



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Executive 2013-14 European Priorities:
OFMDFM Briefing

20 February 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Ms Megan Fearon
Mr Paul Givan
Mrs Brenda Hale
Ms Bronwyn McGahan
Mr Stephen Moutray

Witnesses:

Dr Paul Geddis	Office of the First Minister and deputy First Minister
Dr Gerry Mulligan	Office of the First Minister and deputy First Minister

The Chairperson: We now move to the second of our briefings on EU issues, which is on the draft priorities for the 2013-14 financial year. Still with us are Gerry Mulligan and Paul Geddis.

Dr Gerry Mulligan (Office of the First Minister and deputy First Minister): The format that we used for previous priorities is retained for the 2013-14 priorities. This is very much a second cut; it is a working draft at the moment, and we are particularly interested in the Committee's view on it. We have also consulted, through the Barroso task force, Commission members on that body. They are also looking at this document at the moment. Furthermore, Departments, at their discretion, will take views from stakeholders. We expect that Departments will reflect some of those views back to us. It is very much a working document, and it is at a very high level. Like any framework document, it will steer a specific implementation plan against which we will monitor progress in the way that we have until now.

Our plan is to address the comments that we get from the Committees, the Barroso task force members and stakeholders as appropriate, and provide the next iteration — another draft — to the Executive for approval in and around May. Subject to that approval, we will provide the final agreed Executive document to the Committee.

The Chairperson: No one has indicated that they wish to ask a question yet. You are obviously playing very well with the Committee, Gerry.

I know that we have four main areas of concern. Beyond that, given that funding is such an issue these days — I know that the Ulster Unionist Minister has gone out to Europe and has, I think, been successful in his attempts to seek additional funding — are we maxing out our opportunities?

Dr Mulligan: On the evidence of the decisions taken to date, I think that we are certainly seeing the benefits of Ministers' lobbying on a number of key issues. For our part, we will raise awareness of what the issues are when we need to engage with the Commission. As you said, Chair, on the example of transport, it was vital that we were able to fund roads infrastructure through input to the emerging text of regulations. That is an example of the type of policy that I referred to.

An area where I think that we have maxed out the policy outcome is in the provision of a further Peace programme. That process started back in December 2010, when the First Minister and the deputy First Minister met with President Barroso and impressed on him the need for a further Peace programme. That was followed up by lobbying Commissioner Hahn when the Peace Bridge was opened, and, in advance of the most recent decision, the First Minister and the deputy First Minister lobbied President Van Rompuy. The outworking of that was paragraph 53 of the conclusions of the European Council on 7 and 8 February, which provided €150 million. That is another good example of Ministers pressing the regional case.

We are actively pursuing other policies. One example is the new guidance on regional aid, which, in its present form, does not give us, as a region, the flexibility to apply state aid as we would like. That is another issue on which Ministers have engaged directly with the Commissioner and, of course, with London.

I think the picture is one of Ministers being aware of the need to press the case, and we are seeing the positive benefits of that in the decisions that are being made. However, there is more to be done and, obviously, we need to continue to keep an eye on all those policies, going forward.

The Chairperson: I think that you are right to formally record that, since we last spoke, the €150 million for Peace IV is now official.

Dr Mulligan: Confirmed.

The Chairperson: Yes.

Dr Mulligan: Of course, that is subject to parliamentary ratification.

The Chairperson: Yes. Is there still a prospect of a top-up?

Dr Mulligan: It is in the gift of the Treasury to add to that from structural funds. That €150 million is an additional amount that is agreed before the national allocations are made. It would be a matter for discussion between the Department of Finance (DFP) and the Treasury, but I would imagine that discussions around what might be a viable amount will produce the possibility of an addition to that €150 million. However, that is subject to discussion between DFP, the Department of Finance in Dublin — because, of course, it is a joint programme — and the Treasury.

The Chairperson: Have those discussions begun?

Dr Mulligan: Not at present, Chair. Obviously, we will want to keep close to all of that. That was decided only on 7 and 8 February and the actual structural funds have not yet been allocated among the member states. The UK will have to see what it gets from structural funds before it can begin to consider how those will be allocated around different regions.

The Chairperson: OK. Thank you.

Ms McGahan: Gerry, thank you for your presentation. I want to ask about the area of encouraging business growth. I want to focus particularly on the replacement of machinery in the manufacturing and engineering sector, which would help to safeguard and create jobs. It is my understanding that there is an option in, I think, the cohesion fund for that. Has any consideration been given to that? In County Tyrone, for example, I know that the manufacturing and engineering sector employs at least 5,000 people. We always say that success is not a destination and that you have to keep investing in your processes. Have you any comments on that?

Dr Mulligan: Bronwyn, that is a very specific question about a particular measure. Generally, the way in which structural funds are allocated will take account of what is considered to be our transitional

status, which allows capital spend in certain areas. That might create the opportunity for funding of the sort that you have suggested. There may be other programmes, apart from structural fund programmes, that would cover capital investment in any enterprise. There is a programme named COSME, which is geared at small and medium-sized enterprises, and the use of financial instruments within that is geared towards capital investments, among other things. There may well be competitive programmes available to small and medium-sized enterprises as well. The positive thing is that we have retained, in the final conclusions, the transitional status, and that means that there will be entitlement to capital funding that might not otherwise have been there.

Ms McGahan: Having engaged with Invest NI, I know that there is no grant aid there for the replacement of machinery. However, there is an option in the EU cohesion fund, and we need to know how to tap into that. I have engaged with the sector, and that is a key demand. One of the buzzwords at the minute is "exports". They are telling me that, if there is investment in the machinery, they will be able to export more, create higher turnover and create jobs.

Dr Mulligan: It is an important point, but I do not feel qualified to give you a definite answer. We will take that away, talk to the relevant Departments and come back with a specific answer to that question.

Ms McGahan: An action plan?

Dr Mulligan: We should certainly be able to clarify what will be available through funding.

The Chairperson: Earlier in the meeting, we discussed explanatory memoranda. I am not sure whether you are aware of the one that is coming through on alternative fuel infrastructure. The UK Government, and we, can take a position on the issue of subsidiarity. How do the Executive respond to Europe through the UK? How do our thoughts and decision-making processes correlate, coincide or clash with what is happening in London?

Dr Mulligan: We receive about 700 notifications a year of memoranda of understanding, and we distribute and disseminate those around the relevant Departments. There is a statutory period in which Whitehall has to respond, which I think is eight weeks. Within that relatively short period, they will consult the relevant Departments here, and we will co-ordinate that and register that there is no particular issue for us, if that is how the Department responds, or we will register an interest in being kept advised of developments on a particular directive or piece of legislation, if that is what Departments wish. We are directed by how Departments want to respond to those explanatory memoranda. It is quite a tight timescale; eight weeks is not a long time.

I will invite Paul, with his more detailed knowledge of that process, to say from his experience whether we are always consulted early enough in the process.

Dr Paul Geddis (Office of the First Minister and deputy First Minister): We stress with all Departments, including with policy leads in OFMDFM, the need to maintain very close working relationships with Whitehall in the first instance, because the UK is the member state, and advance warning of what the Commission is working on is normally found in Whitehall, both at the upstream stage and at the various stages downstream. We strongly emphasise the bilateral relationship. When a European draft legislative act is received in the Westminster system, it immediately triggers a Whitehall response in the form of an explanatory memorandum, which effectively explains the draft legislative act to Westminster. There is a 10-day turnaround time on that. Normally, the lead UK Department majors on producing that document, but it consults the devolved Administrations during the process. That would include a reference section on subsidiarity. It also looks at proportionality.

The other end of the process is the scrutiny process that exists at the parliamentary level, particularly treaty provisions. The Lisbon Treaty was somewhat unique in that it gave that subsidiarity provision to national parliaments as a way of strengthening their role in policy formulation and decision-making at European level. There are various views on that. Some parliamentarians are very much of the view that the eight-week period is far too short; they point out the limited scope of the comments that can be made on subsidiarity and that they do not take into account proportionality. They would also refer to the yellow- and orange-card systems, and indicate that the thresholds that compel the Commission to review a proposal are probably set at too high a level in the European consensual decision-making process. There are two elements to that: the process-driven element on the explanatory memoranda that come into the system, and the treaty provisions and what they are intended to achieve. The other component in the parliamentary system is that collaboration is required across EU Parliaments. The

Assembly can also tap into the procedure of the Committee of the Regions. You have your own representatives on that: Francie Molloy and John Dallat. The Committee of the Regions has a subsidiarity function.

It is an issue of process; it is about the support processes in the Executive and Assembly. Even if you go through the process, you might come to a conclusion on subsidiarity that is at variance with the European Commission's explanatory memorandum. There are two memoranda: the UK Government's and the Commission's. You might disagree with the Commission; you might think that there is a subsidiarity issue. However, you might not have the requisite number of votes. Currently, that is set at 54 votes: two per member state. There is also a distinction between the two types of cards. The orange card refers to the codecision process, whereby the threshold is set at a higher level. Specifically, you need 28 votes, which is more than half the 54 votes, to trigger the point at which the Commission will review its draft legislative proposal. For the yellow card procedure, which is not codecision, the threshold is set lower, at 18 votes. Those are the issues that you may wish to consider in that regard. The starting point in all of this from the Executive angle is for the departmental policy leads to maintain very close working relationships with their Whitehall counterparts in their sectoral areas, because that is where the advance warning comes through.

The Committee is well aware that the Joint Ministerial Committee (Europe) has been working over the past year or 18 months on the issue of upstream engagement. I know, Chair, that you were not impressed with that label.

The Chairperson: "Prompt"? "Timely"? I like "timely".

Dr Geddis: It is a Whitehall label.

That is another element of the Whitehall process that seeks to alert Departments and policy leads that the Commission is working on something that will become a draft legislative act at some point, and that you need to influence it at that stage.

The Chairperson: I will use the example that we were discussing earlier of alternative fuel arrangements. Europe is keen to set targets for infrastructure sites and the geographical spread for alternative fuel points. I can see a situation in which the UK Government will take a view that that is a matter for them under subsidiarity, which is the position that they are taking. However, the relevant Executive Minister could say, "Actually, I would not mind Europe setting targets because that would be very helpful for me in my negotiations around the Executive table." Therefore, we clearly have a potential for tension. Are we seeing tensions coming out of those 700 memoranda per annum?

Dr Geddis: The number of explanatory memoranda tends to vary. Last year, it was actually 800. It can drop a bit below that; it can also rise upwards. The range can be anything up to 900 per annum, but it varies from year to year. The fundamental issue is a question of prioritisation — which ones are most important. You are quite right to say that there could be a tension between the UK Government and devolved Administrations. There could even be differences of interpretation between the devolved Administrations on whether the subsidiarity principle has been breached.

The important thing is that the definition of subsidiarity seeks to justify European Union action in light of the possibilities available at national, regional and local levels. The treaty provision actually references regional and local levels for the first time, and the UK Government, as defined in the memorandum of understanding, are obliged to consult the devolved Administrations so that we can make our views known. I suppose your question is this: when push comes to shove, which view would prevail? That has not been tested yet, and we hope that, perhaps, a negotiation might reach a consensual position on it, but it has not been tested.

The Chairperson: It has not happened yet?

Dr Geddis: Not in our experience.

The Chairperson: That is interesting. Members, if you are all content —

Mrs Hale: Can I ask one question, Chair? Thank you, Gerry and Paul. It is nice to see you again after the Brussels visit. I am aware that this is a mid-term report, and we are already on track for nearly 93% of our priorities. How does that compare with other jurisdictions within the United

Kingdom, and similar regions in the rest of Europe? Are we maximising our full potential? Finally, are all the Departments accessing as much drawdown as possible?

Dr Mulligan: On the first part of your question, this approach is unique to us. Colleagues in Scotland and Wales have not, as far as I know, adopted a similar approach of systematic monitoring. They have European priorities, for sure —

Mrs Hale: So we are trailblazing.

Dr Geddis: I stand to be corrected when I raise it with my colleagues in the Scottish and Welsh offices, but the production of a detailed implementation plan and the monitoring of that is possibly unique to us as a devolved Administration. However, I will check. In respect of maximising opportunities, all Departments are represented on the Barroso task force working group and in the themed groups that have access to the support of the desk officers and of the office, so, in that sense, all the Departments have access to the support that we can provide.

Mrs Hale: Is every Department utilising that to its full potential?

Dr Mulligan: Our experience is that most Ministers are engaging with the Department and with the Barroso task force to varying extents. Clearly, there will be more policy issues relevant to the Department for Regional Development or the Department of Enterprise, Trade and Investment than, for example, to the Department of Education. There is proportionality, depending on the competence of Europe, because social policy has been a contested area over the years in relation to whether the Commission has competence over it, and that is reflected in the focus on economic policy. However, we are certainly engaging with all Departments through the Barroso task force.

The Chairperson: Gerry and Paul, thank you both very much indeed. It was good to see you again.