

## BRIEFING SERIES ON THE EUROPEAN UNION

### BRIEFING 2 – RELEVANCY OF THE EUROPEAN UNION LAW AND POLICY TO NORTHERN IRELAND DEVOLVED GOVERNANCE

#### Introduction

To a significant extent, decisions made by the institutions of the European Union (EU) in respect of policy and law directly impact Member States and their regions.<sup>1</sup> In effect, this means EU policy and law helps shape parameters in which UK governance operates, including the UK Government and Parliament and devolved administrations and parliament/assemblies such as those in Northern Ireland. Consequently UK national and regional interests must be fully and properly represented in EU matters (particularly policy formulation and transposition and implementation of EU obligations) at key stages. For Northern Ireland (NI), this requires the use of *appropriate* channels by the NI Executive and the NI Assembly - at both EU and UK levels - to influence and scrutinise the formulation of EU policy and law and its transposition/implementation within NI.

This briefing – Briefing 2 in a three-part series - is intended to facilitate the Members of the Committee of the Office of the First Minister and Deputy First Minister (the Committee) in their scrutiny of EU developments at both EU and UK levels. More specifically, the briefing seeks to assist the Committee in deciding how it should handle European matters.

Building on Briefing 1 (which explained EU institutions and decision-making), this briefing sets out the relevancy of EU developments to NI devolved governance, using the following themes:

1. Key sources of European policy and law that define parameters of NI policy and law;
2. Roles of the UK central and NI devolved governance in European matters; and,
3. Necessity of scrutinising European-related matters from a NI perspective.

#### 1. Key Sources of European Policy and Law that Define Parameters for NI Policy and Law

As a region within a Member State, NI must comply with EU treaties and all that flows from them. Consequently there are a number of ways in which the Community is able to change or shape the law in NI, including: —

<sup>1</sup> It was approximated in Northern Ireland in 2002 that 80 percent of policies in the Office of First Minister and Deputy First Minister's Programme for Government and up to 60 percent of all Northern Ireland legislation concerned the EU.

- **Treaties**, which are binding in their entirety on Member States, unless (Member State) derogations exist.
- **Regulations**, which are binding in their entirety and directly applicable in all Member States.
- **Directives**, which are binding on the Member States as to the ends to be achieved, but leave the means of achieving those ends (that is transposing and implementing) to the discretion of each Member State. Both regulations and directives are initiated by the Commission and adopted by the Council, usually after having received an opinion from the European Parliament.
- **Decisions by the Council or the European Commission**, which are binding on the government, enterprise or individual to whom they are addressed.
- **Recommendations and Opinions of the Council or the European Commission**, which are not binding, but state Council or Commission views.
- **Decisions of the European Court of Justice**, which are binding on Member States.

Consequently each of the above influence NI devolved governance, prescribing boundaries in which it operates.

## 2. Roles of the UK Central and NI Devolved Governance in European Matters

There are distinct roles for the UK central and NI devolved governance in European matters. Each are discussed below.

### UK Government and Parliament

All foreign policy issues and relations with the EU are the sole responsibility of the UK Government and Parliament, as the Member State.

Since the UK joined the European Community in 1973 to date, European treaties have been ratified by the UK Foreign Secretary, or his or her representative, acting on behalf of the Crown. This is a modern constitutional practice whereby Government Ministers exercise Prerogative powers (the “Royal Prerogative”).<sup>2</sup> In practical terms, this translates into the Government representing the UK at the European level (for example, in the Council of Europe and the European Council – see Briefing 1 for an explanation of this EU institution/body).

Enacted by the UK Parliament, the European Communities Act 1972 made the obligations under the 1972 Accession Treaty and European law made thereunder, applicable to the UK (including NI). On subsequent occasions when a new European treaty has been agreed, Parliament has enacted new pieces of UK legislation to amend the 1972 Act. Such legislation makes those parts of new treaties that are intended to have domestic legal effect applicable within the UK.

Consequently UK governance has distinct roles and responsibilities in formulating policy and law at the European level, as well as transposing and implementing EU obligations within the UK – at the domestic level. The UK Government and Parliament play central roles at each level.

### NI Executive and Assembly

Given the existence of devolved governance in the UK, devolved bodies such as the NI Executive and Assembly also have defined roles and responsibilities in matters relating to the EU: albeit the UK government plays a pivotal part in this respect.

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<sup>2</sup> See Walker, David M. *The Oxford Companion to Law*. Clarendon Press. Oxford:1980, pp. 982-83.

Prescribing the regional governance roles are the “devolution statutes”, namely the *Northern Ireland Act 1998*, the *Scotland Act 1998* and the *Government of Wales Act 1998*. These statutes create the various devolved bodies.

They also define the devolved bodies’ powers. With respect to the EU, the statutes’ most significant provisions dividing power between the centre and the regions include the UK government retaining responsibility for foreign relations. Moreover, the statutes place the devolved bodies under a statutory obligation not to legislate or act in a manner that is contrary to EU law. They also provide them with concurrent power (shared with the UK government) to observe, transpose and implement Community law.

But the regions do help central government in developing the UK position for European level negotiations/discussions, for example, to formulate and agree EU policy. Inter-governmental relations play a critical role in this respect. “Concordats” govern such relations. The principal one is the “*Memorandum of Understanding*” (MOU) and *supplementary agreements* (including the Joint Ministerial Committee and the four overarching concordats, one of which concerns the co-ordination of EU policy issues).<sup>3</sup>

There also are ‘*bilateral concordats*’ between the individual UK Governmental departments and their counterparts in the devolved administrations: these cover matters that have been considered best capable of regulation in the context of the relationship between the two parts of the government machine.

As well as the direct effect on devolved functions and policy, the EU is important as a broader arena in which the devolved administrations may wish to act; albeit as regions of a Member State, having no direct legal relationship with the EU or its institutions/bodies (with the exception of the Committee of the Regions).

### **3. Necessity of Scrutinising European-Related Matters from a NI Perspective**

In light of the above, there are three distinct reasons why it is necessary for NI devolved governance to scrutinise European policy and law developments:

1. To ensure NI regional interests are represented when formulating the UK-negotiation line on European policy and law, which later is represented by the UK Government in Europe when the institutions formulate and agree European policy and law;
2. To ensure NI compliance with European obligations that the UK Government agreed to comply with; and,
3. To allow, where possible and appropriate, for NI regional differences when the NI Executive and Assembly transpose and implement such obligations for NI.

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<sup>3</sup> Cm 4444, October 1999.