directive.</td>
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</table>
## EU Directives for Which Transposition is Outstanding (as at 31 March 2008)

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<td>Directive 2007/66 with regard to improving the effectiveness of review procedures concerning the award of public contracts</td>
<td>28/12/2009</td>
<td>Cabinet Secretary for Finance and Sustainable Growth</td>
<td>Jessie Laurie, Procurement Directorate</td>
<td>Consultation on options will be launched in June 2008.</td>
</tr>
<tr>
<td>Directive 2007/43 laying down minimum rules for the protection of chickens kept for meat production</td>
<td>30/06/2010</td>
<td>Cabinet Secretary for Rural Affairs</td>
<td>Ian Strachan, Rural Directorate</td>
<td>A UK-wide Project Group has been formed which is currently looking at the best way to implement the Directive</td>
</tr>
<tr>
<td>Directive 2007/33 on the control of potato cyst nematodes (PCN)</td>
<td>01/07/2010</td>
<td>Cabinet Secretary for Rural Affairs</td>
<td>Jean Waddie, Rural Directorate</td>
<td>A working group is currently looking into options for implementation.</td>
</tr>
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</table>
European and External Relations Committee

13th Meeting 2008 (Session 3)

Tuesday 24 June 2008

Brussels Bulletin

Introduction

1. At its meeting on 18 March 2008 the Committee agreed to include the Brussels Bulletin on the Committee’s agenda. The latest Brussels Bulletin – Issue 15 June is attached at Annexe A.

Purpose of the Brussels Bulletin

2. As Members will be aware, the Brussels Bulletin is produced by the Parliament’s European Officer and is based on the key themes identified by the Committee as a result of its consultation on the Commission’s Legislative and Work Programme for 2008. At its meeting on 19 February 2008, the Committee agreed that the European Officer should focus on four key themes over the coming year:

   - Energy and Climate Change
   - Maritime Issues (including Fisheries)
   - Structural/Reform Issues
   - Economic and Social Issues

3. The European Officer provides early intelligence on expected developments, actions of the key players and detail of debate on these key themes, primarily through the Brussels Bulletin. This is circulated to the subject committees and published on the website. More detailed briefing can also be commissioned by a committee on any specific issue.

Recommendation

4. The Committee is invited to note the latest issue of the Brussels Bulletin.

Committee Clerk
June 2008
NEWS IN BRIEF

**Lisbon Treaty**
The people of Ireland voted against the ratification of the Lisbon Treaty (**12 June 2008**). The vote has created uncertainty across the EU with a number of possible scenarios to resolve the situation being discussed, including providing further sovereignty guarantees to Ireland, creating a two tier Europe, and re-staging the referendum.

The issue will be the main topic of discussion at the Summer Council.

**Summer Council**
The Heads of Government will meet in Brussels (**19 – 20 June 2008**). Top of the agenda will be discussion of the Irish referendum. Other issues to be discussed include, rising food/fuel prices, the social agenda and energy packages and asylum.

**Energy Developments**
The Energy Council (**5 – 6 June 2008**) discussed the energy package – burden sharing, the emission trading scheme, carbon capture and storage, renewables and biofuels.

The Ministers were optimistic of securing agreement on the package by **December 2008**.

**Energy unbundling**
General agreement was reached on the unbundling of energy companies, based upon the third way compromise brokered by the Commission (**6 June 2008**). The issue are to be discussed in the European Parliament (**17 June 2008** for electricity and **8 July 2008** for gas).

**EU Social Agenda**
The Social Agenda Package will be launched on **2 July 2008** at the beginning of the French Presidency. The package will include proposals on cross-border health, modernising education systems, improving workers’ rights and anti-discrimination.

**Fuel subsidy**
The Commission has made a U-turn on subsidies for fishermen facing difficulties over the rising price of fuel. The full package of supporting measures will be presented on **24 June 2008**.

**Scottish MEP contribution**
The third article in the on-going series of MEP contributions comes from **David Martin MEP** on the subject of trade.
THE LISBON TREATY
Proposal
The Lisbon Treaty

Current status
In a referendum, the people of Ireland voted against ratification of the Lisbon Treaty (12 June 2008).

What’s happening?
The Irish people, in the EU’s only popular vote, rejected the Lisbon Treaty by 53.4% to 46.6%, on a turnout of 53.1%.

Following the vote, there is much initial confusion within and beyond the institutions of the EU. Commission President José Manuel Barroso who had earlier remarked that ‘there was no plan B,’ if the the Lisbon Treaty was rejected, stated: ‘At the European Council [19 – 20 June 2008], we will want to confer with each other, to hear [Irish] Prime Minister Cowen’s analysis, as well as his ideas on how to address the concerns expressed by those who chose to vote no’.

France, the next holder of the EU Presidency, has also expressed conflicting views. The Prime Minister declared the treaty, ‘dead’, while the French Foreign Minister called for the ratification process to continue in other countries. The ‘dead’ comment was also echoed by the President of the Czech Republic, which will hold the rotating presidency after France. President Vaclav Klaus, called the Irish result a, ‘victory of freedom and reason’ and said that ‘ratification cannot continue’. His view was echoed in the Czech senate.

Following the meeting of EU foreign ministers in Luxembourg (16 – 17 June 2008) options are beginning to emerge, with consensus likely to become firmer after the upcoming Summer Council (19 – 20 June 2008). It is possible that a detailed course of action may not emerge fully until the next Heads of Government meeting under the French Presidency (16 – 17 October 2008). The three options currently being discussed:

• A Two-Speed Europe. Since the ratification process is expected to continue in the remaining eight countries, Ireland is likely to be further isolated. A number of countries, led by Luxembourg, are advocating the full implementation of the treaty with Ireland left to join the group when (or if) it can. The new ‘high speed’ Europe has been termed the ‘Club of the Few’ by the Prime Minister of Luxembourg. The Spanish Prime Minister José Luis Rodriguez Zapatero has dismissed talk of this option as ‘premature’. The Irish Foreign Minister, Michael Martin, also stated at the same gathering that ‘there were no quick fix solutions’.

A number of problems have been highlighted with this option: (1) the wording of the treaty requires the ratification by all 27 member states; (2) it is unclear how some of the stipulations of the treaty could in effect be imposed on Ireland (e.g. the adjustment of voting weight in Council, the potential loss of a Commissioner, etc.); (3) it is unpopular amongst the new member states and the smaller member states that fear potential relegation to a second division for future ‘failures’.

• Sovereignty guarantees for Ireland. While the text of the treaty cannot be changed without beginning the ratification process all over again, it would be possible to append
‘explanatory protocols’ that explicitly clarify issues of concern to Ireland, such as taxation, neutrality and abortion. These additional protocols could be presented to the Autumn Council (16 – 17 October 2008) for adoption, allowing the ratification to proceed with only a limited delay.

While this may prove to be the most popular option, there remain a number of concerns: (1) since there would be no substantive changes to the treaty, it risks suggesting the Irish people did not understand the treaty and simply made a mistake; (2) it assumes that the explanatory protocols would be adequate to satisfy the Irish people; (3) it assumes that another referendum would not be required.

- **Referendum revisited.** Following ratification by the other member states, and the determination of specific conditions/concessions for Ireland (e.g. guarantees on neutrality, taxation and abortion), a second Irish vote could take place (as happened in Ireland in 2001 and Denmark in 1992). If the Irish support the revised treaty, then full implementation could take place albeit later than **1 January 2009**.

Problems with this option include: (1) the significant delay introduced by a second vote, and the impact on the EU in the interim; (2) the appearance that a member state will be compelled to hold referenda until it comes up with the right answer; (3) the possibility that a second vote would also be lost.

The fourth option, not being openly discussed, is the abandonment of the treaty altogether.

Whatever the course of action taken by the EU institutions and the member states, it seems unlikely that the ratification timetable can be maintained, and the **1 January 2009** date for full ratification is likely to slip. Given the events of next year (Parliamentary elections, swearing in of new Commission, etc.) the delay could be significant.

Another potential obstacle to the progress of the treaty is the ongoing situation in the Czech Republic, where the Czech Constitutional Court is currently analysing the treaty at the request of the Senate (the upper house of the Czech Parliament) to assess whether the Treaty is in accordance with Czech law.

**SUMMER COUNCIL**

**Proposal**
N/A

**Current status**
The EU Heads of Government summer Council will take place in Brussels (**19 – 20 June 2008**).

**What’s happening?**
The next European Council meeting will be dominated by a discussion on the implications of the Irish ‘no’ vote. Also on the agenda will be rising food/oil prices, the EU Energy/Climate change package, issues of Social Policy and asylum.

**Irish ‘no’ vote.** The time originally allocated for a discussion on the implementation of the Lisbon Treaty will now be devoted to discussing the implications of the Irish referendum. The Irish Prime Minister, Brian Cowen, will be invited to give his assessment of the situation in Ireland, and to explore
how progress can be made in addressing the concerns of the Irish people.

Discussion will then centre on the options available to the community, with proposals likely to be tabled at the October Council meeting (16 – 17 October 2008).

Rising Prices. An orientation discussion will take place on the rising prices of fuel and food, and the knock-on impact on inflation across the community. Biofuels are also expected to be discussed in this context.

Energy issues. The energy package will be discussed, with the Slovenian Presidency confident that agreement on the total package can be secured by December 2008.

Social issues. In advance of the publication of the new Social Agenda package scheduled for July 2008 (see below), discussion will centre on two directives currently progressing through the system – the working time directive and the directive on temporary agency workers.

Common Asylum System. As part of the debate around the European Neighbourhood Policy, discussion will focus on combining the Barcelona dialogue with the new proposed Mediterranean Union. The new entity will be entitled the Barcelona Process Union for the Mediterranean, and will be launched on 13 July 2008 in Paris.

ENERGY DEVELOPMENTS
Proposal
The EU ‘energy package’

Current status
The energy package was discussed at the EU Energy Council (6 June 2008).

What’s happening?
The EU Energy Council held policy debates on the main aspects of the climate change/energy package. The UK was represented by Hilary Benn MP, Secretary of State for Environment, Food and Rural Affairs.

The key area of disagreement was how member states will share the 20% CO₂ reduction target. Seven member states, led by Hungary, called for a re-evaluation of how national CO₂ reduction targets are calculated, with the baseline year for calculation a key point of contention. The Commission has proposed using 2005, while the group of seven prefer 1990 (arguing that the cuts they achieved since 1990 following post-communist de-industrialisation should be better reflected in their national targets).

Further discussion focused on other key aspects of the package: (1) EU emission trading system (ETS) review; (2) carbon capture and storage; (3) renewables; and (4) biofuels.

Emission Trading System. The ministers focused on the ‘allocation method’, i.e. how carbon credits would be issued/auctioned and how the monies raised for would then be allocated. There was also discussion on the replacement of the current system of national allocation plans with the setting of an EU-wide cap. A number of
member states raised concerns about the ‘carbon leakage’ whereby energy-intensive industries migrate outside the EU. Ministers also sought to establish which new sectors should be integrated into the scope of the ETS, the reference year or period to calculate the reduction targets per country and how to set intermediate targets.

Other issues discussed include the quantity of allowances set aside for new entrants and the size of installation to be potentially excluded from the scope of the scheme.

**Carbon Capture and Storage (CCS).** Ministers explored the remaining outstanding issues including the nature of the ‘storage permits’, the composition of CO₂ stream, the transfer of responsibility after closure of a storage site and how close Member states are to operating a CCS system.

**Renewables.** Concern was expressed by several member states (including the UK) regarding the current renewables package, with calls for greater flexibility in the determination of targets. The UK would like to see a mechanism that would allow EU countries to collaborate towards achieving their individual goals via joint projects, or allow two member states to combine their targets. The UK also envisages countries that reach their targets early being able to transfer surplus renewable energy to states that are falling behind.

Italy would like to see the inclusion of ‘pro-capita’ criteria within the renewables formula which would in effect mean that less populous states that pollute less would have lower targets. Austria, Luxembourg, Cyprus and Malta support this position.

**Biofuels.** The key aspect of discussion was the determination of sustainability criteria (environmental and social) that should be applied to all biofuel projects. Concern was raised about how the greenhouse gas emission savings would be calculated. Italy requested that the biofuels proposal be viewed within the context of rising food prices.

It is anticipated that a first reading agreement on the climate and energy package will be secured in December 2008 (following the December Heads of Government Council and European Parliament plenary votes).

**ENERGY UNBUNDLING Proposal**

**Current status**

Energy unbundling was discussed at the June Energy Council (6 June 2008).

**What’s happening?**

At the second day of the Energy Council EU Energy ministers discussed energy focusing upon the ‘third way’ of liberalisation advocated by France and Germany. A ‘general agreement’ was reached allowing vertically integrated energy companies to retain ownership of their transmission grids while leaving the day-to-day management in the hands of an independent transmission operator (ITO). The alternative model will be subjected to a review by the Commission two years after entry into force of the directive, according to the agreement. The agreement was welcomed by the UK government.

Ministers also discussed the new EU Agency for the Cooperation of Energy Regulators which will oversee the
functioning of energy markets, particularly the cooperation between transmission operators and agreed that the new body would be independent of the Commission and member states but that its powers would not supersede those of national regulators (contra the position of the European Parliament’s Energy Committee).

The ‘general agreement’ will be discussed during the next EP’s first reading on the electricity market proposal at its plenary session (17 June 2008) and again when the gas market proposal receives its first reading (8 July 2008).

EU SOCIAL AGENDA
Proposal
The EU ‘Social Agenda’ package

Current status
The Commission is expected to launch its social agenda package on 2 July 2008. (The European Officer will provide a briefing on the package once it is launched).

What’s happening?
The Social agenda package follows on from the social agenda stock taking exercise of 2007 and has been declared a priority of the French EU Presidency. The Social Agenda will form part of the EU’s Lisbon Strategy on Growth and Jobs. There are expected to be four main components to the package (1) cross-border health care; (2) improving workers’ rights; (3) promoting better education systems and (4) anti-discrimination.

Cross-border healthcare. The long awaited cross-border healthcare proposal is intended to improve conditions for patients looking for treatment in other member states. It had originally been expected to emerge in November 2007 but had proved controversial. The proposal aims to facilitate the mobility of patients and professionals by clarifying the entitlement, cost issues/burden and by improving the cross-border interoperability of electronic health records.

Modernising education systems. The Commission will bring forward initiatives on skills and intends to support member states in their efforts to modernise their education systems to further reduce unemployment rates, especially among young people. These proposals are also set to include new ideas on multilingualism.

Improving workers rights. The Commission proposes a revision of the legislation on the European Works Councils. The current law (dating from 1994), gives workers the right to consultation and information on company decisions, but trade unions have been calling for it to be revised due to its poor implementation by companies. Social Affairs Commissioner Vladimir Špidla still contends that it should be possible to secure greater commitment from companies on a voluntary basis, but is ready to legislate if co-operation is not forthcoming.

Anti-discrimination. The Commission intends to tackle gender equality by closing pay gaps and facilitating better conciliation between private and professional life.

The Commission is currently trying to broker agreement over directives on temporary agency workers and working time ahead of the publication of the
social package. The French would also like to see progress on the Portability of Supplementary Pension Rights Directive and the development of a framework directive for social services of general interest (SSGIs) during their presidency.

**FUEL SUBSIDY**

**Proposal**
N/A

**Current status**
Following demands (and protests) by fishermen regarding the rising cost of fuel, the Commission has published a series of measures to tackle the problem (17 June 2008).

What’s happening?
Although the Commission had earlier this month (2 June 2008) dismissed calls for support to Europe’s fishermen, the European Commission published a series of measures ‘to tackle the immediate social and economic hardship’ of rising fuel costs on fishermen.

The measures include allowing governments to raise the aid cap to €100k for every vessel over a 3-year period, (up from the current €30k). The aid would however still be capped at €100,000 for every fishing firm. Other elements will include:

- emergency aid for temporary cessation of activities
- decommissioning aid for fleets that accept emergency aid for temporary cessation of activities
- decommissioning aid for fleets that accept substantial restructuring
- aid to encourage a switch towards more energy-efficient and environmentally-friendly fishing methods
- market measures to increase the value of fish.

The draft measures will be presented at a meeting of agricultural ministers (24 June 2008).

In a related matter, Belgian farmers and taxi drivers are staging protests on 18 June 2008 in Brussels, raising concerns that the concessions awarded to fishermen will be just the beginning of further subsidies for other hard pressed industries.

**OTHER NEWS**

- **Mediterranean Union.** The French Presidency of the EU will launch the ‘Union for the Mediterranean’ at a major gathering in Paris (13 July 2008). France has already offered to share the presidency of the union with Egypt and has offered its secretariat to Tunisia. An emerging issue of concern to certain African nations is the inclusion of Israel.

- **Lisbon Treaty.** Three further countries have ratified the Lisbon Treaty - Finland, Estonia and Greece (11 June 2008).

- **Tobacco subsidies.** Under the present CAP, tobacco farmers are still eligible for direct farm payments, i.e. subsidy for growing tobacco. These payments were partially decoupled in 2004 as part of the ‘Mediterranean reforms’ (affecting also olives, cotton and other specifically ‘Mediterranean’ crops). The CAP Health Check (of May 2008) now proposes a full decoupling, replacing direct farm payments with the single area payments under the Single Payment Scheme. Further details of the Commission’s position on tobacco can be found [here](#).

Please note that the next Brussels Bulletin will appear in September 2008.
formalised within the framework of the Lomé Convention. In 2000 the Cotonou Agreement succeeded the Lomé Convention. Discontent by non ACP developing countries had led to a legal challenge at the World Trade Organisation (WTO) which, applying its principle of non-discrimination, ruled that the EU could no longer offer special trade preferences to ACP countries and not to other developing countries.

DAVID MARTIN MEP

For the last year the content and, perhaps more importantly, the spirit of Economic Partnership Agreements (EPAs) - the new trade agreements between the EU and African, Caribbean and Pacific (ACP) countries - have been the subject of a vigorous debate in the European Parliament in particular within its Trade and Development Committees. Although an official parliamentary report on the EPAs reached so far with 35 ACP countries has not yet been drafted, the debate is ongoing and has already shown that many Trade, Development and other MEPs are deeply concerned that the European Commission has irreversibly damaged the unique and privileged trading relationship that Europe has had with ACP countries since 1975.

Up until 2000, this relationship was based on the principle of non reciprocal market access for ACP countries and was

The Cotonou Agreement heralded a new chapter in ACP-EU cooperation for several reasons. First, the Agreement sought to address the issue of commodity dependence. Reliance on low value agricultural exports had meant that poverty and unemployment had worsened in Africa over the previous 25 years despite sustained economic growth. In recognition of this and other economic constraints which the provisions of the Lomé Convention were ill equipped to deal with, the Cotonou Agreement set out three highly honourable and widely welcomed objectives for Economic Partnership Agreements: eradication of poverty, the sustainable development of ACP countries and, lastly, their integration into the global economy while maintaining existing and expanding new regional markets. Similarly welcomed was the principle of equal partnership and ACP ownership of development strategies - the cornerstone of the EPA negotiating process.

However the best laid schemes o’ mice an’ men gang aft a-gley. Good intentions and careful planning in the earlier stages of EPA negotiations gave way to power play tactics by the Commission as the deadline of December 2007 grew closer. Many ACP countries have been disadvantaged by the significant power imbalance: the Ivory Coast for example will now open up 60% of its goods to EU companies within 5
years, 2 years before Kenya even begins its liberalisation. The Ivory Coast's heavy reliance on the EU market for its exports put it in a weak negotiating position when the Commission threatened tariff hikes if it missed the December deadline.

The power imbalance was compounded by the Commission's commercial approach to the principle of reciprocity within EPAs. This principle in itself marks a fundamental change from the provisions of the Lomé Convention. Arguably, however, it is the fact that the Commission has used reciprocity to push for fast paced and far reaching liberalisation of goods and, more worryingly, of services and investment that has drawn widespread criticism.

Strong arm tactics such as these are at the crux of understanding why EPA negotiations have strained ties between the Commission and ACP governments as well as drawing criticism from many sectors of society. Within the European Parliament at least there is a feeling that the Commission has undermined the guiding principle of equal partnership for EPA negotiations and, in so doing, undermined the trust and cooperation that has been the backbone of ACP-EU development since 1975.

The challenge for MEPs now, especially those in the Trade and Development Committees, is to put pressure on the Commission to reconsider the initialled EPAs. As they are not due to be signed until later this year, there is still time to remove or modify aspects of the deals with which ACP countries are unhappy. For EPAs to be concluded in the spirit of the original Cotonou aims, ACP countries must be able to take ownership of their development strategies. Only then can the EU reject the claim that it wants not equal partnership but postcolonial control over ACP countries.

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## UPCOMING EVENTS & MEETINGS

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- **Closing date**: consultation on oil stock legislation
- Further fuel protests in Brussels to be staged by farmers and taxi drivers
- **Closing date**: consultation on offshore wind energy
- **Closing date**: consultation on Energy Performance of Buildings Directive
- Conference: ‘Cutting red tap in Europe’
- EP Climate Change Committee 8\(^{th}\) thematic session on CO\(_2\) reduction in short term
- Agriculture & Fisheries Council
- Fisheries Commissioner Joe Borg will present package of support measures for fishermen.
- Possible publication date of Cross Border Health Directive (likely to be postponed to 2 July 2008)
- Environment Council
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