

Devolution and Europe

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This paper discusses how devolution in Scotland and Wales is likely to affect their representation in Europe. In addition, it looks at some examples of how other EU states have involved sub-national governments in their European policy-making, and how those sub-national governments are represented in the EU. The Scottish and Welsh devolution proposals are described in Research Papers 97/92, *Scotland and Devolution*, and 97/60, *Wales and Devolution*. The Scottish and Welsh referendums on devolution are discussed in Research Paper 97/61, *The Referendums (Scotland and Wales) Bill (Bill 1 1997/98)*; and the Government of Wales Bill will be covered by Research Papers 97/129, *The Government of Wales Bill: Devolution and the Assembly*, and 97/130, *The Government of Wales Bill: the Assembly's Partners*.

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I INTRODUCTION

Since the Government's devolution proposals were published, there has been a debate regarding the extent to which devolution will affect the position of Scotland and Wales in Europe. A number of concerns have been raised regarding a possible marginalisation of Scottish and Welsh interests in Europe as a result of the changes. In July 1997, Michael Ancram, the Conservative Party's spokesman on Constitutional Affairs asked,

What will happen...when there are different political colours and perspectives, as inevitably there will be? How likely is it that there will be agreement on a common United Kingdom policy position? What will happen to Scotland's position if there is no agreement? Will Scotland's case effectively be unrepresented in Councils, as it cannot be under current arrangements? What will happen if, politics apart, there are conflicting interests between Scotland and the rest of the United Kingdom on a European matter? How will Scotland's voice be heard?¹

Others have seen devolution as an opportunity for Scotland and Wales to play a more effective role in European affairs. For example, in June 1997 Dafydd Wigley, the President of Plaid Cymru, stated that,

The clout of Wales in the EU will be that much stronger if we have a Parliament that can have a credible voice in Brussels. Catalonia and the Länder governments in Germany have successfully developed their prospects within Europe and it is essential that Wales likewise has that opportunity.²

The Scottish National Party's Deputy Leader, Dr Allan Macartney MEP, said in October 1997 "Decisions taken in the EU have a huge impact on vital Scottish interests, which is why Scotland needs to develop a voice at the European level";³ and in July 1997 Donald Dewar, Secretary of State for Scotland, said,

I am aware...of the active role played by many constitutional structures below nation state level, such as the German Länder, the Spanish autonomous provinces and the Italian provinces. There are a lot of them, and they all work extremely effectively on behalf of the areas that they represent. There is a real and positive virtue from a Scottish point of view, in having the Scottish Parliament involved at that level.⁴

Many of the proposed areas of competence to be devolved to Scottish and Welsh institutions are in the legislative competence of the European Union. In particular, it is likely that the Scottish Parliament and the Welsh Assembly will have responsibility for the implementation and enforcement of European Union legislation in those policy areas within their competence, for example agriculture and fishing. After devolution, there will need to be arrangements by

¹ HC Deb, 31 July 1997, c. 475.

² HC Deb, 4 June 1997, c.460.

³ SNP Press release, "Scottish Office Frozen out of Europe: Efforts to stifle voice must be resisted.", 6 October 1997.

⁴ HC Deb, 31 July 1997, c.464.

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which the Scottish Executive and Welsh Assembly are involved in UK European policy-making, to ensure that their interests are fully taken into account. Another issue is that of the representation of Scotland and Wales in the European institutions, including participation in Council of Ministers' meetings, and the possibility of their establishing direct representation in Brussels.

Part II explains the current arrangements under which the Scottish and Welsh Offices participate in UK European policy-formation, and the present situation regarding the representation of their interests in Europe. Some indications of how the new arrangements might operate in practice have been given in the two White Papers on devolution⁵ and in proceedings in the House, and these are discussed in Part III. Part IV gives some examples of how other EU Member States have dealt with the matter of the participation and involvement of their sub-national governments in European policy-making.

The Northern Ireland Office currently participates in UK policy-making on much the same terms as the Scottish and Welsh Offices. However, as the current devolution proposals are concerned only with Scotland and Wales, it is not proposed to discuss Northern Ireland in any detail in this paper.

⁵ Cm 3658, *Scotland's Parliament*, and Cm 3718, *A Voice for Wales*.

II CURRENT SITUATION

Under the existing constitutional arrangements, Scotland and Wales have some degree of administrative devolution. However, the Scottish and Welsh Secretaries are members of the UK Government and of the UK Cabinet, which makes the government of Scotland and Wales fundamentally different in character from the governments of other European regions such as Catalonia or Bavaria, which have their own elected assemblies and leaders. Overall responsibility for formal communications between the European Commission and the UK Government rests with the European Secretariat in the Cabinet Office. Direct contact between the Welsh and Scottish Offices and the Commission is principally on administrative matters, including the administration of structural funds. The rights and responsibilities which stem from membership of the EU are conferred on the UK as the member state, not on sub-national governments or their representatives.

Scotland and Wales, as constituent parts of the UK, have participated in policy-formation and negotiation of the UK position on European matters, and have direct representation in the European Parliament and the Committee of the Regions. The present procedures for taking account of distinctive Scottish and Welsh interests in the United Kingdom negotiating position within the EU legislative process are largely contained in Whitehall arrangements. As members of the Cabinet, the Secretaries of State for Scotland and Wales participate in policy discussions, and they have a direct input into policy as members of OPD(E), the Cabinet committee which deals with questions relating to the European Community. Scottish and Welsh Office officials sit on all the relevant inter-departmental committees and are often in attendance at Council of Ministers' meetings.

A. Council of Ministers

The Council of Ministers is the European Union's legislative body, which consists of representatives at ministerial level of all the Member States. Decisions taken there have substantial effects in a wide range of policy areas, and therefore it is important that Scotland and Wales continue to have an input into the policies adopted and negotiations undertaken.

Any Minister from the UK who attends a Council meeting is acting as a representative of the UK Government as a whole, and will adopt a position which has been agreed collectively by those departments and ministers which have an interest.

Currently, Scottish and Welsh Office officials participate in the working parties of the Commission and in working groups of the Council of Ministers, and there are occasions, largely limited to the Fisheries or Agriculture Councils, when a Scottish Office Minister will attend the Council as part of the United Kingdom delegation. On occasions, the Scottish Minister has taken the lead role in the delegation. Sometimes the UK and Scottish Ministers have divided up the agenda between them, while in other cases Scottish Ministers have taken the lead where the UK Minister has not been able to attend. There have been few, if any, occasions on which the Scottish Minister has cast the UK vote, but this is partly due to the fact that formal votes are

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relatively rare. Welsh Office Ministers have also attended Council meetings on occasion, although it is very rare for the Welsh Office to be the lead department. One instance was on the subject of minority languages, where formally the Home Office was the lead department but for which the Welsh Office had in practice taken responsibility.⁶

From 1988 (the first year for which this information is available) until 1996, Scottish Office Ministers attended 59 Council meetings out of a total of 790. There were 88 Council meetings in 1996, of which Scottish Office Ministers attended 15. Thirteen of these related to agriculture and fisheries.⁷ Since April 1992, the Secretary of State for Wales has attended only two Council of Ministers meetings, and a Minister of State for the Welsh Office attended an informal council on regional policy in November 1993.⁸

There is usually at least one Scottish Office official seconded to the Permanent Representation of the United Kingdom to the European Union (UKREP). UKREP represents the UK in the Committees and Working Groups of the Council of the European Union, often with home-based officials. Officials from the Welsh Office have also been seconded to UKREP. Scottish and Welsh Office officials participate in Cabinet Office committees and thus have the opportunity to contribute to the formation of UK policy. A considerable amount of policy formation occurs in inter-departmental meetings convened by the lead Whitehall department, and the Scottish and Welsh Offices are represented at these meetings where appropriate. A regular flow of information goes to these Departments from Whitehall on Community developments within their areas of responsibility, and a Scottish Executive would need to ensure equivalent arrangements to maintain the flow of information and communication. This could be made more difficult if the political positions of the Scottish Executive and the United Kingdom Government were divergent.

Since ratifying the Treaties, the UK Government has been obliged to enforce and implement EC law, even where this has been enacted without the support of the UK Government. Where EC legislation is not given effect in domestic law, or is not given effect adequately, then it is the government of the UK as Member State which is liable in European law for any damages arising out of such error. The Maastricht Treaty introduced a power for the Commission to fine a Member State which fails to fulfil its legal obligations even after an adverse judgement from the ECJ (Article 171).⁹ The White Paper on Welsh devolution states that, should Wales fail adequately to implement or enforce relevant European legislation in Wales, the Welsh Assembly would be liable to any penalties imposed by the EU.¹⁰ The White Paper on Scottish devolution also states that, were any financial penalties to fall on the UK for Scottish non-implementation or non-enforcement of EU obligations, the cost of these would have to be borne by the Scottish Executive if it were responsible.¹¹

⁶ Welsh Affairs Committee, Fourth Report, *Wales in Europe*, HC 393-I, Session 1994-95, p.viii.

⁷ HC Deb. 13 February 1997, c.310W, and 10 February 1997, c.290W.

⁸ HC Deb. 14 March 1996, c.749W.

⁹ *Scotland's Parliament: Fundamentals for a New Scotland Act*, The Constitution Unit, Faculty of Law, University College London, 1996, p.89.

¹⁰ Cm 3718, p.22.

¹¹ Cm 3658, p.17

B. Other European Institutions

The constituent parts of the UK enjoy a limited amount of representation in other European institutions. Scotland has eight Members of the European Parliament, and Wales has five (Northern Ireland has three). Scotland has five out of the UK's twenty-four members of the Committee of the Regions, whilst Wales has three representatives. All of these are local authority councillors nominated by their respective parties. Scottish and Welsh representation in other institutions (for example, Scottish Judge David Edward in the ECJ), is an accident of merit rather than any regional distribution. It is the UK which legally has the right to representation in Community institutions and it is for the UK government to decide how to allocate its places.

C. Regional Links

Wales is an associate member of the Four Motors Group (Baden-Württemberg, Catalonia, Lombardy, Rhône Alpes). As well as arts and cultural programmes, academic exchanges and other co-operation programmes, this relationship has been of direct benefit to Wales in terms of inward investment. The then Secretary of State for Wales, William Hague, stated in evidence to the Welsh Affairs Select Committee in July 1995 that Wales had “drawn particular benefit from those links. Inward investment from the Motor regions now totals...something in the order of £200 million with about 3,500 jobs created as a result”.¹²

Scotland has established strong semi-institutionalised links with the Nordic Council, and has been in discussion with the Nordic countries on issues where they have similar interests, in particular the EU structural funds.¹³ Scotland shares with these countries similar problems of small, scattered populations and difficult geographical and climatic environments.

D. Northern Ireland

The Northern Ireland Office currently participates in UK policy-making on EU matters, and in Cabinet Office meetings and ministerial correspondence, on much the same terms as the Scottish and Welsh Offices. Northern Ireland ministers have on occasion participated in the UK delegation to Council meetings, Agriculture Councils in particular: the current Agriculture minister, Lord Dubs, has attended Council meetings alongside the Secretary of State. There is no Northern Ireland official seconded to UKREP at the moment, and they do not maintain an official presence as a matter of policy, but it is not unusual for there to be a representative from the Northern Ireland Office at UKREP. Northern Ireland departments in Belfast also work closely with their Whitehall counterparts.

¹² Welsh Affairs Select Committee, *Wales in Europe*, HC 393 - ii 1994-95.

¹³ The Nordic Council predates the European Union, and includes Norway, which is not a member of the EU. However, Norway is a member of the European Economic Area, and therefore is concerned to maintain its contacts in the EU.

III DEVOLUTION

A. Scotland

The way in which it is envisaged that Scotland will participate in European Union and UK decision-making on European matters is set out in the White Paper on Scottish Devolution, *Scotland's Parliament*.¹⁴

After devolution, the government of the United Kingdom, as the Member State of the EU, will be negotiating and voting into force EC legislation in areas which may have been formally devolved to the legislative competence of the Scottish Parliament (and Welsh Assembly). This might require the conclusion of an intergovernmental agreement between the Government and the Scottish Executive, including principles for information, consultation and dispute resolution to arrive at a common UK negotiating position. The Scottish Executive would have an obligation to "ensure the implementation in Scotland of EU obligations which concern devolved matters".¹⁵ Where appropriate, the Scottish Executive might agree to UK implementing legislation. This would not affect the sovereignty of Parliament, and Westminster would continue to be able to legislate for the UK as a whole on the implementation of EU obligations, as for any other matter. The White Paper envisages Scottish scrutiny of EU legislative proposals, stating that the UK Government will take into account the views of the Scottish Parliament, and that the UK Parliament may also wish to do so in its scrutiny process.¹⁶ The details of the Scottish scrutiny process are left to be arranged by the Scottish Executive and Parliament, but the Scottish Law Society stresses the importance of the Scottish Parliament receiving "early intimation of EU policy and legislative proposals and of substantial amendments to them" before scrutiny can be effective.¹⁷

With devolution, Scotland could be expected to have a status similar to Bavaria or Catalonia, with its own government and Parliament. Scotland already enjoys direct representation in the Committee of the Regions (CoR) and in the European Parliament. Scotland's representation in the UK CoR delegation is larger than was originally intended, and is said to be the result of an alleged "deal" involving the SNP and the Conservative government over support for the Maastricht Treaty. Reports in the press suggest that the Local Government Association, which represents councils in England, would like to increase their representation on the Committee at the expense of the Scottish (and possibly Welsh) delegations.¹⁸ The White Paper on Scottish devolution refers, however, to Scotland's "established share of representation", which has been taken by the Convention of Scottish Local Authorities (COSLA) to mean that the existing situation will remain unchanged. The final arrangements are still unclear, but some form of general understanding between the London and Edinburgh governments will be necessary, after

¹⁴ See "Relations with the European Union", Cm 3658, *Scotland's Parliament*, pp.16-18.

¹⁵ *Ibid.*, p.17.

¹⁶ *Ibid.*

¹⁷ Law Society of Scotland, *Memorandum of comments on the White Paper 'Scotland's Parliament'*, September 1997, pp.20-21.

¹⁸ *The Scotsman*, 15 October 1997.

devolution, about the nomination and number of representatives, particularly in new or enlarged institutions, in the future.

In answer to a parliamentary question, Henry McLeish, the Scottish Office Minister responsible for devolution, stated that,

We are optimistic that our position vis-à-vis Europe will be enhanced, not diminished, by the advent of devolution and a Scottish Parliament. It will provide for participation in Council of Ministers meetings and in developmental policy; it will provide much more time in the Scottish Parliament to discuss European Union affairs and for more effective scrutiny; and of course, it will give us the possibility of a representative office in Brussels.¹⁹

B. Wales

The White Paper on Welsh Devolution also includes a section which describes how it is expected that devolution will affect Wales with regard to the European Union.²⁰

According to the White Paper, the Welsh Assembly would be able to scrutinise European Union documents and proposals, and take evidence. In addition, the Welsh Assembly would take responsibility for administering the European Structural Funds in Wales.

The Secretary of State would continue to represent Welsh interests in the UK Cabinet, and to participate in the UK delegation to the Council of Ministers where appropriate - this differs from the Scottish example, where a member of the Scottish Executive would take the latter role. The White Paper envisages the establishment of arrangements between the UK Government and the Welsh Assembly which would ensure the participation of the Welsh Assembly in developing a UK position in European negotiations. The Welsh Assembly would also be responsible for the implementation and enforcement of relevant EU obligations. The White Paper also states that the Bill will provide for members of the Assembly to represent Wales on the Committee of the Regions.²¹

In answer to a written question on the subject of the involvement of the Welsh Assembly in EU decision-making, the Secretary of State for Wales stated that,

Wherever it is responsible for the activity in Wales, the Assembly will have a role to play in the delegations at the Council of Ministers through keeping them advised of its views. This will supplement existing arrangements whereby the Secretary of State may himself participate in Council meetings and promote agreed UK objectives.²²

He went on to stress that the Welsh Assembly would have the power to scrutinise proposals which were to go forward to the Council, as well as other European documents.

¹⁹ HC Deb., 4 November 1997, c.105.

²⁰ See "Wales in Europe", Cm 3718, *A Voice for Wales*, pp.21-23.

²¹ *Ibid.*, p.22.

²² HC Deb., 4 November 1997, c.69W.

C. European institutions

There is little in the European treaties about the integration of devolved governments into the Community decision-making process. This is left to be resolved within the Member States. There already exists a Treaty provision which allows ministers from sub-national governments to represent the Member State in Council. Article 146 of the Maastricht Treaty was designed to allow ministers from the federal regions of Germany and Belgium to represent the State in Council. The article states that the Council shall consist of:

a representative of each Member State at ministerial level, authorized to commit the government of that Member State.²³

A regional minister appearing at the Council of Ministers represents the whole state, and there needs to be a prior agreement among the regions and the state as to what their interest is. Regional governments cannot use this clause to represent themselves directly. For example, a minister from the Belgian communities or regions may cast Belgium's five votes in the Council, but the votes cannot be split, so regions or communities have to agree on a common position with the federal government, where appropriate.

The Scottish Constitutional Convention's own publication suggests that a Scottish Parliament would be represented in UK Ministerial delegations to the Council of Ministers "where appropriate" and could lead the delegation when the areas under discussion were of specific relevance to Scotland.²⁴ Certainly under the existing procedure of Art. 146, Scottish Ministers could by agreement represent the whole UK, but not Scotland directly. The devolution white paper states that Scottish Executive Ministers and officials would have a role to play in the relevant Council meetings in Europe. The paper also adds that Scotland "in appropriate cases, could speak for the UK in Councils".²⁵ Scotland might have a strong claim to represent Britain on the fisheries issue, for example, as it represents the largest part of the British fishing industry.

The Scottish Law Society has raised concern about the implications for accountability of Scottish Executive Ministers speaking for the UK in EU Councils. It points out that Scottish Executive Ministers who speak on behalf of the UK in the Council or in other negotiations will not be answerable to the UK Parliament. In addition, it emphasises the need for the Scottish Parliament to be able to hold the Scottish Executive accountable for presenting Scottish views on EU initiatives to the UK and for ensuring as far as possible that they form part of the UK negotiating position.²⁶

Scottish representation in Council of Ministers' meetings would be by representatives of the Scottish Executive, as the Scottish Office in its current form would cease to exist. It is likely that Scottish officials would continue to be represented in UKREP, although it is possible that a more formal arrangement ensuring a certain level of representation might result from

²³ Treaty on European Union, Art.146.

²⁴ *Scotland's Parliament. Scotland's Right.* Scottish Constitutional Convention, 1995, p.16.

²⁵ Cm 3658, p.17.

²⁶ Law Society of Scotland, *Memorandum of comments on the White Paper 'Scotland's Parliament'*, September 1997 pp.19-20

devolution. The Scottish Executive would also need to establish a relationship with the Cabinet Office, to ensure a regular flow of information on European matters.

To some extent, formal representation in the Council is less important than full participation in the development of the common position beforehand. The Council tends to work by consensus wherever possible, so that it is relatively rare for a vote actually to be taken. Ministers rarely deviate far from their national position, and therefore it is crucial that regional governments are able to make their contribution to the formulation of that policy, both in Cabinet committees and working groups in Whitehall, and in Council committees and working groups in Brussels.

It is unclear how Scottish and Welsh formal representation in the Council will be decided in the future. One possibility is an agreement between the Westminster government and the Scottish Executive (and the Welsh Assembly), laying down the circumstances in which Scottish Ministers may take the lead for the UK, or where Scottish and Welsh Ministers may participate in the UK delegation. There are plans to conclude a Concordat, a non-legally binding agreement between the Westminster and Scottish Parliaments, which would establish their respective roles, and would include their co-operation and participation in European institutions. This is particularly important in those areas where the Scottish Parliament would have to implement European legislation. Details of the relationship are expected to evolve over time. An agreement would also safeguard Scottish representation in the event of a disagreement between London and Edinburgh. An additional question to be addressed is the extent to which civil servants in the Scottish Government remain part of the United Kingdom civil service, as this has implications for the flow of information between London and Edinburgh. In particular, it would be necessary to “establish a clear understanding on whether a civil servant in the Scottish Government is ultimately responsible to Her Majesty’s Government in Scotland or Her Majesty’s Government in the United Kingdom”.²⁷

There have been press reports on tensions within the Government over the extent of participation by Scottish Ministers during the UK Presidency of the EU, from January to June 1998. A report in *The Scotsman* suggested that the Scottish Secretary had hoped that he and other Scottish Office Ministers would be able to take the chair in at least some of the committees in charge of day-to-day policy-making areas across a range of issues, particularly fisheries, in order to demonstrate a model for future arrangements under devolution. The article goes on to say that Scottish Office Ministers are likely to be excluded from taking on the presidential role in committees, or may chair one meeting out of the 40-50 that take place during a 6-month Presidency. This is ascribed to pressure from some within the Government who want control to remain in Whitehall and for this pattern to set the precedent for devolution.²⁸

²⁷ St John Bates, “Devolution and the European Union”, T. StJ. N. Bates, *Devolution to Scotland: the Legal Aspects*, 1997, p.68.

²⁸ *The Scotsman*, 6 October 1997.

D. Representation in Brussels

While UKREP would continue to represent Scottish and Welsh interests as part of an agreed government position, both the White Papers on devolution suggest that the Scottish Parliament and the Welsh Assembly will wish to establish their own offices in Brussels. This could ensure a more consistent, focused and distinctive presence in Brussels for both Scottish and Welsh interests. Informal links such as these have also been established by the German *Länder*, for example, each of which is directly represented in Brussels.

There are currently 32 UK regional and local representation offices in Brussels, including the Convention of Scottish Local Authorities, the Nottingham office and the Association of London Government. These offices maintain a flow of information between the authorities in the UK and the European institutions, and lobby on behalf of their authorities with various institutions. *Scotland Europa*, financed by local authorities, companies, universities, Scottish Enterprise, and others, already acts as a regional office lobbying on behalf of its members, although as a matter of policy there that body does not include any Scottish Office officials. The Scottish Secretary said in a statement to the House that, “There will be a Scottish representative office in Brussels; this will complement the role of the Office of the United Kingdom Permanent Representative to the European Community and will allow the Scottish Executive to operate more effectively in Europe.”²⁹

One commentator has argued that the establishment of a Scottish representative office in Brussels would be a “constitutionally inappropriate mechanism”, pointing out that neither the House of Commons nor the House of Lords has established such an office, and emphasising that representation of this kind can be no substitute for arrangements to ensure that the Scottish Parliament is provided with prompt and adequate information on Community developments.³⁰ He argues that there must be arrangements which ensures both that the Scottish Executive keeps the Scottish Parliament informed, to enable effective scrutiny, and that the UK Government keeps the Scottish Executive fully informed, to enable their full participation.

The Wales European Centre, which is sponsored by a range of public and private sector bodies, including the Welsh Development Agency, lobbies on behalf of its Welsh members in Brussels. It operates in a similar manner to *Scotland Europa*.

E. Structural funds

The Structural Funds are one European policy area where the Scottish Parliament and Welsh Assembly will be closely involved. The negotiations on and allocation of the structural funds within the EU is amongst those powers reserved to the UK Government, in consultation with the Scottish Executive and Welsh Assembly, but these would have responsibility for administering and implementing the funds once they were allocated. The structural funds

²⁹ HC Deb., 24 July 1997, c.1043.

³⁰ St John Bates, p.69.

represent significant amounts of money. For 1994-5 the Welsh Office forecast receipts of £55 million from the ERDF (European Regional Development Fund), and £8 million in support measures from the EAGGF (European Agricultural Guidance and Guarantee Fund). Payments of grants under these funds are estimated to be about £1,280 million in the five years to 1999-2000.³¹ For the period 1994-99, structural funds receipts for Scotland are likely to be in the region of £1 billion.³²

³¹ Cm 3718, p.21.

³² For more information on the structural funds, see European Communities Select Committee, Eleventh report, *Reducing disparities within the European Union: the effectiveness of the structural and cohesion funds*, HL 64 96/97.

IV DEVOLUTION IN OTHER EU STATES

Sub-national governments within EU Member States are becoming more involved in the formulation and implementation of European policy. There is now often a European dimension to a wide range of policy areas which are dealt with domestically at the devolved level. This usually includes areas such as culture, education, transport and the environment. This has led to pressure for arrangements which allow devolved levels of government to participate in the formation of EU policies pursued by their national governments in these areas. A number of EU Member States have introduced various arrangements to allow their sub-national governments to participate in the formation of national policy, and to have representation in European institutions.

Article 146 has been used by both the Federal Republic of Germany and Belgium. These are the two countries which have made the most progress in institutionalising the participation of sub-national governments in the European process. In the German case, agreement is negotiated among the *Länder* (states) through the Bundesrat (the upper chamber, which represents the *Länder*), and one of their number is then entrusted with representing the common position. The Belgian regions, communities and federal government have laid down in a special law detailed arrangements for federal sub-national representation and decision-making in the Council of Ministers machinery. In contrast to the German collective approach, Belgian regions and communities minimise the need for prior agreement by taking turns in assuming the lead responsibility for the Councils on matters within their jurisdiction. There have been suggestions that this clause be used in Spain, and the Basque government has been pursuing this line. The Catalans have preferred to exercise influence through their parliamentary coalitions with the governing party.

A. Germany

As part of the process of ratification of the Maastricht Treaty, the German *Länder* (states) secured recognition of the fact that the European integration process can no longer be restricted to “foreign policy” in the conventional sense. The scope of European legislation has meant that sub-national governments are necessarily involved, particularly at the implementation stage. The *Länder* have won recognition of the important principle that they should have rights of participation in European policy measures.

These rights of participation include:³³

- full, constitutionally entrenched rights of early information from the federal government on the EU legislative programme;

³³ Charlie Jeffery. “The Decentralisation Debate in the UK: Role-Model Deutschland?”, *Scottish Affairs*, Spring 1997, pp.49-50.

- constitutional right collectively to express (and to receive feedback from the federal government on) opinions on EU legislation, and for that opinion to be binding on the federal government in areas which impinge on core areas of *Länder* competence;
- the constitutional right to sit and speak for the Federal Republic in the Council of Ministers in policy fields which domestically fall under their exclusive legislative competence;

The Maastricht Treaty resulted in the inclusion of a new Article in the German Basic Law (Constitution). Article 23 requires a qualified majority both in the Bundestag and in the Bundesrat (which represents the *Länder*) for the transfer of competence from Germany to the Community; provides that the decision of the Bundesrat is decisive where such a transfer of legislative competence affects the exclusive legislative competence of the *Länder*; and also provides that Germany may be represented by a member of a *Land* government in the Council of Ministers when matters affecting the legislative competence of the *Länder* are being discussed. Representation in Council by a *Land* minister should take place in areas of exclusive legislative competence of the *Länder*. This would include cultural matters, for example, where the Federal Government has no competence.

The German *Länderbeobachter* is a senior civil servant responsible to the governments of all of the *Länder* and nominated by the Conference of Länder Ministers for Economic Affairs. This became a permanent arrangement as a result of a formal agreement in 1988, when an office was established in Brussels. His main task is to collect information about Community affairs which are of interest to the *Länder* and to pass this to the Bundesrat, to sectoral ministerial conferences and to the *Länder*. In this capacity, the *Länderbeobachter* can attend the Council of Ministers as a "non-speaking" member of the German delegation. He is allowed to join in the preparatory meetings for sessions of the Council, which are held in the Federal Ministry for Economic Affairs, and receives the instructions to the German delegation of the COREPER (the Committee of Permanent Representatives). He is also responsible for obtaining and distributing documents on EC matters to the *Länder*, although this role has diminished with the establishment in Brussels of information and lobbying offices by each of the *Länder*.

B. Belgium

The Belgian system is very complex. There are three regional governments, which are competent in mainly economic matters. These are the Flemish Region (the same as the Flemish Community but without Brussels), the Walloon Region, and the Brussels Region, which is bilingual and governed by both the Flemish and French-speaking Community. There are also three Community governments, the Flemish Community, the French-speaking Community, and the German-speaking Community. These are responsible for mainly cultural and educational matters. There is a co-operation agreement between the Federal Government, the regional and the community governments, which provides for the composition of Belgian delegations to the

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Council of Ministers and regulates the negotiating strategy of the delegation and the manner in which it votes in the absence of an agreement on such strategy.

A special agreement of 1993 divides EC Councils into four categories A-D, depending on the relative importance of federal and regional competences in a policy area. This is then used to determine the Belgian representation. Type A Councils cover exclusively federal competences, and the Belgian representative will therefore be a federal minister. This would include the General Affairs Council, Ecofin and the Budget Council. Type B Councils are those where there are shared competences where the federal level is more important. The federal minister will be accompanied by a regional representative but the federal minister casts the vote. Environment, health and transport are likely to be in this group. In type C Councils, regional/community ministers would cast the vote but be accompanied by a federal representative. This would cover areas where there are shared competences where the regional or community level is more important than the federal level. Type D Councils are those concerned with the exclusive competences of regional/community governments, in which case there is no federal minister present. The representation of regions and communities in various councils is based on six-month rotation.

It is relatively early days for this agreement, but an example of how it has worked in practice was during the Belgian Presidency of the EU in the second half of 1993. A Minister from the Flemish Community acted as President of the Council for Education, whilst a representative of the French Community sat in the Belgian chair. A potential weakness of this system is the possible lack of continuity in policy-making.

C. Spain

In Spain, the Government has agreed to provide the regions with information on Community developments, in particular as they relate to regional policy.

The Spanish regional system is asymmetrical. According to the Spanish Constitution, the state is based on the "unity of the Spanish nation", and the "autonomy of the nationalities and regions which constitute it". There are different levels of autonomy in the sixteen Autonomous Communities, with the most power devolved to the national minorities, the Basque Country, Catalonia and Galicia, together with Andalucia. Alongside the three historic nationalities, there are historic regions such as Andalucia, Asturias, Aragon, Valencia, Navarre and the Balearics, purely administrative regions such as Castile-La-Mancha, and autonomous communities composed of single provinces such as Cantabria, Madrid, La Rioja and Murcia. There are major disparities in population, area and income among the Autonomous Communities.

The Catalan nationalist party, *Convergència i Unió*, was in coalition with the Socialist governing party of Spain from 1993-96, and made a pact in 1996 with the new governing party, *Partido Popular*, after elections in that year. As part of this agreement, they stipulated the appointment of an observer from the autonomous communities in the Spanish permanent representation in Brussels, and participation in determining the Spanish position in the Council and in working groups. However, generally speaking, the institutional position of Spain's regions has been weakened by the transfer of internal competences to the Community

without an effective agreement on co-operation in Community matters with the central government. Regions do not participate directly in European decision-making on many areas, including agriculture, fisheries, industry, economic and spatial planning, transport and the environment, which are within their competence. However, the Spanish regions have established direct informal links with Community institutions. This is important because of their direct involvement in the implementation and management of some European policies.

The Belgian and German federal systems are more or less symmetrical in nature. The British system after devolution will be asymmetrical: different parts of the UK will have different levels of autonomy. In this respect, the UK system will have more in common with the Spanish model. The rather particular circumstances of Belgian federalism mean that this model is unlikely to be of much use in developing a role for the Scottish Executive in UK-EU relations. However, Belgium and Germany have made more progress in institutionalising regional representation in European affairs, and in establishing mechanisms which ensure the consultation and participation of regional levels of government in formulating the national position.

V CONCLUSION

The continued representation of Scottish and Welsh interests in Europe has been an important theme in the debate on devolution. Both White Papers devote substantial attention to discussing the arrangements by which participation in European policy-making and representation in European institutions would be assured. The greater degree of devolution to Scotland has meant that the question of Scottish representation in the Council of Ministers has aroused particular interest.

The White Papers and speeches in Parliament have outlined a framework for the way in which Scotland and Wales would continue to be involved and represented, but the details remain to be worked out and are likely to evolve over time. The extent to which Scotland and Wales will be more effectively represented after devolution depends on the willingness and ability of the UK Government, the Scottish Executive and the Welsh Assembly to work together to formulate common positions and policies. It has been suggested that this might be complicated in a future scenario if there were governments of different political colours in Westminster, Edinburgh and Cardiff. When challenged on this point, the Secretary of State for Scotland said,

I, at least, have enough faith in civil servants, the Government, this Parliament and their Scottish equivalents that they will work together to build a common position and then work effectively for it in the councils of Europe.³⁴

It will be important for all parties to establish mechanisms through which the Scottish Executive and Welsh Assembly participate in forming UK policy, and also to ensure an effective information flow from Whitehall and from Brussels.

In August 1997, the Scottish National Party's Industry, Technology and Employment Spokesperson and member of the "Scotland Forward" Executive, Mr George Reid, argued that a Scottish Parliament would bring benefits to the Scottish economy, saying,

Without a parliament of our own, Scotland will continue to be... Europe's 'invisible nation', and our industry and jobs will fare less well accordingly. Self-government, by contrast, will open up enormous opportunities for Scottish exporters.³⁵

However, the Scottish National Party continues to argue for full independence as the best way of securing Scotland's place in Europe, arguing that,

³⁴ HC Deb., 24 July 1997, c1046.

³⁵ "Parliament will put Scotland on the map: world profile will boost trade and jobs", SNP News Release, 28 August 1997.

Labour's proposed Scottish assembly would not give Scotland permanent representation in the EU. An occasional ability to lead collective delegations is certainly no substitute for full Member State status.³⁶

Plaid Cymru, the Welsh nationalist party, has argued that “Wales should have a Parliament with powers at least equal to those being offered to the proposed Scottish Parliament”. On 26 July 1997 the party's National Council decided to support the devolution proposals for Wales, emphasising amongst other points that, “according to the Secretary of State, Wales will not be disadvantaged compared to Scotland in securing a stronger voice in Europe”.³⁷ Plaid Cymru have also argued that “only full self-government and an independent voice can give us the full benefit from the European Union”.³⁸

Although the European dimension is only one part of the wider devolution debate, it is clear that it has excited some interest and debate from all sides. One commentator has defined the task ahead in these terms:

The European dimension, therefore, continues to be an important element in devising a constitutionally stable contemporary scheme of devolution in Scotland. Any devolution scheme must find a balance between the Community legal obligations of the United Kingdom and the freedom of Scottish institutions to exercise their devolved powers.³⁹

The experience of other EU States indicates that there are a number of possibilities for successfully involving devolved levels of government in the European policy process. Involvement in policy making, both formal and informal, is crucial, as is recognition of the importance of formal representation in European institutions. Lastly, the success of offices established in Brussels by regional governments such as the German *Länder* gives an indication of the roles that the Scottish and Welsh representative offices in Brussels are likely to seek in the future.

³⁶ “Best For Scotland - Independence in Europe”, SNP, 12 August 1996.

³⁷ Dafydd Wigley, Plaid Cymru National Council, 26 June 1997.

³⁸ Plaid Cymru, Frequently Asked Questions.

³⁹ T. StJ. N. Bates, ed., *Devolution to Scotland: the Legal Aspects*, St John Bates, “Devolution and the European Union”, p.63.

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