

Legislation Committee

Date: 4 April 2006
Time: 9.30am
Venue: National Assembly for Wales, Cardiff Bay
Title: Scrutiny of European Legislation in the Assembly

Purpose of Paper

1. As part of the Committee's review of the technical scrutiny of legislation, the Committee has requested information on how the Assembly's committees deal with the scrutiny of European Union (EU) legislation. This paper sets out how this has evolved and how it is currently undertaken.

Introduction: Assembly Committees' scrutiny of EU legislation

2. The National Assembly for Wales is responsible for implementing EU legislation in areas where powers have been granted to it. By the time the Assembly's Committees have the opportunity to scrutinise the implementing regulation for Wales, there will be little scope for Assembly Members to change the way in which European legislation will impact Wales. The best opportunity for ensuring that Welsh interests are not adversely affected is during the EU's consultation phase and, subsequently, during the institutional negotiations at the European level on the proposed legislation.

3. It is worth recalling that the primary aim will be to scrutinise the Welsh Assembly Government's (WAG) position and actions in relation to the piece of EU legislation.

4. The European and External Affairs Committee (EEAC) is responsible for maintaining a strategic overview of the Assembly's relations with the institutions of the EU, the UK government and European organisations. It is responsible for monitoring the impact of EU policies and legislation, but avoids duplicating the work undertaken by the subject committees.

5. The scrutiny of EU legislation is mainstreamed into the work of the subject committees. Under the Assembly's Standing Orders, each subject committee is obliged to advise on European legislation affecting Wales, within its areas of responsibility.

6. EEAC will receive regular reports on the EU scrutiny activities of the subject committees and the Equal Opportunities Committee, in order to strengthen its overview role.

Monitoring the principle of subsidiarity

7. EEAC is also responsible for considering the subsidiarity implications of proposed European legislation. Subsidiarity is the guiding principle for defining the boundary between national / regional and EU responsibilities. The EU should only take action to achieve its objectives, if action taken by other tiers of government (local, regional, national) would not be sufficient and effective. Its aim is to ensure that decisions are taken at the closest level possible to the citizen. The other guiding principle is proportionality which deals with the Community's choice of means, and controls the intensity of the action.

8. If the Assembly holds that, in relation to particular legislation, the EU has not complied with the principle of subsidiarity and the Assembly's powers have been adversely affected by EU legislation, there is no legal recourse for the National Assembly for Wales itself to enforce the principles of subsidiarity and proportionality. However, member states would be able to challenge EU legislation on this basis before the European Court of Justice.

9. Together with national parliaments and the Committee of the Regions (the EU's consultative body representing local and regional government), there is a consensus amongst EU regions on the need to keep a closer watch on the application of the subsidiarity principle with a view to exerting political pressure on the EU's Institutions to ensure respect for the principle. Methods for doing this are currently being piloted. EEAC has been involved in the Committee of the Region's pilot subsidiarity monitoring network.

A more strategic approach to EU issues

10. Prior to 2005, Committees considered whether they wished to scrutinise any EU proposals on the basis of regular lists of EU documents "deposited in the UK Parliament", as is the practice of the Houses of Parliament. Although, these lists were sifted according to relevance to the Committees' priorities, it was felt that this was not always effective in bringing important issues to the attention of the Committees.

11. A new approach to scrutinising European Union (EU) legislation and policy proposals within the Assembly's Committees was adopted in 2005 on the basis of the EEAC's recommendation (11 November 2004) which was endorsed by the Panel of Chairs (7 December 2004).

12. Committee Chairs have generally welcomed this more strategic approach as compared to the deposited documents list. The Panel of Chairs subsequently agreed a protocol for Committees for dealing with the scrutiny of EU legislative and policy proposals (19 April 2005) – attached at Annex A. The process has since been reviewed with some additional recommendations for Committees adopted by the Panel of Chairs on 7 March 2006.

13. The European Commission's Annual Work Programme is used as the starting point for identifying documents of potential importance to the

Assembly during the year ahead. The Work Programme is normally adopted in Autumn of the preceeding year.

14. Each Committee is presented with an analysis of the Work Programme which had been prepared by the Members' Research and Committee Services taking into account the WAG's priorities. The Committee will then agree which key legislative and policy proposals in their subject areas they wish to monitor and scrutinise during the year.

15. Generally, items identified by the Committees as being of significance to Wales are not limited to legislative proposals. As mentioned above, the best opportunity to influence the Commission's proposals are during the consultation stage.

Monitoring and scrutinising EU legislation

16. Each Committee has tailored its own approach to dealing with EU issues, depending on the nature of the document(s) identified for further scrutiny and monitoring. Committees may monitor the development of EU policy and negotiations on legislation via reports from the Members' Research Service.

17. When a legislative proposal is of sufficient significance, the Committee may scrutinise the WAG on the implications of the proposal and their position on it. Some Committees have also taken evidence from stakeholders and have formulated Committee conclusions on the issue.

18. As agreed by the Panel of Chairs (7 March 2006), Committees are also encouraged to consider requesting that the WAG provides them with updates on Council of Minister discussions on legislative proposals. This is to help Committees to track developments in negotiations on priority issues, as often the Commission's original proposals undergo significant amendments as the European Parliament and Member States in the Council of Ministers try to reach an agreement.

19. Committees are also recommended to request from the WAG a copy of the UK government's Explanatory Memorandums (EMs) when undertaking scrutiny of a specific proposal. EMs are produced on every EU document and form the basis of scrutiny in the House of Commons' and Lords' European Scrutiny Committees. They provide a useful summary of the UK government's analysis of the issue and their position.

20. A complete list of all documents 'deposited in the UK Parliament' is still produced for information purposes, and made available to Committee Chairs. This provides a check that nothing is being missed.

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Annex A Protocol for committee scrutiny and action on EU policy

This protocol was agreed by the Panel of Chairs in April 2005.

1. The key to influencing proposals is to engage with the right players at the right time. This is a suggested general approach to European issues, Committees may wish to consider some or all of the following in order to maximise their effectiveness:
 - i. Inviting the Welsh Assembly Government to explain the impact of a proposal on Wales, to give its response to the proposal and explain how it is making its views known to the UK government and Commission.
 - ii. Inviting a Commission representative, UK government officials or MEPs for a direct exchange of views.
 - iii. Inviting Welsh or UK organisations to the committee or expert witnesses to give their views on any particular issue, (e.g. business representatives, ASPBs, Welsh Local Government Association, social and environmental NGOs, universities).
 - iv. EU proposals may sometimes cut across several committees remit and will therefore require co-ordination of views and perspectives. In such a case, it may be appropriate for one committee to take the lead.
 - v. Having agreed its position on an issue, Committees may wish to promote this to the key institutions in the decision-making process, and other relevant players, as follows:
 - vi. The European Parliament: for example, by communicating this to Wales MEPs and inviting them to pursue the issue in the European Parliament. Channels open to MEPs to do so include:
 - influencing relevant EP committee rapporteurs;
 - tabling amendments;
 - tabling questions to the Commission and representatives of the Council of Ministers;
 - influencing the position of their EP political grouping.
 - vii. The European Commission:
 - by responding to Commission consultations;
 - inviting the Commission to Committee meetings or engaging in dialogue with the Commission through other opportunities, such as European conferences;
 - write to the relevant Commissioner responsible for the policy to promote the Committee's view.
 - viii. In addition to scrutinising the WAG's position, the Committee may wish to write to the relevant UK government Minister to make its view known.
 - ix. Other potential players include:
 - the European committees of the Houses of Parliament, for example, submitting evidence to House of Lords' enquiries;

- Assembly Members of the Committee of the Regions may table amendments to the CoR's reports;
 - European associations on which the Assembly is represented and other networks of like-minded regions and organisations. Forming a pan-European coalition on an issue is important for having a wider impact and takes the debate beyond national boundaries.
- x. Monitoring the progress of the proposal through the decision-making process, either through updates from the Welsh Assembly Government in particular on the outcome of Council meetings (Minister's report, for example), or through European update briefings from the Members' Research Service.
- xi. In the interest of transparency, the Committee Chair should request that WAG systematically brief committees on the outcome of Council of Ministers meetings which are relevant to the committee's remit.
- xii. It may be necessary for the committee to re-assess its view in light of the evolving negotiations and to issue a further response at a later stage.