



**THE COMMISSION'S ANNUAL POLICY STRATEGY FOR
2008:
WHAT IS NEW AND SIGNIFICANT?**

**OPEN EUROPE SUBMISSION TO THE EUROPEAN SCRUTINY
COMMITTEE**

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This document focuses on the first two questions posed by the Committee in its enquiry into the Annual Policy Review: which of the proposed measures are significant and which might raise questions about subsidiarity and proportionality?

Our analysis follows the structure of the Commission's own paper.

For more information on any of the issues addressed please contact Neil O'Brien, Hugo Robinson or Paul Stephenson at Open Europe on 0207 197 2333.

MEASURES UNDER THE "PROSPERITY" HEADING

Environment and energy:

Gas network and European Grid: to what extent might these proposals imply a single regulator? To what extent are problems with energy markets due to a lack of physical infrastructure rather than due to dominant players in the market? How much would an increase in interconnection cost and what would the benefits be for the UK?

Oil stocks system and enhanced energy solidarity: If this implies an increase in statutory reserve requirements the cost could be quite substantial. The UK Government has resisted increased requirements in the past. New obligations of energy "solidarity" should be looked at carefully.

Energy competence in general: there are a number of energy policies proposed here. Given the lack of such a competence in the treaties at present, presumably such proposals would have to involve the heavy use of Article 308 as a base.

The Global Climate Policy Alliance does not appear to have been mentioned before by the Commission. Despite rhetoric about "encouraging" developing countries to "engage" with the issue, this proposal is likely to raise a number of controversial issues. In particular, in the section on the budgetary implications of the 2008 foreign policy priorities, the Commission suggests that as well as spending €50m on the GCPA, which will encourage both adaptation and emissions mitigation, it also hopes that there will be "synergies from the EDF" - implying that aid funds may be diverted to, or made conditional on GHG mitigation: a very controversial suggestion. There might be similar concerns about the parallel suggestion of a Global Energy Efficiency and Renewable Energy Fund.

Post 2012 responsibilities: The Policy Strategy notes that 2008 will be the key year for the negotiation of a post-Kyoto agreement, and international burden sharing agreements. However, EU members will have already made commitments to 2020 in the autumn of 2007, when the division of the recently agreed 20% reduction commitment is negotiated. Because of their significance Open Europe believes that the ESC and other Committees should give those negotiations particular scrutiny.

Emissions controls on shipping; legislation to reduce nitrogen oxide emissions from aviation; and legislation on nuclear waste management are all almost certain to raise subsidiarity questions and also questions of external competence.

Legislation on urban transport raises major subsidiarity issues. Matthias Ruete, Director General, European Commission, DG Transport commented recently that "For many years, the issue of urban transport was kept hidden behind the principle of subsidiarity. As a consequence, very little initiatives and proposals were put forward by the EC for the last ten years. The time has come to change that attitude." Messages received from politicians, representatives of the European Institutions, local authorities and citizens call for actions at European level. There are expectations from the EU while its real competences are limited." We are not convinced that this is the case.

This year's green paper, (expected in September) should give a clearer indication of what specific policies are likely to be proposed. Transport Commissioner Jacques Barrot has noted possible areas for intervention, such as regulation of urban infrastructure use, pricing systems (such as an EU-wide policy on congestion charging) and traffic management/ control systems. Others have suggested harmonised standards for public transport. Matthias Ruete, has said that "There will be opportunities for a European policy to achieve harmonisation, better coordination and cooperation at European level and to identify good ways for financial support, and if and when necessary, new legislation. We will repeal existing legislation or possibly introduce new legislation regarding for example interoperability questions, crossborder pursuit of traffic offenders, air quality, etc".

Barrot concluded that "Concerns about the respect of the subsidiarity principle should not be in any way a barrier to proposals for new initiatives." An EU-wide road charging scheme as the eventual goal has been widely discussed, and legislation on the interoperability of road pricing systems suggests a move in this direction. This issue deserves scrutiny in committee.

Single Market:

Single Market review: The Policy Strategy mentions that the Commission will review the EU's Financial Services Action Plan, the implementation of which is now nearly complete. The FSAP has proved extremely costly - we estimate costs of up to £23bn in the UK - whilst the mooted benefits remain uncertain given divergent implementation and enforcement between member states. Given the significance of these costs we believe these questions deserve a great deal of attention in ESC and other committees.

We believe the Commission must be prepared to radically overhaul the legislation passed under the Financial Services Action Plan as part of the review.

Experience has shown that complex, pan-European harmonising regulatory initiatives on this model present many serious pitfalls. Future EU policy in financial services is likely to focus on retail markets, with proposals for standardised rules on savings and investments a strong possibility. Broadly speaking, a number of large continental firms (such as BNPP, Allianz and Axa) support an approach tending towards harmonisation, whilst UK firms maintain doubts over harmonisation, preferring the EU to focus on breaking down barriers to entry in other member states' markets and promoting regulatory competition. They hold that there is limited consumer demand for 'cross-border' purchase of retail financial services, and therefore little need for harmonised rules - market integration has occurred, and will continue to occur, on the basis of foreign acquisitions and setting up branches overseas.

Open Europe supports the latter approach, and would emphasise the dangers of harmonisation in this area. This danger has already been demonstrated by the Insurance Mediation Directive - attempting to create a standardised rulebook for sales of retail insurance products in Europe - which has generated huge compliance costs (£400m per year according to the ABI) whilst not improving consumer protection. The currently stalled Consumer Credit Directive risks creating similar problems. There are now fears within the UK industry that EU policymakers will

return to harmonisation and repeat previous costly mistakes without successfully unlocking the benefits of cross-border trade.

Common Corporate Tax Base: Tax Commissioner Laszlo Kovacs has already said that the EU will push for a harmonised corporate tax base in Europe by 2010. EU member states are deeply divided over tax harmonisation, with 12 capitals in favour, five to seven against and the rest remaining undecided. However, to circumvent this lack of consensus, the Commission plans to use the mechanism of “enhanced cooperation”, which allows at least eight member states to pursue and adopt policy which may be opposed by others.

While in principle there is no reason why we should object to this, close scrutiny will be essential to ensure that any harmonisation of tax bases and accounting procedures cannot be used as a “lever” to put pressure on non-participating members to harmonise their tax rates.

Managing Migration

The Common European Asylum System raises many questions. Given that the system is intended to be in place by 2010, policy is marching a long way ahead of public awareness. While the significance of these measures for the UK depends partly on the UK’s level of participation, it would be wrong to believe that if we do not opt in it will not affect us. Free movement across the Schengen space means that there are likely to be knock-on effects even if the UK does not participate. Legislation on the entry of seasonal workers and remunerated trainees will raise similar questions.

New powers for the external borders agency: The Commission’s proposed migration “surveillance system” is new and will deserve careful scrutiny.

The Commission proposes a “combined migration and development agenda”: this implies that aid will be made conditional to some degree on reducing emigration, which is likely to be controversial.

Education and research

The European Institute of Technology is moving ahead despite criticism from, amongst others, the UK Government. The Policy Strategy states that preparatory work will be carried out in 2008. All of this will deserve careful scrutiny as it is not clear what value the EIT is adding, even as a “decentralised” institution working with existing universities.

MEASURES UNDER THE "SOLIDARITY" HEADING

Agriculture and fishing

Improved "enforcement" of the CFP is interesting because it implies that the current, fundamentally flawed, framework will stay in place. A more balanced approach to enforcement would be welcome - for example UK Fisheries Minister Ben Bradshaw has complained that the EU Commission is allowing French fishermen to catch 40% more tuna than their quota while penalising UK and Irish boats for going over their herring and mackerel quotas. Scrutiny might usefully be applied to the question of whether tougher "enforcement" of the current system is likely to solve its obvious problems.

Social Solidarity

The Globalisation Adjustment Fund, initially opposed by the UK, should be monitored carefully.

Defining Services of General Interest will be hugely significant for public services.

Equal opportunities

Initiatives designed to prevent discrimination outside the labour market seem, *prima facie*, to be likely to raise serious questions about subsidiarity for obvious reasons. The recent debate in the UK over the right of non-governmental adoption agencies not to place children with homosexual couples is a good example of the sort of controversial question that these proposed measures might cover. It is not at all clear why such controversial decisions should be made at European level, when their scope is explicitly nothing to do with the labour market.

Measures aimed at "Reconciling family and working life": The proposed measures to "enhance a better reconciliation between family and professional life" could easily lead to another attempt to remove the UK's opt-out from the working week or further measures to restrict working time. We believe that if the principle of subsidiarity is to have any real meaning then this would not be an area for EU action. We note that according to the British Government's own impact assessments the Working Time Regulations have cost the UK economy £14.2 billion since 1999¹ and that the DTI has calculated that the UK's opt-out is worth £9 billion annually.² UK businesses would be firmly opposed to any further EU regulation of working time. It is curious that the EU Commission - which is committed to a "better regulation" agenda - is still pushing to stop workers from deciding how many hours they want to work in a week.

European Citizenship

Consular Protection: The Commission's green paper from the end of November 2006 suggests that this proposal is likely to be very controversial. It stated that "The Barnier report suggested that all passports should have Article 20 EC printed in them. In its report of 15 June 2006 to the European Council, the Council Presidency asked the Member States to print Article 20 EC in passports. The

¹ British Chambers of Commerce, Burdens Barometer 2007

² Sunday Express, 9 February 2004

Commission considers that this would be an effective way of reminding citizens of their rights."

It also suggested setting up common offices, arguing that "Setting up common offices would help to streamline functions and save on the fixed costs of the structures of Member States' diplomatic and consular networks... these offices could be housed in various representations or national embassies or in just one, or they could share the Commission delegation." It went on to say that "the EU consulates could take over functions now controlled by member states, including issuing visas. "In the long term, common offices could perform consular functions, such as issuing visas or legalising documents."

Rights of the Child

The policy strategy suggests, but does not explain, a range of possible actions under the heading of the "rights of the child." Measures which would involve the EU attempting to regulate the internet or determine age limits on buying violent computer games are likely to raise questions about subsidiarity and also practicality.

MEASURES UNDER THE HEADING "SECURITY AND FREEDOM"

Fighting organised crime and terrorism

Strengthening Eurojust: The Policy Strategy talks about Eurojust both "investigating *and prosecuting*" criminals. Eurojust President Michael Kennedy also recently argued that: "Ultimately there should be some sort of operational structure, giving powers to Eurojust to investigate - or to take part in investigations - and prosecute."³ Such powers would raise significant subsidiarity questions. The phrase "strengthening Eurojust" is often used as shorthand for moves towards creating a European Public Prosecutor's office. Commissioner Frattini recently said that this is an idea that "needs to be explored".⁴ The proposal for a European Public Prosecutor is unacceptable for a number of reasons not least because it would act as a catalyst for further harmonisation of member states' criminal law. The creation of the position itself could create problems for common law countries.

A central fingerprint database. While we recognise the value of police cooperation in Europe in helping to tackle organised crime and trafficking, we have misgivings about drives towards sharing intelligence across the EU such as the measures involved in the Prum Treaty. There are currently few safeguards in place to stop corrupt officials obtaining sensitive information from other countries and virtually no way of checking that the information - once obtained - is used for legitimate purposes. This poses a particular risk in respect of the two newest member states, especially in the light of the concerns raised over the independence of their judiciaries and police forces. We are particularly wary about plans for a centralised database of fingerprints which poses a number of civil liberties issues - not least with whom it would be shared; who would have access to it; what data it would become compulsory for member states to collect to support it; and what types of data might be merged (passport applications, asylum applications, travel data, criminal data) and under what system (hit or no hit etc).

A policy to tackle violent radicalisation could be questioned on subsidiarity grounds. It is not clear why such action need to be taken at European level.

³ Seminar, 16 April 2007

⁴ EUobserver, 17 April 2007

MEASURES UNDER THE HEADING "EUROPE AS A WORLD PARTNER"

The Doha round versus the "Competitiveness agenda". The Communication notes that "the Union is working hard to ensure the successful completion and implementation of the Doha Development Round". We would question the level of this "commitment", given the limited nature of the EU offer. In particular, the "small print" of the EU's offer blocks a really successful outcome at Doha through its special conditions for so many 'sensitive' products.

The Communication notes that this "will be complemented by bilateral negotiations for a new generation of free trade agreements with important emerging economies", under which it plans to agree new Free Trade Agreements with India, South Korea and the Association of Southeast Asian Nations (ASEAN).

A wider issue which deserves scrutiny is the tension between a commitment to the multilateral approach and the pursuit of bilateral deals with mid-income countries.

Failure to agree a substantial multilateral deal is already leading to an explosion in the number of discriminatory bilateral deals. These will not deliver anything like the benefits of multilateral liberalisation, and could actually be damaging for developing countries because of the "hub and spoke" effect.

The deals with Korea and ASEAN undermine both the EU's supposed commitment to multilateralism, and its supposed commitment to a system of income based trade preferences. The bilateral deals are likely to have a marginal effect on income in the EU even if successful, but are likely to damage LDCs and other low income countries, which would suffer preference erosion without receiving any corresponding benefits. Given the EU's use of preference erosion as an argument against radical multilateral liberalisation, this is hypocritical in the extreme.

Economic Partnership Agreements: 1 Jan 2008 is the deadline for the entry into force of Economic Partnership Agreements (EPAs) which are very significant and deserve more scrutiny.

The basic goal of EPAs is for African, Caribbean and Pacific (ACP) countries to form themselves into six regional blocs which will liberalise trade both amongst themselves and with respect to the EU. The Commission hopes that the EPA regions will agree to form a common external tariff. EPAs are scheduled to be finalised by the end of 2007. The Commission has refused to rule out increasing tariffs on non-LDC ACP countries should they fail to sign an EPA by the end of the year.

Many ACP ministers are concerned that developing countries will be compelled to liberalise trade in goods and services too much, too fast, the main risk being the effect of rapidly opening up trade to the EU. There are fears that ACP exporters will not significantly increase their exports to the EU, while European exporters largely increase their shares on the ACP markets, meaning that ACP countries will undergo major trade imbalances, drops in industrial output and job losses. By imposing an external timetable for liberalisation the EU risks undermining rather than boosting support for free trade.

Whilst the EU argues that the new regime will help to foster regional integration, and increase 'south-south' trade, aiding the integration of developing countries in the global economy, the opposite could be the reality. The Overseas Development

Institute argues that, "If regional partners do not have identical tariffs towards the EU the effect will be to give new impetus to maintaining border controls between them - to intercept European goods entering an EPA state with a low tariff and being transhipped to one with a high tariff."⁵

The Communication says that the European Development Fund will "strive for synergies" with the EPAs. Making EU aid conditional on the acceptance of EPAs would be controversial. Several developing country governments see the current shape of the negotiations as the worst of both worlds: the EU will not agree formal aid commitments within the EPAs, but is threatening to make future aid conditional on the degree to which countries accept the EU's negotiating objectives.

⁵ Overseas Development Institute Briefing Paper 4 (June 2006)

MEASURES UNDER THE HEADING "BETTER REGULATION"

The "Better regulation" agenda deserves further scrutiny as it appears to be having little effect so far.

In 2004 the EU Commission pledged to build "a bonfire of red tape" as it announced its new Better Regulation programme. Industry Commissioner Gunter Verheugen said that "cutting red tape" would be his "personal trademark." In spite of this fine sounding rhetoric there has been little in the way of results on the ground.

Verheugen said that he wants to slay the public perception that Brussels is "a bureaucratic monster whose tentacles leave no village untouched," by repealing or simplifying 1,500 pieces of existing EU legislation over three years. But the results have been disappointing.⁶

In late September 2005, the EU Commission announced that it had decided to withdraw 68 pending proposals for legislation. However, on close inspection, it is clear that this was not the "bonfire of the diktats" it was purported to be. Most of the 68 bills concerned were already obsolete, or had been pending for years. 27 of them, for example, were over five years old, and 22 of them concerned the association agreements signed with the ten new member countries, which all became defunct when they joined the EU last year. Many of the other regulations are to be rewritten and will return in one form or another.

The next step in the EU Commission's campaign against over-regulation was announced in October 2005. It said it had turned its attention to the 85,000 pages of EU legislation already in existence and said that it aimed to reduce the damage this does to the competitiveness of European businesses, by repealing or recasting 222 pieces of legislation.⁷ But again, on close inspection the reality is disappointing. Only 8 directives or regulations are definitely going to be repealed and not replaced with other regulations, and the Commission is actually proposing to introduce a new regulation which will apply to small firms. This will make very little impact on the mountain of existing EU regulation. Such was the resistance to reform within the Commission itself that only 50 of the directives intended to be rewritten or repealed had been completed by the end of 2006.⁸

Given that Commissioner Verheugen has said that the administrative burden of EU regulation alone costs the EU economy over €600 billion a year, the Commission's approach is not commensurate to the scale of the problem. Rather than focusing on redrafting and consolidating regulations the Commission needs to focus on *repealing* rather than simply *consolidating* legislation.

⁶ 26 October 2006, Financial Times

⁷ Ibid

⁸ A Strategic review of Better Regulation in the European Union, 14 November 2006