

Lord Boswell of Aynho
Chair of the European Union Committee
House of Lords

12 February 2019

Dear Lord Boswell,

Post-Brexit UK-EU interinstitutional relations, and the role of the devolved institutions

Thank you for your letter dated 25 January 2019 and for providing us with an opportunity to contribute to your work in this area.

Continuing the strong relationships that we have developed with our European friends and neighbours, and identifying ways in which we can continue to act at European level in pursuit of the interests of the people of Wales, is a priority for this Committee.

We have published the first part of our report on Wales' Future Relationship with the European Union and are in the process of finalising the second part of this report.

On the basis of this work, I am happy to provide you with a response from the Committee. I have enclosed the response with this letter.

I must caveat our response by stating that we have received little clarity from either the UK or Welsh Governments on how the structures proposed in the Withdrawal Agreement and the Political Declaration will work in practice.



I trust that this will be of assistance to you. If there is anything further we can do to support your work in this area, please do not hesitate to get in touch.

I am copying this letter to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee in the National Assembly.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large initial 'D' and 'R'.

David Rees AM

Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



External Affairs and Additional Legislation Committee

Post-Brexit UK-EU interinstitutional relations, and the role of the devolved institutions

A response from the External Affairs and Additional Legislation Committee of the National Assembly for Wales

1. Withdrawal Agreement and Political Declaration mechanisms

Withdrawal Agreement

- 1.** To understand the Withdrawal Agreement's Joint Committee structures, we have explored comparable examples. For example, the structure created between Canada and the EU as part of the CETA. We have discussed this with representatives of the Canadian and Quebec Governments and it would appear to offer a reasonable guide to how the UK-EU Joint Committee might operate.
- 2.** Additionally, in terms of more technical engagement, we have discussed the type of engagement that Norway has with the EU. Whilst Norway's relationship with the EU is clearly on different terms to those described for the UK in the Withdrawal Agreement, we believe that there are some parallels to be drawn at a technical level, particularly during transition when most EU law will continue to apply to the UK.
- 3.** We note that there is no provision in the Withdrawal Agreement for an interparliamentary element to the arrangements, beyond a limited continuation of the supply of information from the European Commission to the UK Parliament.

Political Declaration

- 4.** The Political Declaration provides some guide to the interinstitutional mechanisms than might be provided for in a future agreement with the EU.



- 5.** From the limited information available, it appears as though something closer to that of an association agreement is being suggested. As with our work to understand the interinstitutional arrangements during the transition period, we have sought existing examples to assist us, in the absence of more concrete proposals from the UK and the EU. The example we have considered, and continue to explore, is that of the EU-Ukraine Association Agreement.
- 6.** Article 467 of the EU-Ukraine Association Agreement establishes a formal mechanism for interparliamentary dialogue, through the creation of a Parliamentary Association Committee. We are hoping to meet the Chair of the European Parliament's Delegation to the EU-Ukraine Parliamentary Association Committee when we visit Brussels later this month, with a view to exploring how this structure works in practice.
- 7.** Our reading of the Political Declaration is that a similar, formalised, interparliamentary structure is envisaged as part of any future agreement with the EU.
- 8.** In summary, our current understanding is that, in terms of mechanisms to govern UK-EU relations, it is envisaged that we will move from a mechanism that is closer to that found in a comprehensive free trade agreement during transition towards a model closer to that of an association agreement as part of a future agreement.
- 9.** Whilst acknowledging the uncertainty that currently exists around the agreement of the Withdrawal Agreement and Political Declaration, we believe that there is a strong likelihood that the mechanisms outlined in the Withdrawal Agreement will underpin UK-EU relations in short to medium term at least.
- 10.** For the UK-EU future relationship agreement, we see some merit in the prospect of the closer interinstitutional relationships that an association-type of agreement might offer, particularly on a parliamentary level, but believe it too early to attach too much confidence to this.
- 11.** That said, there are many similarities between the two mechanisms and so we would be reasonably confident that the process of moving from the Withdrawal Agreement mechanisms to mechanisms established under a future agreement would be evolutionary rather than representing a step change.
- 12.** For example, there will still need to be a structure analogous to the Joint Committee, the need for similar mechanisms to address technical matters, and a similar dispute resolution mechanism.

2. Scrutiny

- 13.** As a devolved legislature, our primary focus is on scrutiny of the Welsh Government's actions in representing the interests of the people of Wales.
- 14.** For the Assembly to be in a position to perform this function, it is vital that the Welsh Government has the ability to be part of the decision making process that underpins the UK's participation in the UK-EU governance mechanisms.
- 15.** Additionally, at ministerial level, we believe there is a case for Welsh Ministers to, on occasion, represent an agreed UK position, as they have done at the Council of the EU in the past.
- 16.** At a technical level, where particular expertise exist within a devolved administration, it would be to the benefit of the UK as a whole, in our view, for officials from devolved administrations to sit on technical committees. Where the UK sends representatives to sit on technical committees or expert groups that cover areas that are devolved to Wales, or might affect areas devolved to Wales, we would expect the Welsh Government to be involved in agreeing UK positions ahead of participation in these meetings. We would expect such intergovernmental arrangements to be transparent and subject to scrutiny.
- 17.** Without entering further into a discussion of UK intergovernmental relations, we will need a transparent and structured pattern of intergovernmental activity at a UK-level to underpin UK-EU interinstitutional activity if we are to effectively scrutinise the Welsh Government's actions in this regard.
- 18.** In terms of dispute resolution, the primary structure for seeking resolution appears to be the Joint Committee.
- 19.** We agree with Dr Tobias Lock's assessment of the arbitration mechanism:
- In practical terms, this mechanism may never be used. There is a likelihood that the UK and the EU will not disagree fundamentally on the implementation and application of the WA and that any dispute may be resolved amicably in the Joint Committee. For instance, the EEA Agreement contains a similar possibility to refer a dispute between

the parties to the ECJ, which in over twenty-five years has never been used.¹

- 20.** There needs to be UK-level mechanisms established to provide a clear and transparent means for raising and resolving disputes relating to areas of devolved responsibility.
- 21.** To that end, we hope that a UK intergovernmental agreement can be reached that establishes such mechanisms in time for the UK's exit from the EU.
- 22.** The governance of the UK-EU relationship, during transition and beyond, will invariably require consideration of issues where competence is shared between devolved and UK governments and legislatures.
- 23.** As a minimum, the existing lines of communication that have developed between the committees of UK's legislatures principally charged with scrutiny of European affairs must be preserved to ensure a shared understanding of these issues wherever possible. Thought could also be given to removing any procedural barriers that might exist to these committees acting jointly should circumstances suggest that this would offer the best scrutiny outcome.
- 24.** The Interparliamentary Forum on Brexit has the potential to offer an overarching structure from which further interparliamentary engagement can develop and we remain committed to the Forum and its work.

3. Dialogue with the European Parliament

25. Engagement with the European Parliament has been a central tenet of the Assembly's approach to engaging with European affairs, particularly following the Lisbon Treaty. With the enhanced role for the European Parliament in the EU's legislative process that followed Lisbon, the Assembly saw an opportunity to engage with MEPs on a 'legislature to legislature' basis. This allowed the Assembly to directly represent the interests of the people of Wales in the European legislative process and facilitate a dialogue between the European Parliament and Welsh stakeholders. This, in turn, provided the foundations for scrutiny of the Welsh Government's actions at a European-level and enhanced the Assembly's

¹ This quotation is taken from a paper Dr Lock prepared for the External Affairs and Additional Legislation Committee in December 2018: *Assessment and summary of the implications for Wales of the draft Withdrawal Agreement*

influence insofar as it enhanced stakeholder understanding and support for the work of the Assembly's committees engaged in this activity.

26. It is a key relationship that we wish to preserve after leaving the European Union.

27. We have held informal discussions with senior MEPs with regards to establishing mechanisms for the continuation of relations between the Assembly and the European Parliament.

28. We hope to hold further discussions when we visit the European Parliament later this month.

29. At present, the discussions we have held point towards a UK delegation to the European Parliament. It would appear that this is envisaged as a delegation comprising of Members of the House of Lords and the House of Commons.

30. We have discussed the possibility of this delegation including members of the devolved legislatures. Whilst the discussions have only been on an informal and preliminary basis, we also explored the possibility of either a multilateral 'sub delegation' comprising of members of the devolved legislatures or three separate 'sub delegations' that provided bilateral engagement from each of the devolved legislatures with the European Parliament.

31. At this stage, we do not take a view on the precise structure, beyond observing that a bilateral structure might be easier to facilitate. Our priority is that we have a means of engaging with the European Parliament post-Brexit so that we:

- do not lose the good relationships we have built over many years;
- have an opportunity to promote an understanding of the interests of the people of Wales to European legislators; and
- can identify possible scrutiny opportunities insofar as the UK-EU relationship is concerned.

32. In terms of influence, we believe that there are occasions when the broader base of representation that a parliamentary delegation represents can be influential due to the greater chance of finding areas of mutual interest around which to coalesce. The link between parliamentarians and their stakeholders is different to the stakeholder relationship with governments and, again, this allows a different level of insight and possible influence.

33. Insofar as the governance of the future relationship, we can see that there is an opportunity for a UK-EU interparliamentary body to offer recommendations on how this might operate – particularly with regards to oversight and any interparliamentary element of the future arrangements.

4. Principles

34. We are currently considering the question of principles to underpin future bilateral relationships between Wales and other EU Member States, Sub-State Nations and Regions.

35. We hope to report on this in early March and will be sure to draw your attention to our conclusions in this area.

36. We believe that there is an opportunity to consider whether UK-level relationships can be coordinated with the relationships that the devolved governments and legislatures have with sub-state governments and legislatures, in circumstances where this coordination might strengthen the possibility of achieving shared objectives.

5. Governance and scrutiny of the UK-EU relationship

37. As the substance of our answers to previous questions suggests, we believe that the UK-EU relationship can only operate successfully if the devolved governments and legislatures are engaged and involved meaningfully in the governance and scrutiny of that relationship.

6. Lessons learned

38. We have sought to learn from the experiences of a number of the EU's neighbouring countries. We have met with both the Norwegian and Swiss Missions to the EU and hope to meet with the Ukraine's Mission to the EU later this month.

39. We have also reflected on our own position. Whilst Wales is a member of the EU by virtue of it being a constituent part of the United Kingdom, the relationship is, in some regards, analogous to that of a close neighbour insofar as Wales has very few formal opportunities of representation in its own right. In simple terms,

Wales has not had a seat at the table. As such, the Assembly has had to find less formal ways to engage and seek influence at the European level.

40. Achieving influence in Brussels will be all the harder once the UK has left the EU. In our view, now is not the time to be scaling down the Welsh presence in Brussels.

41. During transition, there will be a need to monitor EU law developments, the negotiations on a future relationship with the EU, and to interact with the Withdrawal Agreement governance structures. To do so effectively will require a Brussels-based presence. It is also worth bearing in mind the unseen value of being on the ground in Brussels as much happens outside the formal channels to influence decision making.

42. With these tasks in mind, we support the Welsh Government's intention to maintain its office in Brussels and we understand that the Assembly intends to keep its office in Wales House too.

43. Invariably UKREP will need to adapt to new structures, as likely defined by the Withdrawal Agreement, and we hope to meet with the Permanent Representative to learn more about UKREPs planning when we visit Brussels later this month.

44. In terms of the UK Parliament's presence, we want to note the positive engagement we, and our officials, have had with officials from both Houses of Parliament over the years. Their expertise and knowledge has been of considerable assistance. From our perspective, were the UK Parliament to decide to withdraw its presence from Brussels, it would be a loss to the interparliamentary network that has developed there.

7. Committee of the Regions and the legislative regions of the EU

45. In addition to considering the Assembly's relationship with the European Parliament, we have engaged with the Committee of the Regions in relation to continuation of the Assembly's relationship with this institution.

46. Following discussion with some of the EU's regional governments, we are aware of representations being made to the European Commission's Subsidiarity and Proportionality Task Force for an enhanced role for the EU's more

autonomous regions. For example, in relation to a different partnerships status for the legislative regions of the EU, particularly on draft EU laws.

47. This has extended to discussion of a possible separation of the CoR configuration into separate chambers for representatives from the legislative regions of the EU and representatives from the municipalities and localities.

48. Depending on how these structures develop, they might offer a further route for engagement after Brexit through some form of associate relationship.