

# European and International Board

Agenda

Tuesday 6 March 2012  
11.00am

Millennium House (Herculaneum / Huskisson  
Room)  
48 - 72 Victoria Street  
Liverpool  
L1 6JD

**To:** Members of the European and International Board  
**cc:** Named officers for briefing purposes

## European & International Board

6 March 2012

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The European & International Board meeting will be held on **Tuesday 6 March 2012** at **11.00am**, in **Herculaneum/Huskisson Room** (Ground Floor), Millennium House, Victoria Street, **Liverpool**, L1 6JD.

**Lunch** will be served following the meeting at approximately **1.30pm**. A study **tour of the City**, by foot, will take place at approximately **2.00pm** to see some EU funded projects. It is anticipated that the tour will **finish** at approximately **3.30pm**.

### Apologies

Please notify your political group office (see contact telephone numbers below) if you are unable to attend this meeting, so that a substitute can be arranged and catering numbers adjusted, if necessary.

**Labour:** Aicha Less: 020 7664 3263 email: [aicha.less@local.gov.uk](mailto:aicha.less@local.gov.uk)  
**Conservative:** Luke Taylor: 020 7664 3264 email: [luke.taylor@local.gov.uk](mailto:luke.taylor@local.gov.uk)  
**Liberal Democrat:** Evelyn Mark: 020 7664 3235 email: [libdem@local.gov.uk](mailto:libdem@local.gov.uk)  
**Independent:** Group Office: 020 7664 3224 email: [independent.group@local.gov.uk](mailto:independent.group@local.gov.uk)

### Attendance Sheet

Please ensure that you sign the attendance register, which will be available in the meeting room. It is the only record of your presence at the meeting.

### Location

A map showing the location of the Millennium House is printed on the back cover.

### Contact

Frances Marshall (Tel: 020 7664 3220, email: [frances.marshall@local.gov.uk](mailto:frances.marshall@local.gov.uk) )

### Carers' Allowance

As part of the LGA Members' Allowances Scheme, a Carers' Allowance of up to £6.08 per hour is available to cover the cost of dependents (i.e. children, elderly people or people with disabilities) incurred as a result of attending this meeting.

## European & International Board - Membership 2011-2012

<b>Councillor</b>	<b>Authority</b>	<b>Role</b>
<b>Conservative (6)</b>		
Marco Gr. Uff. Cereste OSSI OMRI [ <b>Deputy Chair</b> ]	Peterborough City	
Gordon Keymer CBE	Tandridge DC	Rural Commission
Keith Glazier	East Sussex CC	
Sandra Barnes MBE	South Northamptonshire DC	
Liz Eyre	Worcestershire CC	
Phil Grove	Malvern Hills DC	Audit & Scrutiny Panel
<b>Labour (5)</b>		
Dave Wilcox OBE ( <b>Chair</b> )	Derbyshire CC	Councillors' Forum
Sir Albert Bore	Birmingham City	
Nilgun Canver	Haringey LB	Safer & Stronger Communities Board
Guy Nicholson	Hackney LB	Economy & Transport Board
Sherma Batson MBE DL	Stevenage BC	
<b>Substitute:</b>		
Richard Williams	Southampton City	Environment & Housing
<b>Liberal Democrat (2)</b>		
Richard Kemp CBE [ <b>Vice- Chair</b> ]	Liverpool City	
Zulfiqar Ali	Rochdale MBC	
Lord Graham Tope CBE (observer)	Sutton LB	
<b>Independent (1)</b>		
Linda Gillham [ <b>Deputy Chair</b> ]	Runnymede BC	
<b>Substitute:</b>		
Roger Dennison	Lancaster City Council	

## LGA European & International Board Attendance 2011-2012

Councillors	31.10.11	17.1.12	6.3.12	21.5.12	11.7.12
<b>Conservative Group</b>					
Marco Cereste	Yes	Yes			
Sandra Barnes MBE	Yes	Yes			
Gordon Keymer CBE	Yes	Yes			
Keith Glazier	Yes	Yes			
Liz Eyre	Yes	No			
Phil Grove	Yes	Yes			
<b>Labour Group</b>					
David Wilcox OBE	Yes	Yes			
Sir Albert Bore	Yes	Yes			
Nilgun Canver	No	Yes			
Guy Nicholson	Yes	Yes			
Sherma Batson MBE DL	Yes	No			
<b>Lib Dem Group</b>					
Richard Kemp CBE	Yes	Yes			
Zulfiqar Ali	Yes	No			
Lord Graham Tope CBE	Yes	No			
<b>Independent</b>					
Linda Gillham	Yes	Yes			
<b>Substitutes</b>					
Roger Dennison		Yes			

## Agenda

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### European and International Board

Tuesday 6 March 2012

11.00am

Herculaneum/Huskisson Room (Ground Floor), Millennium House, Victoria Street, Liverpool, L1 6JD

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### **Part 1 – Board Business**

11am – 12.15pm

#### For discussion

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1.	Delivering our lobbying priorities	<b>3</b>
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3.	Update on reform of EU procurement rules	<b>25</b>

#### For information

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4.	European & International Board Update	<b>49</b>
5.	Notes of the last meeting	
6.	Date of next meeting - 11.00am, Monday 21 May 2012, Town Hall, Bridge Street, Peterborough	<b>55</b>
7.	Briefing Note for themed session: EU funds post 2013 update	

**Part 2 – Themed Session**

12.15pm – 1.30pm

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8. Future EU funding Presentation on future EU funding negotiations and the implications for the North West.  EU funding lead representatives from the North West Local Enterprise Partnerships will be in attendance to contribute to the discussion.	

**Lunch**

1.30pm – 2.00pm

**Part 3 – Liverpool Study Tour**

2.00pm – 3.30pm

## **Delivering our lobbying priorities**

### **Purpose**

For discussion and direction.

### **Summary**

At the last Board meeting, Members agreed a set of EU lobbying priorities for the LGA to pursue. This paper takes forward Members' comments and recommendations from the last meeting.

It sets out the draft corporate priorities of the LGA (through the business planning process) as a context for our EU lobbying and wider work. It confirms the lobbying priorities and maps LGA Members, Boards, MEPs and lead Whitehall departments which have influence over the development of EU policy in our priority areas.

### **Recommendation**

That Members consider the report and recommend any priorities in our lobbying campaign.

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## **Delivering our lobbying priorities**

### **Background**

1. At the last meeting, Members agreed a short-list of EU lobbying priorities for 2012. These arise from the 2012 EU work programme published last October, plus ongoing work from previous years.
2. Whilst Members agreed the list of EU policy initiatives, they made clear the need for our EU work to be driven by, or integrated with LGA corporate priorities.
3. This report sets out two issues for Members:
  - 3.1 the role European and International work will play in delivering emerging 2012 corporate priorities for the LGA, and
  - 3.2 ways in which the LGA can use its influence at home and in Brussels to get the best deal for councils from EU legislative developments established at the last meeting.

### **LGA Business Planning**

4. There is currently widespread consultation on the draft LGA business plan and, at their last meeting; Board Members gave a clear steer to the Executive on their views. The minutes set out this feedback. The business plan is still in development and will be finalised at the Executive meeting in late March.
5. There are currently clear themes emerging. Firstly, there will be clear corporate priorities which are likely to be:
  - 5.1 public service reform
  - 5.2 growth and prosperity
  - 5.3 local government funding
  - 5.4 efficiency and productivity
  - 5.5 sector-led improvement; and
  - 5.6 our own effectiveness and efficiency.
6. Secondly, there will be campaigns attached to these priorities. For example, the work on public service reform will be supported by a campaign to secure the future of adult social care.

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7. European and International work will support the development of the business plan in a number of ways:
  - 7.1 There is a clear line under the “Public Service Reform” chapter which sets the context for our EU lobbying. Under this chapter the LGA will ensure that “future EU regulation minimises burdens and maximises opportunities for councils”.
  - 7.2 Once the priorities and campaigns have been established, we can consider the most effective international comparisons to develop our work. For example, there is a clear European angle in the adult care campaign through international comparisons and need to lobby against the proposal to bring social services within EU procurement rules.
  - 7.3 The business plan has yet to be finalised, so Members may wish to discuss any issues to influence the final plan. Members may also wish to consider how best to develop European and International work within the context of these emerging corporate priorities.

**EU lobbying priorities**

8. At the last Board meeting Members endorsed the draft LGA EU lobbying priorities for 2012 ranking them as priority (proactive and intense resource) and watching brief (reactive).
9. In addition, Members requested more information about how the LGA could tackle these priorities and requested a mapping exercise, which could enable Members to discuss how these are managed internally and how we could organise ourselves externally to influence the outcome both in Brussels and here in London.
10. This is presented in the attached table **Annex 1**. This includes:
  - 10.1 ***Lead LGA programme boards***, which following mainstreaming EU work across the organisation, could lead detailed EU lobbying campaigns. Board chairs are also identified. **European and International Board (EIB) Members may wish to highlight where potential linkages can be made between this and lead Boards.**
  - 10.2 ***The lead Whitehall department(s)*** expected to lead on specific EU issues. Contact with Whitehall is important because they will develop a UK position on draft EU laws before it negotiates in Brussels. As part of the EU fines debate with Government, we expect more structured involvement with Government in advance of developing a UK position in the future. LGA officers will take forward discussions with Whitehall

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officials. **Annex 2** highlights the relevant Secretaries of State and shadow Cabinet Members. **Members may wish to pinpoint where they have contacts with these Ministers or Shadow Ministers and where contact could be made easily.**

10.3 **Key players in Brussels** including lead European Parliament committee and lead CoR commission. **Annex 2** provides detail highlighting MEPs and CoR members.

11. In addition to this, on most campaigns on priority issues, the LGA works with CEMR (the European LGA) working groups and sister associations; UK regional offices; UKREP desk officers; UK public sector bodies (eg NHS Brussels Office), UK private sector lobbyists (eg CBI Brussels Office); and various European NGOs and special interest groups.

12. **Members are invited to suggest ways to support the work of lead LGA Boards and ways in which to we could support making the case in Whitehall and Brussels.**

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**EU LOBBYING UPDATE PAPER:  
ANNEX 1 EU PRIORITIES**

EU proposal and expected impact on LGA member authorities, Mainstreamed LGA Programme Board and relevant chair Level of response (priority or watching brief )	Launch of EU proposal	Brussels decision makers	Whitehall decision makers
<b>LGA Executive</b>			
<b>EU financial sanctions (Localism Act):</b> discretionary powers for Ministers to pass all, or part of, an EU fine for failing to comply with a ECJ ruling for non compliance with EU law. <b>Priority</b>	Live	-	Communities and Local Government (CLG)
<b>Review of Markets in Financial Instruments Directive (MIFID):</b> Reclassification of UK councils as 'non-professional' investors, harming ability to invest public funds. <b>Priority</b>	Live COM(2011)656	ECON (EP) ECOS (CoR)	HM Treasury
<b>VAT affecting public authorities:</b> councils' ability to claim back VAT from government for goods/services they buy for the public sector (crèches etc) may be threatened by common EU approach for public bodies in the EU. <i>Watching brief</i>	<i>In 2011 plan, but not published</i>	ECON (EP) ECOS (CoR)	HM Treasury
<b>Regulation on prudential requirements of credit institutions ("BASEL III")</b> Greater capital requirements introduced by the regulation on prudential requirements for credit institutions may affect the lending (loan) activities of local authorities, credit unions, and public banks. <i>Watching brief</i>	Live COM(2011)452	ECON (EP) ECOS (CoR)	HM Treasury
<b>LGA Children and Young People Board</b> <i>Cllr David Simmonds</i>			
<b>Child poverty:</b> common principles of intervention on support to families (labour market, income support) and childcare, education, healthcare, housing, social services. <i>Watching brief</i>	June 2012	EMPL (EP) ECOS (CoR)	Dept for Education Dept for Work and Pensions (DWP)

<b>LGA Economy and Transport Board Cllr Peter Box</b>			
<b>EU Budget review (2014-2020) incl. structural funds:</b> UK councils benefit from £9bn EU skills and regeneration funding. We seek a coherent, locally responsive and accessible future funding package. <b>Priority</b>	Live COM(2011) 398 COM(2011) 607 COM(2011) 612 COM(2011) 614 COM(2011) 615	BUDG+REGI (EP) AdHoc+COTER (CoR)	Dept for Business Innovation and Skills (BIS) Dept For Env, Food and Rural Affairs (DEFRA) CLG, DWP
<b>CO2 from cars and vans:</b> new targets for manufacturers, but may affect procurement of local authority fleet. <i>Watching brief</i>	Dec 2012	TRAN (EP) COTER (CoR)	Dept for Energy and Climate Change (DECC) Dept for Transport (DfT)
<b>Revisions to regional aid guidelines</b> will affect the UK 'assisted areas' map + levels of grant support councils can offer to business. <b>Priority</b>	Sept 2012	REGI (EP) COTER (CoR)	BIS
<b>Revisions to 'block exemption' &amp; de minimis state aid regulations</b> could make it easier for councils to award state aid to companies without having to notify the EU. <i>Watching brief</i>	July 2012	IMCO (EP) ECOS (CoR)	BIS
<b>Revisions to state aid rules for broadband</b> may make it easier for councils to provide support schemes locally. <i>Watching brief</i>		IMCO (EP) EDUC (EP)	BIS
<b>LGA Environment and Housing Board Cllr David Parsons</b>			
<b>Directive on energy efficiency:</b> LGA opposes inflexible annual 3% binding renovation target for buildings by 2014. <b>Priority</b>	Live COM(2011)370	ITRE (EP) ENVE (CoR)	DEFRA, DECC, CLG
<b>Initiative on radio spectrum policy for more efficient energy production and distribution:</b> harmonisation of smart energy grids / metering. <i>Watching brief</i>	Autumn 2012	ITRE (EP) ENVE (CoR)	DEFRA, DECC, CLG

<b>Revision of EU Greenhouse Gas:</b> fluorinated greenhouse gases (led to fridge mountains). <i>Watching brief</i>	June 2012	ITRE (EP) ENVE (CoR)	DEFRA, DECC, CLG
<b>Review of Environmental Impact Assessment Directive</b> will seek to improve councils' implementation of EU laws. <b>Priority</b>	July 2012	ENVI (EP) ENVE (CoR)	DEFRA, DECC, CLG
<b>Seventh environmental action programme:</b> sets general framework and priorities for future agenda. <i>Watching brief</i>	Oct 2012	ENVI (EP) ENVE (CoR)	DEFRA, DECC, CLG
Potential review of <b>Environmental Liability Directive</b> <i>Watching brief</i>	2014	ENVI (EP) ENVE (CoR)	DEFRA, DECC, CLG
Revision of <b>Waste</b> Framework and Waste Stream Directives must not add to existing duties.			DEFRA, DECC, CLG
New diversion targets from other waste streams may be added to <b>Landfill Directive</b> (zero land fill by 2050.) <b>Priority</b>	2014		DEFRA, DECC, CLG
<b>Directive on water efficiency in buildings:</b> as part of a wider "blueprint" for future water policy, a new Directive may set binding targets and incur a significant cost to councils as owners of municipal buildings and social housing. <b>Priority</b>	Dec 2012	ENVI (EP) ENVE (CoR)	DEFRA, DECC, CLG
<b>Air Quality Directive:</b> review may set new air quality management standards. 2013 is European air quality year <b>Priority</b>	2013	ENVI (EP) ENVE (CoR)	DEFRA, DECC, CLG
<b>LGA Improvement Board Cllr Peter Fleming</b>			
<b>Major review of EU public procurement rules.</b> LGA is lobbying to ensure a simpler and lighter regime overall, and a more flexible approach to shared services. <b>Priority</b>	Live COM(2011)896	IMCO (EP) ECOS (CoR)	Cabinet Office

<p><b>Award of concession contracts:</b> LGA is lobbying for light touch regulation on councils' franchise arrangements: toll bridges car parks, leisure centres, waste, school canteens <b>Priority</b></p> <p><b>Data protection: re-use of public sector information:</b> proposals may affect how councils store and share personal data. <i>Watching brief</i></p>	Live COM(2011)897	IMCO (EP) ECOS (CoR)	
	Live COM(2011)877	LIBE (EP) ECOS (CoR)	
<b>LGA European and International Board</b>			
<b>Role of civil society and local authorities in development.</b> <i>Watching brief</i>	Oct 2012	DEVE (EP) CIVEX (CoR)	Dept for International Development (DFID)
<b>European Neighbourhood Policy and Eastern Partnership</b> <i>Watching brief</i>	2012	AFET (EP) CIVEX (CoR)	Foreign and Commonwealth Office (FCO)
<b>LGA Stronger and Safer Communities Board</b> <i>Cllr Mehboob Khan</i>			
Proposals to review EU Directives/regulations on organic food, tobacco sales, general product safety, animal health, and official food chain controls may affect councils' <b>trading standards</b> and <b>environmental health</b> teams. <i>Watching brief</i>	During 2012-13	ENVI+IMCO (EP) Various CoR	
<b>European consumer agenda:</b> consumer safety, rights redress and access to justice, enforcement, information. <i>Watching brief</i>	Summer 2012	IMCO (EP) EDUC (CoR)	
<b>LGA Culture Tourism &amp; Sport Board</b> <i>Cllr Chris White</i>			
<b>European tourism label sector:</b> legislation to bring quality evaluation of the sector. <i>Watching brief</i>	2012	TRAN (EP) NAT (CoR)	Dept for Culture Media and Sport (DCMS)



<p><b>LGA Workforce Board</b> Mayor Sir Steve Bullock</p> <p><b>LGA Fire Services Management Committee</b> Cllr Brian Coleman AM</p>			
<p><b>Working Time Directive Review:</b> may affect care homes and fire services. Lobbying to keep 48 hour opt-out; ensure not all on-call time is working time; and compensatory rest is taken flexibly.</p> <p><b>Priority</b></p>	Ongoing	EMPL (EP) ECOS (CoR)	CLG, BIS
<p><b>Freedom of movement for workers</b> within the EU may establish certain obligations on employers, including councils. It is envisaged to apply to EU nationals moving/working within the EU rather than migration to/from third countries <i>Watching brief</i></p>	Late 2012	EMPL (EP) ECOS (CoR)	CLG, BIS
<p><b>Green Paper on restructuring:</b> good practice in employment restructuring promoting employment/growth. <i>Watching brief</i></p>	Live COM(2012)007	EMPL (EP) ECOS (CoR)	CLG, BIS
<p><b>Protection of workers from the risks related to carcinogens and mutagens at work</b> <i>Watching brief</i></p>	Oct 2012	EMPL (EP) ECOS (CoR)	CLG, BIS
<p><b>Work/family and private life</b> - measures to increase female employment rates and tackle demographic change <i>Watching brief</i></p>	2012	EMPL (EP) ECOS (CoR)	CLG, BIS



## **ANNEX 2: Key players in Brussels, Whitehall and Westminster**

### **1. European Parliament**

The following six EP committees account for all the LGA top priority items (excluding watching briefs). It is recommended that the Board focuses its political links with these committees:

#### **EP economic and monetary affairs committee (ECON)**

*(LGA priorities on finance, tax)*

- Conservative: Syed Kamall, Kay Swinburne
- Labour: Arlene McCarthy [Vice-Chair]
- Liberal Democrats: Sharon Bowles [Chair]
- Others: Godfrey Bloom (UKIP)

#### **EP employment and social affairs committee (EMPL)**

*(LGA priorities on workforce issues, including Working Time Directive)*

- Conservative: Roger Helmer
- Labour: Stephen Hughes
- Liberal Democrats: *none*
- Others: Derek Clark (UKIP), Jean Lambert (Green), Nicole Sinclaire (independent)

#### **EP environment, public health and food safety committee (ENVI)**

*(LGA priorities on water efficiency, waste, air quality and general policy)*

- Conservative: Martin Callanan, Julie Girling, Marina Yannakoudakis
- Labour: Linda McAvan, Glenis Willmott
- Liberal Democrats: Chris Davies
- Others: Bairbre de Brun (Sinn Fein), Jill Evans (Plaid Cymru), Nick Griffin (BNP), Paul Nuttall (UKIP)

#### **EP industry, research and energy (ITRE)**

*(LGA priority on energy efficiency)*

- Conservative: Giles Chichester, Vicky Ford
- Labour: *none*
- Liberal Democrats: Fiona Hall
- Others: *none*

#### **EP internal market and consumer policy committee**

*(LGA priorities on procurement and concessions)*

- Conservative: Malcolm Harbour [Chair]
- Labour: Catherine Stihler
- Liberal Democrats: *none*
- Others: Trevor Colman (UKIP)

**EP regional policy committee**

*(LGA priorities on EU budget and regional funds)*

- Conservative: *none*
- Labour: *none*
- Liberal Democrats: Catherine Bearder
- Others: *none*

**2. Committee of the Regions**

It is a similar picture in the Committee of the Regions, where all current LGA priorities are covered by three of the six commissions: COTER, ENVE and ECOS. The full list of UK members is as follows:

**CoR commission for Territorial Cohesion Policy (COTER)**

*(LGA priorities on EU budget and regional funds)*

- Conservative: Amanda Byrne (Calderdale) Roger Evans (GLA)
- Labour: Sir Albert Bore (Birmingham)
- Liberal Democrat: Doris Ansari (Cornwall), Flo Clucas (Liverpool)  
Graham Garvie (Scottish Borders) Chris Holley (Swansea)
- Independent: *none*

**CoR commission for Citizenship, Governance, Institutional & External Affairs (CIVEX) *(No LGA priorities in 2012)***

- Conservative: Martin Heatley (Warwickshire), Gordon Keymer (Tandridge), Judith Pearce (Wychavon), David Shakespeare (Buckinghamshire)
- Labour: Sharon Taylor (Stevenage)
- Liberal Democrat: Peter Moore (Sheffield) Lord Graham Tope (Sutton)
- Independent: *none*

**CoR commission for Economic and Social Policy (ECOS)**

*(LGA priorities on procurement, concessions, finance, tax, Working Time Directive)*

- Conservative: Sandra Barnes (South Northants), David Parsons (Leicestershire), David Simmonds (Hillingdon)
- Labour: Christine Chapman AM (Welsh Assembly) Iain Malcolm (South Tyneside)
- Liberal Democrat: Doreen Huddart (Newcastle), Kathy Pollard (Suffolk)
- Independent: *none*

**CoR commission for Education, Youth and Research (EDUC)**

*(No LGA priorities in 2012)*

- Conservative: Peter Thompson (Hounslow)
- Labour: Jennette Arnold (GLA), Bob Bright (Newport), John Dallat MLA (NI Assembly), Roger Stone (Rotherham)
- Liberal Democrat: *none*
- Independent: Roger Knox (East Lothian)

**CoR commission for Environment, Climate Change & Energy (ENVE)**

*(LGA priorities on water efficiency, waste, air quality, energy efficiency and general policy)*

- Conservative: Kay Twitchen (Essex)
- Labour: Nilgun Canver (Haringey), Corrie McChord (Sterling), Neil Swannick (Manchester)
- Liberal Democrat: Paula Baker (Basingstoke)
- Independent: Linda Gillham (Runnymede), Stewart Maxwell MSP (Scottish Parliament)
- Other: Francie Molloy MLA (NI Assembly)

**CoR commission for Natural Resources (NAT)**

*(No LGA priorities in 2012)*

- Conservative: Sir Simon Day (Devon), Arnold Hatch (Craigavon), Herbert Manley (Cheshire West & Chester), Alan Melton (Fenland), Ann Stribley (Poole)
- Labour: Dave Wilcox (Derbyshire)
- Liberal Democrat: *none*
- Independent: Rhodri Glyn Thomas AM (Welsh Assembly), Mary Robinson (Eden)
- Other: Sandy Park (Highland)

**3. UK Government and shadow cabinet**

***Foreign and Commonwealth Office***

Secretary of State: The Rt Hon William Hague MP

Key ministers: Rt Hon David Lidington MP (Europe) and Jeremy Browne MP

Shadow Foreign Secretary: Douglas Alexander MP

***Communities and Local Government***

Secretary of State: The Rt Hon Eric Pickles MP

The Rt Hon Greg Clark MP (EU fines lead)

Bob Neill MP (EU Working Time Directive)

Shadow CLG Secretary: Hilary Benn MP

***Department for Business Innovation and Skills***

Secretary of State: The Rt Hon Dr Vincent Cable MP

Mark Prisk MP (EU Budget lead)

*Shadow* BIS Secretary: Chuka Umunna MP

***Department for Transport***

Secretary of State: The Rt Hon Justine Greening MP

*Shadow* Secretary of State for Transport: Maria Eagle MP

***Department for Environment, Food and Rural Affairs***

Secretary of State: The Rt Hon Caroline Spelman MP

*Shadow* Secretary of State for the Environment: Mary Creagh MP

***Department for Energy and Climate Change***

Secretary of State Edward Davey MP

*Shadow*: Caroline Flint MP

***HM Treasury***

Chancellor of the Exchequer – The Rt Hon George Osborne MP

*Shadow* Chancellor of the Exchequer: Ed Balls MP

Chief Secretary to the Treasury – The Rt Hon Danny Alexander MP

*Shadow* Chief Secretary to the Treasury: Rachel Reeves MP

***Cabinet Office***

Secretary of State: *The Rt Hon Francis Maude MP* (EU procurement)

*Shadow* Minister for the Cabinet Office: Jon Trickett MP

***Department for Education***

Secretary of State: The Rt Hon Michael Gove MP

*Shadow*: Stephen Twigg MP

***Department for Work and Pensions***

Secretary of State: The Rt Hon Iain Duncan Smith MP

The Rt Hon Chris Grayling MP

*Shadow* Secretary of State for Work and Pensions: Liam Byrne MP

***Department for International Development***

Secretary of State: The Rt Hon Andrew Mitchell MP

*Shadow* International Development Secretary: Ivan Lewis MP

***Department for Culture, Olympics, Media and Sport***

Secretary of State: The Rt Hon Jeremy Hunt MP

*Shadow*: Harriet Harman MP

**Item 2**

**International Activities Update**

**Purpose**

For discussion.

**Summary**

This report provides an update on recent externally funded international project activities, as well as outlining the project delivery timetable for the rest of the year.

**Recommendation**

Members are asked to comment on the report and make any recommendations for officers to action.

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## **International Activities Update**

### **Background**

1. The LGA is committed to respond, where external funding is available, to the growing demand from developing countries upon the skills and expertise of British local government. This report summarises our current work in the following areas:
  - 1.1 African Peer Review
  - 1.2 DFID contracts
  - 1.3 Kosovo.

### **International Peer Review Project**

2. United Cities & Local Government Africa (UCLGA), the pan-African LGA, is piloting the concept of peer review across Africa in 2012 with donor funding. In light of the UK's experience of peer review over the last decade UCLGA has commissioned the LGA to train a pan-African cohort of local government peers in peer review and support the delivery of five pilot peer reviews across Africa with funding from the government of Luxembourg.
3. From 30 January – 2 February the LGA hosted local government peers from thirteen African countries in London for a training programme to learn about the principles and practice of peer review.
4. This group was made up of chief executives, politicians and sector experts who participated in the four day course, supported by UK officer and member peers, which was designed to prepare them to deliver the peer reviews in Africa.

### **Next Steps**

5. The next stage is the delivery of five pilot peer reviews throughout the course of 2012. These will be peer reviews of either a council (municipality) or local government association. This stage of the programme will be delivered in two parts.

PART ONE; Adaptation & Benchmarking - *February to end of April.*

6. The success of the programme depends not only on the successful delivery of five peer reviews in-country, but also the adaptation of the peer review benchmark to each of the pilot countries beforehand. Sound preparation, including full political and managerial ownership, as well as a thorough self assessment process is important.

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7. The LGA will be remotely supporting the local sector expert peers in their discussions with the organisation being reviewed and its wider stakeholders in each of the five countries. The tailoring of the peer review benchmark will be led by the sector experts in collaboration with key stakeholders so that it has maximum relevance and enables effective and appropriate challenge.
8. In the meantime is anticipated that the dates for each of the five peer reviews will be agreed by early March. The month of May has been set aside for quality assurance of the benchmarks as well as ensuring that the national policy context is adequately captured.

PART TWO; On-site Delivery of Peer Reviews - *June to October*.

9. Once the adaption stage has been completed the peer reviews will be delivered sequentially between June and October in the following order;
  - 9.1 Namibia
  - 9.2 Ghana
  - 9.3 Uganda
  - 9.4 Cameroon
  - 9.5 Ivory Coast
10. It is important that the selection of the UK peers is based on a good understanding of the hosting authority/association. It is therefore anticipated that the process will begin shortly after the confirmation of dates for each of the five reviews in early March and upon receipt by the LGA of a clear brief on the administrative and political makeup of the hosting organisation.

**DFID Consortium**

11. Members will be aware that the LGA is now an official approved suppliers to DFID. It is part of a consortium led by the consultancy company, HTSPE Ltd, which has been selected as part of a panel of preferred suppliers to support governance services under a DFID-funded framework agreement.
12. The framework is awarded for 2 years with 2 possible extensions of 12 months each. Separate mini-competitions will be run for specific requirements in 28 countries or groups of countries.
13. DFID will notify all suppliers through their consortium leaders of upcoming competitions. Consortium members will then amongst themselves decide who will lead on the bid. Individual programmes will typically be 3-5 years in duration.

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14. Following a stand-still period, framework contracts are expected to be signed in early March with the official launch following two weeks later. Competitions are expected in April. HTSPE will convene a consortium partners meeting soon after the official launch of the framework agreement.

**Kosovo Project**

15. The LGA has been implementing the DFID funded project “Strengthening Financial and Administrative Systems for the decentralisation of the Social Care Services Programme” in Kosovo for over a year. The LGA’s input will continue by organising two training visits to UK. The first visit by the group of five elected mayors in March (12-15) will be focusing on financing of adult’s and children’s social care.

16. The second training will be for slightly larger group of elected mayors and senior officials from Kosovan Ministry of Local Government. It will take place between 29 April and 5 May focusing on the delivery of adult’s and children’s social care in England as well as relations between local and central government.

17. UK members and officers are being recruited through Local Authorities’ existing procedures for selecting peer reviews. UCLEA is having early discussions with donors about this project could be expanded. It is anticipated that LGA would play a role in this roll out.



## **Update on reform of EU procurement rules**

### **Purpose**

For discussion and direction.

### **Summary**

This report updates the European and International Board on LGA's programme of work to secure simpler EU rules governing councils' procurements.

Attached at **Annex 1** is CEMR's (European LGA) first reaction to the European Commission's proposal for a new directive on public procurement.

Attached at **Annex 2** is the LGA's position paper in response to the European Commission's proposal for a new directive on public procurement.

### **Action**

Members are requested to note the report, the annexed position papers, and to give comments as a steer to officers on the next stage of the lobbying programme in Brussels and London.

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## **Update on reform of EU procurement rules**

### **Background**

1. EU procurement rules directly govern how councils can buy their supplies and services. Public procurement represents 18% of Europe's economy and all procurements above a certain value (normally £173,934) must follow a relatively complex and lengthy EU procedure to ensure providers from across the EU get a chance to compete for councils' contracts.
2. The LGA's work is lead by the Improvement Board and contributes to the LGA's 'productivity programme', which encourages local government efficiencies in the face of budget cuts.
3. The work also links with others areas of LGA activity including: localism, promoting local employment and economic growth; new models of service delivery and public private-partnerships; efficiency savings and collaborative procurement; simplifying the commissioning of social services; and environmental and energy efficiency issues in public contracts.

### **Update**

4. In January 2011 European and International (E&I) Board Members endorsed an LGA lobby strategy to seek simpler and more flexible procurement procedures at EU level.
5. Work continues in line with this strategy, and since then the EU has published, in December 2011, its legislative proposals for a new directive governing council procurements. The directive will now be negotiated by the European Parliament and national governments and will come into force on 30 June 2014.
6. The 246 pages of proposals represent a mixed bag for councils. There are some welcome simplifications, and greater clarity in some areas such as the ability to buy socially responsible or green, energy-efficient products.
7. However the proposals also introduce several new burdens on councils which are unwelcome at this time. These include:
  - 7.1 new burdens when commissioning legal and leisure services
  - 7.2 new burdens when councils seek loan financing
  - 7.3 new advertising requirements for commissioning social services and a requirement to introduce new procedures nationally

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- 7.4 councils having to provide explanations as to why they have not split contracts up into smaller lots to help SMEs
  - 7.5 a restrictive interpretation of shared services which may mean councils have to follow the EU rules simply to pool services with neighbouring authorities
  - 7.6 no exemptions for staff 'mutuals' who will now fall under the rules
  - 7.7 complications around the 'community right to challenge' introduced by the Localism Act 2011
  - 7.8 a new monitoring body at national level to police the enforcement of the rules
  - 7.9 new reporting obligations: sending copies of all large contracts to the monitoring body.
8. All-in-all the LGA does not believe the proposals live up to the simplified regime promised by the EU at the start of the process.
9. In response, in the last four months, the LGA has:
- 9.1 established a national procurement advisory group comprising council procurement practitioners, and held a teleconference to seek views
  - 9.2 ran a very successful live online EU 'Hotseat' consultation event with councils
  - 9.3 held discussions with Whitehall and the key members of the European Parliament
  - 9.4 secured local government representation to give evidence to the European Parliament's 'hearing' on the 19 March 2012
  - 9.5 coordinated work with other associations across the EU to present a united voice, and has drawn up a common statement on the need for simplification (attached at **Annex 1** for information).
10. Following the above activities, the LGA Improvement Board, which is leading this work, has approved the LGA position paper which deals with the technical issues (attached at **Annex 2** for information). A draft was also sent to the E&I Chair.
11. Members are asked to give comments on the position or any other concerns regarding EU procurement rules which cause difficulties for councils in delivering services. Such ideas can then be reflected in the ongoing lobbying work towards government and the EU during 2012.
12. Members are asked to comment and agree that during 2012, the LGA continues its programme of engagement with councils, Whitehall and EU institutions to seek a simpler and more flexible procurement regime at EU level. Such activities are covered within the existing budget.



## **Annex 1 - CEMR first reaction to the European Commission's proposal for a new directive on public procurement (Feb 2012)**

**CEMR calls on the European Parliament & Council to significantly reform the Commission's proposals so that they deliver a 'light' regime**

- Local and regional government as public procurers fully endorse the need for open competition when tendering many types of public contract **and fully support** the Treaty principles of equality, transparency, and non-discrimination when it comes to public procurement;
- However, consistently applying the complex rules of the European directives without receiving any offer from providers in another member state **means a waste of resources and cost**. The complex EU regime is not proportionate to the results being achieved;
- An increase of the threshold for goods and services would help to **reduce time and cost burdens** on both sides: the tenderers and the bidders;
- Transparency, non-discrimination and equal treatment in public procurement procedures below the thresholds should be ensured by the Member States via **national rules**.

**CEMR believes that it is necessary to return to the basic objectives and principles of the public procurement concept and find pragmatic, manageable solutions, along the following lines:**

- Focus on the **Treaty principles** (equality, transparency, non-discrimination) and ways to strengthen their application, in particular by using new technologies;
- A proportionate and **well-balanced legal framework** that provides for the basic principles, leaving sufficient flexibility for both the public authority and the bidder;
- Reduction of legal and administrative burdens, **simplifying** and aligning procedures, again for both the public authority and the bidder;
- Allow local and regional authorities to determine their own **purchasing priorities**;
- Increase awareness and incentives to look for innovative solutions.

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**Introduction**

1. Public Procurement is a core issue for local and regional authorities. A major part of public spending is done at local and regional level and thus **contributes in a significant way to the economy** in Europe's cities, municipalities and regions.
2. This is particularly important in times where public investments can help to keep people in their jobs, **stimulate smart growth** in sustainable projects and avoid further economic and social degradation.
3. CEMR as the European umbrella organisation of 60 national associations representing local and regional government from 40 countries has been actively engaged in the debate on the development of the European public procurement rules over the last decade.
4. This is a first reaction to the European Commission's proposal for a new directive on public procurement. A more detailed position paper with proposals for European Parliament amendments will follow.

**Comments on the Commission's proposal**

5. CEMR wishes to underline that the original objective of the public procurement regime is to ensure **value for money**.
6. Local and regional authorities report that European public procurement procedures are very costly and time consuming and still do not materialise in the expected result: **cross-border purchasing**. The financial and administrative efforts invested in the required procedures are disproportionate to the number of contracts concluded with tenderers from another Member State.<sup>1</sup>
7. Some of the 246 pages of provisions have more the **character of guidelines** for implementation and should not be part of a legislative text. Such elements should be provided in a separate, accompanying communication or handbook, which allows modifications over time, without legislative amendment, to keep up with the fast pace of CJEU procurement case law. In this way the legislative text itself could be significantly simplified.
8. CEMR **strongly objects to such detailed provisions** at European level as proposed and stresses, with reference to the principles of subsidiarity and proportionality that such details, including governance and enforcement, should be left to the appropriate authorities in each Member State.

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<sup>1</sup> This is confirmed by the Commission's own evaluation which shows that only 1.6% of contracts are awarded to companies in other Member States.

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9. Like the European Parliament in its resolution on ‘modernisation of public procurement’, CEMR believes that a new directive needs to propose a **significant simplification** and consolidation of the rules.
10. However, the proposed text does the opposite. It goes way beyond what we consider being proportionate: it proposes to create new burdens for legal services, **new advertising requirements** for social services (article 75) and a requirement to introduce **new procedures nationally** (76), **new monitoring bodies** at national level (article 84), additional explanations as to the contract value chosen (article 44), and **heavy reporting** and **notification obligations** (e.g. articles 85 & 86), even directly to the European Commission (e.g. article 32 (6)).
11. We therefore call on the European Parliament and the Member States to take a bold approach and screen the draft directive in order **to eliminate all provisions containing too detailed rules**. In times when public authorities, including the European Commission services, are reducing staff, it is not appropriate to introduce ever-heavier administrative burdens.
12. We would encourage the European Parliament & Council to significantly **reform the Commission’s proposals** so that they deliver a **‘light’ regime**.
13. We consider the WTO **Government Procurement Agreement** (GPA) with its 24 articles on 33 pages to be an excellent model for such a light regime. Since both regimes (EU and WTO) must be generally consistent, we strongly encourage the European legislator to align the proposed directive to the lighter approach of the GPA.
14. CEMR strongly advocates for an increased **threshold** in order to get the balance right in terms of reflecting cross-border interest: doubling the thresholds for goods and services to €400,000 would be a positive first step.
15. Furthermore, and again in line with the European Parliament resolution from 2011, we call for fewer and more **flexible procedures** in line with the GPA, especially when the Commission argues thresholds cannot be raised.
16. Concerning **public-public cooperation**, the proposal assumes too strict an interpretation of the CJEU case law. The wording of the European Parliament’s resolution<sup>2</sup> perfectly reflects the jurisprudence of the CJEU and should be used for the text in the directive. The resolution underlines the fact that transferring tasks between public sector organisations is a matter for the Member

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<sup>2</sup> European Parliament resolution of 25 Oct. 2011 (2011/2048(INI), point 6

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States' internal administrative organisation and not subject to procurement rules.

17. We would also prefer to have the relevant elements included in article 1 (scope) and article 2 (definitions) of the directive instead of a separate article as proposed by the Commission (article 11).
18. Concerning **social and other person-specific services** (articles 74 – 76) CEMR does not see the necessity of introducing a new system. Like the European Parliament in its resolution, we are in favour of keeping the classification of **A and B services**, which recognises the specific character and also 'lighter' rules for locally or regionally provided services of limited cross-border relevance.
19. Public procurement rules are not suitable when it comes to the provision of specific services such as legal advice, social, health or educational services to individuals. We advocate a regime that leaves Member States sufficient room to establish suitable national regimes that ensure value for public money and comply with the Treaty principles of transparency, equal treatment and non-discrimination.

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## **Annex 2 - LGA response - EU proposals for procurement reform**

### **Summary**

On the 20 December 2011 the European Commission published new draft Procurement Directives which will replace the existing public sector and utilities Directives and introduce a new Directive and therefore make important changes to the way councils procure supplies, services, and works. The new legislation will be amended by ministers and the European Parliament and is planned to come into force on 30 June 2014.

The 246 pages of proposals aim to simplify the EU procurement rules but in practice represent a mix of measures, some of which are welcome and some of which are considered unnecessary or impose new burdens.

The response gives an overview of the main measures which will affect councils and the LGA's view following consultation with councils. The numbers in brackets refer to articles in the draft legislation.

### **Key issues**

1. The new shared services exclusion (11.4) needs to be wider than proposed or deleted. The reference to 'mutual rights and obligations' should be removed and councils should be allowed to make an operational surplus provided it is reinvested into public services. Such reform is essential to allow the public sector to make efficiency savings.
2. New advertising requirements at EU level for education, health, and social services regimes should be rejected, as should requirements for new national rules, given the nature of these services. The current Part A/B distinction should remain. If not, then there must be significantly higher thresholds for these services of €5m to reflect the lack of cross-border markets.
3. Similarly, new requirements and burdens should not be introduced for the commissioning of legal services.
4. Councils will have to adapt to accepting self-declarations by SMEs at the selection stage. They will also have to adapt to new e-procurement requirements, but both should result in a welcome reduction in administration for councils and SMEs alike.
5. In the UK, an ability for employee 'mutuals' to receive 'dowry' contracts without tender must be included in the new legislation.
6. The 'light' approach proposed for service concessions, with higher thresholds and no specific award procedures at EU level, should inspire the reform of the procurement directive. The Commission needs to go much further with simplification.

**Detailed response**

1. Scope of proposals
2. Localism
3. SMEs
4. Reformed procedures
5. Governance & transparency
6. Service concessions
7. Next steps

**1. Scope of proposals**

**1.1 Thresholds (4)**

It is disappointing that generally thresholds are proposed to remain at €200,000 for supplies and services and €5m for works. Despite consistent stakeholder feedback from public bodies across the EU, the Commission has not opted to set thresholds at levels which it is believed would reduce administrative burdens and better reflect cross-border economic viability for both contracting authorities and providers.

Our evidence presented to the Commission, as well as their own data, clearly shows a lack of cross-border interest in procurement markets at such low levels of contract value. The result can be unnecessary administrative burdens on public bodies in running lengthy EU-wide procurement processes which receive little or no attention from those based abroad. A more proportionate approach is therefore required based on significantly raised thresholds.

We welcome the intention to review the thresholds by 30 June 2017 (94).

Whilst the thresholds are adjusted in line with the exchange rate against the Euro, no account has been taken of inflation since the thresholds were originally introduced.

Recital 13 (pg 17) suggests that EU institutions and other EU bodies will not have to follow the procurement rules. As we have advocated in other EU proposals, it seems unacceptable that the European Commission does not have to follow its own rules.

**1.2 New regime for social, education, and health services (75,76)**

The current rules distinguish between Part A services which are subject to the full application of the procurement rules and Part B services which are subject to limited technical and procedural requirements. We note the proposed abolition of the distinction between 'Part A' and 'Part B' services and the creation of a new regime for social, health, and education services and a limited number of other specified services, the so-called 'non-priority' services listed in Annex XVI.

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The new regime requires the publication of a Contract Notice (or presumably a PIN as outlined in section 1.4) and publication of a Contract Award Notice for contracts above a higher threshold of €500,000 (75) in the OJEU. There are no specified procedures or statutory time limits. It is advocated that procedural requirements should be limited to ensuring compliance with the principles of transparency and equal treatment such as quality, continuity and accessibility.

Whilst some larger councils routinely advertise Part B services in the OJEU, or even follow Part A procedures for Part B contracts in line with a single tendering path, other councils regret these new burdens in the form of EU level advertising requirements.

Furthermore councils don't see the value of this new regime given the proven lack of cross-border relevance of these services and the competences of the Member States in these fields. The extra tendering costs are unwelcome, and it is believed go against Government's Munro review which is aimed at reducing bureaucracy in children's social care.

Furthermore, the threshold of €500,000 appears low given the nature of the services. €5m would seem a more appropriate threshold for government to push for in negotiations.

All-in-all therefore it would be preferable to maintain the current Part A/B distinction.

Whilst there are no award procedures specified at EU level for these services, the proposals also include a requirement for government to bring in some form of award procedure nationally (76). This is unlikely to be welcome by contracting authorities. Such services are normally service contracts relating to people in need and there needs to be an ability to respond quickly and flexibly when procuring, in line with local decision-making and local conditions. Again the aim should be to simplify existing procedures, not to bring in new procedures.

### **1.3 New 'Part A' services**

Contracts for legal services (and others) are proposed to be subject to the full requirements of the proposals. This is a major area of activity and there are concerns from councils that they will have to spend more time running procurements than currently when they can appoint their existing preferred and trusted legal advisors which whom they have built up a relationship.

Again new burdens, the more lengthy EU timescales involved, increased tendering costs, and new areas of legal challenge (standstill/remedies), are not welcome at this time. The main advantage of being in 'Part B' is not having to follow the EU timescales and standstill requirements, thus allowing, it is believed, procurements to happen more rapidly.

Leisure services (sport and recreation) being subject to full requirements may also create similar difficulties in some cases.

There are also strong concerns that the new wording in Article 10d for the exclusion of financial services means that loan services would now fall within the scope of the procurement rules and that councils will have to tender when they wish to raise capital. Again this is an unnecessary new burden, and draft article 10(d) should be reworded as currently to again include ‘transactions by the contracting authorities to raise money or capital’.

LGA is therefore in favour of the continuing classification of legal (and leisure) services under the non-priority (Part B) regime.

#### **1.4 Lighter procedural regime for local & regional authorities (24.2, 46)**

The ‘light’ regime proposed for ‘sub-central’ authorities allows a prior information notice (PIN) or annual PIN to suffice as a means of calling for a competition, meaning that the publication of separate, individual contract notices would no longer be necessary for specified types of procurements including the restricted or the competitive procedure with negotiation. Sub-central authorities can also set certain time limits in a more flexible way. This is a significant simplification and is welcome. However the proposals need to be clearer about when they mean a single PIN or an annual PIN.

(The Directive specifies what information must be included in a PIN, a PIN used as calling for competition, a contract notice, and a contract award notice in Annex VI).

Within the restricted procedure, sub-central contracting authorities may also set shorter time limits for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates are treated in the spirit of transparency and equal treatment.

Greater flexibility in both these areas is welcome although the dual uses of a PIN may just add to complexity/confusion. There is also a risk that the market will expect to see a Contract Notice rather than a PIN to launch a competition. Awareness raising about the new role of PINs would therefore be required before such changes are introduced.

As opposed to what is proposed in the draft Directive, councils should be able to put their PIN for competition on their buyer profile under the same conditions as currently.

Currently PINs are used as a forward planning tool to also gather information and for market testing so this use of PINs should not be put in jeopardy.



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**1.5 In-house exemption (11.1 to 11.3)**

We note that the current Directive does not outline any form of ‘in house’ or shared services exemption. Important decisions on the organisation of local public services are therefore reliant on practitioner interpretations of CJEU case law. This sometimes results in local authorities spending on expensive and ultimately inconclusive external legal advice, or potentially not developing more innovative models of public service delivery.

The proposed codification of the in-house exemption based on CJEU case law is therefore welcome as it adds to legal certainty: especially codification of the 10% rule (second limb of *Teckal* test).

**1.6 Public-public cooperation / shared services exemption (11.4)**

The proposed codification to allow greater inter-authority cooperation appears not to meet councils’ needs as regards ‘tender free’ pooling of services between public authorities.

The five tests proposed (11.4a to e) to benefit from the shared services exemption are generally from CJEU case law but test 11.4a referring to ‘joint’ performance of public service tasks and ‘mutual rights and obligations’ is unnecessarily restrictive and should be deleted.

The requirement for ‘mutual rights and obligations’ is not mentioned in the case summary for the *Hamburg* case (C-480/06) for example. Future CJEU cases would be necessary to establish whether this will be decisive in general for agreements involving public-public cooperation. It therefore seems premature to base the new exemption on such a condition.

Without rewording the proposed article 11.4, the exclusion may not apply to typical shared services arrangements between councils in practice, where there are often not reciprocal rights and obligations (it is rather a unilateral assignment of a task from one council to another).

Instead of imposing mutual rights and obligations as a precondition of the shared services exemption, the article should seek to better distinguish services with ‘market orientation’ from those which are genuinely non-market oriented, and don’t place any commercial provider at a disadvantage.

Test 11.4d (no profit) is also unnecessarily restrictive as it does not appear to allow for a profit element or even an operational surplus to be carried over and reinvested in other services in the public interest, as may often be the case in practice.

It would be preferable to have no Article 11.4 at all rather than one which provides such a restrictive interpretation of the *Hamburg* case law.  
The article should therefore be reworded or deleted.

### **1.7 Changes to contracts (72)**

The clarifications are welcome as regards when a 'significant change' to a contract during its performance requires a new procurement procedure, including the '5% of contract value' rule.

However clarification for practitioners is needed immediately as the issue is causing difficulties in practice: waiting for the Directive to be agreed and implemented will take several years.

## **2. Localism**

There are two specific instruments introduced by the UK's Localism Act (2011) which give rise to a number of complexities.

### **2.1 Employee mutuals**

The Commission has not incorporated local and central government requests for a special regime to allow for 'tender free' award of 'dowry' contracts directly to employee-led organisations or mutuals. The proposals contain no exemption to allow this meaning that a competition will have to be run under which employee-led organisations will have to bid along with private sector players, to deliver a given service. This creates complexities around using mutuals as a delivery vehicle.

Government should continue to push for an exclusion on this during the EU level negotiations. However in parallel, and in the meantime, it should be made clear to councils that an EU compliant procedure is required when awarding a contract to a mutual.

### **2.2 Community Right to Challenge (CRC)**

The new 'Community Right to Challenge' (CRC), also outlined in the UK's Localism Act (2011) allows voluntary and community groups to require a local authority to run a procurement exercise to externalise its service.

Despite government reassurances that the new right does not alter EU procurement law, outstanding questions remain about the interface and compatibility of these provisions with EU procurement law

Can an authority be a contracting authority and a bidder for its own contract simultaneously? Under what conditions can an authority abandon a CRC-triggered procurement process or ignore the result? What standard of evidence is required to justify such decisions?

The LGA is currently working on the CRC in more detail with government ahead of the publication of the UK regulations which will bring the Right into force at the end of April 2012.

### **3. SMEs**

#### **3.1 Divisions of contracts into lots (44)**

There are a number of provisions relating to the use of lots. These are aimed at encouraging the contracting authority to consider the structuring of opportunities to encourage SME participation. We note the new requirement to explain why contracts have not been broken down into lots of €500,000 or less.

If this requirement remains, support will be needed to be given to councils on how to define/decide on lot types and options, especially if there is to be legal challenge where contracts are not divided into lots. This is the main area of concern: that not dividing into lots will usher in a new area of legal challenge against councils.

All-in-all, it would be better to delete this requirement to explain non-disaggregation.

It must remain at the discretion of the contracting authority to determine whether it seeks lower contract costs with large volume procurement or whether it seeks to afford greater opportunities for SMEs.

Division into small lots also goes against the trend to seek costs savings and aggregate public sector procurement through central purchasing bodies.

#### **3.2 Financial guarantees (56)**

The proposals limit annual turnover requirements to up to three times contract value to help SMEs. The proposals to outlaw the asking of excessive financial guarantees from SMEs are welcome (56.3). We don't believe councils are routinely asking for financial guarantees in excess of this.

#### **3.3 SME self-declaration & EU procurement passport (57,59)**

We note that councils will have to accept self-declarations from SMEs as initial evidence for selection purposes (57), and that an electronic EU 'procurement passport' will also be introduced to automatically qualify an SME for participation in a procurement procedure, meaning an SME's details don't have to be provided many times to the same authority (59).

We tend to look favourably on these measures as they could reduce bureaucracy for both SMEs and councils once such a system is in place, and provided councils receive appropriate support. Several councils have already considered moving towards procurement passports.

#### **3.4 Direct payment of subcontractors (71.2)**

The new possibility to allow direct payment of subcontractors by councils must not affect the right of councils to withhold payment for valid performance

reasons, even those for which the sub-contractor is not responsible.

Councils are reluctant to open up a new avenue which could see sub-contractors turning to councils to ask for direct payments. However providing the possibility remains optional (for the contracting authority) the proposals appear manageable.

#### **4. Reformed procedures**

We welcome the fact that time limits for participation and submission of offer are proposed to be shortened. The ability to further shorten the procurement timescales involved if the Contracting Authority and providers agree is a positive development.

##### **4.1 Selection criteria (54.3, 56)**

The greater flexibilities introduced under the open procedure to allow the evidence for selection criteria to be examined *after* award criteria, if contracting authorities choose to do so, is helpful (54.3). This should allow councils to only request certificates/documentation from the winning bidder, rather than burdening all bidders with providing documentation. In many cases councils do things this way around already, so the proposal provides nothing new.

The SME requirement for self-declaration (57) should mean there is negligible risk that the one winning provider has to incur the costs of tender submission only to find out that they did not satisfy the selection criteria.

This new approach needs to fit with government's recent plans to introduce a shortened pre-qualification questionnaire (PQQ).

We welcome that fact that deficiencies by providers in performing prior contracts will now be able to be taken into account as selection criteria. However there are some concerns that excluding bidders in these circumstances, when they have taken some remedial action, could lead to claims of discrimination and legal challenge. Accordingly, clear guidance would be needed.

##### **4.2 Award criteria (66)**

It is welcome that the possibility to choose from two procurement approaches, most economically advantageous tender (MEAT) or lowest cost, remains. We understand that MEAT is by far the most commonly used approach amongst councils in the UK.

The draft Directive provides that for works and services contracts a contracting authority can require tenderers to name in the tender or in the selection (PQQ) stage the names and relevant professional qualifications of those to be responsible for the performance of the contract. This change is

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welcome. Current provisions if strictly interpreted only permit this information to be requested at the PQQ stage.

The fact that the employment of unemployed people can be specified as a contract performance condition is also welcome (provided it is linked to the subject matter of the contract and is non-discriminatory) (recital 43). However it should be clarified whether the employment of unemployed people can be an award criterion: whether the unemployed would qualify as a 'disadvantaged or vulnerable group' outlined in recital 41.

**Draft contract conditions**

The other thing that local authorities would like to see clarified is the ability to invite proposals on matters set out in draft contract conditions, including 'contract performance conditions', as opposed to the technical specifications, and to take those proposals into account at contract award stage.

This is an issue when councils invite proposals for how TUPE will be handled for example – it is seldom a specification issue, and is normally in the contract conditions. But being in the conditions means there can't be consideration of such issues at contract award stage. In complex procurements (such as PFI) where risk is being transferred, it is also common practice to invite comments on draft contract terms and there is often substantial feedback. It therefore needs to be made clear in the proposals that contract conditions can be taken account of at award stage where justified, non-discriminatory and linked to the subject matter of the contract etc.

**4.3 Green procurement criteria (67)**

Mandatory lifecycle costing is only introduced (for the moment) in the field of vehicle procurement where a costing methodology has already been adopted in EU law (see links). It would be useful for the EU to publish what other costing methodologies for other products or services are in the pipeline at EU level, and may be added to Annex XV meaning their use will be mandatory in future.

It is unclear why the office equipment Regulation (106/2008) has not been included in Annex XV as one which must be followed. The annex would be of more practical use if it listed *all* EU procurement legislation which contracting authorities need to follow.

We welcome the fact that the introduction of lifecycle costing otherwise remains optional, under an *enabling* approach, in line with the need for flexible procurement decision-making at the local level.

The proposals open the door to the mandatory introduction of lifecycle costing for new product/service areas. To ensure democratic scrutiny, such new costing methodologies must be agreed at the EU level through co-decision, not as delegated acts.

#### **4.4 Energy efficiency in procurement**

Whilst local authorities should be given every encouragement to procure energy efficient products, there should be no new *mandatory* energy requirements imposed on local authorities as proposed under the new energy efficiency directive.

The LGA recognises the important role of public procurement in demonstrating leadership but does not support the blanket imposition of mandatory energy requirements in all procurements. The draft energy efficiency directive will need to strike a balance between seeking ambitious levels of energy efficiency and value for money principles. Local taxpayers should not be expected to meet the costs of developing the market in highly energy efficient works, products or services. An even hand should be demonstrated with equivalent expectations made of manufacturers.

The draft energy efficiency directive should recognise that for local authorities a significant proportion of purchasing decisions are made by contractors. Local authorities can specify that energy efficiency expectations are met by contractors and their suppliers in future contracts. However there will be limitations in their ability to change expectations within existing contracts.

As regards the requirements for the energy efficiency of buildings, local authorities use a number of criteria in the choice of buildings to rent. These include location, configuration and capacity. With these considerations in mind it will not always be possible to find an appropriate building to fulfil all energy requirements before the market in highly energy efficient rental buildings reaches sufficient maturity.

The LGA suggests therefore that this part of the draft energy efficiency directive would be more appropriately focused on providing guidance for local authorities on the value of energy efficient products rather than imposing compulsory criteria.

#### **4.5 Social considerations**

It is positive that no new mandatory requirements are imposed in this area, and that the Commission focuses on an *enabling* approach. This approach must not be altered by the European Parliament which may push for more mandatory measures in this area.

It is welcome that fair trade considerations, and any factors directly linked to the production process may now be taken into account in the technical specifications and in award criteria (working conditions, minimum wages, child labour etc).

We note however that general corporate social responsibility (CSR) requirements will not be able to be taken into account (such as a certain

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percentage of women on the board of directors), because they are not directly linked to the subject matter of the contract.

Social and environmental criteria should only be introduced at the discretion of the contracting authority and where appropriate to the category of supplies or services.

It is positive that violations of EU or international law in the field of social, labour or environmental legislation will become legitimate reasons to not award a contract, or to exclude an 'abnormally low' tender (54.2).

In general it is felt that there needs to be more discussion amongst public bodies, and greater understanding about incorporating social issues and CSR into the procurement process.

**4.6 Sheltered workshops (17)**

A wider definition of sheltered workshops is proposed. Whilst the current directive (Art.19) refers to 'handicapped persons', the proposals (Art.17) would allow contracts to be reserved for employers/programmes employing more than 30% 'disabled or disadvantaged' workers. Again, it needs to be established if 'disadvantaged' would allow councils to reserve contracts for those social enterprises helping the long-term unemployed (for example).

**4.7 Competitive procedure with negotiation (27)**

The proposals allow a greater use than currently of a competitive procedure with negotiation. The conditions permitting the use of Competitive Negotiated and Competitive Dialogue have been changed so that they are the same for both procedures. This option to allow greater negotiation with suppliers is helpful. We note the regime is optional: governments may implement it or not (24.1). Government should ensure it is transposed into UK law in the future public contracts regulations, in a way that makes the procedure workable/useful in practice.

**4.8 Competitive dialogue procedure (28)**

Similarly, we note that use of the existing competitive dialogue procedure will be optional for Member States in future (24.1), and thus government will decide whether to maintain the use of the competitive dialogue procedure or not in the UK.

LGA is supportive of the proposed new ability to negotiate with the preferred bidder after the close of competitive dialogue. One of the current risks of competitive dialogue was the inability to move to a negotiated procedure if the process failed in the last stage to have a submission of at least two bids (wasting time and money for all parties to the tender).

#### **4.9 Innovation partnership procedure (29)**

We note the creation of a new ‘innovation partnership’ procedure which may make it easier for councils to commission the research and development and subsequent purchase of new products/services/works, rather than simply buying existing off-the-shelf solutions.

In practice many councils don’t have the financing to invest into the research and development of prototype products, services or works. The new procedure is nevertheless welcome for those larger authorities who do. Birmingham City Council for example is involved in several research and development projects in the energy saving field.

Work will need to be done to raise awareness of what this procedure is and how it can best be used to help councils achieve their aspirations in the fields of product and service innovation. Issues around the transfer of intellectual property rights to councils will also need to be considered.

#### **4.10 Framework agreements (31)**

There appears to be no reform to framework agreements. Much-needed provisions for better communication as to the existence of frameworks or to allow for a new contracting authority to join subsequently or to refresh frameworks with new suppliers are absent. This does not properly address concerns experienced by contracting authorities who are calling for such reforms to reflect changes in markets and changes in demand.

It needs to be clear that a ‘class’ of public authority, such as all ‘local authorities’, can be specified rather than specifying specific local authorities to receive supplies/services. This is important especially for central purchasing bodies, and has caused legal problems in other Member States due to differing interpretations at the local level.

#### **4.11 Dynamic Purchasing Systems (32)**

Simpler rules for dynamic purchasing systems (DPS) and electronic catalogues are proposed. We note a Dynamic Purchasing System (DPS) can now be run as a restricted procedure eliminating the need for indicative tenders and allowing any economic operator meeting the selection criteria to take part. This appears to be a helpful innovation which may make it easier and more cost effective to automatically purchase regular supplies. We note that little use has been made of DPS to date.

#### **4.12 E-procurement (33,34,51)**

The directive introduces a mandatory requirement for all councils to use safe e-procurement by 30 June 2016: sending and receiving all documents electronically i.e. via web or email, free of charge.



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We have no reason yet to believe this will be problematic. Many larger councils are already doing this, but smaller councils may need time and support to adapt.

However, contrary to what is proposed, it would seem reasonable that central purchasing bodies (often run in conjunction with local authorities) should be given the same time to prepare as local authorities, and benefit from the 2 year transition period (30 June 2014 to 30 June 2016).

Making it easier to use safe electronic auctions, electronic catalogues, and electronic marketplaces for frequently purchased supplies is welcome.

There are proposals to reduce the standard statutory minimum time limits. This is to be welcomed as this will go some way in speeding up the process.

## **5. Governance & transparency**

### **5.1 a single independent oversight body (84)**

The Directive requires government to appoint an independent oversight body which will be responsible for the coordination of implementation activities. All contracting authorities shall be subject to its oversight. The oversight body will be responsible for a number of areas, some of which could create problematic internal conflicts of interests, including:

- monitoring the application of public procurement rules by contracting authorities
- providing legal advice to contracting authorities on interpretation of public procurement rules
- countering procurement fraud and examining complaints from citizens and businesses.

We note the UK already has something of a support structure in place, the most recent incarnation being the Government Procurement Service (GPS) under the Cabinet Office 'Efficiency Reform Group'. However the degree to which this is 'independent' from government is perhaps questionable.

However, councils do not necessarily want to see a new public agency established specifically to police procurement. Improvement in procurement practices should be led principally by the local government sector itself.

As regards ensuring the application of procurement law, we suggest that this should be, as currently, the role of the national courts, rather than a new agency.

A 'single' body may also be difficult given devolved competences to Wales, Scotland, and Northern Ireland.

## **5.2 Conflicts of interest (21)**

The proposals include new rules to ‘effectively prevent, identify and immediately remedy conflicts of interest’ arising in the conduct of EU procurement procedures. The rules must cover staff members of contracting authorities, procurement service providers, other providers who are involved in the conduct of procurement procedures (including the private sector acting in this capacity) as well as chairs and members of decision making bodies.

*Perceived* conflicts of interest are also covered. Safeguards are also introduced to ensure no preference is given to participants who have advised the contracting authority in the preparation of a procurement procedure (39.2). Such provisions to fight corruption are welcome, provided they achieve their aim and do not simply introduce new administrative burdens.

New provisions require a copy of all supplies and services contracts over €1m, and all works contracts over €10m to be sent to the ‘national oversight body’ so that they can maintain an overview of all winning bidders selected and make the contracts available to interested persons. Again this is a new burden resulting in the transmission and handling of tens of thousands of contracts, which may add to a delay in the procurement process. It may be a lighter administrative regime to allow the body to *request* copies of any contracts above these thresholds on which they have concerns rather than having to automatically receive them all.

Also, there are concerns that additional scrutiny could deter suppliers from dealing with the public sector as regards the sharing of information and solutions.

## **6. Service concessions**

We note the separate new proposals to regulate service concessions under EU legislation for the first time (COM 2011 897). Service concessions are seen as fundamentally different from public contracts as much of the risk is transferred to the operator. They have therefore not been subject to EU legislation in the past, although they have been subject to the Treaty principles of transparency and non-discrimination etc.

It is regrettable that service concessions have not been integrated into the reform of the public procurement directive as it further fragments the regulatory landscape, adding further to complexity.

It remains unclear to what extent service concessions, as opposed to service contracts, are actually used by councils. Our 2011 survey suggested 27% of councils had awarded at least one service concession rather than a service contract in the last 5 years. However it is possible that there are different perceptions of what a service concession is (UK terminology v EU law) and that even some of the so called ‘concessions’ in the UK have in fact been procured competitively as a normal service contract.

In any case, local authorities in the UK will not routinely award service contracts as concessions. There are however increasing opportunities to exploit assets and therefore the opening to the wider market of what can be a substantial service concession contract may be of benefit.

In practice the proposals may affect some councils' franchise arrangements: leisure centres, toll roads/bridges, waste concessions, car parks, school canteens, letting of roof space on municipal buildings for solar panels, are some examples LGA is aware of.

The high threshold of €5m is welcome (presuming such new legislation is required in the first place), as is the light regime limited to certain advertising requirements.

The light approach proposed under the concessions proposal should in fact act as inspiration to reform the procurement directive as well (no specific award procedures at EU level etc).

Extending the remedies provisions to govern service concessions may be problematic, and there is a need to avoid opening up new areas of legal challenge against councils.

We see that the benefits of the proposal are that major procurement markets governed by concessions on the continent in energy and waste fields for example would be opened up to UK providers. This could be of significant economic benefit to UK business.

## **7. Next steps**

Elements of these proposals may well change during negotiations and before they become law. Thus this position may be refreshed in future to take account of the current state of negotiations.

In conjunction with the LGA's 'Productivity Programme' we look forward to working with local government, government, the European Parliament, the Committee of the Regions, and other partners across Europe as the negotiations progress.

Feedback from councils is welcome throughout the process either directly to the lead contact listed below or via the LGA Productivity and Efficiency Exchange (see links).

### **LGA contacts**

[dominic.rowles@local.gov.uk](mailto:dominic.rowles@local.gov.uk) (Brussels Lead)

[rob.hann@local.gov.uk](mailto:rob.hann@local.gov.uk) (London, Local Partnerships)

[neil.rimmer@local.gov.uk](mailto:neil.rimmer@local.gov.uk) / [siobhan.coughlan@local.gov.uk](mailto:siobhan.coughlan@local.gov.uk) (London, Productivity Programme)

### **Links – EU reform proposals**

Commission proposals COM (2011) 896, press release, and FAQ  
(20.12.2011)

[http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/reform\\_proposals\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm)

Proposed new directive on service concessions (20.12.2011)

[http://ec.europa.eu/internal\\_market/publicprocurement/partnerships/concessions/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/partnerships/concessions/index_en.htm)

Cabinet Office note (21.12.2011)

[http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN-11-11-Legislative-Proposals-for-the-Revised-Procurement-Directives\\_0.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN-11-11-Legislative-Proposals-for-the-Revised-Procurement-Directives_0.pdf)

Feedback from councils is welcome throughout the process via the LGA Productivity and Efficiency Exchange (Community of Practice soon to be replaced by LGA 'Knowledge Hub'):

<http://www.communities.idea.gov.uk/comm/landing-home.do?id=436525&tab=c>

### **Other procurement links**

Commission guidance on public-public cooperation / shared services (Staff Working Paper 4.10.2011)

[http://ec.europa.eu/internal\\_market/publicprocurement/partnerships/cooperation/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/partnerships/cooperation/index_en.htm)

Department for Transport – guidance on procurement of clean vehicles  
(23.8.2011)

<http://www.dft.gov.uk/publications/guidelines-clean-energy-efficient-vehicles/>

LGA 'Buying into Communities' guide (December 2011)

<http://www.local.gov.uk/productivity-procurement>

## **European and International Board Update**

### **Purpose of report**

For information.

### **Summary**

This paper outlines the recent LGA international work and updates Members on current projects taking place.

### **Recommendation**

Members are requested to consider the update and offer any comments.

### **Action**

LGA Officers to take forward any work identified by Members.

**Contact officer:** Ian Hughes  
**Position:** Head of Programmes, LGA  
**Phone no:** 020 7664 3101  
**E-mail:** [ian.hughes@local.gov.uk](mailto:ian.hughes@local.gov.uk)



## **European and International Board update**

### **EU lobbying priorities: lobbying activities by LGA with the support of CEMR (European LGA)**

#### **Funding**

1. LGA staff have participated in meetings with MEPs and Commission officials organised by the CEMR focus group on cohesion policy; the group is updating the CEMR policy paper on the future of EU cohesion policy and lobbying the European Commission regarding its cohesion proposal for the 2014-2020 programming period the draft common strategic framework and code of conduct cohesion regulations.
2. LGA staff are assisting CoR rapporteur Cllr Flo Clucas to promote LGA objectives through her CoR report, which was adopted in December 2011; meetings are currently being sought with the EU representations of several key governments.

#### **Energy and environment**

3. The LGA and the CEMR focus group on **energy efficiency** are continuing to lobby the European Parliament against the 3% annual renovation rate for public buildings and for more flexible public procurement rules in the energy efficiency draft directive. The vote is to take place on 28 February 2012 in the Industry, Research and Energy parliamentary committee. UK MEP Vicky Ford has tabled several amendments in support of LGA policy objectives.
4. The CoR response to proposals to relaunch the €2billion **LIFE programme** will be drafted by Cllr Twitchen, assisted by LGA staff. The objective will be to ensure that the application procedures are simplified and responsive to local needs. LGA Vice-President Julie Girling MEP is shadow rapporteur for the European Parliament and has been contacted.

#### **Internal market (procurement, concessions)**

5. The CEMR focus group on **service concessions** is preparing a response to the European Commission's proposal for a directive on the award of concession contracts. This is an LGA priority and Brussels staff are assisting in the drafting of the CEMR position.
6. LGA staff are assisting the CEMR focus group on **public procurement** to prepare a response the European Commission's proposal for a new public procurement directive.

## **EU funds**

7. We have agreed with BIS to create a local government secondee position within BIS. This person will form part of the UK negotiating team for the EU structural funds reforms. Whilst the person will be based in BIS and will work to civil service rules, they will seek to represent the interests of UK local government and LEPs in the negotiations and provide a link for councils within BIS. The LGA will be supporting BIS in recruiting for the post. All costs will be secured by BIS.

## **Council of European Municipalities & Regions (CEMR)**

8. CEMR have established their lobbying themes for 2012, which include cohesion policy as well as public procurement and service concessions in single market policy. Also among its priorities are air quality in environment policy and energy efficiency in energy policy. These reflect the key aspects of LGA EU policies.
9. CEMR have published their annual statistical “**portrait of local and regional Europe**”. These information sheets comprise a series of indicators that compare the organisation and finances of subnational authorities in the 27 EU member states.

## **Congress of the Council of Europe**

10. The LGA coordinates the nominations to the UK delegation of the Congress of the Council of Europe. The current term of office ends in October 2012 and a new delegation needs to be selected for a four year period. This is formally a Government appointment, but officers have discussed the issue with CLG officials and we are suggesting a roll-over of the very flexible rules of appointment which allows freedom for the LGA, whilst securing party balance, balance of councils and targets for the ethnic and gender make-up of the delegation. Officers will formally launch the nomination process after the May elections through Group Offices, using the political balance figures resulting from the May local elections. It is hoped that an English delegation can be secured before the summer recess.
11. The March plenary session falls during the UK Presidency of the Council of Europe, which it holds for six months to May 2012; the Communities and Local Government Secretary of State is expected to attend to present the UK Programme to plenary. Although the UK priority is reform of the European Court of Human Rights and a reduction in the overall budget of the Council of Europe, an important strand is its attempts to reform the Congress. The main elements of the UK Government reform agenda is to unite into a single programme the activities of the various CoE bodies in respect of local



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democracy (to improve coherence and avoid duplication), and to create a single secretariat for this activity. Although the objectives of improved effectiveness and reduced costs are broadly welcomed by the UK Congress delegation, many countries are opposing the structural changes as a threat to the identity and independence of the Congress as an assembly of local elected members.

12. The LGA is organising an exhibition at the March plenary to mark UK's rare distinction to simultaneously hold the Presidency of the Congress and the Chairmanship of the Committee of Ministers of the Council of Europe. The event will take place during the Spring Session of the Congress 19-23 March in Strasbourg. The exhibition will be a collection of static displays by four UK nations and a central point representing UK. In addition there will be stands hosted by Visit Kent and Welcome to Yorkshire. Exhibition will showcase local democracy in the four UK nations and provide information on UK's tourist and business potentials. The exhibition has been supported by the Visit Britain (together with the British Council and the UKTI), Visit England, several counties and the Foreign Office.

**Committee of the Regions**

13. The CoR met in plenary session in February 2012. The only UK rapporteur was Cllr Doreen Huddart on EU initiatives on child poverty, which was identified by this Board as an important policy issue.
14. The most controversial report was on reform of the Common Fisheries Policy, which attracted 120 amendments (30 UK) and was eventually defeated. European Commission President Barroso addressed the plenary on the economic crisis, and the Danish Foreign Minister set out their priorities for the EU Presidency.

**Election observation**

15. Members of the Congress and the EU Committee of the Regions participated in a training session on election observation LGA organised together with the Congress of the Council of Europe on 13 February in London. Members were trained on the role of international observers, their political mandate as well as on technical and logistics aspect of the election observation. Training has been delivered by Gudrun Mosler-Törnström, Chair of the Austrian delegation to the Congress and Renate Zikmund, Head of Congress's Election observations and communications department. LGA will endeavour to provide tailored oral pre-deployment briefing for members who are selected to take part in Congress/CoR joint missions.



## Note of decisions taken and actions required

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<b>Title:</b>	LGA European & International Board
<b>Date and time:</b>	Tuesday 17 January 2012, 11.00am
<b>Venue:</b>	The Millbank Room, Local Government House

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### Attendance

Position	Councillor	Council
Chair	Dave Wilcox OBE	Derbyshire CC
Vice Chair	Richard Kemp CBE	Liverpool City
Deputy Chair	Marco Cereste	Peterborough City
Deputy Chair	Linda Gillham	Runnymede BC
Members	Gordon Keymer CBE	Tandridge DC
	Keith Glazier	East Sussex CC
	Sandra Barnes MBE	South Northamptonshire DC
	Phil Grove	Malvern Hills DC
	Nilgun Canver	Haringey LB
	Guy Nicholson	Hackney LB
	Zulfiqar Ali	Rochdale MBC
	Roger Dennison	Lancaster City
Apologies	Liz Eyre	Worcestershire CC
	Sherma Batson MBE DL	Stevenage BC
	Zulfiqar Ali	Rochdale MBC
	Lord Graham Tope CBE	Sutton LB
Apologies for late arrival	Sir Albert Bore	Birmingham City

Officers: Ian Hughes, Jasbir Jhas, Drago Djekovic, Ivor Wells, Dominic Rowles, Virginia Ponton

The Chair noted apologies, that Cllr Roger Dennison was present as a substitute and that Sir Albert Bore would be late to the meeting. He welcomed Carl Wright, General Secretary, Commonwealth Local Government Forum (CLGF) and Frédéric Vallier, Secretary General, Council of European Municipalities and Regions (CEMR). Members agreed to change the order of the agenda so that item 1 could be taken after items 2 and 3.

Item	Decisions and actions	Action by
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**2 International Issues**

Ian Hughes introduced the item and Carl Wright thanked the Board for the invitation and circulated his presentation. Carl outlined recent collaborative work between CLGF and the LGA (the Chair, Cllr Wilcox, sits on the CLGF Board). He gave an overview of CLGF, highlighting that it has local government ministries in its membership and has good links to governments, attending high-level meetings to represent local government issues. CLGF prides itself on its value for money including in-kind support and its wealth of experience and expertise. Carl outlined CLGF's commitment to and promotion and monitoring of the 'Aberdeen Principles'; Commonwealth principles on good practice for local democracy and good governance. He detailed CLGF's learning and knowledge sharing offer and its future work.

The Chair thanked Carl and asked members for their comments, which included:

- The importance of the Commonwealth on the political agenda. CLGF has good relations with the Commonwealth minister and despite the lack of local government section, DFID is opening up.
- The move away from local authority engagement towards country engagement. A pool of councillors and officers could develop this collaborative work abroad. CLGF could explore the role of the LGA in relation to this pool.
- Members highlighted the need for a mandate for the pool of individual councillors, which the LGA could provide.
- The LGA could also provide help with press relations as members highlighted the need to increase citizens' and the press' understanding of the benefits of this work.
- Ian Hughes said that the Local Growth Campaign had identified the need for local authorities to be involved in international work in order to attract international investors.

Ian Hughes said that work would continue with Carl, in particular to ensure that:

- DFID funding is renewed
- learning from the Commonwealth is taken on board
- links to Cyprus are actively sought in preparation for their term of EU Presidency as well as to influence the distribution of EU Structural Funds.

The Chair thanked Carl for meeting with the Board and

endorsed the priorities as set out by Ian, which were also agreed by members.

#### **Action**

- Officers to continue to work with CLGF.

**Officers**

### **3 European Union 2012 lobbying programme**

Jasbir Jhas introduced item 3 and the Chair welcomed Frédéric Vallier, who thanked the Board for the invite.

Frédéric set the context of all countries focussing on the financial crisis and that the continued level of EU funding to the regions and local authorities demonstrates the importance of local issues at the EU level. He hoped for the same, if not increased, levels of regeneration funding as well as increased influence on how funding could be spent. Frédéric outlined how CEMR structures have been reframed and how the LGA can influence these new structures. He outlined the work programme priorities; seminars which members could attend and he invited members to the General Assembly in September. The Chair thanked Frédéric and invited members' questions and comments, which focussed on the need:

- to ensure awareness of the work of CEMR ('European LGA')
- to focus on the future of the European Social Fund and the role of local government as a key partner of investment
- to work with other local government associations and to mainstream European and international work across other LGA Boards
- for CEMR to exchange more good practice
- for clarification on housing for local authorities as strategic housing authorities within an EU context
- to explore the opportunity of engaging with CEMR on workforce issues.

Frédéric understood and appreciated members' comments, highlighting in particular the need for best, or worse, practice to be shared. He emphasised CEMR's communication and representation of local views with the European Commission before decisions are made and that CEMR works with the officers who draft the papers.

Members then considered the list of EU lobbying priorities. Whilst the short list of priorities were agreed, members were concerned that there was a lack of corporate priorities to steer

the European and International contribution to the LGA. This was being addressed through the business planning process and members agreed to revisit the priorities once finalised.

### **Action**

- Officers to revise the work programme table to be more explicit (regarding priorities and working briefs)
- Officers to circulate the presentations.

**Officers**

## **1 LGA Business Plan 2012/13**

The Chair asked Cllr Kemp to take item 1 while he left the room briefly. Cllr Kemp introduced the item and Ian emphasised that this is a first draft. The Business Plan will go to the LGA Executive in March.

The Board welcomed the opportunity to feed into the development of the plan, which was seen as a “first draft”. Thus, at this early stage, members were keen to provide some “big messages” to help the development of corporate priorities.

- Members welcomed the development of tangible, corporate priorities and endorsed broadly the six priorities presented in the draft plan. In looking at the Board’s own priorities for next year, members have examined the issues in the EU legislative programme which will have the biggest impact on councils and the opportunities to raise resources to support local government abroad. However, there is an urgent need for the work of the Board to fit into a much bigger picture and to be joined up to other Boards’ work. The development of clear corporate themes was a welcome direction of travel and members felt it would be worth re-visiting the Board’s work once these are established in order to ensure a clearer “golden thread” through the LGA. For example, the Board could consider the best international examples to support the corporate priorities and campaigns and how the Board could add an international challenge to peer reviews.
- Under “Public Service Reform”, the most important issue was the public health agenda and the reform of adult social services which provide both an opportunity and major threat to every English council. This must be the key theme of this work. Climate change is also critical, especially as new EU regulations are expected in this area.

- The business plan also needs to consider how fund raising both in councils and in the LGA can be supported. For councils, the raising of external resources is a priority and the Board is developing work with regional LGAs to secure more EU funds for councils. Within the LGA, there are opportunities to raise external resources to support priorities. There is a need to consider how to establish an entrepreneurial framework within the LGA which is rewarded and supported by the budget process.
- On a wider issue, both business and government are pressing councils to forge new links with the tiger economies. This is something that can be addressed through the Board's work through international LGAs.

The Board would like to return to the detail of the business plan once the corporate priorities are agreed.

**Action**

- Officers to relate board members' comments to the Chairman.

**Officers**

**4 European and International Programme Board update**

The Chair reminded members about the training session on election monitoring on 13 February. He said the Groups should think about CEMRs invitation to get involved with their committees and that the Group Leaders had agreed to establish a relationship with the Economy and Transport Board.

**Action**

- Officers to send members an invitation to the training session on election monitoring on 13 February.
- Joint working arrangements with members of the Economy and Transport Board to be established through the Group Leaders.

**Officers**

**5 2012 Olympic and Paralympic Games**

Liz Hobson gave some background to the 2012 Olympics and Paralympics Task and Finish Group which provides support to local authorities in the run-up to the Games. Areas where the European and International Board can provide support and make an impact include providing training grounds for the

opportunity for international teams to visit and train; get involved in 'host a nation' week to establish stronger links abroad and get involved with heads of state visits.

Members expressed an opportunity to revive ambassadorial visits and establish connections and networks. The Chair thanked Jas and Liz on their helpful suggestions and officers will draw up a proposal on this.

The Chair reminded members that the next meeting will be in Liverpool and thanked the speakers for attending.

## **6 Notes of the last meeting**

### **Decision**

*Members **agreed** the notes of the last meeting.*



## **Briefing Note for themed session: EU funds post 2013 - Update**

### **Background**

1. 2012 is the key year in finalising the arrangements for the future funds at EU level. The EU published legislative proposals in October 2011 governing how the funds for regional development, training, rural development and fisheries could work together in a more integrated way in the next programming period: 2014-20. An LGA summary position is attached as **Annex 1**.

### **LGA Activity**

2. LGA has increased its activity towards the EU accordingly and has undertaken significant work with other associations across Europe to develop:
  - 2.1 a common position on the future funds
  - 2.2 a common set of legislative amendments to promote to MEPs
  - 2.3 a common statement on the importance of strong local involvement in the funds post 2013.
3. The approach across Europe on behalf of local authorities is therefore significantly more coordinated than previously and is beginning to show results. In particular:
  - 3.1 there are welcome new possibilities for local authorities (especially cities) to be more closely involved in the design and delivery of the funds
  - 3.2 there are much stronger rules on working in partnership with local authorities
  - 3.3 there is greater opportunity for local strategies to help steer the delivery of the funds
  - 3.4 there are new opportunities for the involvement of local community groups.
4. We also note improved dialogue with decision makers in the EU. The CEMR (the European LGA) has played an important role in facilitating this, as MEPs and Commission officials find it beneficial to meet with a single delegation rather than many separate associations of local and regional government from across Europe.

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5. In particular, LGA has been successful in:
  - 5.1 getting the EU to commit to come forward with guidance on involving local authorities more closely in the delivery of funds
  - 5.2 providing input into the key report in the European Parliament
  - 5.3 getting the European Parliament to secure Derek Vaughan MEP (LGA Vice-President) as spokesperson on local involvement in the future of the funds.
6. Councillors are also playing an important role in the Committee of the Regions on these questions:
  - 6.1 Cllr Flo Clucas is following up her CoR report on the EU's financing post 2013 with meetings with EU representations of several key governments, especially those who seek to reduce the EU's budget.
  - 6.2 Cllr Albert Bore recently tabled amendments to ensure a strong local dimension in the CoR's report on the future of the funds.
7. There is also significant activity taking place in London to engage councils and to engage with Whitehall. Whilst the EU framework looks more promising than in previous rounds in terms of local involvement, government still retains much discretion about how the arrangements will work in practice.
8. We continue to engage partners in Whitehall on the potential role of local authorities in the future EU funding programmes. There is a risk that Government will look to further centralise the priorities and administration of EU funds to the detriment of what local partners want to achieve for their places.
9. This engagement is based on the previously agreed principles of: ensuring local authorities have an effective role in order to target EU funds at priority issues for their areas; better join-up between EU funds and with other national and local schemes with similar objectives, and; simplifying the arrangements to ease the burden of council engagement with the EU funds.
10. This activity includes:
  - 10.1 roundtable engagement events with local authorities and government officials, on 27 February LGA hosted an event with 30 local authorities at which government tested some initial EU funding concepts for 2014-2020 There will be an oral update at the meeting on outcomes.
  - 10.2 ongoing work with the Department of Business, Innovation and Skills to establish a local authority secondment to government with the purpose of engaging local authorities in the process of drafting and negotiating the future Partnership Contract with the EU on future funds.

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10.3 the development of a paper setting out the LGA's vision for moving forward on the EU funding programmes - based on the premise of effective engagement in a way that allows all local areas to explore their proposed contribution to the programmes in their area.

11. Looking ahead it is proposed to continue dialogue with councils and government officials, and step up political engagement with Ministers. The informal task group of E&I and E&T members will continue to lead this work, which might include the presentation of ideas to Ministers, and engagement with Commissioner Hahn.

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## European Union Structural Fund Regulations – LGA On the Day Briefing

On 6 October 2011 the European Commission published proposals for the future structural funds, and the rural development and fisheries funds. This kicks off 12 to 18 months of detailed legislative negotiations between the European Commission, the European Parliament, and Member States through the European Council. Local government has an advisory role via the Committee of Regions.

The LGA has been working to influence debate on the future of structural funds for the last two years and the proposed regulations include a number of successes for local government. The exact level, scope and role of local authorities in future EU funds is, however, a decision for Government, and so there is a great deal still to do to ensure positive change.

This quick brief introduces some of the key issues for local authorities.

### - Structural funds, what are they?

The EU structural funds typically support economic and skills development activity, and are regularly accessed by councils to help realise local ambitions. They include the European Regional Development Fund (ERDF), the European Social Fund (ESF), and transnational co-operation funds. The public spending squeeze throws greater emphasis on the role structural funds will play in driving economic growth. Currently, the structural funds are worth over £8 billion to the UK between 2007-2013. There is also the rural development (EAFRD) and fisheries funds (EMFF), and a host of thematic EU-wide programmes.

### - Proposals for the future, what do they say?

The Commission's proposal for the EU Budget 2014-20 includes a proposal for €336 billion for structural funds (ERDF, ESF, Cohesion Fund) EU-wide between 2014-2020, with €97 billion available to the EAFRD and EMFF. Together these funds are called the Common Strategic Framework funds, or CSF Funds. The regulatory package includes a General Regulation (GR) for the CSF funds, and individual regulations for ERDF, ESF, Territorial Cooperation, and Cohesion Fund.

The key issues are introduced below:

**Funding for all areas, new opportunities for some.** All areas will receive some funding in the future. Currently, areas are identified as rich (competitiveness) or poor (convergence) with some phasing in/out areas in between, receiving levels of funding accordingly. From 2014 the proposal is to create a new 'transition' category for areas between the level 75%-90% EU GDP, with allocations proportionate to each place's GDP. This would formalise support for regions in transition as a specific objective of EU cohesion policy. The proposal is welcome as it will ensure some EU funds continue to flow into the relatively prosperous UK. Some initial calculations suggest Highlands and Islands, Cumbria, Tees Valley &

Durham, South Yorkshire, Merseyside, Lincolnshire, Shropshire & Staffordshire, Devon, and Cornwall may benefit as new transition areas; but this will not be clear for some time. All other areas with a GDP above 90% will continue to benefit from lesser levels of funding as they do now. **The LGA will** work with partners to explore what areas might be eligible for which category of funds.

**Local authorities and strategic programming.** The regulations place a new emphasis on the role of local authorities as essential partners, encouraging Government to ensure local authorities are fully engaged in the preparation, implementation, monitoring and evaluation of operational programmes. Article 4 of GR reinforces that ‘the CSF funds shall provide support, through multi-annual programmes, which complement national, regional and local intervention’, and Article 5 reinforces the need for Government to properly engage local authorities and other partners. This emphasis is new; it represents the hard work of the LGA and partners, born out of a dissatisfaction of the level of local authority engagement by Government in the past. **The LGA will** support these principles through the legislative process, to ensure they are taken seriously by Government.

**Priorities and thematic concentration.** In response to the pressures on the size of the EU Budget for structural funds, the European Commission proposals emphasise that spending should address a limited number of ‘thematic objectives’, introduced in Article 9 of the GR. The investment priorities for CSF funds will be brought together within the EU Common Strategic Framework (Article 10), which will aim to drive more targeted, joined up, and simplified strategic and operational spending. It is proposed that ‘transition’ and more developed areas (i.e. all areas in England) – will be able to choose a limited number priorities as outlined in the GR annex, and individual fund regulations<sup>1</sup>. ESF spending is also heavily ring-fenced to fund certain priorities. **The LGA will** warn that restricted priorities should not strangle local growth.

**New delivery vehicles for local economic development.** The regulations set out new options for integrating funds within functional economic areas, a proposition central to LGA lobbying. ‘Integrated Territorial Investments’ (Article 99) and ‘Joint Action Plans’ (Article 93) offer options for establishing local/mini programmes that can operate within operational programmes. These would be managed by intermediate bodies, such as local authorities. This is a success for the LGA, as measures better allow for more locally responsive delivery models as outlined in the LGA’s publication *EU Funds and Place Based Budgets*. **The LGA will** work with Government to ensure local areas keen to have a greater role in delivering EU funds are able to pursue that ambition.

**Urban dimension ring-fencing.** Article 7 in the ERDF regulation proposes that at least 5% of ERDF resources must be allocated to integrated actions for sustainable urban development, and that management be delegated to

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<sup>1</sup> (1) Strengthening research, technological development and innovation (2) enhancing accessibility to and use and quality of information and communication (3) enhancing the competitiveness of small and medium –sized enterprises (4) supporting the shift towards a low-carbon economy in all sectors.

cities through the Integrated Territorial Investment vehicle. This is welcome in ensuring mandatory sub-regional management of EU funds in some places, and other area types should also have opportunity to promote sustainable growth in their places. **The LGA will** support this opportunity for cities that want to pursue it, and argue that they be able to spend other European and domestic funds in an integrated developmental approach.

**Community-led local development.** Article 28 in the GR introduces proposals for new community-led local development initiative, which offer the opportunity to establish integrated local development strategies that bring together CSF funds into small-scale programmes led and implemented by local community groups. This is another new initiative, which will operate in a way similar to the LEADER initiative under the EU Rural Development Programme. **The LGA will** call on Government to ensure all communities that want to explore this route are given the opportunity to do so, and look to ensure local authorities are given some statutory involvement in the establishment of local development initiatives.

**Connecting Europe.** The GR also outline proposals for a new EU wide €40 billion fund for transport, energy and ICT infrastructure. **The LGA will** look to ensure that this facility is established alongside the wider negotiation of structural fund programmes, to ensure local authorities are able to shape investments to fit with the economic ambition for places.

#### - Negotiating the future programmes for the UK

**Partnership Contract.** Each Member State will have to prepare a single Partnership Contract for the CSF funds for 2014-2020 (Article 14 of GR). It would set out the chosen thematic objectives, an integrated strategy for territorial development that deliver objectives, details of the operational programmes and management arrangements, and agreed indicators, conditionalities and performance monitoring systems. The Partnership Contract will need to be negotiated and agreed between Government and the European Commission before the end of 2013. **The LGA will** ensure local authorities are fully engaged in the process of developing the Partnership Contract and negotiating future programmes.

**The proposed regulations will now be debated by the European Parliament and the European Council over the next 12 – 18months. Local government will hold an advisory role, politically through the Committee of Regions, and through the EU LGA. We will work closely with MEPs, UK government and other partners in Brussels to ensure future programmes are better joined-up and more locally responsive.**

The full [Structural and Cohesion Fund Regulations](#) are available online.

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## Location

**Meeting Room:** Herculaneum/Huskisson Room, Ground Floor

**Venue:** Millennium House, Victoria Street, Liverpool, L1 6JD

**Entrance:** The building entrance is on Victoria Street (the A5039).

**Train Stations:** Lime Street Station is just under a 10 minute walk to the venue.  
Moorfields Station, which is on the Wirral and Northern Lines, is about a 7 minute walk.

**Car Parks:** The Queen Square car park, which is covered, is located on Whitechapel. The Victoria Street Pay and Display car park, which is open-air, is located between Sir Thomas Street and Crosshall Street. There is also on-street metered parking in the vicinity.

**Map:** <http://g.co/maps/3dm8h> Venue is marked as A.



