



Role of sub-National Parliaments in the EU

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Role of sub-Member State Parliaments/Legislatures in EU affairs

Introduction

1. This paper provides an overview of the approach of the National Assembly for Wales to EU affairs since the Treaty of Lisbon, focusing in particular on the activities under the current Assembly (i.e. since May 2011, the last elections).
2. It also highlights a number of issues concerning the status of sub-National Parliaments and governments within the EU.

Role of sub-National Parliaments/Legislatures in EU affairs: defining characteristics

3. Within the UK engagement with the European Union is considered part of foreign policy and as such remains a reserved competence of the UK Government. Therefore, direct relations between the UK and the EU Institutions, in theory, are the preserve of the UK Government. However, given the impact that EU legislation and policy has on devolved powers in Wales, and given the requirement on Welsh Government to ensure appropriate compliance with EU law and implementation of EU legislation, developments at EU level are clearly of direct interest and relevance to the work of the Assembly.
4. In practice there are three main areas where the Assembly has a role to play on EU affairs:
 - Subsidiarity and proportionality, in particular the ‘early warning system’ on subsidiarity introduced in Protocol No2 of the Treaty of Lisbon
 - Scrutiny of the Welsh Government’s work on EU affairs, including its engagement in the policy and legislative process, its compliance with requirements of EU legislation, including the management of EU funding programmes
 - Direct engagement of the Assembly in the policy and legislative process, acting as a forum through which Welsh stakeholders are able to engage with and understand key developments relevant to them
5. In all of the above areas the primary focus is on areas of devolved competences that are affected by developments at the EU level. There is, however, also interest in other fields that remain reserved powers of the UK Government, particularly where there may be significant implications to devolved competences for example trade negotiations, state aids and competition law.
6. In considering the role of the National Assembly for Wales – and the other UK devolved legislatures in EU affairs – there are a number of elements that merit particular mention at the outset:
 - the UK Government represents ‘Welsh’ interests formally in the Council of the European Union. As such the scrutiny of the Welsh Government’s work at governmental level focus in particular on its ability to influence the UK Government’s



line in Council (as well as the influence it can exert through other fora and on other EU Institutions). It also means at times there is legitimacy in the Assembly scrutinising the work of the UK Government on EU affairs where this is of clear interest to Wales

- the House of Commons and House of Lords act as ‘gatekeepers’ to formal submission of the Assembly’s concerns on subsidiarity under the ‘early warning system’
 - given the important roles of the European Parliament (as co-legislator) and European Commission (as primary initiator of policy/legislative proposals, together with its broader role of policing compliance with EU law) the Assembly has an interest in building direct relationships with both institutions in the context of understanding, scrutinising and influencing key developments of relevance to Wales.
7. The Constitutional and Legislative Affairs (CLA) Committee of the National Assembly for Wales, of which I am the Chair, undertook an important inquiry looking at the question of Wales’ role in EU decision-making, and there is a section on the main findings of this report towards the end of this paper. The CLA Committee also submitted a response to the UK Government’s Balance of Competences Review consultation on subsidiarity, and a number of the points from this response are highlighted in the section on subsidiarity below.
 8. One strong theme to emerge from this work is that the current debate at EU level with regard to democratic deficit and EU governance, tends to focus on the question of what role National Parliaments could or should play to increase democratic accountability and bring the EU closer to its citizens. This may be explained by the lobbying effort of National Parliaments to strengthen their voice, including through the work of COSAC, building on the Barroso Political Dialogue introduced in 2006 as well as the strengthened references in the Treaty of Lisbon to National Parliaments. There is no real recognition however, being given in this debate to the role of sub-National Parliaments, which in my view is an error. Sub-National Parliaments, as my paper will show, have an important role to play in EU policy and law-making, and in scrutinising the work of their governments in implementing and complying with EU law. As democratically-elected bodies they also have a direct engagement with their citizens, and can enhance understanding of the EU’s policy and legislative processes, as well as providing a platform through which stakeholders can more effectively engage in this.
 9. The wider question of the UK’s continuing relationship with the EU also has implications for the development of the British constitution. Even the cultural question of membership and a possible Brexit is now a matter of added controversy in Scotland and Wales where the nationalist parties argue that express consent would be required from each nation in the UK. One thing is very clear, there is a close connection at all levels of government in the UK and Europe on issues of democratic legitimacy.



Approach to EU affairs in the National Assembly for Wales

10. A major change since the 2011 elections in the National Assembly for Wales was the introduction of a 'mainstreaming approach' to EU affairs within the Assembly's Committees. This was not motivated by the Treaty of Lisbon – it was the result of internal reforms to the Committee structures agreed at the beginning of the current Assembly.
11. This was significant as there had been a dedicated European and External Affairs Committee since the Assembly was established in 1999 and concerns were expressed from a number of sources (internal and external to the Assembly) about the potential negative impact this could have on EU engagement of the Assembly. Given the positive approach to EU affairs since 1999 across all parties represented in the Assembly, the supporters of the new approach argued that the political culture of the Assembly would make it impossible for EU affairs to be downgraded as a result of 'mainstreaming' across Committees.
12. The Assembly's EU Office (based in Brussels – and co-located with the Welsh Government, Welsh universities and Welsh Local Government offices) assumed an overall co-ordinating role for EU activities of the Assembly, across all Committees and working across all departments, in order to support mainstreaming in practice. This had been an evolving process over the previous two years however, it was seen as a key element in ensuring mainstreaming could function effectively.
13. The fact that the Assembly has an EU Office (first established in 2004) is further evidence of the cross-party support for EU engagement. The presence of national parliament representatives in Brussels is not unusual – all are represented, and in a number of cases each chamber or 'house' has a dedicated office. However, the only other sub-National Parliaments with an office in Brussels are German Landtagau – including Bavaria and Baden Württemberg.
14. In practice mainstreaming is organised as follows, and it is important to note that subsidiarity is viewed as just one part of the Assembly's broad approach to EU affairs:
 - Responsibility for Subsidiarity Monitoring has passed to CLA Committee, which is the Committee responsible for scrutinising 'subordinate legislation' (i.e. secondary legislation) originating from the UK Parliament. More on this below in the section on subsidiarity.
 - Thematic policy/legislative committees deal with questions of policy content (e.g. views on reform of Common Agricultural Policy or Structural Funds) as well as scrutinising Welsh Government Ministers (and at times UK Government and officials from the EU Institutions) on EU-related issues falling within their remit. There are five main policy/legislative Committees. In addition Finance Committee has also undertaken EU related work.
 - Wider strategic issues concerning the Assembly's EU engagement (that fall outside particular policy areas) are addressed through CLA Committee



- Regular informal meetings of Chairs of Committees are held with the Ambassador to the UK of the rotating EU Presidency
 - An annual meeting of the Presiding Office ('speaker'), Committee Chairs, Welsh MEPs and Welsh Committee of the Regions representatives has also been held, whilst MEPs contribute directly to the work of the Assembly's Committees.
15. In practice the bulk of the EU work has gone through three Committees:
- Environment and Sustainability Committee: major pieces of work on CAP and fisheries reforms; integration of EU dimension into its work on energy, marine and coastal management, invasive alien species, animal welfare, organic farming etc.
 - Enterprise and Business Committee: major inquiries into EU Structural Funds, Horizon 2020, EU Funding Opportunities (e.g. Erasmus+, Creative Europe), as well as scrutiny of Welsh Government on a host of other EU issues e.g. TEN-T and Connecting Europe
 - CLA Committee (which leads on subsidiarity – more on this below): major inquiry into Wales' role in influencing EU policy and law-making.
16. An example of the type of approach taken is shown in the work of Environment and Sustainability Committee on the CAP and fisheries reform. This Committee identified these as two key priorities for 2011-2013, during the negotiations on the reforms in Brussels. The Committee analysed the draft proposals when they were published, consulting closely with Welsh stakeholders, to identify positive and negative elements of the proposal, and to provide feedback to the European Parliament (using Welsh MEPs as conduits and focusing on rapporteurs and Chairs of the lead Committees) including draft amendments to the text. This approach of engaging with the European Parliament in the form of 'legislature to legislature' dialogue was viewed as particularly important, as a legitimate form of engagement by a legislative assembly (with Welsh Government working through governmental channels via the UK voice in Council). The Committee was able to act as a platform through which to elicit and present concerns of Welsh stakeholders throughout the negotiations, whilst also being able to explain changes to proposals and provide ongoing monitoring of the co-decision process at work.
17. CLA Committee's inquiry into the role of Wales in EU decision-making was also an important piece of work. This looked at the core questions of how Wales engages in EU affairs, the role taken by the Welsh Government, and the extent to which a sub-national voice is able to have impact at EU level. More on this towards the end of this paper.
18. There has been less EU-related work in the Children and Young People, Health and Social Care, and Communities and Local Government Committees, which is explained by legislative workload, domestic priorities (education and health are key political issues in Wales where the Welsh Government has devolved competences), and lack of relevant developments at EU level. Each of these Committees, however, receives regular updates on relevant EU priorities to their work, and EU priorities are considered as part of their forward programme. Notably Health and Social Care



Committee has undertaken scrutiny work on a number of EU dossiers in the context of other work it is undertaking (e.g. Data Protection, Legal Highs, Medical Technologies).

19. In June 2012 a review of mainstreaming gave a resounding positive note to the new approach, and this has been the pre-dominant view since then. The 2012 review concluded that a broader range of issues had been covered than under the previous Assemblies. There was also strong support for the quality and depth of this work, and in the pro-active approach to working with the EU Institutions, notably the European Parliament through 'legislature to legislature' engagement, with the Welsh MEPs acting as important conduits in this.
20. **Annex 1** contains a summary of the EU-related work of the Assembly under the current Assembly.

Subsidiarity monitoring including the 'early warning system'

21. The 'early warning system' on subsidiarity introduced by the Treaty of Lisbon provides limited scope for sub-National Parliaments (referred to as 'regional' parliaments in the protocol to the Treaty) to exert influence given formal participation is reserved to National Parliaments: any concerns raised by sub-National Parliaments must be taken on board by the relevant National Parliament and incorporated in a 'reasoned opinion' submitted to the European Commission within the set deadline in order for these to be formally recognised.
22. Under the Assembly's Standing Orders (Standing Order 21), a 'responsible committee' in the Assembly (currently the CLA Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity (as set out in Article 5 of the Treaty of Lisbon and in accordance with Protocol No.2 of the Treaty *On the Application of the Principles of Subsidiarity and Proportionality*).
23. In accordance with Standing Orders, the Committee may make written representations to appropriate committees in the House of Commons or House of Lords with concerns regarding subsidiarity, and lay these representations before the Assembly. Such representations may ask the relevant parliamentary committee to consider incorporating the concerns into any reasoned opinion it submits to the European Commission.
24. In order to ensure that the CLA Committee fulfils its subsidiarity monitoring function effectively, Assembly officials monitor all draft EU legislative proposals that are relevant to Wales on a systematic basis to check whether they raise any subsidiarity concerns. Where concerns are raised, these are notified to the CLA Committee for consideration. The Chair of the CLA Committee is empowered to take a decision on behalf of the Committee when time constraints do not permit discussion within a



formal meeting. A subsidiarity monitoring report is prepared by officials for information on a termly basis.¹

25. Within this process the UK Government's 'batch list' of EU proposals (sent to the Assembly by the Foreign and Commonwealth Office) is used to carry out an initial filter to identify legislative dossiers relevant to the Assembly's competence, and a more detailed analysis is undertaken subsequently using the UK Government's Explanatory Memoranda (which are sent to the Assembly by the House of Commons European Scrutiny Committee). Assembly officials also refer directly to the European Commission's proposals and supporting documents in undertaking this more detailed assessment.
26. This system also provides for communication between Committees within the Assembly, whereby a policy/legislative committee may raise a question or concern regarding 'subsidiarity', which is drawn to the attention of CLA Committee, whilst the CLA Committee will also flag up to other Committees concerns on subsidiarity or proportionality where relevant.
27. One element that is not readily available in this 'sifting' process is detailed information on the Welsh Government position on relevant dossiers to Wales (as the UK Government EM's rarely if ever include detail on Welsh views on proposals). This issue had been pursued under the previous Assembly by the European and External Affairs Committee without success. CLA Committee has followed up on this in its recent inquiry into Wales' role in EU decision-making, however, the Welsh Government (despite some signs of willingness/movement) has refused to commit to making such statements citing resource constraints as the primary reason for not being able to provide this information. The Minister for Finance has encouraged the Assembly Committees to pursue issues with the relevant Ministers where cases of interest arose.
28. To date the Assembly has made two written representations (in accordance with the procedure set out in Standing Order 21.9):
 - On the proposals for a directive on public procurement (COM(2011)896) – February 2012. The concerns raised were included in the Reasoned Opinion adopted by the House of Commons, and debated on the floor on 6 March 2012;
 - On the proposals for a regulation on high-speed electronic communications networks (COM(2013)147). The CLA Committee in correspondence agreed with the subsidiarity concerns raised by the House of Commons in its Reasoned Opinion adopted on 13 May 2013.
29. The CLA Committee also wrote informally to the House of Commons' European Scrutiny Committee about proposals for directives on tobacco and related products (COM(2012)0788) and alternative fuels infrastructure (COM(2013)0018).

¹ See: <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=8668>



30. The CLA Committee also wrote to the EU Commissioner for Maritime Affairs to highlight concerns regarding the proportionality of draft legislation to introduce a ban on use of driftnets.
31. As noted earlier, CLA Committee submitted a response to the consultation on subsidiarity that formed part of the UK Government's Balance of Competences Review of the EU. This highlighted a number of issues with the process, including a call for the 8-week timeframe to be extended to 12-weeks, and for greater recognition to be given of the role (albeit formally weak) of sub-National Parliaments in this.

Value of networking: Committee of the Regions, CALRE and EC-UK Forum

32. The Assembly benefits from engagement in a number of networks and forums at UK and EU level, which add clear value to its work on subsidiarity and other aspects of EU affairs.
33. This includes the Committee of the Regions' (CoR) EU-wide Subsidiarity Monitoring Network and its Subsidiarity Expert Group. This provides a useful way of exchanging of information on draft proposals, and provides an insight into the priorities of other legislatures across Europe. As well as the web-resources, and contacts in other legislatures, through these mechanisms the CoR also organises events and conferences where politicians and officials can meet and discuss subsidiarity concerns, similar to this conference on National Parliaments in Rome.
34. Likewise through our membership of CALRE we are able to talk directly to other sub-state parliaments, and discuss the interactions they have with their national legislatures and governments in dealing with subsidiarity and other EU policy issues. CALRE has had less of an impact to date in terms of influencing the EU Institutions and the debate on the role of sub-National Parliaments.
35. Within the UK, I participate in an informal meeting of the Chairs of the European (and equivalent) Committees from the UK and Devolved Legislatures, called the EC-UK Forum. This meets twice-yearly, hosted on a rotating basis by each of the legislatures, with the Chairs exchanging information on their current and planned EU-related work, including a regular discussion on subsidiarity issues. There is encouragement for good co-operation between officials in the Committees and European teams, which is reflected in practice through regular alerts and forewarnings on dossiers that are expected to raise concerns.
36. Within Brussels the Assembly's EU Office has a network of informal contacts across the EU Institutions, with the National Parliament and German Landtagau representatives, as well as various other EU networks, to draw expertise, intelligence and influence on issues of most relevance to the Assembly's work.

Wales' role in EU decision-making

37. The CLA Committee undertook a detailed inquiry into Wales' role in EU decision-making during 2013-2014, including two 'rapporteur' visits to Brussels to take



evidence, as well as formal sessions in Cardiff. The report was published in March and debated in plenary in June.

38. The Committee made 13 recommendations and the Welsh Government in its response accepted all (or ‘in principle’) except one.
39. The primary focus of the inquiry was in respect of the activities of governments so the report focused on the Welsh Government’s role in the EU decision-making process, although it did also look at the other Welsh representations in Brussels, and the work of the Committee of the Regions.
40. The evidence clearly demonstrated that good communication, an effective presence in Brussels, the timing of engagement and strong personal contacts are crucial in order to gain influence in EU decision-making.
41. The report focused in particular on the need for the Welsh Government to improve its strategic approach to EU affairs, moving away from a largely ‘reactive’ strategy to a more focused, and pro-active approach – including developing a new ‘EU Strategy’ setting clear targets and deliverables, and a stronger and more coherent Welsh voice in Brussels across all priority areas.
42. The report found that the ‘informal’ mechanisms for inter-governmental discussions on EU affairs within the UK, between the UK Government and Devolved Governments, functioned reasonably well, although it was recognised that the system relies heavily on goodwill and strong personal relationships.
43. One of the most striking findings was how the role of the European Parliament has strengthened and increased in prominence since the Lisbon Treaty, particularly in areas— such as agriculture and Structural Funds—that are important to Wales. This makes it imperative to take the European Parliament seriously, and work closely with MEPs, targeting those with similar interests and concerns to Wales.
44. We heard mixed views about the Committee of the Regions and European Economic and Social Committee and their effectiveness, with the majority suggesting that their role and therefore ability to influence was limited.



Annex 1: Summary of work on EU Affairs during Fourth Assembly²

Enterprise & Business Committee

- Scrutiny of Welsh Government Ministers on EU Structural Funds implementation in Wales (and follow up to other EU Funding inquiries) – ongoing.
- EU funding opportunities 2014-2020 (September 2014).
- Scrutiny of Welsh coverage in TEN-T maps/corridors 2014-2020 (incorporated into EU Funding Opportunities inquiry).
- Horizon 2020 (July 2012).
- International Connectivity through Welsh Ports and Airports (July 2012).
- Influencing the modernisation of European procurement policy (May 2012).
- The Draft Legislative Proposals EU Structural Funds for 2014-2020 (February 2012).

Note: EU dimension (particularly with regard to EU Funding) features in other inquiries e.g. Youth Entrepreneurship, Employment Opportunities for Older People, Assisting Younger People into Work.

Environment & Sustainability Committee

- Inquiry into the organic production and labelling of organic products (ongoing).
- Scrutiny of EU environmental legislation reasoned opinions against UK (Aberthaw Power Station; designated sites for porpoises under Habitats Directive; concerns over transposition of EU law on mercury waste).
- Scrutiny of EU proposals to ban use of driftnets (June 2014).
- Cultivation of GMOs – briefing session with officials (June 2014).
- Sustainable Land Management (May 2014).
- Invasive alien species (January 2014).
- Marine policy in Wales (January 2013).
- Coastal protection in Wales (October 2012).
- Glastir (October 2012).
- Energy policy and planning in Wales (June 2012).
- Proposed Reforms to Common Fisheries Policy (originally through a Task & Finish Group).

² For full details visit: <http://www.senedd.assembly.wales/mgListCommittees.aspx?bcr=1>. The Assembly's Europe Matters publication provides a summary of all EU-related work: <http://www.assembly.wales/en/bus-home/research/Pages/europe-matters.aspx>



- Proposed Reforms to the Common Agricultural Policy (originally through a Task & Finish Group).

Note: EU dimension features in much of this Committee's work (e.g. scrutiny of M4 in context of appropriate compliance with EU environmental legislation).

Finance Committee

- Inquiry into Finance Wales (May 2014).
- Effectiveness of European Structural Funding in Wales (December 2012).
- Update session with Rhodri Glyn Thomas AM on his Committee of the Regions reports on EU budget synergies, public private finance and the role of the European Investment Bank (January 2013).

Note: EU dimension features in other work of the Committee e.g. Higher Education Funding inquiry

Constitutional and Legislative Affairs Committee

- Role of sub-Member States in EU governance: correspondence to EU Institutions January 2015
- Response to UK Government's consultation on subsidiarity in context of ongoing Balance of Competences Review (June 2014).
- Inquiry into Wales' role in EU decision-making (March 2014).
- Lead responsibility for subsidiarity issues including participating in the 'early warning system' introduced by Committee of the Regions. Regular Subsidiarity Monitoring Report considered by Committee (four under current Assembly). Five dossiers where concerns raised:
 - Proposals to ban use of driftnets in EU waters.
 - Public Procurement draft directives.
 - Proposals concerning infrastructure for deployment of alternative fuels.
 - Tobacco products draft proposals.
 - Proposals for deployment of high-speed electronic communications networks.

Health & Social Care Committee

No dedicated EU inquiry to date although the Committee has received updates from the EU Office on relevant developments to the Committee's remit.

The EU dimension has featured in a number of recent/ongoing inquiries including:

- Legal Highs inquiry - implications of draft EU proposals on new psychoactive substances (ongoing).
- Draft proposals to amend EU Data Protection legislation (June 2014) - implications to Wales in particular medical research.

Communities, Equalities and Local Government Committee



No dedicated EU inquiry to date although the Committee has received updates from the EU Office on relevant developments to the Committee's remit.

Children, Young People & Education Committee

As with CELG no dedicated EU inquiry to date although the Committee has received updates from the EU Office on relevant developments to the Committee's remit.

There has been some comparative work – looking at other countries including EU Member States for some of the Committee's work for example its inquiry into Educational Outcomes for Children from Low Income Households.

The Committee also undertook a visit to the OECD in September 2014 focused on PISA and educational outcomes.

Plenary debates

As well as debates on committee reports, Welsh Government Ministerial statements, and other questions to Ministers, there have been a number of dedicated plenary debates on EU affairs including the following in 2014:

- Debate on EU and use of EU Structural Funds in Wales (30 April 2014).
- Debate on the positive contribution of the EU to Wales and Wales to the EU (26 March 2014).
- Debate on the benefits to Wales of the UK's continued membership of the European Union (26 November 2013).

Other:

- Informal 'Chairs of Committees meeting with UK Ambassador of each rotating EU Presidency (twice per annum).
- Informal meeting of Presiding Officer, Committee Chairs with Welsh MEPs and Welsh representatives on the Committee of the Regions (May 2012 and May 2013).

Committee of the Regions

Rapporteurships:

- Christine Chapman (member until November 2012): Europe 2020 Anti-Poverty Platform.
- Mick Antoniw (member from April 2013): European Public Employment Services legislative proposals.
- Rhodri Glyn Thomas (member since : three reports
 - (i) synergies between EU, national and sub-national budgets,
 - (ii) synergies in public private finance and role of European Investment Bank,
 - (iii) state aid to fisheries and aquaculture.

Other activities:



- Christine Chapman: Political Co-ordinator of the Europe 2020 Monitoring Platform plus speaking slots at conferences (e.g. European Anti-Poverty Network annual conference in Brussels November 2012).
- Mick Antoniwi: member of CORLEAP (Eastern Partnership) and PES Group lead on the Ukraine crisis, including number of speaking slots at conferences in Brussels (e.g. April 2014).
- Rhodri Glyn Thomas: speaker at number of conferences in Brussels (and elsewhere –e.g. Poland) including 2013 and 2014 Open Days Week of Regions chairing two seminars with EIB and European Commission.