

Constitutional and Legislative Affairs Committee
Inquiry into Wales' Role in the EU Decision Making Process
EU 4 – Professor Michael Keating, University of Aberdeen, Scotland

Wales in the European Union

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My comments are based on experience from Scotland and from other devolved jurisdictions in the European Union.

1. During the 1990s and early 2000s there was a great deal of talk about a Europe of the Regions. This was not clearly defined but the general idea was that devolved governments could emerge as a 'third level' within an emerging federal Europe. The movement's main gains were at the 1992 Maastricht Treaty. The Committee of the Regions was set up; regions were given the right under certain circumstances to represent their state in the Council of Ministers; and the principle of subsidiarity was reaffirmed. Less progress was made in the Lisbon Treaty. In particular, the demand of 'regions with legislative powers' for recognition was not heeded. So devolved authorities have been seeking new ways to pursue their interests, through their member state, and directly in Brussels.
2. There are two directions in which devolved jurisdictions might be involved in EU matters: upwards, through participation in EU policy-making; and downwards through participation in transposition and implementation.
3. All UK devolved authorities have used the provision allowing them to participate in the Council of Ministers (Council of the European Union) when devolved matters are at issue. This has continued even when the two levels are controlled by different parties. This, however, is at the discretion of the UK government. The question has been posed as to whether this should be put on a statutory basis.
4. There is a question of how far devolved governments participate in the preparatory meetings on preparing the state position for Council meetings.
5. In the UK, devolved authorities must toe the overall state line and not dissent in public. This raises the question of how far they can account to their own legislatures and public for positions which may not be their preferred ones, and of transparency, if negotiations are behind closed doors. It might be desirable for disagreements to be aired more publicly.
6. In Belgium and Germany, there are stronger arrangements, whereby the regions can determine the state position where matters are entirely within their competence. This would be more difficult to apply in the UK because of the lack of a federal constitution and the asymmetry of the settlement, with the UK government representing both the United Kingdom and England.
7. Most EU matters are settled by compromise and consensus. Over the issue of the future of the EU itself, the review of powers and the promise to renegotiate the UK's relationship with the EU, however, there are major differences between English Conservatives and the majority in the Scottish Parliament and National Assembly for Wales. A more transparent process for negotiating the UK position would be desirable here.
8. Direct links into Europe are provided by the Committee of the Regions but its impact has been limited. Its procedures do not encourage a focus on key

policy issues; member interests differ; and it is divided between local governments and legislative regions, whose role in the policy process is quite different.

9. More influence comes from networking in Brussels, forging alliances, and knowing when to intervene in the policy process.
10. The most effective interventions are those that propose positive policies of wider benefit rather than mere lobbying.
11. Devolved governments require intelligence of forthcoming issues in order to intervene.
12. They need to be selective, as their resources do not permit intervening on everything. This indicates a need for horizon-scanning to identify upcoming issues.
13. Since the Lisbon treaty, state parliaments have the right to intervene where they consider that an EU measure breaches the principles of subsidiarity and proportionality. This is the 'early-warning' system. Where regions are represented in the second chamber of the state parliament, this gives them a role but where they are not so represented they must act via the central parliament of the Committee of the Regions. This also requires an ability to anticipate issues and to act quickly.
14. The role of devolved authorities in the transposition of EU directives is a neglected area. Sometimes they have left this to the state government while at other times they have taken the lead themselves, which may allow some margin of discretion in the details.

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