

European and External Affairs Committee

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Date:	24 November 2005
Time:	9.00 - 12.30
Venue:	National Assembly for Wales, Cardiff Bay
Title:	Subsidiarity Monitoring Network of the Committee of the Regions

Purpose of the Paper

1. The Committee of the Regions (CoR) has invited the National Assembly for Wales to participate in the test phase of its subsidiarity monitoring network. The results of the test will feed in to CoR recommendations on how to reinforce the monitoring of the subsidiarity principle through the development of an electronic network of European regional and local authorities.
2. The European and External Affairs Committee is invited to discuss how the issue of a subsidiarity and proportionality check should be dealt with by the Assembly.
3. The Committee is invited to provide feedback to the Committee of the Regions on:
 - i. Procedural steps used to evaluate the issue of subsidiarity and an evaluation of the website as a tool for facilitating the network.
 - ii. Its view on the Commission's proposal on the Thematic Strategy on Air Pollution with regards to the subsidiarity principle.

Background

1. The Committee of the Regions is piloting a Subsidiarity Monitoring Network, aimed at the regional and local authorities of the European Union (including regional parliaments and assemblies). It is a tool for exchanging information and views on policy documents and proposals of the European Commission of relevance to local and regional authorities and the policies for which they are responsible. It will be a virtual network, with a dedicated website which the CoR will maintain.
2. This subsidiarity monitoring exercise is based on the principle of subsidiarity and proportionality

currently in force, as laid out in the Treaty establishing the European Community (often referred to as the Amsterdam Treaty) and the Subsidiarity Protocol annexed to it. The Subsidiarity Protocol provides specific guidelines which the legislator of the EU needs to observe to ensure respect for these two principles. This is not a trial run of how the provisions of the EU Constitutional Treaty would work if it were ratified.

3. The objective of the network is to take more seriously the implementation of the Amsterdam Treaty protocol, to strengthen the monitoring of the principle of subsidiarity. The network is a way of broadening the CoR's consultation base and to increase the CoR's expertise so that it can represent more efficiently the interests of its members in the EU legislative process.
4. Twenty-one participants have been selected as a representative (geographical, political) cross-section of local and regional authorities and their associations. The National Assembly for Wales was nominated by CALRE to participate – the only one from the UK.

Outcome of the test phase

5. The CoR will report on the test phase (31 October – 9 December), examining the practical side of the functioning of the network and make recommendations concerning its organisation in the future. It will be discussed by the CoR's Bureau and in plenary session in the new year.
6. A summary of the views submitted by members of the network on how far the document under consideration conforms with the subsidiarity and proportionality guidelines (in this case, the Thematic Strategy on Air Pollution and accompanying directive) will be forwarded to the CoR member responsible for drafting the CoR opinion. The opinion and the conclusions on subsidiarity will be agreed by the CoR, through the usual political process (vote by the relevant committee, adoption at plenary).
7. Depending on the results of the test, in future, each legislative document received by the CoR would be circulated amongst the network for a systematic subsidiarity check. It would therefore be a system for alerting authorities quickly to new documents of relevance and allowing for exchange of information between the organisations involved in the network and the EU institutions.

Compliance with the principles of subsidiarity and proportionality

8. The CoR has selected two recent proposals published by the European Commission: "Thematic Strategy on air pollution" and "Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe" to be the subject of the test. They can be found on the CoR website above and the Commission's website:

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

9. The CoR has provided some introductory comments on the analysis of subsidiarity and proportionality with regards this document which is available on their website:

[http://www.cor.eu.int/subsidinet/documents/Introductory comments.pdf](http://www.cor.eu.int/subsidinet/documents/Introductory%20comments.pdf)

10. Legal analysis of the directive has been provided by the Legal Advisor to the Committee at Annex A. A summary of the two proposals is attached at annex B.
11. The Committee is invited to give its views on whether the principle of subsidiarity has been conformed with in the proposal.

The Procedure undertaken by the Assembly Parliamentary Service

12. The procedure adopted by the Assembly Parliamentary Service (APS) for dealing with this subsidiarity test was:
 - i. The original documents were circulated to Members on 3 November 2005 by the Clerk.
 - ii. A summary of the proposal has been drafted by Members Research Service (MRS) for members' information.
 - iii. APS' legal advisor has provided advice on the compliance of the proposal with the subsidiarity principle as laid out in the Treaty articles and the guidelines of the Protocol.
 - iv. The Welsh Assembly Government has not submitted a formal view on the proposal, but an officer is available to answer questions at the Committee meeting on the implications of the proposal for Wales.
 - v. We have informed UK Parliament and UK government (via UKRep) that the Committee is participating in this trial test.

13. The Committee may also be consulted in future again by the UK Parliament, as was the case in May this year (see paper EUR2 04-05 (p3)). The UK Parliament is in the process of developing more stringent monitoring of the subsidiarity principle in co-operation with other EU national parliaments via their association, the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC). Their approach is to select five or six proposals from the Commission's Annual Work Programme which they wish to check for compliance with the subsidiarity principle during the course of the year.

14. Members are invited to discuss the following:

- i. Does the Committee wish to participate in the network in future?
- ii. Is the process laid out above in paragraph 12 sufficient to enable the Committee to give its view?
- iii. Where documents fall within the remit of other Committees, should they be invited to give their

view on subsidiarity?

- iv. The CoR expects a response within six weeks. Is this a reasonable time frame?
- v. Would Members agree to respond by e-mail, if the Committee does not meet during the consultation period or should the Committee simply respond later having had time to give it consideration in Committee?
- vi. Committee conclusions which express concern on the subsidiarity element of a proposal could be sent to the WAG, UK Parliament, UK government, European Commission, members of the European Parliament as well as the Committee of the Regions.
- vii. If the network becomes live, the Committee is likely to receive many documents for comment. Given the pressures on Committee time and APS resources, should the Committee only focus on those proposals selected by the Assembly's Committees as priorities in the Commission's Annual Work Programme? The Committee could be free to subject any other proposal to the test if others were subsequently identified.

Action for Committee

15. Members are invited to:

- Agree the Committee's approach to dealing with subsidiarity checks, as discussed in paragraph 8.
- Give their view on whether the principle of subsidiarity has been conformed with in the Commission's draft proposals: "Thematic Strategy on air pollution" and "Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe".
- Respond to the points raised in paragraph fourteen above and agree the feedback to be provided to the CoR.

Sandy Mewies

Chair

November 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,

promoting measures at international level to deal with regional or

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 Member 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

16.11.05

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".