

# **European and External Affairs Committee**

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## ***EUR(3)-11-10 : Paper 2 : 6 July 2010***

### **Purpose**

1. The purpose of this paper is to:
  - update the Committee on developments relating to the Protocol on Subsidiarity and Proportionality (Protocol no.2) contained in the Lisbon Treaty, hereafter referred to as the ‘Subsidiarity Protocol’ or ‘Protocol’; and
  - inform further consideration of the approach and procedures that may be adopted by the Assembly’s European and External Affairs Committee (EEAC) in relation to that Protocol.
2. The Committee previously considered this issue on 9 February 2010 (paper EUR(3)-03-10:p2) and 20 April (paper EUR(3)-06-10:p5).

### **Action for the Committee:**

3. Members are invited to consider the issues outlined in Annex A and reach agreement on the following issues:

**Issue 1:** To consider whether, in the absence of any formal protocol between the national Parliament and the devolved legislatures in the UK, the incoming European Committee Chairs of both Houses of Parliament should be invited to confirm that the undertakings made by their predecessors still stand.

**Issue 2:** What is the Committee’s view on the recommendations set out in the Scottish Parliament European and External Relations Committee Report on the Lisbon Treaty and its proposed approach to subsidiarity monitoring (set out in Annexes B and C of this paper)?

**Issue 3:** Is the Committee content with the proposed procedures set out in Annex D for subsidiarity monitoring as part of the EU scrutiny process in the National Assembly for Wales?

**Issue 4:** What is the Committee’s view on how any formal Assembly view on subsidiarity could be endorsed and communicated to the UK parliament? Could this be done with plenary powers by an Assembly Committee or will it need to be ratified by the Assembly itself? What should the recess

arrangements be? This Committee's view on this issue could be fed into the Business Committee's current review of Standing Orders.

**Issue 5:** In representing the National Assembly for Wales as a 'regional parliament', for the purposes of the Subsidiarity Protocol, does the Committee wish to explore further with the Assembly Government how the Committee can act on any concerns brought to its attention by the Assembly Government on forthcoming EU legislative proposals?

## **ANNEX A - Issues for Discussion**

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### **Developments in other legislatures**

4. The two Houses of Parliament - in practice the Committees in the House of Commons and House of Lords dealing with European matters - receive all draft EU legislation for scrutiny. Following the General Election in May 2010 EU scrutiny Committees are yet to be established, although the Lords' Liaison Committee has agreed that the EU Select Committee be set up again. It is expected that its scrutiny practices may continue much as they did in the previous parliament, and its procedures for subsidiarity monitoring are set out in a Lisbon Treaty Handbook published by the previous Committee Chair, Lord Roper.

### **Exercise of the 'Reasoned Opinion' Procedure**

5. The committee clerk and researchers from Wales and Scotland met with the House of Lords clerks and lawyers in May to learn more about the practical detail of their scrutiny process, including the Chair's weekly sift of EU proposals for consideration by the seven sub-Committees. This very useful visit confirmed that at the time clerks were aware of two Reasoned Opinions submitted by France (on the European Heritage Label) and Poland (on operational cooperation at external border - Frontex) but the Lords Committee had not identified any subsidiarity issues, and stood ready to alert the devolved legislatures should that change.

6. A Parliamentary Lawyers' training seminar on the Subsidiarity Protocol was hosted in the Senedd on Friday 25 June with the Commons, Lords, Wales, Scotland and Northern Ireland all represented. It was noted at the seminar that there had been a total of 12 Reasoned Opinions submitted since the Protocol came into effect, but six of these were in response to proposals put forward by Member States through the European Council, not Commission proposals, and had not been entered onto the inter-parliamentary database IPEX which all national (and regional) parliaments can use to follow scrutiny of EU proposals. The House of Lords representative in Brussels was seeking a change to procedures for alerting to Reasoned Opinions being put forward. So far there does not appear to be a pattern or 'critical mass' in the submission of Reasoned Opinions on any specific proposal or legal bases.

7. The Committees of the Houses of Parliament have raised concerns about the limited interpretation of proposals that constitute a 'draft legislative act' and therefore are subject to Protocol no.2, and these concerns have been

raised in the forum of COSAC – the Conference of Community and European Affairs Committees of Parliaments of the European Union.

8. As detailed in the paper considered by the Committee on 9 February (EUR(3)-03-10:p2), both the previous Commons and Lords Committee Chairs had undertaken to pass on the views of the National Assembly for Wales on any subsidiarity issue to the UK Government, whether or not the national Parliament Committees agreed with those views.

**Issue 1: To consider whether, in the absence of any formal protocol between the national Parliament and the devolved legislatures in the UK, the incoming European Committee Chairs of both Houses should be invited to confirm that the undertakings made by their predecessors still stand.**

### **The Baden-Württemberg experience**

9. As part of the Parliamentary Lawyers' training seminar on the Subsidiarity Protocol, hosted in the Senedd on Friday 25 June, a presentation was given by the Brussels representative of Baden-Württemberg, exploring relations between the regional (State) Governments and (State) Parliaments of the 16 German Lander, and the Federal Government, which under the German constitution is required to consult with the Bundesrat (the second chamber representing the regional *governments*) to agree the national negotiating position on EU issues. There is a constitutional requirement for the State Parliament of Baden-Württemberg to receive briefings on EU legislative proposals from the State Government, but the State Parliament's opinions are not binding on the State Government, so it is a question of influence. The short amount of time available to put forward a view has led Baden-Württemberg to appoint a Brussels officer as a 'direct line' to obtain early information, and other German State Parliaments are following its example.

10. A majority of federal States must resolve to raise an issue of subsidiarity before it can be communicated to the European Commission by the Bundesrat. Discussions on the participation of the State Parliament of Baden-Württemberg in the subsidiarity early-warning system of the State Government are still ongoing, but since 2007 there has been a pilot agreement under which the State Government has agreed to provide the State Parliament with its assessment on the subsidiarity and proportionality aspects of major EU legislative proposals.

11. In the State Parliament, Committees meet on average once a month, too infrequently to deal with subsidiarity objections. Ideas being considered to address this include:

- i) an 'immediate response mechanism' – giving authorisation for an objection to be submitted on behalf of the State Parliament either by: giving competence to a number of deputies representing all parties to hold an emergency meeting to take a decision; or the European Affairs Committee to meet more frequently or hold emergency meetings or set up a sub-group to do this; and
- ii) Considering whether the European Affairs Committee should be competent for every subsidiarity control in the Parliament or whether it should be spread across Committees.

12. Other questions raised are whether the purely legal question of competence should be considered separately from the content of the proposal (as Bavaria does) or both the legal check and the scrutiny of content and scope should be examined together (as they currently are in Baden-Württemberg). The setting up of a mutual information system between the State Parliaments on the results of subsidiarity monitoring is also being considered.

### **CALRE and Committee of the Regions**

13. Implementation of the subsidiarity protocol is an issue that CALRE is following closely, through the Working Group chaired by the Parlament de Catalunya. They will hold a second seminar on the protocol in Barcelona on 7 July, which Assembly officials will attend (this follows on from the seminar they held with Court of Justice Judges in September 2009). The Committee of the Regions Subsidiarity Platform will launch a consultation during the summer on the implementation of the protocol across Europe, and plan to hold a conference in Brussels on 7 December "Regional Parliaments and the Subsidiarity Protocol".

### **Recommendations of the Scottish Parliament's inquiry into the Lisbon Treaty**

14. On 23 June the Scottish Parliament's European and External Relations Committee (EERC) reported on its inquiry into the Lisbon Treaty. The inquiry took evidence from the Bavarian Parliament, Basque Parliament and Flemish Parliament. Members are invited to note the proposed approach to EU scrutiny by the EERC and Subject Committees, and specifically to subsidiarity

monitoring, attached at Annexes B and C. The proposed approach in Annex C does not differ significantly from that in the EEAC report on subsidiarity.

15. The EERC's key conclusions and recommendations include the need for improved mechanisms to ensure representation of the devolved position in the UK negotiating line and for the scrutiny of this process. The Committee wants to see more transparency in the process of incorporating the devolved position into the UK negotiating line, and a clear and agreed position on what information can be disclosed. It also seeks more reporting to the Parliament, through the EERC, on the agenda and outcomes of JMC(E) meetings and outcome of Council deliberations.

16. The EERC also has concerns about discrepancies in how Whitehall departments manage the interests of the devolved administrations, and urges the Scottish Government to encourage the Whitehall departments to adopt a standardised and consistent approach based on best practice. It recommends an improved model of EU scrutiny and engagement at all levels of government and parliament in the UK.

17. The EERC notes that the Subsidiarity Protocol offers a chance to challenge "any incursion into areas of devolved interest", but that because it is necessary to go through the UK Parliament to do this, "A formal mechanism to ensure cooperation in this matter between the UK Parliament and the Scottish Parliament is required."

18. On the question of whether consultation with devolved parliaments with legislative powers is mandatory or permissive, the EERC "is persuaded that Article 6 does not impose a legal duty on 'national parliaments, or chambers of national parliaments' to consult but considers that the Scottish Parliament should be consulted where appropriate. The Committee considers that consultation is increasingly the convention and it would be difficult for Westminster to justify a situation in which the Scottish Parliament had not been consulted on a matter on which it should have been consulted."

19. The key issues identified in relation to the Subsidiarity Protocol are: the process for consultation 'where appropriate'; the problem of the eight-week scrutiny period and, related to this, the issue of parliamentary recess; and the importance of relationships with both Houses of the UK Parliament and with the Scottish Government.

20. The EERC supports EEAC's own conclusions that any internal procedure for identifying and tracking issues of subsidiarity should be part of a wider scrutiny process, noting that this is a tendency in other devolved

parliaments, and noting also “the extensive use made in other jurisdictions of the various subject committees as EU scrutiny is mainstreamed across the parliaments.”

21. The EERC also points out that as part of the scrutiny process it may be possible to identify areas in which subsidiarity is more or less likely to arise. The Committee has recommended that the Solicitor to the Scottish Parliament undertakes an analysis of the areas where subsidiarity may arise to support a focused approach to early warning/engagement. This is similar to the approach proposed by the Assembly’s Chief Legal Adviser in his paper to the Committee of 20 April.

### ***Timescale for consultation***

22. In relation to the scrutiny period of 8 calendar weeks, of which the European Commission discounts the four weeks of August, the EERC supports the request by the House of Lords to the UK Government proposing that the Council would not, under normal circumstances, place a qualifying proposal on its agenda for eight weeks after notification, plus the four weeks of August, where they fall within that eight-week period.

### ***Reforming its scrutiny and engagement model***

23. The EERC sees its role as that of overseeing and co-ordinating 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. It sees the active scrutiny role resting primarily with the subject committees, which they would do under their own volition (by prioritising issues, initiating research, conducting inquiries etc. It proposes that ‘European Union Co-ordinators’ are appointed on each subject Committee, to act as conduits between the EERC and their own committee, and with a role including highlighting the EU dimension where relevant to policy debates. The idea is based on a model that has been successfully utilised in the Bavarian Parliament and the Flemish Parliament and reflects the original aspirations of Scottish Parliament Standing Orders (rule 6.8.4) to have strong links between the European and subject committees.

24. Before this strategy can be achieved there will need to be discussion within the Scottish Parliament in plenary session, and dialogue with the Standards, Procedures and Public Appointments Committee and other Parliamentary authorities over changes to the Parliament’s standing orders etc; between the EERC and the Scottish Government on its contribution to

Explanatory Memoranda; and with the subject committees through the Conveners Group and with committees individually.

**Issue 2: What is the Committee's view on the recommendations set out in the Scottish Parliament European and External Relations Committee Report on the Lisbon Treaty and its proposed approach to subsidiarity monitoring (set out in Annexes B and C of this paper)?**

## **Scrutiny procedures in Wales**

### ***Provision of Explanatory Memoranda by the Welsh Government***

25. When giving evidence to EEAC on 4 May, the First Minister for Wales undertook to provide the Committee with a list of Explanatory Memoranda for European legislative proposals on which the Welsh Government has been consulted by the UK Government. The action arising noted that this information was to be forwarded to the Committee in a timely manner within the 8 week window for raising concerns in accordance with the Protocol. The First Minister has not yet responded formally to that action, but the Committee Clerk, Members Research Service and Legal Services will be meeting shortly with Welsh Government officials to discuss how this information can be provided in a timely way.

26. The Committee is invited to consider Annex D which outlines the current procedures for EU scrutiny and how subsidiarity monitoring may fit within these procedures. It takes account of the approach adopted by the previous Commons and Lords EU scrutiny committees.

**Issue 3: Is the Committee content with the proposed procedures set out in Annex D for subsidiarity monitoring as part of the EU scrutiny process in the National Assembly for Wales?**

### ***Responding on behalf of the Assembly***

27. The procedures of both the House of Commons and the House of Lords require any Reasoned Opinion proposed by the respective committees to be approved by the relevant House. Consideration will need to be given as to whether the Assembly should follow Parliament's approach (which would probably require an amendment to Standing Orders) or whether making representations to those Houses in relation to subsidiarity issues should be regarded as part of the terms of reference of the EEAC to:



“consider and report on any matters relevant to the exercise by the ...Assembly of any of their functions relating to the European Union...”<sup>1</sup>”

28. As previously advised by the Assembly’s Chief Legal Adviser, in considering that issue relevant factors are: the nature of the function (in effect inviting one of the Houses of Parliament to incorporate views on subsidiarity as it affects Wales into a formal reasoned opinion which only that House has the power to submit); and the practical one of how effective expression of views on behalf of the Assembly can be achieved within the very short time window – only 8 weeks in the case of Parliament and so considerably less in the case of the Assembly. Under current arrangements, views expressed by Assembly Committee(s) to the Parliamentary Committees within the 8 week timeframe would be taken account of by the Committees of the House (and indeed can be forwarded directly to the European Commission for consideration) but would ultimately carry more weight as a Welsh position if formally endorsed by the whole Assembly.

**Issue 4: What is the Committee’s view on how any formal Assembly view on subsidiarity could be endorsed and communicated to the UK parliament? Could this be done with plenary powers by an Assembly Committee or will it need to be ratified by the Assembly itself? What should the recess arrangements be? This Committee’s view on this issue could be fed into the Business Committee’s current review of Standing Orders.**

**Issue 5: In representing the National Assembly for Wales as a ‘regional parliament’, for the purposes of the Subsidiarity Protocol, does the Committee wish to explore further with the Assembly Government how the Committee can act on any concerns brought to its attention by the Assembly Government on forthcoming EU legislative proposals?**

**Committee Service  
July 2010**

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<sup>1</sup> SO 18.1

## Annex B – Scottish Parliament Report on the Treaty of Lisbon

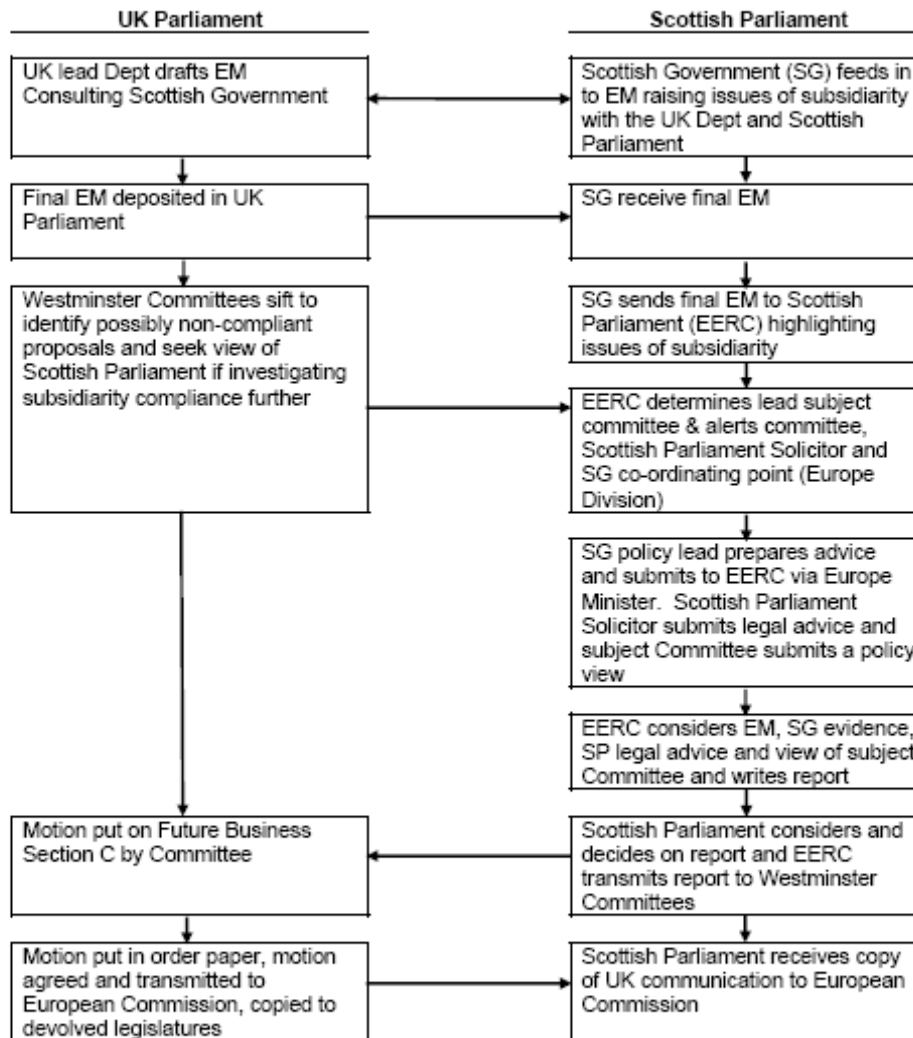
### ANNEXE A: ROLE OF EUROPEAN AND SUBJECT COMMITTEES IN EUROPEAN ENGAGEMENT AND SCRUTINY

Role	European and External Relations Committee	Subject Committees
<b>Scrutiny of Scottish Government</b>		
Priorities and action plan	<ul style="list-style-type: none"> <li>• Scrutinise Scottish Government priorities</li> </ul>	<ul style="list-style-type: none"> <li>• Scrutinise relevant Ministers and EU priorities</li> </ul>
Explanatory Memoranda	<ul style="list-style-type: none"> <li>• Develop the EM scrutiny process.</li> <li>• Liaison with Scottish Government.</li> <li>• Overview of EMs – prioritised by strategic selection criteria.</li> </ul>	<ul style="list-style-type: none"> <li>• EU Co-ordinator to consider list of EMs and prioritise.</li> <li>• Consider EM and agree action</li> <li>• Issues possibly passed back to EERC.</li> </ul>
Joint Ministerial Committee (Europe)	<ul style="list-style-type: none"> <li>• Establish a system of scrutiny of Scottish Government input into the JMC(E) process.</li> </ul>	<ul style="list-style-type: none"> <li>• Where appropriate Interview relevant Minister before / after relevant European Council meeting.</li> </ul>
Transposition –	<ul style="list-style-type: none"> <li>• Receive annual report from SG.</li> <li>• Request letter from Minister when a late transposition anticipated.</li> </ul>	<ul style="list-style-type: none"> <li>• Receive article 57(1) letters from</li> </ul>

[Targeted on late implementation]	<ul style="list-style-type: none"> <li>• Receive article 226 letters from Minister.</li> </ul>	Minister.
<b>Early Engagement / Commission Work Programme Analysis</b>	<ul style="list-style-type: none"> <li>• Develop Scottish Parliament approach to early warning system and ‘horizon-scanning’</li> <li>• Undertake global analysis.</li> <li>• Identify strategic priorities. for Parliament and ongoing monitoring.</li> <li>• Undertake annual consultation with MEPs</li> <li>• Prompt Scottish Government-sponsored debate.</li> </ul>	<ul style="list-style-type: none"> <li>• Consulted in process. Identify policy specific priorities for action.</li> <li>• Issues possibly passed back to European and External Relations Committee .</li> <li>• Liaison with EP (MEP’s, rapporteurs and committee chairs) and CoR.</li> </ul>
<b>Role</b>	<b>European and External Relations Committee</b>	<b>Subject Committees</b>
<b>Subsidiarity</b> [ Selective approach - covered by EM process – see above.]	<ul style="list-style-type: none"> <li>• Scottish Parliament Co-ordinator for subsidiarity issues</li> <li>• Draft internal Scottish Parliament scrutiny and reporting process and procedures for consideration of subsidiarity</li> <li>• Reach agreement with Lords/Commons on the mechanism to take the Scottish Parliament views into account.</li> <li>• Ongoing liaison with Westminster</li> </ul>	<ul style="list-style-type: none"> <li>• Input to the consideration of subsidiarity on specific cases</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• Liaison meetings with Welsh and N Ireland committees.</li> <li>• Develop, monitor, review and update the Scottish Parliament European Strategy</li> </ul>	

The process for the consideration of subsidiarity issues within European legislative proposals involves a wider group of actors, including the United Kingdom and Scottish Governments. The process will be part of the overall process of scrutiny of Explanatory Memoranda which will be developed by the autumn. The following flowchart sets out how this process might operate.

**ANNEXE B: SUBSIDIARITY - PROPOSED PROCESS FOR CONSIDERATION**



**NB.** Issues of subsidiarity may arise in advance of receipt of an EM. An early warning system via the CWP and ongoing discussion with the SG Europe Division would enable the SP to identify particular Scottish subsidiarity concerns in any draft EU proposal at the earliest stage and begin consideration before receiving the EM trigger.

A streamlined process will require to be devised for periods when the Scottish Parliament

## Annex D - Focused Scrutiny of European Proposals - including Committee procedures for a Reasoned Opinion on Subsidiarity

### Stages in the process:

What	Who	Action	Outcome/Comments
European Commission's (EC) Annual Legislative and Work Programme published - usually October/November	Assembly's Head of EU Office in consultation with Members' Research Service (MRS) Europe Team and Committee Clerk	EEAC considers analysis paper on the EC Work Programme and agrees the strategic priorities for Wales arising from it *; * including both <i>legislative</i> and <i>non-legislative</i> proposals of significance for Wales.	Strategic priorities built into Committee work programme - scoping papers for inquiry work and/or monitoring by Head of EU Office carried out as appropriate.
	Committee Clerk to Legal Adviser	The strategic priorities (including significant <i>legislative</i> proposals or <i>communications that may lead to legislative proposals</i> ) are brought to the attention of EEAC's Legal Adviser.	EEAC Legal Adviser is currently also the Legal Adviser to the Constitutional Affairs Committee which is responsible for scrutiny of subordinate legislation arising from any proposed EU legislative proposals
Ongoing policy scrutiny via inquiries	Head of Assembly EU Office keeps strategic priorities under review, providing the Clerk, Chair and Members, MRS Europe Team and Legal Services with briefing and intelligence from Brussels on progress and timing of all prioritised proposals.	EEAC undertakes scrutiny of prioritised EU proposals within its work programme (5-6 fortnightly meetings each Assembly term, up to 2 hours per meeting).	EEAC reports to the Assembly (usually with plenary debate). Report forwarded to Welsh Government for response, and to: the European Committees of the UK legislatures; European Commission; Welsh MEPs;

			other Welsh, UK and European bodies as appropriate.
EU Draft Proposals are deposited (usually by the European Commission) with the UK Parliament and received by the FCO. Proposals are forwarded by e-mail rule to Welsh Government and from the House of Commons/ Lords to MRS in-box. Weekly 'Batch lists' of all published proposals also received from the FCO.	European Institutions to National Parliament/FCO - forwarded to Welsh Government and National Assembly for Wales (MRS).	MRS Europe Team/Head of EU Office bring proposals that EEAC has identified as strategically important to the attention of relevant research teams	Ongoing monitoring of all proposals - legislative and non-legislative for purposes of longer-term strategic policy scrutiny - this is a separate function to the process of monitoring legislative proposals on which the Welsh Government has been consulted that are subject to the Subsidiarity Protocol.
Explanatory Memoranda for EU <i>Legislative</i> Proposals are deposited with the UK Parliament and forwarded to the Welsh Government.	<b>Welsh Government - European and External Affairs Division</b> <b>(Clarify timing/deadline for forwarding by EEAD).</b>	Welsh Government European and External Affairs Division (EEAD) official opens EMs. <b>Those which are for consultation with the devolved administrations</b> (noted on the front of the EM) are forwarded to the appropriate Welsh Government department for consideration. <b>EEAD could simultaneously forward the EMs to the National Assembly for Wales' European and External Affairs Committee e-mail in-box. *</b>	<b>* The EMs for consultation may include non-legislative proposals that may result in future legislation (eg Green/White papers) - for ease these may also be copied to the EEAC in-box.</b>

<p>EMs for consultation received into the National Assembly for Wales' European and External Affairs Committee in-box. Forwarded by e-mail rule to a separate 'for consultation' MRS inbox.</p>	<p>MRS Europe Team</p> <p><b>(Clarify deadline for matching and forwarding on proposals to Legal Services)</b></p>	<p>A member of the MRS Europe team matches the EM to the legislative proposal (referring to the FCO 'batch lists') and forwards both onto Legal Services for consideration of Subsidiarity. The proposals are also forwarded to the relevant MRS researchers and Committee Clerks (by legislative competence area) for information and use in briefing Committees.</p>	<p>Comment: Timing of EEAC scrutiny of First Minister and officials on specific issues (currently once per term) unlikely to be quick enough to seek relevant information on legislative proposals flagged as a potential breach under the Subsidiarity Protocol – <b>no formal mechanism to seek further information from Welsh Government on proposals – currently relies on good will of Welsh Ministers.</b></p>
<p>National Assembly for Wales Monitoring of the Legal Principle of Subsidiarity</p>	<p><b>Legal Services</b></p> <p><b>(Clarify deadline for legal advice to Clerk/Chair)</b></p>	<p>Legal Services analyse EM and legislative proposal and provide advice to EEAC Clerk and Chair of any potential breach of the subsidiarity principle arising from the proposal and whether further action is recommended. The Head of EU Office and relevant Committee Clerk for the area of legislative competence will be copied in on advice for information.</p>	
<p>Subsidiarity issues flagged</p>	<p>House of Commons / House of</p>	<p>EEAC Clerk refers issue to</p>	<p>House of Lords</p>



by House of Lords or House of Commons Committees to the devolved legislature	Lords Clerks directly alert European Committee Clerks of the devolved legislatures.	Assembly Legal Services for timely advice (copied to Head of EU Office and MRS Europe Team Leader). Advice provided to Chair, copied to Members for information.	procedures handbook says "If a potential subsidiarity issue is detected, some or all of the devolved assemblies may be alerted, at staff level, on a case-by-case basis." Similar verbal commitment has been given by the previous House of Commons Committee Chair to forward and reports from the devolved legislatures to the UK Government.
Consultation between devolved legislatures	European Committee Clerks of the devolved legislatures.	Clerks and Legal Advisers in the devolved legislatures alert one another to subsidiarity issues of concern and exchange views.	
subsidiarity issues or other policy scrutiny concerns identified in House of Commons Weekly Reports	House of Commons Clerks – EEAC Clerk/Researchers/ Head of EU Office	EEAC Clerk notes House of Commons scrutiny reports on strategic priority issues identified by EEAC – as the Commons look at every EM as it is published this will include early scrutiny of non-legislative proposals.	Comment: this is part of the Committee's strategic approach but may provide early warning of proposals that have not been cleared by the UK Parliament Committees due to issues of concern.
National Assembly for Wales provides its views on	EEAC Chair/Clerk – reporting to the UK Parliament Committees	In case of a potential breach identified independently in	EEAC Members will be copied in, but formal

<p>subsidiarity issues to the National Parliament</p>	<p>(copied to Clerks of devolved legislatures).</p>	<p>Wales, or a shared concern on an issue referred to Wales by the National Parliament Committees, the Chair authorises the Clerk to e-mail the concerns to UK Parliament Clerks for inclusion in reporting and forwarded onto the UK Government.</p>	<p>involvement in further scrutiny will depend on timing and whether the Assembly is in session. <b>Does this constitute a 'Reasoned Opinion' of the Assembly if the Committee has not formally considered it? The Protocol is silent on this.</b></p>
<p>Detailed scrutiny / formal consideration by EEAC</p>	<p>EEAC</p>	<p>Chair to decide if possible whether the matter should be referred to the full Committee for formal scrutiny and/or referred to other Assembly Committee Chairs for consideration.</p>	<p>Comment: Timing critical here. .</p>
<p>National Parliament Committees take account of any concerns raised by National Assembly for Wales and incorporate them into reporting to the National Parliament and UK Government Ministers.</p>	<p>House of Commons / House of Lords - via Clerks</p>	<p>In case of any other significant issue being identified of proportionality, scope or substantive content of the proposal, the Chair to authorise the Clerk to raise these issues with UK Parliament (via e-mail to Clerks of Commons and Lords)</p>	<p>Comment: formalisation of mechanism for ensuring national parliament takes account of these issues - House of Lords Procedural Handbook sets out its approach to including devolved legislatures concerns in its reports. <b>Is this still the procedure if a document has already</b></p>

			<b>been cleared but Wales raises an issue?</b>
National Assembly for Wales EEAC also brings concerns to attention of relevant stakeholders via other channels		Copying reports to others eg direct to European Commission DG's, Welsh Government (First Minister/Relevant Welsh Minister), Committee of the Regions.	

### Considerations:

- Members prioritise EU proposals for policy scrutiny according to significance to Wales, the Committee's power to influence and resources required: in accordance with EEAC's agreed strategic approach
- Supports the approach recommended by Cardiff academics during EEAC Subsidiarity inquiry 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 issues are considered likely to arise in only a small number of legislative proposals each year" (House of Lords identified 31 breaches during 2008-09, few of which in areas of devolved competence.)
- Maximises use of the Committee's time and resources to meet a wide remit also covering external affairs: the Welsh Government and National Assembly for Wales' European and International relations.
- Allows Members to concentrate on the substantive content of prioritised proposals, with more likelihood to be able to influence the final Directive or regulations through UK and Welsh Government, European institutions including MEPs and European Commission officials, and other channels.
- EEAC's focus on early scrutiny of prioritised proposals should over time mean less likelihood of secondary legislation coming forward that does not meet Wales' needs, and therefore less pressure on the Constitutional Affairs Committee to pick up problems later (avoiding the 'fridge mountain' scenario).
- Avoids over-reliance on House of Commons and Lords Committees to flag up subsidiarity issues relevant to Wales. Houses of Parliament see it as a matter for devolved legislatures to judge what may be considered a breach of devolved competence, and to seek information from devolved governments to assist that process.
- Timely process led by officials allows quick response within the 8 week window. Committee Members' time is not spent reviewing a full sift of all EU legislative proposals. The time constraints place a restriction on elected Members'

ability to undertake formal scrutiny. As subsidiarity issues will come up on an ad-hoc basis, setting aside in the Committee work programme for their consideration will impinge on other planned scrutiny and external affairs work.

- Procedure relies on timely legal advice.
- The European Commission may issue various versions of an EM on the same proposal, and proposals are likely to be revised several times or even withdrawn and resubmitted later under another guise. Expertise is needed to follow this process and assess the significance of any changes - the Head of the Assembly's EU Office has an important role in respect of this.

**Committee Service**  
**June 2010**

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