



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

European and External Affairs Committee



Report of Inquiry into Subsidiarity

March 2009

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European and External Affairs Committee

Inquiry into subsidiarity

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European and External Affairs Committee



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Chair's Foreword



Subsidiarity is a long established European principle, but the Treaty of Lisbon proposed to introduce a formal system to flag up and manage breaches of the principle. When the Committee decided to conduct an inquiry into subsidiarity in February 2008, before the 'no vote' in the Irish referendum, it seemed likely that the Treaty of Lisbon would come into force. The treaty included a strengthened subsidiarity protocol, which recognised a formal role for regional assemblies in the EU decision making process for the first time.

Whilst the inquiry has examined this proposed process in some detail, it has also provided evidence about the way the Committee should be working more broadly in monitoring and prioritising its consideration of European policy and legislative proposals. It has yielded some very useful recommendations and helped the Committee to re-focus its role following formal separation of the National Assembly for Wales and the Welsh Assembly Government in 2007.

This report highlights how the Committee can better screen and select topics to scrutinise from the vast number of European proposals every year; the way it communicates with the Assembly Government and other UK legislatures and its strategic approach to scrutiny topics. This thorough and strategic approach to the Committee's work will improve its outcomes. It also encourages closer working with the other UK devolved legislatures and with both Houses of Parliament on European matters.

Despite the current uncertainty about the future of the Treaty of Lisbon, it is important that we build upon this recognition that we also have a voice in European matters.

Sandy Mesies

Actions and recommendations

Actions for the European and External Affairs Committee

Action 1:

The Committee will explore establishing a formal protocol between the House of Commons, House of Lords and with the Devolved Legislatures regarding the 8-week consultation to enable devolved legislatures to flag up concerns on the basic principle of subsidiarity

Action 2:

The Committee will take a more selective approach to monitoring European proposals in Wales, focusing on key issues relevant to the Assembly including policy content, the ability to influence proposals and the timing of their impact

Action 3:

The Committee will table a report at each meeting of the European and External Affairs Committee highlighting those new legislative proposals published since the previous meeting that are considered relevant to Wales, with a brief explanation of why. The Committee will, on the basis of this information, agree whether or not to follow up on these issues

Action 4:

The Committee will lead a proactive formal monitoring and alerting role, including a co-ordinating role in channelling issues to other Assembly Committees where appropriate

Action 5:

The Committee will refer European issues of significance to Wales to other committees of the National Assembly for consideration

Recommendations to the National Assembly:

Recommendation 1:

The Committee recommends that the National Assembly for Wales continues to use the subsidiarity monitoring network of the Committee of the Regions in as far as this provides positive support to the monitoring work of the Assembly's Committees

Recommendation 2:

The Committee encourages joint working and networking with members of the CALRE, and other EU networks or regions, where they may be of benefit to the Assembly

Recommendations to the Welsh Assembly Government:

Recommendation 3:

The Committee recommends the Assembly Government should provide regular updates to the European and External Affairs Committee on its short-term, medium-term and long-term European priorities in the context of the annual work and legislative programmes of the Commission

Recommendation 4:

The Committee recommends the Assembly Government should make available in a timely manner all UK Government Explanatory Memoranda on European legislative and policy proposals of relevance to Wales

Recommendation 5:

The Committee recommends the Assembly Government should produce for the Committee a Welsh Assembly Government version of each Explanatory Memorandum, explaining its views on all new proposals that have devolved consequences and the implications they will have for Wales

Introduction

The European and External Affairs Committee agreed to conduct an inquiry into subsidiarity on 7 February 2008. Prior to considering the inquiry's Terms of Reference the Committee took evidence from Andrew Duff MEP on 15 May, a recognised authority on the European Constitution.

The inquiry started in September 2008 and concluded in November 2008.

Terms of Reference

The agreed terms of reference were as follows:

To scrutinise current arrangements for the subsidiarity monitoring of European proposals, and to establish mechanisms and/or formal arrangements for future collaboration between the National Assembly for Wales and Westminster in line with new protocols attached to the Treaty of Lisbon. To consider, in particular:

- How the National Assembly for Wales is notified of European proposals which fall within its legislative competence and the role of the Welsh Assembly Government in this process
- How other legislative regions of the European Union address the issue of subsidiarity monitoring
- How will the new protocol set out in the Treaty of Lisbon impact on formal arrangements in Wales? What would be a suitable period of time within which to scrutinise a proposal and respond to the Westminster Parliament?
- What will be the resource implications of a formal agreement between UK devolved legislatures and how might these be addressed?
- How might a formal agreement between the devolved legislatures be coordinated?
- What would happen if Wales determined an EU proposal to be in breach of the subsidiarity principle? And what would be the outcome if the National Assembly and Westminster differed in their views on a proposal?
- Might subsidiarity monitoring be more adequately done at the European level (through the Committee of the Regions) than at a UK level?

Background

Definition of subsidiarity

Subsidiarity is the principle that matters should be handled by the smallest, lowest or least centralised competent authority.

In the context of the European Union, subsidiarity is formally defined in Article 5 of the Treaty on European Union which states:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.¹

The Lisbon Treaty and subsidiarity

The Lisbon Treaty was signed by EU Heads of State and Government in December 2007, and is subject to ratification by each individual Member State before it can come into effect. It would give national parliaments greater scope to participate alongside the European institutions in work of the European Union by providing a new power to enforce subsidiarity. Any national parliament could flag a proposal for EU action which it believes does not respect this principle.

The Treaty significantly adds to the existing Treaties Establishing the European Community (TEC) by including regional and local government within the sphere of application of subsidiarity. It does not prescribe how subsidiarity should be applied at sub-state level – this is left to Member States, but importantly does not ignore this level, as the present Treaty Article does.

This Subsidiarity Protocol would give national parliaments an eight-week period, as opposed to six weeks in the Constitution, to submit a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It specifically states that national parliaments would be responsible for consulting regional parliaments on compliance.

In the context of Europe, and the Treaty of Lisbon, the National Assembly for Wales is considered to be a 'regional parliament' and the Assembly Government a 'regional government'. Westminster is a 'national parliament' and the UK Government is a 'national government'.

As a regional parliament, the National Assembly for Wales does not currently have any formal mechanism to directly influence European institutions or the UK Government in negotiations at a European level unlike Westminster which

¹ Official Journal of the European Union – EU Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:pdf>

operates under a 'scrutiny reserve' agreement with the UK Government which 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'.²

It is however possible for the National Assembly for Wales to use other channels to seek influence in the EU decision making process which are explored later in this report.

The Lisbon Treaty – current situation

At the time of writing, the Lisbon Treaty has not come into force following the 'no' vote in the referendum on the Treaty in the Republic of Ireland. Negotiations are underway at a European level to resolve the concerns of the Irish and find a way forward for the Lisbon Treaty. However, witnesses to our inquiry agreed that aspects of the Treaty regarding subsidiarity were likely to survive, regardless of whether the Lisbon Treaty is implemented in its current form or not. The First Minister has previously told this committee:

'Probably about 30 or 40 per cent of what was in the treaty that was rejected by the Irish people could be implemented without having to have these big treaty negotiations. We think subsidiarity could be part of such a package'³

The House of Commons Inquiry into the Role of National Parliament under the Lisbon Treaty

We have taken account of the written report of the House of Commons European Scrutiny Committee Inquiry into Subsidiarity, National Parliaments and the Lisbon Treaty, which reported on 21 October 2008. The inquiry focused on:

- Examining the new provisions for national parliaments under the Lisbon Treaty, in particular the subsidiarity early-warning mechanism
- How these new provisions might work in practice, including cooperation with the House of Lords, Devolved Assemblies, Departmental Select Committees and inter-parliamentary coordination; and
- The likely practical effect of the new provisions

Relevant findings from the House of Commons Inquiry are discussed in the 'key issues' section of this report.

² House of Commons European Scrutiny Report: Subsidiarity, National Parliaments and the Lisbon Treaty – Thirty-third report of session 2007-08

³ European and External Affairs Committee, Scrutiny of the First Minister, 19 June 2008

Legislative Framework

Section 94(6) of the Government of Wales Act 2006 (the Act) provides that the National Assembly may not legislate by way of Measure in a way that is incompatible with Community Law. Section 108(6) contains a similar provision that would apply following a referendum to broaden the Assembly's legislative competence.

Section 80 of the Act requires Welsh Ministers to implement and comply with the United Kingdom's Community obligations when they have the relevant functions. Section 59 of the Act provides for Welsh Ministers to be designated under the European Communities Act 1972 for the purpose of implementing Community obligations. A number of designation orders have been made under that Act. Welsh Ministers (and previously the National Assembly under the Government of Wales Act 1998) have made numerous Statutory Instruments in order to implement Community obligations in relation to Wales.

Standing Order 18 of the Standing Orders of the National Assembly made under the Government of Wales Act 2006 provides for the Committee on European and External Affairs "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."

Evidence

Committee meetings

The organisations and individuals who gave evidence in person to the Committee are listed at Annex 1 along with the transcripts which are available on our website.

15 May 2008

- Andrew Duff MEP

9 October 2008

- Cardiff University School of European Studies
- Cardiff Law School
- European Commission Representation in Wales

23 October 2008

- Committee of the Regions

5 November 2008

Written evidence

- Secretary General – European Commission
House of Commons European Scrutiny Committee Report

Key issues

Implications of the subsidiarity protocol of the Lisbon Treaty

1. The impact of the protocol at a UK level was considered by the House of Commons European Scrutiny Committee⁴. Where the Committee currently has concerns, it draws them to the attention of the UK Government and, where it agrees, Ministers take up the concerns with the European Commission and other Member States. It sees no reason to expect that this will change with the introduction of the Lisbon Treaty.
2. The House of Commons European Scrutiny Committee expects the European Commission to listen to the views of national parliaments even if the number of opinions does not reach the levels set for the 'yellow and orange cards'. In particular, it welcomed a statement made by Commissioner Wallström in giving evidence to the Committee that the Commission should listen to the views of national parliaments even if the number of votes does not reach the threshold.
3. The Commons inquiry into subsidiarity concluded that if implemented, the Lisbon Treaty would make little difference in scrutiny of EU documents in the House of Commons or to the influence presently enjoyed by the UK Parliament because all relevant EU documents are already deposited by the UK Government.
4. Significantly, the Commons European Scrutiny Committee clarifies that it would not be in a position to act on behalf of the devolved assemblies in spotting what might be objectionable proposals, the onus therefore being on the devolved Assemblies or Parliaments to obtain draft legislation, vet it and tell the Commons Committee as quickly as possible if they have objections.
5. Where devolved Assemblies have expressed a view to Parliament, the Commons Committee will invite the comments of the devolved Assemblies or Parliaments on the Commons Committee's drafts of opinions.
6. Whilst the subsidiarity protocol may not have significant implications at a UK level because of the monitoring systems already in place, in Wales there is currently little monitoring of European proposals so the protocol has implications for the National Assembly for Wales in monitoring subsidiarity. The significant resource requirements of a comprehensive monitoring system were outlined by Professor Wincott:

⁴ House of Commons European Scrutiny Committee, *Subsidiarity, National Parliaments and the Lisbon Treaty*. Thirty-third report of session 2007-08

'the sheer volume of information that will be sent under the proposed Protocol will also create or exacerbate existing resource issues, particularly for sub-state parliaments and assemblies'⁵

7. The Committee has already been invited by the House of Lords to respond to pilot 'subsidiarity checks' on EC legislative proposals, initiated by COSAC (The Conference of Community and European Affairs Committees of Parliaments of the European Union).
8. We are acutely aware of this issue as the same scale of resources at the disposal of the Westminster parliament cannot be devoted to subsidiarity monitoring in the National Assembly. Furthermore, such comprehensive monitoring of European proposals would not stand up to reasonable scrutiny:

'One of the battles that you will have in trying to commit resources to this is the fact that when you get through all of these proposals only a limited number will have the subsidiarity question mark raised over them. Therefore you will have to face questions about how you justify the use of resources given that limited impact'⁶

9. On this point Andrew Duff said:

'one has to get the balance right between scrutiny, being informed, being sufficiently close to the affairs of Brussels to be able to promote an informed debate about the future of the European Union, and to act as a conduit between the EU authorities and the press and public inside the member states. One must balance the importance of that with the fact that national and regional parliaments also have other things that they should be doing, and also that they are not a formal part of the EU legislature.'

10. The subsidiarity protocol also prompts examination of the current coordination and monitoring arrangements between the UK Parliament/Government and the devolved assemblies. Whilst the European Parliament will recognise devolved assemblies and regions under the subsidiarity protocol, it is for the national parliament to present its united position. Some Member States have constitutional arrangements for devolved positions to be considered (particularly in the federal states such as Germany, Belgium and Austria), however, this is not the case in the UK and the devolved nations will not likely enjoy the same level of influence over the national position as regions in other countries. Professor Loughlin considers the current arrangements for cooperation and coordination between UK parliament/government and devolved legislatures to be inadequate:

⁵ Professor Wincott, Blackwell Law and Society Chair, Cardiff Law School – oral evidence to Committee 9.10.08

⁶ Dr. Palmer, Cardiff School of European Studies – oral evidence to Committee 9.10.08

'A lot of thought needs to be put into the institutional mechanisms. I would argue that the existing rather informal mechanisms are not adequate to deal with the issue, particularly if the Government at Westminster is of a different party to those of the Governments in the devolved regions'⁷

11. Andrew Duff said:

'It is not only Government that must be informed and sympathetic to hearing the opinions of the regional governments, but more specifically, under the Treaty of Lisbon, parliaments. The onus is on the House of Commons and the House of Lords to include you in their scrutiny procedures. The timetable for that is very brief. It is an eight-week period from the publication of all draft law in all of the languages of the EU. I would be primarily concerned that the inter-parliamentary relation was improved and consolidated.'

12. Professor Loughlin suggested a need to move towards more formal mechanisms in the relations and that a protocol should be developed between Westminster and the devolved legislatures.

13. He suggested a new body, the 'Joint Parliamentary and Assembly Subsidiarity Monitoring Group' and such a body should have a broader remit than just subsidiarity. Developing such a body would require significant resources and political will. A more achievable approach within the scope of this Committee is to develop a coordination agreement between the National Assembly, Westminster and other devolved legislatures.

Action 1:

The Committee will explore establishing a formal protocol between the House of Commons, House of Lords and with the Devolved Legislatures regarding the 8-week consultation to enable devolved legislatures to flag up concerns on the basic principle of subsidiarity

Why monitor subsidiarity?

14. A clear message emerged from the evidence that monitoring subsidiarity would take a lot of effort and resources and breaches of the subsidiarity principle would be rare, so why monitor subsidiarity at all?

15. We were told subsidiarity has both a legal/technical dimension *and* a political dimension, which is particularly important to regions and small nations such as Wales:

⁷ Professor Loughlin, Cardiff School of European Studies - oral evidence to Committee 9.10.08

16. Professor Loughlin:

*'...it seems that there are opportunities for sub-national entities of various kinds to establish themselves in the architecture of Europe, and subsidiarity is the principle that allows them to do that, even if that is in a technical sense. I would imagine the Commission has pre-empted any challenges to subsidiarity [...] and there will be very few cases going to the European Court of justice [...] but in its broader political sense, this is a strong opportunity for regions and nations such as Wales to establish themselves on the European scene.'*⁸

17. Andrew Duff:

"As I said to the Scottish Parliament, we in Brussels are extremely interested in the opinions of regional parliaments, not only about subsidiarity—and not even primarily about subsidiarity—but about the quality or direction of the draft legislative proposals."

18. In addition, instituting a mechanism would provide an effective means of monitoring the broader implications of European proposals and their impact upon Wales (whether they have subsidiarity implications or not) and enable the National Assembly to consider whether it wishes to make representations to the Welsh Assembly Government, the UK Parliament, or make representations to European institutions about such issues.

The Committee of the Regions and subsidiarity monitoring

19. Our Terms of Reference included examining the case for relying on existing mechanisms in place by the Committee of the Regions (CoR) to monitor subsidiarity. We asked our witnesses about this and the importance of the CoR to Wales in Europe.

20. The CoR is a consultative body which includes local authorities and regions and was established by the Treaty of Maastricht. Whilst it may generally be perceived as being weak, Professor Loughlin said about it:

'it is an extremely important institution in the institutional architecture of Europe, because it is the primary institution in which regions of all kinds can have a voice and be represented at the level of EU decision making'

21. He advised:

'...the CoR should be used to maximum effect given the state of evolution it is in and the resources it has. One of its major functions is networking. This is a wonderful opportunity for regions like Wales to network with other powerful regions in Europe such as the German Lander and Catalunya and so on'

⁸ Professor Loughlin, Cardiff School of European Studies - oral evidence to Committee 9.10.08

22. Mr. Gerhard Stahl, Secretary General of the Committee of the Regions explained to us that it has enjoyed some success in influencing and gave some examples of how it has previously made a difference to the European legislative process. In particular, the CoR is experienced in contributing to the early policy shaping of the European process. He described an example of the CoR influencing the structural fund regulations to 2012:

'...the Commissioner responsible for regional policy asked us to present an outlook opinion on regional policy and structural funds and give an indication of how CoR wanted this policy to be shaped for the future. Some of the difficult negotiations which resulted in the concrete legislation were undertaken during that consultation process [...] the CoR can say that many of the elements that make up the regulations are the result of its input...'⁹

23. We therefore see the value in maintaining membership of the Committee of the Regions and in using the subsidiarity monitoring network established by it, however, we believe this should take place alongside monitoring by our committee and not in place of it.

Recommendation 1:

The Committee recommends that the National Assembly for Wales continues to use the subsidiarity monitoring network of the Committee of the Regions in as far as this provides positive support to the monitoring work of the Assembly's Committees.

Learning from others' experience

24. The Terms of Reference of our inquiry referred to examining the arrangements in place for subsidiarity monitoring in other European regions with legislative powers. This is important as it enables us to learn lessons from others and to recognise and make the most of potential opportunities for collaborating with the other devolved administrations across Europe. We have already discussed doing this through the Committee of the Regions Subsidiarity Monitoring Network, but other networks also offer such opportunities, including the Conference of European Regional Legislative Assemblies (CALRE). These networks may be more relevant to the National Assembly's position as they focus on regions with legislative powers and exclude the broad set of sub-state institutions without legislative powers that are included in the CoR.

Recommendation 2:

The Committee encourages joint working and networking with members of the CALRE, and other EU networks or regions, where they may be of benefit to the Assembly

⁹ Mr. Gerhard Stahl, Secretary General, Committee of the Regions – oral evidence to Committee 23.10.08

25. Cardiff University academics underlined the importance of looking at practice in other EU regions and explained the three types of state within the EU¹⁰:

- **Federal states** – Austria, Belgium, and Germany, where formalised structures between the federal and regional governments have been developed and there is a constitutional obligation to deal with the question of subsidiarity within their own inter-governmental relations
- **Classic unitary states** – such as France, the Netherlands and Sweden
- **Hybrid states** – such as Spain and Italy and including the UK – where there are regions with powers but not federal states. The challenge for these states is to determine how subsidiarity applies given it is not always written into the constitution, such as the UK situation

26. So, although the federal states have well developed subsidiarity monitoring systems which are worthy of study, they cannot be easily compared to the UK's situation. Unfortunately, it seems there has been little action within more comparable hybrid states regarding subsidiarity monitoring.

'Until now we have not had much development in those countries [hybrid states], and the National Assembly for Wales is one of the first of its kind to look at the issue. What you are doing is therefore very timely'¹¹

27. However, where we can compare, it seems generally other European regions have faced the same difficult questions as we have in working out the best way to monitor European proposals. Other regions' equivalent EU Affairs Committees, difficulties have included timing, workload and resource issues, as well as other constitutional and procedural issues.

'The eight weeks proposed by the Protocol is extremely tight in practice [...] One potential response, used in Scotland and also suggested by the Austrian Länder, is to focus on the priorities of forthcoming presidencies and the annual work and legislative programmes of the Commission as a method for identifying core issues of interest.'¹²

28. We feel there is merit in taking such an approach which is discussed in more detail later on in this paper.

¹⁰ Professors Loughlin and Wincott - oral evidence to Committee 9.10.08

¹¹ Professor Loughlin – oral evidence to Committee 9.10.08

¹² Professor Wincott, Blackwell Law and Society Chair, Cardiff Law School – oral evidence to Committee 9.10.08

Developing a subsidiarity monitoring system for Wales

29. When considering how a system of monitoring subsidiarity should be developed in the National Assembly, it is important to remember that a large number of proposals (legislative, consultative and communications) come out of Brussels – somewhere in the order of 600 per year. Around 350 of these are legislative proposals from the European Commission and the subsidiarity mechanism would only apply to these¹³.
30. Professor Loughlin proposed a theoretical formal mechanism for subsidiarity monitoring with three ‘phases’:
- Phase 1: Intelligence gathering and sifting of EU policy proposals
 - Phase 2: Internal scrutiny within the Assembly – in the first instance likely to be by the European & External Affairs Committee, with call upon other specialist committees as required
 - Phase 3: Joint Parliamentary body, bringing together representatives from the devolved administrations and UK Houses of Parliament to formally agree and discuss issues regarding subsidiarity (and potentially the wider EU agenda)
31. This theoretical system has its merits although as we have already discussed the resources available to the National Assembly for Wales for monitoring and gathering intelligence about EU proposals is limited, as is the capacity of the Assembly’s other scrutiny committees. We do however agree that the principle of such a system could be implemented. The rest of this section explores how such a system could work.

Intelligence gathering and sifting EU proposals

32. We are aware that in seeking to influence developments in European policy, timing is critical, which is why the importance of information gathering and researching at an early stage to act as an early warning system was stressed by Cardiff academics. This is particularly important because the eight week period set out in the Subsidiarity Protocol may be insufficient time for national parliaments to invoke subsidiarity breach procedures without advanced warning. Considering reasonable administrative delays in communicating with and eliciting action from devolved legislatures, the 8 week deadline would be even less for those legislatures to produce a reasoned response.
33. Cardiff academics suggested that a broader, more general monitoring of the impact of EU policies at the sub-national level may be of value to the Assembly in light of the fact subsidiarity is likely to affect only a small

¹³ Catherine Day, Secretary General of the European Commission: written evidence to the Committee 5.11.08

number of pieces of legislation coming out of Brussels each year. They also recognised the resource challenges faced by devolved administrations including the National Assembly for Wales in performing a monitoring role. A 'broader' approach could provide the basis of an early warning system.

34. A degree of monitoring is currently carried out by the National Assembly's EU Office in Brussels which was established in 2004 to provide access to advanced information on the ground, through informal and formal networking in Brussels. It supports the Assembly's Committees, working in particular with the European & External Affairs Committee, as well as providing a broader information support role to Assembly Members, and carrying out a representational and networking role in Brussels.

Action 2:

The Committee will take a more selective approach to monitoring European proposals in Wales, focusing on key issues relevant to the Assembly including policy content, the ability to influence proposals and the timing of their impact

35. The Assembly Government can assist the Committee in improving the targeting and quality of information available to it in gathering intelligence and sifting proposals by:

- **Informing the Committee of its priorities** - prior to separation of the National Assembly for Wales from the Welsh Assembly Government, the First Minister was a member of the European and External Affairs Committee and provided regular updates on the Assembly Government's European activities.
- **Assisting the Committee in targeting relevant EC proposals** - the National Assembly for Wales does not currently receive formal notification of European proposals, although these are freely available on the internet. In contrast, the House of Lords and the House of Commons receive an explanatory memorandum (EM) from the UK Government on each proposal which provides a précis of the European proposal and an assessment of its implications for the UK. The EM contains a section detailing implications for devolved administrations. Where the proposal impacts on devolved matters; devolved administrations *should* be consulted by UK Government. The Assembly Government should therefore be aware of most, if not all European proposals that potentially have an impact upon Wales. Whilst the details of discussions between devolved administrations and UK Government on foreign policy are confidential, it should be possible for the Assembly Government to explain its position in relation to European proposals with a devolved implication. An initial filter of relevant proposals such as this would help in reducing the administrative burden of sifting through all EC proposals to identify those of interest to the Assembly.

Recommendation 3:

The Committee recommends the Assembly Government should provide regular updates to the European and External Affairs Committee on its short-term, medium-term and long-term European priorities in the context of the annual work and legislative programmes of the Commission.

Recommendation 4:

The Committee recommends the Assembly Government should make available in a timely manner all UK Government Explanatory Memoranda on European legislative and policy proposals of relevance to Wales

Recommendation 5:

The Committee recommends the Assembly Government should produce for the Committee a Welsh Assembly Government version of each Explanatory Memorandum, explaining its views on all new proposals that have devolved consequences and the implications they will have for Wales

36. We also believe that there are potential synergies in developing a monitoring relationship for EC proposals with the other UK devolved legislatures. This already happens on an informal basis between the Brussels-based representatives, and through contacts between committee clerks and research services of the devolved legislatures.

‘...the National Assembly for Wales might focus on developing relationships and structures within the UK [...] there may be a stronger common interest in protecting devolved competences between the National Assembly and the Welsh Assembly Government (and indeed other devolved legislatures and executives) than is the case at the Member State level. It may be possible to develop joint scrutiny – perhaps including supportive institutional arrangements – among the devolved legislatures and/or executives’¹⁴

37. We agree that there are potential opportunities for joint working that would increase our efficiency in examining European matters, and in some cases, joint scrutiny could be an option. This could be explored further in developing the working protocol with other devolved legislatures we propose in Recommendation 1.

38. Filtering and targeting of relevant EC proposals is an ongoing process as new developments from Europe occur throughout the year, so although the Committee can produce a basic work plan based on the EC’s annual work programme and information from the Assembly Government as described above, it is necessary to continually review the work plan and priorities attached to topics identified for scrutiny, in light of European and domestic developments and of course world events.

¹⁴ Professor Wincott, Blackwell Law and Society Chair, Cardiff Law School – oral evidence to Committee 9.10.08

Action 3:

The Committee will table a report at each meeting of the European and External Affairs Committee highlighting those new legislative proposals published since the previous meeting that are considered relevant to Wales, with a brief explanation of why. The Committee will, on the basis of this information, agree whether or not to follow up on these issues

Internal scrutiny

39. Once the Committee has decided what it wishes to scrutinise, it will decide the best course of action to take. Sometimes this will mean the Committee carrying out an inquiry into an issue itself, but also being mindful that it is not always best placed to carry out scrutiny of a specific topic that may be better examined by one of the Assembly's other scrutiny committees. In this way, we envisage this Committee channelling work to other Assembly committees and providing advice and coordination with respect to the timing of inquiries and targeting inquiry conclusions to the appropriate players to maximise the Assembly's influence on an issue.

Action 4:

The Committee will lead a proactive formal monitoring and alerting role, including a co-ordinating role in channelling issues to other Assembly Committees where appropriate

Action 5:

The Committee will refer European issues of significance to Wales to other committees of the National Assembly for consideration

Communicating the views of the National Assembly

40. Once the Committee and if appropriate, the National Assembly has taken a view on an issue, there are a variety of channels available to it to seek to influence the European decision making process:

- Through the **European Commission** – responding to the various legislative and non-legislative proposals, including Green Papers and White Papers, including Communications setting out policy options and inviting responses
- Through the **European Parliament** – via the Parliament's lead subject committee. The lead committee has a procedure for developing its position on a proposal which is then considered at the plenary session of the Parliament where it may be adopted

- Gaining support from the **Welsh MEPs** – although they may not sit on the lead committee for the proposal, they are able to table amendments to reports being considered by any European committees, and through discussions with their political colleagues, can potentially influence the party line taken by European Parliament's political groups when it comes to the vote in the committee
- Through the **Committee of the Regions (CoR)** – consulted for its opinion and feeds into the formal EU Institutions. The CoR 'lobbies' the other EU Institutions for its views to be taken on board, and also works through other formal and informal networks as another route to apply influence. Wales has four representatives on the CoR, two full members and two alternates. The National Assembly is presently represented by Christine Chapman (full member) and Nerys Evans (alternate). The Welsh Local Government Association has the other two places
- Through the **Council of Ministers** – this can be influenced via the Welsh Assembly Government which feeds into the UK Government's position and/or through the House of Lords and the House of Commons
- Through **EU networks** – reports can also be disseminated to a wide range of formal and informal EU lobbying networks in Brussels and across the EU, as part of the process of trying to influence the policy debate. Such networks include CALRE, REGLEG, COSAC, the Conference of Peripheral and Maritime Regions, Eurocities, Eurochambres, Assembly of European Regions, as well as the plethora of local, regional and national representations based in Brussels, and industrial/sectoral lobbyists

41. The National Assembly's ability to influence depends on the stage in the EU decision making process the proposal is at, and in practice will mainly be facilitated by the European and External Affairs Committee.

Breaches to the subsidiarity principle

42. We have already established that breaches to the subsidiarity principle will be few and far between, but where they are identified, implementing an early warning and monitoring system as described above should pre-empt the need to invoke formal procedures by resolving issues at an early stage. In the unlikely event that the National Assembly is not satisfied that the subsidiarity principle has been respected with a legislative proposal, there is a formal procedure to offer a 'reasoned opinion' to the EC. Catherine Day, Secretary General of the European Commission in answering the question as to whether Member States are free to delegate invoking the formal procedure to a regional level, said:

'Under the terms of the Lisbon Treaty, the power to issue a reasoned opinion lies with the national parliaments. However, there is also a specific reference made that national parliaments can, if appropriate, consult regional parliaments with legislative powers. Exactly how to organise this and what consequences would flow from this consultation would be a matter for national constitutional choice'

43. Clearly then, in such an event that we reach the stage of requesting the formal procedure is invoked, there is a reliance on our relationship with the Westminster Parliaments. The Commons' subsidiarity inquiry report makes it clear that it will consider devolved representations and invite comments on the Commons Committee's drafts of opinions. As the competence lies at a national level, the National Assembly for Wales would not be in a position to challenge this if it disagreed with Westminster's position.

Annex 1

Organisations and individuals who gave evidence in person to the Committee

Those giving evidence	Representing	Date	Transcript Paragraph Reference
Andrew Duff MEP	European Parliament	15/5/08	70-114
Professor John Loughlin, Professor of European Politics	School of European Studies, Cardiff University	9/10/08	26-98
Professor Alistair Cole, Professor of Politics	School of European Studies, Cardiff University	9/10/08	26-98
Dr Rosanne Palmer, School of European Studies, Lecturer	School of European Studies, Cardiff University	9/10/08	26-98
Professor Daniel Wincott, Blackwell Law and Society Chair	Cardiff Law School, Cardiff University	9/10/08	26-98
Dr Stijn Smismans, Reader and Jean Monnet Chair in EU Law and Governance	Cardiff Law School, Cardiff University	9/10/08	26-98
Gerhard Stahl, Secretary General	Committee of the Regions, Brussels	23/10/08	4-52

Copies of all papers and transcripts can be found at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eur-home.htm>