

Y Pwyllgor Materion Ewropeaidd ac Allanol

EUR(2) 02-05 (p9)

Dyddiad:	24 Tachwedd 2005
Amser:	9.00 - 12.30
Lleoliad:	Cynulliad Cenedlaethol Cymru, Bae Caerdydd
Teitl:	Rhwydwaith Monitro Sybsidiaredd Pwyllgor y Rhanbarthau

Diben y Papur

1. Mae Pwyllgor y Rhanbarthau (CoR) wedi gwahodd Cynulliad Cenedlaethol Cymru i gymryd rhan yng nghyfnod prawf ei rwydwaith monitro sybsidiaredd. Bydd canlyniadau'r prawf yn cynorthwyo Pwyllgor y Rhanbarthau i lunio argymhellion ar sut y gellid atgyfnerthu'r broses o fonitro egwyddor sybsidiaredd trwy ddatblygu rhwydwaith electronig o awdurdodau Ewropeaidd lleol a rhanbarthol.
2. Gofynnir i'r Pwyllgor Materion Ewropeaidd ac Allanol drafod sut y dylai'r Cynulliad ddelio â'r broses o wirio sybsidiaredd a chyfranoldeb.
3. Gofynnir i'r Pwyllgor gynnig sylwadau i Bwyllgor y Rhanbarthau ar:
 - i. Y gweithdrefnau a ddefnyddiwyd i werthuso sybsidiaredd a darparu dadansoddiad o werth y wefan fel arf i hwyluso gwaith y rhwydwaith.
 - ii. Cynnig y Comisiwn ar y Strategaeth Thematig ar Lygredd Aer mewn perthynas ag egwyddor sybsidiaredd.

Cefndir

1. Mae Pwyllgor y Rhanbarthau yn treialu Rhwydwaith Monitro Sybsidiaredd, sydd wedi'i anelu at awdurdodau rhanbarthol a lleol yr Undeb Ewropeaidd (yn cynnwys seneddau a chynulliadau rhanbarthol). Mae'n llwyfan i gyfnewid gwybodaeth a sylwadau am ddogfennau polisi a chynigion y Comisiwn Ewropeaidd sy'n berthnasol i awdurdodau lleol a rhanbarthol a'r polis?au y maent yn gyfrifol amdanynt. Bydd yn rhwydwaith electronig, gyda gwefan un pwrpas y bydd Pwyllgor y Rhanbarthau yn ei gynnal.

2. Mae'r broses hon o fonitro sybsidiaredd yn seiliedig ar yr egwyddor o sybsidiaredd a chyfranoldeb sydd mewn grym ar hyn o bryd, ac a amlinellir yn y Cytundeb sy'n sefydlu'r Gymuned Ewropeaidd (y cyfeirir ato'n aml fel Cytundeb Amsterdam) a'r Protocol Sybsidiaredd sy'n atodol iddo. Mae'r Protocol Sybsidiaredd yn darparu canllawiau penodol y mae angen i ddeddfwyr yr Undeb Ewropeaidd eu hystyried i sicrhau bod egwyddorion sybsidiaredd a chyfranoldeb yn cael eu parchu. Nid prawf o sut y byddai darpariaethau Cytundeb Cyfansoddiadol yr Undeb Ewropeaidd yn gweithio pe bai'n cael ei gadarnhau yw hwn.
3. Amcan y rhwydwaith yw rhoi mwy o bwyslais ar sut y gweithredir protocol Cytundeb Amsterdam er mwyn cryfhau'r broses o fonitro egwyddor sybsidiaredd. Mae'r rhwydwaith yn fodd o ehangu sylfaen ymgynghori Pwyllgor y Rhanbarthau a chynyddu arbenigedd y Pwyllgor fel y gall gynrychioli buddiannau ei aelodau'n fwy effeithlon ym mhroses ddeddfu'r Undeb Ewropeaidd.
4. Dewiswyd un ar hugain o awdurdodau i gymryd rhan gan gynrychioli trawsdoriad (daeryddol a gwleidyddol) o awdurdodau lleol a rhanbarthol a'u sefydliadau. Enwebwyd Cynulliad Cenedlaethol Cymru gan CALRE – yr unig sefydliad sy'n cymryd rhan o'r Deyrnas Unedig.

Canlyniad y cyfnod prawf

5. Llunnir adroddiad ar y cyfnod prawf (31 Hydref – 9 Rhagfyr) fydd yn dadansoddi sut mae'r rhwydwaith yn gweithio'n ymarferol ac yn gwneud argymhellion ynghylch ei drefniadaeth yn y dyfodol. Caiff yr adroddiad ei drafod gan Fiwro Pwyllgor y Rhanbarthau ac mewn cyfarfod lawn yn y flwyddyn newydd.
6. Caiff crynodeb o sylwadau aelodau'r rhwydwaith ar ba mor dda mae'r ddogfen dan sylw (yn yr achos hwn, y Strategaeth Thematig ar Lygru'r Aer a'r gyfarwyddeb sy'n atodol iddo) yn cydymffurfio â'r canllawiau ar sybsidiaredd a chyfranoldeb ei hanfon at yr aelod o Bwyllgor y Rhanbarthau sy'n gyfrifol am ddrafftio barn y Pwyllgor. Cytunir ar y farn a'r canlyniadau ar sybsidiaredd gan Bwyllgor y Rhanbarthau drwy'r broses wleidyddol arferol (pleidlais yn y pwyllgor perthnasol a chymeradwyaeth y cyfarfod llawn).
7. Gan ddibynnu ar ganlyniadau'r prawf, yn y dyfodol, byddai pob dogfen ddeddfu a dderbynnid gan Bwyllgor y Rhanbarthau yn cael ei dosbarthu ymysg y rhwydwaith ar gyfer prawf sybsidiaredd systematig. Byddai felly'n fodd o hysbysu awdurdodau ynghylch dogfennau newydd perthnasol yn gyflym a byddai'n caniatáu cyfnewid gwybodaeth rhwng y sefydliadau sydd ynghlwm â'r rhwydwaith a sefydliadau'r Undeb Ewropeaidd.

Cydymffurfio ag egwyddorion sybsidiaredd a chyfranoldeb

8. Mae Pwyllgor y Rhanbarthau wedi dewis dau gynnig diweddar a gyhoeddwyd gan y Comisiwn Ewropeaidd, sef y "Strategaeth Thematig ar lygredd aer" a'r "Cynnig am Gyfarwyddeb Senedd

Ewrop a'r Cyngor ar ansawdd aer yr amgylchedd ac aer glanach i Ewrop", i fod yn destun y prawf. Gweler y dogfennau ar wefan Pwyllgor y Rhanbarthau uchod neu y Comisiwn Ewropeaidd:

<http://www.europa.eu.int/comm/environment/air/cafe/index.htm>

9. Mae Pwyllgor y Rhanbarthau wedi darparu sylwadau arweiniol ar ddadansoddi sybsidiaredd a chyfranoldeb mewn perthynas â'r ddogfen hon, ac maent ar gael ar eu gwefan:

<http://www.cor.eu.int/subsidinet/documents/Introductory comments.pdf>

10. Darperir dadansoddiad cyfreithiol o'r gyfarwyddeb gan Gyngorydd Cyfreithiol y Pwyllgor hon yn Atodiad A. Mae crynodeb o'r ddau gynnig yn Atodiad B.
11. Gofynnir i'r Pwyllgor fynegi barn ar ba un ai y cydymffurfiwyd â'r egwyddor o sybsidiaredd yn y cynnig hwn.

Y drefn a ddilynwyd gan Wasanaeth Seneddol y Cynulliad

12. Dyma'r drefn a ddilynwyd gan Wasanaeth Seneddol y Cynulliad ar gyfer delio â'r prawf sybsidiaredd:
 - i. Dosbarthwyd y dogfennau gwreiddiol i Aelodau ar 3 Tachwedd 2005 gan y Clerc.
 - ii. Drafftiwyd crynodeb o'r cynnig gan Wasanaeth Ymchwil yr Aelodau, er gwybodaeth i aelodau.
 - iii. Darparodd cyngorydd cyfreithiol Gwasanaeth Seneddol y Cynulliad gyngor ar gydymffurfiad y cynnig â'r egwyddor o sybsidiaredd fel y'i pennwyd yn erthyglau'r Cytundeb a chanllawiau'r Protocol.
 - iv. Nid yw Llywodraeth Cynulliad Cymru wedi cyflwyno barn ffurfiol ar y cynnig, ond bydd swyddog yn bresennol yng nghyfarfod y Pwyllgor i ateb cwestiynau am oblygiadau'r cynnig i Gymru.
 - v. Rydym wedi hysbysu Senedd a Llywodraeth y DU (drwy UKRep) fod y Pwyllgor yn cymryd rhan yn y prawf treialu hwn.

13. Gallai Senedd y DU gysylltu â'r Pwyllgor eto yn y dyfodol fel a ddigwyddodd ym mis Mai eleni (gweler papur EUR2 04-05 (p3)). Mae Senedd y DU yn datblygu proses fonitro fwy llym o egwyddor sybsidiaredd, ar y cyd â seneddau cenedlaethol eraill yr Undeb Ewropeaidd drwy gyfrwng COSAC. Maent am ddewis pum neu chwe chynnig o Raglen Waith Flynyddol y Comisiwn y maent yn dymuno gwirio eu bod yn cydymffurfio ag egwyddor sybsidiaredd yn ystod y flwyddyn.

14. Gofynnir i Aelodau drafod y canlynol:

- i. A yw'r Pwyllgor yn dymuno bod yn rhan o'r rhwydwaith yn y dyfodol?
- ii. A yw'r broses a bennir ym mharagraff 12 uchod yn ddigonol i alluogi'r Pwyllgor i roi ei farn?
- iii. Pan fo dogfennau'n dod o fewn cylch gwaith Pwyllgorau eraill, a ddylid eu gwahodd hwy i roi eu barn ar sybsidiaredd?
- iv. Mae Pwyllgor y Rhanbarthau yn disgwyl ateb o fewn chwe wythnos. A yw hyn yn amserlen resymol?
- v. A fyddai Aelodau'n cytuno i ymateb drwy e-bost, os nad yw'r Pwyllgor yn cyfarfod yn ystod y cyfnod ymgynghori neu a ddylai'r Pwyllgor ymateb yn hwyrach, ar ôl cael amser i drafod y mater mewn Pwyllgor?
- vi. Pe na bai'r Pwyllgor yn hapus ynghylch sybsidiaredd yng nghyswllt unrhyw gynnig, gellid anfon sylwadau at Lywodraeth Cynulliad Cymru, Senedd y DU, Llywodraeth y DU, y Comisiwn Ewropeaidd, aelodau Senedd Ewrop yn ogystal ag at Bwyllgor y Rhanbarthau.
- vii. Os daw'r rhwydwaith i fodolaeth wedi'r cyfnod prawf, mae'r Pwyllgor yn debygol o dderbyn llawer o ddogfennau i roi sylwadau arnynt. Yn wyneb y pwysau sydd ar amser Pwyllgorau ac ar adnoddau Gwasanaeth Seneddol y Cynulliad, a ddylai'r Pwyllgor ganolbwyntio'n unig ar y cynigion hynny a ddewisir gan Bwyllgorau'r Cynulliad fel blaenoriaethau yn Rhaglen Waith Flynyddol y Comisiwn? Bydd rhwydd hynt i'r Pwyllgor brofi unrhyw gynnig arall pe bai blaenoriaethau eraill yn cael eu pennu'n ddiweddarach.

Camau i'w cymryd

15. Gofynnir i Aelodau:

- Gytuno ar agwedd y Pwyllgor ynghylch delio â phrofion sybsidiaredd (gweler paragraff 8).
- Rhoi eu barn ynghylch pa un ai y cydymffurfiwyd â'r egwyddor o sybsidiaredd yng nghynigion drafft y Comisiwn: "Strategaeth Thematig ar lygru'r aer" a'r "Cynnig am Gyfarwyddeb Senedd Ewrop a'r Cyngor ar ansawdd aer yr amgylchedd ac aer glanach i Ewrop".
- Ymateb i'r pwyntiau a godwyd ym mharagraff pedwar ar ddeg uchod a chytuno ar ymateb y Pwyllgor i Bwyllgor y Rhanbarthau.

Sandy Mewies

Cadeirydd

Tachwedd 2005

Annex A: Legal analysis of the draft directive on ambient air quality and cleaner air for Europe

Legal Basis

1. The Explanatory Memorandum that accompanies the draft Directive sets out a summary of the proposed action as -

"to revise substantially and merge five separate elements of the existing acquis on ambient air quality in a single directive. This will necessarily simplify and streamline existing provisions particularly in respect of monitoring and reporting. The proposal will also update the provisions to reflect new scientific developments and introduce controls on human exposure to PM2.5 in ambient air."

2. The proposed legal basis for the Directive is Article 175 of the Treaty Establishing the European Community ("the Treaty"). This permits the Council, acting in accordance with the legislative procedure contained in Article 251, to decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 174.

3. The objectives referred to in Article 174 are –

"preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, worldwide environmental problems."

4. A Directive on ambient air quality and cleaner air for Europe would appear to sit firmly within the first two of these objectives, so that Article 175 is an appropriate legal basis.

Subsidiarity and Proportionality

5. The principles of subsidiarity and proportionality are enshrined in Article 5 of the Treaty -

"The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. 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. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."

6. Subsidiarity in this context applies to the balance between the Community and Member States. How

these matters are addressed within Members States is dealt with below. The continuing effects of the Chernobyl incident in Wales demonstrate that air pollution does not recognise political boundaries, and that this is an issue appropriate to be addressed (at least in part) at the European level. That has already been accepted in relation to the existing legislation that is now to be simplified. The balance that has been struck on this occasion is the use of a Directive that requires Member States to reach certain objectives, whilst leaving it to Member States to determine how that is to be done.

7. Proportionality is the final element of Article 5 – whether the proposals do no more than is necessary. The Explanatory Memorandum explains how the Commission considered the options in respect of controlling human exposure to PM2.5. Scientific knowledge or advice appears necessary to form a view of whether the chosen approach is appropriate. The Commission also cites the use of a directive as the legal instrument to implement the policy as well as the simplification of the monitoring and reporting provisions as evidence of proportionality

Implementation

8. Although the Directive distinguishes between the Commission and Member State, implementation does not have to be carried out at Member State level. Article 3.1 requires Member States to "designate at the appropriate levels" the competent authorities and bodies responsible for various aspects of the implementation. The Assembly was designated in 2000 under section 2(2) of the European Communities Act 1972 for –

"Measures relating to the assessment and management of ambient air quality and compliance with air quality limit values, target values and objectives, but not measures which –

(a) relate to technical standards and requirements for products; and

(b) have the purpose of limiting or reducing air pollution."

9. The making of implementing legislation by the National Assembly would appear to be excluded by paragraph (b) of the current designation, but the Assembly could seek to have that limitation removed. In any event, the Assembly could be designated a "competent authority" even if the implementing legislation were made by the Secretary of State.

Gwyn Griffiths

APS Legal

Annex B: Summary of the Thematic Strategy on Air Pollution and the Air Quality Directive

1. Thematic Strategy on Air Pollution

A. Air pollution in the EU

Air pollution currently causes almost 370,000 deaths in the EU every year and reduces average life expectancy by an average of nine months. The human health damage that air pollution causes is estimated to cost the European economy between €427 and 790 billion per year, in addition to the substantial costs to the environment. As air pollution transcends national borders, the Commission believes it is appropriate to deal with it at European level.

B. Thematic Strategy

The Sixth Environmental Action Programme (6EAP) requires the Commission to produce a Thematic Strategy on Air Pollution to address the issue. The 6EAP sets as an objective "attaining levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment" by 2020. Analysis carried out by the Commission has shown that achieving this target fully will not be possible by 2020. The Strategy therefore sets interim targets, with a particular focus on reducing human exposure to particulate matter.

The Commission estimates that the Strategy will bring health benefit savings to the EU of between €42 and 135 billion (0.30-1.0% of EU-25 GDP) per year by 2020.

C. What the Strategy aims to do

- Consolidate and streamline existing air quality legislation;
- Reduce emissions of five primary air pollutants: particulate matter, ammonia, nitrogen oxides, sulphur dioxide, and volatile organic compounds;
- Reduce ground-level ozone.

The Strategy's primary focus will be on the reduction of particulate matter, based on research carried out by the World Health Organisation and the Commission's Scientific Committee on Health and

Environmental Risk. The proposal is for a concentration ceiling for PM_{2.5} (the smallest particulates, which have been shown to do the most damage to human health), in ambient air in the most polluted areas at a level that would prevent high risks to the population. In addition, Member States would be required to reduce average human exposure to urban background levels of PM_{2.5} over the period 2010-2020 (a 20% reduction if possible). Monitoring of certain pollutants would also be increased.

More information can be found at <http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/334&format=HTML&aged=0&language=EN&guiLanguage=en>

2. Summary of the Air Quality Directive

The proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe has two aims.

i. Revise and consolidate existing EU legislation in this area into a single directive.

The following separate instruments would be combined into a single legal act:

- Council Directive 96/62/EC on ambient air quality assessment and management;
- Council Directive 99/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air;
- Directive 2000/69/EC of the European Parliament and of the Council relating to limit values for benzene and carbon monoxide in ambient air;
- Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air;
- Council Decision 97/101/EC establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the member states.

ii. Update the provisions to reflect new scientific developments and introduce controls on human exposure to PM_{2.5} in ambient air.

PM_{2.5} are the smallest particulates in ambient air and have been shown to do the most damage to human health.

B Consultation on the proposed Directive

Before issuing the Directive the Commission held meetings with stakeholders including industry groups, Member States, NGOs (including the World Health Organisation), and Accession and EEA countries. There were also meetings of approx. 100 technical working groups, and a web-based consultation.

Summary of responses

The draft Directive states that "the views of the Member States and other stakeholders are generally supportive of the Commission's initiatives. In view of this, the draft proposes a fairly high concentration cap for PM_{2.5}, to apply everywhere in the EU. Member States would also be obliged to monitor PM_{2.5} in urban areas and bring about a differentiated reduction in the average levels measured according to measured pollution levels in 2010.

C Proposals in the draft Directive

- A common approach to the assessment of air quality to allow Member States to take detailed measurements of fine particulate matter, with standardised measurement techniques (up to date information, in a standardised format, on pollution levels to be made available to the Commission and to the public);
- A concentration cap on PM_{2.5} to allow a minimum degree of health protection everywhere;
- Air quality status should be maintained or improved where it is already good;
- Fixed measurements of ozone to be mandatory in certain zones and the risk to vegetation from pollution to be assessed away from built-up areas;
- Member States to develop plans for areas where pollutants exceed air quality standards, which will be consistent in format and integrated with other plans across the EU;
- Member States to develop action plans for short term solutions where necessary;
- Member State to consult one another if the level of a pollutant exceeds, or is likely to exceed, the relevant air quality standards (the transboundary nature of pollutants such as ozone may require co-ordination between neighbouring Member States and third countries);
- Member States should lay down rules on penalties for infringements of this Directive which should be "effective, proportionate and dissuasive".

D Subsidiarity and Proportionality

Subsidiarity

The draft states that "the air quality objectives of this Directive cannot be sufficiently achieved by Member States alone and can therefore, by reason of the transboundary nature of air pollutants, be better achieved at Community level". This is supported by the fact that existing legislation sets minimum standards of air quality throughout the EU. To this end, the draft states that all Member States must take measures to reduce the risks to the population. By setting Community objectives to ensure minimum standards but allowing the means of compliance with the final Directive to be decided by the "appropriate Member State authorities", the draft states that it is complying with the subsidiarity principle.

Proportionality

The draft also states that it complies with the principle of proportionality because:

- the chosen instrument is a Directive, which leaves the details of implementation to the Member States who have better knowledge of local circumstances;
- the proposals to simplify and consolidate existing legislation will reduce the administrative burden on Member States;
- the proposed additional monitoring will lead to a greater understanding of air pollution which should permit more use of modelling to assess air quality, rather than more expensive monitoring.

The draft therefore states that "In accordance with the principle of proportionality [...] this Directive does not go beyond what is necessary in order to achieve those objectives".