



The Scottish Parliament
Pàrlamaid na h-Alba

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

AGENDA

5th Meeting, 2011 (Session 4)

Tuesday 25 October 2011

The Committee will meet at 2.00 pm in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private; and discussion of the Cabinet Secretary's evidence and determination of issues to be highlighted to the Scotland Bill Committee in private at a future Committee meeting.
2. **Scotland Bill – EU dimension:** The Committee will take evidence from—

Professor Sir David Edward, former Judge of the Court of Justice of the European Communities;

David Crawley, former Scottish Government Europe Director and Brussels representative;

and then from—

Professor Laura Cram, Strathclyde University;

Professor Michael Keating, University of Aberdeen.
3. **European Commission Work Programme (CWP) priorities:** The Committee will consider draft criteria which will inform the annual selection of the Parliament's European priorities.
4. **Brussels Bulletin:** The Committee will consider the latest edition of the Brussels Bulletin.
5. **Scotland Bill – EU dimension:** The Committee will consider the evidence taken earlier in the meeting.

EU/S4/11/5/A

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The papers for this meeting are as follows—

Item 2

Note by the Clerk and SPICe

EU/S4/11/5/1

Item 3

Note by the Clerk

EU/S4/11/5/2

Item 4

Note by the Clerk

EU/S4/11/5/3

European and External Relations Committee

5th Meeting, 2011 (Session 4), Tuesday, 25 October 2011

Scotland Bill – EU dimension

Introduction

1. The European and External Relations Committee has agreed to conduct an inquiry into the EU dimension of the Scotland Bill, and to report its findings to the Scotland Bill Committee.

2. The Committee's remit for this inquiry is:

To consider and report on the Scottish Government's proposed amendment to the Scotland Bill which seeks '*to put Scottish Ministers' attendance at [EU] Council of Ministers' meetings on a statutory footing*'¹. The Committee will also examine the process whereby the UK Government negotiating position for European Council meetings is determined, and the role that the Scottish Government plays in this procedure.

Purpose of evidence session

3. As part of its inquiry, the Committee will take oral evidence at this meeting from two panels of witnesses and has received written evidence from these witnesses and other interested persons. Brief biographies of all witnesses and submitters of written evidence are in Annex A. The written evidence received is in Annex B.

4. The written evidence has highlighted the following themes which the Committee may wish to follow up in oral evidence:

- Stakeholders' views on the contribution made by Scottish Ministers when they were able to attend Council of Ministers' meetings.
- Stakeholders' views on the contribution made by Scottish officials when they were able to attend Council working groups.
- The advantages or disadvantages of placing Scottish Ministers attendance at Council of Ministers' meetings and Scottish officials' attendance at Council working groups on a statutory footing.
- The importance of the meeting of the Joint Ministerial Committee (Europe) and other such meetings where the UK negotiating position is agreed, and the role that the Scottish Government plays in that process.

¹ <http://www.scotland.gov.uk/Resource/Doc/1124/0120113.pdf>

5. Additionally, the Scotland Bill Committee in its call for evidence asked for views on the following themes which the EER Committee may wish to pursue in this session:

- Stakeholder's views on the Scottish Government's proposal that Scotland needs more influence in European Union negotiations and particularly in the Council of Ministers.
- Whether any lessons can be learned from arrangements in other Member States.

Background

6. Background papers prepared by SPICe for this evidence session are included as Annex C.

Committee Clerk
October 2011

Annex A – witness biographies

As part of its inquiry, the Committee will take oral evidence from two panels of witnesses. Brief biographies of these witnesses are as follows:

Professor Sir David Edward is currently Professor Emeritus at the School of Law, University of Edinburgh. His background includes: Admitted Advocate, 1962; QC (Scotland), 1974; Judge of the Court of First Instance, 1989-92; Judge of the Court of Justice of the European Communities, 1992-2004. Professor Edward was not able to submit written evidence due to other commitments.

David Crawley was involved in EU negotiations from a Scottish and a UK perspective for several decades until he left the civil service in 2006. He was Head of Agriculture in the Executive from 1999 to 2002, responsible for the renegotiation of the Common Agricultural Policy; and Scottish Executive Europe Director and Brussels representative 2005-6.

Professor Laura Cram of the University of Strathclyde was Special Advisor to the European and External Relations Committee for its inquiry into the Impact of the Treaty of Lisbon on Scotland (2009- 2010). Her research focus is primarily the European Union, specifically in relation to the social policy of the EU and the impact that the policies and activities promoted by EU institutions have had on the relationship between the EU, member states and their citizens.

Professor Michael Keating is Professor of Politics at the University of Aberdeen, and from 2000 until 2010 was a Professor at the European University Institute, Florence. He has worked extensively on regions in Europe and has been a consultant for the Committee of the Regions.

Written evidence has also been received from Michael Aron and George Calder who are not available to give oral evidence.

Michael Aron is currently HM Ambassador to Iraq based in Baghdad. He was EU Director for the Scottish Government and head of the Scottish Government's EU Office in Brussels from 2007-2009.

George Calder was Head of the Scottish Government EU Office from its inception in July 1999 until he retired in November 2004. Prior to that he was Head of the European Funds and Co-ordination Division of the Scottish Office (during which period he conducted a review of how the Scottish Office related to the European Union) and also worked in the Cabinet of a Scottish European Commissioner.

Annex B – written evidence

Written evidence from David Crawley

Background

1. This note outlines the background against which I am able to comment on the issues raised by this inquiry; indicates certain key conditions for effective involvement by the Scottish Government in EU negotiations; and comments on the proposed statutory duty.
2. I was involved in EU negotiations from a Scottish and a UK perspective for several decades until I left the civil service in 2006, including:
 - Development of the Common Fisheries Policy from 1977 – 1981;
 - As Counsellor in the UK Permanent representation to the EU from 1990 to 1994 I was involved in a series of negotiations of importance to Scotland such as the Habitats Directive among much other environmental legislation and regional policy including the 1992 renegotiation of the structural fund measures;
 - As Head of Agriculture in the Executive from 1999 to 2002, the renegotiation of the Common Agricultural Policy; and
 - As Scottish Executive Europe Director and Brussels representative in 2005-6, several significant issues before, during and after the last UK Presidency of the EU.
3. There will no doubt be differing views about the outcomes of each of these negotiations but substantial account was taken of the Scottish interest in each case. Despite the massive changes in Scottish governance over that period there are some general lessons for effective involvement, which are likely still to be valid.

Conditions for successful involvement

4. I would emphasise five conditions in particular, as the basis for effective involvement in EU negotiations:
 - There needs to be **a significant and clearly articulated Scottish interest**. This is overwhelmingly the case in respect of fisheries, agriculture, regional policy, environment and justice policy. (I am not ignoring other areas where there are often key issues for Scotland and much for Scotland to contribute but it depends on the actual current agenda and the extent to which there is a distinct Scottish interest.)
 - There should be **consistent involvement by Scottish officials and Ministers**. Our best successes have emerged when we have become respected for our expertise in a particular area and have contributed

usefully to UK positions over the period of a negotiation; and where official involvement has been built on by consistent Ministerial support and, where necessary, presence.

- **Full consultation between UK and Scottish officials and Ministers** is needed well before any serious negotiation starts. This has varied a great deal both between subject areas and at different times. Much depends on trust and personal relationships between both Ministers and officials but also on sound structures. There will always be awkward moments (even between Ministers of nominally the same political persuasion). Decent structures help get over these.
- **Effective communication during negotiations.** This applies whether or not Scottish Ministers are part of the delegation. Those in the delegation need to know what we must have and what our sticking points are; we need to know how negotiations are developing, when issues arise which might affect us and – as we near the end – what it is realistic to achieve. Of course this assumes broad prior agreement on objectives.
- **Targeted informal contact between Scottish representatives and the EU institutions.** This is a delicate area where there is a risk of conflicting with a UK line. The need to press a separate Scottish interest needs to be balanced against the need to maintain the trust and support of the UK representatives and the coherence of the UK line. But there have been many occasions when work by Scottish officials and Ministers has delivered valuable and specific objectives and where that has sat comfortably within an overall UK line.

5. The present system has served Scotland relatively well in these respects. The quality of coordination within the UK has varied to some extent from subject to subject but in the areas where and when I have been mainly involved – notably CAP negotiations 1999 to 2002 – coordination at official and Ministerial level was strong (despite the occasional row). In Brussels we have been well served by the UK Representation and also by the Scottish Executive EU Office, which enjoys diplomatic status unlike the representations of other major regions within the EU such as Catalonia and Bavaria.

Inclusion in the delegation

6. Inclusion in the UK delegation to formal Councils is only one aspect of what is involved in securing good outcomes for Scotland in Brussels. Being in the delegation may mean many different things – being part of the team in the Council chamber, sitting in the salle d'ecoute, waiting for news in the delegation room, or chatting in the coffee bar. The most important factors are effective involvement in meetings in the delegation room held by the leader of the delegation and maintaining good intelligence on developments in and out of the formal discussion. The fuss over speaking is generally overdone: it matters little (domestic politics apart) who speaks if the line is agreed. Delegations to informal Councils are usually much smaller. Involvement in

these can be a mixed blessing – costs and time have to be balanced against the value of getting to know other Ministers better and contributing to wider policy discussion, the direct impact of which is often limited.

A statutory obligation

6. It is not clear to me that a statutory obligation in the form of the proposed amendment would improve the capacity of the Scottish administration to deliver positive outcomes on EU issues. There are a number of difficulties:

- To which areas of negotiation would it apply? Given the breadth of the agendas of many of the Council formulations, it is very likely that it would apply to most – possibly all - Council meetings in part with the exception only of those concerned exclusively with foreign affairs.
- To which stages of negotiation? EU measures are discussed in many different fora as well as the Council, including `Commission committees and the Parliament. Implementing and monitoring measures are dealt with in a wide range of Commission committees.
- Such a measure could not apply to Scotland without also applying to Wales and Northern Ireland, involving significant practical difficulties in managing UK delegations.
- The part actually played by the Scottish team would depend on agreement with the UK Minister. The draft amendment appears to place the obligation to agree solely on the UK Minister – this looks like a recipe for argument. This will not help the delegation to work effectively.
- There are genuine problems over space in the relevant buildings in Brussels, given the growth of the EU. Seating in the main chamber is tightly restricted. The leader of the UK delegation needs to have high quality advice from EU experts and policy advisers close to him or her. This always makes it hard to give all the Ministers present the prominence they want.
- We cannot make decisions like this without regard to the reaction from other member states, many of which would object for fear that their own sub nations would demand similar treatment.

7. My main concern is that a statutory obligation would – even if it succeeded in delivering more places for Ministers at EU Councils – tend to encourage UK Ministers to keep Scottish (and other devolved) Ministers at arms length. It would discourage the good quality informal relationships which are needed for effective intervention. Statute will not deliver the conditions at paragraph 4 above.

8. It seems to me highly unlikely that UK Ministers would be prepared to agree to the amendment as drafted, in the light of the extent and nature of the obligations which would be placed on them. It would give Scottish Ministers

the whip hand in deciding whether to join the delegation at almost any Council meeting and what part to play in it. There are no balancing obligations placed on the Scottish Ministers e.g. to respect the confidentiality of discussions or to support the outcome of the negotiation.

Alternatives

9. There are alternatives. My personal view remains that the Scottish interest is likely to be best served by working on the basis of the non-statutory concordats, which have underpinned EU negotiations since devolution. It would be wrong for Scottish Ministers or officials to be excluded from negotiations where there are significant devolved issues at stake but the case for inclusion or otherwise in the delegation at Council depends on the substance of the issue and on practical considerations. The post devolution structures (including the Joint Ministerial Committee which meets separately to consider EU issues) should be capable of dealing with disputes.

10. I recognise that the case for more formalised structures has grown as the political gap between UK and Scottish administrations has grown. If there is good evidence of failure by UK Departments to consult over significant EU issues affecting devolved matters in Scotland then there may be a case for some form of statutory duty requiring consultation. In the light of the difficulty of drafting an effective provision however my preference would be to see a strengthened statement by the UK Government of the requirement to consult.

Conclusion

11. I am grateful for the opportunity to contribute to this debate and I hope the Committee will find these comments helpful.

Written evidence from Dr Laura Cram

As the range and reach of EU jurisdiction into matters of devolved competence has extended significantly with the ratification of the Treaty of Lisbon, it is appropriate to re-examine the constitutional settlement in the UK in relation to the representation of Scotland in the EU decision-making process.

WHAT ARE THE ISSUES?

The UK is the Member State of the EU and has responsibility for legislating at EU level. According to the Memorandum of Understanding on Co-ordination of European Policy (B4.3), the UK government has a responsibility to consult devolved governments on matters of European business which relate to devolved matters. The stakes in EU policy-making are high. EU legislation once in place takes precedence (supremacy) over national legislation (UK or devolved) and has direct effect (does not require domestic implementing legislation to be justiciable). Moreover, under the Memorandum of Understanding (B4.25) the Scottish Government is responsible for any

penalties and costs associated with infractions or failure to implement EU law. There is an expectation in the Memorandum of Understanding of the need for maximum cooperation on both sides but a recognition that procedures also need to work when such cooperation *is not forthcoming*.

This last point is important. The art of good law-making is putting in place procedures which are effective regardless of the political context or the specific constellation of governing parties in either jurisdiction (at UK or devolved level). In practice, any issues are usually worked out informally, through bilateral discussion or by correspondence, without triggering formal dispute resolution processes at the level of the Joint Ministerial Committee (Europe). Although note the Scottish Government's concerns, expressed in evidence to the Scottish Affairs Committee (Fourth Report on 'Scotland and the UK: Cooperation and Communication Between Governments'), that Scottish interests are often diluted or lost when incorporated into the UK negotiating line.

The first point worth making is that it is not an EU rule that participation in the Council of the European Union (often known as the Council of Ministers) need be restricted to members of the UK government. Since the Maastricht Treaty in 1993, participation in the Council of the European Union has been formally opened up to a wider range of participants. This was prompted specifically by the German practice of sending representatives of the German Länd governments to vote in meetings of the Council of Ministers when those meetings dealt with matters within the exclusive competence of the Länder. The current Lisbon Treaty states: (Preamble, Title III, Article 16: 2) 'The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote'.

A second point to note is that, since the initial formulation of the Scotland Bill, the scope of EU shared and supporting competences in areas of devolved responsibility or of relevance for devolved affairs has extended in significant ways. Of particular note is the area of justice, which is now a 'shared competence' with the EU, as are : internal market; aspects of social policy; economic, social and territorial cohesion; agriculture and fisheries (excluding conservation of marine biological resources); environment; consumer protection; transport; trans-European networks; energy; and common safety concern in public health. The EU now also has 'supporting competence' in the areas of: protection and improvement of human health; industry; culture; tourism; education, youth, sport and vocational training; civil protection and administrative cooperation. As this Committee noted in its Inquiry into the impact of the Lisbon Treaty (paras 129-139), supporting competence has often preceded the emergence of shared competence in the EU context. The trend towards extension of supporting competence is of potential importance. Many areas of supporting competence are devolved or have significant devolved interest. Should the EU begin to legislate in these areas, the UK Government not the Scottish Government would formally negotiate any legislation at EU level even when such legislation impacted upon areas of devolved competence.

Finally, it is important to acknowledge the 'hybrid' nature of the EU on the one hand, as an *issue* (whether or not to be a member of the EU and on what terms and conditions) and, on the other hand, as a *policy-making forum*. In the UK constitutional settlement, the EU is treated as a foreign affairs issue as it involves entering into agreement with third party states at the EU level. Involvement in the EU decision-process is thus a 'reserved' matter, part of the foreign affairs of the UK state. However, the 'European Union' has both a *horizontal* 'foreign affairs' element and a *vertical* 'domestic impact' element. In practice, much of the content of EU policy negotiations concerns intricate matters of every-day domestic policy significance. As noted above, with recent Treaty expansion and the formalisation and codification of the broader reach of the EU, many of the domestic policy impacts of EU legislation now occur in areas of devolved Scottish competence or in areas of significant devolved interest.

As an issue is uploaded to the EU legislative level, aspects of devolved competence are eroded. Once subject to EU legislation, an area of previously devolved competence becomes part of the EU decision process and as such becomes the responsibility of the UK government to negotiate within the EU. The Scottish Government remains, however, responsible for implementation in Scotland and becomes responsible for any infractions. How this problem can be resolved in the UK context is one of the aspects under discussion in relation to the proposed revision of the Scotland Bill.

WHAT ARE THE ALTERNATIVES?

In Germany, part of the resolution of this problem was to empower the Bundesrat (the chamber of the German Parliament which represents the interests of the Länd governments at the Central Government level) to appoint Länder representatives who, alongside the responsible Federal Ministry, are able to participate directly in negotiations in the Council when issues of Länder competence are at stake. In cases pertaining exclusively to Länder authority, the Länder representative is the sole German representative and enjoys the power to vote in the relevant Council of the European Union.

In Belgium an agreement has been in place since 1993 which allows ministers from the federated states to represent their country in the Council of the European Union for areas within their competence. For issues which are within the exclusive competence of the federated states a regional minister is the exclusive spokesperson in Council meetings. A rotation system allows a different federated state to represent Belgium each six months, in appropriate areas. In Fisheries and Agriculture no rotation system applies. Fisheries is always represented by a Flemish Minister and, in the case of Agriculture, the Belgian federal minister is always assisted by the authorised ministers of the Walloon and Flemish Regions.

Interestingly, representation of devolved administrations in the EU decision making process has also been extended beyond the borders of the EU member states. This is the case in the ongoing negotiations on a free trade

area between the European Union and Canada (the 9th round of negotiations began October 17th 2011). Aspects of the Comprehensive Economic and Trade Agreement will impact on areas of provincial and territorial exclusive or shared competence. The provincial and territorial governments will be responsible for implementation of these elements. Thus, the EU and the Provinces (with the exception of Newfoundland and Labrador, which cited substantive issues with CETA) both requested that the Provinces and Territories should participate directly in the CETA negotiations. The Canadian provinces and territories now have a direct place at the EU negotiating table for CETA matters.

WHY DOES IT MATTER?

The German government sums up the problem very well. As the representation of Germany to the EU is a competence of the Federal Government – this means that at the EU level, the German Government now also decides on matters which were assigned as competences of the Länder before they became subject to EU legislation: *‘This would effectively constitute an erosion of Länder competence by the Federal Government via a Brussels detour’*. In the language of UK constitutional debate, this is effectively a manifestation of the West Lothian Question in reverse: ie. a situation in which the UK government is able, at EU level, to bind Scotland to commitments even in areas of devolved competence or with significant effects on devolved matters.

Chris Bryant, the previous UK Government’s Minister for Europe, in his evidence to this committee on the Lisbon Treaty Inquiry, made it clear what would happen in the event that there was a disagreement between the UK Government and the Scottish Government on EU policy:

Foreign affairs is not a devolved responsibility, so if there is no means of resolution, the UK Government wins, I am afraid. It is the UK Government that decides who it puts in the chair and who advances the argument. If it is a Scottish Executive minister who sits in the British chair at a council meeting, that minister must advance the UK argument, not just their own personal or Scottish argument.

The existing processes of UK intergovernmental negotiation on EU policy usually work well. In practice, serious conflicts over representation of the Scottish position on EU issues in UK policy positions have been few. However, this is highly dependent on particular constellations of actors, generally shared interests and the assumption that most issues under negotiation are not make or break issues. Good constitutional law needs to ensure, even when these conditions do not apply, that the input of Scottish governing bodies on issues with significant devolved interest is guaranteed and that the Scottish administration’s control over matters of devolved competence, for which it is responsible, cannot be undermined - whether purposefully or inadvertently.

Written evidence from Professor Michael Keating

1. The principle that Scottish ministers should participate in EU ministerial meetings, including the Council of Ministers, where devolved matters are at issue is a logical corollary to devolution itself.
2. There is a strong case for putting this on a statutory basis. UK Governments have so far been willing to allow Scottish ministers to participate but, while this remains at the discretion of the UK government, there will always be some doubt about the commitment. It is better to establish clear rules now, rather than waiting for a conflict to emerge and for it to become a major issue.
3. The provision for ministers of sub-state governments to participate in the Council is enshrined in the treaties but it is up to Member States to decide whether and how to apply this. So far it has been applied in very different ways in Germany, Belgium, Spain and Italy. Germany and Belgium have strong statutory provisions. Ministers from the sub-state level have a right to participate and the negotiating line must be agreed with them where regional competences are involved. In Belgium, the regions and communities each have a veto. In Germany, any conflicts are resolved by a vote among the Länder. In Spain, ministers from autonomous communities have a right to attend a specified list of council formations but the line is ultimately decided by the Spanish government. The Italian system has a similar but rather weaker provision. In Belgium, it is normal for regional ministers to chair Council meetings during the Belgian presidency.
4. A crucial difference in the Scottish case is that devolution here is asymmetrical. What is being proposed is a bilateral arrangement between the UK and Scottish governments. We can assume that any arrangement for Scotland would be extended to Wales and Northern Ireland, but the UK government would continue to speak for England.
5. There is some bilateralism in Spain. The revised Catalan Statute of Autonomy (2006), specifies that Catalan ministers can participate bilaterally 'in European matters that affect it exclusively.' It goes on to stipulate that 'The position expressed by the Generalitat is determinant for the formation of the state position if it affects its exclusive competences or if the European proposal entails financial or administrative consequences of particular relevance for Catalonia. In other cases, the Catalan position must be heard by the state.' This is somewhat ambivalent and for everyday purposes is effectively superseded by the common arrangement applying to all the autonomous communities; but it may provide some safeguard for essential Catalan interests, depending on how it is interpreted. In the 1990s there was agreement in principle on a bilateral arrangement with the Basque Country but this was not developed.

6. There are three issues here: whether Scottish ministers will have a right to attend meetings; whether they can speak; and how the negotiating line will be decided. It is relatively straightforward to put the first on a statutory basis. It is more difficult to legislate for the extent to which Scottish ministers will participate. The proposal that the UK minister must agree with the Scottish minister on the extent of participation could be difficult to enforce since there is no provision for what happens in the event of disagreement. This matter of Scottish ministers' right to speak could perhaps better be put in the memorandum of understanding, where it could contain stronger but not legally enforceable language. This might also address the question of Scottish ministers leading certain delegations, as happens in Germany and Belgium.
7. The proposal does not address the mechanisms for reaching a common negotiating position between Scottish and UK ministers, which is critical for determining Scottish influence. It is not possible to replicate the German system in the absence of devolved governments outside Scotland, Wales and Northern Ireland. Nor is it realistic to think that Scotland could have a veto over the UK line. There may be a case for a safeguard clause akin to the Catalan one, on essential matters touching the powers of the Scottish Parliament but it is difficult to see how this might be drafted. The Catalan clause, like other items in the Spanish autonomous regime, is declaratory and will have to be tested in the courts. Otherwise, differences will inevitably be resolved politically. If there is a serious disagreement, the Scottish Government would have to be able to make its position clear, in which case it would be logical for it not then participate in the Council meetings on that occasion since it is impossible to dissent within a member state delegation.
8. UK devolution, like the constitution in general, has relied heavily on conventions (such as the Sewel convention) and political negotiation. Intergovernmental disputes have never been taken to the courts. In this case, a statutory provision for Scottish presence in EU councils could underpin a convention that the views of Scottish ministers be taken seriously.

Written evidence from Michael Aron

1. I have been asked to give evidence to the European and External Relations Committee because I was EU Director for the Scottish Government and head of the Scottish Government's EU Office in Brussels from 2007-2009. I am sorry that I am unable to attend in person to give evidence orally, but I am now HM Ambassador to Iraq based in Baghdad.
2. I have been asked to focus on three particular issues:

- (i) Based on your experiences as the Head of the Scottish Government's EU Office, can you describe the contribution made by Scottish Ministers when they were able to attend Council of Ministers' meetings?
 - (ii) What would be the advantages or disadvantages of placing Scottish Ministers attendance at Council of Ministers' meetings on a statutory footing?
 - (iii) How important is the meeting of the Joint Ministerial Committee (Europe) where the UK negotiating position is agreed and what roles does the Scottish Government play in that process?
3. My comments all relate to the time when I was working for the Scottish Government. Things may have changed since then. After leaving the Scottish Government I returned to the FCO (my parent department) and I have been working for them since then on issues not related to the devolved settlement.

Based on your experiences as the Head of the Scottish Government's EU Office, can you describe the contribution made by Scottish Ministers when they were able to attend Council of Ministers' meetings?

- 1. When I was head of the EU Office we produced detailed records of which Scottish ministers attended which Councils and put these on our website. I assume the Committee has had access to these records. Scottish ministers attended a wide variety of councils, but those most attended were the Agriculture and Fisheries Councils (I suspect that Ross Finney MSP still holds the record for UK attendance at this Council) and Justice and Home Affairs Councils.
- 2. The Home Office welcomed Scottish ministerial participation at JHA Councils and on a number of occasions Scottish ministers made interventions on behalf of the UK when no UK minister was present (and even I think when UK ministers were present). UK Ministers recognised and valued attendance by Scottish Ministers.
- 3. Because of the sensitive nature of discussions in the Agricultural and Fisheries Council, particularly of fisheries policy, Scottish Ministers did not speak on behalf of the UK in those Council meetings. When a UK Minister was not present, the UK would be represented by the UK Deputy Permanent Representative (a senior civil servant).
- 4. The basic principle is that any Scottish Minister attending a Council meeting of whatever kind was there as a representative of the UK. It was not part of their role to put forward the Scottish point of view.

What would be the advantages or disadvantages of placing Scottish Ministers attendance at Council of Ministers' meetings on a statutory footing?

5. Based on my experience at the time I believe it would be worthwhile clarifying the nature and status of Scottish (and other devolved) Ministers attending council meetings. I do not have views on how this should be done. But I think it would be worth making clear that (a) devolved Ministers should have the right to attend Council meetings of interest to the devolved administration concerned, rather than leaving it to the UK Secretary of State to decide, and (b) that when a Minister is present (UK or devolved) that the minister should have precedence over any civil servant in representing the UK.

How important is the meeting of the Joint Ministerial Committee (Europe) where the UK negotiating position is agreed and what roles does the Scottish Government play in that process?

6. JMC(E) is not in practice the forum where the UK negotiating position is agreed and nor should it be. The UK negotiating position needs to be agreed by the relevant lead UK department, taking into account as appropriate the views of the devolved administrations. As far as the devolved administrations are concerned JMC(E) and the official sub-committee which was established at our insistence during my time with the Scottish Government (JMC(E)(O)) are useful in providing fora for the discussion of issues of principle in relation to the devolved administrations, such as participation at Councils (for example when one UK department is being difficult about agreeing that devolved ministers should attend a particular council). The Scottish Government played a significant role in both JMC(E) itself as well as JMC(E)(O) during my time.

Written evidence from George Calder

1. **Background.** The Secretariat has asked me to give evidence to this Inquiry, particularly on the three issues highlighted below. I was Head of the Scottish Government EU Office from its inception in July 1999 until I retired in November 2004. Prior to that I had been Head of the European Funds and Co-ordination Division of the Scottish Office (during which period I conducted a review of how the Scottish Office related to the European Union) and had also worked in the Cabinet of a Scottish European Commissioner.
2. **Council of Ministers - Attendance by Scottish Government Ministers.** It is easy to exaggerate the importance to Scotland of formal meetings of the Council of Ministers. If you want to change an EU proposal to reflect a Scottish interest, it is easiest to do so at a very early stage, ideally during

Commission consultation, or in the early stages of a Council Working Group. Once a proposal has reached the level of a formal Council of Ministers, change to reflect our particular interests is very difficult indeed to achieve.

3. Moreover, you do not need to be at the Council of Ministers to ensure Scottish interests are protected. The Scottish Government should have the opportunity to help shape the UK line. The lead Department representing the UK in the Council is obliged to speak to the UK line, reflecting the interests of all Departments. The UK Representation and the Cabinet Office see it as part of their job to ensure that the interests of all are protected.
4. However, for some Councils of Ministers it is important – indeed essential - that a Scottish Minister is present. The main reason is that deals and compromises may have to be considered rapidly in the course of the meeting, and a Scottish Minister who is present can make a forceful input to the UK Delegation's discussion of such issues. This is obviously so in the case of the Fisheries Council, which is particularly fluid and fast-moving as it seeks to make annual catch allocations. I would also be uncomfortable if a Scottish Minister were not present at an Agriculture or an Environment Council, given the scale of our interests in their decisions.
5. In my period in the SGEUO we pursued a policy of having our Ministers attend when appropriate a wider range of Councils – such as, if I remember correctly, Industry, Justice and Home Affairs, Transport, Health and Culture. In addition to the substance of the issues under discussion, it was helpful to demonstrate to lead Departments the seriousness of our interest in the EU dimension. It also served to familiarise the relevant Ministers and officials with the workings of the Council, and to offer them chances to extend their network of contacts.
6. Generally lead Departments welcomed rather than resisted the attendance of Scottish Ministers. The exception, at least initially, was attendance at the Justice and Home Affairs Council, despite the strength of our argument based on our separate legal system. I assumed the problem there was that we had failed to stake our claim to this territory for too long a period, allowing the lead Department to become accustomed to interpreting its lead role as entitling it to be the sole UK Department attending Councils. We did, however, negotiate a compromise allowing an acceptable frequency of Scottish Ministerial attendance, and it is disappointing to note from the explanatory Scottish Government paper that a problem has again arisen with this Council.
7. Whether or not a Scottish Minister actually speaks in Council is generally of little importance in terms of protecting Scottish interests (although it must be very frustrating to attend regularly and not be allowed to speak). The point is that whoever speaks for the UK is obliged to follow the UK line, and that, if the dossier under discussion has reached the negotiating end-game, eloquence and conviction in making a point are generally likely

to count for little. The Fisheries Council is, however, something of a special case given Scotland's predominant share of the UK industry, and the fluid nature of the end-year Council, and I think it is perfectly reasonable for a Scottish Minister to ask for a fair share of the speaking role.

8. In my experience whether or not a Scottish Minister was invited to speak in a Council depended on a range of factors, including the particular dossiers considered, the personal preferences of the lead Minister (who might feel that the continuity of the negotiator was of overriding importance), his or her relationship with their Scottish colleague, and whether Welsh and Northern Irish Ministers were also present and hoping to speak (as became increasingly common).
9. One point was essential – the rules of the game were that if you spoke in the Council you had to follow the UK line. This is fair - as the UK is the member state and Scotland has had its chance to contribute to the UK line – and is obviously essential if the UK is to negotiate effectively. In this context, I was concerned to see some equivocation in the Scottish Government explanatory paper about whether it would always support the UK line. I can understand the reasons for such reservations, but, if this has become the general Scottish Government line, it would not be surprising if Whitehall Departments have become uneasy about whether Scottish Ministers attending and speaking at Councils will actually follow the UK line. It might work better to commit unconditionally to following the UK line if speaking within the Council chamber, and leave any cases of inadequate consultation to be pursued separately if they arise.
10. **Joint Ministerial Committee (Europe).** I was asked to comment on use of the Joint Ministerial Committee (Europe). I think I am correct in saying that this was initially conceived as a forum that would resolve disputes about the UK line on particular dossiers. I do not recall it ever being considered necessary in practice to use it in this way, although it proved a useful forum for other co-ordinating discussions.
11. **Putting Scottish Ministerial Attendance on a Statutory Basis.** I was also asked to comment on the advantages and disadvantages of the proposed amendment. In my experience in the 1999-2004 period, the system based on the Concordats and Memorandum of Understanding worked well to protect Scottish interests, including giving Ministers access to Councils. The Foreign Office and UKRep, and the Cabinet Office, could not have done more to ensure that Scotland's voice was heard, and that we had access to the innermost workings of Government. The system we enjoyed – above all our access to Council Working Groups - was the envy of most of the people representing European regions that I dealt with. And the system was intended to be robust enough to handle the problems that can arise with governments of a different political colour in Edinburgh and London.

12. The idea of a statutory basis for attendance is a bright one. However, I can see limited real advantage based on my own experience, or indeed on the recent problems as identified in the explanatory note. The amendment would not necessarily resolve the question of who speaks in the Fisheries Council (for how would you reach agreement if the parties disagree?). The only definite advantage as things stand would seem to be to remove any argument about Ministerial attendance at the Justice and Home Affairs Council. However, as already noted, Scotland's interests can largely be protected by other means in such a Council, and it has proved possible in the past to achieve Ministerial attendance at this Council through negotiation.
13. But would there be any actual disadvantage to putting our representation on a statutory basis? Not necessarily, if the amendment came out in the way suggested, other than that forcing our way in by means of the law rather than agreement could lead to some loss of goodwill.
14. However, if the amendment gets anywhere near the statute book, it is unlikely to come out in the form suggested, and we need to be wary of the law of unintended consequences. Firstly, there is the position of the other devolved administrations. The explanatory note suggests that the Memoranda of Understanding and Concordats could be strengthened for them, which begs the question of why that route would not also be sufficient for Scotland. But we can be confident that the other devolved administrations would want legislation too if Scotland were getting it, which introduces another element of uncertainty into the possibility of obtaining the amendment, and its final shape. Secondly, I would imagine that the last word on who speaks would still end up with the lead Department.
15. Finally, the illustrative amendment is very widely drawn. I can appreciate the reasons for doing so, in that most areas of competence of the Scottish Parliament are also covered by EU competence. But I could imagine that Whitehall might want to draw the amendment more tightly, perhaps narrowing the right down to areas deemed to be of particular importance to Scotland. It would be disastrous if we ended up with something that actually restricted the access to Councils of Ministers and Council Working Groups that we currently enjoy.
16. Judged by my experience of some years ago, the proposed amendment would probably produce pretty limited real advantage, and conceivably significant disadvantage.

Annex C – SPICe background papers



THE COUNCIL OF THE EUROPEAN UNION

The Council consists of a representative of each Member State at ministerial level (also known as the Council of Ministers), who may commit the Government of the Member State in question and cast its vote (Article 16 TEU). Which ministers attend a meeting depends on which topic is on the agenda. The Council also meets regularly at the level of working groups and ambassadors. The Council is responsible for working with the European Parliament to exercise legislative and budgetary functions.

The Council meets in ten configurations. These are:

- General Affairs
- Foreign Affairs Council
- Economic and Financial Affairs
- Justice and Home Affairs (JHA)
- Employment, Social Policy, Health and Consumer Affairs
- Competitiveness
- Transport, Telecommunications and Energy
- Agriculture and Fisheries
- Environment
- Education, Youth and Culture

Although there are 10 configurations, not all will relate to devolved issues, for instance the General Affairs and Foreign Affairs Councils will relate to purely reserved matters. In addition, where Council configurations do relate to devolved matters, the agenda may not always cover matters of a devolved nature.

Each configuration can meet formally and informally. While decisions can only be taken in the formal Council meetings, informal meetings can be useful to exchange views on matters of common concern and to prepare the ground for work in the Council.

Under the current Polish Presidency of the EU, there are plans for 19 informal Councils and 35 formal Council meetings covering all the Council configurations.

SCOTTISH GOVERNMENT MINISTERIAL ATTENDANCE AT EUROPEAN COUNCIL OF MINISTERS MEETINGS

The Scottish Government publishes Ministerial attendance at European Council of Ministers meetings on their website. The data for attendance by the current administration is available at: <http://www.scotland.gov.uk/Topics/International/Europe/Our-Focus/Engagement/At-Council>.

According to the Scottish Government's figures, in total Ministers have attended 6 Councils so far in 2011 and attended 9 Councils in 2010, 17 Councils in 2009, 14 Councils in 2008 and 7 Councils following the Scottish Parliamentary elections in May 2007.

Attendance at Council by the three Administrations between 1999 and 2007 is available at: <http://www.scotland.gov.uk/Topics/International/Europe/Our-Focus/Engagement/At-Council/Archive1999-2007>.

The "Memorandum of Understanding" and the "[Concordat on Coordination of European Union Policy Issues](#)" between the UK Government and the Devolved Administrations govern the procedures for Devolved Ministers attendance at Council of Ministers meetings. Under the section on **Attendance at Council of Ministers and related meetings** it states:

B4.13 Decisions on Ministerial attendance and representation at Council meetings will be taken on a case-by-case basis by the lead UK Minister. In reaching decisions on the composition of the UK team, the lead Minister will take into account that the devolved administrations should have a role to play in meetings of the Council of Ministers at which substantive discussion is expected of matters likely to have a significant impact on their devolved responsibilities.

B4.14 Policy does not remain static in negotiations and continuing involvement is a necessary extension of involvement in formulating the UK's initial policy position. The role of Ministers and officials from the devolved administrations will be to support and advance the single UK negotiating line which they will have played a part in developing. The emphasis in negotiations has to be on working as a UK team; and the UK lead Minister will retain overall responsibility for the negotiations and determine how each member of the team can best contribute to securing the agreed policy position. In appropriate cases, the leader of the delegation could agree to Ministers from the devolved administrations speaking for the UK in Council, and that they would do so with the full weight of the UK behind them, because the policy positions advanced will have been agreed among the UK interests.

SCOTTISH MINISTERS REFUSED ATTENDANCE AT EUROPEAN COUNCIL OF MINISTERS MEETINGS

The Scottish Government have provided details of the occasions when a Scottish Government Minister has been refused permission to attend both formal and informal Council of Ministers meetings as part of the UK delegation along with the reason for that refusal. In total, Scottish Government Ministers

have been refused attendance to one formal council and 6 informal councils since July 2008.

- 7/8 July 08, informal JHA, Cabinet Secretary for Justice, Kenny MacAskill was refused permission to attend
- 21/22 July 08, informal Culture, Minister for Europe, External Affairs and Culture, Linda Fabiani was refused permission to attend
- 15/16 Jan 09, informal JHA, Cabinet Secretary for Justice, Kenny MacAskill was refused permission to attend
- 21/22 Sept 09, formal JHA, Mr MacAskill refused on basis that the agenda concerned reserved matters.
- 21/22 Jan 10, informal JHA, Mr MacAskill refused on grounds of Council Presidency's strict limits on delegation size.
- 4/5 May 10, informal AgriFish in Vigo discussing fisheries issues, Cabinet Secretary for Rural Affairs and Environment, Mr Lochhead was refused permission to attend and the UK was represented by the House of Lords Minister (Lord Davies).
- 16/17 July 10, informal JHA, Mr MacAskill refused on the grounds of Council Presidency's strict limits on delegation size.

The Scottish Government do not have a record of any refusals which may have taken place during Session 1 and Session 2 of the Scottish Parliament. It is worth noting though that in the information they provided it states that the refusal to allow the Cabinet Secretary for Justice to attend the formal JHA Council in September 2009 was the first time a devolved minister had ever been turned down from attending a formal Council in 11 years of devolution.

Iain McIver
SPICe Research



Background

This paper provides some background on the way in which legislative regions in Belgium, Germany and Spain are represented at EU level including in the Council of Ministers.

BELGIUM

Background

The Belgian federal state is comprised of two different kinds of entities; communities and regions. A community is a population group speaking one language. A region is a defined geographical area.

In 1980 the Flemish Community, the French Community and the German Community were set up.

Each Community has its own parliament, with designated areas of competence and can approve decrees possessing force of law, and its own government which is charged with the implementation and application of these decrees.

Belgium is also divided into three regions: the Flemish Region (Flanders), the Walloon Region (Wallonia) and the Brussels Capital Region.

The Flemish and French Regions each have their own parliament which can issue decrees within their particular spheres of competence, and their own governments responsible for the implementation and application of these decrees. The Brussels Capital Region also has a separate parliament and government.

The Federal Government's powers cover everything that does not expressly come under the Communities or Regions. The Federal State also has powers for exemptions and restrictions on the powers of the Communities and the Regions.

Intergovernmental relations between the Belgian Government and the communities and regions on European Union issues²

² Kris Deschouwer, Forum of Federations (2002)
http://www.forumfed.org/en/libdocs/Global_Dialogue/Book_1/BK1-C02-be-Deschouwer-en.htm

An agreement exists which organizes how Belgium and its regions and communities are represented in the European Union (EU). Within the EU, Belgium is a member state. Yet numerous matters regulated by the EU are the responsibility of the regions and communities. An agreement of cooperation, however, allows Belgium to be represented in EU decision making by a regional or community minister rather than by a federal minister. Once the regions and communities have agreed on the view that will be defended, one of the regional or community ministers (they alternate) may sit in the Belgian chair in Europe. When Belgium chairs the Council of Ministers, a regional or community minister may also be the chairperson. If the federated entities cannot reach consensus on an issue, Belgium abstains from voting.

GERMANY

Background

The Federal Republic of Germany is made up of 16 Lander. At the Federal level there are two parliamentary chambers, these are the Bundestag whose members are elected in national elections every four years and the second chamber, the Bundesrat.

The Bundesrat is the representation at Federal level of the Lander Governments. Its purpose is as a safeguard for intergovernmental coordination and cooperation between the Federal Government and the Lander Governments. The German Constitution safeguards the Bundesrat from any threat of dissolution by the Federal Government; it has been given the status of “eternal organ” in the Basic Law of Germany.

It is made up of the appropriate cabinet Ministers from each of the sixteen Lander. Each Land with less than two million inhabitants has three votes, those with from two to six million inhabitants have four votes and those with more than six million inhabitants have five or six votes. Crucially a Land's votes must be cast uniformly. This is significant for two reasons. Firstly because some Land governments are coalitions it can be difficult for them to agree a unified position. As a result of this it is possible that some Land Governments choose not to vote at all as it is not possible for them to split their vote. This situation then has a knock on effect, for a vote to be passed by the Bundesrat it requires an absolute majority of the sixty nine votes available. This means for a proposal to be agreed requires 35 votes. As a result of this Land Government who abstain during the vote are effectively casting no votes as 35 votes are still required for a measure to pass.

Relations between the German Government and the Lander in relation to the European Union

Article 23 of the German Basic Law sets out the position of the federal and regional governments in respect of EU issues. Under Article 23(2) the Bundestag and, through the Bundesrat, the Länder (State Governments) participate in EU matters. The Federal Government is obliged to keep the

Bundestag and the Bundesrat informed, comprehensively and, at the earliest possible time.

Under Article 23(3) the Federal Government must provide an opportunity for the Bundestag to state its position before participating in EU legislative acts. The Federal Government should take the position of the Bundestag into account during negotiations.

Under Article 23(4) the Bundesrat should participate in the decision making process insofar as it would be competent to do so in a comparable domestic matter or insofar as the subject falls within the competence of the German Länder.

Even where the matter is within the exclusive competence of the Federal Government, the position of the Bundesrat should be taken into account where Länder interests would be affected (Article 23(5)).

Where the matter relates primarily to an area of Länder competence the exercise of the rights of the German Federation as a Member of the EU should be delegated to a representative of the Länder designated by the Bundesrat (Article 23(6)), with the participation and concurrence of the Federal Government.

SPAIN

Background

Spain is divided into 17 Autonomous Communities, all with self-government. As a result of this federal structure the Spanish Government has been required to develop a series of bodies and organisations which are used to manage the relationship between the Spanish Government and the Autonomous Communities both collectively and individually. Individual relations between the Spanish state and an autonomous community are governed by a Statute of Autonomy. This section uses the example of the Statute of Autonomy of Catalonia.

Relations between the Spanish Government and the Autonomous Communities in relation to the European Union

The sectoral conference for European issues is known as the Conference for Affairs Related to the European Communities.

Chapter II of the Statute of Autonomy of Catalonia regulates the relations of the Catalan Government with the European Union.

Article 186 gives the Catalan Government the right to participate in the formation of the State position in matters concerning the powers or interests of Catalonia. Where the State position exclusively affects Catalonia it is the responsibility of the Catalan Government to work bilaterally with the Spanish Government to achieve the State position. If the issue is also one of concern

to other Autonomous Regions then the line to be taken will be agreed by the Spanish Government along with all those Autonomous Regions affected.

Where the European Union policy being debated is one of exclusive competence for one or more Autonomous Regions the State position will be decided exclusively by the region or regions concerned.

The Issue of Confidentiality

The Catalan and Spanish Governments have an agreement on confidentiality with regard to negotiations at European Union level. The Spanish Government also has a “last say” clause which allows for flexibility during European Council negotiations.

Representation of Autonomous Communities in the European Council

The Conference for Affairs Related to the European Communities adopted an agreement in December 2004 which permitted regional Ministers to attend European Councils and represent the Spanish view in the following areas;

- Employment, Social Policy, Health and Consumer Affairs
- Agriculture and Fisheries
- Environmental Issues
- Education, Youth and Culture

These Council formations are those which the autonomous communities have exclusive competence in. It is the responsibility of the different sectoral conferences relating to each policy area to agree a unified regional position to be represented in the Spanish position in the European Council.

Two civil servants from the autonomous communities are also permitted to serve in the Spanish Permanent Representation in Brussels and to represent the views of the autonomous communities.

Iain McIver
SPICe Research

European and External Relations Committee

5th Meeting, 2011 (Session 4), Tuesday, 25 October 2011

European Commission Work Programme (CWP) priorities

Criteria for determining the Scottish Parliament's EU priorities

1. To grow the Scottish Parliament's influence in Europe, the Parliament adopted a European Strategy in early 2011. The keystone of the strategy is the scrutiny of the European Commission's Annual Work Programme (CWP) by the Parliament's Committees to determine the issues likely to impact upon Scotland and that require attention. As almost all EU proposals will have some impact on Scotland it is important to concentrate Committee efforts upon a focused number of strategic priorities to maximise influence.
2. The Committee considered draft criteria, by which the Parliament's EU priorities will be determined, at its recent Business Planning Day.
3. The Committee is invited to endorse the amended selection criteria, which will then be lodged on Committee's page of the Parliament's website.

Prioritising EU issues

- *Nature of proposal.* Not all EU proposals result in legislation, e.g. many initiatives seek to share good practice, raise awareness or even offer non binding guidance.
- *Stage of proposal.* The earlier the engagement with the EU legislative process, the greater the potential influence, both on the Scottish Government and the EU institutions. The later the stage, the greater the exertion required to exert influence.
- *Scottish dimension.* The EU institutions are particularly receptive to the views of the Scottish Parliament on issues where Scotland has a distinct contribution to make¹ Upon such issues the institutions will often be more receptive.
- *Impact on Scotland.* Many EU issues have a significant policy/political impact upon Scotland. In such circumstances the Scottish Parliament should be a participant in the debate, either via its scrutiny of the Scottish Government or directly via engagement with the EU institutions.

¹ While it is not possible to produce a definitive list of issues upon which the Scottish view would be welcomed, the Scottish Parliament's position on issues such as fishing, renewable energy, law, whisky, subsistence farming, lifeline transport and so on is likely to be recognised and respected.

- *Scotland v. UK.* In considering a proposal, it is useful to establish whether the Scottish view is distinct from that of the UK as a whole, e.g. on CAP reform, cohesion funding, etc. In considering this question it is important to address the issues of 'devolved *versus* reserved' and subsidiarity considerations.
- *Other issues.* Other factors may be relevant in determining engagement: (i) monetary value of proposal/cost to Scotland; (ii) impact upon Scots law; and (iii) whether the issue is transient or long term.

Committee Clerk
October 2011



The Scottish Parliament
Pàrlamaid na h-Alba



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NEWS IN BRIEF

Regional Policy

The Commission published its proposals for regional policy for the period 2014 – 2020 (**6 October 2011**). Funding for policy stands at €336bn, two thirds of which would go to less developed regions and one third to more developed and transition regions.

EU Summit

Eu Heads of state and government will meet in Brussels on **23 October 2011**. The agenda for the meeting will be dominated by the crisis in the Eurozone.

Energy Efficiency

Following publication of the Commission's proposals (**June 2011**) the Energy (ITRE) Committee of the Parliament discussed a report on the issue produced by Claude Turmes MEP (**10 October 2011**). The report calls for legally binding efficiency targets.

Common Agricultural Policy (CAP)

The Commission published its CAP reform proposals on **12 October 2011**. As expected the proposals would see a greater share of agri-spend being focused upon eastern member states, as well as green support. Thus far the proposals have not been warmly received.

Climate Change

The Environment Council discussed the EU position for the upcoming UN Climate Change Conference in Durban, South Africa (**10 October 2011**). Ministers agreed that the EU would sign-up to a new phase of the Kyoto Protocol if other industrialised nations also committed.

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Common Agricultural Policy (CAP)
Climate Change
6th Environment Action Programme
Common Sales Law (Contract Law)
Other news

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Contact details

6th Environment Action Programme (EAP)

The Environment Council also discussed the merits of the 6th EAP and considered the challenges for a successor programme (**10 October 2011**).

Common Sales Law (Contract Law)

The Commission published a draft regulation to establish an 'Optional Instrument in European Contract Law' (**12 October 2011**). The regulation would create a '28th legal regime' in which cross border trade could be conducted.



REGIONAL POLICY

Current status

The Commission published its legislative proposals for the next Cohesion Policy funding period (2014 – 2020) on **6 October 2011**.

What's happening?

Introduction. The package consists of a draft: (i) general regulation on common provisions for European Regional Development Fund (ERDF), European Social Fund (ESF), Rural Development and Fisheries Funds; (ii) ERDF regulation; (iii) Cohesion fund regulation; (iv) Territorial Cooperation regulation; and (v) amendment to the regulation on European Grouping on Territorial Cooperation.

In order to increase efficiency, the Commission proposes a single set of rules for each fund. A new regional architecture is also proposed, introducing the distinction between three categories of regions: Less Developed Regions (GDP per capita of less than 75% of EU average), Transition Regions (GDP per capita between 75% and 90%) and More Developed Regions (GDP per capita with more than 90% of EU average).

The overall funding for Regional Policy stands at €336bn, two thirds of which would go to less developed regions and one third to more developed and transition regions.

An important feature of the package are new powers for the Commission by which it could suspend funding where member states flout budget rules or breach the EU's Stability and Growth Pact. The proposal has already come in for much criticism from leading MEPs and the Committee of the Regions. Commenting on the proposal, Regional Policy Commissioner Johannes Hahn said: *'This will always be implemented proportionately, especially in countries where certain regions have a great deal of independence and autonomy through their constitution. It's not necessarily the case that all programmes will fully come under the penalties or sanctions.'*

The key features of the proposals are:

- A focus on prioritisation of activity and associated alignment with the Europe

2020 Strategy to produce identifiable and quantifiable results by 2020.

- Strategic Programming with: (i) Development and Investment Partnership Contracts (DIPCs) drawn up by the Member States; (ii) thematic concentration from a menu of 11 objectives aligned to Europe 2020 and translated into *'investment priorities'*; (iii) a common strategic framework, with shared management funds and a central set of regulations (as far as possible) across funds – *'one set of rules for five funds'*;
- Incentives and conditionalities to ensure that funding follows the pathway which is already set-out and agreed and that additional rewards (based on a *'performance reserve'*) are allocated for good performance. A macro-economic conditionality, which monitors conformance to the Stability and Growth Pact, is proposed across all funds.
- A performance framework to enhance monitoring and evaluation, with strategic direction through the DIPCs.
- Three categories of region (more developed, transition and less developed regions)
- A commitment to move from *'grants to loans'* and to further develop the use of financial instruments.
- Further simplification of funding, audit and management through the harmonisation of eligibility rules, simplified costs and electronic submission of information.

Funding. The proposed funding allocation is detailed in the table below.

Proposed Budget 2014 - 20	€bn
Less developed regions	162.6
Transition regions	38.9
More developed regions	53.1
Territorial Cooperation	11.7
Cohesion Fund	68.7
Extra allocation for outermost & sparsely populated regions	0.9
Connecting Europe Facility*	40.0

* plus €10bn from the Cohesion Fund



The Commission has proposed that the ESF contribution across the three types of region be enhanced and has pre-specified associated funding allocations, with the minimum equating to €84bn (25% to Less Developed regions, 40% to Transition Regions and 52% to More Developed Regions). Of this share across the regions, at least 20% must be allocated to social inclusion measures. Prioritisation of ESF will mean that funding must be focused on increasing employment, improving education and addressing inclusion.

A new Programme for 'Social Change and Innovation' has been proposed under ESF, which would bring together PROGRESS (which supports employment, gender equality, social inclusion, working conditions and anti-discrimination), EURES (for European job mobility) and the micro-financing facility (which acts as a 'one-stop-shop' for business start-ups, aimed at specific groups such as migrants and the unemployed).

In terms of co-financing arrangements, for Transition Regions the maximum co-financing rate will be 60% from the EU. The other ceilings for co-financing remain the same - maximum 50% for the Most Developed Regions, maximum 85% for the Less Developed Regions and maximum 85% for the Cohesion Fund.

It is proposed that More Developed and Transition regions will focus the entire allocation of Cohesion Policy funding (except for the ESF) on energy efficiency, renewable energy (representing at least 20% of programme allocations) and SME competitiveness and innovation, while less developed regions would be able to fund a wider range of priorities reflecting their needs.

In terms of ERDF the Commission has declared a series of funding priorities: (i) strengthening research, technological development and innovation; (ii) enhancing access to and use and quality of ICT; (iii) enhancing SME competitiveness; (iv) supporting shift towards low-carbon economy; (v) promoting climate change adaptation and risk prevention; (vi) protecting environment and promoting sustainable use of resources; (vii) promoting

sustainable transport; (viii) promoting employment and labour mobility; (ix) promoting social inclusion and combating poverty; (x) investing in skills, education and lifelong learning; and (xi) enhancing institutional capacity and efficient public administration

The proposals also request that each Member State earmark a minimum 5% of its ERDF allocation to '*integrated actions*'. These would combine investments and would be delegated to cities for management. There is also a proposal to allocate 0.2% of the ERDF budget to finance innovative actions in urban areas.

The Commission is expected to publish its proposals on a Common Strategic Framework early in **December 2011**, with a consultation opening in **January 2012**.

EU SUMMIT

Current status

The EU Heads of State & Government will meet in Council on **23 October 2011**.

What's happening?

The next EU summit will take place in Brussels amid serious concerns surrounding the health and prospects of the Eurozone. The agenda for the meeting will focus primarily upon economic matters while also setting the EU's position for the upcoming G20 meeting in Cannes (**3 – 4 November 2011**) and setting the EU position for negotiations at the upcoming UN Climate Change conference in Durban (**28 November - 9 December 2011**; see below).

The Commission published '[A roadmap to stability and growth](#)' on **12 October 2011**. The five-point plan proposes solutions to solve the problems of cash-strapped Greece, strengthen the euro area, strengthen the banking system through re-capitalisation, pursue growth policies and build stronger economic governance. It also calls for 'maximising' the €440 billion euro zone's rescue fund, leveraging the European Financial Stability Facility (EFSF) in order to give it more power should a country like Spain or Italy experience financial difficulties.



The summit discussions will take place against a backdrop of a double-notch downgrade to Spain's credit ratings yesterday (**18 October 2011**) which will increase the pressure on EU leaders to secure a viable solution to the crisis. Spain is the fourth largest economy in the Eurozone.

However, German Government officials have sought to dampen expectations of the summit declaring that a single meeting was unlikely to produce a '*definitive solution*'.

ENERGY EFFICIENCY

Current status

The Commission published its draft legislative proposals on energy efficiency in **June 2011**. The proposals set out measures to establish national energy efficiency obligation schemes but stop short of setting binding energy efficiency targets.

What's happening?

The Parliament's Energy (ITRE) Committee held a first exchange of views on the report of Claude Turmes MEP which considers the draft Directive on Energy Efficiency (**10 October 2011**). The report calls for a binding target for the EU as a whole, as well as Member State targets based on a uniform percentage of their national energy consumption. The report also calls for an annual obligation of 1.5% end use energy savings to be applied across all economic activity, including the transport sector.

On the issue of financing, the report proposes that dedicated national funds for energy efficiency be established utilising existing EU funding streams such as the Structural and Cohesion Funds. Revenues generated from the auction of EU Emissions Trading Scheme permits should also be used, particularly as a means of leveraging private capital.

The draft report also calls for maintenance of the proposed 3% renovation rate for public buildings (a proposal unpopular with a number of Member States).

Debate on the proposals will continue throughout the autumn, with a plenary vote expected in **April**

2012. The EU energy ministers will discuss the draft legislative proposals at their **November 2011** Energy Council.

The Danish Government, which takes over the rotating EU Council Presidency in January 2012, has declared its intention intends to push for binding targets for energy.

COMMON AGRICULTURAL POLICY

Current status

The Commission published its draft package of proposals for reform of the Common Agricultural Policy (CAP) on **12 October 2011**.

What's happening?

The CAP reform package includes four regulations covering: (i) Direct Payments; (ii) the Single Common Market Organisation; (iii) Rural Development; and (iv) a Horizontal Regulation, outlining how the proposals fit together. Three lesser regulations cover transitional arrangements. The proposals reflect closely the details discussed in the Brussels Bulletin 58.

Launching the package, Agriculture Commissioner Dacian Cioloş declared that, '*Europe needs its farmers. Farmers need European support.*' He stated that the proposals are designed to strengthen the competitiveness, sustainability and permanence of the agriculture sector in the next programming period.

Under the current allocation of funds, France is the largest beneficiary with around 20% of funding, followed by Germany and Spain (~13% each), Italy (~11%) and the UK (~9%). Noting that there would be a fairer sharing of funding, Cioloş stated that 'older' member states could expect to see a diminution in their funding of between 1 and 7%.

The key features of the package are:

- *Greater targeting of income support.* There will be fairer distribution amongst farmers, regions and Member States, addressing the low level of funding received by the states of the east. Additionally, only 'active farmer' will receive income support.



- *A heightened approach to crisis management.* Funding will be more 'responsive and effective'.
- *Introduction of 'Green' payments.* A dedicated 30% of direct payments will be linked to 'green' practices such as crop diversification, maintaining permanent pastures and preserving ecological reserves and landscapes.
- *Research and innovation investments.* There will be a doubling of the agronomy budget with a new partnership for innovation intended to strengthen links between agriculture and scientific community.
- *A more competitive and balanced food chain.* The Commission would like to reduce the 'distance' (i.e. number of stages) between producer and consumer.
- *Boost agric-environmental initiatives.* The ambition is to support the restoration of eco-systems and fight climate change.
- *Aid for young farmers.* This will come in the form of support for a start-up scheme aimed at those under 40.
- *Stimulate rural employment and entrepreneurship.* The Commission propose the creation of a 'starter-kit' for micro-business projects and a strengthening of the 'leader axis' to support renewed economic activity in rural areas.
- *Greater focus on 'fragile areas'.* Farmers in areas with natural handicaps will be compensated in addition to other subsidies granted.
- *Simplification.* Several CAP mechanisms will be simplified including support for small farmers.
- *Funding.* The European Agricultural Fund for Rural Development will be integrated into the proposed Common Strategic Framework – the unified funds previously administered under Cohesion Policy, Rural Development and Fisheries.
- *Performance reserve.* Rural Development funding would also be subject to a 'performance reserve', where 5% of funding is held back and distributed on the basis of high performance.

European Agricultural Fund for Rural Development (EAFRD)

The Commission's proposal for the EAFRD 2014 - 2020 have few specifics on how this money should be spent (in contrast to the detailed regulations issued for the EU's regional development and social funds). The fund is valued at €101.2bn.

The fund is now divided into six priorities linked to the EU's 2020 strategy, the first five of which concern agriculture specifically. These include knowledge transfer and innovation, improving the competitiveness of 'all kinds of agriculture', promoting food chain management, improving agriculture and forestry-related ecosystems, and moving towards resource efficiency in agriculture and the transition to a low-carbon economy. Only the final priority defines rural development in terms other than agricultural, with the aim of using the fund for '*promoting social inclusion, poverty reduction and economic development in rural areas*'. The latter is itself divided into three axes: (i) diversification and the creation of small enterprises and jobs; (ii) the promotion of local development in rural areas; and (iii) the improvement of access to new information and communication technologies.

The proposal stipulates that member states must 'spend a minimum of 25% of the total contribution from the EAFRD to each rural development programme for climate change mitigation and adaptation,' including through land management and organic farming. In addition, it says that 5% of EAFRD funds disbursed must be spent on the Commission's [Leader+ programme](#).

Reactions to the proposals

French Agriculture Minister Bruno Le Maire stated that France supports the principle of greening CAP subsidies, but insisted that it must be 'simple', give incentives and take into account budget considerations. Greening should match the economic reality of farms and cut red tape. He concluded, "For the time being, the Commission proposals do not meet these objectives'.

UK Environment Secretary Caroline Spelman declared that, '*while some of the Commission's rhetoric is right, overall we're disappointed and*



the proposals as they stand could actually take us backwards'.

In the European Parliament, Luis Capoulas Santos MEP who will be lead the negotiations on CAP reform, said that *'the package needs to be greatly improved, if it is to win the support of the Parliament,' as 'there is too much bureaucracy, less money and not enough justice.'* According to Santos, the proposed implementing measures *'are so bureaucratic that they will induce many farmers to renounce EU incentives and opt-out from the greening policy we are trying to introduce in Europe.'* He also criticised the Commission's definition of an active farmer, saying, *'Queen Elizabeth [would qualify as] a farmer'.*

The European Parliament's Agriculture Committee will take evidence from national farmers at their first hearing on the issue on **7 November 2011**.

CLIMATE CHANGE

Current status. The next UN Climate Change summit will take place in Durban, South Africa, **28 November – 9 December 2011**. In preparation for the summit the EU Environment Council discussed a successor to the 1997 Kyoto Protocol (**10 October 2011**).

What's happening?

In debating the EU negotiating position for the upcoming UN Climate change summit, environment ministers meeting in Council agreed to commit to a new phase of the Kyoto Protocol on the condition that other industrialised nations also commit. The EU is presently responsible for 11% of global carbon emissions.

The Kyoto Protocol was adopted in **December 1997** by the 3rd Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and opened for signature in **March 1998**. The protocol committed industrialised countries to reduce their collective emission of six greenhouse gases (GHG) by 5.2% from 1990 levels during the period 2008 - 2012. Under the protocol, the EU committed itself to reduce GHG emissions by 8%. The first

commitment phase of the Protocol ends in December 2012.

Ministers stated that there was a need for a roadmap, which would indicate whether the other industrialised countries (notably the US, China and India) were willing to sign up to a binding Kyoto successor.

Commenting on the Council position, Climate change Commissioner Connie Hedegaard stated, *'If we do that [agree to a second commitment period] without any conditions attached, some would say we have saved Durban, but Durban would not result in one less tonne of carbon dioxide'.*

The Council also addressed the issue of allowances under the Kyoto process, known as Assigned Amount Units (AAUs). The issue of allowances to produce greenhouse gases up to a certain limit has divided the EU. East European nations such as Poland, holder of the rotating EU presidency, are keen to hold on to a surplus they have, as they can sell them to governments struggling to meet Kyoto targets. The Environment Council managed only to agree on an *'ambitious approach to environmental integrity,'* but declined to set out how allowances could be carried over into a second phase of Kyoto after phase one expires.

The Environment Council also adopted conclusions on the UN Sustainable Development Conference (Rio de Janeiro, **June 2012**). The conclusions state that the transition towards a green economy has the potential to promote long-term sustainable growth, job creation as well as the eradication of poverty. It is hoped that Rio+20 will produce a 'green economy roadmap' with goals, objectives and actions.



6TH ENVIRONMENT ACTION PROGRAMME (EAP)

Current status

The recent Environment Council discussed the 6th EAP and the value of launching a successor programme before 2012 (**10 October 2011**).

What's happening?

The 6th EAP established a framework and series of priorities for EU environmental policy-making for the period 2002-2012. Four priority areas were identified: climate change, nature & biodiversity, environment & health and natural resources & waste. The 6th EAP led to the development of [seven Thematic Strategies](#) (soil, the marine environment, air, pesticides, urban environment, natural resources and waste recycling). The Thematic Strategies constitute the framework for action at EU level in each of the concerned priorities.

At the Environment Council, ministers reiterated their desire to see the Commission propose a successor to the 6th EAP by **January 2012**. The ministers declared that a new EAP should address key challenges and objectives:

- develop an ambitious vision for EU environmental policy for 2050 and realistic and achievable targets and timetables for 2020
- improve coherence, complementarity and synergies with other relevant EU strategies
- take into account EU impacts on the global state of the environment
- better integration of the environment into relevant policies such as agriculture, fisheries, transport, energy, industry, trade, development and research
- stimulate the development of and shift towards a green economy
- focus on climate change, biodiversity, efficient and sustainable use of resources, urban environment, prevention and reduction of environmental pollution, and improving quality of life and human health.

Although the 6th EAP will end in July 2012, the Commission has indicated its intention to wait until the second half of 2012 to present a future

strategy, to leave time for broader consultation and to await the outcome of the Parliament's assessment of the programme. Some ministers expressed concern that waiting until late 2012 would create a 'legislative gap' between the two EAPs.

COMMON SALES LAW

Current status

The Commission has published a proposal in the area of contract law; a draft regulation establishing a Common Sales law (**12 October 2011**).

What's happening?

The Commission proposal, the 'Optional Instrument in European Contract Law' would guarantee the rights of consumers and businesses across Europe no matter where the goods are bought or sold. The 'optional instrument' is in effect a new legal jurisdiction, the '28th-regime', that would exist separate but alongside the existing national jurisdictions and would enable individual traders to 'opt-in' to use the new instrument when they conduct cross-border sales.

The Regulation, which would apply principally to goods bought on-line, would enable the consumer to choose at the point of sale whether they want the transaction to be covered by national rules or the European framework. The establishment of one common, though optional, trade law across the EU has been seen as advantageous for companies and consumers alike. For businesses it is hoped to have several advantages:

- Introduction of identical cross-border rules would mean less confusion of dealing with multiple national contract laws
- Cutting transaction costs for companies, *i.e.* fewer costs related to translation and lawyers
- Helping SMEs to expand into new markets. Currently only 9.3% of all EU companies sell across EU borders, thus there is a lot of unused potential



OTHER NEWS

Euro Zone Finance Minister? Following on from a Dutch Government suggestion to create a Commissioner for Euro Zone budget integrity (see Bulletin 59), French President Nicolas Sarkozy has indicated that he finds the proposal, 'interesting' and, 'deserves to be explored'. The Dutch Prime Minister Mark Rutte discussed the proposal with the French president during in Paris (23 October 2011). The Dutch would like to see a commissioner enforce measures on countries breaking the Stability and Growth Pact, which limits public debt and deficits in the euro area at 60% and 3% of GDP respectively.

Eastern Partnership. Belarus has withdrawn from the EU's 'Eastern Partnership' initiative, aimed at developing closer relations with the countries of Europe's eastern periphery (**30 September 2011**). The Belarusian Foreign Ministry released a statement deploring the 'unprecedented discriminatory measures'. Poland had taken against Belarus in the preparation for an upcoming summit of members of the Eastern Partnership. The statement declares that, 'they [the Polish Government] refused to issue an invitation to the head of the Belarus government. As a consequence, the head of delegation appointed by the Republic of Belarus was limited in participating in the Summit's programme.' Poland had chosen to invite Belarus's Foreign Minister rather than the President (who is widely considered to be Europe's last dictator).

EU expansion. Two countries had their application for membership of the EU formally recognised by the Commission, Montenegro and FYR Macedonia (**12 October 2011**). Of the two only the application of Montenegro is expected to make progress in the short to medium term. The full list of 'candidate countries' stands at five (Croatia, Turkey, Macedonia, Montenegro and Iceland). Croatia is expected to sign its accession treaty in **December 2011**. 'Potential candidate countries' (those which have more progress to make before their status is upgraded) include Serbia, Bosnia & Herzegovina, Albania and Kosovo.

Belgian Government in sight. The political parties in Belgium appear to have reached an agreement on the constitutional future of the

country (**8 October 2011**), some 500 days after the June 2010 general election. The agreement will give the country's two main regions, Flanders and Wallonia, greater powers to raise their own taxes. The next step in the process will be negotiations on the socio-economic aspects, including the 2012 budget and measures to curb the country's debt.

Microcredit. The Commission has published a '[European Code of Good Conduct for Microcredit Provision](#)'. The aim is to assist the microcredit sector in accessing long-term finance. It is targeted at funders, investors, customers, owners, regulators and partner organisations. The Code is voluntary, and is divided into sections on: Customer and Investor Relations, Governance, Risk Management, Reporting Standards; and Management Information Systems.

Gender balance in Business Schools. EU Justice Commissioner Viviane Reding has highlighted the role that business schools can play in, 'equipping young women for a career in business and helping them to reach the top'. The Commissioner noted that 60% of university graduates are female but this falls to 12% of board members and 3% of board presidents. The comments came after a [meeting](#) between Reding, European business schools and female business leaders (**6 October 2011**).

Late Payments Directive. Commission Vice-President Antonio Tajani has declared his intention to write to Member States asking them to advance transposition of the late payments directive, initially scheduled for **January 2013** (**13 October 2011**). His hope is that the directive will better assist SMEs whether the difficult financial climate.



UPCOMING EVENTS & MEETINGS

October 2011

24 – 27	European Parliament plenary session
26	EP discussion of Tourism report
27 – 28	JHA Council

November 2011

7	AGRI Committee hearing with national farmers
8	ECOFIN (Finance) Council
14 – 17	European Parliament plenary session
14 – 15	Agriculture & Fisheries Council
18	ECOFIN Council Budget discussions
24	Energy Council
25	Regional Policy Ministers informal council
28 – 29	(Visit of the Scottish Parliament European & External Relations Committee to Brussels
28 – 29	Education, Youth, Culture & Sport Council
28 – 9 Dec	UN Climate Change conference Durban, South Africa
30	ECOFIN Council
30 – 1 Dec	European Parliament Mini-plenary



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