



Northern Ireland  
Assembly

# Report of the European Project Manager

June 2013



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## Executive Summary

This report was compiled by the European Project Manager in order to inform Assembly Commission considerations on options for enhancing the Northern Ireland Assembly's engagement in European affairs.

Consultation took place with colleagues in other legislatures on the challenges and opportunities presented by alternative models of parliamentary European scrutiny.

In addition to consideration of the most effective model of European scrutiny for the Assembly, extensive activity in seeking to support committees in greater engagement in European affairs was undertaken during the course of the Project (February 2012 – May 2013).

### Key Findings

- Effective engagement in European affairs is a process, not an event.
- Engagement in European affairs should be based on a methodical approach, fully integrated into the systems and procedures of the Assembly rather than on an ad hoc basis.
- Any European engagement strategy should acknowledge the competing priorities for the Assembly committees in terms of their workload.
- Greater clarity on the role of Assembly committees in engaging in European affairs is necessary for both Members and the Secretariat.
- Increased engagement with stakeholders and pursuance of avenues of influence will enhance effectiveness.
- Committees need to '*be selective to be effective*' in concentrating efforts on key priorities.
- Development of defined processes for handling EU affairs and clear delineation of responsibility will support further development on European engagement.
- Effectiveness in European affairs represents a resource commitment which must be considered in the context of competing budgetary pressures.
- Work carried out by any Assembly Brussels office could be undermined if Assembly structures are not established and developed.
- A dedicated European affairs committee could assist in focussing on strategic European scrutiny, coordinating committee and Assembly engagement and undertaking an external relations role.
- A permanent European officer based in Parliament Buildings should be appointed to drive the Assembly's engagement in European affairs.
- Processes for gathering, analysis and dissemination of information must be enhanced.
- Increased engagement in European affairs may have a resource impact on a number of business units and this must be evaluated.

## Project Successes

During the course of the project the European Project Manager, Shauna Mageean

- facilitated the Committee for Environment in successfully highlighting Northern Ireland concerns on a European proposal on vehicle roadworthiness to the House of Commons European Scrutiny Committee and House of Lords European Union Committee and subsequently to the Minister for Transport in advance of European negotiations on the proposals at the Council of Ministers.
- established a system for receipt of UK Government documents on European proposals to facilitate Assembly committee scrutiny of legislative and non-legislative proposals prior to decisions. Previously the Assembly did not have access to these documents.
- created a pilot project for committees on 'policy triage' where committees would select priority areas for scrutiny from the annual European Commission Work Programme. Previous attempts to scrutinise the Commission Work Programme had been unsuccessful as prioritisation had not been carried out.
- developed a procedure for subsidiarity monitoring involving committees, Research and Information Services and Legal Services.
- secured the attendance of the Minister of State for Europe, the Rt. Hon. David Lidington MP at a meeting of the Committee for the Office of the First Minister and deputy First Minister to give formal evidence to the Committee on a range of European issues. This was the Minister's inaugural evidence session with an Assembly committee.
- secured the attendance of the Irish Minister of State for European Affairs, Lucinda Creighton TD. at a session of EC-UK, the biannual meeting of the Chairpersons of the European committees of the House of Commons, House of Lords, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.
- secured the attendance of the Minister at a briefing hosted jointly by the Committee for OFMDFM and the Northern Ireland Assembly and Business Trust to discuss the Irish Presidency of the Council of the European Union. In addition a Youth & Europe event was organised where young people from schools, universities and community groups had the opportunity to ask the Minister questions on European affairs.
- worked in partnership with the Queen's University Belfast School of Politics, International Studies and Philosophy on a successful bid for funding from the European Commission Representation in the UK for a series of discussion seminars on the theme of 'Debating Europe'. The series of six seminars was jointly hosted by Queen's University Belfast and the Northern Ireland Assembly and Business Trust.
- represented the Assembly on the Northern Ireland European Regional Forum which is co-chaired by OFMDFM and Belfast City Council and hosted the inaugural external meeting of the Forum in the Long Gallery in November 2012.

# Recommendations

## The Role of the Assembly in European Scrutiny

1. In any future Assembly EU strategy, the priority routes for committee engagement should be:
  - scrutiny of the Northern Ireland Executive
  - influencing the UK Government and Parliament
  - influencing the European institutions.

## Avenues of Influence

2. A 'best practice' approach to European scrutiny could be drawn up and approved by the Chairpersons' Liaison Group. One element of this could be that, as part of their ongoing scrutiny, committees may wish to seek information from respective departments on what interaction with UK Government departments has taken place regarding particular policies or legislation. Committees may also wish to scrutinise if liaison has taken place at the formative stages of development of the UK Government position.
3. As part of the 'best practice' approach outlined above, Assembly committees should actively seek opportunities to feed into the European scrutiny processes at the House of Commons and the House of Lords through contributing views on the proportionality or subsidiarity of European proposals. Committees should also seek opportunities to feed into any inquiry work being undertaken by Sub committees of the EU Committee of the House of Lords.
4. A quarterly or biannual briefing from MEPs should be arranged to provide a platform solely for MEPs to brief committees or committee Chairpersons on activity at the European Parliament and for Assembly committees to feedback to MEPs on any relevant work undertaken. The schedules for MEPs do not easily align with meetings of Assembly committees therefore careful consideration should be given to scheduling of these briefing sessions in advance to facilitate attendance by all MEPs and to provide maximum value for the session.
5. As part of the 'best practice' approach outlined above, any Assembly committee undertaking a work stream with a European focus should consider, where appropriate, seeking a view from the Northern Ireland MEPs. Committees should forward a copy of any report, for example on an inquiry, to the Northern Ireland MEPs in order to ensure that the Assembly viewpoint is communicated and also as a means of keeping the MEPs informed of Assembly activity.
6. Chairpersons may also wish to consider greater levels of legislature to legislature communications – that is, communications from the Northern Ireland Assembly directly to



European Parliament Committee Rapporteurs who have responsibility for drafting committee reports and amendments to European Commission proposals. There is a view that generally, connections with Committee Rapporteurs rather than committees themselves will be more effective in inputting a regional viewpoint. Colleagues in the National Assembly for Wales have drafted suggested amendments to Commission proposals and forwarded these amendments to European Parliament Rapporteurs and Welsh MEPs.

7. Similarly, subsidiarity and/or proportionality concerns with a legislative or policy proposal should be communicated to the Northern Ireland MEPs. While the concerns may or may not be relevant to a committee of which a Northern Ireland MEP is a member, there may be opportunities for local MEPs to communicate any Northern Ireland Assembly view to colleagues who do sit on the particular committees examining a proposal.
8. Consideration should be given to an annual 'Northern Ireland in Europe' event, possibly under the auspices of the Speaker or the Committee for the Office of the First Minister and deputy First Minister (OFMDFM), to which the MEPs, representatives from the Committee of the Regions and European Economic and Social Committees and all committee Chairpersons are invited. This informal event should allow for some element of briefing from the Northern Ireland representatives in Europe and then discussions with committee Chairpersons. Such an event would foster a link between the Assembly Chairpersons and the NI representatives in Europe for mutual exchange of information.
9. There is currently a lack of clarity around the support arrangements for the Northern Ireland Assembly representatives on the Committee of the Regions. It is recommended that further clarification and confirmation be sought from the Northern Ireland Executive European Division on the support mechanisms for the Northern Ireland Committee of the Regions members.
10. As part of the 'best practice' approach, consideration should be given to how Assembly committees should seek to respond where appropriate to Committee of the Regions (CoR) consultations to ensure that the region specific views are expressed and included in the CoR response to any European Commission proposals. Such participation in CoR activities should be explored for opportunities to identify other European regions with similar interests or concerns on key proposals – again with a view to presenting a strengthened opinion to decision makers.
11. The Committee for OFMDFM may wish to consider how to ensure that a forum exists for quarterly or biannual briefings from the Northern Ireland representatives on the Committee of the Regions (CoR). Consideration should be given to the timing of these briefings dependent on the CoR work programme and relevant Commission or plenary sessions. The Committee may wish to seek an annual or biannual written briefing on the work of the Northern Ireland representatives on the Committee of the Regions in the preceding period – this is of course dependent upon the agreement of the representatives.

12. Similarly, as part of the 'best practice' approach, any Assembly committee undertaking a work stream with a European focus could consider, where appropriate, seeking a view from the Northern Ireland CoR representatives. Committees should forward a copy of the report to the Northern Ireland CoR representatives in order to ensure that the Assembly viewpoint is communicated and also as a means of keeping the CoR representatives informed of Assembly activity.
13. The Assembly should continue its contribution to the CoR Subsidiarity Monitoring Network in order that the specific regional view is expressed clearly through this channel. Any opinions on subsidiarity or proportionality issued by the Assembly should be uploaded to REGPEX (the regional parliamentary database for information exchange) in order to inform the considerations of other regional parliaments. A clear line of responsibility for communication with the Subsidiarity Monitoring Network (and consequently the REGPEX system) should be defined within any future Secretariat resource for EU affairs.
14. As part of the 'best practice' approach, any Assembly committee undertaking a work stream with a European focus should consider, where appropriate, seeking a view from the Northern Ireland EESC representatives. Committees should forward a copy of the report to the Northern Ireland EESC representatives in order to ensure that the Assembly viewpoint is communicated and also as a means of keeping the EESC representatives informed of Assembly activity.

## Process and Procedure

15. Given the successful arrangements for receipt of UK Government Explanatory Memoranda on European proposals, further consideration should be given to drawing up a clear and defined mechanism for handling. This mechanism should be defined and agreed with Research and Information Service and Clerking Secretariat staff who will retain joint responsibility for bringing relevant European proposals and attendant Explanatory Memoranda to the attention of the appropriate statutory committees.
16. As part of the 'best practice' approach, committees should be supported in forming a Northern Ireland view on specific proposals with input from stakeholders where relevant and in conveying that opinion to the Houses of Parliament European committees in advance of consideration of those proposals. In this way, the Northern Ireland view point will contribute directly to the scrutiny reserve resolution whereby the relevant UK Government Minister cannot agree a proposal at the European Council of Ministers without the clearance of the UK Parliamentary committees.
17. The best practice document should make it clear that committees endeavouring to undertake early engagement should seek to consider European proposals at consultation and Green or White paper stage in order to have input into the pre-legislative stage.

18. A trial period of subsidiarity monitoring has successfully resulted in scrutiny of a number of European proposals for subsidiarity concerns. Consideration should be given to streamlining of the process and reducing the time spent on consultation with the other statutory committees. Further options should be explored.
19. In order to participate more widely in subsidiarity monitoring, any Assembly opinions produced on subsidiarity considerations should be published on REGPEX, the regional parliamentary information exchange system, which is a platform for the mutual exchange for information between regional parliaments in the early phase of EU legislative procedure. Procedures and resourcing of this process must be further considered.
20. The pilot project of 'policy triage' has facilitated committees in focusing on key areas as well as providing a useful forward look at what initiatives are forthcoming from the European Commission. The effectiveness of the pilot project in assisting committees to select priority areas for engagement should be evaluated at the end of the year in order to identify areas for improvement. Given the competing pressures on committee resources, the approach of *'being selective to be effective'* should be continued.

## Networks and Fora

21. It is important that Assembly committees and any Assembly EU Officer should endeavour to explore and exploit any available avenues of influence, that is, any opportunities for the Assembly to input into the policy or legislative process or to build alliances with other stakeholders to strengthen such input. European engagement must take place, however, without compromising the position of the UK Permanent Representation (UKRep) to the European Union which has primary responsibility for promoting and negotiating agreed UK policy positions with the EU institutions.
22. It is recommended that the OFMDFM Committee re-evaluate the effectiveness of the European Advisory Panel and further considers how it may formally engage with MEPs.
23. A representative of the Assembly should continue to attend the meetings of the Northern Ireland European Regional Forum co-chaired by OFMDFM and Belfast City Council. Consideration should be given to the onward dissemination of minutes of the meeting and any committee relevant information following the quarterly meetings.

## Information Flows

24. As part of the 'best practice' approach greater engagement by every committee with departmental European Coordinators and scheduled and regular updates from departmental officials, the Barroso Taskforce Desk Officers and individual departmental

representatives on the Barroso Taskforce Working Groups should also provide committees with information on the Executive's activity on European affairs.

25. The establishment of effective networks is a vital means of identification of issues of relevance and the mutual exchange of information must be a key aspect of any European scrutiny strategy. These often informal networks must be continually nurtured and as is the case with most effective networking, it is the mutually beneficial nature of the relationship which is key to success, that is, it is important that the Assembly provides information as well as receives.
26. The Committee for OFMDFM may wish to seek copies of the monthly 'Director's Brussels Bulletin' produced by the Director of the Office of the Northern Ireland Executive in Brussels and disseminate this to other committees. The Committee may also wish to seek updates from the Chairs of the Barroso Taskforce Working Group.
27. Further consideration should be given to information dissemination at the Assembly – both internal and external. In relation to internal dissemination, consideration must be given to how European information is disseminated to committees. While the existing Horizon service on the internal Assist network is useful, consideration should be given to inclusion of a document in the weekly committee packs. This document could have headline details which could then be followed up by the committees if desired. The resource implications in the compilation of this briefing document would require scrutiny.
28. The external communication of the Assembly's work on European affairs must not be overlooked as this is key element of the Assembly's strategic corporate objective of communicating widely the work of the organisation. Previously MEPs, Committee of the Regions and European Economic and Social Committee representatives have stated that they would welcome more information on what EU related work the Assembly committees are undertaking. Informal communications can remedy this situation in the short term but it could be hoped that as Assembly engagement in European affairs increases, a more formal communication, for example in a quarterly or bimonthly newsletter, may be an important element in external communications.

## **Events and Capacity Building**

29. Participation in the EC-UK meetings of the Chairpersons of the European Committees in the House of Commons, House of Lords, Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly is vital in developing and enhancing the working relationships between the various parliamentary committees and this participation should continue to be supported.
30. As part of its strategic forward work planning, the Committee for OFMDFM could ensure that engagement with the Member State hosting the Presidency of the Council of the EU is a

standing biannual item on the forward work programme. Consideration could be given to the appropriate format, possibly a briefing by the Member State representative followed by a question and answer session from attendees. The event should be open to all Members and where appropriate invitations should also be issued to key stakeholders involved in European affairs, for example the Northern Ireland European Regional Forum. In this way, the committee can not only facilitate high level discussions on European matters but also can ensure that the work of the Assembly is widely communicated.

31. The British Irish Parliamentary Assembly (BIPA) has three subject committees, one of which (committee B) covers European Affairs. The Northern Ireland Assembly currently has one Member on this Committee. Given the opportunity to highlight the Northern Ireland perspective on EU issues to the other legislative bodies represented on BIPA, further consideration should be given to the support provided to the Assembly Member on that Committee and to compilation of an Assembly contribution to any Committee discussions on key EU issues.
32. Other opportunities for partnership working should be further explored, for example in relation to working with the Northern Ireland Assembly and Business Trust (NIABT) on European themed briefings for NIABT members and Assembly Members. Such an approach can broaden the appeal for an event and provide a useful opportunity for greater levels of external engagement for the committee in inviting stakeholders from the private, public and voluntary sector to discuss an area of committee scrutiny.
33. There may be opportunities to participate in the Northern Ireland Civil Service European training courses. This possibility should be investigated further as a means of capacity building with assessment of any budgetary implications.
34. In 2012, the European Commission, in collaboration with the Committee of the Regions, launched 'Erasmus for local and regional elected representatives'. Consideration should be given to encouraging Assembly Members to apply for any future programme in 2014.
35. Given the development of the Politics Plus programme by the Northern Ireland Assembly Legislative Strengthening Trust, consideration should be given to the incorporation of a section on European scrutiny.

## **Parliamentary Models of European Scrutiny – Options Appraisal**

36. While the evidence supports the establishment of a European Committee, it is recognised that this issue forms part of a wider strategic review being undertaken by the Committee Review Group, due to report in early autumn 2013.

## Secretariat Structures

37. A permanent Assembly European Manager should be appointed as soon as possible. The role of this officer would be to:
- Energise the process of European scrutiny at the Assembly ensuring continued impetus, momentum and motivation
  - Provide support to committees in scrutinising key areas including liaison with RaISe
  - Liaise with Westminster and the other devolved regions to develop networks to support committee activity
  - Develop and enhance scrutiny mechanisms
  - Coordinate the Assembly wide engagement in EU affairs including monitoring and reporting
  - Enhance and develop communication flows, both inwards and outwards;
  - Represent the Assembly at meetings and events to raise the organisation's profile.
  - Create effective networks for partnership working for reputational enhancement
38. Any future Assembly European Officer should be based in Parliament Buildings, with appropriate travel to Brussels when required to supplement networking opportunities. The role and location of the Officer should be re-evaluated in 2-3 years' time dependent on other organisational restructuring.
39. If a dedicated European Committee is created, the complementarity of the role of the Clerk to the Committee and the European Officer must be clearly defined to ensure clarity of roles and identify areas for support and cross working.

# 1. Introduction

Rarely has European politics been so much to the fore in political discussions as has been the case recently. A future UK referendum on membership of the European Union has prompted fresh questions on the benefits and costs of membership of the EU. In July 2012, the UK Government launched its review of the Balance of Competences where departments will consult Parliament and its committees, business, the devolved administrations, and civil society to look in depth at how the EU's competences (the power to act in particular areas conferred on it by the EU Treaties) work in practice.

There are many political views on Europe but whether a Eurosceptic or a Europhile what is clear is that the Assembly operates in the context of being a regional legislature within a Member State of the European Union and therefore European affairs have an impact.

The UK Government estimates that around 50% of UK legislation with a significant economic impact originates from EU legislation<sup>1</sup>. This points up the need for the Assembly and its committees to seek where possible, to influence the development of that legislation for the benefit of Northern Ireland.

In the debate following the publication of the Committee for the Office of the First Minister and deputy First Minister inquiry into the Consideration of European Issues<sup>2</sup>, the Committee Chairperson Mr Danny Kennedy stated:

*“The purpose of the Committee’s inquiry and report is to help to promote Northern Ireland as an active region of the European Union that does not simply receive European funding but that is more fully involved in the development of legislation and policy and in the sharing of our experiences with the other regions of Europe.”<sup>3</sup>*

The Treaty of Lisbon, which came into force on 1 December 2009, strengthened the role of the legislatures in Europe. The role of the European Parliament was enhanced through extension of the ‘ordinary legislative procedure’ (formerly known as co-decision) into new areas (ordinary legislative procedure means that the Parliament has an equal say with the Council in whether any particular proposal is passed). There is also greater involvement of national parliaments through ‘subsidiarity’ – a new mechanism to ensure that the European Union only acts where results can be better attained at EU level. Article 12 of the Treaty on European Union mentions the monitoring of EU institutions as a mechanism through which national Parliaments participate in the good functioning of the European Union. In addition, Protocol 1 on the role of national Parliaments in the European Union as attached to the Treaty of Lisbon establishes the duty of the EU institutions to forward a number of documents to national Parliaments.

Indeed, national parliamentary representatives from the Member States are now housed in the European Parliament building as part of the integration of national parliaments into the EU processes.

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<sup>1</sup> House of Commons Research Paper 10/62 ‘How much legislation comes from Europe?’, 13 October 2010

<sup>2</sup> NIA 33/09/10R - Committee for the Office of the First Minister and deputy First Minister report on its ‘Inquiry into Consideration of European Issues’, 13 January 2010

[Welcome to the Northern Ireland Assembly - Office of the First Minister and deputy First Minister - Report 33/09/10R](#)

<sup>3</sup> Official Report, 26 January 2010

Each Parliament/Chamber in the Member States has established its own system for engagement in European affairs and monitoring of proceedings and these systems vary from country to country and indeed from region to region.

This project examines at length the models used in other legislatures and suggests a number of options which could be used by the Assembly to improve the effectiveness of committee engagement in European affairs. The variance of the models and views of the interviewees on the effectiveness of these models clearly indicate that there is no 'silver bullet' in effective European engagement.

A number of other legislatures are currently re-evaluating their approaches to European engagement and scrutiny. The Scottish Parliament carried out a pilot project in 2011 to test revised procedures for scrutiny of European legislative proposals. The National Assembly for Wales introduced a new approach to European scrutiny in 2012 within a focus on mainstreaming, i.e. distribution of European affairs across all committees. The House of Commons European Scrutiny Committee is currently carrying out an inquiry into the European Scrutiny system in the House of Commons. The Houses of the Oireachtas have also reviewed the European scrutiny system and implemented a mainstreaming approach in autumn 2011.

Therefore it is timely that the Assembly re-examines how it approaches European affairs in order to keep pace with other devolved legislatures. However, the experiences of other legislatures also serve to highlight that whichever the approach to be taken for this mandate of the Assembly, the approach should be reviewed periodically for effectiveness.



## 2. Evidence Gathering

In order to inform the project and final EU report and action plan, meetings were undertaken with a range of stakeholders to take views on the Assembly's role in European affairs. Topics discussed included the Assembly's current engagement in European affairs; mechanisms for scrutiny of the Executive's activity on EU matters; potential amendments to structures for European scrutiny and resourcing thereof; capacity building for staff and Members; and European scrutiny mechanisms in other legislatures. Interviews were held with the stakeholders below.

The Report by the Committee for OFMDFM (previously quoted) and subsequent debate provided the clear policy direction that the Assembly wished to improve its systems of engaging at an appropriate stage in development of policy and legislation. The views and experiences of officials who have supported similar developments in other legislatures were sought.

- Northern Ireland Assembly statutory committee clerks
- House of Commons
  - European Scrutiny Committee – Clerk
  - UK National Parliament Representative to the EU
- House of Lords
  - European Union Committee – Clerk
  - UK National Parliament Representative to the EU
- National Assembly for Wales
  - Head of EU Office
  - Research Service
  - Committee Clerks
  - Senior Legal Advisors
- Scottish Parliament
  - Chief Executive
  - Head of Committees & Outreach
  - Senior Researcher (Europe and International)
  - European and External Relations Committee – Clerk and Assistant Clerk
  - European and External Relations Committee – Members
  - Infrastructure and Capital Investment Committee – Clerk
- Houses of the Oireachtas
  - Joint Committee on European Union Affairs – Clerk
  - Joint Committee on European Union Affairs – Policy Advisor
  - Permanent Representative of the Houses of the Oireachtas to the EU
  - Principal Officer: Committees – EU & International Relations
- Parliament of Hessen
  - European Affairs Officer
- Parliament of North-Rhine Westphalia
  - European Affairs Officer
- Representation of the Free State of Bavaria to the EU
  - Head of Liaison Office Brussels

- Office of the Northern Ireland Executive in Brussels
  - Head of Office
  - Deputy Head of Office
- European Commission office Belfast
  - Head of Office (former and current)
- European Parliament Office Edinburgh
  - Head of Office
- Northern Ireland Local Government Association (NILGA)
  - European Officer

The input of all interviewees was extremely useful in informing the development of both the project and the final report and thanks are due for the valuable contributions of all those who provided their views.

### 3. Approach

The development of an Assembly European Report and proposed Action Plan follows on from the Committee for the Office of the First Minister and deputy First Minister (OFMDFM) Inquiry into Consideration of European Issues (January 2010) and from the Northern Ireland Assembly's European Engagement Strategy (February 2011).

The OFMDFM Committee Inquiry sought to establish how the Northern Ireland Assembly and the Northern Ireland Executive could improve interaction with the European institutions and raise the profile of Northern Ireland. The report included a number of recommendations for statutory committees, the Speaker, the Assembly Commission and the Office of the First Minister and deputy Minister. The recommendations for the Assembly Commission included that the *'the Assembly Commission should develop a European engagement strategy...'*<sup>4</sup>

Accordingly an Assembly European Engagement Strategy was developed with the objective *'to ensure that the Assembly Commission develops and exploits the resources available to better enable the Assembly, its committees and its Members to engage in European issues'*<sup>5</sup>. The European Engagement Strategy was considered by the Assembly Commission in February 2011.

The European Project Manager was appointed to develop the Assembly European Report and proposed action plan on the future role of the Assembly in a European context for presentation to the Assembly Commission. Shauna Mageean took up post on 1 February 2012 and reported directly to the Clerk Assistant.

The main aims of the post holder as detailed in the job description were to:

- contribute to and coordinate the work of the statutory committees and the Northern Ireland Assembly generally in relation to the scrutiny of European issues.
- provide specialist advice to committees in relation to the work of the EU and its institutions and the impact these have at national and regional levels.
- analyse the work produced by Research and Information Service and establish the most effective use of this information by the statutory committees in their scrutiny of European issues.
- Liaise with key stakeholders with a European focus.

The main duties and responsibilities of the post were:

- To prepare a business case outlining options for establishing the post of Assembly European Union Officer, to be located in Brussels;
- To contribute to the Secretariat objectives in relation to service delivery and outreach by developing an Assembly EU action plan; report to the Commission, Senior Management Group (SMG) and the Committee for OFMDFM;
- To report to the Clerk Assistant on additional resources and systems that may be required by statutory committees to carry out their scrutiny function;

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<sup>4</sup> Committee of the Office of the First Minister and deputy First Minister report on 'Inquiry into Consideration of European Issues', January 2010

<sup>5</sup> The Northern Ireland Assembly's European Engagement Strategy, February 2011

- To provide a report for the Clerk Assistant by setting out targets and milestones for an Assembly European action plan for the next 5 years;
- To provide liaison between the statutory committees and RaISe and to proactively provide additional procedural briefing for committees;
- To provide specific scrutiny support on European issues for the OFMDFM Committee through the Committee Clerk;
- To liaise with key stakeholders and organise briefings to build capacity to work effectively and contribute to scrutiny of EU matters;
- To report to the Assembly Commission and to the Chairpersons' Liaison Group and SMG on the content of the action plan and progress against timescales; and
- To influence MEPs and other key EU players in Northern Ireland to ensure that the NI Assembly's role is clearly understood and that departmental work in Europe is carried out proactively. This would involve preparing and presenting to SMG and the Commission a detailed business case, including option appraisal, in relation to taking forward a European strategy for the Assembly.

A project plan for the expected duration of the project was developed and contained four key stages:

- Scoping and research (February – June 2012)

The aim of this stage was to establish the context for the project and to establish a comprehensive evidence base for any conclusions and recommendations to be included in the final European report and Action Plan.

- Consolidation and identification of EU priorities (July – September 2012)

The aim of this stage was to analyse the evidence produced during the scoping and research stage in order to identify European priorities for the Assembly and to establish mechanisms to support and enhance committee scrutiny of European issues.

- Enhancement of EU scrutiny and engagement (October 2012 – March 2013)

The aim of this stage was to support committees in enhanced scrutiny of European issues and in active participation in European engagement.

- Draft European report and Action Plan (April – June 2013, revised to May 2013)

The aim of this stage was to draft the Assembly European report and action plan including a business case for the appointment of an Assembly European Union Officer to be based in Brussels.

The project plan was considered and approved by the Senior Management Group and the Assembly Commission. Update briefings throughout the duration of the project were provided to the Chairpersons' Liaison Group, the Senior Management Group and the Assembly Commission.

An internal EU Steering Group was established for the life of the EU Project and included:

- Clerk Assistant (Chairperson)
- Advisor to the Speaker
- Clerk to the Commission
- Head of Outreach and Education
- Senior Researcher
- Clerk to the OFMDFM Committee
- European Project Manager.

The Steering Group met on a bi-monthly basis with the objective of supporting and facilitating the Assembly in engagement in European matters. All meeting papers for the Steering Group were published on the Assembly's internal ASSIST directory.

## 4. UK and European Issues

It is estimated that 50% of UK legislation emanates from the EU and in a study of sub-national authorities' involvement in the transposition of European Directives, the UK devolved administrations are second to top in involvement with implementation of EU law.<sup>6</sup>

In March 2010, a Memorandum of Understanding (MoU) was signed setting out the mechanisms between the Westminster Government and the devolved administrations of Northern Ireland, Scotland and Wales, including with regard to the handling of European affairs. As all foreign policy issues are non-devolved, relations with the European Union are the responsibility of the UK Parliament and Government, as Member State. However, implementation of European policies in Northern Ireland often falls to the departments of the Northern Ireland Executive. A copy of this MoU is contained in Appendix 1.

*The MoU states that "As a matter of law, international relations and relations with the European Union remain the responsibility of the United Kingdom Government and the UK Parliament. However, the UK Government recognises that the devolved administrations will have an interest in international and European policy making in relation to devolved matters, notably where implementing action by the devolved administrations may be required. They will have a particular interest in those many aspects of European Union business which affect devolved areas, and a significant role to play in them..... The UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters. This must, obviously, be subject to mutual respect for the confidentiality of those discussions and adherence to the resultant UK line, without which it would be impossible to maintain such close working relationships.*

*The devolved administrations are responsible for observing and implementing international, European Court of Human Rights and European Union obligations which concern devolved matters. In law, UK Ministers have powers to intervene in order to ensure the implementation of these obligations. If the devolved administrations wish, it is open to them to ask the UK Government to extend UK legislation to cover their EU obligations. The devolved administrations are directly accountable through the domestic courts, in the same way as the UK Government is, for shortcomings in their implementation or application of EC law. It is agreed by all four administrations that, to the extent that financial penalties are imposed on the UK as a result of any failure of implementation or enforcement, or any damages or costs arise as a result, responsibility for meeting them will be borne by the administration(s) responsible for the failure.<sup>7</sup>"*

One mechanism included in this Memorandum of Understanding (MoU) was the establishment of a Joint Ministerial Committee (JMC) consisting of UK Government, Scottish, Welsh and Northern Ireland Ministers. The terms of reference of the Joint Ministerial Committee are:

- a. to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;

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<sup>6</sup> House of Commons Research Paper 10/62 'How much legislation comes from Europe?', 13 October 2010

<sup>7</sup> Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, March 2010

- b. where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- c. to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- d. to consider disputes between the administrations.

Plenary meetings of the JMC are held at least once a year and the JMC may also meet in other “functional” formats: for example, JMC Europe (JMC(E)) which is one of the principal mechanisms for consultation on the UK positions on EU issues which affect devolved matters. A copy of the JMC Annual Report 2011-12 is attached at Appendix 2.

Within the MoU there is a ‘Concordat on Co-ordination of European Policy Issues’ for each of the devolved regions. The Concordat sets out the mechanisms between UK Government and the Northern Ireland Executive Committee for the handling of EU business.

Specifically, the Concordat covers:

- provision of information;
- formulation of UK policy;
- attendance at Council of Ministers and related meetings;
- implementation of EU obligations; and
- infraction proceedings.

*“.....the UK Government wishes to involve the Northern Ireland Executive Committee as directly and fully as possible in decision making on EU matters which touch on devolved areas (including non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance in Northern Ireland).*

*.... the coordination mechanisms should achieve three key objectives:*

- *they should provide for full and continuing involvement of Northern Ireland Ministers and their officials in the processes of policy formulation, negotiation and implementation, for issues which touch on devolved matters;*
- *they should ensure that the UK can negotiate effectively, in pursuit of a single UK policy line, but with the flexibility that fast-moving negotiations require; and*
- *they should ensure EU obligations are implemented with consistency of effect and where appropriate of timing.*

*Such mechanisms should also ensure that the Northern Ireland Executive Committee and the UK Government inform each other of any relevant policy proposals which might impact on either existing or new EU proposals or requirements. They should also ensure that, when required by EC legislation, relevant obligations or initiatives are reported to the Commission and when necessary the other Member States.”<sup>8</sup>*

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<sup>8</sup> Ibid

## 4.1 Scrutiny of EU Legislation

With reference to the role of the Assembly, the Concordat states *“the devolved legislatures may wish to set up a procedure to allow them to scrutinise EU issues relating to devolved matters to ensure its interests are properly reflected.*

*The lead Whitehall department will liaise as necessary with the devolved administrations in the preparation of Explanatory Memoranda relating to such matters, and will keep them informed. The UK department will send the finalised Explanatory Memorandum to the devolved administrations at the same time that it is submitted to the UK Parliament.*

*Officials of the devolved administrations will pass on to their Whitehall counterparts the views of the devolved legislatures as soon as these are known. Where timing allows, the UK Government undertakes to take account of these views in formulating the UK's negotiating position, which will continue to balance the interests of all parts of the UK.”<sup>9</sup>*

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<sup>9</sup> Ibid



## 5. European Scrutiny in other legislatures

At this stage it may be useful to provide a very brief synopsis of the structures for European scrutiny in other legislatures.

### 5.1 House of Commons

The House of Commons system of scrutiny is document based, that is, the European Scrutiny Committee meets weekly to examine EU documents and the Government's policy towards them. It deals with all European Union documents and reports to the House with recommendations as to the importance of each document and on whether further consideration by the Committee or by the House (i.e. debate) is necessary.

There are usually 30 or so items of business (both European documents and letters from Ministers) and for each the Committee has an analysis and recommendation from the Committee staff (Clerk Advisors). Once the briefing with the Committee's staff has been completed, the Committee considers the documents and agrees its report. The Committee meets in closed session.

What the Committee must decide in each case is:

- *Is the document of political or legal importance? Political importance may stem from the sensitivity of the subject matter, the financial implications, or the likely impact on the UK. Legal importance may arise because of a doubtful legal base, an unsupported assertion by the Commission of powers to act, difficulties of drafting, or impact on existing law.*<sup>10</sup>

If the Committee finds the document to be of political or legal importance, it reports on it in detail in that week's Report. The Report describes the document and its progress, and sets out any criticisms the Committee may have, as well as further information it is requesting (or has received) from the Government. Each Report is normally published a fortnight or so after the Committee's meeting, both in hard copy and on the Committee's website.

Documents not regarded as of political or legal importance are cleared immediately.

In an average year, the Committee considers about 1,000 documents. It finds about 500 to be of political or legal importance and reports substantively upon them. It recommends about 40 documents for debate in European Committee, and about three for debate on the Floor.

The Committee does not make a decision on the merits of each document, but, in assessing a document's importance, whether it has enough information and whether the document should be debated, it may well identify potential problems or benefits and question Ministers about them.

Matters of particular interest to the Committee include:

- how important is the proposal?
- which aspects of the proposal give cause for concern?

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<sup>10</sup> Department of the Clerk of the House 'The European Scrutiny System in the House of Commons' April 2010

- would a debate serve a useful purpose?
- what matters might be covered by a debate?

### **Does it have enough information to make a decision?**

If a European document is comprehensive and of sufficient quality, and no doubts or questions arise, the Committee can often clear the document immediately. If not, further information is requested from the Government. On major or problematic proposals, there may be a lengthy dialogue between the Committee and the Government before the Committee is satisfied that it is in a position to take a decision. This dialogue is one of the most important aspects of the scrutiny process. In general it is in writing, but sometimes the Committee takes oral evidence (usually from a Minister). Such evidence sessions are always in public.

If a proposal is likely to be heavily amended, the Committee usually leaves it uncleared until more information is available about the progress of the negotiations or the likely outcome. Sometimes further information is requested even though the document is cleared.

### **Should the document be debated?**

The Committee can choose to have the document debated either in one of the three European committees or – for the most important documents – on the Floor of the House.

The three European Committees are:

- A. Energy and Climate Change; Environment, Food and Rural Affairs; Transport; Communities and Local Government; Forestry Commission.
- B. HM Treasury; Work and Pensions; Foreign and Commonwealth Office; International Development; Home Office; Justice; and matters not otherwise allocated.
- C. Business, Innovation and Skills; Children Schools and Families; Innovation, Culture, Media and Sport; and Health.

The three European Committees have new memberships and a new Chairperson appointed each time they consider a document for debate. During the 2012-13 parliamentary session there were 38 committee debates.

### **... or should the document be “tagged”?**

Documents which may not merit debate in their own right may be tagged by the Committee – that is, noted as relevant to a particular debate or any future debate on a particular subject in the House or in a European Committee. Tagging a document has no effect on clearance of that document from scrutiny which is a separate decision.

The scrutiny process at the House of Commons can be very rapid – if the Committee has the official text of a document and the Government’s notes on same by noon on a Thursday, it will often report on the document the following Wednesday. Timing is critical at every stage of the scrutiny process.

## **5.2 House of Lords**

The Chairperson of the Lords European Union Committee carries out a ‘sift’ of European legislative and non-legislative proposals and their associated documents every sitting Tuesday. Sifts are occasionally held during the Parliamentary recess to prepare for the resumption of Committee

business. The purpose of the sift is to determine whether each document should be cleared or considered further by one of the Committee's 6 sub-committees. About 40% of the 1,000 EU documents deposited annually by the government are sent on to the sub committees.

The sub committees each have specific remit.

Sub Committee A	Economic and Financial Affairs
Sub Committee B	Internal Market, Infrastructure and Employment
Sub Committee C	External Affairs
Sub Committee D	Agriculture, Fisheries, Environment and Energy
Sub Committee E	Justice, Institutions and Consumer Protection
Sub Committee F	Home Affairs, Health and Education

The Select Committee and its sub-committees meet to a published timetable when the House is in Session.

The sub-committees look at EU proposals to check if they:

- are matters the EU should be legislating for
- have been subject to a proper cost analysis
- give too much power to the EU.

The sub-committees regularly write to Ministers to highlight concerns about a particular proposal, or to ask the government to explain proposals in more detail.

The sub-committees select a few key proposals each year to examine in-depth via committee inquiries. They conduct these inquiries in the same way as other parliamentary committees. They invite written and oral evidence from government departments, EU institutions, and other interested bodies and individuals in order to consider a wide range of points of view before reaching conclusions.

The sub-committee sets out its analysis, conclusions and recommendations in a draft report. The main European Union Committee approves the reports, and they are then published. The government must respond in writing to each report, and most reports are also debated.

All of the Committee's reports and the government's responses to them are available on the committee's web pages, together with correspondence with ministers about the full range of EU documents that the Committee considers.

### 5.3 The Scrutiny Reserve Resolution

This resolution of the House constrains Ministers:

- From giving agreement in the Council or European Council to legislative proposals and certain other decision which the European Scrutiny Committees have not cleared; and
- From giving agreement to any such proposal or decision which is awaiting consideration by the House – in other words, which has been recommended for debate by the Scrutiny Committee, but on which the House has not yet come to a resolution

The Resolution also gives the Houses of Parliament an opportunity to influence the government's position in negotiations with other member states.

However, a Minister may give agreement:

- if he or she considers that a proposal is confidential, routine or trivial, or is substantially the same as one on which scrutiny is completed;
- if a proposal has been recommended for debate, but the Committees (usually for reasons of urgency or the protection of UK interests) have agreed that the resolution may be overridden; or
- for 'special reasons' provided that the Minister explains those reasons to the Scrutiny Committees at the first opportunity after deciding to give agreement. In practice, Ministers usually inform the Committees in advance. If a proposal is awaiting consideration by the House, the Minister must inform the House at the first opportunity after giving agreement.

Despite its provisos, and the fact that a national scrutiny reserve has no legal status in the EU, the scrutiny reserve resolution is fundamental to the Houses' scrutiny process. It imposes a general discipline on Ministers and departments to provide the UK government views on European documents, to respond to the Scrutiny Committees' requests for information and to arrange debates in advance of consideration by the Council.

### 5.4 Scottish Parliament<sup>11</sup>

The Scottish Parliament has a European and External Relations Committee. The remit of the Committee is to consider and report on-

- a) proposals for European Communities legislation;
- b) the implementation of European Communities legislation;
- c) any European Communities or European Union issue;
- d) the development and implementation of the Scottish Administration's links with countries and territories outside Scotland, the European Communities (and their institutions) and other international organisations; and
- e) co-ordination of the international activities of the Scottish Administration.

The Scottish Parliament developed a 'European Union Strategy' setting out the approach for the Scottish Parliament in its future European engagement and scrutiny. The strategy is based on the

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<sup>11</sup> European and External Relations Committee Report 'A European Union Strategy for the Scottish Parliament: Recommendations from the Inquiry into the Impact of the Treaty of Lisbon on Scotland', December 2010

conclusions and recommendations contained in the European and External Relations Committee's (EERC) report on the implications of the introduction of the Treaty of Lisbon for Scotland (published in June 2010). The EERC considered that a parliament-wide EU strategy was necessary in order to respond to the changes introduced by the Treaty of Lisbon (i.e. the extended and new competencies, the institutional and procedural changes and the Protocol on subsidiarity).

In summary, the EERC report recommended that the Scottish Parliament develop a European Union strategy for engagement and scrutiny that:

- Defines the parliamentary objectives and priorities in relation to EU engagement and scrutiny,
- Sets out the roles and responsibilities of Parliament as a whole, the parliamentary committees and the Parliament's office in Brussels,
- Identifies the need to develop relationships with external bodies, and
- Details the processes and mechanisms required for effective scrutiny.

The European Union Strategy sets out the roles and responsibilities of the committees as follows;

#### **European and External Relations Committee (EERC)**

The EERC oversees and co-ordinates European relations as a whole, horizon-scanning on behalf of the Parliament, acting as an informed and competent conduit for the subject committees and, where necessary and possible, acting as a safety net in consideration of specific issues by taking on specific tasks where, for example, the work load of a subject committee does not permit examination of that issue. The Committee is responsible for developing, monitoring, reviewing and updating the Scottish Parliament's European strategy and approach to engagement.

In addition, the functions of the Committee are to:

- hold an evidence session with the ambassador to the UK of each country that holds the EU Presidency,
- hold an evidence session with Scotland's MEPs every six months, and
- undertake inquiries on European issues of general interest to the whole Parliament such as the EU Budget Review and Europe 2020.

The EERC produces an annual report, on behalf of Parliament, outlining the EU related engagement being undertaken by the Parliament. This report includes contributions from each of the Parliament's subject committees.

#### **Subject committees**

A deeper engagement with Europe by the subject committees is vital in implementing the Parliament-wide European Union strategy. The active scrutiny role primarily rests with the subject committees, which they do under their own volition (by prioritising issues, initiating research, conducting inquiries etc.).

To reflect the importance of the new scrutiny role, the remits of the subject committees have been amended to include a commitment to reflect Standing Order rule 6.2 - 'Functions of all Committees'. EU reporters have been appointed for each subject committee, and they are responsible for promoting and speaking to European issues on their committee and highlighting the European

dimension in policy debates. The EU reporters act as conduits between the EERC and their own committee.

All subject committee reports and inquiries should consider any possible EU dimension and any committee which produces a report which has resonance with the EU or an ongoing EU issue should submit the report to the appropriate EU institutions directly.

## 5.5 National Assembly for Wales

At the commencement of the fourth Assembly in April 2011, the National Assembly for Wales undertook a review of committee structures and as part of this review, took a decision to mainstream European affairs across the work of all committees, rather than having a dedicated European Committee. This was a significant change for the Assembly as previously, all EU matters were dealt with by a European and External Affairs Committee with a remit to *“consider and report on any matters relevant to the exercise by the First Minister, Welsh Ministers, the Counsel General or the Assembly of any of their functions relating to the European Union or external affairs.”*

As a result of the review of committee structures, a relatively small number of subject-based committees were established which would undertake both policy and legislative work.

With regard to European issues, the five thematic policy/legislation committees now take the lead on European issues falling within their remit. In addition, the Constitutional and Legislative Affairs Committee is responsible for subsidiarity monitoring checks.

The thematic committees have undertaken a number of inquiries into key European policy and funding issues for Wales as well as including a ‘European dimension’ in other inquiries.

In June 2012, the Business Committee carried out a review of the new committee structures including the mainstreaming of European affairs and has deemed this approach to be successful and agreed to retain this approach at the National Assembly for Wales.

## 5.6 Houses of the Oireachtas

In 1995 the Oireachtas Joint Committee on EU Affairs was established to examine all aspects of European policy. A Sub Committee on EU Scrutiny was also established to examine legislation. Matters warranting further scrutiny were referred onwards to one of the sectoral committees.

The current mainstreaming model was introduced in September 2011. The Joint Committee on European affairs continues to examine strategic European issues however the Sub Committee on EU Scrutiny has been discontinued. The sectoral committees examine all European issues within their remit including legislation.

The European Union (Scrutiny) Act 2002 established the legislative basis for the EU scrutiny process in the Houses of the Oireachtas. The Act enables the Houses of the Oireachtas or Oireachtas committees to make recommendations to Ministers on proposed EU measures which Ministers are legally obliged to take into consideration.

The Act places a statutory obligation on Government departments to inform the Oireachtas of draft EU measures. The Act states that Ministers must—

- forward to the Oireachtas each draft EU legislative measure published by the European Commission;
- forward an Oireachtas Scrutiny Information Note (OSIN) with each draft EU legislative measure outlining the content, purpose and likely implications for Ireland of the proposed measure;
- submit reports to the Oireachtas every six months giving details of proposed measures and other developments in relation to the European Communities and the European Union ;
- and have regard to recommendations contained in reports of committees.

Although not specifically within the scope of the Act, Government departments in practice also supply Oireachtas Scrutiny Information Notes on Green and White Papers and Council decisions.

The Oireachtas also has a general oversight role in respect of EU matters and the Government's interaction with the European Union. This means it has to be informed of matters which are under consideration at meetings of the Council of Ministers by—

- being briefed by the relevant Minister in relation to the agenda of upcoming Council meetings and the outcome of meetings.
- having debates in the Dáil following meetings of the European Council, which provides for statements by the Taoiseach and the Opposition leaders followed by a question and answer session.

The Joint Oireachtas Committee on European Affairs has been briefed on a regular basis by the Minister of State for European Affairs in advance of all meetings of the General Affairs Council meetings. This type of briefing is important for both National Parliaments and for the success of the Council meetings because it allows for input by the National Parliaments into the formulation of policies.

In addition to the monitoring of meetings of the Council of Ministers and the European Council, the Joint Committee on European Affairs considers a wide range of wider EU strategy, including the Commission's policy planning documents and overarching policy initiatives.

In addition to consideration of EU legislative proposals, the role of the committees in relation to EU Affairs includes consideration of proposals for national primary legislation or Statutory Instruments (S.I.s) to implement EU Directives. The Programme for Government 2011 proposes that the Regulatory Impact Assessments prepared by Government departments on all EU Directives and significant Regulations be forwarded automatically to the relevant sectoral Oireachtas committees.

The Joint Committee on European Union Affairs has a specific role for such S.I.s and may recommend to the Houses of the Oireachtas that a Regulation be annulled.

## 6. European Issues and the Northern Ireland Executive

The aforementioned Memorandum of Understanding and the Concordat on Co-ordination of European Policy Issues has informed the development of the Northern Ireland Executive's own structures and mechanisms for European affairs.

Responsibility for European affairs lies with the Office of the First Minister and deputy First Minister (OFMDFM). A European Division operates within OFMDFM comprising the European Policy and Co-ordination Unit (EPCU) based in Belfast and the Office of the Northern Ireland Executive in Brussels (ONIEB).

The role of EPCU is described as:

EPCU provides a central policy and co-ordination role in relation to the European Union (EU). It helps Northern Ireland fulfil its EU responsibilities and develop a positive approach to participation in the European Union. This involves:

- Leading on the development of the Executive Committee's strategic approach to Europe.
- Maintaining effective liaison arrangements with Whitehall, the Scottish and Welsh devolved administrations, the Irish Department of Foreign Affairs, the Department of the Taoiseach and across NICS departments on European matters.
- Monitoring the transposition of European directives.

The Office of the Northern Ireland Executive in Brussels (ONIEB), which opened in 2001, is a Northern Ireland Civil Service office based in Brussels. Along with the EU offices of the Scottish Government and the Welsh Assembly Government, the Office of the Northern Ireland Executive in Brussels operates under the umbrella of the UK Permanent Representation to the European Union (UKRep).

Invest Northern Ireland, Northern Ireland's regional economic development agency, also has two consultants based in ONIEB.

The fundamental vision of ONIEB is to help Northern Ireland better engage in the European Union.

The three strategic priorities of the office are:

- To support Northern Ireland's engagement with the EU.
- To ensure that Northern Ireland has the opportunity to engage in policymaking with the EU Institutions.
- To raise the positive profile of Northern Ireland.

The Northern Ireland Executive produces a 'European Priorities' document every year which sets out the Executive's plans to strengthen European engagement, influence future policy and build a positive profile for Northern Ireland.

The Executive's priorities for Northern Ireland for 2012-13 continue to focus on the four priority thematic policy areas identified in the European Priorities 2011-12 document, namely



- Competitiveness and Employment;
- Innovation and Technology;
- Climate Change and Energy; and
- Social Cohesion.

These priority thematic areas reflect the European Union's Europe 2020 Strategy which is the EU's ten-year growth strategy. Europe 2020 has five key objectives in the areas of employment; education; research and innovation; social inclusion and poverty reduction; and climate and energy. Each Member State has adopted its own national targets in these areas.

The Executive's European Priorities documents details the key aims, EU policies, networks, funding streams and objectives within each thematic priority area. An Implementation Plan is also published each year which provides further details on the attainment of the objectives contained within the European Priorities document including the relevant responsible Executive departments.

The Programme for Government 2011-15 also includes a target for the Executive to increase drawdown of competitive (i.e. non –structural funds) by 20% over the period. The task of increasing the drawdown of competitive funds falls to each individual department and the measuring and reporting of progress against the targets to the Executive is performed by EPCU.

OFMDFM provides a synopsis of discussions to the Committee for OFMDFM following every meeting of the Joint Ministerial Council on Europe.

## 6.1 Barroso Task Force

The President of the European Commission, José Manuel Barroso announced a European Commission Task Force for Northern Ireland on 1 May 2007. This inaugural task force for a specific region in the EU was created in order to support the peace process, with particular emphasis on how to support Northern Ireland in its efforts to improve its economic competitiveness and to create sustainable employment. The Task Force comprises a group of representatives from the European Commission working with officials from the Northern Ireland Executive departments to strengthen European engagement. The vision for the Task Force was:

*“The NITF represents, in effect, a new and closer partnership between Northern Ireland and the Commission services as the region's long period as major recipient of European regional aid is gradually phased out, and where it will increasingly rely on its own resources.”<sup>12</sup>*

In April 2008, the European Commission produced a report on the Northern Ireland Task Force which examined performance to date and included suggestions and recommendations for future activity. In response, the Northern Ireland Executive produced an Action Plan for 2008-09 setting out the European policy and programme priorities. The Executive now produces an annual European Priorities document.

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<sup>12</sup> Communication from the Commission to the Council and to the European Parliament on the Report of the Northern Ireland Task Force, April 2008

In 2011, President Barroso announced the continuation of the work of the Northern Ireland Task Force in aligning the priorities of Northern Ireland with the priorities at EU level and linking them with the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth.

The Task Force continues in both Brussels and Belfast – in Brussels through the Commission Task Force members and the Barroso desk officers (see below) and in Belfast through a Barroso Task Force Working Group (BTWG) and four thematic sub-groups.

The BTWG is chaired by Junior Ministers Bell and McCann and leads on implementation of the Executive's 2012-13 European Priorities. The group comprises Senior Civil Service representatives from each Executive department and has the objectives of:

- Participation in EU policy development to benefit the region;
- Engagement in European networks, allowing us to benchmark our performance and learn from best practice across Europe in the delivery of services to citizens and businesses; and
- Drawdown of resource from competitive EU funding programmes, strengthening our economy and delivering competitive advantage for our businesses.

BTWG has also established four policy sub groups with a focus on each of the thematic priority areas. In addition, a Human Resources Sub-Group oversees and supports secondments and placements of NICS staff in Brussels institutions as well as development of enhanced EU training for NICS staff and a Finance sub-group to facilitate delivery of the 20% increased drawdown of competitive funds target.

## **6.2 Barroso Desk Officers**

To support the Executive in work on the four thematic priority areas defined in the European Priorities 2012-13 document, i.e. Competitiveness and Employment; Innovation and Technology; Climate Change and Energy; and Social Cohesion, four desk officers were appointed in March 2012, focusing on influencing and building Northern Ireland's profile in each of the thematic priorities.

### **Main Duties/Responsibilities**

- Identify funding opportunities and facilitate the application process to maximise the potential for success to Northern Ireland;
- Develop a network of contacts with key EU officials, the other Devolved Administrations and other Permanent Representations in Brussels to advance the engagement and interaction of Northern Ireland in these networks;
- Liaise with the relevant Desk Officers in the European Commission, the UK Rep other Devolved Representations, and the Irish Permanent Representation on relevant areas of policy;
- Suggest policy priorities based on knowledge gained;
- Prepare regular updates for the heads of the Thematic Groups and the Permanent Secretary Group (PSG) on developing policies and events within the Commission in regard to the 4 priority Themes;

- Draft work programmes and strategic documents in support of the Barroso Task Force Working Group and Thematic Priority Groups;
- Contribute to the development of a wide range of emerging European policies of the NI departments;
- Carry out analytical work to support the development of policy options;
- Work with relevant policy leads in NI departments to assist them in developing their strategy and action plans to take forward “Winning in Europe” and maximise the drawdown of EU funds;
- Analyse and assess information and data to support the development of policy options in the relevant policy field
- Extract and disseminate best practice and facilitate exchange of experiences;
- Study results of stakeholder consultations and refer these to the appropriate Northern Ireland official;
- Attend, if appropriate, meetings with regions/EU Member States
- Examine and follow-up programmes prepared by EU regions/Member States;
- Provide information and advice as appropriate to the relevant Northern Ireland official for replies to correspondence on matters relevant to their specific area of European policy responsibility.<sup>13</sup>

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<sup>13</sup> EU 68/11 - Job Description for Desk Officer (Northern Ireland) – based in Brussels

## 7. Current structures for scrutiny of EU affairs

The model of European scrutiny in the Assembly is that OFMDFM Committee, as an intrinsic element of its statutory duty to scrutinise OFMDFM, leads on European affairs at the Assembly.

Policy and legislative European issues are broadly mainstreamed at the Assembly, that is, statutory committees undertake some level of policy specific European scrutiny, dependent on the committee remit.

Some committees have been more involved in European affairs than others, largely as a result of the committee remits.

Currently the European activity undertaken by statutory committees is done on an ad hoc basis and issue by issue basis so there is limited ability for committees to work together on cross cutting European issues which are relevant to more than one committee. This could prevent comprehensive scrutiny of a broad strategic area and can potentially result in duplication of time and effort.

In its inquiry into Consideration of European Issues, the Committee for OFMDFM recommended that *“The Assembly’s statutory committees will be responsible for the scrutiny of all European issues of relevance to the committee. In the autumn of each year statutory committees will be requested to provide a report of activity on European issues to the Committee for OFMDFM. The Committee for OFMDFM will formulate all contributions into one report to the Assembly which will be submitted to the Business committee for Plenary debate.”*<sup>14</sup>

This report and attendant debate have happened twice to date.

In June 2011, the Committee established a European Advisory Panel to help to inform consideration of European issues by committees and by the Assembly. The panel comprises Northern Ireland's three MEPs, our representatives on the European Economic and Social Committee and the Committee of the Regions, as well as officials from the EU Commission office in Belfast, the Executive's office in Brussels and local government. Chairs of statutory committees were also invited when the subject of the panel meeting related to their committee work.

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<sup>14</sup> Committee of the Office of the First Minister and deputy First Minister report on ‘Inquiry into Consideration of European Issues’, January 2010

## 8. Proviso

There are some conditions attached to Assembly scrutiny of European affairs which should be borne in mind when considering how best the Assembly can be effective in European engagement.

### 8.1 Member State vs. region

International relations with the European Union are a reserved matter and therefore the responsibility of the UK Government and UK Parliament. The UK Government however has given a commitment to involve the devolved administrations in the formulation of the UK policy position on EU matters which touch on devolved matters.

This commitment has the caveat that European engagement must take place without compromising the position of the UK Permanent Representation (UKRep) to the European Union which has primary responsibility for promoting and negotiating agreed UK policy positions with the EU Institutions.

### 8.2 Upstream engagement

Effective European engagement is a complex and inexact science. There are myriad organisations based in Brussels and throughout the European Union endeavouring to effectively engage in Europe to further industry, local, regional or national interests. There are 262 permanent regional representations in Brussels, all seeking to promote the interests of their localities. From national and regional governments and parliaments, to local authorities, interest groups and paid lobbyists, the resources - in financial, people and time terms - required to effect amendments to European proposals cannot be underestimated.

The key for all those engaged in lobbying in any form is 'upstream engagement', a term coined to describe involvement in the development of a policy or legislative proposal at the earliest stage, preferably in advance of any written document being issued by the European institutions.

A telling comment from one of the interviewees for this project was that *'those who engage in effective upstream engagement are the most anonymous – if you have effectively amended a proposal before it is fully developed no one will ever know'*.

The importance of 'intelligence' in this upstream engagement is obvious. The informal conversations and off the record discussions which take place outside the formal channels are the key to development of this intelligence. The challenge of upstream engagement is one faced by large multinational organisations and national governments alike who have significant resources at their disposal to tackle this issue. Hence the reasons why so many groups spend millions of Euro every year in having key personnel working in Brussels

The ability of the Assembly to engage in upstream engagement and intelligence with a very small team of Secretariat staff focusing on European issues, even if that team were based in Brussels, is extremely limited. Therefore it is important that the expectations of the Assembly are matched to the evidence from other key players about what can realistically be achieved even with substantial resource commitment.

The role of statutory committees in the Assembly<sup>15</sup> is to scrutinise how Executive departments are tackling upstream engagement rather than necessarily seeking to engage in upstream policy or legislative influence themselves. That said, should an opportunity arise for upstream engagement as a result of information gathered through networks, committees can of course act accordingly.

### **8.3 European Funding**

Northern Ireland has benefited significantly from European funds in the past and indeed was the recipient of a Structural Funds programme, PEACE, specifically targeted at supporting the region in emerging from conflict.

Perhaps inevitably, when considering European affairs, initial thoughts are in relation to European funding. As a legislature, the Assembly and its committees do not draw down funding but rather the facilitation of drawdown is an area of departmental activity which committees may wish to scrutinise and, where appropriate, challenge.

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<sup>15</sup> Good Friday Agreement 1998, Section 9 and Northern Ireland Act 1998, Section 29

## 9. The Role of the Assembly in European Scrutiny

Whichever model of European scrutiny is chosen, it is important that there is clarity about the objective of the Assembly's engagement in European affairs and specifically the roles of committees. While the methods of engagement may be different, we can draw some comparisons between the role of national parliaments and the role of regional legislatures such as the Assembly in influencing European affairs.

A report 'Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny' prepared by COSAC (Conference of Parliamentary Committees for Union Affairs) and presented to the Conference of Community and European Affairs Committees of Parliaments of the European Union states:

*"An assessment of the influence of national parliaments in EU policy is difficult to make. There are nevertheless a few generally accepted elements when assessing influence. Early starters have greater possibilities to influence decisions—both on the national and the EU level. There is a clear and relatively recent tendency among national parliaments to focus more attention than before on the pre-legislative phase of EU decision-making.*

*Most national parliaments concentrate their scrutiny efforts on the national level (i.e. controlling their governments); irrespective of the scrutiny model they follow.*

*Some parliaments engage the European Commission during its consultations and in relation to the application of subsidiarity and proportionality principles. Several national parliaments mention the Commission's initiative of direct communication with national parliaments as a welcome development that has also had some positive spill-over effects on national scrutiny systems.*

*Only a couple of national parliaments appear to be trying proactively to influence decisions at the national or the EU level. National parliaments—even those with power to influence decisions—seem to be quite reactive in their approaches to policy formulation."*<sup>16</sup>

Therefore an important point to be reiterated is that the primary role of the Assembly committees in European affairs is to scrutinise the approach taken by the Northern Ireland Executive in European affairs. It should be said that there will of course be issues on which Assembly committees wish to support the Executive in presenting a strong regional voice on a particular issue in Europe but the statutory role of committees is clear with regard to scrutiny.

Scrutiny of the Northern Ireland Executive will include both policy and legislative scrutiny and can include committee scrutiny of the respective department's performance in relation to European related Programme for Government targets, for example, the current target for 20% increase in the drawdown of competitive (i.e. non-structural) funds from Europe.

In addition to the scrutiny role, there is the question of exerting influence. It must be borne in mind that relations with the European Union are the responsibility of the UK Parliament and Government, as Member State. The United Kingdom Parliament retains authority to legislate on any issue,

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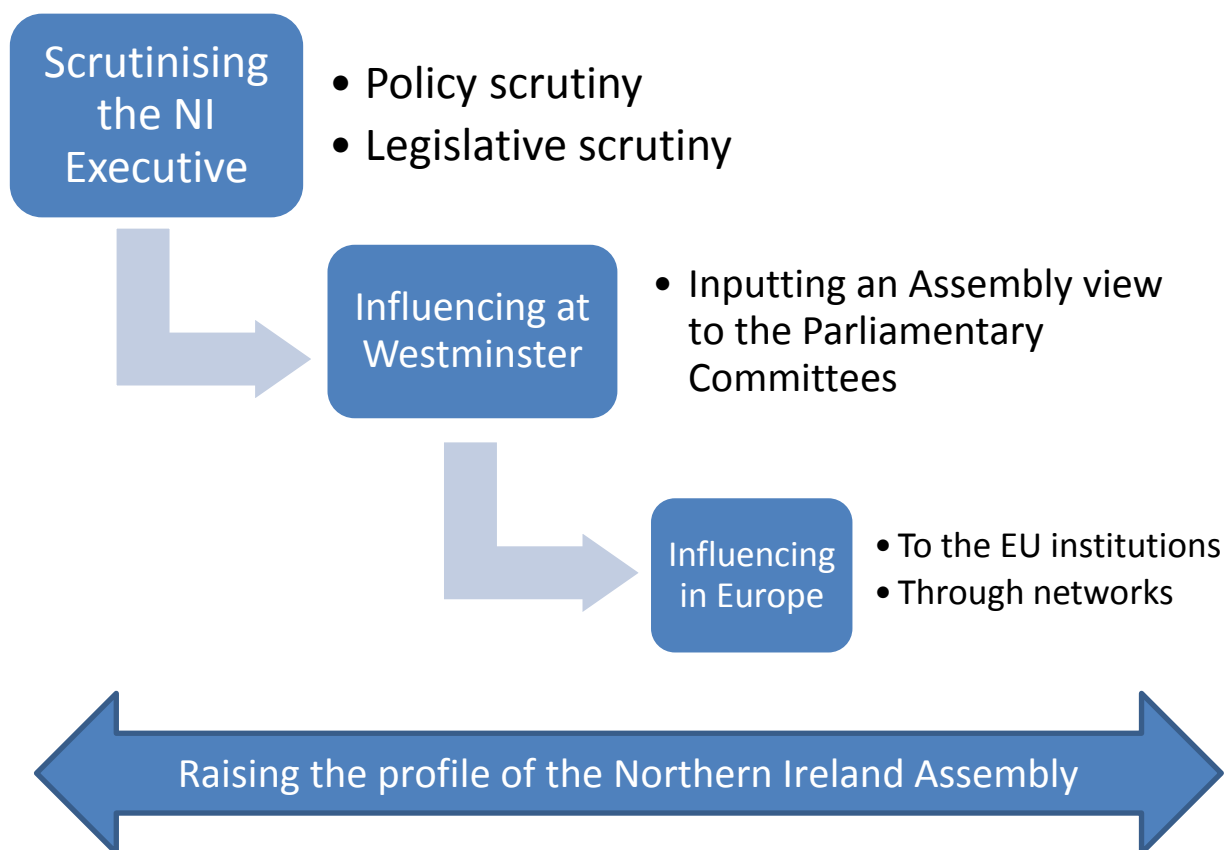
<sup>16</sup> 'Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny' prepared by COSAC, October 2007

whether devolved or not. It is ultimately for Parliament to decide what use to make of that power.<sup>17</sup> Therefore, the primary means of ensuring that Northern Ireland view is taken on board should be via the UK Parliament committees.

The secondary means of influence could then be seen to be the European institutions. Engagement with these institutions can be addressed through a variety of avenues and this is explored in more detail later in this report.

The Assembly also has a wider role in promoting Northern Ireland generally to the European institutions and key stakeholders in seeking to promote local interests. This is achieved through formal and informal networks and through the Northern Ireland representatives in Europe.

### Assembly committee engagement in European affairs (in priority order)



#### Recommendation 1

**Clarity of the role of Assembly committees in European engagement should be emphasised. For example, in determining potential action on specific legislative or policy proposals, the priority routes of engagement as above should form the basis of any future EU strategy.**

<sup>17</sup> Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, March 2010



## 10. Avenues of Influence

### 10.1 UK Government and Parliament

As detailed earlier, research has shown that most parliaments concentrate their scrutiny efforts on influencing the government. In the case of Northern Ireland, ultimately it is the UK Government which determines the overall UK negotiating position when dealing with the European institutions.

Therefore, the conveyance of Northern Ireland's interests to the UK Government and Parliaments is an essential element in the process of influencing European policy.

Northern Ireland Executive departments engage with counterparts in Whitehall in the creation of a UK position on any particular policy which touches on a devolved competence.

#### Recommendation 2

**A 'Best Practice' committee approach to EU scrutiny could be drawn up and approved by the Chairpersons' Liaison Group. One part of this could be that, as part of their ongoing scrutiny of the Executive, Committees may wish to seek information from respective departments on what interaction with UK Government departments has taken place regarding particular policies or legislation. Committees may also wish to scrutinise if liaison has taken place at the formative stages of development of the UK Government position.**

In scrutinising UK Government Explanatory Memoranda on European documents, Assembly committees should forward any views on the proportionality or subsidiarity of European proposals to the relevant committees in the UK Houses of Parliament. These committees have already expressed their commitment to considering and referencing the views of the committees of the devolved institutions in their work.

Each of the six sub committees of the European Union Committee at the House of Lords selects a few key proposals each year to examine in-depth via committee inquiries and take evidence in the same way as other parliamentary committees. The UK Government must respond to each report and most reports are also debated.

#### Recommendation 3

**As part of the 'best practice' approach described above, Assembly committees should actively seek opportunities to feed into the European scrutiny processes at the House of Commons and the House of Lords through contribution of views on the proportionality or subsidiarity of European proposals. Committees should also seek opportunities to feed into any relevant inquiry work being undertaken by Sub committees of the European Union Committee of the House of Lords.**

## 10.2 European Parliament

The European Parliament is the only directly elected body of the European Union. Most of Parliament's in-depth work is done in specialised committees that prepare reports that will later be voted on in the plenary. There are 20 parliament committees which meet in public, once or twice a month in Brussels. The committees draw up, amend and adopt legislative proposals and own-initiative reports. They consider Commission and Council proposals and, where necessary, draw up reports to be presented to the plenary assembly.

Under the 'ordinary legislative procedure' (formerly co-decision) mechanism introduced by the Lisbon Treaty, the European Parliament is now on an equal footing with the Council of Ministers in deciding upon the vast majority of EU legislation. The Parliament also decides on the entire European Union budget with the Council.

The Lisbon Treaty also placed a greater emphasis on the role of national Parliaments in EU affairs. While there is no direct reference to the role of regional parliaments such as the Northern Ireland Assembly, there is a clear opportunity for greater 'legislature to legislature' communication.

There are 754 Members of the European Parliament (MEPs). The UK delegation has 73 MEPs and the Irish delegation has 12 MEPs.

Once elected, the Members of the European Parliament are grouped by political affinity and not by nationality. They exercise their mandate in an independent fashion and are not accountable to the Northern Ireland Assembly.

Northern Ireland has 3 MEPs as detailed below in alphabetical order:

- Martina Anderson
  - Member of the Confederal Group of the European United Left - Nordic Green Left
  - Member of the Committee on the Environment, Public Health and Food Safety
  - Delegation to the EU-Croatia Joint Parliamentary Committee
  - Substitute member of the Committee on Regional Development and the Delegation for relations with the Palestinian Legislative Council
- Diane Dodds
  - Non-attached member (i.e. not a member of any political grouping)
  - Member of the Committee on Agriculture and Rural Development
  - Delegation for relations with Israel
  - Substitute member of the Committee on Fisheries
- Jim Nicholson
  - Member of the European Conservatives and Reformists Group
  - Vice Chair of the Delegation to the ACP (Africa Caribbean Pacific)-EU Joint Parliamentary Assembly
  - Member of the Committee on Agriculture and Rural Development
  - Substitute Member of the Committee on the Environment, Public Health and Food Safety

- Substitute Member of the Committee on Regional Development
- Substitute Member of the Special Committee on organised crime, corruption and money laundering
- Substitute Member of the Delegation for relations with the countries of South Asia

Currently the Committee for OFMDFM schedules briefing sessions with the MEPs as well as inviting them to meetings of the Assembly EU Advisory Panel (see Section 12.2). Attendance by all three MEPs at one session has proved difficult to arrange given scheduling issues. There has been one evidence session with the Committee during this mandate which two MEPs attended. In addition, views from MEPs were that given the wide range of stakeholders in attendance at the Advisory Panel meetings, MEPs were not afforded sufficient time to provide in-depth updates on relevant issues.

#### **Recommendation 4**

**A quarterly or biannual briefing from MEPs should be arranged to provide a platform solely for MEPs to brief committees or committee Chairpersons on activity at the European Parliament and for Assembly committees to feedback to MEPs on any relevant work undertaken.**

The schedules for MEPs do not easily align with meetings of Assembly committees therefore careful consideration should be given to scheduling of these briefing sessions in advance to facilitate attendance of all MEPs and to provide maximum value for the session.

#### **Recommendation 5**

**As part of the ‘best practice’ approach outlined above, any Assembly committee undertaking a work stream with a European focus should consider, where appropriate, seeking a view from the Northern Ireland MEPs. Committees should forward a copy of the report to the Northern Ireland MEPs in order to ensure that the Assembly viewpoint is communicated and also as a means of keeping the MEPs informed of Assembly activity.**

#### **Recommendation 6**

**Chairpersons may also wish to consider greater levels of legislature to legislature communications – that is, communications from the Northern Ireland Assembly directly to European Parliament committee Rapporteurs who have responsibility for drafting committee reports and amendments to European Commission proposals. There is a view that generally, connections with committee rapporteurs rather than committees themselves will be more effective in inputting a regional viewpoint. Colleagues in the National Assembly for Wales have drafted suggested amendments to Commission proposals and forwarded these amendments to European Parliament Rapporteurs and Welsh MEPs.**

#### **Recommendation 7**

**Similarly, subsidiarity and/or proportionality concerns with a legislative or policy proposal should be communicated to the Northern Ireland MEPs. While the concerns may or may not be relevant to a committee of which a Northern Ireland MEP is a member, there may be opportunities for local MEPs to communicate any Northern Ireland Assembly view to colleagues who do sit on the particular committees examining a proposal.**

#### **Recommendation 8**

Consideration should be given to an annual 'Northern Ireland in Europe' event, possibly under the auspices of the Speaker or the Committee for OFMDFM, to which the MEPs, representatives from the Committee of the Regions and European Economic and Social Committees and all committee Chairpersons are invited. This informal event should allow for some element of briefing from the Northern Ireland representatives in Europe and then discussions with committee Chairpersons. Such an event would foster a link between the Assembly Chairpersons and the NI representatives in Europe for mutual exchange of information.

### 10.3 Committee of the Regions

The Committee of the Regions (CoR) comprises 344 members who are elected representatives of regional and local authorities across all Member States. As well as meeting in plenary session, CoR meets in 6 ‘commissions’ similar to committees which cover a range of policy areas. Since the Treaty of Lisbon entered into force, the Committee of the Regions now has to be consulted throughout the EU legislative process on a number of policy areas. CoR adopts recommendations on draft legislation, but it also acts upstream at the earliest stages by proposing new policy approaches drawn from local and regional experience and expertise.

The members of the Committee of the Regions have formed groups which reflect their political affiliations and each group has its own secretariat. The groups generally meet in advance of plenary sessions to agree common positions. Members can also choose to be non-aligned, i.e. sit independently of the political groupings. Political groups in CoR have become increasingly significant in terms of internal organisation of work because rapporteurships and speaking time are usually distributed according to party size.

Each Member State has a national delegation for Committee of the Regions. All UK members of the CoR are elected politicians representing local authorities or the devolved bodies of Scotland, Wales, Northern Ireland and London. The Local Government Association (LGA) is the secretariat to the UK Delegation to the CoR. The secretariat coordinates briefings for members attending meetings; gives feedback to local authorities on CoR developments and Opinions; and promotes the work of the Delegation both within the UK and throughout the EU.

Although the UK Delegation is formally nominated by the UK Government, proposals for membership are made by devolved legislatures including the Assembly (in consultation with the Northern Ireland Local Government Association). Although the CoR grants each full member two commission places and none to alternates, under an informal arrangement within the UK Delegation each of the 24 full and 24 alternate members is allocated a seat on a CoR commission so that they can become rapporteurs, move amendments, and debate in meetings – these are known as “permanent alternates”. Members *‘may not be bound by any mandatory instructions and shall be completely independent in the performance of their duties, in the general interest of the (European) Union’*<sup>18</sup>. Members therefore are not accountable to the Assembly and cannot be provided with any direction or guidance of a political nature.

Currently Northern Ireland has 2 full members and 2 alternates – one each from the Assembly and local government.

- Trevor Cummings (Northern Ireland Local Government Association)
  - Member of the Commission for Natural Resources
  - Member of the Commission for Territorial Cohesion
  - Alternate member - Arnold Hatch
- Francie Molloy<sup>19</sup> (Northern Ireland Assembly) (replacement tba)
  - Member of the Commission for Environment, climate change and energy

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<sup>18</sup> Committee of the Regions Rules of Procedure, 2010

<sup>19</sup> Resigned as a Member of the Assembly 7 April 2013

- Member of the Commission for education, youth, culture and research
- Alternate member – John Dallat

Neither of the Northern Ireland full members is aligned to any of CoR's political groupings. With regard to previous comments, sitting independently has disadvantages in relation to speaking time and opportunities to be rapporteurs on opinions. Both alternate members are aligned to a political group.

The Committee of the Regions also plays a key role in subsidiarity monitoring through the Subsidiarity Monitoring Network and this is considered separately at page 74.

There is currently a lack of clarity around the support arrangements for the Northern Ireland Assembly representatives on the Committee of the Regions.

The report on the review of the European Division of the Office of the First Minister and deputy First Minister in September 2011 stated:

*"The Office also provides NI MEPs and our representatives on the Committee of the Regions and the European Economic and Social Committee with briefing on request on issues relevant to their areas of interest. This is an important role of the Office in that, with the co-decision responsibility of the European Parliament and the influential opinions of the Committee of the Regions and the European Economic and Social Committee, our representatives should be well briefed as far as possible."*<sup>20</sup>

However, evidence provided by the Northern Ireland Committee of the Regions representative Francie Molloy to the Committee for OFMDFM stated:

*"I have to say that there has been no big improvement in relation to the recognition, back-up or support that the Committee of the Regions gets..... My understanding was that a group was to be set up, which would be representative of the Executive, and that it would have some sort of idea of what lines and what role the Executive were following in relation to Europe and how they thought that would be of benefit, and that, within the Committee of the Regions, we could raise those issues. However, that has not happened to date, so there has been no improvement in that way."*<sup>21</sup>

As stated previously, the Members are independent so cannot be provided with any advice by departmental or Assembly officials on any policy area. The role of any support mechanism provided would be to provide a navigational rather than a directional role.

It is worth stating that in Scotland, a fee is paid for support to be provided to Scottish CoR members by the LGA. In the Republic of Ireland, support for CoR members is undertaken by the Government rather than the Oireachtas.

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<sup>20</sup> Review of the European Division of the Office of the First Minister and deputy First Minister, September 2011

<sup>21</sup> Official Report, 23 January 2013

#### **Recommendation 9**

**It is recommended that further clarification and confirmation be sought from the Northern Ireland Executive European Division on the support mechanisms for the Northern Ireland Committee of the Regions members.**

Given the specific consultation role on policy and draft legislation accorded to the Committee of the Regions by the Lisbon Treaty, there are clearly opportunities for Assembly committees to have input into the work of CoR.

#### **Recommendation 10**

**As part of developing the ‘best practice’ approach, consideration should be given to how Assembly committees should seek to respond where appropriate to Committee of the Regions consultations to ensure that the region specific views are expressed and included in the CoR response to any European Commission proposals. Such participation in CoR activities should be explored for opportunities to identify other European regions with similar interests or concerns on key proposals – again with a view to presenting a strengthened opinion to decision makers.**

#### **Recommendation 11**

**The Committee for OFMDFM may wish to consider how to ensure that a forum exists for quarterly or biannual briefings from the Northern Ireland representatives on the Committee of the Regions. Consideration should be given to the timing of these briefings dependent on the CoR work programme and relevant Commission or plenary sessions. The Committee may wish to seek an annual or biannual written briefing on the work of the Northern Ireland representatives on the Committee of the Regions in the preceding period – this is of course dependent upon the agreement of the representatives.**

#### **Recommendation 12**

**Similarly, as part of the ‘best practice’ approach, any Assembly committee undertaking a work stream with a European focus could consider, where appropriate, seeking a view from the Northern Ireland CoR representatives. Committees should forward a copy of the report to the Northern Ireland CoR representatives in order to ensure that the Assembly viewpoint is communicated and also as a means of keeping the CoR representatives informed of Assembly activity.**

The Assembly is a member of the CoR Subsidiarity Monitoring Network which provides the opportunity to exchange information with other regional legislatures on specific European proposals. To date, the Assembly has not contributed any correspondence to the Network.

#### **Recommendation 13**

**The Assembly should increase its contribution to the CoR Subsidiarity Monitoring Network in order that the specific regional view is expressed clearly through this channel. Any opinions on subsidiarity or proportionality issued by the Assembly should be uploaded to REGPEX (the regional parliamentary database for information exchange) in order to inform the considerations of other regional parliaments. A clear line of responsibility for communication with the Subsidiarity**

**Monitoring Network (and consequently the REGPEX system) should be defined within any future Secretariat resource for EU affairs.**



## 10.4 European Economic & Social Committee

The European Economic and Social Committee (EESC) is a consultative body of the European Union which represents civil society. It provides a formal platform for economic and social interest groups and representatives to express their points of view on EU issues. Consultation of the EESC by the Council or the Commission is mandatory in some cases, optional in others. The EESC may also adopt opinions on its own initiative. On average, the EESC delivers 170 advisory documents and opinions per year, of which about 15% are own initiative. These opinions are forwarded to the institutions of the European Union, i.e. the Council, the Commission and the European Parliament, and are published in the EU's Official Journal.

As well as meeting in plenary session, the EESC has six 'sections' (similar to committees) covering a range of competences. Study groups, with a lead rapporteur, within these sections draft the opinions. There are currently 344 members who are nominated by national governments and appointed by the Council of the EU for a renewable 5 year term. The members of EESC belong to one of three groups: Employers; Workers; or Various Interests.

The UK has 24 members of the EESC and Ireland has 9.

Northern Ireland has 2 representatives on the EESC.

- Jane Morrice
  - Recently elected Vice President of the EESC
  - Member of the Various Interests Group
  - Member of the Section for Transport, Energy, Infrastructure and the Information Society
  - Member of the Section for Employment, Social Affairs and Citizenship
  - Alternate member – Timothy Magowan
- Prof. Mike Smyth
  - Member of the Various Interests Group
  - Member of the Section for the Single Market, Production and Consumption
  - Member of the Section for Economic and Monetary Union and Economic and Social Cohesion
  - Alternate member – John Simpson

### Recommendation 14

**As part of the 'best practice' approach, any Assembly committee undertaking a work stream with a European focus should consider, where appropriate, seeking a view from the Northern Ireland EESC representatives. Committees should forward a copy of the report to the Northern Ireland EESC representatives in order to ensure that the Assembly viewpoint is communicated and also as a means of keeping the EESC representatives informed of Assembly activity.**

## 11. Process and Procedure

There are a number of key areas in which the Assembly could develop clearly defined processes which will enhance effective scrutiny of European issues. This would be in line with practice in the National Assembly for Wales and the Scottish Parliament, both of which have amended Standing Orders on the roles of committees in relation to European affairs as well as, in the case of the Scottish Parliament, to the wider Parliamentary responsibility in terms of engagement.

There were views from officials in other legislatures that amendments to Standing Orders not only provide clarity as to the respective roles of the legislatures and the committees in engagement in European affairs but also ensure that the level of importance attached to this engagement is transparent and understood by Members, Secretariat and the public.

### 11.1 Explanatory Memoranda

When a document is published by the European Union's institutions it is accompanied by an Explanatory Memorandum which details the context of the proposal, the European Union's competence in this policy area and any legal or budgetary implications. Each EU document must be formally deposited in the UK Parliament within two working days of its arrival in the Foreign and Commonwealth Office in London. About 1,000 'European Union (EU) documents' each year are deposited in Parliament.

Within **10 working days** of a document being deposited, the UK Government (i.e. a Minister from the lead department) is required to provide a brief to Parliament on that document's content and implications for the UK. This written brief is called an 'explanatory memorandum' or EM. An EM summarises the document, its legal, policy and financial implications and the likely timetable of its consideration by the Council of Ministers. This UK Government Explanatory Memorandum differs from the EU Explanatory Memorandum as it examines the document from a UK viewpoint.

Each UK Explanatory Memorandum has a section detailing where Ministerial responsibility lies. If the matter is devolved, the devolved administrations are consulted in the preparation of the EM. An example of a UK Explanatory Memorandum is contained in Appendix 4.

In Northern Ireland, the European Policy Co-ordination Unit (EPCU) in the Office of the First Minister and deputy First Minister receives requests for the completion of Explanatory Memorandums (EMs) directly from Cabinet Office. Procedures are in place at OFMDFM to ensure that those departments who declare an interest in EMs have the opportunity to provide comments from a Northern Ireland perspective.

## PROJECT SUCCESS

*As noted, OFMDFM does not provide copies of the UK Government Explanatory Memoranda (EMs) on European proposals to the Northern Ireland Assembly, even where those proposals touch on a devolved competence and the Northern Ireland Executive has been consulted.*

*As a result of building up effective working relationships with officials in the House of Commons, the European Project Manager secured agreement of officials to the European Scrutiny Committee to forward Government EMs to the Assembly upon receipt.*

*A dedicated email account for these EMs which can be accessed by Clerking and Research and Information Services staff, was established.*

*As a result, Assembly Committees now have the opportunity to scrutinise the UK view of EU proposals and where necessary, can contribute to the UK Parliamentary consideration of these documents in advance of agreement on the UK Government negotiation position at the Council of Ministers.*

In its 'Report on its Inquiry into Consideration of European Issues' in January 2010, the Committee for the Office of the First Minister and deputy First Minister made a recommendation that OFMDFM should highlight ....*"to the Committee all EMs which have particular relevance to Northern Ireland including any issues relating to subsidiarity and proportionality"*<sup>22</sup>. In response, OFMDFM stated that *"Explanatory Memoranda already contain statements on subsidiary and proportionality. The Assembly should receive these directly from Westminster Parliamentary sources"*.<sup>23</sup>

By way of comparison, the Scottish Government categorises each draft EU legislative proposal and EM according to their nature, colour coded red, amber or green depending on whether the proposal covers devolved matters, devolved and reserved matters or purely reserved matters. The Scottish Government then sends its list of the legislative proposals on a weekly basis – categorised as red, amber and green and by lead UK Government department along with a copy of each legislative proposal and accompanying EM to the Scottish Parliament European and External Relations Committee for consideration.

Scrutiny of Explanatory Memoranda represents an opportunity for Assembly committees to seek to ensure that any NI specific concerns are represented to the relevant UK Ministers prior to European level negotiations. This is achieved through timely communication with the House of Commons European Scrutiny Committee and the House of Lords European Union Committee and its sub-committees. The Houses of Parliament Committees welcome comments from the devolved regions and will reference the Northern Ireland Assembly committee view where appropriate in committee reports or communications with UK Ministers, including in supporting a Westminster committee decision not to clear a document from scrutiny and exercise the scrutiny reserve where there are significant concerns on a legislative proposal.

Since the establishment of the system of receiving and scrutinising UK Government Explanatory Memoranda a number of committees have presented a view to the Houses of Parliament Committees, for example, the Committee for

<sup>22</sup> Committee of the Office of the First Minister and deputy First Minister report on 'Inquiry into Consideration of European Issues', January 2010

<sup>23</sup> COR32/2010 Correspondence from OFMDFM– Response to EU Inquiry Report, June 2010

## PROJECT SUCCESS

*Following examination of a European proposal in relation to roadworthiness the European Project Manager identified areas of potential concern to Northern Ireland regarding the extension of vehicle testing to tractors and light trailers which would disproportionately affect the local economy as well as issues around the unique system of MOT testing in Northern Ireland. The Committee for the Environment was alerted.*

*Through liaison with networks, the European Project Manager secured a conference call for the Committee with Baroness O'Cathain, Chair of the House of Lords EU Sub Committee examining the proposals. She also conveyed the Committee's concerns to the House of Commons European Scrutiny Committee and the correspondence was included in the House of Commons report on the proposals (see Appendix 3)*

*The Committee's concerns were relayed to the UK Minister for Transport and informed the UK negotiation position. The concerns were subsequently largely addressed at the European Council Working Groups negotiations on the proposals.*

Culture, Arts and Leisure highlighted the Northern Ireland concerns in relation to a European proposal establishing measures for the recovery of the stock of European eel and the Committee for Environment has commented on Northern Ireland concerns in relation to a European proposal for a Directive on the assessment of the effects of certain public and private projects on the environment. The example opposite illustrates the positive outcomes of such engagement.

### **Northern Ireland Assembly input into scrutiny of Explanatory Memoranda**

In consideration of any European legislative or policy proposal and the attendant EM, the primary issues of concern will be in relation to the principles of proportionality and subsidiarity.

The principle of proportionality regulates the exercise of powers by the European Union. It seeks to set actions taken by the institutions of the Union within specified bounds. Under this rule, the involvement of the institutions must be limited to what is necessary to achieve the objectives of the Treaties. In other words, the content and form of the action must be in keeping with the aim pursued.

The principle of subsidiarity ensures that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at Union level is justified in light of the possibilities available at national, regional or local level. Specifically, it is the principle whereby the Union does not take action (except in the areas that fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level.

It should be remembered that most proposals are examined not on the basis of a single document at a specific point in the legislative process but at several different points as new documents are published. Scrutiny begins at an early stage, since the documents deposited include Commission consultation papers and Green and White Papers; they also include the Commission's Annual Policy Strategy and its Work Programme, which lists the proposals to be put forward in the following year. Early communication with the Westminster committees, for example at consultation or

Green or White paper stage can ensure that the NI view is conveyed at an early stage in the legislative process.

#### **Recommendation 15**

**Given the successful arrangements for receipt of UK Government Explanatory Memoranda on European proposals, further consideration should be given to drawing up a clear and defined mechanism for handling. This mechanism should be defined and agreed with Research and Information Service and Clerking Secretariat staff who will retain joint responsibility for bringing relevant European proposals and attendant Explanatory Memoranda to the attention of the appropriate statutory committees.**

Currently only Explanatory Memoranda which relate to a defined committee priority or raise a potential subsidiarity issue are forwarded to committee clerks. An alternative approach could be to utilise a priority list system where all Explanatory Memoranda within a statutory committee's remit are provided on a weekly basis to committee for information, with a priority A list of documents which are deemed most relevant and related to committee priorities and a priority B list of EMs to note only. In this way, committees will have sight of all relevant information but the prioritisation will allow for focused attention on specific items. As the familiarity of committees increases with EU scrutiny processes, it may be that these can be developed and tailored to changing members' expectations and expertise. Any consequent development needs for secretariat staff can be separately addressed.

#### **Recommendation 16**

**As part of the 'best practice' approach, Committees should be supported in forming a Northern Ireland view on specific proposals with input from stakeholders where relevant and in conveying that opinion to the Houses of Parliament European committees in advance of consideration of those proposals. In this way, the Northern Ireland view point will contribute directly to the scrutiny reserve resolution whereby the relevant UK Government Minister cannot agree a proposal at the European Council of Ministers without the clearance of the UK Parliamentary committees.**

The key to effective scrutiny of a policy or legislative proposal is the adoption of longitudinal approach – that is, examining European Commission communications, White Papers, Green Papers etc. and following the policy through the legislative process. In this way, a committee will not be blindsided by developments but rather will potentially have more than one opportunity to contribute to the wider considerations. However, it must be recognised that in the face of competing committee priorities, this early engagement must be a strategic decision for the committee.

#### **Recommendation 17**

**The best practice document should make it clear that committees endeavouring to undertake early engagement should seek to consider European proposals at consultation and Green or White paper stage in order to have input into the pre-legislative stage.**

## 11.2 Subsidiarity

The principle of subsidiarity is defined in Article 5 of the Treaty on European Union. Specifically, it is the principle whereby the European Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principle of proportionality, which requires that any action by the European Union should not go beyond what is necessary to achieve the objectives of the Treaty.

The Treaty of Lisbon represents an increased role for national parliaments, devolved parliaments with legislative powers and devolved governments and provides an opportunity for the parliaments of the devolved regions to challenge the competence of any EU legislative proposal which falls within an area of devolved interest. The Early Warning System provides an opportunity for parliaments to enhance their visibility as players in the decision as to whether an EU legislative proposal complies with the principle of subsidiarity.

The Early Warning System (EWS) is a procedure established by the Lisbon Treaty to enable national parliaments to carry out subsidiarity checks on draft EU legislative acts and possibly object to the draft on this ground. Within eight weeks from the date of transmission, they may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the subsidiarity principle. Each national parliament or each chamber of a national Parliament may, should this be deemed appropriate, consult regional parliaments with legislative powers. In other words, regional parliaments such as the Northern Ireland Assembly may be involved at an early stage of the EU legislative procedure to assess whether draft legislative acts comply with the subsidiarity principle.

There is no provision within the Early Warning System for regional parliaments to have a separate vote on subsidiarity concerns and therefore the devolved administrations must issue any opinions to the European committees at the House of Commons and/or House of Lords in order that this view may be incorporated into the final reports from the Parliamentary committees in advance of any plenary debate in either House.

Therefore, the consideration period for subsidiarity in reality will be less than eight weeks. The very limited time for consideration necessitates the development of a timely, streamlined and efficient process for subsidiarity monitoring at the Assembly.

For the devolved administrations, a subsidiarity concern may be raised in a number of ways:

- By alert from the regional Executive
- By alert from the House of Lords and/or House of Commons European Committees
- By alert from a devolved body or another national parliament (informally or formally through IPEX<sup>24</sup>, by the Committee of the Regions or some other external body
- In advance through examination of the European Commission's Work Programme
- At the sift of Explanatory Memoranda
- In the course of scrutiny

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<sup>24</sup> IPEX, the InterParliamentary EU information eXchange, is a platform for the mutual exchange of information between the national Parliaments and the European Parliament concerning issues related to the European Union, especially in light of the provisions of the Treaty of Lisbon.

In October 2008, the House of Commons European Scrutiny Committee concluded that; *‘the European Scrutiny committee would not be in a position to act on behalf of the devolved assemblies in spotting what — for them — might be objectionable proposals. It might not be apparent that a proposal contained objectionable material until the Explanatory Memorandum arrived or that a proposal contained material which was likely to be objectionable to one of the devolved Assemblies or Parliaments but not to others (for example, because there was a conflict with Scottish law but not with that of England and Wales). The Committee considers therefore that it:*

- *should place the onus on the devolved Assemblies or Parliaments to obtain draft legislation, vet it and tell the committee as quickly as possible if they have objections; and*
- *should invite the comments of the devolved Assemblies or Parliaments on the Committee’s drafts of opinions where the draft includes reference to a matter on which one or more devolved assemblies have expressed a view.*
- *If a devolved Assembly or Parliament were not ready to express its views until after the Committee’s Motion had been proposed, or if the Committee disagreed with the views, the Assembly or Parliament should be invited to send its views to the Committee for onward transmission to the Government.’<sup>25</sup>*

It should be noted that both the Scottish Parliament and the National Assembly for Wales make provisions within Standing Orders for scrutiny of draft European legislation with consideration to compliance with the principle of subsidiarity.

Both the Scottish Parliament and National Assembly for Wales have established a coordination mechanism with their respective regional executives. In Scotland, the Government sends a list of the legislative proposals and accompanying Explanatory Memoranda on which the Scottish Government has been consulted by the UK every week. In Wales, the Welsh Government forwards copies of the final Explanatory Memoranda containing the regional executive views on the proposals to the Assembly at the same time as the Explanatory Memoranda are sent back to the UK Government departments.

### House of Commons

The European Scrutiny Committee decides whether a proposal does not comply with the principle of subsidiarity and set out the reasons for this decision in a report. The Chairman, or another member of the Committee acting on behalf of the Committee, puts a motion to the effect that *‘in the opinion of this House, [the proposal] does not comply with the principle of reasons set out in the [First] Report of the European Scrutiny Committee’*. Not less than 5 and not more than 8 sitting days after the notice of the motion has been given; the government puts the motion on the Order Paper. The questions on the motion and any amendment to it which are selected are put to the House. If the motion is agreed to, the Speaker forwards the text of the resolution, together with a copy of the European Scrutiny Committee’s Report to the relevant EU institutions.

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<sup>25</sup> Thirty-third Report – Subsidiarity, National Parliaments and the Lisbon Treaty - House of Commons European Scrutiny Committee, October 2008



### House of Lords

The subsidiarity check is conducted by the European Union Committee or one of its sub-committees. The EU Committee sifts through the Government Explanatory Memoranda and associated documents to determine whether each document should be cleared or considered further by one of the Committee's sub-committees. That sub-committee then scrutinises the proposed EU legislation including an assessment of whether the principle of subsidiarity is complied with. If the Committee/sub-committee finds a breach of subsidiarity, it will present a draft report incorporating a 'reasoned opinion'.

### National Assembly for Wales

Subsidiarity issues are dealt with by the Assembly's Constitutional and Legislative Affairs Committee. Previously these went to the European & External Affairs Committee but that Committee is no longer in existence as scrutiny of European matters has been mainstreamed across all committees.

UK Government Explanatory Memoranda are reviewed by Research Officers for subsidiarity concerns and if noted, a Research paper is prepared for the Constitutional and Legislative Affairs Committee. These papers are also circulated to the Welsh Members of the European Parliament.

The Constitutional and Legislative Affairs Committee does not formally seek a view from the relevant thematic committee, however a policy advisor for the relevant topic does provide any additional information necessary to the Committee in its considerations.

In February 2012, the Assembly's Constitutional and Legislative Affairs Committee prepared a Subsidiarity Report on a Proposal for a Directive of the European Parliament and of the Council on Public Procurement. This followed consideration of the Explanatory Memorandum prepared by the UK Government for the Parliamentary Committees on European issues which highlighted concerns over subsidiarity. This report was fed into the European Committees at the Houses of Parliament and was also sent to the Subsidiarity Monitoring Network at the Committee of the Regions. In informal conversation with the Assembly's Head of EU Office in Brussels, it was revealed that the National Assembly for Wales also wrote directly to the European Commissioner responsible on the issue, having already advised the Houses of Parliament on this course of action. While the letter has no legal standing, the Assembly felt it was appropriate in order to highlight the Welsh view of the proposal.

### Scottish Parliament

The early warning system via parliamentary scrutiny of the European Commission's Work Programme and on-going discussion with the Scottish Government Europe Division enables the Scottish Parliament to identify particular Scottish subsidiarity concerns in any EU document at the earliest stage and begin consideration before the Explanatory Memorandum 8 week trigger. The Scottish Government will alert the Scottish Parliament immediately if it has subsidiarity concerns.

On a weekly basis the Parliament now receives from the Scottish Government each EU proposal and accompanying Explanatory Memorandum as one file accompanied by a tabular summary of all proposals flagged as devolved (red), partially devolved (amber) or reserved (green). This table identifies the policy area the proposal relates to and the lead policy officer in the Scottish Government. Papers on matters which are devolved, or partly devolved, within the remit of a subject committee are sent to the Clerk of that committee and to EU researcher. The clerk and the



researcher undertake the initial screening of documents on the basis of each committee's agreed priorities. Where a document is identified as a priority (or during the review it is clear that it may be of interest to the committee as it may be particularly relevant to the committee's work programme) the appropriate researcher will prepare a briefing note outlining the key elements of the proposal, significance in the Scottish context and options for engagement.

Whilst the overall time to respond to the European Commission from the date of publication of the document is eight weeks, the actual time for the Scottish Parliament to respond to Westminster committees will be considerably shorter and will vary depending on the respective timetable for consideration of and reporting on proposals in the Commons and Lords Committees. The time available to a committee of the Scottish Parliament to take evidence on a proposal and put down a motion to be debated in plenary may be a matter of days rather than weeks. The Clerk to the European and External Relations Committee (EERC) will make the initial contact with the European committees in the Lords and Commons and with the Scottish Government and the Solicitor to the Scottish Parliament and advise that there is a potential subsidiarity issue. The Clerk to the relevant subject committee is directly responsible for liaison and briefing on the proposal. As a matter of course, all reports on issues of subsidiarity will be sent directly to the Commission by the Clerk to the EERC.

For those proposals that have been flagged with subsidiarity concerns the relevant committee will need to come to a view as to whether it agrees with the subsidiarity concern. In doing so, the committee will seek a view from the Scottish Government and may wish to invite the relevant official or Minister to give evidence. The Solicitor to the Scottish Parliament reviews the Scottish Government evidence and prepares advice for the committee. The legal advice provided to a committee should not be published as a matter of course. The decision as to whether the advice should be placed in the public domain should be a matter for each committee on a case by case basis.

Where the committee wishes to raise concerns about the EU document/Explanatory Memorandum the committee will be required to report to Parliament. The report is likely to be very short (1 page) and will form the basis of a motion to the Parliament. Parliament will debate and agree (or otherwise) on a motion to transmit its views to Westminster (both the House of Lords European Scrutiny Committee and the House of Commons European Union Select Committee).

### **Northern Ireland Assembly**

Prior to the commencement of this project, the OFMDFM Committee was receiving subsidiarity alert notifications from the House of Lords EU Committee. These alerts were then forwarded to Assembly Legal Services and Research and Information Services. The Assembly had never issued any opinions on subsidiarity.

There was no communication from Executive departments on proposals which raised subsidiarity concerns. The process for dealing with Explanatory Memoranda in the Northern Ireland Executive is as follows:

- Cabinet Office circulates European documents to the lead Whitehall department (copied to the devolved administrations) and requests them to complete an Explanatory Memorandum ensuring the Devolved Administrations are consulted during the process.

- European Policy Co-ordination Unit (EPCU) at OFMDFM circulates this request to Northern Ireland department(s) to ascertain any departmental interests.
- EPCU confirms any interests to Whitehall and asks them to ensure that EPCU received a draft Explanatory Memorandum for comment.
- The draft Explanatory Memorandum is circulated to NI Executive departments where they will be given the opportunity to provide comments/input for inclusion in the Explanatory Memorandum.
- EPCU will circulate all final Explanatory Memoranda to those departments who declared an interest.

In order to create a defined process for subsidiarity monitoring at the Assembly to fulfil this important aspect of parliamentary European scrutiny it was vital that the committees should have sight of the UK Government Explanatory Memoranda on each EU proposal in order to consider the UK view of the subsidiarity impacts.

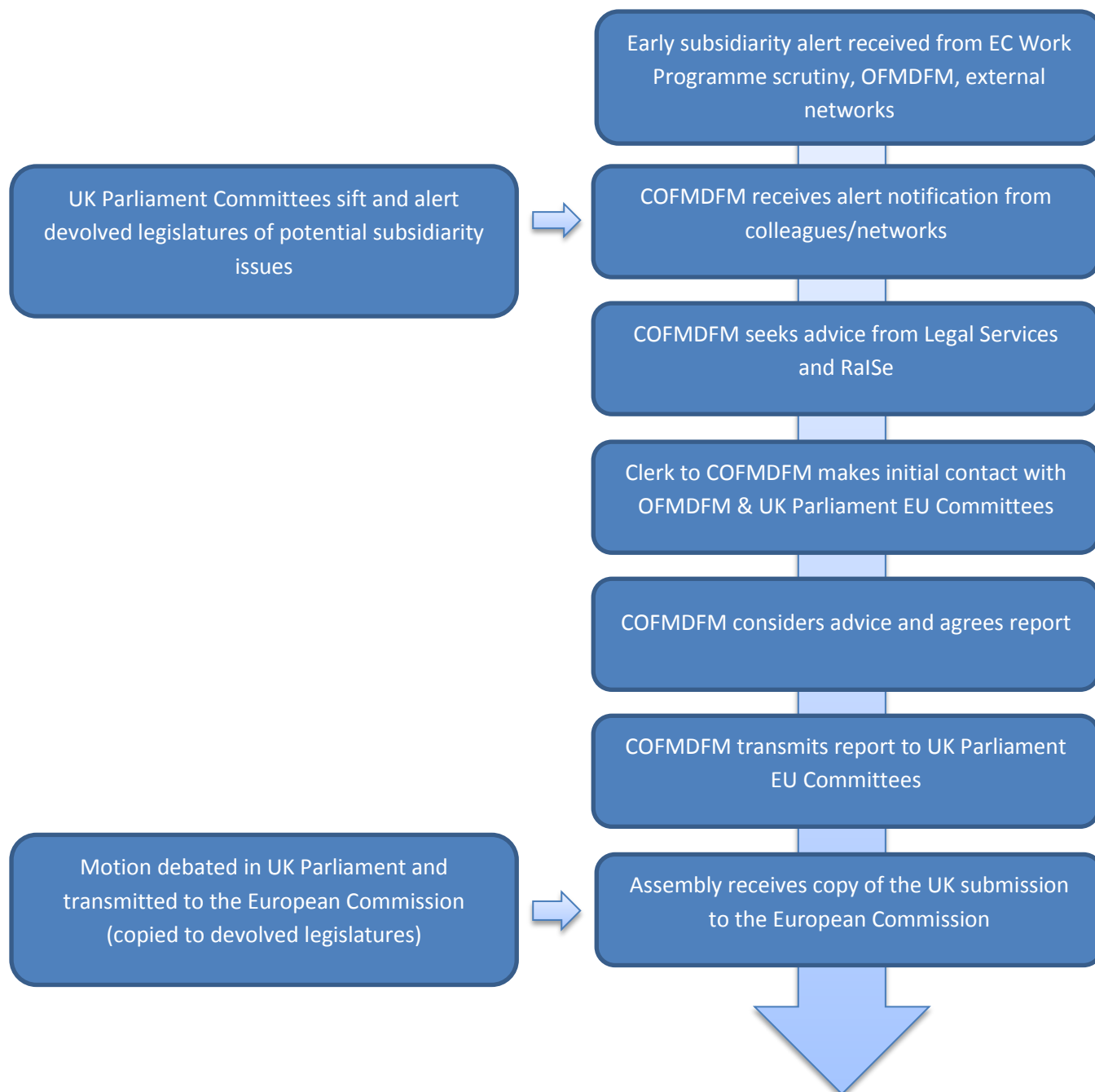
As discussed previously, the European Project Manager established a process whereby these UK Government EMs would be forwarded by officials at the House of Commons European Scrutiny Committee. A number of options were considered in relation to lines of responsibility for the analysis of and reporting upon these subsidiarity concerns. The internal European Steering Group considered these options and agreed that the Committee for OFMDFM, in its role as leading on European affairs at the Assembly, should have responsibility for reporting the Assembly views on subsidiarity to the Houses of Parliament European committees.

The process of subsidiarity analysis involves advice from Legal Services and from Research and Information Services and is outlined below.

- The Committee for the Office of the First Minister and Deputy First Minister will, when alerted by colleagues/networks to any potential subsidiarity issues, seek advice from Legal Services for analysis of any subsidiarity concerns.
- Where there is a potential subsidiarity concern, the Clerk to the Committee for OFMDFM will make initial contact with OFMDFM and the Houses of Parliament to advise that there is a potential subsidiarity concern.
- Using the advice from Legal Services and support from RaISe where necessary, and seeking a view from the subject committee if required, the COFMDFM will come to a view on whether there is a subsidiarity concern.
- If the Committee agrees that there is a subsidiarity concern, it will prepare a short report (1-2 pages).
- The Clerk to the COFMDFM will submit this report to the Houses of Parliament.

## UK PARLIAMENT

## NORTHERN IRELAND ASSEMBLY



This process was implemented at the beginning of 2013 with the agreement of the Committee for the Office of the First Minister and deputy First Minister. Since then, the Committee for OFMDFM has issued correspondence to the UK Parliament European Committees on three European proposals:

- Proposal for a Directive on the deployment of alternative fuels infrastructure (February 2013)

- Proposal for a Directive establishing a framework for maritime spatial planning and integrated coastal management (April 2013)
- Proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks (April 2013)

An example of the correspondence is attached in Appendix 4.

A trial period of subsidiarity monitoring has successfully resulted in scrutiny of a number of European proposals for subsidiarity concerns. However, the timelines for responding to subsidiarity checks is **extremely challenging**. The current arrangement where formulation of an Assembly response is undertaken by the Committee for OFMDFM after consultation with the relevant statutory committees is time consuming and often results in agreement on an Assembly view after the reports have already been issued by the House of Commons and/or House of Lords European Committees.

#### **Recommendation 18**

**Consideration should be given to streamlining the process and reducing the time spent on consultation with the other statutory committees. This could be achieved by the Committee for OFMDFM retaining responsibility for production of Assembly ‘opinions’ on subsidiarity but receiving any policy input from a relevant researcher during the considerations or alternatively delegating responsibility for production of opinions to the statutory committees. Further options should be explored.**

Amendments to Standing Orders may be required to recognise the power of the Committee for the Office of the First Minister and Deputy First Minister to submit formal views to the UK Parliament on subsidiarity matters on behalf of the Assembly (as is the case in the National Assembly for Wales) or simply that there be provision for views to be provided to the UK Parliament in advance of a motion in the House by the Chair of the Committee for OFMDFM (as is the case in the Scottish Parliament).

#### **Recommendation 19**

**In order to participate more widely in subsidiarity monitoring, any Assembly opinions produced on subsidiarity considerations should be published on REGPEX, the regional parliamentary information exchange system which is a platform for the mutual exchange for information between regional parliaments in the early phase of EU legislative procedure. Procedures and resourcing of this process must be further considered.**

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#### PROJECT SUCCESS

*A recurring issue in European scrutiny by Committees is dealing with the volume of European policy and legislation. In order to address this some form of 'policy triage' is necessary.*

*To this end, the European Project Manager initiated a pilot project to encourage, support and facilitate committees in selecting priority areas of engagement in order to focus committee resources.*

*The pilot is similar to an approach used by the Scottish Parliament and uses the European Commission Work Programme to identify scrutiny topics. In this way, Committees can identify opportunities to engage in pre-legislative scrutiny as well as to focus on emerging issues of particular relevance to Northern Ireland.*

*With RaSe prioritising the proposals, Committees then selected areas of interest to pursue throughout the year. This approach will also facilitate RaSe in horizon scanning.*

*The Committee for OFMDFM was the coordinating committee and published the compiled committee priorities*

### 11.3 Prioritisation of European issues

Some committees are already active in consideration of European legislation and policy, others less so. Whilst it can be envisaged that there is wider interest in Assembly engagement in European affairs, it could be suggested that there has been reluctance to actively engage – this may have been due to timing and workload issues and perhaps reflects the interest and priority which EU matters have been accorded within committees, as well as the absence of a dedicated resource to support committees and their teams in navigating a sizeable and complicated array of information.

Given that almost all European policy or legislative proposals will have some impact on Northern Ireland it is important that a method of selection of key issues is developed in order to facilitate committees in focusing on issues of strategic priority where influence can be exerted. Using a '**policy triage**' approach, statutory committees can be supported in focusing attention on policy or legislative proposals of most relevance to the committee and to Northern Ireland.

The pilot project was initiated based upon the EU strategy adopted by the Scottish Parliament and following on from the OFMDFM Committee Inquiry into Consideration of European Issues which contained an action for statutory committees and Research and Information Service to utilise the Commission work programme to prioritise European scrutiny topics. Within the recommended pilot project scrutiny of European issues at committees was based upon:

- review of the European Commission's work programme
- review of the NI Executive's response to the above
- the NI Executive European Priorities 2012-13 and related Implementation Plan
- NI Executive Programme for Government targets which have a European focus

## European Commission Work Programme

The European Commission is the EU's executive body and represents the interests of Europe as a whole. The Commission's main roles include setting objectives and priorities for action; proposal of legislation to the European Parliament and the Council of the European Union; and management and implementation of EU policies and the budget. A new team of 27 Commissioners, one from each EU member state, is appointed every five years and the current Commission's term of office runs until February 2014. The current President of the Commission is José Manuel Barroso.

Each Commission sets out the overarching priorities for its entire term of office at the beginning of its term. The current Commission's priorities for its full term are under the theme of 'A vision for Europe 2020' and consist of:

- Making a successful exit from the (economic) crisis
- Leading on climate change
- Boosting the new sources of growth and social cohesion
- Advancing a people's Europe
- Opening a new era of global Europe

Every year, the President of the Commission then sets out the priorities and objectives for the year ahead in a 'State of the European Union' address each autumn. The Commission plans its work, including the drafting of new legislation, based on the political priorities set by the President.

An annual Commission work programme is developed and shows how the Commission plans to give practical effect to the political priorities set out by the President. This programme is a key document as the Commission alone has the 'right of initiative' within the European Union. The Commission work programme sets out the legislative (directives, regulations etc.) as well as the non-legislative (action plans, green papers, communications, recommendations etc.) proposals which the Commission will bring forward in the forthcoming year. Thus it provides a valuable early warning on forthcoming activity and can therefore be used to facilitate committees in planning forward work programmes and to identify areas of interest.

The Northern Ireland Executive, in developing its annual European Priorities document and associated Implementation Plan, considers and reflects the Commission's work programme and this therefore also plays a role in development of the Executive's priorities. The Executive's annual European Priorities document is published in May. The Executive's European Priorities for 2012-13 fall into four thematic priority areas:<sup>26</sup>

- Competitiveness and Employment
- Innovation and Technology
- Climate Change and Energy
- Social Cohesion

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<sup>26</sup> European Priorities 2012-13: Winning in Europe – Northern Ireland Executive, May 2012

### Filter criteria

The first step in the process was the development of a set of defined criteria to be used by Research & Information Service (RaISe) to filter the European Commission's work programme to facilitate committees in focusing on priority items. Given that committee's role in having lead responsibility for engagement in European matters, the criteria were agreed by committee of the Office of the First Minister and deputy First Minister in advance of publication of the Commission work programme.

The agreed criteria are:

- *Competence* – initiatives relating to devolved matters only, as many items in the Commission's Work Programme may relate to excepted/reserved matters.
- *Type of initiative* – legislative initiatives have particular significance given their impact on Northern Ireland law and the application of the subsidiarity early warning system to draft legislative acts.
- *Stage in development* – specific non-legislative initiatives, such as green papers, represent an opportunity for committees to engage with an issue at an early stage in the policy development process, when the potential to exert influence may be greatest.
- *Executive's European Priorities* – initiatives relating to the Executive's current European priorities, given that a key role of statutory committees is scrutinising departmental performance.
- *Committee focus* – initiatives which relate to existing topics of interest to committees or topics identified in committees' forward work programmes.
- *Financial Implications* – initiatives which may have significant financial implications in terms of funding or in terms of direct or indirect costs resulting from increased regulation.
- RaISe would also seek to highlight initiatives where it might be anticipated that the EU institutions would be particularly receptive to the distinct contribution to be made by the Executive or the Assembly or initiatives in relation to which the interests of Northern Ireland may differ from those of the UK as a whole.

RaISe used the above criteria to produce an analysis of the Commission work programme for 2013 detailing the issues of devolved relevance and relative importance for Assembly committees. In engaging with other key stakeholders in this process, the Committee for OFMDFM consulted with OFMDFM regarding its EU priorities and also sought the view of the Northern Ireland MEPs on their views of the key issues for forthcoming year.

The statutory committees considered the report from RaISe on the key issues identified in the review of the Commission's work programme. Following due discussions and consideration, committees agreed the EU priority issues as well as the steps which they plan to take to engage on these issues. The Committee for OFMDFM has collated the responses from statutory committees and compiled a report detailing the Assembly's declared European Priorities and proposed future engagement for each committee for the year ahead.

It is envisaged that following a 'full cycle' of the pilot project, that a debate will be sponsored by the Committee for OFMDFM in March every year upon publication of the Assembly priorities for the

year ahead. Such a debate would provide an opportunity for committees to discuss their priorities for the year ahead and also make comment on their efforts in the previous year.

### **Committee engagement on European issues throughout the year**

With regard to engaging on their chosen European priorities, in fulfilling their statutory responsibilities, it would be envisaged that committee engagement in EU matters would primarily be achieved through scrutinising the work of the NI Executive in engaging in the EU policy and legislative process; however committees may also wish to seek other avenues of engagement and influence. This can include, but is not limited to the options below.

- communicating the committee view to the relevant committees in the Houses of Parliament
- engagement directly with the European Parliament in recognition of its role in the ordinary legislative procedure:
  - in the form of communications with MEPs
  - contacting rapporteurs on particular legislative proposals
  - contacting committees in the European Parliament
- through responding to European Commission Green and White paper consultations
- liaising directly with officials in the European Commission
- seeking to exchange knowledge and seek common ground with committees in the devolved regions or other countries/regions in Europe
- through communicating the committee view through any relevant networks in Brussels

In engaging on their selected priorities, it would be for the statutory committees to decide the method of engagement. This can include, but would not be confined to;

- following up on relevant priority issues in the course of the current work programme – e.g. during inquiries
- writing to the respective department for information on how it is proposing to engage with the proposals
- considering whether to take written or oral evidence from key stakeholders as appropriate.

In engaging on the priority issues, statutory committees would seek to ensure that the Northern Ireland perspective is taken into account in EU policy.

Committees may also wish to scrutinise a particular policy or item which relates to on-going or existing work within the committee work programme. It is hoped that in the course of committee inquiries and existing work streams that consideration would be given, where appropriate, to the European dimension of any issues under consideration. In this way, increased engagement in European affairs would not represent a separate work stream for the committees but rather be an additional dimension to considerations during the course of inquiries.

RaISe continues to provide support to the committees through the year and committees may wish to schedule regular updates from the committee researcher on the chosen priorities in the committee's forward work programme. Committee researchers would also screen any emerging European issues against the committee's agreed priorities and would prepare a briefing if required in



discussion with the committee clerk and Chairperson if appropriate. Any briefings on European issues would be added to the committee agenda as normal.

This pilot project of course does not preclude statutory committees from undertaking other European activity in addition to the priority items selected under the pilot project. Committees may for example wish to follow up regularly with departments in relation to funding streams and drawdown of same, particularly with reference to the Executive's Programme for Government targets for increased drawdown of European funds.

The pilot project of 'policy triage' has facilitated committees in focusing on key areas as well as providing a useful forward look at what initiatives are forthcoming from the European Commission.

#### **Recommendation 20**

**The effectiveness of the pilot project in assisting committees to select priority areas for engagement should be evaluated at the end of the year in order to identify areas for improvement.**

Given the competing pressures on committee resources, the approach of 'being selective to be effective' should be continued.

In evaluating the pilot, other options could be considered. For example, a more coordinated approach to monitoring of the priority areas may be useful whereby committees can schedule a biannual or quarterly review of the status of these priority areas with RalSe, departmental officials or officials in the Office of the Northern Ireland Executive in Brussels. In this way, committees can keep abreast of developments in a timely manner and will also ensure that these European issues are more fully integrated into the committee work programme.

## 12. Networks and Fora

There are many key stakeholders in the area of European engagement and ultimately the establishment, maintenance and enhancement of relationships with these stakeholders is vital in supporting Assembly committees in increased and more effective engagement in European issues.

The importance of networking and in building relationships cannot be underestimated – the flow of information on European issues will be important in supporting committees in deeper understanding of key issues, in considering the views of stakeholders in forming a committee position on these issues and in some cases in facilitating committees in influencing policy or legislative proposals through cohesive and coordinated activity with like-minded stakeholders.

The position of Northern Ireland as a peripheral region in the geography of Europe and indeed as a peripheral region of a Member State only serves to highlight the importance of networking and of building strong alliances with others who may share a common view on a particular European policy or legislative proposal.

The intangible nature of networking often presents difficulties in measuring the effectiveness of such efforts, but in the course of this project, the significant efforts expended in building effective relationships with officials in Westminster for example, have yielded results for Assembly committees whose views on EU proposals have been referenced in House of Commons and House of Lords considerations.

The representational role fulfilled in networking and attendance at meetings and fora is also a vital one. The Assembly Commission's Corporate Strategy seeks to achieve the Strategic Aim of provision of outstanding parliamentary services by '*ensuring that the Assembly and its work are accessible to all and communicated widely*'<sup>27</sup>. Representation of the Assembly at EU fora is clearly aligned with this Strategic Aim and serves to further highlight to external stakeholders that the Assembly and its committees are actively involved in the scrutiny and consideration of EU issues. Such activity in itself often results in new connections and networks with stakeholders who had not previously considered the Assembly's involvement in European affairs.

Given the intangible nature of networking and relationship building, it is important that where such activities yield information or intelligence which will be useful for committees or Members, a mechanism for appropriate dissemination of the information is available. It is, of course, important that any future European Officer should ensure that any information gathered through relationship building, networking or attendance at events or fora is disseminated to the relevant committees in a timely manner.

### Recommendation 21

**It is important that Assembly committees and any Assembly EU Officer should endeavour to explore and exploit any available avenues of influence, that is, any opportunities for the Assembly**

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<sup>27</sup> Northern Ireland Assembly Commission Corporate Strategy 2012/2016

**to input into the policy or legislative process or to build alliances with other stakeholders to strengthen such input.**

**European engagement must take place, however, without compromising the position of the UK Permanent Representation (UKRep) to the European Union which has primary responsibility for promoting and negotiating agreed UK policy positions with the EU institutions.**

## **12.1 European Steering Group**

During the life of the European Project, a Steering Group of Secretariat staff was established. The Steering Group met bimonthly during the course of the Project with an agenda and minutes for each meeting. Meeting papers were uploaded to the Assembly ASSIST network.

In recognition of the cross cutting nature of European engagement at the Assembly, the Group comprised staff from a number of Directorates.

### **Terms of Reference**

The European Steering Group provided a platform for discussion on all matters of relevance to the work of the Northern Ireland Assembly regarding engagement with Europe.

The Steering Group was:

- Clerk Assistant (Chairperson)
- Adviser to the Speaker
- Clerk to the Commission
- Head of Education & Outreach
- Senior Researcher
- Clerk to the Committee for the Office of the First Minister & Deputy First Minister
- European Project Manager

The Steering Group met bimonthly with the objective of supporting and facilitating the Assembly in engagement in European matters.

This objective was achieved by:

- Collaborating to support and facilitate the work of the European Project Manager in development of an Assembly EU Report and Action Plan.
- Sharing information on EU developments relevant to the Assembly
- Co-ordinating, sharing resources and information on current and future EU related activities.
- Ensuring good governance and monitoring of all Assembly related European activity
- Promoting and supporting Assembly engagement in European matters both internally and externally.

The Steering Group has functioned effectively during the life of the European Project in supporting cross Directorate discussions on a range of issues including resource implications of new approaches to engagement. This cross Directorate approach has also ensured that European issues are not confined to one part of the organisation but rather are in the process of becoming more integrated into wider work patterns.

During the course of gathering evidence for this project, comments were made about the lack of a strategic direction on European issues for Northern Ireland as a whole, with a range of different organisations playing a role in European issues, primarily with regard to draw down of European funds. In seeking to address the absence of a strategic co-ordination mechanism, two key fora have been created: the Assembly European Advisory Panel and the Northern Ireland European Regional Forum.

## 12.2 Assembly European Advisory Panel

In seeking to create effective links with Northern Ireland's representatives in Europe, in its report on the Inquiry into Consideration of European Issues (January 2010), the Committee for OFMDFM recommended the establishment of a forum of European experts to help inform discussions on Europe. The Committee for OFMDFM 'European Advisory Panel' was established and held its inaugural meeting in June 2011.

The Panel brings together:

- OFMDFM Committee Members;
- MLAs
- MEPs
- European Economic and Social Committee representatives,
- committee of the Regions Representatives, including alternate members;
- Key stakeholders in the European sector
- Departmental officials
- EU Commission Office in Belfast
- Belfast City Council
- NILGA
- NICO
- Chairpersons and Deputy Chairpersons of relevant statutory committees

The Panel has met four times to discuss the following issues:

- June 2011: General discussion/First meeting
- December 2011: Common Agricultural Policy
- March 2012: Structural Funds and Transportation.
- June 2012: Research and Development (Horizon 2020)

Attendance by MLAs at the Advisory Panel meetings has been low.

In gathering evidence, there were comments that while the Panel is a useful forum for a range of stakeholders to meet to discuss issues, it is not a meaningful platform for MEPs to give their views on these issues – the preference would be for a meeting with MEPs only.

In gathering evidence there were also issues raised about the logistical arrangements for the panel – some commented that the dates should be arranged further in advance; that there are too many people in attendance leading to an unstructured discussion; and that a focused set of papers should be the basis for the meetings, for example, the Panel could be useful in analysing and commenting upon quarterly updates on European affairs provided by the Executive departments.

#### **Recommendation 22**

**It is recommended that the OFMDFM Committee re-evaluates the effectiveness of the Advisory Panel and further considers how it may formally engage with MEPs.**

### **12.3 Northern Ireland European Regional Forum**

Belfast City Council has established the Northern Ireland European Regional Forum. This Forum was established to provide a strategic platform for collaboration on EU policy and funding, with objectives to:<sup>28</sup>

- maximise EU funding opportunities and
- shape EU policy to the benefit of the region
- influence future funding calls to the benefit of regional stakeholders

In 2012, the Office for the First Minister and deputy First Minister became Co-Chair of the Forum with Belfast City Council and the Forum has since realigned its work with the themes chosen as the Northern Ireland Executive's' European Priority themes – i.e. Competitiveness and Employment; Innovation and Technology; Climate Change and Energy; and Social Cohesion.

The Forum initiates sub groups, as required, for particular task and finish work streams. These are aligned to the current Barroso themes but have no executive authority, but encourage members to:

1. collaborate to identify suitable funding opportunities, to support bid development and project implementation;
2. share information they have available on EU policy and utilising EU contacts and networks such as Eurocities to influence relevant EU policy development;
3. Proactively seeking to influence the shape of future funding calls to the benefit of regional stakeholders,
4. promote our region in Europe, demonstrating local good practice in a European context to attract new business/investment opportunities;

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<sup>28</sup> Northern Ireland European Regional Forum Terms of Reference: Strengthening Our Voice in Europe, May 2013 revision

## PROJECT SUCCESS

*The European Project Manager has represented the Northern Ireland Assembly at the meetings of the Northern Ireland European Regional Forum since February 2012, and attended the formal launch event for the Forum in May 2012 which was attended by the Junior Ministers and officials from the European Commission.*

*The Forum traditionally met every quarter in Belfast City Council offices. Since the establishment of the Forum, membership has grown significantly and the Forum agreed to include a networking session in advance of each of the quarterly meetings.*

*The European Project Manager arranged for the Northern Ireland Assembly to host the first external meeting of the Forum in the Long Gallery of Parliament Buildings in November 2012 and facilitated the networking session held in advance of the meeting itself.*

*This meeting served to highlight that the Assembly is more actively involved in European affairs and also fulfilled an important engagement role in bringing decision makers from the public, private and voluntary sectors to Parliament Buildings.*

5. promote best practice from other European cities in areas such as security, employment, housing, health and social services, education and economic regeneration to achieve maximum effect within the region;

6. facilitate information exchanges between local people, professionals and politicians by hosting inward visits and showcasing our region in Europe;

7. co-ordinate, share resources and information on current and future EU related activities.

The work of the Forum reaches a wide range of people who will have opportunities to take part in events, lobbies, activities or projects. These opportunities will be promoted via a Forum portal hosted by Belfast City Council and by members who will share information via their contact databases.

Forum members come from the private, public and voluntary sectors. They are decision makers within their organisations who can authorise action. Information on projects and event is shared at the meetings Members meet 4 times each year and I have been attending meetings of the Forum as a representative of the Assembly.

Current membership of the Forum is listed below.

- Action Cancer
- Action on Hearing Loss
- Agri-Food and Biosciences Institute
- Arts Council NI
- Ballybeen Women's Centre
- Ballymena Borough Council
- Barroso Taskforce
- Belfast Area Partnership Boards
- Belfast City Council
- Belfast Health and Social Care Trust
- Belfast Healthy Cities
- Belfast Metropolitan College
- British Council
- Bryson Energy
- Centre for Cross Border Studies

- Colleges Northern Ireland
- Cooperation and Working Together
- Craigavon Borough Council
- Department for Employment and Learning
- Department of Enterprise, Trade and Investment
- Department of Environment
- Department of Finance and Personnel
- Department of Justice
- Department of Social Development
- Derry City Council
- Dungannon and South Tyrone Borough Council
- Early Years
- European Economic and Social Committee
- EU Commission Office in Northern Ireland
- Europe Direct NI
- European Enterprise Network
- European Movement Northern Ireland
- Fermanagh District Council
- GEMS NI
- Gingerbread NI
- Institute for Conflict-Related Trauma
- Intertrade Ireland
- Invest NI
- Mencap
- NI-CO
- NILGA
- NORIBIC
- Northern Ireland Assembly
- Northern Ireland Environment Link
- Northern Ireland Housing Executive
- North West Region Cross Border Group
- Office of the First Minister and deputy First Minister
- Probation Board NI
- PROTEUS (NI) Ltd
- Police Service of Northern Ireland
- Queen's University Belfast
- Rural Development Council
- Skills for Justice
- Special EU Programmes Body
- Springboard
- Ulster Historical Foundation
- Ulster Supported Employment Limited
- University of Ulster
- Young Enterprise NI
- Youth Council Northern Ireland



### **Recommendation 23**

**A representative of the Assembly should continue to attend the meetings of the NIERF. Consideration should be given to the onward dissemination of minutes of the meeting and any committee relevant information following the quarterly meetings.**

The Committee for OFMDFM may wish to seek a formal evidence session on a biannual or annual basis from the Co-Chairs of the Forum. This would provide a useful opportunity to hear more about local partnership working on funding projects.



Launch of the Northern Ireland European Regional Forum at Queen's University Belfast, May 2012



## 13. Information Flows

### 13.1 Early warning

A recurring theme which emerged during the course of carrying out interviews for this project was the issue of having sufficient and timely information in order to exert influence.

There were views that the Assembly committees do not receive either sufficient information on European policies and legislation from the departments or that the information is conveyed at a late stage, for example when decisions have already been reached or when infraction proceedings are looming.

With regard to early warning on European issues, it is worth noting that committees are not alone in experiencing shortcomings in this area. Indeed, the Review of the European Division of the Office of the First Minister and deputy First Minister in September 2011 stated:

*“For Executive Ministers to exert the maximum influence on policy at a European Level, timing of intervention is critical. Policy, much of which is reflected in opinions, directives and regulations, often takes a number of years to complete, with numerous stages of policy development including Green Papers, consultation and legislation.....Given the long 'gestation period' for European policy and legislation there should in theory be ample opportunity to exert timely influence. However a recurring issue with departments identified by this review has been the lack of time that they have to respond to policy papers and draft legislation which is often seen for the first time through exchange of correspondence with Whitehall Ministers. Whitehall departments will of course have a clear line of sight to emerging policy through direct involvement in European Council Working Groups which take forward policy proposals of the Commission. ONIEB officials can participate as observers but could in theory devote the entire resource of the office to working group-related activity to the exclusion of everything else. Some targeting of policy areas is therefore needed....”<sup>29</sup>*

Continuation of the committee pilot project in using the European Commission Annual Work Programme to identify forthcoming issues will go some way to alerting committees to emerging issues. This will also facilitate committees in engagement in the policy development stage and pre-legislative scrutiny, for example in reviewing and where applicable, responding to European Commission Communications, Green Papers and White Papers.

The pilot project and the process of policy triage and selection of committee priorities will support the committees’ efforts to focus in depth on key issues and to communicate with respective departments at an early stage which specific proposals they are focused upon and scrutinise the departmental engagement in these areas accordingly. Scheduled updates from RalSe on the committee priorities can also ensure that committees are well informed of developments in those priority areas.

The newly initiated system for receipt and review of UK Government Explanatory Memoranda also provides a vital tool for committees in gauging the UK Government’s position on a European proposal and any input from devolved regions as applicable. This affords Assembly committees an

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<sup>29</sup> Review of the European Division of the Office of the First Minister and deputy First Minister, September 2011

opportunity to feed into UK Parliamentary scrutiny of these proposals and formulation of the official UK Government negotiation position to be used at the Council of Ministers.

#### **Recommendation 24**

**As part of the 'best practice' approach, greater engagement by every committee with departmental European Coordinators and scheduled and regular updates from departmental officials, the Barroso Taskforce Desk Officers and individual departmental representatives on the Barroso Taskforce Working Groups will provide committees with information on the Executive's activity on European affairs**

## **13.2 Information Dissemination**

One of the challenges of scrutiny of European affairs is the sheer volume of information available and the time and resources required to sift through this information and to extract that which is useful and relevant to the Assembly and its committees. This process is resource intensive but necessary.

Another challenge has been how to disseminate this information. During the course of the project the European Project Manager has been sharing relevant information on an ad hoc basis with committee clerks and Research and Information Services. Research and Information Services also upload selected articles to the Assembly 'Horizon' service which can be accessed by all Members and Secretariat.

There are myriad formal sources of European information, including, but not limited to those outlined below:

- European journals and newsletters

There is a range of journals which are useful tools for keeping up to date with news but also a useful learning tool for Secretariat or Members who wish to find out more about European affairs.

The Assembly Library already provides access to a number of European databases. There is a wide range of sources of information online which are updated daily such as EurActiv, EU Observer, European Parliament News, European Commission News, European Movement Ireland, European Movement UK, Open Europe, Enterprise Europe Northern Ireland, and OECD.

- Existing fora

The work of fora such as the Northern Ireland European Regional Forum can also be a useful source of information, although most of that information is in relation to funding streams for projects. This information is available not only through attendance at the meetings but through a dedicated online portal on the Belfast City Council website.

- IPEX

IPEX is the InterParliamentary EU information eXchange. It is a platform for the mutual exchange of information between the national Parliaments and the European Parliament

concerning issues related to the European Union, especially in light of the provisions of the Treaty of Lisbon. The establishment of IPEX derives from a recommendation given by the Conference of Speakers of the Parliaments of the European Union in the year 2000.

The main part of IPEX is the documents database which contains draft legislative proposals, consultation and information documents coming from the European Commission, parliamentary documents and information concerning the European Union. The parliamentary documents are uploaded individually by each national Parliament. IPEX offers at the same time the means for following the subsidiarity check deadlines. The House of Commons European Scrutiny committee, the House of Lords European Union committee and the Oireachtas Joint committee on European Affairs are all active members of IPEX.

IPEX also contains a calendar of interparliamentary cooperation meetings and events in the European Union and a section on national Parliaments and the European Parliament providing links to relevant websites and databases in the field of interparliamentary cooperation, as well as specific procedures in EU Parliaments.

- **Subsidiarity Monitoring Network (SMN)**

The SMN was established to support the Committee of the Regions in carrying out its role in subsidiarity monitoring. The network is made up of a number of partner organisations and the Northern Ireland Assembly is a member of the SMN. The SMN carries out analysis of the European Commission work programme to determine which priorities concerning subsidiarity are most important for the regional and local level, starting from the European Commission Work Programme.

The SMN has also carried out substantial research into subsidiarity and the role of regional authorities and indeed coordinated a study on the "Division of powers between the EU, the Member States, and Regional and Local Authorities" carried out by the European Institute of Public Administration for the CoR. This study follows, updates and further develops previous work carried out by the CoR since 2003. Indeed, as the political assembly representing local and regional authorities in the EU institutional set-up, the CoR has a clear role in monitoring the evolution of devolution and decentralisation in Europe.

- **REGPEX**

REGPEX is similar in nature to IPEX in that it is intended as a platform for mutual exchange of information between regional (rather than national) parliaments. It was established in February 2012 and is coordinated by the Subsidiarity Monitoring Network of the committee of the Regions. REGPEX is designed to support the participation of regions with legislative powers in the early phase of the EU legislative procedure, the Early Warning System. Furthermore, it is meant as a source of information and exchange between regional parliaments and governments in the preparation of their subsidiarity analyses.

REGPEX provides an easy access to the relevant information sources of the EU institutions and national parliaments on EU legislative proposals. The Northern Ireland Assembly is a

REGPEX partner organisation, meaning that the Assembly can upload opinions on European legislative proposals to the database to share with other regional parliaments.

#### Recommendation 25

**The establishment of effective networks is a vital means of identification of issues of relevance and the mutual exchange of information must be a key aspect of any European scrutiny strategy. These often informal networks must be continually nurtured and as is the case with most effective networking, it is the mutually beneficial nature of the relationship which is key to success, that is, it is important that the Assembly provides information as well as receives.**

### 13.3 Inter-legislature cooperation

During the course of this project, the European Project Manager built strong and effective relationships with officials at the Scottish Parliament, the National Assembly for Wales, the House of Commons European Scrutiny Committee and the House of Lords European Union Committee.

These relationships have been invaluable in exchanging useful information on parliamentary practices in European scrutiny, in flagging up potential proportionality and/or subsidiarity concerns with a specific European policy or legislative proposal or in highlight ongoing work streams which may be relevant to the work of Assembly committees.

The value of these working relationships is evidenced in subsidiary monitoring in particular where an early unofficial 'heads up' about potential activity on a proposal can allow timely action at the Assembly which contributes to the UK Parliamentary committees' activity.

The Project Manager also takes delivery of the Irish Regions Office monthly newsletter, the Scottish Parliament Brussels Bulletin, the Europe Matters publication produced by the EU Office of the National Assembly for Wales, the House of Commons European Scrutiny Committee newsletter and Remaining Business report, House of Lords European Union Committee Sift Result Reports as well as the Progress of Scrutiny reports.

This information is useful in keeping up to date with what activity is taking place in the other legislatures but often also contains information which is relevant or useful to Assembly committees.

The Review of the European Division of the Office of the First Minister and deputy First Minister (September 2011) acknowledged the issues around identification and communication of key information:

*"A recurring concern expressed by departments in the course of the Review was the potential to be unsighted on major issues which were of critical importance to the department in question. Involvement in these issues cannot solely depend on 'early warning' from the Brussels Office given the sheer amount of policy development across the various EU Directorates-General at any one time, however, European Division and in particular:*

***RECOMMENDATION 4:- ONIEB should develop a Communication Plan to reduce the likelihood of important information being overlooked and to increase the likelihood of it receiving timely attention by the relevant department. The Plan should address the needs not only of Ministers and their***

*departments but also examine how it might best assist the wider stakeholder community including the OFMDFM committee, NI MEPs and other NI Reps in the EU institutions, and Local Government.*

*Given the importance of this, some work is already underway, which includes for example, the production of a monthly 'Director's Brussels Bulletin'. This reactivates a monthly report previously produced by ONIEB. However this bulletin covers a wide range of business possibly beyond the focus of interest of other departments. Therefore:*

***RECOMMENDATION 5:-*** *The Head of European Division should provide regular updates to members of the Barroso Taskforce Working Group (BTWG) and to the Permanent Secretaries Group on activity relating to the work of the Barroso Task Force, highlighting in particular follow-up actions by departmental and Commission officials, linked to those areas where progress is sought namely: increased drawdown from non-structural funds programmes; access; influence; endorsement of regional initiatives; membership of advisory and evaluation committees.*

*Thereafter, the Chairs of BTWG may wish to circulate and update periodically to Ministerial colleagues and the Chair of the OFMDFM departmental committee.<sup>30</sup>*

#### **Recommendation 26**

**The Committee for OFMDFM may wish to seek copies of the monthly 'Director's Brussels Bulletin' as per Recommendation 4 of the ONIEB review report as above and disseminate this to other committees. The Committee may also wish to seek updates from the Chairs of the Barroso Taskforce Working Group as per Recommendation 5 as detailed above.**

In giving evidence to the Committee for OFMDFM in July 2012, the Head of the Northern Ireland Executive Office in Brussels highlighted that the ONIEB team do use the Irish Regions Office newsletter in particular which contains details of recent calls for funding proposals. However, he suggested that the production of a Northern Ireland specific consolidated brief which incorporated information from the various other newsletters produced could be an exercise in duplication.

#### **Recommendation 27**

**Further consideration should be given to information dissemination at the Assembly – both internal and external. In relation to internal dissemination, consideration must be given to how European information is disseminated to committees. As discussed previously, this information comes from a variety of sources and not all of this information will be relevant to committees. While the existing Horizon service on the internal Assist network is useful, consideration should be given to inclusion of a document in the weekly committee packs. This document could have headline details which could then be followed up by the committees if desired. The resource implications in the compilation of this briefing document would require scrutiny.**

The external communication of the Assembly's work on European affairs must not be overlooked as this is key element of the Assembly's strategic corporate objective of communicating widely the work of the organisation.

Consideration should be therefore be given to how to report the work the Assembly is doing on EU affairs to the public and external stakeholders. The National Assembly for Wales produces 'Europe

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<sup>30</sup> Ibid

Matters' on a quarterly basis which details the Assembly's work on European affairs. It provides details of the work of each Assembly committee on EU issues as well as the external activities of Assembly Members on EU and international matters, including Committee of the Regions attendance, Commonwealth Parliamentary Association engagements, EC-UK participation, British Irish Parliamentary Assembly meetings and VIP guests welcomed at the Assembly. The purpose of this publication is external engagement and it is disseminated to MEPs and external stakeholders as well as being uploaded to the National Assembly for Wales website.

#### **Recommendation 28**

**Consideration should be given as to how the work of the Assembly on European engagement is communicated externally. Previously MEPs, Committee of the Regions and European Economic and Social Committee representatives have stated that they would welcome more information on what EU related work the Assembly committees are undertaking. Informal communications can remedy this situation in the short term but it could be hoped that as Assembly engagement in European affairs increases, a more formal communication, for example in a quarterly or bimonthly newsletter, may be an important element in external communications.**

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#### PROJECT SUCCESS

*By using networks in the department of the Taoiseach the European Project Manager secured the agreement of the Irish Minister of State for European Affairs, Lucinda Creighton TD to provide a briefing on the priorities of the Irish Presidency of the Council of the EU.*

*The briefing was hosted jointly by the Committee for OFMDFM and the Northern Ireland Assembly and Business Trust. Invitations were also issued to members of the Northern Ireland European Regional Forum. The event was attended by MLAs, Secretariat, business people, departmental officials, local government officials and members of the European Economic and Social Committee.*

*The Project Manager also organised a 'Youth and Europe' event in the Senate Chamber where young people from schools, colleges and community groups had a chance to ask Minister Creighton questions about European matters.*

*Both events were well attended and the Minister's office expressed their gratitude for the successful programme which was arranged.*

## 14. Events and Capacity Building

It is important that the Assembly's engagement in European affairs is seen as an integral element of the Assembly's wider external engagement. Indeed Strand 2 of the Assembly's External Relations Strategy refers to the Assembly's engagement with the European Union.

European themed events and briefings open to all Members can provide an excellent opportunity to support and develop the Assembly's relationships with other countries. Fostering relationships with the institutions of the UK, the European Union and other European Member States and regions can not only provide opportunities for greater engagement and influence but also provide a platform for learning from common experiences.

Events should clearly be linked to supporting the development of the Assembly as a legislature in the European Union as well as supporting Members in their professional development and enhancing understanding of key European issues and the Assembly's role in scrutinising those issues.

Support of such events will also enhance the reputation and profile of the Assembly amongst European Members States as well as clearly contributing to the raising the profile of Northern Ireland in a wider European context.

Given the current budgetary constraints, it is important to consider partnership working where the Assembly could support and participate in European events on a partnership basis with other organisations.

With regard to capacity building on European affairs for Assembly Members, from the evidence gathered from interviewees during the course of this project, it was clear that specific and defined training sessions on European affairs were not well attended by Members and that learning from the sessions was not used in a timely manner and therefore was less effective as a capacity building tool.



The common view was that information on European matters needs to be related to a specific subject/policy rather than general study visit. The immediacy of using the knowledge in the scrutiny process on a specific issue is more effective than information gathered on a study visit which may not be actually put into use until a much later date.

The evidence suggested that with regard to enhancing knowledge of the European legislative process, committee Members received briefings from Research which supported them in their considerations and as a result skills and knowledge on European scrutiny were developed during the course of the scrutiny activities themselves.

## 14.1 Events

EC-UK is the forum where chairpersons of the UK parliamentary committees with responsibility for European affairs meet. The forum meets approximately every 6 months and hosting of the forum rotates among the legislatures. Currently the Chairperson to the Committee for OFMDFM attends as the Northern Ireland representative. At the forum meetings, the chairpersons provide summaries of their committee's work during the period since the previous meeting including details of any inquiries etc. Agenda items are added in advance at the request of the participants and discussions centre on areas of common concerns or interest as well as how the views of the devolved administrations are included in the UK policy and legislative considerations.



Attendees at EC-UK in Parliament Buildings October 2012

(L-R) Rhodri Glyn Thomas AM, National Assembly for Wales; Michael Connarty MP, House of Commons; Mike Nesbitt MLA, Northern Ireland Assembly; Lord Boswell of Aynho, House of Lords; Lucinda Creighton TD, Minister of State for European Affairs; Dominic Hannigan TD., Houses of the Oireachtas; Christina McKelvie MSP, Scottish Parliament



## PROJECT SUCCESS

Through liaison with the Foreign & Commonwealth Office, the European project Manager secured the visit of the Minister of State for Europe, Rt. Hon. David Lidington MP to Parliament Buildings in May 2013. The Minister attended an event on PEACE funded projects hosted by the Committee for OFMDFM and then provided formal evidence to the Committee at the weekly meeting, discussing the UK's position in Europe, devolution and the review of balance of competences.

*This is the first time the Minister has given evidence to an Assembly Committee.*

## Recommendation 29

Participation in the EC-UK meetings is vital in developing and enhancing the working relationships between the various parliamentary committees responsible for European affairs and this participation should continue to be supported.



Visit of the Minister of State for Europe, Rt. Hon. David Lidington MP, May 2013

(L-R) Pat Colgan, SEUPB; Rt. Hon. David Lidington MP; Teya Sepinuck, Theatre of Witness; Mike Nesbitt MLA, Chairperson - Committee for OFMDFM

The Presidency of the Council of the European Union rotates on a biannual basis between Member States. The Council is one of the decision making bodies of the European Union and during its six month term, the hosting Member State organises and is Chair of the Council meetings made up of government ministers from Member States. The Presidency has the responsibility of moving Council work forward as much as possible by helping Member States reach agreement and by formulating compromise proposals that support the interests of the EU as a whole when differences in opinion emerge.

The Committee for OFMDFM Inquiry Report contained an action which stated *'the Committee will, with the change of Presidency every six months, consider how it wishes to engage with the holder of the*

## PROJECT SUCCESS

*The European Project Manager assisted the European Parliament Office in the UK in organising a conference 'The Future of EU Funding in Northern Ireland' held in November 2012 in the Europa Hotel, Belfast by advising the European Parliament office in relation to logistics as well as suggesting invitees, speakers and moderator.*

*The event, moderated by BBC Business Editor Jim Fitzpatrick, was fully subscribed and was attended by European Commission officials, Members of the European Parliament, Members of the House of Commons, European think tanks, academics, departmental officials and representatives of the private and voluntary sectors.*

*The Project Manager secured the opportunity for the Chairperson of the Committee for Enterprise, Trade and Investment to speak at the event and the assistance of the Assembly was noted at the event.*

*While not of direct benefit to the Assembly, the event greatly raised the profile of the Assembly as well as building networks and relationships.*

*Presidency of the European Union Council to discuss the priorities of the Presidency'.<sup>31</sup>*

### Recommendation 30

**As part of its strategic forward work planning, the OFMDFM Committee could ensure that this engagement with the Member State hosting the Presidency of the Council of the EU is a standing biannual item on the forward work programme. Consideration could be given to the appropriate format, possibly a briefing by the Member State representative followed by a question and answer session from attendees. The event should be open to all Members and where appropriate invitations should also be issued to key stakeholders involved in European affairs, for example the Northern Ireland European Regional Forum.**

**In this way, the committee can not only facilitate high level discussions on European matters but also can ensure that the work of the Assembly is widely communicated.**

In advance, a briefing paper should be prepared for the Committee examining the European Commission Work Programme for the year and focusing on the specific legislative and non legislative actions which will be taken forward during the Presidency period.

The British Irish Parliamentary Assembly (BIPA) has three subject committees, one of which (committee B) covers European Affairs. Committee B considers matters arising from Britain and Ireland's common membership of the European Union and regularly interacts with the various institutions of the EU. Among the issues it has considered are the Common Agricultural Policy; transport links between Britain and Ireland; cross-border trade within the EU; and European funding to socially deprived areas. The Northern Ireland Assembly currently has one Member on this Committee.

### Recommendation 31

**Given the opportunity to highlight the Northern Ireland perspective on EU issues to the other legislative bodies represented on BIPA, further consideration should be**

<sup>31</sup> Committee of the Office of the First Minister and deputy First Minister report on 'Inquiry into Consideration of European Issues', January 2010

## PROJECT SUCCESS

*The European Project Manager worked with the Queen's University Belfast (QUB) School of Politics, International Studies and Philosophy on a successful application for European funding on a series of seminars on the theme of 'Debating Europe'.*

*The seminars were hosted jointly by QUB and the Northern Ireland Assembly and Business Trust and sought to engage academics, elected representatives, community and voluntary sector representatives and business people in informative discussions and to encourage debate on EU issues and how these affect Northern Ireland.*

*There were 6 seminars in total, 3 held in Parliament Buildings and 3 in Queen's University Belfast. Invitations were issued to Members, Secretariat and key stakeholders including the NI European Regional Forum.*

*This project attracted a range of attendees, emphasised the Assembly's engagement in EU affairs, enhanced the European programme of the Northern Ireland Assembly and Business Trust and encouraged a range of stakeholders to attend an event at Parliament*

**given to the support provided to the Assembly Member on that Committee and to compilation of an Assembly contribution to any Committee discussions on key EU issues.**

The European Parliament Office in the UK organises events throughout the UK to highlight the work of the European Union institutions and specifically the Parliament on a regular basis. The European Project Manager has established an excellent working relationship with the Head of the European Parliament Office in Edinburgh and this relationship should be maintained with a view to supporting events being organised by the European Parliament.

### Recommendation 32

**Other opportunities for partnership working should be further explored, for example in relation to working with the Northern Ireland Assembly and Business Trust (NIABT) on European themed briefings for NIABT members and Assembly Members. Such an approach can broaden the appeal for an event and provide a useful opportunity for greater levels of external engagement for the committee in inviting stakeholders from the private, public and voluntary sector to discuss an area of committee scrutiny.**

A successful example of partnership working during the course of this Project has been the series of 'Debating Europe' seminars jointly hosted by Queen's University Belfast School of Politics, International Studies and Philosophy and the Northern Ireland Assembly and Business Trust.

## 14.2 Capacity Building

During 2010-11, familiarisation visits to Brussels were undertaken by Secretariat staff (Assembly Grade 6 and above) and Members. The aims of the familiarisation visit by Secretariat were, firstly, to familiarise staff with the role, structures and procedures of the EU institutions and secondly to examine the relationship and impact of those institutions on the work of the assembly, particularly Assembly committees. Accommodation was provided at the Irish Institute in Leuven and a total of 38 staff

participated in total.

The Northern Ireland Assembly and Business Trust also provides a European Programme every year which combines presentations from officials based in Brussels, visits to the European Parliament and the opportunity to meet Northern Ireland MEPs. To date a total of 14 Members have participated.

Regarding the Northern Ireland Civil Service, the Centre for Applied Learning (CAL) has provided European training programmes for a number of years and these are available to all civil servants whose work relates to Europe<sup>32</sup>. This training is coordinated by ONIEB and the Barroso Task Force HR Sub Group who advise on content and oversee the development of enhanced EU training delivered by CAL.

In the Northern Ireland Executive European Priorities 2012-13 Implementation Plan, one of the overall objectives for OFMDFM was to *'Deliver a Senior Civil Service Master Class in European engagement by end of March 2013'*<sup>33</sup>.

In gathering evidence for this project, experience at other legislatures demonstrated that structured formal training for Members was not well attended. Experience showed that Members 'learned by doing', that is became more familiar with the European legislative process through carrying out regular scrutiny of proposals and receiving appropriate written and oral briefings in the context of scrutiny of specific items. The view was that if relevant priority topics are followed through, then Members would learn more about European affairs and structures.

Some interviewees held the opinion that the lack of engagement in European affairs was a reflection of cultural and attitudinal issues rather than lack of understanding or knowledge, that is, that Members felt that there was little point in engagement as impact is limited and European affairs are not priority issues for the public.

A view is also held that the current ad hoc nature of EU scrutiny in Assembly committees also means that the extent to which this scrutiny occurs is often down the interests of the individual committee chairs and members. If there is little interest in European issues, the European scrutiny can be easily overlooked.

It may be that the current 'Politics Plus' members' development project could afford some further capacity building in relation to EU issues but also there may be opportunities to participate in the NICS European training courses as detailed above.

### **Recommendation 33**

**This possibility should be investigated further as a means of capacity building with assessment of any budgetary implications.**

In 2012, the European Commission, in collaboration with the Committee of the Regions, launched 'Erasmus for local and regional elected representatives'. The aim of this programme is to *"increase European elected representatives' knowledge and expertise on European Cohesion Policy through ad*

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<sup>32</sup> COR32/2010 Correspondence from OFMDFM– Response to EU Inquiry Report, June 2010

<sup>33</sup> European Priorities 2012-13 Implementation Plan: Winning in Europe – Northern Ireland Executive, May 2012

*hoc training and transnational learning activities*<sup>34</sup>. The programme is fully funded and therefore would not represent any resource commitment from Assembly budget.

100 elected representatives took part in the 2012 programme which included a delegation of 8 from the UK and 2 from Ireland. No programme for 2013 has been launched (given the current negotiations on the European budget).

#### **Recommendation 34**

**Consideration should be given by the Assembly Commission to encouraging Assembly Members to apply for any future programme in 2014. Details of the programme are contained at Appendix 5.**

#### **Recommendation 35**

**Given the development of the Politics Plus programme by the Northern Ireland Assembly Legislative Strengthening Trust, consideration should be given to the incorporation of a section on European scrutiny.**

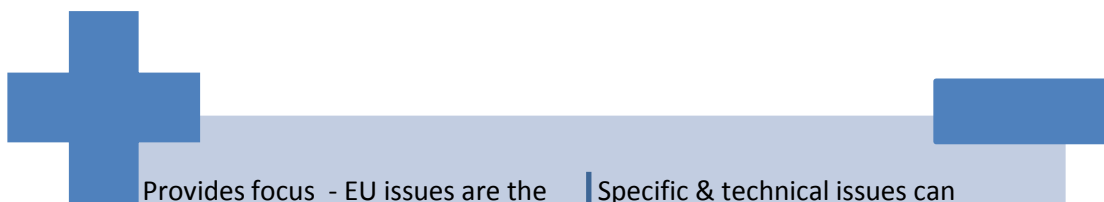
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<sup>34</sup> Preparatory Action: Erasmus for Local and Regional Elected Representatives – European Commission Directorate General Regional Policy, May 2012

## 15. Parliamentary Models of European Scrutiny

There are many different models of parliamentary engagement in European affairs. The common approaches are: operation of a dedicated EU affairs committee which undertakes all EU related activity; a 'mainstreaming' approach, where each statutory or sectoral committee examines EU policy and legislative affairs in its remit; or a combination of the two approaches. In considering the appropriate model for European scrutiny at the Assembly it is worth examining the pros and cons of each 'absolute' approach, that is, mainstreaming vs. a sole EU affairs committee.

### Single European Affairs committee responsible for all EU scrutiny



<ul style="list-style-type: none"><li>Provides focus - EU issues are the priority</li><li>Ability to tackle broad crosscutting themes</li><li>Members develop expertise</li><li>Clear lines of responsibility</li><li>Representational role in EU affairs on behalf of Assembly</li><li>Can undertake monitoring and review role</li></ul>	<ul style="list-style-type: none"><li>Specific &amp; technical issues can require policy knowledge of a statutory committee</li><li>Expertise limited to few members and Secretariat</li><li>Lack of integration into wider Assembly committee activity</li><li>Parliamentary trend is for mainstreaming</li></ul>
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### Mainstreaming – all committees undertaking scrutiny of EU legislation and policy



<ul style="list-style-type: none"><li>Integration of EU issues into all policy areas</li><li>Broader range of policy areas can be examined</li><li>Places responsibility on all committees</li><li>Development of expertise across all committees</li><li>No need for separate EU committee - less resource impact</li><li>In line with parliamentary trends</li></ul>	<ul style="list-style-type: none"><li>Domestic issues inevitably take priority</li><li>Subject to domestic legislative pressures</li><li>Places responsibility on all committees - no 'driver'</li><li>Additional resource pressures</li><li>Strategic and crosscutting issues can be overlooked</li><li>External relations aspect can be diluted or lost</li></ul>
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The COSAC report on ‘Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny’ states:

*“In most national parliaments, a European affairs committee is at the heart of the scrutiny procedure, though in an increasing number of parliaments sectoral committees also participate in the scrutiny process, by providing specialist advice to European affairs committees in the early stages of EU decision making and/or in particular focusing on subsidiarity and proportionality aspects”.<sup>35</sup>*

In written evidence supplied to the ongoing House of Commons European Scrutiny committee inquiry into EU scrutiny, Dr Ariella Huff and Dr Julie Smith commented on the trend towards mainstreaming of EU scrutiny in European parliaments.

*“In recent years a number of European parliaments – e.g. the Dutch Tweede Kamer and Eerste Kamer– have ‘mainstreamed’ the European scrutiny process, giving departmental select committees direct responsibility for scrutinising EU affairs in their policy area (with the EU committees playing a coordinative, overseeing role). In the Netherlands, this system developed in part as a response to the ‘no’ vote in the 2005 referendum on the Constitutional Treaty, as parliamentarians perceived that voters were demanding more effective scrutiny of EU policies. The Lisbon Treaty’s new provisions have added further momentum to the reforms, which are seen within the chambers as very effective in facilitating debate over EU policy both before and after legislative proposals are made.*

*In the German Bundestag, the European Affairs committee plays a coordinating role while sectoral committees are responsible for scrutinising EU policies relevant to their areas. The EAC retains responsibility for constitutional questions like Treaty reform and accession of new Member States. Since the Lisbon Treaty, the EAC is also responsible for the final decision to submit reasoned opinions on potential breaches of subsidiarity (as part of the Early Warning System), although sectoral committees are also involved in these discussions and are responsible for initially proposing reasoned opinions. In addition to enabling scrutiny of EU policy by sectoral committee experts, this system also gives sectoral committee chairs the expertise needed to consult with their counterparts in other countries on EU affairs (an aspect of cooperation that has become highly salient in the context of the financial crisis).”<sup>36</sup>*

In providing evidence on behalf of the UK Government to the House of Commons European Scrutiny Committee inquiry into the European scrutiny system, the Foreign and Commonwealth Office stated: *“An ideal system of scrutiny would harness existing expertise including the technical and policy expertise within the departmental Select committees (DSCs). Mainstreaming and good linkages with the DSCs increases upstream scrutiny by the House on policy formulation. This enables Government to be better informed of Parliamentarians’ views early on in its policy development. In turn, timely engagement with Parliament encourages Government to formulate its position early to influence better the EU process. The Government also notes the increased use by the European Scrutiny committee in seeking opinions from the Select committees on matters under scrutiny.*

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<sup>35</sup> Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny’ prepared by COSAC, October 2007

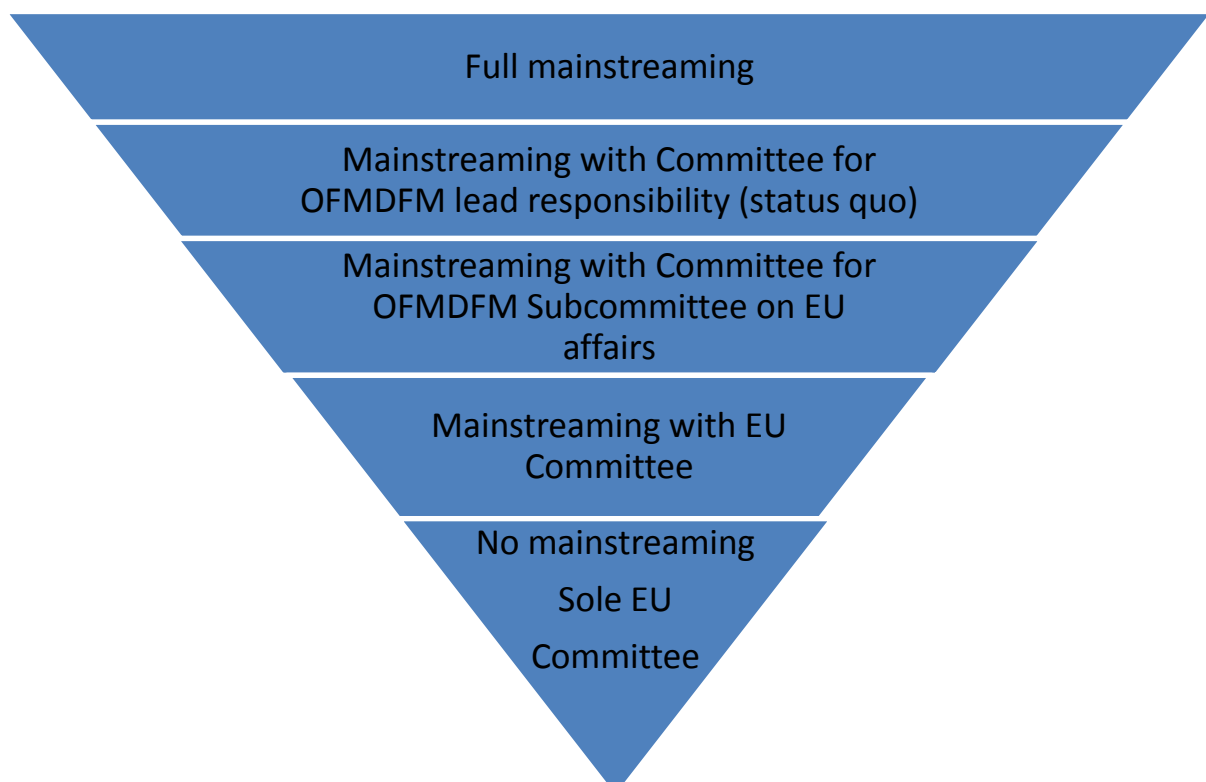
<sup>36</sup> ESI 6: Written evidence to the House of Commons European Scrutiny Committee Inquiry into European Scrutiny - Dr Ariella Huff and Dr Julie Smith, University of Cambridge, September 2012



*There are many examples where Select committee input has benefited the UK's negotiating position. For instance, in its report on Sulphur emissions by ships, the Transport Select committee's firm line on negotiating robustly in the EU to fend off any gold-plating of the revised MARPOL Annex VI strengthened the UK's hand in taking a strong negotiating position in discussions on a proposed directive on the sulphur content of marine fuels. In particular, the report emphasised the need for the Government to prioritise its efforts and secure two key outcomes, and to do this by forging alliances with other EU Member States.*<sup>37</sup>

In gathering evidence for this report is clear that there is no 'perfect' approach and as discussed previously, a number of legislatures are reviewing their approaches to European scrutiny. There are a number of options which can be summarised in a spectrum or total versus no mainstreaming.

#### Options for Assembly scrutiny of EU affairs



<sup>37</sup> ESI 5: Written evidence to the House of Commons European Scrutiny Committee Inquiry into European Scrutiny - Foreign & Commonwealth Office, on behalf of the Government, September 2012



## Option 1: EU affairs are fully mainstreamed across statutory committees and no single committee has lead responsibility for EU affairs

This is the approach which has been adopted by the National Assembly for Wales. It should be borne in mind however this approach has the support of a full time permanent official based in Brussels who in effect has become the 'champion' for European affairs in the Assembly. Another factor to be considered is that the National Assembly for Wales has 60 Members which has practical implications for Members' availability to sit on committees.

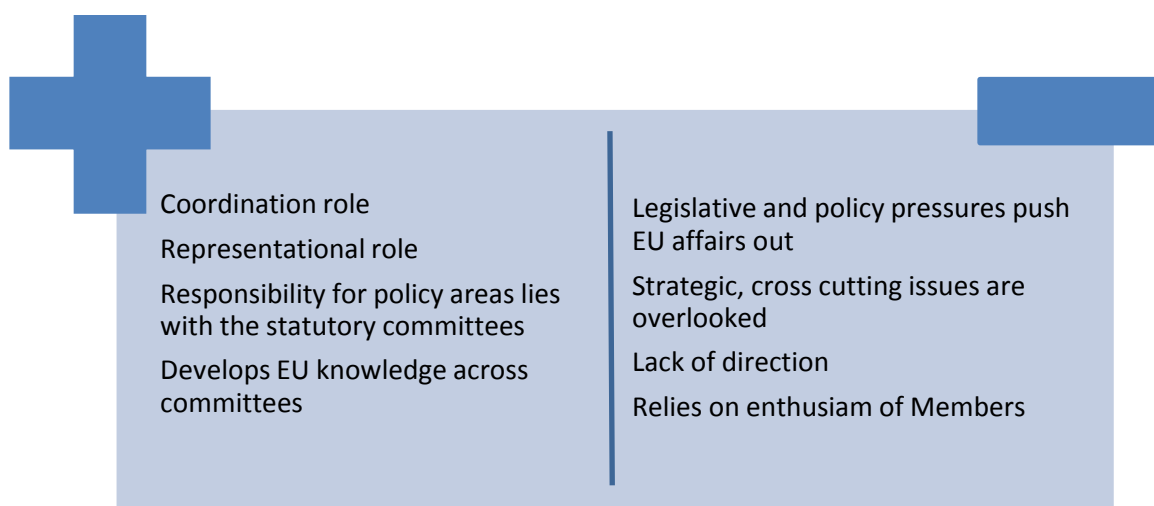


For this approach to be successful, there are a number of key points to consider.

- Mainstreaming requires a determined, enthusiastic and motivated 'champion' of EU issues to ensure that all committees are as involved as possible in European affairs.
- There remains a necessity for a mechanism of coordination to ensure no duplication of effort and to retain a strategic approach for the organisation as a whole.
- A heavy domestic policy and/or legislative workload will perhaps inevitably mean that European affairs will become less of a priority for statutory or sectoral committees.
- Broad, strategic EU issues can be overlooked as they do not sit neatly within the remit of statutory or sectoral committees
- The external affairs and representational engagement role can be lost as there is no longer one lead committee who can represent the European role of the organisation and engage in profile raising with key European stakeholders.
- The success of this approach requires considerable and sustained 'buy in' from both Members and Secretariat, particularly in periods of pressure.

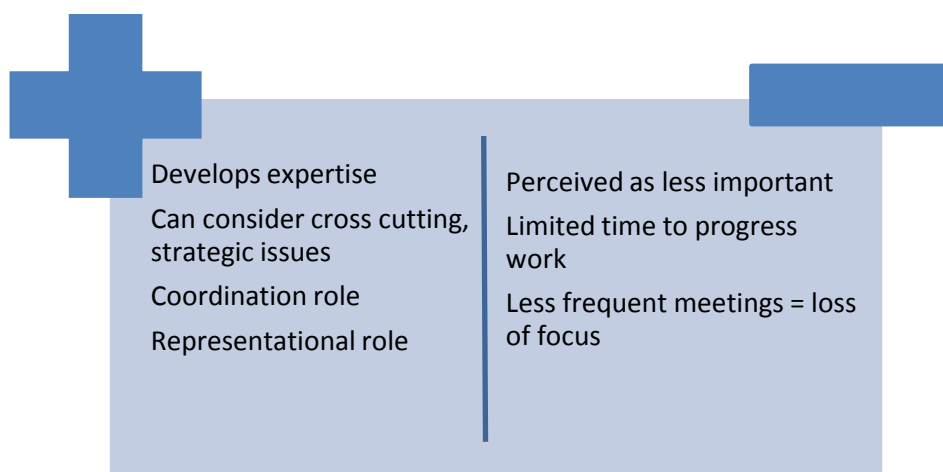
## **Option 2: EU affairs mainstreamed across statutory committees with the Committee for OFMDFM having lead responsibility as well as examining EU affairs within its own remit**

This represents a continuation of the current system in place at the Assembly. Firstly, the Committee for OFMDFM has lead responsibility for European affairs at the Assembly as a reflection of the structures for EU affair within the Executive. Secondly, the Committee has responsibility for European affairs which lie within its own statutory remit, i.e. European affairs relating to equality, children and young people, older people, victims and survivors etc.



- For both the Committee for OFMDFM and the statutory committees, domestic policy and/or legislative issues will inevitably take priority, leaving little time or appetite for European matters
- Broad, strategic EU issues can be overlooked – they do not necessarily fall within the Committee for OFMDFM remit and can be too resource intensive for a statutory committee to examine.
- The Committee for OFMDFM to some extent can play a coordination role in committee wide engagement in EU affairs.
- The external affairs and representational engagement role in EU matters can be played by the Committee for OFMDFM.

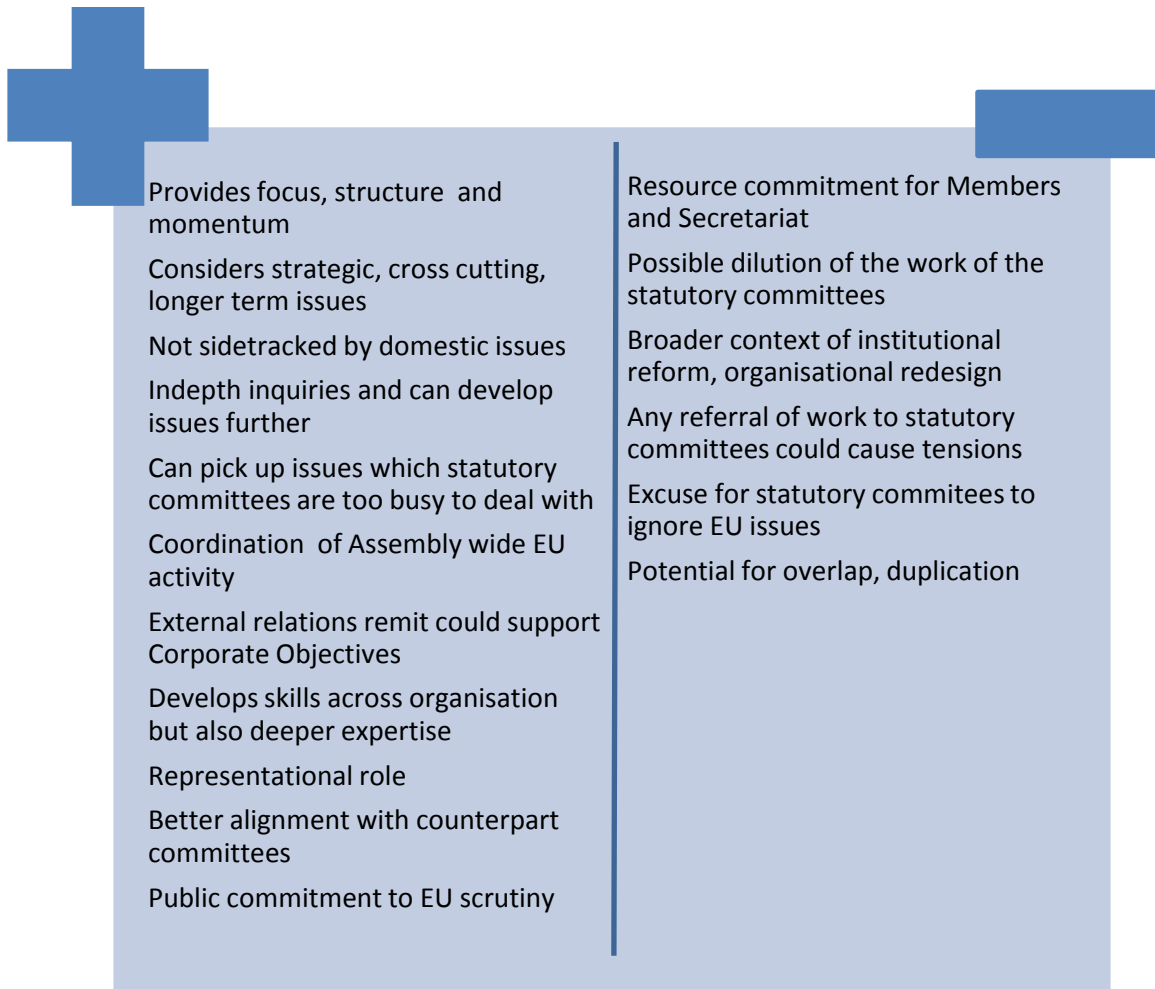
**Option 3: EU affairs mainstreamed across statutory committees with the Committee for OFMDFM having lead responsibility through a subcommittee focused on EU affairs.**



- EU affairs will be the sole priority for the subcommittee and this will provide enhanced focus as well as the opportunity to tackle broad and strategic themes, with agreement of relevant statutory committees.
- The external affairs and representational engagement role in EU matters can be played by the Committee for OFMDFM or its subcommittee.
- Members of the subcommittee will develop expertise in EU affairs.
- The subcommittee can play a coordination role in committee wide engagement in EU affairs and will retain a strategic overview of organisational activity on EU issues.
- A subcommittee could meet in place of the whole Committee for OFMDFM on a fortnightly or monthly basis which would not increase the time pressures on Members and accommodation pressures.
- A monthly meeting might result in a loss of focus or momentum.
- The use of a subcommittee could be construed as according little importance to European affairs both internally and externally.
- This subcommittee could draw in members from other statutory committees for specific scrutiny items of relevance – e.g. a member of the Committee for Enterprise, Trade and Investment could sit on the subcommittee for the duration of an inquiry into the impact of EU support for small businesses in Northern Ireland.

#### **Option 4: EU affairs mainstreamed across statutory committees and a standing European and External Relations Committee be established with a central, coordination role.**

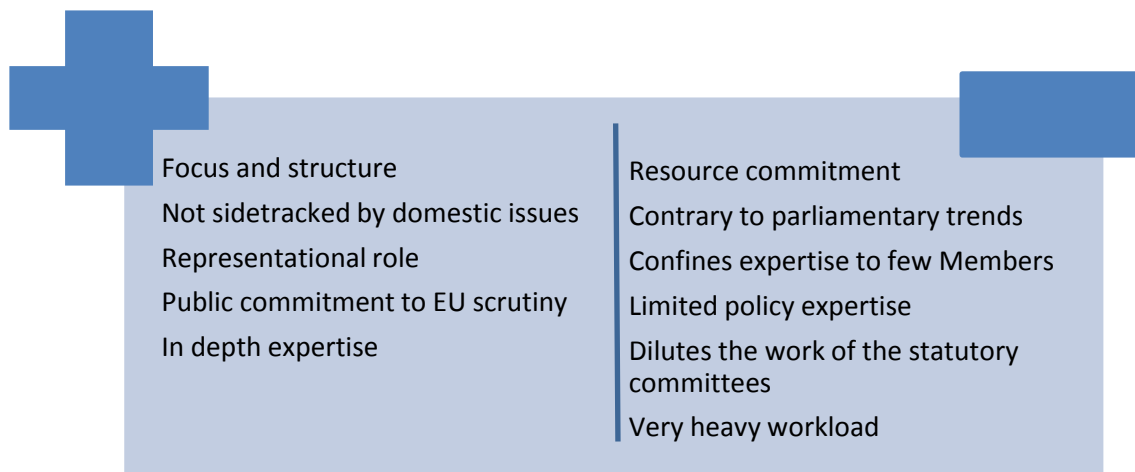
This is the approach which has been adopted by the Scottish Parliament and the Houses of the Oireachtas and is a common model across European parliaments and legislatures.



- A dedicated European (and external relations) standing committee would be established to examine broad, strategic and/or cross cutting EU affairs, with the statutory committees continuing to examine policy or legislative matters within their remits.
- A dedicated European Committee would provide focus and momentum on EU issues and could examine medium to long term issues.
- In its remit, a Committee may carry out:
  - scrutiny of the Northern Ireland Executive in EU affairs including implementation of EU existing legislation, its position on new EU proposals and its position on external affairs;
  - examination of key strategic European Commission proposals;

- monitoring specific on-going European legislative proposals including subsidiarity implications;
  - engagement and participation activities as part of the Assembly's external relations function
- Any European Committee would prioritise work by: selecting inquiry topics according to significance to Northern Ireland; the committee's power to influence and the resources required for scrutiny.
- The Committee for OFMDFM would continue to examine European issues within its own statutory remit.
- A European Committee would take responsibility for all cross cutting EU issues as well as carry out in depth scrutiny of broad and strategic issues.
- A dedicated European Committee would represent the Assembly in the European arena as well in discussions with equivalent committees in the UK and Ireland. Consideration could be given to incorporation of a wider external or international (i.e. not just EU) relations remit.
- The Committee could incorporate a significant element of engagement with stakeholders in European affairs and fulfil a role of coordinating a Northern Ireland view on key EU issues to relevant key players in EU policy making.
- Establishment of a new committee represents a resource commitment.
- Expertise in EU issues would be developed across the organisation - both amongst Members and Secretariat.
- The statutory or sectoral committees would retain responsibility for EU affairs within their remits and Members policy knowledge in the area would add value to scrutiny of remit relevant EU affairs.
- A dedicated lead Committee on European affairs clearly demonstrates both internally and externally, the importance accorded to engagement in European issues and the priority placed upon these matters.
- This committee could be made of members of other statutory committees with a significant EU element to their work.
  - Use of a rapporteur system, where a member from each statutory committee also sits on the European Committee, would facilitate greater two way communication.
  - The members of the EU Committee would bring the EU expertise to their statutory committees and their knowledge of the policy area of the statutory committee to the EU committee considerations.
  - The benefits of specialisation would then be realised where a member of an EU Committee has the in depth knowledge of procedure but also the policy knowledge from membership of a statutory committee.

**Option 5: A dedicated European (and external relations) committee would be established taking full responsibility for European affairs across all committee remits.**



- Expertise in EU issues would be developed only in a small number of Members and Secretariat staff.
- Lack of policy knowledge across a wide range of subjects may inhibit consideration of the European issues in that area.
- Examination of all EU policy and legislative affairs would represent a significant workload and would inevitably impact on the ability to examine issues in depth.
- A dedicated European committee would provide focus and momentum on EU issues.
- A dedicated European committee would represent the Assembly in the European arena as well in discussions with equivalent committees in the UK and Ireland.
- The committee could incorporate a significant element of engagement with stakeholders in European affairs and fulfil a role of coordinating a Northern Ireland view on key EU issues.
- Establishment of a new committee represents a resource commitment.
- An EU committee might dilute the work of the subject committees.

## 15.1 Options Appraisal

The Assembly's current approach to mainstreaming has yielded positive results in taking initial steps towards more enhanced integration of European issues into the statutory committee agendas.

It is clear that any move away from that approach and to concentrate all European scrutiny in one committee (Option 5) would be a retrograde step in view of the wider European parliamentary trend for mainstreaming. The workload for one single committee carrying out all Assembly scrutiny of European policy and legislative issues would be immense.

The opposite approach of mainstreaming across all committees with no committee taking the lead on European affairs is a radical one (Option 1) and at present, the scrutiny of European affairs is not sufficiently well integrated into wider committee scrutiny to be able to move to such a system. Such an approach may, however, be an option for future consideration as the European Strategy progresses.

Therefore the considerations fall to what mechanism the Assembly should employ to play the lead role in committee engagement in European affairs, that is Options 2, 3 or 4.

Option 2, i.e. maintenance of the status quo where the Committee for OFMDFM takes the lead on European affairs, does not always provide sufficient impetus to the process of European scrutiny at the Assembly. Firstly, as lead Committee for European affairs at the Assembly, the Committee reflects the structures in the Executive where OFMDFM leads on EU issues. The Committee therefore takes the lead on:

- compilation of the report on statutory committee activity on European affairs,
- coordinates statutory committee scrutiny of the Executive's European Priorities
- engaging with the EU Presidency of the Council of the EU every six months
- engaging with MEPs, Committee of the Regions and European Economic and Social Committee representatives.

In addition, the Chairperson represents the Assembly on the EC-UK Forum and initiated the Assembly European Advisory Panel in June 2011

During the course of this project the Committee has also led on the pilot project on committee prioritisation of EU issues from the European Commission Work Programme and on the pilot project for subsidiarity monitoring.

Secondly, with regard to scrutiny of EU affairs within its own remit, the Committee already has a wide and varied remit which inevitably results in European affairs becoming less of priority. For example, in the current session, extensive work on the inquiry into Historical and Institutional Abuse has left limited scope for consideration of European issues.

For these reasons, maintenance of the current structures could pose a risk to the full development of the Assembly's EU strategy.

It would be possible, as in other legislatures, for the first element of the Committee for OFMDFM's European role, i.e. the co-ordination element, to be undertaken by a Committee solely focused on European affairs. This would enable increased forward planning and a more strategic approach to

European affairs at the Assembly. The coordination elements of the activity of other statutory committees could be more timely – for example, the report on Committee European Priorities for 2013, due to be published in March 2013 (akin to similar timelines in other legislatures) will be published in May due to other (non EU related) work pressures. In addition, leading on the two pilot projects during this year on Committee Prioritisation of EU issues and subsidiarity monitoring has created pressures for the Committee for OFMDFM and subsequently the processes have not been fully and thoroughly tested through no fault of the Committee. Introduction of new systems such as these two pilot projects for improvement in EU scrutiny could obviously be more fully and thoroughly tested, examined and reviewed through a dedicated committee.

A dedicated committee will also have capacity to plan to scrutinise key European issues, for example wider strategic, cross cutting and/or longer term European issues which have relevance for Northern Ireland. Currently, competing pressures for the Committee for OFMDFM and for all statutory committees do not facilitate such activity. Consideration could be given to a referral mechanism – whereby a European committee could pick up issues which other statutory committees do not have capacity to scrutinise.

A European committee will also provide a degree of momentum to the Assembly's wider European engagement and consideration could be given to incorporation of an external relations aspect to its role. The Committee would also have an obvious role in liaison with counterpart committees in Westminster and the devolved administrations as well as with the Northern Ireland representatives in Europe.

If there were a decision to set up a European Committee, consideration would be given to whether such a dedicated committee should be a standing committee of the Assembly in its own right or be a subcommittee of an existing statutory committee, likely the Committee for OFMDFM.

In order to determine the preferred option, it is necessary to reflect upon the anticipated relative success of these two approaches, that is, how effective each would be in enhancing European scrutiny at the Assembly.

What is clear is that a subcommittee, meeting in place of the Committee for OFMDFM, say one week in four, would not represent a significant additional burden on Member's time but would have limited scope to undertake a comprehensive work programme. Time lags would also have a negative impact on issues which necessitate timely consideration such as subsidiarity monitoring.

Loss of momentum would also be a negative impact and this is significant in that the focus on the duration of this project and beyond would be that the momentum on EU activity at the Assembly would be increased. There is also a high risk that the inherent perception among both Secretariat and Members would be that the scrutiny of EU issues was merely an 'add on' and therefore of less value than other scrutiny. The external perception by key European stakeholders could also be that EU issues are not viewed as a priority by the Assembly.

A standing European committee would not suffer from these issues; however, establishment of another committee would represent an additional burden on Member's time as well as the resource impact of establishing a Committee team and this must be seriously considered, particularly with the budgetary pressures currently facing the organisation.



Regarding effectiveness, it is clear that a standing European committee would have capacity to assume a strategic and structured work programme focusing on a range of issues important to Northern Ireland and in this way would be the most effective option available to enhance committee scrutiny of European issues.

The committee would coordinate Assembly wide activity and provide the necessary focus and momentum. It would also provide a useful mechanism for monitoring, evaluating and reviewing Assembly and committee process and activities on EU issues.

The committee would also take the lead in representing the Assembly externally and would make a clear statement about the Assembly's commitment to scrutiny in this area.

At present, a Committee Review Group has been established consisting of chairpersons from each of the main political parties as well as expert advisers. This group is considering the committee system of the Assembly, including whether thematic or cross cutting committees might be a feature of the Assembly in future and whether it may be desirable to incorporate these and other changes into Standing Orders.

#### **Recommendation 36**

**Therefore while the evidence supports the establishment of a European Committee, this report recognises that this issue forms part of a wider strategic review being undertaken by the Committee Review Group and due to report in the autumn of 2013.**

## 16. Secretariat Structures

In addition to revised committee structures for European engagement, more effective engagement in European affairs can be supported through revised staffing structures.

These revised staffing structures will have budgetary implications and these are outlined in this section using estimated figures supplied by the Finance Office.

There are three main cost considerations:

- a. Costs of a new committee team to support a European Committee
- b. Full time officer based in Brussels
- c. Full time officer based in Parliament Buildings

Any further resource implications for existing committee teams and RaSe in light of increased engagement in European affairs by existing statutory committees should be monitored and reviewed where necessary.

### a. Committee team to support a European and External Relations Committee

Should a new European and external relations Committee be established, the committee support structures would likely mirror those for other standing committees. The figures below indicate approximate costs of a standard committee team.

The structure of the committee team may obviously be altered as the trial of 'business unit teams' proposed by the Business Efficiency Review within the Clerking Directorate progresses.

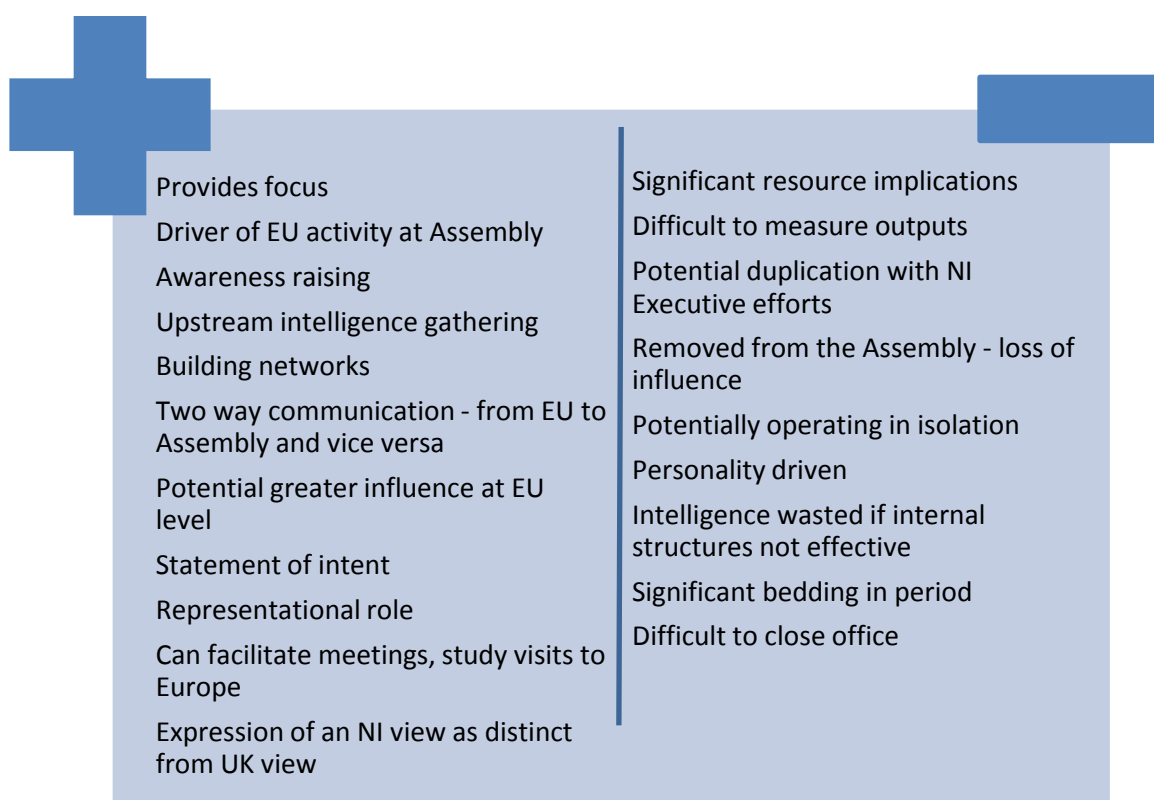
Housing & Personal Allowance	£0
Salary & Employer Costs*	£165,323
Travel	£3,000
Office Costs	£0
Hospitality	£600
<b>Total</b>	<b>£168,923</b>

\*Based on an AG4, AG6, AG7 and AG8 team structure

## b. Establishment of an Assembly European office in Brussels with a full time official

The national parliaments employ this approach. The House of Commons Brussels office employs 2 members of staff and the House of Lords and Houses of the Oireachtas both employ 1 person each. Representatives of national parliaments have offices in the European Parliament building.

The National Assembly for Wales also has a full time member of staff in its EU Office who is co-located in Wales House. The Scottish Parliament has revised its strategy and no longer has a full time official based in Brussels. The EU Officer post is under review.



- Would provide a clear statement of intent to European institutions of the importance placed on EU affairs by the organisation
- Significant resource implications and resultant potential for negative publicity related to expenditure.
- Can gather intelligence through Brussels networks.
- Outputs can be difficult to measure – can be a question of ‘what would be missed if we didn’t have an officer in Brussels?’.
- The value added of a Brussels office is dependent on the effective use by Assembly committees of any intelligence gathered. In the absence of established EU scrutiny structures at the Assembly which have been through a period of trial, consolidation and review, establishment of a Brussels office could be seen as a premature step.

- An important point to consider is that once an Assembly office in Brussels is established, there is a reputational risk to any subsequent closure.
- Potential for confusion at European level between the influencing activities of the Office of the Northern Ireland Executive in Brussels and a Northern Ireland Assembly Office in Brussels.
- A Brussels based officer can become removed from the Assembly and thus have less effective working relationships and influence with Secretariat and Members

### Estimated costs: Assembly Officer based in Brussels (Assembly Grade 4)

Housing & Personal Allowance	£25,000-30,000  *NI Assembly Policy on Housing Allowance remains under development by HR – assume NICS figures remain relevant
Salary & Employer Costs (AG4)	£66,000
Travel**	£3,375
Office Costs***	£0-25,000 (ONIEB Figure)
Hospitality	£5,000
<b>Total</b>	<b>£99,375 - £129,375</b>

\*\* 8 return flights from Brussels for business purposes, plus one personal return flight

\*\*\* If the Assembly Officer was based at the Office of the Northern Ireland Executive in Brussels, an approximate rental premium of £25,000 p.a. An agreement with the Northern Ireland Executive may reduce that rental premium.

### c. Establishment of an Assembly European Affairs Office based in Parliament Buildings



- Would provide a focus for EU affairs at the Assembly – including in relation to committee work and engagement and outreach activities.
- Less resource intensive than establishment of an office in Brussels.
- An EU Affairs Office would play a representational role for the Assembly in a range of EU fora and networks.
- An EU Affairs Office could have a role to play in dissemination of information both in providing information to committees on EU activity and also in disseminating the work of Assembly committees on EU affairs to stakeholders.
- Important to have effective working relationships with colleagues at the Assembly in order to provide focus and be the 'EU champion' - a Brussels based officer can become removed from Assembly activity
- Real value comes from energising the whole process of the Assembly's engagement in European affairs.

## Estimated costs: Assembly Officer based in Parliament Buildings (Assembly Grade 5)

Housing & Personal Allowance	£0
Salary & Employer Costs (AG5)	£51,820
Travel & Accommodation****	£10,000
Office Costs	£0
Hospitality	£5,000
<b>Total</b>	<b>£66,820</b>

\*\*\*\* 8 return flights from Brussels & accommodation for 5 nights for business purposes

Consideration must be given to administrative support for any European Officer. The outworkings of provision of this support can be further considered upon evaluation of the trial business unit project in the Clerking Directorate.

### 16.1 The role of a European Office in the Northern Ireland Assembly

In the 'Review of the European Division of the Office of the First Minister and deputy First Minister' three elements of the role of the European division within OFMDFM were identified: policy support and coordination; communication of information; and representation of the Executive and promotion of Northern Ireland.<sup>38</sup>

These three elements provide a useful basis for drawing up a specification for any future European Officer and/or team. The three elements should be seen as complementary. It could be envisaged that the role would encapsulate:

- Policy support and coordination
  - Supporting committees in scrutinising the NI Executive performance in key policy and legislative areas.
  - Liaison with officials at the Westminster committees and other devolved administrations to contribute Assembly committee views.
  - Coordination of the production of the annual Assembly EU Priorities report.
  - Developing networks of support.
  - Coordination of the work of Research and Information Services in supporting committees.
- Communication
  - Communicating and coordination of information flows into committees with RaiSe.
  - Dissemination of relevant information to external stakeholders.
  - Arranging the EU Presidency events and briefings.
  - Feeding back information from networks and key information flows to committees.
  - Establishment of relations with parliamentary representations from other regions, UK and other member states.
  - Monitoring and reporting on the nature and level of engagement of committees with EU issues.
- Promotion and Representation

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<sup>38</sup> Review of the European Division of the Office of the First Minister and deputy First Minister, September 2011

- Representing the Assembly at European meetings and events in order to highlight the Assembly's role in European engagement.
- Acting as an Assembly representative in key networks and creating linkages with the work of committees.
- Working in partnership with key stakeholders on NI profile events, e.g. European Parliament.
- Enhancement of the Assembly's reputation in EU matters

It must be recognised that ultimately, in holding departments to account on the levels and nature of engagement in EU policy and legislation, any European officer or team cannot lead on such matters – this role is clearly defined as within the statutory responsibility of committees.

A European officer will also not be the only and sole channel of communication for important information on EU affairs on which committees need to act. Rather, the role of such an office will be as a catalyst to raise awareness and communicate information. The role is therefore not one of primary responsibility but rather that of coordination and facilitation. The role should seek to supplement rather than supplant the horizon scanning carried out by committees and RaISe.

A European office can provide a strategic and longer term overview on emerging issues and can use this knowledge to guide committees in setting priority areas for scrutiny.

In gathering evidence for this report, there were a number of comments in relation to the key skills of any European officer. These included:

- A European officer needs to be resilient to deal with potential resistance from colleagues and Members
- Must be a self-starter, extremely motivated and able to work on their own initiative.
- Ability to energise the processes at the Assembly.
- Well developed 'soft skills', i.e. excellent communication skills
- Strong networking skills and the ability to build effective relationships.
- Biggest issue for a Brussels based officer is doing work which is largely ignored back at the Parliament.
- Needs to have full support and buy in from senior management as well as the Speaker and committee Chairpersons.
- A view expressed from a number of interviewees during the course of this project was that engagement in European affairs is in an output in itself in that it raises the profile of the legislature which in turn can have benefits in building networks and influencing.

## 16.2 Options Appraisal

Any amendment to Secretariat structures must be viewed in conjunction with amendments to committee structures for European scrutiny, however these amendments are not necessarily exclusive but rather complementary.

If the Assembly Commission supports the establishment of a European Committee, this will entail creation of appropriate support mechanisms for that committee. Example costs of a staffing structure identical to that which supports other committees have been provided, however given the potential creation of business units within Clerking Directorate following the Business Efficiency Review, these support arrangements may be amended.

Consideration can therefore focus on firstly, the need for, and role of, an Assembly European officer and secondly, whether such an Officer should be based in Brussels or in Parliament Buildings.

As discussed previously, the role of an Assembly European Officer would be to energise the process of European scrutiny at the Assembly through providing support to committees; enhancing communication flows, both inwards and outwards; and through representing the Assembly at meetings and events to raise the organisation's profile. In gathering evidence for this report, EU Officers were described as being essential to the process of European scrutiny in ensuring continued momentum, impetus and motivation to both colleagues and Members.

Views from other legislatures which employ some element of mainstreaming of EU affairs across committees emphasised that the process would not function without a European officer to drive and champion the process.

During this project the European Project Manager has undertaken work as detailed previously in seeking to stimulate and support greater engagement in European affairs and there is clearly a role for a European Officer at the Assembly to take this work forward and further develop and enhance the Assembly's European scrutiny mechanisms. This is also a role which is likely to be necessary, in some form, into the foreseeable future so it is appropriate for a permanent position to be created to facilitate continuity, creation and maintenance of skills and knowledge in this area and long term promotion and enhancement of effective networks. This would avoid the loss of continuity associated with a series of fixed term appointments or temporary promotions.

### **Recommendation 37**

**An Assembly European Manager should be appointed as soon as possible and this recruitment should be for a permanent position.**

As to the location of this officer, the significant resource implications of establishing an Assembly Office in Brussels must be considered. The prime benefit of a Brussels based officer, as opposed to a Parliament Buildings based officer, would be the ability to gather intelligence through networks in Brussels.



Such intelligence would indeed be extremely useful for committees in, for example, divining the European Commission's direction of travel on a particularly relevant policy or legislative proposals in advance of any written consultation documents.

The views of many interviewees in the course of evidence gathering however were that it is more important for the Assembly to ensure that appropriate internal structures for European scrutiny are established, developed and reviewed in advance of serious consideration of establishment of a Brussels office. A risk of establishing a Brussels office in advance of well-established structures is that the effort expended in intelligence gathered in Brussels will be wasted as the intelligence information will not be used effectively by committees. Indeed, this was a challenge acknowledged by some interviewees where information gathered in Brussels was effectively ignored by the committees in the home legislature.

The outputs of a Brussels office will be difficult to measure and this is especially pertinent in the current budgetary climate and media scrutiny of expenditure.

The other tasks which could form part of the role of an Assembly European Officer – i.e. policy support; communication; and representation, could to a large extent, be achieved by a Parliament Buildings based officer. Realistic and pragmatic expectations of what could be achieved by a Brussels based officer would require further consideration. A more appropriate, resource efficient and, in the medium term, efficient approach would be to ensure that the architecture for scrutiny at the Assembly is well established before any such Brussels office was considered. In this way, the function, role and required outputs of any Brussels office will be clear having reviewed any gaps in Assembly scrutiny using a Belfast based approach.

#### **Recommendation 38**

**That any future Assembly European Officer is based in Parliament Buildings, with appropriate travel to Brussels when required to supplement networking opportunities. The role and location of the Officer should be re-evaluated in 2-3 years' time dependent on other organisational restructuring.**

#### **Recommendation 39**

**If a dedicated European Committee is created, the complementarity of the role of the Clerk to the Committee and the European Officer must be clearly defined to ensure definition of roles and areas for support and cross working.**

## 16.2 Post Grading

Should an Assembly European Affairs Officer role be established, further consideration must be given to the appropriate grading level for the Officer.

Ultimately the decision as to the appropriate grade of this official will be determined using the organisation's job evaluation process. There are a number of key points to be considered in deciding the appropriate grade level for an Assembly European Affairs Officer:

- Equivalent roles in the Scottish Parliament, National Assembly for Wales, House of Commons, House of Lords and Houses of the Oireachtas are all Clerk (AG4) grade or above.
- Comments noted during the evidence gathering of this project emphasised that the role of an Assembly European officer must be authority driven in order to secure buy in from both Secretariat colleagues and Members. Views were expressed that any European Officer must be equivalent Assembly Grade to a committee Clerk in order to prevent a situation where efforts to support or encourage committees in European engagement can effectively be overruled by the Clerk.
- A European Affairs Officer should be a decision maker within the organisation (i.e. an Officer of the Assembly) who can attend meetings and events on behalf of the organisation.
- It is likely that European Affairs Officer would carry out a significant representational role on behalf of the Assembly in attending key events centred on European affairs. It is important that any representative of the Assembly in such a role be of an appropriate grade in order to liaise with high profile European officials and stakeholders effectively and at an appropriate level.
- A European Affairs Officer will have significant interaction with colleagues across Directorates in working on cross cutting policies which may necessitate influencing and gaining the commitment of others and should therefore be a decision maker.

## 16.3 Role of Raise

The Research and Information Service (RaISe) systematically monitors a range of official EU and other sources to provide committees with information updates on EU policy and legislative developments. This information is disseminated using Horizon, the electronic resource designed to keep users informed about topics relevant to Assembly business.

Researchers are also expected to engage with a variety of organisations to develop networks and contacts to enable the gathering of intelligence. In addition, the Library provides access to a number of commercial products which aim to share intelligence exclusively with clients.

Research and Information Service has taken on the role of logging and maintaining a database for receipt of UK Government Explanatory Memoranda (EMs) on legislative or policy proposals. The receipt of these EMs has also created a work stream for RaISe in analysis of these documents and where necessary provision of written and/or oral briefing for committees.

Consideration should also be given to the support provided by Research and Information Service to any committee on European affairs. If a committee decides for example to maintain a watching brief on key European policy or legislative proposals with regular update throughout the process this may create an additional work stream for RaISe.

Resource implications for Research and Information Service for the longer term management of logging and analysing Explanatory Memoranda and for increased activity on analysis of European policy or legislative proposals should be considered.

During the course of interviews for this project, there were views that a more proactive and timely approach by RaISe in updating committees on emerging European issues would be welcomed. The Horizon system while useful was not utilised fully.

A re-evaluation of how committees and Members receive European related information would be worthwhile. Discussions should involve Clerking and RaISe as providers and users.

It is important that there is clarity of responsibilities between RaISe and the role of any European Office or Officer. It can be envisaged that sourcing, analysis and communication of information on European issues would remain with RaISe, which holds key expertise.

In gathering information and intelligence and in carrying out the horizon scanning activity, researchers should be supported, where necessary, in building further networks with counterparts in other legislatures and key stakeholders, and where necessary, researchers should be facilitated in undertaking familiarisation visits to Brussels. These networks can be invaluable in providing intelligence and highlighting complementary areas of work and information gathering which would be useful for committees.

## 17. Suggestions for Committee Activity on European Affairs

Previous parts of this report have suggested a 'best practice' approach for committees to undertake scrutiny of EU matters and this section outlines some further suggestions for consideration.

### 17.1 Scrutiny of Northern Ireland Executive in European Engagement

- Further scrutiny of the work of the Barroso Task Force and its Working Groups including details of specific activities and outputs. As referred to previously, the Barroso Task Force Working Group has a number of thematic sub groups – each focusing on one of the Executive's high level European priorities. Each of these thematic groups is supported by a Barroso Desk Officer based in Brussels. The 'Review of the European Division of the Office of the First Minister and deputy First Minister' recommended that *"The priorities for policy work within ONIEB should be clearly specified by departments through Thematic Priority Groups and appropriate policy leads identified with whom Desk Officers will closely liaise..... In addition to regular reports, the European Division send 'items of potential interest' to nominated 'departmental EU Co-ordinators' within departments. These can cover, for example, announcements of EU consultations, conferences and calls for research proposals."*<sup>39</sup>

Committees may wish to follow up with respective departments on which priority areas have been established for particular thematic groups and also seek updates from the departmental EU Coordinators.

- One of the key issues identified was the view that departments do not provide sufficient information on EU activities to committees, or do not provide the information at an early enough stage to allow any influence to be exerted. There was a general view that the departments are not forthcoming on emerging European issues.

To this end, committees may wish to schedule regular updates from the departments. In establishing an understanding of the work undertaken by each department in relation to European affairs, each committee could set a 'checklist' of questions for departments, for example:

- how are EU affairs resourced at the department – in money and people terms
- what early warning systems they have in place for policy or legislative scrutiny
- what networking is the department doing in relation to European affairs
- what engagement have they had with the private sector on funding and policy issues
- what visits have the Ministers and officials undertaken
- what is being discussed at the Commission which is relevant to NI
- How is the department progressing in relation to funding drawdown

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<sup>39</sup> Ibid

- As discussed previously, the Northern Ireland Executive publishes its European Priorities on an annual basis, followed by a Priorities Implementation Plan which provides specific details of how the priorities will be achieved as well as the responsible departments. Committees may wish to follow up with departments on respective responsibilities and progress against these targets on a regular basis.
- 2013-14 sees the conclusions of the last European budgetary period. Negotiations on the next European budget – the Multi Annual Financial Framework – for 2014-2020 are ongoing. Committees may wish to seek further information from respective departments on what part departments have played in policy discussions for the next funding period.
- While the final budgetary allocations are not yet decided, details of the European Commission’s headline programmes are known. Committees may wish to ask departments for details of preparations for the next round of funding, particularly with regard to large scale funding programmes such as Horizon 2020 - the European Union’s flagship initiative aimed at securing Europe's global competitiveness. Running from 2014 to 2020 with an €80 billion budget, this programme for research and innovation is part of the drive to create new growth and jobs in Europe.
- The Department of Finance and Personnel has established a **‘Consultative Partnership Group on EU Funding 2014-2020’** to consider and discuss issues relating to the development of Northern Ireland’s future EU Structural Funds Programmes. The Group *“provides a forum through which key stakeholders can have an on-going influence on the development and preparation of future European Regional Development Fund and European Social Fund programmes”*.<sup>40</sup> The Group is preparing the Northern Ireland contribution to the UK Partnership Agreement which is the key strategic document that underpins all Operational Programmes within the UK. Members have been nominated from relevant social partners, local Government sectors, trade unions, voluntary and community sectors, environment, energy, education and agri-rural sectors and the Equality Commission and advisors to the Group consist of representatives from DETI, DEL, DARD, SEUPB, the European Commission and NISRA.

Committees may wish to seek further information on the discussions at this Partnership Group and the nature of the departmental inputs.

- Some Executive departments are actively involved in specific projects, for example, the EU-US Health Initiative. The Department of Health, Social Services and Public Safety has been undertaking activity in this area in seeking to have US companies create company bases in Northern Ireland. This initiative also has a funding stream under the EU E-Health Alliance. Projects such as this could be the subject of committee focus and the committee, if

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<sup>40</sup> [http://www.dfpni.gov.uk/index/finance/european-funding/eu-c-and-e-mon-info/consultative\\_partnership\\_group\\_on\\_eu\\_funding\\_2014-2020.htm](http://www.dfpni.gov.uk/index/finance/european-funding/eu-c-and-e-mon-info/consultative_partnership_group_on_eu_funding_2014-2020.htm)

supportive of the department's activity, could make representations in Europe, for example to the European Parliament, in support of the Minister etc.

- It is vital that committees have a dual aspect to their role – in scrutinising the policy and legislation at an early stage but also in assessing the post agreement phase, that is the transposition into national legislation and the implementation on the ground in Northern Ireland. Infraction proceedings emanating from late implementation of European directives for example are often only examined when the stories are covered in local media. Committees should also seek to establish the department's position on a policy before the department formally feeds into Whitehall in the production of a UK Government Explanatory Memorandum on a policy proposal.
- Committees could play a greater role in representing stakeholder views, that is compiling a Northern Ireland viewpoint as result of greater and earlier engagement with stakeholders. This view could then be conveyed to Westminster and or the European institutions.

This approach is viewed as a key element of committee engagement in European affairs at the National Assembly for Wales, where the committees present a Welsh view to the EU through active engagement with stakeholders and also then feedback to the stakeholders, e.g. through updates on the progress of the legislation at the European Parliament, amendments, rapporteur reports etc. This approach is viewed as having provided a high degree of visibility to Welsh concerns at European level and provided a platform for elected Members and Welsh stakeholders to make a contribution at the critical early stage of policy formulation to head off the adverse and promote the positive potential for Wales.

This approach does rely on early engagement with proposals, preferably at the pre-legislative stage where the committee could seek to take the stakeholder views on the proposals and convey that view onwards in advance of legislative agreement.

## **17.2 Engagement with the European Institutions**

- Greater emphasis should be placed on committee engagement at a pre-legislative stage, that is, in consideration, and where appropriate, responding to Commission communications, White Papers and Green Papers.
- Committees should also take greater note of the Priorities of the Presidency of the Council of the European Union. Each Presidency will set out its priorities to be achieved during its six month term, for example, during its term, the Irish Presidency drafted the regulations for the Youth Guarantee Initiative. Committees can use these Presidency priorities as an opportunity to engage on a key initiative in a timely manner.

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# EXTRACT

## **Devolution**

### **Memorandum of Understanding and Supplementary Agreements**

Between the United Kingdom Government, the Scottish  
Ministers, the Welsh Ministers, and the Northern Ireland  
Executive Committee

Presented to Parliament by Command of Her Majesty  
and presented to the Scottish Parliament and the  
Northern Ireland Assembly and laid before the National  
Assembly for Wales.

March 2010



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## **Explanatory Note**

This paper, superseding Command Paper Cm5240 published in December 2001, comprises a series of agreements between the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland setting out the principles which underlie relations between them. It is not intended that these agreements should be legally binding.

The principal agreement is the Memorandum of Understanding (MoU). It provides for a Joint Ministerial Committee (JMC), which is the subject of a separate agreement covered in Part II of the MoU. In addition to the JMC agreement, three separate overarching Concordats apply broadly uniform arrangements across Government to the handling of: the co-ordination of EU policy and implementation; financial assistance to industry; and international relations touching on the responsibilities of the devolved administrations.

Individual UK Government Departments and their counterparts in the devolved administrations have also agreed and published bilateral concordats.

Ministerial responsibility within the UK Government for the MoU and JMC agreements lies with the Lord Chancellor and Secretary of State for Justice, and with the Secretary of State for Wales, who has been given day-to-day responsibility for the JMC by the Prime Minister. The Foreign and Commonwealth Secretary is responsible for the Concordats on the Coordination of European Union Policy Issues and on International Relations. The Chief Secretary to the Treasury is responsible for the Concordat on Financial Assistance to Industry. The Secretaries of State for Scotland, Wales and Northern Ireland also have responsibilities within the UK Government for promoting the devolution settlement, for ensuring effective working relations between the Government and the devolved administrations, and for helping to resolve any disputes which may arise.

The First Minister of Scotland, the First Minister of Wales, and the First Minister and deputy First Minister of Northern Ireland have overall responsibility within their respective Administrations for the MoU and its associated overarching concordats. They participate as necessary in the work of the JMC, in particular in helping to resolve any disputes which may arise between the devolved administrations and the UK Government.

## **PART I: MEMORANDUM OF UNDERSTANDING**

### **Introduction**

1. This Memorandum sets out the understanding of, on the one hand, the United Kingdom Government, and on the other, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee (“the devolved administrations”) of the principles that will underlie relations between them. The UK Government represents the UK interest in matters which are not devolved in Scotland, Wales or Northern Ireland<sup>1</sup>. Policy responsibility for these non-devolved areas is within the exclusive responsibility of the relevant UK Ministers and Departments. It is recognised by these Ministers and Departments that, within the UK Government, the Secretaries of State for Scotland, Wales and Northern Ireland are responsible for ensuring that the interests of those parts of the UK in non-devolved matters are properly represented and considered. Other UK Ministers and their departments represent the interests of England in all matters.

2. This Memorandum is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. Nothing in this Memorandum should be construed as conflicting with the Belfast Agreement.<sup>2</sup>

3. This Memorandum is supplemented by agreements on the establishment of a Joint Ministerial Committee and for certain other areas where it is necessary to ensure uniform arrangements for relations between the UK Government and the three devolved administrations. In particular, broadly uniform arrangements need to apply to: handling of matters with an EU dimension; financial assistance to industry; and international relations touching on the responsibilities of the devolved

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<sup>1</sup> The devolution legislation – that is the Acts of Parliament dealing with devolution: the Scotland Act 1998, the Government of Wales Acts 1998 and 2006, and the Northern Ireland Act 1998 – define the respective functions of the UK Government and the devolved administrations in different ways. This Memorandum simply uses the terms ‘devolved’ and ‘non-devolved’. ‘Devolved’ means in the Scottish context any function not reserved to the UK Government or Parliament under Schedule 5 to the Scotland Act or transferred to the Scottish Ministers under other legislation; in the Welsh context, any function exercisable by the Welsh Ministers, or any matter within the legislative competence of the National Assembly for Wales; and in the Northern Ireland context any matter which is not an excepted or reserved matter under Schedules 2 and 3 to the Northern Ireland Act. ‘Non-devolved’ means anything else.

<sup>2</sup> The British-Irish Agreement reached at Belfast on 10 April 1998 and the Multi-Party Agreement reached on the same date and annexed thereto

administrations. Recent legislation establishing new arrangements for statistical work across the UK means the former concordat on that subject is no longer necessary (see paragraph 10-11 for more details). In addition, the four administrations may prepare Concordats or make other less formal arrangements to deal with the handling of procedural, practical or policy matters between them. Concordats are not intended to be legally binding, but to serve as working documents.

### **Communication and Consultation**

4. All four administrations are committed to the principle of good communication with each other, and especially where one administration's work may have some bearing upon the responsibilities of another administration. The primary aim is not to constrain the discretion of any administration but to allow administrations to make representations to each other in sufficient time for those representations to be fully considered.

5. Against this background, and in confidence where necessary (see paragraph 6 below), the administrations will seek:

- to alert each other as soon as practicable to relevant developments within their areas of responsibility, wherever possible, prior to publication;
- to give appropriate consideration to the views of the other administrations; and
- to establish where appropriate arrangements that allow for policies for which responsibility is shared to be drawn up and developed jointly between the administrations.

6. It is recognised that there are certain areas of UK Government action - Budget proposals and national security are two examples - in which, as a matter of pre-existing practice, advance notification did not take place or was very limited. These practices are unaffected by devolution.

7. The devolution legislation (see footnote 1 for definition) provide for statutory consultation by the UK Government with the devolved administrations in relation to certain specific matters and vice versa. This Memorandum does not create any equivalent or other legal right to be consulted.

### **Co-operation**

8. All four administrations want to work together, where appropriate, on matters of mutual interest. The administrations recognise the importance

of co-operation across a range of areas. They also recognise that it may be appropriate for them to undertake activities on each other's behalf, which may be covered in agency arrangements or other agreements.

9. Various public bodies deal with matters within the responsibilities both of the UK Government and of one or more of the devolved administrations. The UK Government and devolved administrations affirm their commitment to work, together where appropriate, to ensure that such bodies continue to operate effectively.

### **Exchange of information, statistics and research**

10. In order to enable each administration to operate effectively, the administrations will aim to provide each other with as full and open as possible access to scientific, technical and policy information including statistics and research and, where appropriate, representations from third parties. These exchanges between administrations may be subject to restrictions or requirements, such as those relating to confidentiality or freedom of information. Each administration will aim to provide any information that may be reasonably requested by another administration to enable it to carry out its responsibilities effectively, provided that (a) this is practicable, (b) it would not involve disproportionate cost, and (c) the information is available in reasonably accessible form. The emphasis will always be on exchanging information where this proves possible. Where any of these three provisos is not met, problems will be resolved on a case-by-case basis.

11. The administrations recognise that co-operation is necessary to meet their respective policy and business objectives and their collective responsibility to deliver official statistics to the required standard. Each has a contribution to make to the provision of statistical advice and information in relation to both devolved and reserved matters, and to the production of coherent statistics about the UK whilst recognising that the priorities and objectives of the administrations may not always be identical. They have a common interest in promoting the integrity of official statistics and adherence to high professional standards. Specific arrangements for co-operation among the UK Government and devolved administrations on official statistics will be contained principally within an inter-administration agreement made between the National Statistician and the Chief Statisticians in each of the devolved administrations, and also in other bilateral agreements between UK Government departments and the devolved administrations.



## **Confidentiality**

12. Each administration will wish to ensure that the information it supplies to others is subject to appropriate safeguards in order to avoid prejudicing its interests. The four administrations accept that in certain circumstances a duty of confidence may arise and will between themselves respect legal requirements of confidentiality. Each administration can only expect to receive information if it treats such information with appropriate discretion. In particular the administrations accept:

- it is for the administration providing the information to state what, if any, restrictions there should be upon its usage;
- each administration will treat information which it receives in accordance with the restrictions which are specified as to its usage;
- disclosure of information will be subject to legal and other provisions relating to freedom of information and data protection: these first two principles will apply to all information and difficult cases may be referred back to the originator for consideration; and
- some information will be subject to statutory or other restrictions: this may mean that there will be restrictions on the category of persons who may have access to some material, for example under the Official Secrets Act; and there will be a common approach to the classification and handling of sensitive material.

## **Correspondence**

13. The four administrations are committed to providing a satisfactory level of service and accountability to the public in this area. As was the case prior to devolution, officials will need to handle all correspondence in accordance with appropriate freedom of information and data protection provisions.

## **Parliamentary Business**

14. The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.

15. The United Kingdom Parliament retains the absolute right to debate, enquire into or make representations about devolved matters. It is ultimately for Parliament to decide what use to make of that power, but the UK Government will encourage the UK Parliament to bear in mind the primary responsibility of devolved legislatures and administrations in these fields and to recognise that it is a consequence of Parliament's decision to devolve certain matters that Parliament itself will in future be more restricted in its field of operation.

16. The devolved legislatures will be entitled to debate non-devolved matters, but the devolved executives will encourage each devolved legislature to bear in mind the responsibility of the UK Parliament in these matters.

17. These same principles will be applied to other aspects of each administration's responsibilities towards its Parliament or Assembly. The administrations will provide each other, so far as appropriate and practicable, with information necessary to meet these responsibilities.

### **International and EU Relations**

18. As a matter of law, international relations and relations with the European Union remain the responsibility of the United Kingdom Government and the UK Parliament. However, the UK Government recognises that the devolved administrations will have an interest in international and European policy making in relation to devolved matters, notably where implementing action by the devolved administrations may be required. They will have a particular interest in those many aspects of European Union business which affect devolved areas, and a significant role to play in them.

19. Arrangements for the handling of devolved administrations' interests outside the United Kingdom are set out in the international relations and EU concordats. The devolved administrations are able to develop bilateral or multilateral arrangements with other members of the British-Irish Council, including the Republic of Ireland, and to participate in the British-Irish Council itself, as set out in the Belfast Agreement. The Northern Ireland Executive Committee is also able to develop relations with the Irish Government through the North/South Ministerial Council provided for in that Agreement.

20. The UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters. This must, obviously, be subject to mutual respect for the confidentiality of those discussions and adherence to the resultant UK

line, without which it would be impossible to maintain such close working relationships.

21. The devolved administrations are responsible for observing and implementing international, European Court of Human Rights and European Union obligations which concern devolved matters. In law, UK Ministers have powers to intervene in order to ensure the implementation of these obligations. If the devolved administrations wish, it is open to them to ask the UK Government to extend UK legislation to cover their EU obligations. The devolved administrations are directly accountable through the domestic courts, in the same way as the UK Government is, for shortcomings in their implementation or application of EC law. It is agreed by all four administrations that, to the extent that financial penalties are imposed on the UK as a result of any failure of implementation or enforcement, or any damages or costs arise as a result, responsibility for meeting them will be borne by the administration(s) responsible for the failure.

### **Non-devolved matters**

22. The UK Government represents the UK interest in matters which are not devolved in Scotland, Wales or Northern Ireland. Policy responsibility for such matters lies with the relevant UK Ministers and Departments. Within the UK Government, the Secretaries of State for Scotland, Wales and Northern Ireland will continue to ensure that the interests of those parts of the UK in non-devolved matters are properly represented and considered. The devolved administrations agree to provide the UK Government with any factual information and expert opinion available to them relevant to such non-devolved matters.

### **The Joint Ministerial Committee**

23. The UK Government and the devolved administrations believe that most contact between them should be carried out on a bilateral or multi-lateral basis, between departments which deal on a day-to-day basis with the issues at stake. Nonetheless, some central co-ordination of the overall relationship is needed. Therefore the administrations agree to participate in a Joint Ministerial Committee (JMC) consisting of UK Government, Scottish, Welsh and Northern Ireland Ministers.

24. Detailed arrangements for the JMC are set out in Supplementary Agreement A. Its terms of reference are:



- to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- to consider disputes between the administrations.

25. The UK Government and the devolved administrations commit themselves, wherever possible, to conduct business through normal administrative channels, either at official or Ministerial level. The Secretaries of State for Scotland, Wales and Northern Ireland, whose functions include the promotion of good relations between the UK Government and the respective devolved administrations, should be consulted in any significant case of disagreement.

26. Where a dispute cannot be resolved bilaterally or through the good offices of the relevant territorial Secretary of State the matter may formally be referred to the JMC Secretariat subject to the broader principles and arrangements for dispute avoidance and resolution set out at Section A:3 of this Memorandum of Understanding.

### **Implementation of devolution settlements**

27. The devolution legislation contains various powers for the Secretary of State to intervene in devolved matters. It also contains powers for the Law Officers to refer questions of vires to the UK Supreme Court. Although the UK Government is prepared to use these powers if necessary, it sees them very much as a matter of last resort. The UK Government and the administration concerned will therefore aim to resolve any difficulties through discussion so as to avoid any action or omission by the devolved administration having an adverse impact on non-devolved matters. If formal intervention should become necessary, the UK Government will whenever practicable inform the devolved administration of its intentions in sufficient time to enable that administration to make any representations it wishes, or take any remedial action.

28. In order to enable the UK Government to decide whether they need to activate these procedures, the devolved administrations will notify legislative measures to the relevant UK Departments and Law Officers both when they are proposed and when they are adopted. Legislative

proposals will normally have been subject to advance notification and consultation, in accordance with the general principles set out above.

### **Reviewing bilateral relations**

29. The administrations recognise that there may be a need from time to time for some adjustment to be made to the devolution settlements, for example, in response to new issues or in the light of the operation of the settlements. The administrations agree that there should be mechanisms in place to review the operation of the settlements and for adjustments to be agreed.

30. The JMC and its supporting functional and official committees will therefore keep the broad operation of the arrangements under review and will also look at the effectiveness of concordats and bilateral relations more generally. The JMC Secretariat will also have a role in keeping the arrangements under review and providing advice on concordats both to the JMC and to the administrations.

### **Review of this Memorandum of Understanding**

31. This document will be reviewed by representatives of the administrations at a meeting of the JMC at least annually and updated as necessary.

## **PART II: SUPPLEMENTARY AGREEMENTS**

### **A1: THE JOINT MINISTERIAL COMMITTEE**

A1.1 The UK Government and the three devolved administrations have agreed to participate in a Joint Ministerial Committee (JMC) consisting of UK Government, Scottish, Welsh and Northern Ireland Ministers. This supplementary agreement sets out the basis on which the Committee will operate, pursuant to the Memorandum of Understanding.

A1.2 The terms of reference of the Joint Ministerial Committee are:

- a. to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- b. where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- c. to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- d. to consider disputes between the administrations.

A1.3 Plenary meetings of the JMC will be held at least once a year. They will consist of the Prime Minister (or his representative), who will take the chair, the Scottish and Welsh First Ministers, each together with one of their Ministerial colleagues, the Northern Ireland First Minister and deputy First Minister, and the Secretaries of State for Scotland, Wales and Northern Ireland. Other Ministers will be invited to attend as appropriate when issues relevant to their areas of responsibility are to be discussed.

A1.4 The Joint Ministerial Committee may also meet in other “functional” formats: for example, JMC Europe (JMC(E)) or JMC Domestic (JMC(D)). The Secretaries of State for Scotland, Wales and Northern Ireland will be invited to participate in these meetings as appropriate. Irrespective of their location, the meetings will be chaired by the responsible UK Minister.

A1.5 The JMC will also be available to try to resolve differences between the UK Government and one of the devolved administrations on a matter which does not affect the other administrations. In such a case, the Committee will be composed of appropriate Ministers from the UK

Government and the devolved administration concerned under the chairmanship of an appropriate senior UK Minister.

A1.6 Meetings of the JMC, in its various guises, will be held for three purposes: to take stock of relations generally and of the way in which the devolution arrangements are working in a particular area; to discuss policy development where policy responsibility straddles both devolved and non-devolved matters; and to address particular issues or problems. In the latter case, the presumption is that an issue will come to the JMC only when there is an impasse: i.e. following an unsuccessful bilateral exchange at Ministerial level (see section A3 for more details on the mechanics/principles for managing dispute resolution).

A1.7 Where a dispute cannot be resolved bilaterally, or through the offices of the relevant territorial Secretary of State, the matter may formally be referred to the JMC Secretariat by any one administration. Each bilateral concordat will include a reference to the process for triggering formal JMC intervention. Where this appears likely, the JMC Secretariat should be consulted at an early stage in order to ensure a consistent interpretation of the devolution settlements, and to provide advice on handling of any differences of view.

A1.8 Meetings of the JMC, in the appropriate functional guise, will be held at the request of the UK Government or any of the devolved administrations. The responsibility for convening a meeting lies with the responsible UK Minister and this will be done within one month of the referral being received, or another period by agreement.

A1.9 The JMC - chaired for this purpose by the Foreign Secretary (or his representative) - will also operate as one of the principal mechanisms for consultation on UK positions on EU issues which affect devolved matters. The fact that rapid decisions have to be taken on EU issues to meet the timetable of negotiations in the Council of Ministers, as well as the Government's own wish to involve the devolved administrations as fully as possible in discussions on the formulation of UK policy positions, necessitates a mechanism which enables the lead UK Minister where necessary to consult other UK Government Ministers and their counterparts in the devolved administrations simultaneously. In this functional format, it is likely that the majority of business will be conducted through correspondence, although meetings will also be convened where necessary.

A1.10 The JMC is a consultative body rather than an executive body, and so will reach agreements rather than decisions. It may not bind any of the participating administrations, which will be free to determine their own policies while taking account of JMC discussions. Nonetheless, the

expectation is that participating administrations will support positions that the JMC has agreed.

### **Confidentiality and Public Statements**

A1.11 The proceedings of each meeting of the JMC will be regarded as confidential by the participants, in order to permit free and candid discussion. However, the holding of JMC meetings may be made known publicly, and there may be occasions on which the Committee will wish to issue a public statement on the outcome of its discussions. A communiqué to be agreed between the participating ministers will usually be issued following each JMC plenary.

### **Committee of officials**

A1.12 A Committee of officials from the UK Government and the devolved administrations will shadow the Joint Ministerial Committee and prepare for its meetings. It will consist of at least one representative from each administration, and, as appropriate, a representative of the Secretaries of State for Scotland, Wales and Northern Ireland. Representatives of other Whitehall Departments will be invited to attend as appropriate when issues relevant to their areas of responsibility are to be discussed. The chairman of the Committee will be the Cabinet Secretary (or his representative) and the JMC Secretariat will provide secretarial facilities.

A1.13 Meetings will be regarded as confidential by the participants. The official Committee may establish sub-committees to deal with individual subject areas. In particular, a sub-committee for EU business will consider EU issues. The same principles of membership, chairmanship and secretarial support and confidentiality will apply to the sub-committees as to the principal official committee.

### **Joint Secretariat**

A1.14 The JMC Secretariat will comprise staff from the UK Cabinet Office and the devolved administrations. Its composition and role is described in the attached Annex (A2).



## **B: CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY ISSUES**

### **B3: Concordat on Co-ordination of European Union Policy Issues – Northern Ireland**

B3.1 This document and the common Annex (B4) are to be read in conjunction with the Memorandum of Understanding (MoU) between the UK Government, Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee and the enabling legislation establishing these administrations. Reference to devolved or non-devolved matters will be construed in accordance with the MoU.

B3.2 This concordat is an agreement between the Northern Ireland Executive Committee and the UK Government. This concordat is not intended to constitute a legally enforceable contract or to create any rights or obligations which are legally enforceable. It is intended to be binding in honour only.

B3.3 This Concordat sets out the mechanisms between UK Government and the Northern Ireland Executive Committee for the handling of EU business. Specifically, the Concordat covers:

- provision of information;
- formulation of UK policy;
- attendance at Council of Ministers and related meetings;
- implementation of EU obligations; and
- infraction proceedings.

B3.4 The UK engages with the EU in many different fora and the practicalities attached to developing and presenting UK policy are to be handled in line with the general principles set out in this paper. Other concordats may set out the procedure in more detail as appropriate.

#### **General**

B3.5 As all foreign policy issues are non-devolved, relations with the European Union are the responsibility of the Parliament and Government of the United Kingdom, as Member State. However, the UK Government wishes to involve the Northern Ireland Executive Committee as directly and fully as possible in decision making on EU matters which touch on devolved areas (including non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance in Northern Ireland). In general, it is expected that consultation, the exchange of information and the conventions on

notifications to EU bodies will continue in similar circumstances to the arrangements in place prior to devolution.

B3.6 Participation will be subject to mutual respect for the confidentiality of discussions and adherence by the Northern Ireland Executive Committee to the resulting UK line without which it would be impossible to maintain such close working relationships. This line will reflect the interests of the UK as a whole. In accordance with these general principles, the coordination mechanisms should achieve three key objectives:

- they should provide for full and continuing involvement of Northern Ireland Ministers and their officials in the processes of policy formulation, negotiation and implementation, for issues which touch on devolved matters;
- they should ensure that the UK can negotiate effectively, in pursuit of a single UK policy line, but with the flexibility that fast-moving negotiations require; and
- they should ensure EU obligations are implemented with consistency of effect and where appropriate of timing.

B3.7 Such mechanisms should also ensure that the Northern Ireland Executive Committee and the UK Government inform each other of any relevant policy proposals which might impact on either existing or new EU proposals or requirements. They should also ensure that, when required by EC legislation, relevant obligations or initiatives are reported to the Commission and when necessary the other Member States.

B3.8 The arrangements in the common Annex (B4) are intended to be adaptable to suit the differing circumstances of individual cases.

### **North/South Arrangements**

B3.9 As required by the Belfast Agreement, the North/South Ministerial Council brings together those with executive responsibilities in Northern Ireland and the Irish Government to develop consultation, co-operation and action within the island of Ireland on matters of mutual interest within the competence of the administrations. This includes consideration of the European Union dimension of relevant matters, including the implementation of EU policies and programmes. The Special EU Programmes Body has a clear operational remit as set out in the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999. This concordat applies to the Northern Ireland Executive Committee's participation in North/South arrangements. In accordance with paragraph 17 of Strand II of the Belfast Agreement, arrangements are to be made to ensure that the views of the

North/South Ministerial Council are taken into account and represented appropriately at relevant EU meetings.



## **B: CONCORDAT ON CO-ORDINATION OF EUROPEAN UNION POLICY**

### **B4: Co-ordination of European Policy Issues: Common Annex**

#### **Provision of Information**

B4.1 In order to contribute effectively to the United Kingdom's decision making on European Union (EU) matters, the devolved administrations will need to have information on relevant EU business. The UK Government will therefore provide the devolved administrations with full and comprehensive information, as early as possible, on all business within the framework of the European Union which appears likely to be of interest to the devolved administrations, including notifications of relevant meetings within the EU. This is likely to mean all initiatives within the framework of the EU which appear to touch on matters which fall within the responsibility of the devolved administrations. The same policy will be followed by the devolved administrations on such issues likely to be of interest to the UK Government.

B4.2 These arrangements will rely for their effectiveness on mutual respect for the confidentiality of information (including statistics) exchanged. Complete confidentiality is often essential in formulating a UK negotiating position in the EU and in developing tactical responses.

#### **Participation in formulation of UK Policy (including Resolution of Differences)**

B4.3 It is the Government's intention that Ministers and officials of the devolved administrations should be fully involved in discussions within the UK Government about the formulation of the UK's policy position on all issues which touch on matters which fall within the responsibility of the devolved administrations. The arrangements outlined below assume maximum co-operation on both sides, although they will also need to work effectively when such co-operation is not forthcoming.

#### **Ministerial involvement**

B4.4 Many issues will be capable of being dealt with bilaterally between the lead Whitehall Department and the devolved administrations.

B4.5 Even where EU issues require wider inter-departmental consultation, it may often be possible (as at present) to resolve the matter through correspondence; and the arrangements described in this document for copying papers widely to the devolved administrations will help to ensure that matters are resolved in this way wherever possible.

EU business operates to an externally imposed timetable and the UK will need to determine its negotiating position in good time. Potential areas of contention will therefore be identified as early as possible, and every effort made to resolve them without escalating discussions to senior levels.

B4.6 Where it is not possible to resolve matters bilaterally or by correspondence as described above, the Government envisage that such EU issues will be considered by the Joint Ministerial Committee in European format (paragraph A1.9 of the supplementary agreement on the JMC), which will bring together UK Ministers and Ministers of the devolved administrations to discuss non-devolved matters which touch on matters which fall within the responsibility of the devolved administrations, and where appropriate the treatment of matters falling within the responsibility of the devolved administrations in different parts of the UK. In the case of EU matters, the JMC will be the forum for seeking to resolve differences between the UK Government and the devolved administrations. The procedure to be followed for handling EU business within the JMC is laid down in the supplementary agreement on the JMC.

B4.7 The JMC meeting in this format has also adopted the following practices:

- Meetings will be held in advance of each scheduled European Council meeting and may be held more regularly;
- The JMC Secretariat will endeavour to circulate at the outset of each year a forward timetable with suggested dates and agenda items for JMC(E) meetings with a view to ensuring that meetings are held on dates and at times on which Ministers from all administrations are able to attend;
- Officials will meet around ten working days in advance of each JMC(E) to ensure in particular that the Devolved Administrations have an active role in agreeing the JMC(E) agenda and discussing draft papers;
- JMC(E) papers will normally be circulated 48 hours in advance in line with normal Cabinet Committee arrangements although drafts will be circulated to devolved administrations further in advance whenever possible;
- All administrations will be given the opportunity to clarify points in the minutes of JMC(E), meetings at Ministerial or official level in relation to their own interventions before the minutes are circulated more widely; and
- Meetings of JMC(E) either at Ministerial or official level may take place on occasion in Belfast, Cardiff or Edinburgh.

B4.8 In the case of implementation of EU obligations, the wider provisions for resolution of vires disputes through reference to the Supreme Court will apply, with the UK Parliament and UK Ministers retaining the power, as provided under the devolution legislation, to legislate to implement EU obligations throughout the UK.

### **Official Involvement**

B4.9 In line with paragraphs B4.2 and B4.3 above, lead Whitehall departments and UKRep (within its normal reporting responsibilities) will inform officials of the devolved administrations of developments in EU business which touch on matters which fall within the responsibility of the devolved administrations. Such information will be shared both with the devolved administrations and with other interested Government Departments from the outset. Officials of the devolved administrations will have access to relevant papers (including telegrams) which are copied inter-departmentally by UKRep and lead Whitehall departments.

B4.10 The EU official sub-committee of the JMC will provide an important forum for discussing EU issues. In addition, informal communications and meetings at official level will continue to make a major contribution to the resolution of EU issues. Officials of the devolved administrations will be included in these contacts.

B4.11 Clearly the nature of consultation procedures in individual cases will depend on the nature of the issue, on previous practice and on the degree of urgency. Depending on the circumstances, issues might be dealt with bilaterally between the lead Whitehall department and the devolved administrations without the need for wider inter-departmental consultation. In cases where wider inter-departmental consultation is necessary, individual Departments could choose to consult bilaterally with their opposite numbers in the devolved administrations on a particular subject, before consulting more widely on the basis of an agreed approach. In other cases, they could include the devolved administrations from the outset in a multi-lateral consultation process.

### **Attendance at Council of Ministers and related meetings**

B4.12 Ministers and officials of the devolved administrations should have a role to play in relevant Council meetings, and other negotiations with EU partners.

B4.13 Decisions on Ministerial attendance and representation at Council meetings will be taken on a case-by-case basis by the lead UK Minister. In reaching decisions on the composition of the UK team, the lead Minister will take into account that the devolved administrations should

have a role to play in meetings of the Council of Ministers at which substantive discussion is expected of matters likely to have a significant impact on their devolved responsibilities.

B4.14 Policy does not remain static in negotiations and continuing involvement is a necessary extension of involvement in formulating the UK's initial policy position. The role of Ministers and officials from the devolved administrations will be to support and advance the single UK negotiating line which they will have played a part in developing. The emphasis in negotiations has to be on working as a UK team; and the UK lead Minister will retain overall responsibility for the negotiations and determine how each member of the team can best contribute to securing the agreed policy position. In appropriate cases, the leader of the delegation could agree to Ministers from the devolved administrations speaking for the UK in Council, and that they would do so with the full weight of the UK behind them, because the policy positions advanced will have been agreed among the UK interests.

B4.15 Attendance by officials of the devolved administrations at EU meetings will continue, as at present, to be agreed bilaterally with the lead Whitehall Department. Such agreement would also cover attendance at Presidency and Commission chaired meetings, including those discussing implementation matters. The role of officials from the devolved administrations will be to support and advance the single UK negotiating line which they will have played a part in developing.

### **Implementation of European Union Obligations**

B4.16 It will be the responsibility of the lead Whitehall Department formally to notify the devolved administrations at official level of any new EU obligation which concerns devolved matters and which it will be the responsibility of the devolved administrations to implement in Scotland, Wales or Northern Ireland (although the arrangements for policy formulation and negotiation described above should ensure that the devolved administrations are already aware of new obligations). In addition, Whitehall Departments will, as necessary, liaise closely with the devolved administrations about the implementation by UK legislation of obligations in non-devolved areas, particularly where these could touch on areas which fall within the responsibility of the devolved administrations.

B4.17 For matters falling within the responsibility of the devolved administrations, it is for the devolved administrations to consider, in bilateral consultation with the lead Whitehall Department, and other Departments and devolved administrations if appropriate, how the obligation should be implemented and administratively enforced (if



appropriate) within the required timescale, including whether the devolved administrations should implement separately, or opt for GB or UK legislation. Where a devolved administration opts to implement separately, it will have a responsibility to consult the lead Whitehall Department bilaterally, and other Departments as necessary, on its implementation proposals, to ensure that any differences of approach nonetheless produce consistency of effect and, where appropriate, of timing. The same official and Ministerial mechanisms as for policy formulation will operate where wider inter-Departmental discussion is necessary.

B4.18 Following the consultation referred to in paragraph B4.17, notification to the European Commission of such separate implementation should be sent through UKRep, involving the lead Whitehall Department as necessary, and copying to them in any event. In cases where there is a need for a consolidated UK communication to the European Commission, this should be co-ordinated by the lead Whitehall Department and copied to the devolved administrations, but without prejudice to the devolved administrations' responsibility for implementation. Areas which require such co-ordination may be specified in the relevant bilateral concordats.

B4.19 Where EU legislation provides, in relation to matters falling within the responsibility of the devolved administrations, for the possibility of local measures or derogations within Member States, subject to Commission approval, and where such legislation is being implemented separately in Scotland, Wales or Northern Ireland, the relevant devolved administrations will first consult the lead Whitehall department on whether there are wider UK policy implications. Whitehall departments will also inform the devolved administrations of any similar plans they might have. If, following such consultation, a devolved administration wishes to proceed with such local measures, the request for approval will be routed through UKRep, involving the lead Whitehall Department as necessary, and copying to them in any event.

B4.20 Under the devolution legislation, UK Ministers may split a quantitative EU obligation on the UK, such as a quota, to facilitate the transfer of part of it to the Scottish Ministers, Northern Ireland Ministers or departments and the Welsh Ministers. The devolved shares can be enforced as a devolution issue on the same basis as any other function of observing and implementing an EU obligation. The size of the devolved share should be equitable, taking into account the extent of the powers of the devolved legislatures and executives and the possibility that the range of measures which can be taken to fulfil an obligation could lie across both non-devolved and devolved areas. UK Ministers will consult the devolved administrations before any order is made to apportion the

devolved share of such an obligation, and the UK Government has made it clear to Parliament that it would do its best to reach agreement with them.

### **Enforcement of European Union Obligations**

B4.21 Where they have devolved responsibilities for the enforcement of EC obligations, the devolved administrations will co-operate fully with the relevant lead Whitehall Department. The devolved administrations and lead Whitehall Department will, in such cases, consult and inform each other of their chosen methods of enforcement of EU instruments. They will also consult with each other on any enforcement difficulties before they are discussed with the European Commission, and on any corrective action demanded by the Commission.

### **Infraction Proceedings**

B4.22 Where the European Commission instigates informal or formal proceedings against the UK for alleged breaches of EU law, the Cabinet Office will commission and co-ordinate the UK response, which will be sent by UKRep on behalf of the UK Government.

B4.23 Where a case relates solely to implementation in Scotland, Wales, or Northern Ireland in relation to a matter falling within the responsibility of a devolved administration, the draft reply will be prepared by the appropriate devolved administration and agreed at official, and where necessary, Ministerial level with interested Whitehall departments. It will be submitted through UKRep in the normal way as outlined in Paragraph B4.19. Where a case partly concerns implementation of a devolved matter in England and one or more of the devolved regions, the lead Whitehall department will prepare the draft reply in bilateral consultation, at official or Ministerial level as appropriate, with the relevant devolved administrations. Such a procedure will also be followed where a case concerns implementation in Scotland, Wales or Northern Ireland in relation to a non-devolved matter.

B4.24 Where a case partly or wholly involving implementation by a devolved administration is referred to the European Court of Justice, the devolved administration will contribute to the preparation of the UK's submissions to the Court. The devolved administration would take the lead in doing so for cases wholly concerned with implementation in relation to a matter falling within its responsibility, agreed as appropriate with the relevant Whitehall departments. The Cabinet Office and the Treasury Solicitors Department will co-ordinate the UK's submissions to the Court.

B4.25 To the extent that financial costs and penalties imposed on the UK arise from the failure of implementation or enforcement by a devolved administration on a matter falling within its responsibility, or from the failure of a devolved administration to meet its share of an EC quota or obligation, responsibility for meeting these will be borne by the devolved administration. These provisions are without prejudice to the continuing operation of standing arrangements in respect of EU programmes funded as Annually Managed Expenditure (AME).

### **Representation in Brussels and Links with European Union Institutions**

B4.26 The status and functions of the UK Permanent Representation in Brussels as the institution representing the United Kingdom within the European Union will continue unchanged.

B4.27 The devolved administrations are able to take part in the less formal discussions with the institutions of the EU and interests within other Member States. Subject to paragraph B4.26 above, the devolved administrations are able, and have chosen to establish an office in Brussels, to assist direct relationships, including with other regional governments and with the institutions of the European Union, so far as this serves the exercise of their powers and the performance of their functions as laid down in the devolution legislation and so far as it is consistent with the responsibility of the UK Government for relations with the EU. The Devolved Administration EU offices (DA EUOs) are part of UKRep organisational structure and their UK-based staff are permanent UK civil servants issued with British diplomatic passports. As part of the diplomatic representation of the UK they are subject to the authority of the Permanent Representative in respect of the usual issues of personal conduct. On this basis, the UK-based staff of the devolved administrations' EU Offices, have diplomatic status, and are notified to the Belgian authorities by the Permanent Representation accordingly. Both UKRep and the DA EU offices will develop working procedures which reflect the need to balance the interests of all parts of the UK.

B4.28 Staff of the devolved administrations will continue to be eligible for secondment to UKRep and to the institutions of the EU.

### **Nominations of Representatives**

B4.29 The devolved administrations will be responsible for nominating their established share of representatives within the Committee of the Regions and the Economic and Social Committee. Such nominations will then be forwarded to the FCO. The final decision on proposals for UK appointments will continue to be made formally by the Foreign Secretary,

with the agreement of the Prime Minister, after co-ordination by the FCO and Cabinet Office.

B4.30 The devolved administrations will be consulted by the UK Government on appointments to other European Institutions where appropriate.

### **Scrutiny of EU Legislation**

B4.31 The devolved legislatures may wish to set up a procedure to allow them to scrutinise EU issues relating to devolved matters to ensure its interests are properly reflected.

B4.32 The lead Whitehall Department will liaise as necessary with the devolved administrations in the preparation of Explanatory Memoranda relating to such matters, and will keep them informed. The UK Department will send the finalised Explanatory Memorandum to the devolved administrations at the same time that it is submitted to the UK Parliament.

B4.33 Officials of the devolved administrations will pass on to their Whitehall counterparts the views of the devolved legislatures as soon as these are known. Where timing allows, the UK Government undertakes to take account of these views in formulating the UK's negotiating position, which will continue to balance the interests of all parts of the UK.



## **JMC ANNUAL REPORT 2011-2012**

### **Introduction**

The Joint Ministerial Committee (JMC) comprises the UK Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive and is at the centre of formal relations between these administrations. The JMC meets in Plenary, Domestic and European formats. Procedures for the operation of the Joint Ministerial Committee are set out in the Memorandum of Understanding, which can be found at <http://www.cabinetoffice.gov.uk/resource-library/devolution-memorandum-understanding-and-supplementary-agreement>

This document outlines the activities of the JMC since the last meeting of JMC in plenary format in June 2011 and will be published on the websites of the four administrations.

### **JMC Plenary**

The Joint Ministerial Committee (JMC) met in plenary format on 8 June 2011. A discussion took place on the priorities of the Devolved Administrations following the elections to their respective legislatures on 5 May 2011 and on the state of the economy and public finances. Ministers reaffirmed the importance of working closely together on matters of mutual interest. Amendments to the Memorandum of Understanding to provide for the commissioning of independent third party analysis in relation to disagreements and disputes were agreed. Ministers also agreed to examine options to progress the resolution of the Olympic funding dispute.

### **Domestic policy discussions**

The JMC met in Domestic format on two occasions during the year.

On 20 February 2012 it discussed:

The importance of co-operation on Electricity Market Reform;  
Co-ordination between administrations on Inward Investment; and  
Progress on updating the Memorandum of Understanding.

On 23 May 2012 it discussed:

The implementation of the UK Government's Welfare Reform Programme;  
Maximising the benefits of the London 2012 Olympics.

It also agreed that a revised Memorandum of Understanding should be presented to the next Plenary meeting for approval.

## **Discussion of European issues**

The JMC met in European format on five occasions during the year to discuss current European Union (EU) business in which the Devolved Administrations have an interest; and to facilitate their input to the UK Government's negotiating stance prior to European Councils.

On 13 June 2011 it discussed:

Priorities for the June European Council:  
UK/Devolved Administration Co-ordination and Horizon Scan;  
Devolved Administration European priorities;  
and  
EU Financial Perspectives.

On 13 October 2011 it discussed:

Priorities for the October European Council:  
UK/Devolved Administration Co-ordination and Horizon Scan;  
Multi-Annual Financial Framework, including Common Agricultural Policy and Structural and Cohesion Funds.

On 21 November 2011 it discussed:

Priorities for the December European Council:  
  
UK/Devolved Administration Co-ordination and Horizon Scan;  
Direct actions and preliminary references before the European Court of Justice involving the Devolved Administrations;  
Upstream engagement;  
Connecting Europe Facility – Transport, Energy and Telecommunications networks; and  
Update on the Multi-Annual Financial Framework.

On 2 February 2012 it discussed:

Priorities for the Spring European Council.  
UK/Devolved Administration Co-ordination and Horizon Scan covering a Read out of January Informal Council and Intergovernmental Treaty and Technical amendments to the Concordat on the co-ordination of EU policy;  
Upstream engagement;  
Horizon 2020; and  
Update on Multi-Annual Financial Framework.

On 11 June 2012 it discussed:

Priorities for the June European Council;  
UK/Devolved Administration Co-ordination and Horizon Scan covering the technical refresh to the Concordat on the co-ordination of EU policy;  
EU Growth;

EU Transport Strategy; and  
Update on the Multi-Annual Financial Framework.

## **Resolution of Issues**

During the course of the year, two inter-administration disagreements/disputes were considered under the dispute avoidance and resolution protocol. A dispute concerning Barnett consequential allocations to the devolved administrations arising from a 2012 Olympics funding package (UK Government/Northern Ireland Executive/Scottish Government/Welsh Government) was resolved in December 2011. A disagreement on the £18 billion capital expenditure commitment to Northern Ireland (Northern Ireland Executive/UK Government) has been the subject of discussion between the two administrations. The administrations have exchanged letters and agreed that the disagreement should be reviewed at an appropriate future date.

## **Discussions on the Economy and Public Finances**

The key forum for consideration of financial and economic matters is the Finance Ministers' Quadrilateral which met twice during the period.

On 14 July 2011 it discussed:

- A general economic overview;
- Access to End of Year Flexibility (EYF);
- Pensions Reform;
- Banking / Access to Finance; and
- Welfare Reform

On 5 March 2012 it discussed:

- A general economic overview;
- Employment;
- Regional Pay;
- Pensions Reform;
- Infrastructure investment; and
- Spending Controls.



House of Commons

European Scrutiny Committee

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# **Periodic Roadworthiness tests for motor vehicles and their trailers: Reasoned Opinion**

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## **Fifteenth Report of Session 2012-13**

**Documents considered by the Committee on 17 October 2012,  
including the following recommendation for debate:**

Periodic Roadworthiness tests for motor vehicles and their  
trailers: Reasoned Opinion



House of Commons  
European Scrutiny Committee

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# Periodic Roadworthiness tests for motor vehicles and their trailers: Reasoned Opinion

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## Fifteenth Report of Session 2012-13

Documents considered by the Committee on 17 October 2012,  
including the following recommendation for debate:

Periodic Roadworthiness tests for motor vehicles and their  
trailers: Reasoned Opinion

*Report, together with formal minutes*

*Ordered by The House of Commons  
to be printed 17 October 2012*

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## Notes

### Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

### Abbreviations used in the headnotes and footnotes

EC	(in " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	(in " <i>Legal base</i> ") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

### Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

### Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": [www.parliament.uk/escom](http://www.parliament.uk/escom). The website also contains the Committee's Reports.

\*Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website:  
<http://europeanmemorandum.cabinetoffice.gov.uk/search.aspx>.

Letters sent by Ministers to the Committee relating to European documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

### Staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Lis Partridge (Assistant to the Clerk), Julie Evans (Senior Committee Assistant), Jane Lauder (Committee Assistant), Jim Camp (Committee Assistant), Liam Hennessy (Committee Assistant), Becci Burton (Committee Assistant) and Paula Saunderson (Office Support Assistant).

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# 1 Transport: roadworthiness

(a) (34131) 12786/12 + ADDs 1–3 COM (12) 380	Draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC
(b) (34138) 12803/12 + ADDs 1–3 COM (12) 381	Draft Directive amending Council Directive 1999/37/EC on the registration documents for vehicles
(c) (34139) 12809/12 + ADDs 1–4 COM (12) 382	Draft Regulation on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC

<i>Legal base</i>	Article 91; co-decision; QMV
<i>Documents originated</i>	13 July 2012
<i>Deposited in Parliament</i>	(a) 25 July 2012 (b) and (c) 30 July 2012
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 27 July 2012 and Minister's letter of 4 October 2012
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Possibly 20 December 2012
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(a) Not cleared; further information requested. For debate on a draft Reasoned Opinion on or before 22 October. (b) and (c) Not cleared: further information requested.

## Background

1.1 The current EU regime sets minimum standards for roadworthiness testing across the EU. Before a vehicle is allowed to be put on the market, it has to fulfil all the relevant type or individual approval requirements guaranteeing an optimal level of safety and environmental standards. Every Member State has the obligation to register for the first time any vehicle that has EU type-approval on the basis of a "Certificate of Conformity" issued by the vehicle manufacturer. This registration is the official authorisation for the use on public roads and enforces the different introduction dates of different vehicles' requirements. Following this, cars on the road have to be regularly submitted to periodic roadworthiness tests. The aim of these tests is to ensure that such cars remain roadworthy,



safe and do not pose any danger to the driver and other road users. Cars are therefore checked for compliance with certain requirements, such as those for safety and environmental protection, as well as for retrofitting requirements.

## The documents

1.2 The Commission has proposed this new package of measures dealing with roadworthiness of motor vehicles and trailers. It moves beyond the current regime by seeking to ensure a vehicle maintains compliance with its original specification throughout its life in respect of safety elements and environmental protection. The two draft Regulations and the draft Directive in the package would replace existing Directives already transposed into domestic legislation. The Commission's primary aim is to harmonise vehicle testing throughout the EU to reduce fatalities, injuries and harmful emissions. The package aims to facilitate the market in second hand vehicles by easing the movement of used vehicles between Member States and to reduce fraud in the second hand car market.

1.3 Broadly the Commission aims to:

- widen the scope of vehicles that are to be tested;
- increase the frequency at which vehicles are tested (for those Member States that require tests every two years);
- ensure vehicles and their components comply with original manufacturers' specifications;
- ensure higher standards for vehicle testers and test equipment;
- facilitate interchange of information on vehicle inspection between Member States; and
- reduce mileage fraud on used vehicles.

1.4 More specifically the draft Regulations and Directive would require:

- compulsory testing for all classes including motorbikes and three wheel vehicles;
- increased frequency of periodic roadworthiness tests for old vehicles with a minimum in all Member States of a first test at four years, then two years, then annually thereafter (commonly called 4–2–1);
- improved quality of vehicle tests by setting common minimum standards for equipment and inspectors;
- elimination of almost all exemptions from periodic testing;
- bringing all trailers and all agricultural tractors capable of more than 40 kph into scope of testing;
- subjecting electronic safety components to mandatory testing;

- clamping down on mileage fraud, with mandatory registered mileage readings and a new offence for non-compliance;
- an interchange of electronic information on vehicle inspection;
- Member States to use powers to deal with ‘dangerous’ vehicles; and
- introduction of a system to de-register a vehicle if deemed to be un-roadworthy.

1.5 The roadworthiness package is part of a wider initiative to reduce the number of citizens killed on roads within the EU, as set out in the Commission Communication: *Towards a European road safety area: policy orientations on road safety 2011–2020*.<sup>1</sup> The target set in the Communication is to halve the number of people killed, from 35,000 in 2009.

1.6 The package is accompanied by the Commission’s Impact Assessment, which suggests that between 900 and 1100 lives will be saved annually by adopting this draft legislation.

## The Government’s view

1.7 In his Explanatory Memorandum the then Parliamentary Under-Secretary of State, Department for Transport (Mike Penning), comments first on the legal basis and subsidiarity aspects of the proposals, saying that:

- the legal basis proposed for this package is Article 91 TFEU;
- the Government considers that the vast majority of the provisions in the proposals as currently drafted fall within the scope of that Article;
- Article 19 of the draft Regulation on periodic roadworthiness tests, document (a), would, however, require Member States to introduce a specific offence on odometer tampering;
- the wording of the Article is ambiguous — so the Government is seeking clarification from the Commission on whether the offence is intended to be a civil offence or a criminal offence;
- if it is intended to be a criminal offence, the Government will need to give consideration as to whether the appropriate legal base has been cited and whether the provision would create an obligation in the field of Justice and Home Affairs (JHA);
- if a JHA obligation is created, the Government would also consider its position on whether or not the UK should opt in to the Regulation, within 3 months of the publication of the last language version of the proposal (13 July 2012);
- the EU has competence under Article 91 TFEU to adopt measures relating to transport safety and has exercised competence to set the requirements of technical inspection of motor vehicles through Directives for many years;

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1 (31840) 12603/10: see HC 428–viii (2010–11), chapter 9 (17 November 2010).

- much of the detail on how vehicles meet roadworthiness standards has been previously left to Member States to determine;
- the Commission feels, however, that this has led to an unacceptable divergence of standards at periodic testing and at roadside inspection and so has proposed this package;
- it is looking to harmonise standards of roadworthiness in order to support the single market by ensuring the free movement of vehicles throughout the EU and the commonality of standards;
- the proposals create mandatory processes that go beyond what Member States currently determine themselves;
- the proposal for deregistering of unroadworthy vehicles is an example of this — the UK has an alternative system of prohibition that achieves the same end;
- the Commission's view would be that other Member States should have in place systems similar to those applying in the UK; and
- while the proposals fall within EU competence and in a number of respects would reflect UK practice, the Government is concerned that the package may constrain UK freedom to adjust vehicle testing arrangements in future, compared with the constraints of the existing Directive.

1.8 Turning to the policy implications of the proposals the Minister says that:

- the Commission claims that its package will lead to a significant saving of lives across the EU;
- the Government will reach its own view on this, but any road safety benefits are likely to be greater in Member States with a poor road safety record;
- in the UK, where annual testing after three years and testing for motorcycles is already required, any safety benefits are likely to be negligible; and
- there are likely, however, to be significant cost implications in the UK.

1.9 Continuing with more detailed comments, the Minister says that:

### *Legislative*

- the current system of domestic legislation that reflects EU legislation would be replaced by the two proposed Regulations;
- the existing acts and subsequent instruments would require considerable revision if the proposed package is adopted as drafted;

### *Registration Schemes*

- the proposed package would require all trailers to be tested;

- in order to deliver and enforce this there would have to be a national registration system for trailers — a study in 2009 estimated a cost of £237 million;

### *Testing*

- currently the Vehicle and Operator Services Agency (VOSA) administers the MOT scheme, together with testing of heavy goods vehicles and public services vehicles;
- it authorises the suitability of premises, the competency of testers and provides training on a commercial basis;
- it also gives instruction on technical and legal updates;
- the proposed package would add new types of vehicle into the testing regime, would add to the content of the test itself and would place pressure on VOSA resources;
- the additional volume of vehicles falling into the testing regime would increase demand at test stations;
- the requirement to establish and maintain an electronic database on vehicle roadworthiness already falls to VOSA — the need to coordinate with similar systems across the EU would represent a major, as yet uncoded, IT project;

### *Businesses and motorists*

- the Government is still analysing the likely impact of the new measures;
- but it looks likely that, if adopted as proposed, they would increase the cost of the MOT test for motorists;
- there might be implications too for manufacturers and the after-market industry;
- the businesses that carry out testing in UK are predominantly commercial garages and most are small or micro business;
- the proposed package would result in an increase in the number of vehicles falling within testing schemes and the change to standards might generate additional work for garages;
- they would, however, face additional costs in terms of new equipment, training and accessing technical specifications on vehicles;
- the Commission would like to see harmonisation of the level of qualification and a higher standard of training for inspectors across the EU;
- this would require a system to recognise qualifications and training requirements for some 58,000 testers in the UK; and
- the most affected identifiable group of motorists would be those who use any form of trailer (including caravans) — they would be required to register their trailers and test them on an ongoing basis.

1.10 On the financial implications the Minister says that:

- the Commission's impact assessment gives an annual cost over the whole EU for their preferred option of €3,347 million (£2,691 million), with a claimed road safety benefit of €5,807 million (£4,669 million);
- some of the benefits the Commission identify are based on assumptions which the Government will want to test with the industry;
- the benefit calculation is particularly sensitive to assumptions on the number of lives saved as a result of improved inspection standards; and
- the Government cannot yet offer a view on how robust the Commission's assumptions are.

1.11 The Minister tells us that the Commission carried out a generic consultation exercise in 2010, that this did not, however, indicate the precise content of the current package and that the Government will be carrying out informal consultation with industry and representative groups. He also attaches to the Explanatory Memorandum an impact assessment checklist for each of the two draft Regulations and for the draft Directive.<sup>2</sup>

1.12 In his letter the Parliamentary Under-Secretary of State, Department for Transport (Stephen Hammond), reports first that:

- at the first three meetings of the Council working group on the package, which began in September, delegates discussed the Commission's impact assessment and Articles 1 to 8 of the draft Regulation on periodic roadworthiness tests, document (a); and
- due to the contentious nature of some of the elements of the proposal and widespread concern of many Member States about the regulatory burdens imposed by the package, progress to date has been slow.

1.13 The Minister then turns to the possible JHA implications of Article 19 of the draft Regulation on periodic roadworthiness tests, document (a), which his predecessor highlighted to us. He says that:

- UK officials sought an early meeting with the Commission to discuss this issue;
- the Commission was very clear that there was no intention to create a criminal offence and that it would be at the discretion of the Member State to decide whether it wished to make the offence a civil or criminal offence;
- the Government asked for formal confirmation of this during the working group meeting on 28 September; and
- the Commission again stressed that it had no intention of mandating that odometer fraud becomes a criminal offence in Member States and agreed that this

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2 See the Explanatory Memorandum at <http://europeanmemorandum.cabinetoffice.gov.uk/>.

should be reflected in all language versions of the proposal and that the required changes will be made.

## Conclusion

1.14 The Minister's analysis of the proposal's compliance with subsidiarity is superficial. The regulatory and financial impact of these proposals on Government agencies and motorists necessitated a far profounder analysis, in the context of the UK, of the Commission's arguments that action at EU level is now required to enhance road safety and environmental protection. Given the eight-week deadline in which national parliaments have to issue a Reasoned Opinion on non-compliance with the principle of subsidiarity, we expect this type of analysis to be contained in an Explanatory Memorandum, as well as after the Government has conducted its own impact assessment.

1.15 For the reasons set out in the Reasoned Opinion attached to this Report, we conclude that document (a), the draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC, does not comply with the principle of subsidiarity. Accordingly we recommend that the House adopt a Reasoned Opinion to be sent to the President of the Commission, Council and European Parliament before midnight on 22 October 2012.

1.16 Attached to the Reasoned Opinion are relevant excerpts from a letter we received from the Northern Ireland Assembly Committee for the Environment, setting out its concerns with document (a). We were grateful to receive this.

1.17 Whilst the issue of a criminal offence of odometer fraud has been resolved satisfactorily, we note that other important issues remain, with regard particularly to the potential onerous burdens for government, businesses and motorists. So before considering these proposals further we should like to hear about:

- developments in working group discussions that might mitigate potential burdens; and
- the Government's own assessment of the costs and benefits of the proposals, especially in the light of the comments it is seeking from interest groups.

Meanwhile the documents remain under scrutiny.

## Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, pursuant to Article 6 of Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality

**concerning**

### **a Draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC<sup>3</sup>**

#### **Treaty framework for appraising compliance with subsidiarity**

1. The principle of subsidiarity is born of the wish to ensure that decisions are taken as closely as possible to the citizens of the EU. It is defined in Article 5(3) TEU:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

2. The EU institutions must ensure “constant respect”<sup>4</sup> for the principle of subsidiarity as laid down in Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

3. Accordingly, the Commission must consult widely before proposing legislative acts; and such consultations are to take into account regional and local dimensions where necessary.<sup>5</sup>

4. By virtue of Article 5 of Protocol (No 2), any draft legislative act should contain a “detailed statement” making it possible to appraise its compliance with the principles of subsidiarity and proportionality. This statement should contain:

- some assessment of the proposal’s financial impact;
- in the case of a Directive, some assessment of the proposal’s implications for national and, where necessary, regional legislation; and
- qualitative and, wherever possible, quantitative substantiation of the reasons “for concluding that a Union objective can be better achieved at Union level”.

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3 COM(380) final.

4 Article 1 of Protocol (No. 2).

5 Article 2 of Protocol (No. 2).

The detailed statement should also demonstrate an awareness of the need for any burden, whether financial or administrative, falling upon the EU, national governments, regional or local authorities, economic operators and citizens, to be minimised and to be commensurate with the objective to be achieved.

5. By virtue of Articles 5(3) and 12(b) TEU national parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol (No. 2), namely the reasoned opinion procedure.

### **Previous Protocol on the application of the principle of subsidiarity and proportionality**

6. The previous Protocol on the application of the principle of subsidiarity and proportionality, attached to the Treaty of Amsterdam, provided helpful guidance on how the principle of subsidiarity was to be applied. This guidance remains a relevant indicator of compliance with subsidiarity. The Commission has confirmed it continues to use the Amsterdam Protocol as a guideline for assessing conformity and recommends that others do.<sup>6</sup>

“For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States’ action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

“The following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States’ interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.”<sup>7</sup>

“ The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures”.

6 See, respectively, pages 2 and 3 of the 2010 and 2011 Reports on Subsidiarity and Proportionality (COM(10) 547 and COM(11) 344).

7 Article 5.



## Proposed legislation

### *Legislative objectives*

7. The Commission's explanatory memorandum explains that:

“[t]he objective of the proposal is to lay down updated harmonised rules on the roadworthiness testing of motor vehicles and their trailers with a view to enhance road safety and environmental protection.

“The proposal aims at contributing to reach the target of a reduction of road fatalities by half until 2020 as laid down in the Policy Orientations on Road Safety 2011–2020. It will also contribute to the reduction of emissions in road transport linked to poor maintenance of vehicles.”<sup>8</sup>

These objectives will be fulfilled by:

“extend[ing] the scope of the existing regime to new categories of vehicles, including motorcycles, as well as the frequency of inspections for older vehicles to those having reached a high mileage”;<sup>9</sup>

and by:

“lay[ing] down new requirements on several issues related to the standard and quality of testing, namely test equipment, skills and training of testing personnel and supervision of the testing system.”<sup>10</sup>

### *Subsidiarity*

In its explanatory memorandum the Commission says the proposal complies with subsidiarity because:

“[t]he objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason: the technical requirements for roadworthiness testing have been set on a minimum level at Union level and their implementation by Member States has led to a high diversity in the requirements throughout the Union with negative impacts both on road safety and on the internal market.”<sup>11</sup>

There is a further, but limited, analysis of subsidiarity in the Commission's Summary of impact assessment:

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8 COM(380) final, page 2.

9 As above, page 3

10 As above, page 3.

11 As above, page 7.

“The right to act for the EU in the field of transport is set out in the Treaty on the Functioning of the European Union. More particularly, Art. 91 of the Treaty puts on the legislators the obligation to lay down measures to improve road safety.

“Road transport — individual, passenger and particularly commercial — has a strong crossborder aspect. This is particularly important for enforcement, where effectiveness depends on the seamless flow of information about the technical state of vehicles, the compliance history and fraud detection between different authorities in different Member States. Similarly, vehicle manufacturing is global, and action addressing the provision of data for PTI purpose by the manufacturers clearly has to be taken at the highest possible level.

“Under current rules, Member States have a lot of flexibility in the application of the Directives, allowing them notably to establish higher PTI standards. Experience show that this opportunity has not been seized by all the MS, resulting in a diversity of testing qualities across the continent. This trend can be only reversed by concerted action at EU level.

“In order to avoid falling in the trap of looking at legislative solutions only, the Commission also analysed the impacts of an intervention based purely on soft-law, or on a mixed soft and legislative approach.

“The Commission believes that some aspects of the review of the roadworthiness system should be left to the MS, who can achieve the goals in a more effective way, notably in what concerns: the organisation of roadside technical inspections, training of inspectors and the execution of supervision activities.”<sup>12</sup>

### **Aspects of the Regulation which do not comply with the principle of subsidiarity**

11. The House of Commons considers that the draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC does not comply with either the procedural obligations imposed on the Commission by Protocol (No 2) or with the substantive principle of subsidiarity in the following respects.

#### *i) Failure to comply with essential procedural requirements*

12. Neither the explanatory memorandum nor the impact assessment contains a “detailed statement making it possible to appraise compliance with the [principle] of subsidiarity” (and proportionality), as required by Article 5 of Protocol No 2, TFEU, the contents of which are set out in paragraph 4 of this Reasoned Opinion.

13. The presumption in Article 5 TEU is that decisions should be taken as closely as possible to the EU citizen. A departure from this presumption should not be taken for

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<sup>12</sup> SWD(2012) 207 final, page 4.

granted but justified with sufficient detail and clarity that EU citizens and their elected representatives can understand the qualitative and quantitative reasons leading to a conclusion that “a Union objective can be better achieved at union level.”<sup>13</sup>

14. The detailed statement should also demonstrate an awareness of the need for any burden, whether financial or administrative, falling upon the EU, national governments, regional or local authorities, economic operators and citizens, to be minimised and to be commensurate with the objective to be achieved. This analysis has not been undertaken to the extent required. At regional level for example, the Environment Committee of the Northern Ireland Assembly (see the appendix to this Reasoned Opinion) is deeply concerned about the proposal’s impact on Northern Ireland’s economy. One of the reasons given is the “unique” situation in Northern Ireland whereby vehicle testing is carried out by a government agency rather than private garages; another, in relation to the testing of agricultural vehicles, is the “relative importance” of agriculture in its economy compared to other countries.

15. At paragraph 1.3 of the impact assessment the Commission says that the subsidiarity argument has been strengthened as a consequence of the opinion of the Impact Assessment Board: “the whole part on subsidiarity has been considerably extended notably to explain where extension of EU competences is foreseen and where Member States should remain competent”.<sup>14</sup> We were unable to locate this extended argument, and presume the Commission must be referring to the passage cited above from the summary of the impact assessment, which is far from extensive.

16. In addition, we note that the consultation did not indicate the precise content of the current proposal.

## *ii) Failure to comply with the principle of subsidiarity*

### *- Necessity*

17. In the House of Commons’ view, necessity is a pre-requisite both for action at EU level and for conformity with the principle of subsidiarity.

18. This view is confirmed by the Commission:

“Subsidiarity cannot be easily validated by operational criteria. The Protocol, as revised by the Lisbon Treaty, no longer mentions conformity tests, such as ‘necessity’ and ‘EU value added’. Instead it has shifted the application mode towards the procedural aspects ensuring that all key actors can have their say. The Commission has continued to use ‘necessity’ and ‘EU value-added’ tests as part of its analytical framework and recommends the other actors to do likewise.”<sup>15</sup>

19. Necessity for EU action has to be substantiated by evidence collated and assessed in an impact assessment. However, there is little reliable evidence adduced in the impact

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13 Article 5 of Protocol 2.

14 SWD(2012) 206 final (PART 1), page 5.

15 See page 3 of the 2011 Report on Subsidiarity and Proportionality (footnote 4).

assessment that the enhancement and expansion of roadworthiness tests will indeed reduce the number of people killed in road accidents in the EU. The Commission states itself that the main source of empirical evidence of the link is not reliable, and that it has had to rely in the alternative on available literature:

“The CARE database, which contains an assessment of the main causes of accidents, is for the Commission the main source of empirical evidence on the link between the condition of the vehicles and road safety. However, the assessment of the causes of the accidents is mostly performed on the spot by policemen who typically don’t have the expert technical knowledge necessary to identify a technical defect. The data is therefore not fully reliable.

“Having said that, a large body of literature is available on the causes of road accidents. Studies of vehicles involved in accidents have shown that technical defects contributed to between 3% and 19% of accidents. Empirical evidence from Germany has shown that technical defects are contributing to around 10% of accidents. For this IA, a broadly agreed and more conservative average figure of 6% responsibility of technical defects in accidents of cars is used. The defects of safety related electronic systems are estimated to contribute even more to accidents”.<sup>16</sup>

20. It adds that the available scientific data is “scarce”, before making the following assumption:

“In 2009, 35,000 fatalities on European roads have been reported. *Assuming that technical defects contribute to fatalities proportionately to their contribution to accidents, more than 2,000 fatalities per year in the European Union may be linked to technical defects of vehicles.* Based on available studies,<sup>17</sup> between 900 and 1,100 of these could be avoided if adequate improvements to the roadworthiness testing system were put in place. The range of 900–1100 fatalities is retained in this report as an indication of the conventional (without using most costly measures) life-saving potential, of measures aimed at enhancing PTI rules.”<sup>18</sup>

21. This extrapolation is the principal premise — see recital (5) — for the imposition of onerous and costly regulatory burdens in a field of activity which had largely remained within the competence of Member States. Yet the premise is based on an *assumption*, and one the underlying methodology of which is without evidential support.

22. Furthermore, we note that recital (5) states that “there is a clear correlation between the level of road safety and the number of technical deficiencies of vehicles”. We question how there can be a “clear correlation”, given that main source of empirical evidence of the link is said not to be reliable.

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16 SWD(2012) 206 final (PART 1), page 8.

17 Based on a report from 2007 (“AUTOFORE 2007”)

18 SWD(2012) 206 final (PART 1), page 9–10.

23. From the foregoing the House of Commons concludes that the Commission has failed to adduce sufficient evidence that the action it proposes is necessary to reduce fatalities in road accidents in the EU.

*- EU value-added*

24. For EU action to be justified, in this case action which includes harmonisation measures, there must be evidence of a problem that cannot be satisfactorily addressed by legislation at national or regional level. This implies that it will have a strong cross-border element.

25. We fail to understand how harmonised rules on the conduct and frequency of roadworthiness tests will have an impact on road fatalities that can only be addressed at the level of the EU. Put another way, the Commission should adduce evidence that improving the testing of cars, light trailers or even more so tractors, in one Member State will reduce road fatalities in another Member State? Without this, there is no evidence of value being added by EU regulation.

26. Whilst the impact assessment makes the point that road transport has a cross-border element, it is, importantly, in relation to enforcement, rather than to the primary objective of reducing fatalities as a consequence of better roadworthiness testing:

“Road transport — individual, passenger and particularly commercial — has a strong cross border aspect. This is particularly important for enforcement, where effectiveness depends on the seamless flow of information about the technical state of vehicles, the compliance history and fraud detection between different authorities in different Member States. Similarly, vehicle manufacturing is global, and action addressing the provision of data for PTI purpose by the manufacturers clearly has to be taken at the highest possible level.”<sup>19</sup>

27. In a similar vein, the Commission fails to demonstrate why national or regional governments are not better placed for assessing whether the roadworthiness tests are causing fatalities in accidents on their roads. The evidence in the UK appears to be strongly to the contrary. The UK Government says in its Explanatory Memorandum dated 27 July that “any benefits” of the proposal “are likely to be negligible. However, there are likely to be significant cost implications in the UK”. The Environment Committee of the Northern Ireland Assembly includes among its concerns:

- “The significant cost implications for the DVA in delivering its vehicle testing, licensing and enforcement functions as well as industry, the police and the public;
- “The negligible road safety benefit to the UK given the already high standards of road safety vs. the burden (of both cost and bureaucracy) of implementation”.

28. Harmonised measures might be justified if, for example, the Commission proposed that cars registered in one Member State could be tested in another. But free movement of

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<sup>19</sup> SWD(2012) 206 final (PART 1), page 22.

vehicles is not an objective of this proposal: Article 4(1) makes plain that a vehicle can only be tested in the Member State where it was registered.

## Conclusion

29. In conclusion, the House of Commons considers that the one-size-fits-all approach proposed by the Commission is neither justified at a supranational level nor appropriate to national circumstances of vehicle testing.

## **Appendix: excerpts from the letter from the Chairperson of the Committee for the Environment, Northern Ireland Assembly, dated 11 October.**

The Northern Ireland Assembly Committee for the Environment considered the above proposals on 13 September 2012 and asked the Northern Ireland Department for the Environment (DOE) to comment on the implications of the proposals on the Driver and Vehicle Agency (DVA) in Northern Ireland

The Committee considered DOE's response at its meeting on 4 October 2012 and is deeply concerned about the implications for testing, enforcement and licensing of vehicles by DVA and for the impact on Northern Ireland's economy.

The Assembly Committee has concerns primarily based upon:

- The unique situation in Northern Ireland whereby vehicle testing is carried out by a government agency — the Driver & Vehicle Agency (DVA), rather than private garages
- The significant cost implications for the DVA in delivering its vehicle testing, licensing and enforcement functions as well as industry, the police and the public
- The negligible road safety benefit to the UK given the already high standards of road safety vs. the burden (of both cost and bureaucracy) of implementation
- Disproportionate impact on Northern Ireland given the high numbers of SMEs in Northern Ireland
- Disproportionate impact on Northern Ireland given the relative importance of agriculture
- Requirement for parts to be replaced with like parts for the life of the vehicle (the Department of the Environment has indicated that this would require, for instance, the same brand of tyres throughout a vehicle's life)
- Additional requirements for tester training and annual retraining of testers including training the police to the required standards for testing

- Setting up of a new trailer registration and deregistration scheme.

The Committee considered the options available and feels that rather than pursuing a reasoned opinion, the best way to address these concerns would be that the European Commission's endeavours to promote road safety should take the form of directive rather than regulations. This would allow for flexibility for Member States and their devolved regions to tailor their road safety actions according to need rather than incurring cost for negligible return.

# Formal minutes

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**Wednesday 17 October 2012**

Members present:

Mr William Cash, in the Chair

James Clappison

Michael Connarty

Julie Elliott

Chris Heaton-Harris

Kelvin Hopkins

Chris Kelly

Henry Smith

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The Committee deliberated.

Draft Report (*Periodic Roadworthiness tests for motor vehicles and their trailers: Reasoned Opinion*), proposed by the Chair, brought up and read.

Motion made, and Question proposed, That the Chair's draft Report be read a second time, paragraph by paragraph.—(*The Chair*.)

Paragraphs 1.1 to 1.14 read and agreed to.

Paragraphs (now paragraphs 1.15 and 1.16) brought up, read a second time, and agreed to.

Paragraph 1.15 (now 1.17) read and agreed to.

Annex agreed to.

*Resolved*, That this be the Fifteenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

The Committee further deliberated.

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[Adjourned till Wednesday 24 October at 2.00 p.m.]



## Standing Order and membership

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The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

### Current membership

Mr William Cash MP (*Conservative, Stone*) (Chair)  
Mr James Clappison MP (*Conservative, Hertsmere*)  
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)  
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)  
Julie Elliott MP (*Labour, Sunderland Central*)  
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)  
Nia Griffith MP (*Labour, Llanelli*)  
Chris Heaton-Harris MP (*Conservative, Daventry*)  
Kelvin Hopkins MP (*Labour, Luton North*)  
Chris Kelly MP (*Conservative, Dudley South*)  
Penny Mordaunt MP (*Conservative, Portsmouth North*)  
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)  
Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)  
Jacob Rees-Mogg MP (*Conservative, North East Somerset*)  
Henry Smith MP (*Conservative, Crawley*)  
Ian Swales MP (*Liberal Democrat, Redcar*)

## **EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION**

### **Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks**

Submitted by the Department for Culture, Media and Sport on April 2013

#### **SUBJECT MATTER**

1. The proposed Regulation aims to reduce the overall cost of deploying new superfast broadband infrastructure, primarily through measures intended to reduce the costs of civil engineering works during rollout.
2. The measures in the proposed Regulation include streamlined procedures for applications for permits, and a requirement to make passive infrastructure available for sharing on request. The Commission cites independent estimates that up to 80% of the cost of deploying new superfast broadband networks is rolled up in civil engineering works. The Commission argues that implementing these measures would lead to savings of 20-30% of total investment costs, amounting to up to €63 billion by 2020.
3. The proposal directly supports the Digital Agenda for Europe, and the Commission's two main broadband targets: 30 megabits per second (Mbps) broadband speeds for 100% of households, and at least 50% of these households subscribing to speeds over 100Mbps, both by 2020. The UK supports the Commission's Digital Agenda targets, and the transformation we will see in UK broadband by 2015 (higher speeds, wider penetration, continued choice and competition) will play an important role in achieving them.
4. The key aims of the Regulation broadly fall into four main areas: access to existing infrastructure; information provision around existing infrastructure; co-ordination of street works / permitting; and infrastructure in new buildings.
5. The Regulation contains eleven articles:

Article 1 states the subject matter and scope of the Regulation.

Article 2 defines the terms used.

Article 3 states that any 'network operator' shall be obliged to meet reasonable requests to provide access to its physical infrastructure (e.g. ducts, pipes, overhead lines) to support deployment of high speed communications infrastructure. The term 'network operator' is very widely framed, and explicitly includes electricity, gas, water, sewage, roads, railways etc. in addition to telecoms. The Article also sets out potential reasons for refusal (suitability, safety) and the proposed dispute resolution process.

Article 4 requires the setting up of a single contact point to provide information on the location, size and ownership of existing infrastructure. It sets out the method by which this information shall be gathered from public bodies and network operators, and the process by which any operator can request information from this central point to inform its network deployment planning.

Article 5 sets out the process by which any civil works partially or fully funded by public money must meet any reasonable request from communications network operators to coordinate their works.

Article 6 states that a single information point for the granting of permits (for example covering street works, planning and environmental permitting) shall be set up, and that communications network operators shall have the right to submit any permit applications to the central point, which would then be responsible for facilitating the granting of the permit.

Article 7 states that all newly constructed buildings and major renovations must be equipped with in-built superfast broadband infrastructure, and that newly constructed multi-dwelling units (i.e. flats or office blocks) must also have a single access point connecting to the in-built infrastructure.

Article 8 states that network providers will have the right to terminate their infrastructure at the access point (Article 7) and then access the in-built network.

Article 9 dictates that the National Regulatory Authority (Ofcom in the UK) will act as the dispute resolution body and single information point mentioned in Articles 3, 4, 5 and 6, unless the Member State designates or sets up another body.

Article 10 pledges to report to the European Parliament and Council on the Regulation's implementation.

Article 11 states when the Regulation shall come into force, and that it shall be binding in all Member States.

6. The Commission's impact assessment discusses a number of options:
  - i. Maintaining business as usual
  - ii. Promoting efficiency gains via guidance and recommended measures
  - iii. A Regulation to implement the policy
  - iv. A combination of a Regulation and a Recommendation to the implement the policy
  - v. Legislation to complement the existing regulatory framework and mandate further measures

After analysis in the impact assessment, the Commission has chosen option iii, arguing that it is best placed to deliver a comprehensive solution across different Member States relatively quickly.

### **SCRUTINY HISTORY**

7. The proposed Regulation was formally proposed on 27 March 2013, so this is the first occasion it has been subject to scrutiny by Parliament.

### **MINISTERIAL RESPONSIBILITY**

8. The Secretary of State for Culture, Media and Sport has primary responsibility for UK telecommunications policy.

### **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

9. Policy on telecommunications and broadband is a reserved matter under the UK's devolution settlements. However, Ministers from the Scottish Government, Welsh Government and Northern Ireland Executive will also have an interest as the proposed Regulation would also affect a number of devolved policy areas, such as roads and street works. The devolved administrations have been consulted in the preparation of the EM.

### **LEGAL AND PROCEDURAL ISSUES**

10. Legal basis  
The proposal is based on Article 114 of the Treaty on the Functioning of the European Union, with its objectives seeking to improve the conditions for the establishment and functioning of the internal market.
11. Legislative procedure  
Ordinary legislative procedure.
12. Voting procedure  
Qualified Majority Voting.

13. Impact on United Kingdom Law (including implementation issues)

Regulations are directly applicable in UK law. However, it will be necessary to give effect to the Regulation by establishing the principles to which Regulators should have regard when considering applications. It may be necessary to grant new powers to regulators and to create penalties for non-compliance.

14. Application to Gibraltar

The Regulation will apply to Gibraltar.

15. Fundamental Rights Analysis

Article 1 of Protocol 1 will be engaged as the protection it affords extends to businesses as well as individuals. The Regulators implementing the Directive would need to take care that compensation is appropriate and set at the correct level.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

16. As a proposal with an Article 114 legal base, it is likely to be adopted throughout the European Economic Area.

## **SUBSIDIARITY**

17. The Commission assesses that the proposed Regulation is justified by the subsidiarity principle, and that the measures it will put in place are necessary at European Union level. It cites the different rules, procedures and regulatory regimes currently governing broadband infrastructure deployment in different Member States as a barrier to rollout and the effective functioning of the Single Market.
18. The UK Government has concerns that the Regulation is not justified in accordance with the subsidiarity principle. The measures supported by the Regulation – infrastructure sharing, information provision, street works coordination and in-built broadband equipment in buildings – would all be implemented at a local level. There is little prospect of these measures having a cross-border market effect, as the issues the Regulation seeks to address are not applicable to the core network that crosses Member State borders. The Government believes that the Regulation's intended aim – to support superfast broadband rollout by lowering the cost of civil engineering works – would be best achieved by action at Member State level.

## **POLICY IMPLICATIONS**

19. The Government is committed to achieving the European Digital Agenda targets on broadband, and is supportive of measures at different levels which streamline and lower the cost of superfast broadband deployment. The Government is currently implementing a package of measures in the UK to

sweep away red tape around planning, street works, access to land, and power supplies. The proposed Regulation does, in fact, contain a number of elements that reflect current UK priorities to promote broadband rollout, for example encouraging infrastructure sharing between telecoms providers and electricity suppliers, and streamlining the permit scheme process when carrying out street works. Many of the policy objectives behind the Regulation could, in theory, be supported at the EU level if they were proposed in a different way using a different legal instrument.

20. We are, however, concerned that the proposed Regulation will not achieve its goals to lower the cost of civil engineering works, but instead place burdens on business, government and regulators, and potentially stifle progress while it is being implemented.
21. Our key concern is the use of a Regulation as the vehicle to implement these measures. The Regulation would be applicable in all Member States and would enforce a prescriptive approach, no matter what the current policies, regulations and structures are in a particular location. On infrastructure sharing, for example, network operators would be required, not just encouraged, to meet requests from telecoms providers to provide access to their infrastructure. In addition, there is a risk that mandated infrastructure sharing underpinned by law could in fact act as a disincentive to network investment in the most hard-to-reach areas – precisely the places currently lacking in superfast broadband access – because of the risk of ‘free riding’ on existing infrastructure.
22. The Government also has concerns regarding some of the specific policy proposals, particularly around the effect of the measures on wayleaves – the payments made by utilities companies to landowners to install and maintain equipment on private property. The wayleave regimes in the UK for communications and electricity, for example, are different to some other European countries where landowners do not enjoy rights of compensation for allowing infrastructure. It is unclear how this issue would be resolved if sharing were mandated, without major legislative changes to the regime for electric line wayleaves and the likely increase in burdens on the public and private sectors. Issues around wayleaves and private property rights would also arise when implementing the plans for in-built broadband infrastructure in new buildings.
23. While the current drafting of the Regulation advocates a commercially-led approach, the language does not provide any certainty on a number of issues, for example broadband infrastructure in new buildings. Introducing uncertainty into a market where return on investment is already precarious is unlikely to lead to additional investment.

## IMPACT ASSESSMENT

24. The Commission has produced a detailed impact assessment alongside the proposed Regulation. The impact assessment estimates that savings of 20-30% on the civil engineering costs of superfast broadband deployment could be achieved by adopting the measures proposed in the Regulation.
25. Specifically, the impact assessment identifies for the proposed policy option (see paragraph 6 above) significant capital savings for communications providers thanks to infrastructure sharing, co-deployment and faster rollout. It also cites the potential additional revenues for network operators who share their infrastructure, arguing that this would outweigh costs.
26. The Commission's estimate is predicated on assumptions about the level of network deployment that would occur in shared passive infrastructure – namely that 25% of new deployment would occur in shared infrastructure and that 75% of the civil engineering costs would be saved. We will need to understand these assumptions better and in more detail.
27. The Government feels that, while infrastructure sharing could potentially lead to some capital expenditure savings, the impact assessment does not fully take into account the knock-on effects of the measure. On the issue of implementation and administrative costs incurred by Member States, for example, the impact assessment acknowledges that they are difficult to quantify and would vary significantly between different Member States; however, it then argues that the costs would be outweighed by the wider capital savings and potential synergies. We will need to understand in more detail what these administrative costs will be and to what extent they would be one off setup costs, in both the UK and in other Member States.
28. The Regulation would require all telecoms companies to make their passive infrastructure available for sharing on request. Ofcom already has the power to require passive infrastructure sharing on specific request, but subject to a proportionality test – i.e. whether the request is objectively justified and would not distort competition. The new Regulation reverses this presumption, in that small telecoms providers would be required to open their infrastructure to larger competitors. Under the Regulation, adverse effect on competition would not be a permitted ground for refused access.
29. Other impacts would include increased wayleave payments imposed on network operators whose infrastructure becomes shared by telecoms providers (paragraph 22 above), and the additional burdens around providing network information to the single point of contact in Article 4.

30. There is also a risk that co-operation and investment in broadband infrastructure would stall while the legal instrument was being drafted, and that the measures could ultimately disincentivise investment in the hardest to reach areas.
31. We have not, as yet, been able canvass the views of the various industries – gas, electricity, water etc. – who would be affected by the Regulation, but we will be seeking their views. When the Government consulted on infrastructure sharing in 2010, industry concerns included responsibility for installation and maintenance, and liability.

## **FINANCIAL IMPLICATIONS**

32. The proposal notes that the Regulation would have no impact on the Commission's budget. However, the impact assessment does identify significant costs. In addition to the possible burdens on business outlined above, the measures would also have a financial effect on individual Member States and their national regulatory authorities. In the vast majority of Member States, a new body to oversee dispute resolution and set up and manage the single point of contact for information provision would have to be created, or an existing body (like the national telecoms regulator) greatly expanded. The setup and running costs for such a body could be significant for individual Member States.

## **CONSULTATION**

33. The Commission did consult last year on a series of measures to reduce the cost of communications infrastructure deployment, but not on a proposed Regulation.

## **TIMETABLE**

34. The proposal is expected to be formally discussed at the Telecoms Council in early June, with the Commission's ambition to conclude negotiations by the end of 2013 and the Regulation to come into force soon afterwards.

Ed Vaizey MP  
Minister for Culture, Communications and Creative Industries  
Department for Culture, Media and Sport





**Mike Nesbitt MLA, Chairman**

**Committee for the Office of the First Minister and deputy First Minister**

Mr William Cash MP  
Chairperson  
European Scrutiny Committee  
House of Commons  
7 Millbank,  
London  
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([escom@parliament.uk](mailto:escom@parliament.uk); [evansjulie@parliament.uk](mailto:evansjulie@parliament.uk); [daviess@parliament.uk](mailto:daviess@parliament.uk))

20 May 2013

Dear Chair

**Proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks**

The Committee for the Office of the First Minister and deputy First Minister (the OFMDFM Committee) at the Northern Ireland Assembly has been considering this Proposal, and the corresponding UK Government's Explanatory Memorandum (EM) prepared by the Department for Culture, Media and Sport, in relation to subsidiarity.

The OFMDFM Committee has taken advice and sought views on the Proposal and the issues raised in the EM from the Assembly's Committee for the Regional Development, Committee for Enterprise, Trade and Investment and Committee for the Environment and, through them, their corresponding Northern Ireland Departments.

A substantive response from the Department for Regional Development (DRD) indicates that its view is that the proposed Regulation would not provide a clear benefit by reason of its scale and/or effectiveness compared with action at national, regional or local level.

It also shares the view expressed in paragraph 21 of the EM, that "*mandated infrastructure sharing underpinned by law could in fact act as a disincentive to network investment in the most hard-to-reach areas – precisely the places currently lacking in superfast broadband access – because of the risk of "free riding" on the existing infrastructure.*"

DRD considers that “members states and individually devolved regions should have the flexibility to consider these matters on an individual basis”.

Unfortunately, there was insufficient time for the Committee for Regional Development to respond to us.

The Assembly Committee for Enterprise Trade and Investment considered that that this issue would be best legislated at a European level rather than locally. However, the Department for Enterprise Trade and Investment (DETI) expressed concern that the “*introduction of this Regulation would be perceived by the telecoms sector as an additional burden without any clear benefit.*” DETI endorses the UK Government view that any measures designed to assist in the deployment of broadband infrastructure are best addressed at a local member state level.

The Committee for the Office of the First Minister and deputy First Minister considers that the Regulation does not adhere to the principle of subsidiarity, for the reasons set out the European Scrutiny Committee’s Report and draft Reasoned Opinion; that there is not a clear benefit from action at EU level compared with action at national, regional or local level; and supports the views expressed by DRD and DETI that appropriate measures are best taken at member state/local level.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Nesbitt". The signature is written in a cursive style with a horizontal line underneath the name.

**Mike Nesbitt MLA**  
**Committee Chairman**

**Copy to:**

House of Lords EU Select Committee [[scotthl@parliament.uk](mailto:scotthl@parliament.uk); [graciad@parliament.uk](mailto:graciad@parliament.uk)]  
Committee for Regional Development  
Committee for Enterprise, Trade and Investment  
Committee for the Environment



## European Scrutiny Committee

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From: William Cash MP

21 May 2013

Mike Nesbitt MLA

Chairman

Committee for the Office of the First Minister

Northern Ireland Assembly

Room 435, Parliament Buildings, Ballysmiscaw

BELFAST BT4 3XX

### **Regulation on reducing costs of deployment of high-speed electronic communications networks — Document (34806) 7999/13**

The Committee has asked me to thank you for your letter of 20 May 2013, enclosing the Report from your Committee on the proposed Regulation on reducing the costs of deployment of high-speed electronic communications networks.

We note the representations of the Committee of the First Minister and deputy First Minister on subsidiarity issues arising from the proposed Regulation and welcome their alignment with this Committee's views.

We will take those views into account in our on-going scrutiny of the proposed Regulation and undertake to keep your Committee informed of any future developments. So far, I can report that since our first Report on this proposal dated 8 May, the Reasoned Opinion we recommended was debated in European Committee on Monday 20 May.

I am copying this letter to Baroness O'Cathain and Nicole Mason in the House of Lords and Stephen Magee, Staff for your Committee.

**CHAIRMAN**



## EUROPEAN COMMISSION

Directorate General  
Regional Policy

Policy development

### **PREPARATORY ACTION: ERASMUS FOR REGIONAL AND LOCAL ELECTED REPRESENTATIVES**

#### **Background information**

The challenges facing European local and regional territories (economic and financial crisis, climate and demographic changes, environmental issues, etc.) increasingly call for actions to be undertaken through sustainable and integrated development strategies involving all levels of governance.

As stated in the 'Leipzig Charter on Sustainable European Cities', integrated strategies and coordinated actions are vital if the objective of sustainable cities is to be achieved.<sup>1</sup>

The concept of an integrated sustainable approach is also supported by the Territorial Agenda 2020 (TA2020) agreed at the Informal Ministerial Meeting of Ministers responsible for Spatial Planning and Territorial Development on 19th May 2011 in Gödöllő, Hungary, which states *'The objective of the TA2020 is to provide strategic orientations for territorial development, fostering integration of territorial dimension within different policies at all governance levels and to ensure implementation of the Europe 2020 Strategy according to territorial cohesion principles.'*<sup>2</sup>

The objectives of the EU defined in the Europe 2020 Strategy for smart, sustainable and inclusive growth can only be achieved if the territorial dimension of the strategy is taken into account, as the development opportunities of the different regions and urban areas vary.

As more attention is given to multi-level governance, the role of local and regional authorities is becoming crucial – as is the need to help them upgrade their skills and capacities in order to meet the new targets. It has to be ensured that those working to deliver integrated development policies at all levels acquire the generic and cross-occupational skills and knowledge needed to develop local, urban and regional areas as sustainable communities.

Stronger support should be provided at European level to elected representatives – **with particular focus on those with little experience in EU affairs and policies** - in order to help them to:

- Increase their **knowledge of European cohesion policy and its rules (e.g. strategic planning, partnership, co-funding, monitoring, additionality, evaluation)**, with particular focus on territorial and urban development, through the participation in European seminars and workshops;

<sup>1</sup> [http://ec.europa.eu/regional\\_policy/archive/themes/urban/leipzig\\_charter.pdf](http://ec.europa.eu/regional_policy/archive/themes/urban/leipzig_charter.pdf)

<sup>2</sup> <http://www.eu2011.hu/files/bveu/documents/TA2020.pdf>

- Strengthen the **interaction and mutual learning approach** through the organisation of activities that may facilitate sharing and exchange of experience with their counterparts throughout Europe;
- Increase their **ability to implement integrated approaches** to sustainable local and regional development.

In order to help tackle these issues the European Commission, at the initiative of the European Parliament<sup>3</sup> and in collaboration with the Committee of the Regions is launching the Preparatory Action entitled 'Erasmus for local and regional elected representatives'<sup>4</sup>, with the aim of increasing European elected representatives' knowledge and expertise on EU Cohesion Policy through ad hoc training and transnational learning activities.

## Objectives

Through the implementation of the preparatory action the European Commission intends to achieve the following objectives:

- to provide help and support to local and regional elected representatives within the EU with very limited or no experience in multilateral co-operation at EU level;
- to encourage multilateral cooperation between local and regional institutions on a political level on issues related to EU Cohesion Policy;
- to stimulate exchange of ideas on the problems the local and regional representatives encounter on a regular basis when implementing EU Cohesion Policy by means of on-the-spot training and the sharing of experience, and
- to promote the exchange of better practices.

## Description of activities

Selected candidates will take part, over a period of six months (fall 2012 – spring 2013), in a 'three-step learning process', namely:

- Step 1: Participation in the OPEN DAYS 2012<sup>5</sup> which will take place in Brussels from 8 to 11 October. Selected candidates will be invited to attend a general introductory session on the aims and content of the preparatory action and at least five workshops on EU Cohesion Policy issues, chosen from a fixed menu focussed on integrated territorial development and community led local development.
- Step 2: On-site visits to an EU city/region. Building on the knowledge gained through the participation in the OPEN DAYS, participants will take part in a two and a half day site visit linked to one of the following themes (provisional):
  - o community led local development,

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<sup>3</sup> In the context of the 2012 budgetary procedure, the European Parliament has voted three new Preparatory Actions, one of which is devoted to support mobility of elected local and regional representatives. Article 13 03 34: "The objective of this preparatory action is to provide help and support for local and regional councils in the Union. The first principle of the preparatory action is to encourage and support the mobility of both elected local and regional representatives within the Union. The second principle of the preparatory action is that the mobility element is included in an agreed programme of on-the-spot training and sharing of experience with focus on 'economic and social cohesion.'"

<sup>4</sup> The implementation of this preparatory action is subject to the availability of the appropriations provided for in the draft financing decision for the preparatory action entitled "Erasmus for elected local and regional representatives" for 2012 after the adoption of the decision.

<sup>5</sup> [http://ec.europa.eu/regional\\_policy/conferences/od2012/index.cfm](http://ec.europa.eu/regional_policy/conferences/od2012/index.cfm)

- energy efficiency in housing,
  - energy efficiency in transport,
  - culture and creativity as leverage to territorial regeneration,
  - urban-rural partnership,
  - integrated approach to social and economic inclusion,
  - brownfield regeneration.
- Step 3: Final seminar. Participants will be invited to a two-day seminar in Brussels in which they will have the chance to gain further insights into the covered topics, discuss lessons learnt, and exchange knowledge and experience gained.

**N.B.** Participants will have to commit themselves to participate in the whole learning process, as the admission to step 2 and 3 will be dependent on attendance of the previous steps.

### **Eligibility and selection criteria**

To be eligible, a candidate should be an elected local or regional representative in one of the EU Member States (and Croatia) whose term in office will not end in the following 18 months.

In the selection process, the following criteria will be used:

- The geographical balance will be taken into account in the selection of applications.
- While elected representatives with European cooperation experience (e.g. involvement in URBACT projects or other European programmes/projects implying transnational learning activities such as: peer learning, exchange activities, etc.) are eligible to apply, preference will be given to those with little or no experience in cooperation at EU level.
- Candidates should have good command of at least one of the following six languages (English, French, Spanish, Italian, German or Polish<sup>6</sup>). Passive understanding of English is highly recommended to all candidates as some workshops may not benefit from interpretation.
- The selection of candidates will be made in full compliance with the principle of gender equality.
- In order to increase added value, priority will be given to representatives from Member States which have recently joined the EU or those which will soon join (Croatia), in case of equal competences;
- Should the number of applications - in case of equal competences – exceed the number of 100, priority will be given to younger candidates.

### **How to apply**

Following the launch of this call for expression of interest, up to 100 elected representatives will be chosen to participate in the 'Erasmus for regional and local elected representatives' preparatory action.

Interested participants should fill in the attached form (Expression of Interest) in one of the six languages covered by the preparatory action and send it **by the 20<sup>th</sup> of June** to the following email address: [regio-erasmus@ec.europa.eu](mailto:regio-erasmus@ec.europa.eu) . All forms received after this deadline will not be taken into account.

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<sup>6</sup> Given the 'pilot' nature of the action and the logistical constraints, only a limited number of languages can be covered by interpretation facilities.

The costs related to the participation of the selected candidates in the above described activities (travel, accommodation, per diem) will be covered by the organising institutions (the European Commission<sup>7</sup>, and the Committee of the Regions if applicable).

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<sup>7</sup> For the reimbursement of participants to the Erasmus preparatory action the rules for reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity will be applied. For details see 'Expenses reimbursement' document attached.











