

## **Cllr Tony Buchanan, Scottish member of the EU Committee of the Regions**

### **Transatlantic Trade and Investment Partnership – Impact in Local Government**

I am pleased to note that the Europe and External Affairs Committee is currently carrying out an inquiry into the impact in Scotland of the Transatlantic Trade and Investment Partnership (TTIP).

This is indeed a topical debate and I very much welcome that the Committee is taking an interest. As a Member of the EU Committee of the Regions, specifically of its Economic Affairs (ECOS) Commission I can confirm that TTIP is an issue that will have an impact in devolved areas and local authorities. Indeed, I am participating in the voting next week at ECOS of a draft Opinion on TTIP which I am enclosing, I believe even in the draft form it already sums up the elements of TTIP that may impact on the way national and local authorities provide services and the safeguards that the final agreement on TTIP needs to introduce.

I have been invited in previous CoR meetings to give a Scottish perspective on TTIP. Last October I had the opportunity to meet the then EU Trade Commissioner Karel de Gucht. I said then and believe Members will agree that while the delivery of growth and jobs is clearly an aim that we can all support, and indeed there is potential in TTIP to deliver for Scottish businesses, we need to make sure that rights are protected.

Removing barriers to trade does not mean removing the protection of social and environmental standards.

Scotland's NHS is revered around the world and famous for being a first-class service free at the point of need. I welcome the potential for any economic growth within the agreement for Europe however we need cast-iron assurances that the rights of our public sector workers and our citizens are protected, and we must ensure that this does not become a race to the bottom for public services.

While I welcome the recent announcements by the new Commission President Juncker of more transparent rules to ensure that citizens are aware of what is being negotiated I believe that more must be done on that front. In particular it is an issue of great concern that in the TTIP Stakeholder Forum, which is a platform for experts from business and other interested parties to interact with the TTIP negotiators and see the negotiation documents, there is not a single Local Government expert from any country invited to attend these meetings. I believe this is an issue of the utmost importance that the Commission must address with urgency.

In addition to the above general statements, there are quite a few more detailed points on specific impact in Local Government that have emerged from the discussions in and around the CoR in Brussels, I believe that it would be very welcome if the Committee could add to the inquiry.

#### **Protection of public services:**

Public services across the EU Internal Market are safeguarded from excessive EU regulation by the EU Lisbon Treaty and most particularly by the Protocol 26 on Services of General Interest with Local Authorities free to organise, provide or contract out local services they are responsible for.

As the definition of public services is markedly different between the EU and the US, (different degrees of provision of public services within the EU, let alone within Member States such as the UK) questions have been raised by local government across Europe on the impact of TTIP in public services.

From our discussions in Brussels I understand that the European Commission regards EU Treaty provisions on public services and the specific protection on Treaty Protocol 26 on Services of General Interest as the framework for any negotiation. On that basis their negotiation mandate on TTIP that has been made public proposed the following safeguards.

- Very Broad Exemption for services “in the exercise of governmental authority”
- Exemptions to specific sectors: (e.g. Water) this includes broad reservations on Public Utilities available to MS, Regions and Local Authorities.
- Exemptions to specific services – each Member State, including the UK is putting forward reservations in specific services. I understand that the provisional list of services that are requested to be exempted within the UK are a general reservation to protect services (using the code CTC 92312) but also specific protection for the following services:

Human health services (CPC 931) – it is understood that the TTIP draft include specific reservations for the following services:

- Hospital services , residential health facilities other than hospital services
- Medical and dental services
- Other human health services
- Midwives services, services provided by nurses, physiotherapists and paramedical personnel.
- ambulance services

Education services (CPC 92) – this appears to include specific reservations on:

- Primary Education Services
- Secondary Education
- Higher Education
- Other education and training services

As far as we are aware, the UK has indeed introduced reservations on the above services, as well as residential care services, social care (CPC933), pharmaceutical, retail energy, consultancy services, legal advice, NHS medical profession.

If this is confirmed at the end of negotiations, the above safeguards are of course very much welcome. The question is however whether the above reservations are sufficient to protect public services, as there are other public services not covered in the above list.

In the previous exchanges with the Committee of the Regions the Commission believes that the provisions in the draft “in the exercise of governmental authority” do reflect the EU Treaty safeguards on Services of General Interest. The Commission seems adamant that the wording used, such as “public use”, “public utility” which they argue, also include social, health, environment and research. This very broad exemption from TTIP is on top of specific reservations on health, water and public education. In their view this seems sufficient to cover the EU acquits on Services of General Interest.

However, officials are telling me that the above terms if used to describe public services do not neatly fit with EU law and the Treaties: Public use, and public utilities are under EU law not identical to the standard EU legal definition of public services, known as “Services of General Interest” (if protected from tender) or “Services of General Economic Interest” (if open to competitive tendering).

Thus rather than use these rather vague alternative terms it would perhaps be more reassuring if TTIP uses the same legal terms as the EU Treaties and crucially the Lisbon Treaty Protocol 26 on Services of General Interest that provide a broad safeguard to local services from undue EU or international interference such as in TTIP.

### **Remuneralisation of services:**

TTIP includes the so-called “ratchet clause”. This is widely contested by public service stakeholders as it is feared that it will make very difficult to renationalise a public service that was previously privatised. However the Commission argues that the Ratchet clause does not apply to public utilities. Specifically education and health are not subject to Ratchet -- these reservations would be included in ANNEX II (some of them listed above). Clearly it would be useful to seek further reassurances from the Commission on this issue.

### **Differences within Member States:**

There have been a number of high profile exchanges about the impact of TTIP in the UK as the United Kingdom is quite unique as it has several legal jurisdictions (Scotland, England & Wales and Northern Ireland) and each of them might define what a public service is (or indeed whether it can be privatised) differently. As discussed above the Commission claims that public services are exempt from the ratchet clause – this means that the UK authorities can have different regimes – however this will very much depend on the reservations put by the UK to TTIP. Still any reassurance that MSPs can obtain throughout this enquiry on this point would be most welcome.

### **Procurement:**

Procurement issues are dealt in a specific chapter in TTIP, and is thus regarded as different from the one negotiations dealing with services. However progress on this chapter are still in early days, without even draft offers not had been yet exchanged. Still at this stage it looks that the bigger disruption would not happen this side of the Atlantic but in the US. The EU procurement market is far more open and open to tendering than in the US, which contains large sector bound upon “Buy American” clauses and a very fragmented tendering market, with very diverse procurement requirements in each state or within it.

Still I believe we must remain vigilant also on this as we have the recent precedent where the recent World Trade Organisation Government Procurement Agreement (WTO GPA) effectively prevented certain aspects of the EU Procurement Directives (currently being transposed in Scotland as part of the Procurement Reform Act) being subject to parliamentary negotiation.

### **Investor-state dispute settlement (ISDS)**

This is a procedure that allows foreign companies to seek redress for trade disputes held in another country. Countries, including many from Europe, have in the past requested such arrangements to be included as part of trade pacts with other countries with weak governance standards, for fear that local courts would not give a fair ruling (or protection against nationalisation) to foreign companies. There has been recently a consultation on ISDS in TTIP. There is a fear that by agreeing to have ISDS in TTIP this can be used by foreign companies to flout national courts and procedure and seek redress via the special arrangements set up in ISDS. I believe that Members would agree that any dispute

between an American and a Scottish should be carried out in the first instance through Scottish Courts.

### **Next Steps**

Clearly we are looking at a moving picture as TTIP negotiations progress. The above intelligence is therefore provisional. Only around 2016 will it be possible to have a clear picture on whether the above issues have been sufficiently covered.

Still given the change in public opinion on both sides of the Atlantic, it is not yet certain that an agreement would be reached. If that were the case we would be keen that TTIP is subject to a double ratification of the EU as a whole as well as Member State Parliaments. In so doing it would only make sense that the Scottish Parliament could be associated into the UK ratification process.

We believe that there are several elements of reassurance, as well as certain elements concerning the status of local public services in which we would encourage this Committee's careful scrutiny as this inquiry progresses over the next months.

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