



The Scottish Parliament
Pàrlamaid na h-Alba

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

AGENDA

1st Meeting, 2014 (Session 4)

Thursday 16 January 2014

The Committee will meet at 9.00 am in Committee Room 4.

1. **The Scottish Government's proposals for an independent Scotland: membership of the European Union:** The Committee will take evidence from—

David Crawley, Former Senior Civil Servant;

Professor Laura Cram, Professor of European Politics, University of Edinburgh;

Dr Paolo Dardanelli, Senior Lecturer in Comparative Politics, University of Kent;

Professor John Bachtler, Director, European Policies Research Centre, University of Strathclyde;

and then from—

Marius Vahl, Senior Officer to the Standing and Joint Committee and EEA Council, and Johanna Jonsdottir, Officer, Services, Capital Persons and Programmes Division, European Free Trade Association.

2. **Report from Scottish Government:** The Committee will consider a report from the Scottish Government on Transposition of EU Directives.
3. **The Scottish Government's proposals for an independent Scotland: membership of the European Union (in private):** The Committee will consider its approach to the inquiry.
4. **The Scottish Government's proposals for an independent Scotland: membership of the European Union (in private):** The Committee will consider the evidence heard during the meeting.

EU/S4/14/1/A

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The papers for this meeting are as follows—

Agenda item 1

Written evidence received

EU/S4/14/1/1

SPICe paper

EU/S4/14/1/2

PRIVATE PAPER

EU/S4/14/1/3 (P)

Agenda item 2

Note by the Clerk

EU/S4/14/1/4

Agenda item 3

PRIVATE PAPER

EU/S4/14/1/5 (P)

European and External Relations Committee

1st meeting, 2013 (Session 4), Thursday 16th January 2014

**The Scottish Government's proposals for an independent Scotland:
membership of the European Union**

Introduction

1. The Committee agreed its approach to its inquiry at its meeting on 12 December 2013. The following remit for the inquiry has been agreed—

An inquiry to examine the Scottish Government's proposals for an independent Scotland's membership of the European Union as set out in "Scotland's Future" and "Scotland in the European Union".

Evidence

Call for written evidence

2. On Monday 16 December, the Committee launched its call for views on the inquiry. The deadline for receipt of written submissions is **24 January 2014**.

Oral evidence

3. This is the first oral evidence session where the Committee will hear from David Crawley, Former Senior Civil Servant; Professor Laura Cram, Professor of European Politics, University of Edinburgh; Dr Paolo Dardanelli, Senior Lecturer in Comparative Politics, University of Kent; Professor John Bachtler, Director, European Policies Research Centre, University of Strathclyde; Marius Vahl, Senior Officer to the Standing and Joint Committee and EEA Council, and Johanna Jonsdottir, Officer, Services, Capital Persons and Programmes Division, European Free Trade Association.

4. Written evidence has been received from David Crawley and Dr Paolo Dardanelli and is attached at Annexe A to this note.

Next steps

5. The Committee will continue to take evidence on its inquiry at its next meeting on 23 January 2014.

**Katy Orr
Clerk to the Committee**

WRITTEN EVIDENCE FROM DAVID CRAWLEY

Enquiry into issues surrounding the place of an independent Scotland in Europe

INTRODUCTION

1. I am grateful for this opportunity to submit a note to the European and External Relations Committee. As members may be aware my background is that of a civil servant from 1972 to 2006. I have been involved in a number of major European negotiations over that period from both a Scottish and a UK point of view, starting with fisheries from 1977 to 1981. I was a Counsellor in the UK Permanent Representation (UKREP) from 1990 to 1994 and as Europe Director was the then Scottish Executive's representative in Brussels at the time of the UK Presidency in 2005. As head of agriculture in the Executive from 1999 to 2002 I was closely involved in the CAP reforms of that period. I hope that this background (plus my other involvement in the present Scottish constitutional arrangements) gives me a useful perspective for this study although it is only fair to point out that the European context has changed substantially since I have had day to day involvement.

2. My comments are in two parts: first the wider case for Scottish participation in Europe and, second, the issues surrounding the pathway of an independent Scotland into membership of the EU. I should emphasise that the views in this note are my own personal ones.

THE CASE FOR SCOTLAND IN EUROPE

3. In my view it would be wholly in the interests of Scotland – were it to become independent – to become a full member state within the European Union. I agree fully with the Scottish government's view of why membership of the EU matters, expressed in its paper 'Scotland in the European Union'. As a relatively small nation state on the edge of Europe it is difficult if not impossible to imagine a context other than full membership of the EU in which Scotland could prosper economically; and to throw away the huge economic, social and cultural advantages of EU membership would in my view be a major strategic mistake. The Scottish government's paper sets out well enough why this is the case; and points accurately to the severe weaknesses of any alternative, notably the idea of membership of the EEA.

4. There are however practical realities which require consideration. For example:

(a) I welcome the Scottish government's explicit recognition that the EU is a system of governance in which legislative and policy outcomes are the result of a process of discussion and negotiation and that compromise is inevitable. In other words we cannot get all we want; that is an important reality. Moreover, when the EU agrees a legislative instrument, it has binding effect either directly or through member states' obligation to implement fully and timeously in domestic law.

Surrender of this degree of sovereignty is an inescapable element of EU membership – another important reality which has to be accepted;

(b) all states – irrespective of size – need to form **alliances** on both the general approach to EU matters and on specific issues. Alliances shift regularly over time although some interests – such as most northern member states' commitment to higher common environmental standards and firmer support for free market principles – remain the same. It requires constant effort and engagement to develop and maintain alliances across Europe and it will be critical for a newly independent Scotland to do so. That may well require some pretty hard thinking about Scottish objectives e.g. on fisheries or the rebate, which are likely to prove unpopular with some potential allies. As noted below, it will also require resources;

(c) there is a good deal of debate about how well **small states** can do out of the EU system. In my view this rather depends on where and how the small state positions itself (or is lucky enough to find itself positioned). For example:

- If there is a powerful and general EU political objective. The fall of the Berlin wall and the opening of the east led quickly to a strong political tide which – despite some initial objections from some member states – swept East Germany into the EU closely followed at intervals by the other former communist states. Over many years the political and economic need to drive up the prosperity of the Mediterranean states, especially Spain, Portugal and Greece and southern Italy and more recently Cyprus and Malta, has brought them huge benefits through the structural funds – and, arguably, led to some becoming members of the Eurozone well before they should have done. As a new small state, Scotland would need to be able to catch new winds of change, albeit from the position of being an established democracy and a more prosperous economy in European terms than newer member states;
- If the state can ally itself with one or more larger member states. In regular Council business and at European Councils (of heads of state) it is evident that the larger members' states can (and mostly do) wield substantial influence in discussions. That reflects not only voting weight on qualified majority issues but also effectiveness of coordination and application to detail (both UK strengths since accession in 1973), commitment to the European strategy and financial and economic power (Germany) or deft handling of the diplomacy and politics (traditionally France). Small states – which can offer votes and support – benefit from working with larger and more influential partners with whom they share major geographical, economic and strategic issues.
- Close alignment with the Commission and the full package of European ideals and objectives. This was typically how the tiniest state of all - Luxembourg – did so well out of the EU often jointly with Belgium and until quite recently the Netherlands. Even the French have achieved much through vocal support for the European objective, if not always matched by their practice.

(d) The **resource implications** of an active and effective role in the EU are considerable. Scotland has always made a significant contribution to EU debate

both through involvement in UK led negotiations and through direct involvement in commission working groups, with the European Parliament and other institutions. But we have been able to be selective and play to our strengths. An independent Scotland will need to devote – and pay for – much more capacity in breadth and depth in order to deal effectively with the EU. Comprehensive diplomatic representation in Brussels and across Europe and consistent ministerial and official engagement with emerging policies and proposals will be required. The Scottish Government will need to employ a much wider range of expertise than it has at present to cover all the domestic and international policy issues dealt with at European level. Consideration will have to be given to where that expertise may be found.

5. A central plank of the Scottish Government's position is that Scotland will necessarily achieve more as **an independent state within the EU** than it would by remaining part of the UK. This is a political point and it is not the aim of this note to engage with that. However, drawing on my own experience, I would argue that the view that Scotland has been disadvantaged by its position within the UK is debatable. Going back as far as the late 1970s and early 80s, the Scottish position was at the centre of the UK's position on the Common Fisheries Policy (and the fishermen were there to ensure that!); Scottish interests were fully recognised in the negotiations on successive structural fund regimes which have been of major benefit to Scotland over many years; and in very many areas of EU legislation such as health and safety, environment, employment and the single market, UK and Scottish needs and objectives have largely coincided. Clearly this has not always been the case especially where the UK – mainly because it is a substantial net contributor even with the rebate – has argued for reducing EU funding or renationalizing funding responsibilities. Yet Scotland has often got much of what it wants because other member states share Scottish concerns (aspects of the 2002/3 CAP deal being in my view a case in point). It is interesting in this context that the Scottish Government has stated that it expects to retain a share of the UK rebate (an objective which it is very hard to see being achieved in the light of the strong and continuing resentment which most other member states feel for the current arrangement).

6. An even more challenging issue is where the balance of advantage for Scotland would lie if a future UK government were to take the rest of the UK out of the EU following a referendum. I share the view that this would be hugely damaging; but the implications for Scotland have not been considered at all. If the UK were to become a non EU country with Scotland remaining in the EU the effect within the British Isles on trade, the economy and the movement of people would be massive. This will need much more analysis if the referendum plan does appear in any UK party's manifesto for the next UK election.

THE ROAD TO MEMBERSHIP

7. The road by which an independent Scotland would become or, depending on the point of view remain, a member of the EU has been the subject of much heat and, at least until recently, not much light. It is now agreed between all parties that negotiations with all member states within the framework of the European Treaties will be required for Scotland to become a member state in its own right. That must

be right: the EU is based on successive Treaties signed by the Governments of the member states. Despite the rhetoric and the laudable aims of the EU it is based, formally, on agreements between states, not peoples.

8. Equally, it is largely accepted both that it is entirely reasonable for Scotland, if independent, to become a state member of the EU and that for the most part the EU would expect and welcome such an outcome. However this leaves room for major uncertainties over the appropriate legal basis for Scotland's potential entry to the ranks of full membership, the complexity and difficulty of the negotiations and therefore the timing.

9. It has been argued that the only basis for Scotland to become a member is for it to proceed as a conventional accession candidate and in effect to join an orderly queue with Turkey and others and await its turn for detailed analysis and chapter by chapter negotiation with each stage subject to Council and Parliament approval. The Commission appears to have endorsed this view so far. The Scottish government has put forward an alternative view based on a presumption that there should be continuity of the effect of Scotland's participation in the EU as part of the UK; and that article 49 of the European treaty would allow any necessary Treaty change to be made to provide for this.

10. Unfortunately, whatever Scottish government lawyers think, this view is little more than an interesting argument – possibly one which would catch the sympathy of many other EU member states but with little effect unless both the Commission legal services and the Council legal services could be persuaded that it was indeed the right and only approach. If EU lawyers remain firmly of the view that the accession articles are the ones that must apply it will be very hard to follow any alternative; and if there is any notion that the question might be tested in the European Court of Justice, it should be dismissed. It is hard to see any basis under which this might be put to the court and any attempt to do so would involve massive delay.

11. Having said that, I am not convinced that the actual basis should make all that much difference. Either way, there is no explicit provision in the EU treaties for a situation in which part of an existing member state secedes from that state but wishes to be a member of the EU. Previous examples sometimes quoted are in fact opposite to this – Greenland left the EU but remained a part of Denmark; and East Germany joined both Germany and the EU. It is certainly true that the EU managed to accommodate these exceptional situations but the legal provisions relating to the accession of new member states are far more clearly established now. It is also probable that, whatever the basis, the actual work the Commission will need to carry out to assess Scotland's application will be much the same i.e. primarily a detailed analysis of the economy and the extent of implementation of the current body of EU law.

12. The central point is that, in the absence of an explicit Treaty provision, the unanimous agreement of all existing member states will be needed both to the process to be followed and to the nature and outcome of the negotiations. The position of most states will depend heavily on the advice and preparatory work carried out by the Commission and on the views of the Council legal service. It is

already clear that at least one major state – Spain – is likely to be difficult in view of the precedent Scottish accession would set; and there may well be others who decide to be awkward for their own reasons. Sympathy and goodwill for Scotland is no bad thing but it won't cut much ice for some.

13. Scotland does have in its favour the fact that it has long been geographically part of the EU; and also the fact that the full body of EU legislation has been implemented subject to any opt outs granted to the UK. Inevitably however, demands for special measures will complicate negotiations. Opt outs from the euro; Schengen and even a demand for a share of the rebate seem likely to dent the welcome Scotland hopes to receive from other states.

14. The complexity and extent of issues to be negotiated will be bound to lengthen the time the whole thing takes. Even assuming a reasonably fair wind the timetable suggested by the Scottish Government seems unrealistic. Within the EU Scotland's position will be seen as a difficult issue but it is very unlikely to be top of the EU's collective priority list. Much will depend on the pace the Commission moves at. It is likely to be well into 2015 before it is able to present a full report to Council on the issue and only then can real discussions start. The fact that the UK government will be the only body competent to negotiate on Scotland's behalf before Scotland becomes a recognised independent state is a further and major complicating factor. However much goodwill there may be, a responsible UK Government will be bound to think carefully about how to take this forward; and of course there is a UK election scheduled for mid 2015.

15. In the absence of a clear timeline agreed not only by the UK government but also by EU member states and institutions it is very hard to be confident that full Scottish EU membership can be delivered by March 2016. I would expect that attention will need to turn sooner rather than later to interim arrangements needed to maintain Scotland's legal relationship with the EU until final decisions are taken.

CONCLUSION

16. I am clear that if Scotland decides to leave the UK it should become a full member state of the EU and also that most – possibly all – EU member states and institutions would want to see that happen in the end. It is nevertheless essential to be realistic about the genuine negotiating complexities and obstacles that lie in the way of this outcome; to acknowledge and deal with the fact that it is more than likely to be a longer process than the Scottish government currently believes; and for Scotland to develop a clear strategy for achieving this outcome. This will need to recognize that not all aspirations may be attainable in a negotiation in which Scotland will not have the upper hand, and therefore that some compromises will be inevitable.

10 January 2014

WRITTEN EVIDENCE FROM PAOLO DARDANELLI

An Independent Scotland and EU Membership

Evidence submitted to the Scottish Parliament European and External Relations Committee's inquiry into "The Scottish Government's Proposals for an Independent Scotland's Membership of the European Union"

Executive Summary

1. In assessing the pros and cons of an independent Scotland's membership of the European Union, we need to take into account the multifaceted nature of the question.
2. We also have to take into account its dynamic nature, making such an assessment necessarily mostly a matter of speculation.
3. Alternatives to EU membership, such as membership of the EEA or Swiss-style bilateral relations, are sub-optimal so the real choice is between membership and 'the open sea'.
4. A crucial variable is whether the Rest of the UK decides to remain in the EU or not.
5. Should an independent Scotland wish to re-orient itself towards Scandinavia, the trajectory of Denmark and Sweden would also be of primary importance.
6. Membership would be in the best interests of an independent Scotland on the basis of the EU as currently constituted but a number of factors might affect its viability in the medium term.

Submitter

Dr Paolo Dardanelli is Senior Lecturer in Comparative Politics, Co-convenor of the Comparative Politics Research Group, Deputy Director of the Centre for Federal Studies, and Director of the Centre for Swiss Politics in the School of Politics and International Relations of the University of Kent.

1. Purpose

This brief written evidence is intended to address the following statements of the Scottish Government: a) "membership of the EU is in the best interests of Scotland" and b): "membership of the EU provides the best international economic framework within which to optimise the economic and social gains of independence and tackle the global challenges that we face" and support the debate in the first evidence session of the Committee's inquiry.

2. A multifaceted and dynamic question

The question of whether membership of the EU would be in the best interests of an independent Scotland is a multifaceted one, touching as it does on a wide range of aspects pertaining to the country's economy, security, identity and so forth. The benefits Scotland would derive from membership and the costs it would incur in each of these spheres are likely to be different and possibly diverging, and some are less easily quantifiable than others.

The object of the question is also a highly dynamic one, in at least four ways. First, Scotland would have to decide whether to be a 'semi-detached' member, thus following in the footsteps of the UK, or playing a full role. Second, the EU is undergoing significant internal change that might lead in the medium term to the emergence of a very different organisation, the contours of which we are only imperfectly able to predict today. Second, the UK is reviewing its own membership of the EU, a review which might result in its (what would be the Rest of the UK, or RoUK, by then, if Scotland secedes in 2014-16) withdrawal before the end of the current decade. Third, Scotland would take time to 'find its feet' as an independent state and its future trajectory would naturally affect the costs and benefits of membership, broadly understood.

Reaching an assessment of whether being a member of the EU would be in the best interests of an independent Scotland thus requires setting the many different aspects of the membership trade-off against each within a highly fluid context. It is thus an exceedingly difficult exercise and one that has of necessity to be based on a considerable amount of speculation and educated guesswork.

3. EU membership on current terms

EU membership can essentially be seen as a trade-off, placing constraints on its members' autonomy on the one hand but delivering a range of benefits on the other. A positive assessment of membership rests on the costs of membership being outweighed by its benefits. In the remainder of this evidence I shall focus primarily on the economic aspects of membership, with references to the second statement of the Scottish government object of this inquiry.

The main costs for an independent Scotland would be as follows:

- a) the country would be bound by EU market regulation, which in some cases might impose a heavier burden on business than Scotland might have unilaterally chosen
- b) as a member state richer than the EU average, Scotland would likely be a net contributor to the EU budget
- c) its fishing industry would be constrained by the EU common fisheries policy.

Such costs, however, should be set against the benefits Scotland would derive, the most prominent of which include:

- a) unfettered access to the EU's single market of 500m people, the world's largest market by value. As an economy substantially reliant on exports, this would be of crucial importance to Scotland, especially in regard to the country's attractiveness as a location for multinationals wanting to serve the EU market from a Scottish base.
- b) direct access to EU decision-making, including membership of the European Council and the Council of Ministers. Although many policy areas are governed by qualified majority voting, member states retain a veto in some areas and there is a strong culture of consensus, meaning member states of Scotland's size 'punch above their weight'.
- c) through the EU, Scotland would be able to negotiate trade agreements with third parties on more favourable terms than it might be able to obtain by negotiating on its own.

d) it is likely that as a member of the EU Scotland would be able to project its influence on to the rest of the world more effectively than by acting alone on the world stage.

Although quantifying non-financial costs and benefits is tricky, it seems reasonable to argue that the latter would outweigh the former, hence that membership would be in the best interests of Scotland.

4. Joining the core?

The above 'stylised' assessment assumes that Scotland would decide to follow the UK's path of a 'semi-detached' form of membership. Alternatively, it may decide to become a 'full player'. If so, this would likely require adopting the euro and joining the Schengen free-circulation area, although neither is currently in the plans of the Scottish government. When it comes to Schengen, of course, Scotland would be in a similar situation to Ireland, which has not joined it because it would have meant losing freedom of movement within the British Isles.

As both the euro and Schengen touch on high-profile, politically sensitive issues – currency and immigration – public attitudes might present a significant obstacle with which a change of course would have to contend. While there is currently no virulent Euroscepticism in Scotland, trying to deepen the country's integration might indeed stoke it, given less than enthusiastic mass opinion on many aspects of the EU.

5. Alternatives to membership are sub-optimal

Alternatives to EU membership Scotland might be tempted to consider include membership of the European Economic Area (EEA), of which the main example is Norway, and Swiss-style bilateral relations. Both have been advocated by those arguing for the UK's exit from the EU, on the grounds that they would be preferable to the status quo. Virtually all the analyses that have set out to assess the relative merits of either compared to the current UK 'tailor-made' membership, which leaves it outside monetary union and Schengen, however, have concluded that they are actually an inferior way of pursuing relations with the rest of Europe. This is primarily because both Norway and Switzerland are directly or indirectly bound by EU law but have no say in shaping it. As these alternatives are thus sub-optimal, the real choice facing an independent Scotland would be between EU membership and 'the open sea'.

6. Decision by RoUK is a key variable

A key variable is whether the RoUK decides to stay in the EU or not. If the Conservatives win the 2015 general election a referendum on the issue will be called in 2017. Judging by the current state of public opinion, the probability that the electorate will decide to vote in favour of withdrawal is high, perhaps as high as 50 per cent.

Even if it decides to re-orient itself towards the Continent or towards Scandinavia, an independent Scotland would still be closely linked to the RoUK for a long time after secession. Should the latter decide to leave the EU, this would naturally have a major impact on Scotland's own position and may lead to a situation in which EU membership would no longer be in the country's best interest – see below.

6. EU evolution scenarios

Parallel, but also partially linked, to the RoUK's decision, the EU can also be expected to evolve significantly in the foreseeable future. Key to such evolution will be the internal dynamic within the Eurozone (EZ) and relations between the latter and the wider EU. I would expect the following main trends to unfold:

- The EZ is likely to deepen its integration, especially in the form of a 'banking union' and closer supervision of member states' economic policies, but short of a transition towards a federal system.
- The EZ is also likely to expand, to include countries such as Poland, the Czech Republic, and Hungary.
- A larger and more integrated EZ would deepen the marginalisation of the non-EZ member states, especially if the RoUK, by far the most important non-EZ member state, leaves.
- Scotland's accession to independence within the EU would set a precedent for other 'stateless nations' aspiring to independence such as Catalonia and Flanders. Were they to achieve independent statehood within the EU too, they might be natural allies for Scotland in EU decision-making. If this does not take place, however, Scotland might face the hostility of member states threatened by secession movements, notably Spain.

7. Trajectory of the Scandinavian countries

An independent Scotland might decide to re-orient itself towards Scandinavia in the medium term. If so, the trajectory of the Scandinavian countries in relation to the EU would affect the viability of Scotland's own membership. Iceland – having decided to drop its application – and Norway are likely to remain outside the EU but within the EEA. The Faroe Islands are also likely to keep their current status of a Danish territory but outside the EU. The key variables are the trajectories of Denmark and Sweden. Having both rejected adoption of the euro by referendum, the two countries are unlikely to join the EZ for the foreseeable future. A RoUK departure, however, would have a major impact, possibly leading them to reconsider their position too, either by joining the EZ or by following the RoUK out of the EU. In an extreme, but not too far-fetched, scenario in which the RoUK leaves, and Denmark and Sweden, and possibly Ireland too, leave as well, Scotland would find itself surrounded by non-EU members.

8. Conclusions

Deciding whether membership of the EU would be in the best interests of an independent Scotland requires an assessment of the question in relation to the EU as it is currently constituted as well as consideration of its likely evolution in the medium term. A key question mark hanging over such evolution is whether the RoUK would leave if a referendum on membership is held in 2017.

Given that alternative institutional forms of relations with the EU short of full membership – such as the EEA and Swiss-style bilateral relations – are sub-optimal, I consider that membership of the EU as it currently constituted would be

in the best interests of Scotland if the country accedes to independence in 2014-16.

Were the RoUK to leave, though, and taking into account the likely internal evolution of the EU – notably the deepening and widening of the EZ – the viability of EU membership for Scotland would be severely affected and the country might indeed find itself in a situation in which membership would no longer be in its best interests.

9. Recommendations to the Committee

My central recommendation is that the Committee should consider EU membership as being in the best interests of an independent Scotland on current terms. As the EU is likely to undergo potentially far-reaching changes in the medium term, this should be considered as a provisional recommendation which would require revision in the light of such changes if and when they occur.

29 December 2013

European and External Relations Committee

1st meeting, 2013 (Session 4), Thursday 16th January 2014

**The Scottish Government's proposals for an independent Scotland:
membership of the European Union**



SCOTLAND IN THE EUROPEAN UNION

Introduction

The White Paper states that the “Scottish Government, supported by the overwhelming majority of Members of the Scottish Parliament, believes that membership of the EU is in the best interests of Scotland.” The Scottish Government further indicates that membership of the EU “provides the best international economic framework within which to optimise the economic and social gains of independence and tackle the global challenges that we face.”

Initially this paper provides background information for the European and External Relations Committee on Scotland’s current status within the European Union, how Scotland operates on EU issues within the UK, and the value of EU membership to Scotland. The paper then goes on to look at the Scottish Government’s vision of Scotland as an independent member of the European Union, Scottish public attitudes to the European Union and the impact small states can make in the European Union. Finally, the paper looks at potential alternatives to EU membership such as the European Free Trade Area.

SCOTLAND'S CURRENT STATUS IN THE EUROPEAN UNION

The European Union Context

The European Union is a creation of its Member States. The Treaties that govern the workings of the European Union and its institutions have been agreed unanimously by its Member States and address the way in which the European Union institutions work with the Member States. As a result the policy and direction of the European Union has been an instrument of its Member States.

Representation in the EU Institutions

Membership of the European Union entitles Member States to send their Head of State or Government to the regular meetings of the European Council¹ of which there are at least two during each six month Presidency period. In addition Government Ministers from each of the Member States attend meetings of the Council of the European Union² (also known as Council of Ministers meetings).

The Council of Ministers 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

The Council also meets regularly at the level of ambassadors and deputy permanent representatives. The Permanent Representatives Committee or Coreper is responsible for preparing the work of the Council of the Ministers. It consists of representatives from the Member States with the rank of Member States' ambassadors to the European Union and is chaired by the Member State which holds the rotating Council Presidency. Coreper works in two configurations:

¹ The European Council is the meeting of Member States Heads of State or Government. The European Council generally meets twice every six months though further meetings can be convened by the President when deemed necessary.

² The Council of the European Union ministerial meetings 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 (under Article 16 Treaty of the European Union (TEU)). Which ministers attend a meeting depends on which topic is on the agenda. The Council is responsible for working with the European Parliament to exercise legislative and budgetary functions.

- Coreper I, consisting of the deputy permanent representatives, deals with technical matters;
- Coreper II, consisting of the ambassadors, deals with political, commercial, economic or institutional matters³

Council Working Group meetings at which legislation is often developed are also attended by government officials from each Member State.

Council Decision Making

The way decisions are made in both the European Council and the Council of Ministers means that all Member States, no matter what their size, need to work closely with allies to achieve their own specific objectives.

In the European Council decisions are made by consensus. This means each Member State effectively has a veto on European Council decisions such as changes to the Treaties and agreement of the Multi-annual Financial Framework. The need for consensus means each Member State has to compromise and prioritise its key interests. In recent years the European Council has taken a key role in agreeing the strategic direction of the EU, for instance in agreeing the broad objectives of the Europe 2020 agenda.

Decision making in the Council of Ministers (where legislation is agreed) is achieved by unanimity or qualified majority voting depending on the process agreed in the Treaties. For qualified majority voting, the number of votes each Member State has is determined by population size and as a result qualified majority voting is based on the principle of the weighting of votes. Under the current weighting system, the Member States with the largest populations have 27-29 votes, the medium-sized countries have 7-14 votes and the small countries 3 or 4 votes. A decision requires at least 255 out of 345 votes for it to be adopted.

With the entry into force of the Treaty of Lisbon a new system known as “double majority” was introduced. It will enter into force on 1 November 2014 (though until 31 March 2017, Member States can demand the application of the previous weighting rules). In accordance with the Treaty, the new qualified majority corresponds to at least 55% of the members of the Council, comprising at least 15 of them and representing at least 65% of the European population. A blocking minority may be formed comprising at least four members of the Council⁴.

According to the Scottish Government the move to a double majority system of Council voting;

“poses no challenge to the advantages to Scotland of independent EU membership. Indeed, it is more likely to strengthen the role that smaller states play in the wider EU negotiating process.”⁵

EU Membership currently allows each Member State to nominate a European Commissioner. The European Commission is responsible for representing and upholding the interests of the EU and for drafting proposals for new EU laws. In

³ Europa Glossary: http://europa.eu/legislation_summaries/glossary/coreper_en.htm

⁴ http://europa.eu/legislation_summaries/glossary/qualified_majority_en.htm

⁵ Scotland in the European Union

addition, it is responsible for managing the day to day business of implementing EU policies and spending EU funds⁶. Although each Member State nominates a Commissioner, each Commissioner is required to act in the best interests of the Commission and the European Union as a whole rather than represent the interests of his or her home state.

Each Member State is also entitled to elect a number of Members to the European Parliament. The European Parliament plays a major role in the agreement of nearly all legal acts of the union. Under the Ordinary Legislative Procedure the European Parliament is required to jointly agree legislation with the Council.

Seats in the European Parliament are allocated on the basis of population of each Member. Scotland as part of the UK, elects 6 Members of the European Parliament (MEPs) out of a UK total of 73. Small Member States such as Denmark, Finland and Slovakia elect 13 MEPs, and Ireland and Lithuania elects 12 MEPs each⁷.

Scotland within the United Kingdom

The United Kingdom Government as the Member State represents Scotland in the European Council and the Council of Ministers meetings. In addition, contact with the European Commission is primarily made through the Member State Government.

This situation is reflected in the Scotland Act 1998, which states that relations with the European Union are the responsibility of the Parliament and Government of the United Kingdom. This means the United Kingdom Government is responsible for managing relations with the European Union including leading on all policy and legislative negotiations. However, the Scotland Act does give the Scottish Government and Scottish Parliament responsibility for implementing European obligations where they relate to devolved matters, for example in the area of environmental policy.

Memorandum of Understanding and the Concordat on the Coordination of European Union Policy Issues

As many pieces of European legislation relate to devolved policy areas, the United Kingdom Government works closely with the Devolved Administrations in Scotland, Wales and Northern Ireland. This relationship is managed by the Memorandum of Understanding and the Concordat on Coordination of European Union Policy Issues between the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland.

The Memorandum of Understanding established a Joint Ministerial Committee which meets under several different formats including the Joint Ministerial Committee (Europe). According to the Scottish Government the JMC(Europe) meets to:

“discuss forthcoming meetings of the European Council and European issues affecting the UK and devolved administrations. It also acts as the forum for the

⁶ www.europa.eu/about-eu/institutions-bodies/European-commission/index_en.htm

⁷ <http://www.europarl.europa.eu/aboutparliament/en/0005bfbcb/Number-of-Members-per-Member-State.html>

exchange of information and the discussion of strategic or cross-cutting issues where there is a devolved administration interest. JMC(E) is normally chaired by the Foreign Secretary or the Minister for Europe.

The JMC also acts as a forum for settling inter-administration disputes that cannot be solved through bilateral official or ministerial channels. The dispute resolution protocols are set down in the Memorandum of Understanding.”⁸

The Concordat on Coordination of European Union Policy Issues between the UK Government and the Scottish Government is designed to:

“ensure that the Devolved Administrations are given a forum to raise any issue, related to exchanges within Europe, that may have an effect on devolved policy.”⁹

The Concordat on Coordination of European Union Policy Issues specifically manages the United Kingdom Government’s relationship with the Scottish Government in the provision of information, the formulation of UK policy, attendance and representation at Council of Ministers meetings, implementation of EU obligations and infraction proceedings. The relevant sections of the Concordat are reproduced below for information.¹⁰

Provision of information – to allow the Scottish Government to contribute to the development of UK’s decision making on EU matters the UK Government will provide information on relevant EU business. The provision of information includes information provided by lead Whitehall Departments and UKRep¹¹ on matters which fall within the responsibility of the devolved administrations, including non-devolved matters which might impact on areas for which Devolved Ministers have competence.

The exchange of information between the UK Government and the Scottish Government is done on a confidential basis.

Formulation of UK policy - Ministers and officials of the Scottish Government should be fully involved in discussions within the UK Government about the formulation of the UK’s policy position on all issues which touch on matters which fall within the responsibility of the devolved administrations.

Attendance and representation at Council of Ministers and related meetings – Scottish Government Ministers may request to attend Council of Ministers meetings where the meeting’s subject may touch on devolved competences. Attendance at Council of Ministers meetings is a decision to be taken “on a case-by-case basis by the lead UK Minister, recalling that the

⁸ <http://www.scotland.gov.uk/About/Government/Inter-Governmental/Joint-Ministerial-Committee>

⁹ <http://www.scotland.gov.uk/About/Government/Inter-Governmental/Memo-of-Understanding>

¹⁰ <http://www.scotland.gov.uk/Resource/0043/00436627.pdf>

¹¹ The United Kingdom Permanent Representation to the European Union (UKRep) represents the UK in negotiations that take place in the EU

Memorandum of Understanding recognises the importance of cooperation across a range of areas and the importance of all four administrations working together, where appropriate, on matters of mutual interest". If a Scottish Minister attends a Council of Ministers meeting, they may also speak for the UK at such a meeting. In speaking, the Scottish Government Ministers would support the agreed UK negotiating line.

Attendance by officials of the Scottish Government at EU meetings is agreed bilaterally with the lead Whitehall Department. Such agreement also covers attendance at Presidency and Commission chaired meetings, including those discussing implementation matters. The role of officials from the Scottish Government will be to support and advance the single UK negotiating line which they will have played a part in developing.

Implementation of EU obligations – The Scottish Government is responsible for deciding how to implement EU obligations where they relate to a devolved competence. Whitehall Departments will also liaise closely with the Scottish Government "about the implementation by UK legislation of obligations in non-devolved areas, particularly where these could touch on areas which fall within the responsibility of the devolved administrations".

Infraction proceedings – where the Scottish Government fails to properly implement or enforce an EU obligation relating to an area of devolved competence and as a result financial costs and penalties are imposed on the United Kingdom as the Member State, the Scottish Government is responsible for meeting those financial costs or penalties.

Scottish Ministerial attendance at Council

The Scottish Government has provided details of Scottish Ministers' attendance at Council of Ministers meetings since 1999. Details are provided in the table below:

Scottish Ministerial Attendance at Council of Ministers meetings

Year	Formal Councils Attended
1999	5
2000	8
2001	11
2002	10
2003	12
2004	11
2005	13
2006	8
2007	9
2008	14
2009	17
2010	9
2011	15
2012	21
2013	16
Total	179

Of the 179 formal Council of Ministers meetings that Scottish Ministers have attended, 98 have been attendance at the Agriculture and Fisheries Council (or Agriculture or Fisheries), 30 have been attendance at the Justice and Home Affairs Council and 23 have been attendance at the Environment Council.

The Scottish Government's vision of Scotland as an independent member of the European Union

Scotland in the European Union sets out the Scottish Government's vision for contributing to the European Union as a Member State. It states:

“An independent Scotland will play a full and constructive role as a Member State of the European Union, working with its partners to address common economic and social challenges on a basis of mutual respect in co-operation in accordance with the terms and spirits of the EU Treaties.”

The Scottish Government's starting point in terms of its membership of the European Union is that it plans to seek continuity of effect meaning the terms of membership that Scotland currently enjoys as part of the United Kingdom should continue in the event an independent Scotland joins the European Union.

The Scottish Government has also suggested it will seek reforms of the European Union by working with other Member States. The three areas it highlights as requiring reform are:

- Enhancing democracy and thereby restoring legitimacy to the European institutions
- Promoting a bigger focus on boosting growth and jobs in the European Union through European Union policies
- Closer working with other EU member states to deliver key EU objectives in areas where Scotland has expertise such as energy, climate change, and the marine environment

THE VALUE OF EUROPEAN UNION MEMBERSHIP FOR SCOTLAND

In Scotland in the European Union, the Scottish Government states:

“The Scottish Government firmly believes that continued membership of the EU provides the best international economic framework within which to optimise the economic and social gains of independence and tackle the global challenges that we face”.

The next section of this paper looks at the value of European Union membership to Scotland in terms of the benefits of the Single Market, the European funding Scotland receives and the terms of membership it holds as part of the United Kingdom.

Access to the Single Market

In “Scotland in the European Union”, the Scottish Government sets out what it sees as “The Economics of European Union Membership”. It sets out the value of the Single Market to Scotland.

According to the Scottish Government the European Union is “the main destination for Scotland’s international exports¹² - accounting for around 46% of Scotland’s international exports in 2011, with an estimated value of around £11 billion.”¹³.

The Scottish Global Connections Survey for 2011 shows that of Scotland’s top ten international export destinations, seven are EU Member States (Netherlands, France, Germany, Belgium, Ireland, Spain and Italy) and the value of exports to those countries was worth just over £9 billion in 2011¹⁴.

Scotland has also benefited from access to the Single Market by importing goods and services from other European Union Member States. There is currently no data available to show Scottish imports from across the EU but UK Government figures show that in 2012, the EU accounted for just under half of all UK trade (both exports and imports) in goods and services.¹⁵

According to the Scottish Government, European Union membership is a contributing factor to increased Foreign Direct Investment with firms based in other EU Member States being responsible for about 40% of the total number of foreign-owned companies which operate in Scotland. In addition, European Union membership can encourage investment from companies located in countries such as the United States of America and Japan who wish to have a presence within the European Union and access to the Single Market.

¹² International exports mean those to out with the United Kingdom

¹³ Scotland in the European Union

¹⁴ Scottish Global Connections Survey 2011

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy/Exports/GCSIntroduction/GCS2011tables>

¹⁵ es

¹⁵ United Kingdom Balance of payments - The Pink Book, 2013 Dataset

<http://www.ons.gov.uk/ons/rel/bop/united-kingdom-balance-of-payments/2013/tsd-pink-book-2013-time-series.html>

Access to the Single Market also helps support a number of jobs in Scotland. The latest Scottish Government Input-Output Tables allow users to calculate the economic impact of final demand markets, including export markets. Exports from Scotland to the European Union support a total of 110,000 full-time equivalent (FTE) jobs this includes employment directly within organisations exporting from Scotland to the EU and indirect employment among suppliers within the supply chains of those exporting to Europe. The impact also includes household spending arising from income created through the jobs supported.

The principle of free movement has allowed Scots to travel to other European Union Member States to work or study. Likewise, other EU nationals are able to come and work or study in Scotland. According to the Scottish Government:

“Scotland’s economy, and society benefits significantly from the 160,000 citizens from other Member States who have chosen to live, work or study here.”¹⁶

External Trade

EU Membership also allows Scotland to benefit from the bilateral Free Trade Agreements that the European Union has negotiated. The EU already has in place trade agreements with some 50 partners including Chile, South Korea, Mexico, South Africa and the Central American countries. In addition, negotiations for further Free Trade Agreements are currently taking place with, amongst others, the United States of America, Canada, Japan, India and China.¹⁷

European Funding

Scotland has benefited from both pre-allocated and competitive European funds over the last 4 decades. European funding programmes such as Structural Funds and the Common Agricultural Policy see funds pre-allocated to Member States and, as such, there is no competitive bidding process required to ensure Scotland gets “its share” of funding. The allocation of Common Agricultural Policy funds and European Structural Funds between the countries of the UK is negotiated by the UK Government with the Devolved Administrations.

The two pre-allocated funds Scotland has historically benefited from most are the Common Agricultural Policy and European Structural Funds.

Between 2007 and 2013 Scotland benefited from around €4.5 billion of Common Agricultural Policy (CAP) funding. Between 2014 and 2020 Scotland is likely to benefit from around €4 billion

¹⁶ Scotland in the European Union

¹⁷ European Commission: The EU's bilateral trade and investment agreements – where are we?
http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150129.pdf

Between 2007 and 2013 Scotland received around €800 million in European Structural Funds¹⁸. During the 2014 to 2020 Multiannual Financial Framework, Scotland is likely to receive around €795 million in funding.

In terms of other pre-allocated funds during the 2007 to 2013 programming period, Scotland received around €100 million from the European Fisheries Fund and just over €40 million from European Territorial Cooperation Programmes¹⁹.

Scotland has also been successful in accessing competitive funding. The biggest programme that Scotland has benefited from is the research and development programme. According to figures from Scotland Europa supplied to the European and External Relations Committee, for the period from 2007 up to 1 July 2013, Scotland had secured €505 million which is 1.5% of the total allocated Framework Programme 7 for Research and Development (now Horizon 2020) budget. This also represents almost 10% of the €5.2 billion of funds which have come to the UK²⁰. Scotland has also received money from other strands of competitive funding such as the Competitiveness and Innovation Programme and the LIFE+ programme but receipts from these programmes have been comparatively small.

Scotland's Contribution to the European Union budget

Whilst Scotland has benefited from European funds, it has also contributed payments to the European budget as part of the UK.

As part of its National Conversation series (Europe and Foreign Affairs), in 2009 the Scottish Government calculated contributions to and receipts from the European budget in 2007, based on the 2007 to 2013 Multiannual Financial Framework. According to the Scottish Government's Europe and Foreign Affairs section of the National Conversation:

“it is estimated Scotland would have made a positive contribution to the EU of approximately €1.6 billion before the rebate, and €1.1 billion after the rebate, when North Sea GDP is excluded. When a population share of North Sea GDP is included Scotland is estimated to make a net positive contribution to the EU of approximately €1.6 billion before the rebate and €1.1 billion after the rebate. When an illustrative geographical share of North Sea GDP is included in the analysis Scotland is estimated to make a net positive contribution to the EU of approximately €1.8 billion before the rebate and €1.4 billion after the rebate.”²¹

Using the 2007 to 2013 Multiannual Financial Framework, the Financial Scrutiny Unit in SPICe has made an assessment of Scotland's likely receipts and payments to the EU Budget between 2007 and 2013. The data which is attached as an Annex show Scotland's illustrative contribution to the EU budget (€m) and allocated EU receipts. The illustrative budget contributions are based on an illustrative share of the UK's EU

¹⁸ Ibid.

¹⁹ Ibid

²⁰

[http://www.scottish.parliament.uk/S4_EuropeanandExternalRelationsCommittee/Meeting%20Papers/Papers_for_Meeting_on_5_December_\(429KB_pdf\).pdf](http://www.scottish.parliament.uk/S4_EuropeanandExternalRelationsCommittee/Meeting%20Papers/Papers_for_Meeting_on_5_December_(429KB_pdf).pdf)

²¹ The National Conversation: Europe and Foreign Affairs

<http://www.scotland.gov.uk/Publications/2009/09/08143726/10>

budget (see appendix). Data for EU allocations and spending are not readily available in a consistent format from 2007 to 2013 and Figure 2 is based on allocations published in the Scottish Draft Budget. The data suggests that Scotland is a net contributor to the EU, which is consistent with previous estimates produced by the Scottish Government in September 2009.

It was not possible to undertake an assessment of likely receipts and payments during the 2014-2020 Multiannual Financial Framework as it would have required a number of assumptions about future Scottish GNI and VAT based payments to the EU budget.

Any calculations looking at an independent Scotland's likely payments and receipts for the 2014-2020 period would be difficult because the Multiannual Financial Framework may require a revision as a result of Articles 20 and 21 of the Council regulation on the Multiannual Financial Framework for 2014-2020, which state:

“Article 20

Revision of the MFF in case of a revision of the Treaties

Should a revision of the Treaties with budgetary implications occur between 2014 and 2020, the MFF shall be revised accordingly.”

Article 21

Revision of the MFF in the event of enlargement of the Union

If there is an accession or accessions to the Union between 2014 and 2020, the MFF shall be revised to take account of the expenditure requirements resulting therefrom.”²²

The UK Opt-outs

As part of the United Kingdom, Scotland currently has opt-outs from a number of European policy areas. These include the requirement to join the Eurozone and the Schengen Area along with an opt-out from aspects of Justice and Home Affairs policy. In addition, the United Kingdom currently receives a budgetary correction ensuring a proportion of its net contribution to the EU budget is returned. The Scottish Government has said it believes “continuity of effect” will apply with regards to the terms of membership an independent Scotland might be granted but this is likely to be subject to negotiation so it cannot be guaranteed.

²² COUNCIL REGULATION laying down the multiannual financial framework for the years 2014-2020: http://ec.europa.eu/budget/mff/figures/index_en.cfm

PUBLIC ATTITUDES TO EU MEMBERSHIP

According to an Ipsos MORI poll published on 14 February 2013, over half of the Scottish electorate think there should be a referendum on UK membership of the EU (58%), compared with just over a third who disagree (36%). Just over half of Scots (53%) said they would vote to stay in the EU, compared with a third who said they would vote to leave (34%). This was in contrast to November 2012 data on attitudes in England, when half said they would vote to leave the EU compared with 43% who would vote to stay in.

Ipsos MORI also asked participants in the February 2013 poll “regardless of how they intend to vote in the 2014 referendum, whether an independent Scotland should or should not be a member of the EU”. According to the results six in ten Scots (61%) think that an independent Scotland should be a member of the EU compared with around three in ten who think it should not (33%).

According to Professor John Curtice writing on whatscotlandthinks.org in October 2013:

“an analysis of opinion poll data collected during the course of this year suggests that whereas across Britain as a whole only 37% would vote to stay in the European Union, in Scotland that figure is rather higher, 43% - a difference of six points. Equally, the proportion who would vote to leave is six points lower in Scotland. While that difference is potentially enough to alter the majority outcome, it is not enough to suggest that there is a far stronger groundswell in favour of the European project north of the border”.²³

²³ www.blog.whatscotlandthinks.org/2013/10/two-different-countries-scottish-and-english

POTENTIAL ALTERNATIVES TO EU MEMBERSHIP IN A GLOBALISED WORLD

European Free Trade Association²⁴

The European Free Trade Association (EFTA) is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States.

EFTA was founded in 1960 by the following seven countries: Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom. Finland joined in 1961, Iceland in 1970 and Liechtenstein in 1991. In 1973, the United Kingdom and Denmark left EFTA to join the then European Community. They were followed by Portugal in 1986 and by Austria, Finland and Sweden in 1995. Today the EFTA Member States are Iceland, Liechtenstein, Norway and Switzerland.

The immediate aim of the Association was to provide a framework for the liberalisation of trade in goods amongst its Member States. EFTA was also established as an economic counterbalance to the more politically driven European Economic Community (EEC). In the 1970s, the EFTA States concluded free trade agreements with the EC; and in 1994 the EEA Agreement entered into force.

Since the beginning of the 1990s, EFTA has actively pursued trade relations with third countries in and beyond Europe. The EFTA States currently have 26 free trade agreements (covering 36 countries). At present EFTA does not have free trade agreements with the United States of America, India (negotiations are on-going) or China (though it does have an agreement with Hong Kong, China)²⁵.

European Economic Area

The Agreement on the European Economic Area, which entered into force on 1 January 1994, brings together the 27 EU Member States and the three EEA EFTA States — Iceland, Liechtenstein and Norway — in a single market, referred to as the "Internal Market". The EEA Agreement also states that when a country becomes a member of the European Union, it shall also apply to become party to the EEA Agreement (Article 128), thus leading to an enlargement of the EEA.

The EEA Agreement provides for the inclusion of EU legislation covering the four freedoms — the free movement of goods, services, persons and capital — throughout the 30 EEA States. In addition, the Agreement covers cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as "flanking and horizontal" policies. The Agreement guarantees equal rights and obligations within the Internal Market for citizens and economic operators in the EEA.

The EEA Agreement does not cover the following EU policies:

- Common Agriculture and Fisheries Policies (although the Agreement contains provisions on various aspects of trade in agricultural and fish products);
- Customs Union;

²⁴ <http://www.efta.int/about-efta/european-free-trade-association>

²⁵ <http://www.efta.int/free-trade/free-trade-agreements>

- Common Trade Policy;
- Common Foreign and Security Policy;
- Justice and Home Affairs (even though the EFTA countries are part of the Schengen area); or
- Monetary Union (EMU).

EEA Decision Making²⁶

The EEA Agreement is based on the primary legislation of the EU (Treaty of Rome) at the time of the EEA Agreement's entry into force, and on secondary legislation (EEA-relevant regulations, directives, decisions and certain non-binding instruments). Hence, a large part of the EEA Agreement is identical to the relevant parts governing the four freedoms as laid down in the Treaty on the Functioning of the European Union. A central feature of the EEA Agreement is its dynamic aspect; the common rules of the EEA Agreement are updated continuously with new EU legislation.²⁷

The decision-making phase in the EEA

Liechtenstein, Norway and Iceland have no representation in any of the EU institutions and only indirect influence – including the right to be consulted – on EU proposals affecting them.

According to the EFTA website:

“The EEA Agreement does not grant the EEA EFTA States formal access to the decision-making process within the EU institutions. However, the EEA EFTA States can participate in shaping a decision at the early stages of preparing a legislative proposal. The EEA Agreement provides for input from the EEA EFTA side at various stages of the preparation of EEA-relevant legislation:

- First, representatives of the EEA EFTA States have the right to participate in expert groups and committees of the European Commission. They participate extensively in the preparatory work of the Commission and should be consulted in the same manner as EU experts. The Commission may seek advice from the EEA EFTA experts by phone or by correspondence, or in meetings. The experts may also be associated with the preparatory work through regular committee meetings.

- Second, the EEA EFTA States have the right to submit EEA EFTA comments on upcoming legislation.

²⁶ <http://efta.int/eea/eea-institutions/eea-decision-making.aspx>

²⁷ <http://www.efta.int/eea/eea-agreement/eea-basic-features#12>

While the EEA EFTA States use these opportunities to contribute to the legislative process, they can neither sit nor vote in the European Parliament or the European Council.”²⁸

The EEA EFTA States have access to the following types of Commission committees: expert groups (Article 99 EEA); comitology committees (Article 100 EEA); programme committees (Article 81 EEA); and other committees in specific areas (Article 101 EEA). In total, the EEA EFTA States have the right to participate in several hundred committees.

Constitutional requirements

The contracting parties have not transferred any legislative powers to the EEA Joint Committee. It has therefore been necessary to regulate the situation in which, according to their constitutions, an EEA Joint Committee Decision (JCD) can only be binding on one or the other contracting party after it has been approved by parliament or by referendum.

Decisions that have budgetary implications for more than one year will in principle need parliamentary consent in Norway. In Liechtenstein parliamentary consent is needed if the financial contribution of participation by Liechtenstein in a Community activity amounts to more than 50 000 Swiss Francs (about £34,000) in total or to more than 20 000 Swiss Francs (about £14,000) per annum for three consecutive years. In Iceland, the administration negotiates the total EEA budget which is then presented to the Icelandic Parliament for approval as a single figure within the national budget. This process takes place on an annual (financial) basis.

EFTA States Participation in EU Programmes

The EEA Agreement ensures participation by the three EEA EFTA States in a number of EU programmes and agencies. During the 2007-2013 programming period EFTA states participated in programmes such as the Framework Programme 7 (now Horizon 2020), the Lifelong Learning Programme and the Competitiveness and Innovation Programme.²⁹

The EEA Grants³⁰

The EEA Grants are related to the EEA Agreement and provide social and economic development funding from the EEA EFTA States. This financial support aims at reducing economic and social disparities in the EEA and strengthening bilateral relations with the beneficiary states: Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain. In addition to the EEA Grants, Norway has funded a parallel scheme since 2004 – the Norway Grants.

²⁸ <http://www.efta.int/eea/eea-agreement/eea-basic-features#12>

²⁹ <http://www.efta.int/eea/eu-programmes>

³⁰ <http://eeagrants.org/>

Norwegian Participation in EU Programmes

The Norwegian Government participates in EU programmes such as the cohesion programmes, the Framework Programmes for Research and Development and other cross EU programmes related to education and cultural initiatives as a result of the EEA agreement.

According to the Norwegian Government:

“Norway commits to making a yearly financial contribution to the relevant EU Budget. EEA EFTA states fund their participation in programmes and agencies by an amount corresponding to the relative size of their GDP compared to the GDP of the whole EEA. The EEA EFTA participation is hence on an equal footing with EU Member States.

The total EEA EFTA commitment amounts to 2.4% of the overall EU programme budget. In 2010 Norway’s contribution was €210 million. Throughout the programme period of 2007-2013, the Norwegian contribution will increase substantially in parallel with the development of the EU programme budget, from €130 million in 2007 to €290 million in 2013.”³¹

The Swiss model – EFTA but not EEA

Switzerland is in EFTA and Schengen but is not a member of the EU or the EEA, but it has a bilateral agreement with the EU. According to the Swiss Government:

“Switzerland pursues its interests with respect to the EU via the so-called “bilateral path”. The two partners negotiate contractual agreements in selected sectors of mutual interest. On the one hand, these improve reciprocal market access for companies or regulate related aspects of product safety, employee protection and health. On the other hand, they enable closer cooperation in areas such as research, security, asylum, the environment, education and culture. Switzerland also contributes towards the development of Europe through various commitments. Examples are the enlargement contributions to reducing social and economic disparities in Europe, Switzerland’s involvement in peace missions in south-east Europe, and its participation in the Council of Europe’s efforts to promote respect for human rights.”³²

This approach means Switzerland has access to the Single Market in many areas and each time access to the Single Market it agreed it requires a new agreement with the European Union. According to the Centre for European Reform:

“Switzerland signed up to the EU’s customs union in 1972, which abolished subsidy and tariff barriers. Since then, it has also decided to sign up to the majority of the single market: it is a full member of the single market for goods, a signatory to the Schengen agreement, and it has signed up to most of the single market for capital. In many areas, therefore, Switzerland is effectively a

³¹ Norwegian Ministry of Foreign Affairs, Norway and the EU – partners for Europe, 2011, p11

³² Swiss Government information in 2009 brochure Bilateral agreements Switzerland-EU:
http://www.europa.admin.ch/themen/00500/index.html?lang=en&download=NHZLpZeg7t,lnp6l0NTU042l2Z6ln1ad1lZn4Z2qZpnO2Yug2Z6gpJCDdYR6gGym162epYbg2c_JjKbNoKSn6A--

member of the single market. But like Norway, it does not have the ability to affect the rules that govern it.”³³

Swiss Financial Contribution to the EU

Switzerland contributes financially to both enlargement costs ‘to reduce economic and social disparities’, and the EU programmes in which it participates under its array of bilateral agreements. According to the Swiss Government:

“If one adds up the various contributions paid by Switzerland for participation in the different EU programmes, agencies and cooperation arrangements as part of the bilateral agreements, and if one also includes the enlargement contributions towards the reduction of economic and social disparities in the enlarged EU, Switzerland’s annual payments to the EU amount to just under 600 million francs (around £400 million)³⁴.

Swiss Enlargement Contribution

Switzerland makes an Enlargement Contribution to finance specific, high quality projects aimed at reducing the economic and social disparities in the twelve new EU-Member States. In this way, it supports the EU objective of strengthening the economic and social cohesion (to be understood as internal cohesion), and it does so in its own particular way. Indeed the projects are bilaterally agreed upon with each individual partner country, with Switzerland autonomously making the final decision on approval of the financing

Between 2007 and 2012 the Enlargement Contribution was worth around 100 million Swiss Francs (around £67 million) each year³⁵. A new programme running to 2017 is now in operation.

³³ Centre for European Reform – Britain should not go Swiss, 10 July 2012:

<http://www.cer.org.uk/insights/britain-should-not-go-swiss>

³⁴ Swiss Government information in 2009 brochure Bilateral agreements Switzerland-EU:

http://www.europa.admin.ch/themen/00500/index.html?lang=en&download=NHZLpZeg7t,lnp6l0NTU042l2Z6ln1ad1lZn4Z2qZpnO2Yug2Z6gpJCDdYR6gGym162epYbg2c_JjKbNoKSn6A--

³⁵ http://www.contribution-enlargement.admin.ch/en/Home/The_Swiss_contribution/Financing

Annexe

Figure 1 – Scotland (including geographic share of the North Sea) illustrative contribution to EU budget (€m cash terms)

	2007	2008	2009	2010	2011	2012	2013	2007-13
GNI based contribution	1,154	1,017	993	1,143	1,174	1,365	1,302	8,148
UK abatement	-467	-552	-422	-299	-319	-341	-354	-2,754
Net expenditure transfers to the EU	687	465	572	845	855	1,024	947	5,394
Receipts to cover TOR collection costs	-37	-37	-32	-35	-34	-36	-36	-246
to give contribution to Totally Managed Expenditure	650	428	540	810	821	988	911	5,148
Total Own Resources (TOR)	147	147	128	140	136	142	144	985
VAT-based payments to the EU	315	274	139	198	228	258	243	1,655
Gross contribution to the EU budget	1,112	849	807	1,148	1,184	1,388	1,299	7,787

Source: Calculations based on HM Treasury (PESA), Scottish Government (GERS and SNAP) and ONS data (see appendix)

Figure 2 – Scotland’s allocated EU receipts (€m cash terms)

	2007	2008	2009	2010	2011	2012	2013	2007-13
Structural Funds ³⁶	130	126	122	118	113	108	104	821
Common Agricultural Policy ³⁷	696	647	572	671	637	698	664	4,584
Framework Programme 7 ³⁸	72	72	72	72	72	72	72	504
European Fisheries Fund ³⁹	14	14	14	14	14	14	14	98
Total	912	859	780	875	836	892	854	6,007

³⁶ Scottish Structural Funds Operational Programmes 2007-2013

³⁷ Source: Scottish Government (draft budget figures)

³⁸ total received by projects in Scotland €504 million which has been split over the 7 years of the programming period

³⁹ total received in Scotland €98.53 million split over 7 years of the programming period

Appendix

The approach used in estimating Scotland's illustrative contribution to the UK's EU Budget closely follows the approach outlined in [Europe and Foreign Affairs: Taking forward our National Conversation](#) (Scottish Government, September 2009).

The UK's transactions with the institutions of the EU are shown in [Public Expenditure Statistical Analyses](#) (PESA) data published by HM Treasury. The illustrative contribution of Scotland was based on a share of the UK figures. The illustrative share includes contributions based on Gross National Income (GNI)⁴⁰, the UK abatement, import duties (from outside of the EU) and VAT-based payments. Where data was unavailable for some estimates for 2012 and 2013, shares were based on the latest data available for 2011-12.

The GNI contribution share is based on GNI figures for the UK published as part of the Office for National Statistics (ONS) [Quarterly National Accounts](#). An [initial estimate of GNI for Scotland](#) was published by the Scottish Government (for 2010). The difference between GNI and GDP in 2010 was applied to GDP figures from 2007 to 2012 to estimate GNI for 2007 to 2012. The initial GNI estimates made by the Scottish Government (November 2013) show GNI was 98.3% of Scottish onshore GDP and 94.8% of Scottish GDP including a geographic share of the North Sea.

The original estimates of GNI based contributions made by the Scottish Government (September 2009) were based on Scotland's share of UK GDP. GNI is lower than GDP and the difference between GNI and GDP is greater when a geographic share of the North Sea is included. The original estimates are likely to have overstated Scotland's contribution (when a geographic share of the North Sea is included).

VAT-based contributions were estimated based on the Scotland's share of UK VAT receipts as shown in [Government Expenditure and Revenue Scotland](#) (GERS). This approach closely follows the original estimates made by the Scottish Government.

A contribution is recorded for Traditional Own Resources (TOR) which, for the period covered, is comprised solely of import duties levied on imports from outside of the EU. The contribution is reduced by 25% to costs in respect of collecting TOR.

The original TOR contribution estimates made by the Scottish Government (September 2009) were based on the Scotland's share of UK VAT receipts. An approach based on VAT receipts is more likely to reflect consumption rather than imports from outside of the EU.

Data from the Scottish National Accounts Project ([SNAP](#)) was used to show Scottish imports (from outside of the UK) as a share of UK imports. Scotland's share of imports from outside of the UK is around 4%, lower than Scotland's share of UK VAT

⁴⁰ Gross national income, abbreviated as GNI, is the sum of incomes of residents of an economy in a given period. It is equal to GDP minus primary income payable by resident units to non-resident units, plus primary income receivable from the rest of the world.
[http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Gross_national_income_\(GNI\)](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Gross_national_income_(GNI))

receipts (around 8.7%). The latest SNAP data shows that Scottish imports from the rest of the UK are nearly three times the value of Scottish imports from outside of the UK.

The share of imports (from outside of the UK) was used to allocate a share of TOR contributions. The aforementioned share does not distinguish between imports from the rest of the EU and the rest of the World but it a more accurate measure than the previous estimate based on VAT receipts.

The GNI contribution shown in Figure 1 is based on Scottish GDP including a geographic share of the North Sea. If Scottish onshore GDP were used to estimate the GNI contribution then illustrative budget contribution 2007-13 would be €6,655m (Scotland would remain a net contributor).

All figures are shown in euros based on the following € to £ exchange rates

2007	2008	2009	2010	2011	2012	2013
0.6968	0.7903	0.9093	0.85995	0.86665	0.79805	0.83605

References

Scottish Government. (September 2009) Europe and Foreign Affairs: Taking forward our National Conversation. Available at:

<http://www.scotland.gov.uk/Publications/2009/09/08143726/0>

Scottish Government. (March 2013) Government Expenditure and Revenue Scotland 2011-12. Available at:

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy/GERS>

Scottish Government. (November 2013) Scottish National Accounts Project (SNAP) Income Account and Gross National Income. Available at:

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy/SNAP/expstats/aggregates/GNI>

European and External Relations Committee

1st Meeting, 2012 (Session 4) Thursday 16 January 2014

Report on the Scottish Government's transposition of EU Directives

1. The Committee receives a regular report from the Scottish Government providing the latest information on the transposition of EU legislation into domestic law.
2. The Cabinet Secretary for Culture and External Affairs wrote to the Committee on 9 January 2014 to provide an update on the Scottish Government's on-going transposition of EU Directives. The Cabinet Secretary's letter and transposition report, is attached at the Annexe.
3. The transposition report 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.

Update from the previous transposition report

4. The Committee considered the Government's last transposition report in June 2013. Since that time, six Directives have been completed and two Directives are currently in the process of being transposed. One Directive has missed its deadline for transposition of 15 March 2013.

Recommendation

5. The Committee is invited to—
 - note the Government's transposition report; and
 - forward the report to the relevant subject committees for further action (in accordance with the Parliament's EU Strategy).

**Committee Clerk
January 2014**

ANNEXE - REPORT ON SCOTTISH GOVERNMENT'S TRANSPOSITION OF EU DIRECTIVES

To further enable the Committee's consideration of our implementation of European Union legislation, I am writing to update you on the Scottish Government's position in relation to the transposition of EU Directives as of 31 December 2013.

The report details each Directive implemented in the period from 1 June to 31 December 2013 as well as the transpositions which are currently in progress as at 31 December 2013.

You will note from the report that the Scottish Government has made six instruments transposing EU Directives since our last report in June and the Scottish Government currently working on two instruments to implement two Directives.

I trust you find this update both helpful and reassuring in relation to our EU transposition obligations.

Fiona Hyslop MSP
Cabinet Secretary for Culture and External Affairs

Transpositions Completed Since Last Update (Period 1 June 2013 – 31 December 2013)

EU Directive	Transposition Deadline	Implementing Instrument	Purpose of SSI	Lead Minister	Lead Official	Dates	Comments
Council Directive 2011/97/EU of 5 December 2011 amending Directive 1999/31/EC as regards specific criteria for the storage of metallic mercury considered as waste	15 March 2013	The Landfill (Scotland) Amendment Regulations 2013 (SSI 2013/222)	To set out specific criteria for the storage of metallic mercury considered as waste.	Cabinet Secretary for Rural Affairs and the Environment	Gary Gray	Laid on 1 July 2013. Commenced on 1 August 2013. Notified to Commission on 1 August 2013.	Transposition date was missed but the amendment had no impact in Scotland as no one stores mercury in Scotland and is highly unlikely to do so.
Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients	Consolidating Directive – No Transposition Date.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013	To implement the provisions of the Directive on the approximation of the laws of Member States on extraction solvents used in the production of foodstuffs and food ingredients.	Minister for Public Health	John Paterson	Laid on 13 September 2013 and came into force on 31 October 2013. Notified to Commission on 20 December 2013.	Consolidating Directive – no transposition date.
Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011	25 October 2013	The National Health Service (Cross - Border Health Care)	To implement the requirements for national contact points	Cabinet Secretary for Health and Wellbeing	John Brunton	Laid on 30 August 2013 and came into force on 25 October	The transposition deadline of 25 October 2013 was met.

EU Directive	Transposition Deadline	Implementing Instrument	Purpose of SSI	Lead Minister	Lead Official	Dates	Comments
on the application of patients' rights in cross-border healthcare		(Scotland) Regulations 2013 (SSI 2013/292)	and the reimbursement of charges set out in the Directive.			2013. Notified to Commission on 20 December	
Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy	22 December 2003	The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013 (SSI 2013/323)	To set out in regulations further provision to reflect the requirements of the Directive.	Minister for Environment & Climate Change	Joyce Carr	Laid on 14 November 2013 and came into force on 22 December 2013. Notified to Commission on 7 January 2013.	The SSI addresses concerns of the European Commission about the legislation implementing the Directive referring to Articles and Annexes of the Directive rather than copying out the text.
Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration	16 January 2009	The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013 (SSI 2013/323)	To set out in regulations further provision to reflect the requirements of the Directive.	Minister for Environment & Climate Change	Joyce Carr	Laid on 14 November 2013 and came into force on 22 December 2013. Notified to Commission on 7 January 2013.	The SSI addresses concerns of the European Commission about the legislation implementing the Directive referring to Articles and Annexes of the Directive rather than copying out the text.
Directive 2008/105/EC of the European Parliament and of the	13 July 2010	The Water Environment (River Basin	To set out in regulations further	Minister for Environment & Climate	Joyce Carr	Laid on 14 November 2013 and	The SSI addresses the anticipated concerns of the

EU Directive	Transposition Deadline	Implementing Instrument	Purpose of SSI	Lead Minister	Lead Official	Dates	Comments
Council of 16 December 2008 on environmental quality standards in the field of water policy		Management Planning: Further Provision) (Scotland) Regulations 2013 (SSI 2013/323)	provision to reflect the requirements of the Directive.	Change		came into force on 22 December 2013. Notified to Commission on 7 January 2013.	European Commission about the legislation implementing the Directive referring to Articles and Annexes of the Directive rather than copying out the text in light of the Commission's comments on the transposition of Directives 2000/60/EC and 2006/118/EC.

Transpositions in Progress as at 31 December 2013

EU Directive	Transposition Deadline	Implementing Instrument	Purpose of SSI	Lead Minister	Lead Official	Reason for Risk Assessment	Action Required
Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings	27 October 2013	The Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2013	To implement Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings	Cabinet Secretary for Justice	Kevin Philpott	Consultation with the affected organisations has resulted in late transposition.	Proposed to be laid on 31 January 2014 coming into force on 10 March 2014.
Directive 2011/24/EU of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare – the order relates solely to Clause 4 (2)(d)	25 October 2013	The Health Care and Associated Professions (Indemnity Arrangements) Order 2013* *Order made under the Scotland Act 1998 – laid in both Scottish and Westminster Parliaments	To make insurance or indemnity compulsory for all healthcare professionals to be registered with their appropriate professional regulatory body.	Cabinet Secretary for Health and Wellbeing	Jason Birch	The UK Department of Health lead on this Order and are responsible for meeting transposition deadlines. We are in close contact with DH who are fully aware of the situation. The delay results from associated issues with stakeholders	Proposed to be laid in Scottish Parliament on 17 February 2014 and provisional date to bring into force 3 June 2014

