

JOINT DISCUSSION PAPER ON EUROPEAN GOVERNANCE – SCOTTISH EXECUTIVE AND COSLA



The Key Principles proposed in this paper

Principle 1: Effective European governance should facilitate citizens' participation in and influence over EU policy-making.

Principle 2: We need to find ways of better engaging regional and local organisations in the EU decision-making process.

Principle 3: It is particularly important to involve regional and local levels of government, because they are democratically elected and implement much EU legislation. We think it is essential that the EU Governance debate addresses the potential for giving a greater role to Scotland and the other regions with legislative powers.

Principle 4: Decisions should be taken at the lowest level (i.e. closest to the citizen) consistent with effectiveness (the subsidiarity principle). This becomes all the more important with enlargement.

Principle 5: The EU institutions must respect the Member State's role in deciding the internal allocation of competences between it and sub-national authorities.

Principle 6: A greater sense of participation can only be achieved if there is wider consultation of all those affected by proposed legislation before final versions are drafted by the Commission. Enlargement will make wide consultation more challenging but even more necessary.

Principle 7: Any policies with an impact at the regional or local level (e.g. agriculture, fisheries, environment, education) should be made available on a consultative basis to the relevant authorities at the earliest possible stage (i.e. before adoption by the College of Commissioners).

Principle 8: The EU institutions should take better account of the potential financial impact of legislation on the implementing authorities and other concerned parties (whether private or public sector).

Principle 9: Those involved in the attainment of targets should be involved in setting them.

Principle 10: The Commission and implementing authorities should aim for a consensual approach whereby the Commission assists in achieving the objectives of a policy (e.g. cleaner rivers) rather than simply resorting to infraction proceedings if there appears to be a problem.

Principle 11: In the present Union, and especially after enlargement, the Commission needs to find more flexible ways of implementing policy which draw on the resources and expertise present at Member State and sub-Member State level, allowing implementation to take account of local needs on the ground. This should apply to policies such as agriculture, environment and fisheries.

Possible means of implementing the principles

TACKLING THE DEMOCRATIC DEFICIT: Multi-level democracy

- The principle of subsidiarity should be elaborated in greater detail to make it clear to citizens and authorities at all levels what it actually means. Amongst other things this means addressing the issue of how to act when competences are shared between different levels of government.
- Relations of subsidiarity between the EU institutions, Member States and, as appropriate, sub-national authorities might be enshrined in a Statement of Subsidiarity Principles.
- We propose that a body at European level should have the power to ensure that the elaborated principles of subsidiarity are enforced. This means it would be able to reject or review proposed legislation that did not accord with the subsidiarity principles. This body could comprise representatives of national and sub-national implementing authorities.

HANDLING THE PROCESS OF PRODUCING AND IMPLEMENTING COMMUNITY RULES: Effective consultation

- Consultation must take place before the negotiation process.
- We propose that the Commission agree a Code of Practice on Consultation.
- The Commission must be able to demonstrate that it has consulted fully and incorporated the results of that consultation when presenting a proposal to the Council/ European Parliament. The body discussed in Section B (a ‘subsidiarity watchdog’) might also have a role in ensuring that the Commission abides by the Code of Practice and allows significant time for, and pays appropriate heed to, the views of implementing authorities.
- We propose that Information Technology should be used to facilitate and speed up the consultation process and information flows between the Commission and national, regional and local authorities and other affected parties, particularly as the Union approaches Enlargement.

The decision-making process

- We propose that the legislative process (from Commission to European Parliament and Council) should be more transparent to enable interested bodies to know how the draft legislation is being modified.

- We suggest that the policy development role of the Troika might be strengthened in order to provide continuity between Presidencies. There is a need to look at longer term planning than 6 months – perhaps the next 4 Presidencies in each period could propose strategic directions to policies for consideration by the institutions.

The impact of EC legislation

- We propose that a proper cost assessment and scrutiny of the cost of compliance with new legislation - in relation to the benefits - should be conducted at all stages of the legislative process. This should take into account results from research and consultation to ensure that legislation is evidence based, and should apply whether the costs fall to the public or private sector. The impacts and outcomes of legislation should be monitored and evaluated regularly to review the legislation if necessary.
- Both the Commission and the European Parliament should review their systems in order to take full account of the potential costs and benefits of draft legislation and proposed amendments to it.
- We suggest that a further role of a ‘subsidiarity watchdog’ body could be to reject or review legislation where it believes the potential costs of implementation, when measured against the potential benefits, are too high.
- Because the institutions have been set up essentially to make law, it is all too easy to ignore more appropriate non-legal instruments. We therefore strongly commend the expansion and greater use of non-legal instruments in achieving EU policy aims.
- We propose that those involved in the attainment of targets should be involved in setting them.

Simplifying legislation

- The Commission should re-examine the forms of its law-making to identify an effective way of creating short and strategic laws with unambiguous objectives which leave genuine scope for flexible implementation.
- The interpretation of what constitutes implementation of Directives should be agreed at the outset between the Commission and the implementing authorities, and not be revisited years later.

IMPROVING THE EXERCISE OF EUROPEAN EXECUTIVE FUNCTIONS THROUGH DECENTRALISATION: Vertical Decentralisation of implementation

- We propose that a more flexible and decentralised approach to implementation should be used more widely in policy areas such as environment, fisheries and agriculture.

JOINT DISCUSSION PAPER ON EUROPEAN GOVERNANCE – SCOTTISH EXECUTIVE AND COSLA

Introduction

The Scottish Executive and the Convention of Scottish Local Authorities (COSLA) warmly welcome the initiative of the European Commission in addressing the question of European Governance.

This discussion paper has been prepared in consultation with all local authorities in Scotland and the departments of the Scottish Executive. The Scottish Executive is the devolved government formed from the Scottish Parliament – in European terms, the ‘regional authority.’ COSLA is the umbrella organisation for Scotland’s 32 local authorities. This discussion paper reflects the views of the Scottish regional and local levels of government, and not necessarily those of the UK government.

This paper discusses the themes which we feel to be central to the debate on European Governance. It suggests some fundamental principles and discusses some possible ways of putting them into practice, taking account of Scottish examples. The paper covers an initial set of ideas based on discussions within the Scottish Executive and Scottish local authorities. We see this discussion paper as a starting point for a wider debate on European Governance in Scotland, which will be taken forward notably by the Edinburgh conference co-organised by the Committee of the Regions and the discussion planned by the Scottish Parliament’s European Committee – both in May.

By the very nature of the European Union, much of its business (and therefore this paper) concentrates on the **legislative process** – the process of forming legislative proposals, the passage of legislative proposals through the institutional framework, and the implementation of legislation once it is adopted at Council.

We present the issues which we feel are key elements of the debate in three sections. We include a first general chapter on multi-level democracy, which relates to **all six areas of the Work Programme** (SEC(2000) 1547/7 final). The other two chapters deal with specific themes in the Work Programme – Handling the process of producing and implementing Community rules, and Improving the exercise of European executive functions through decentralisation.

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BACKGROUND: The Scottish situation

Under the devolution settlement in the UK matters of EU policy are officially reserved to the UK Government in London. However, the Scottish Executive and Parliament (in partnership with local government) are responsible for the transposition of EC legislation into either primary or secondary Scottish legislation. Approximately 80% of the functions devolved to the Scottish Parliament are also covered by an EU competence of some kind. The Scottish Executive also directly manages a number of EU programmes within Scotland, the two largest being the Structural Funds and the Common Agricultural Policy. The European Committee of the Scottish Parliament is responsible for scrutinising draft EU legislation and EU policies. There are eight Members of the European Parliament representing Scotland, who play an active role in promoting Scottish interests. There is also Scottish representation on the Committee of the Regions and the Economic and Social Committee. There are networking arrangements in place between the different Scottish representatives to ensure coherence in our input to the EU.

In addition to its implementation roles, the Scottish Executive works closely with UK government departments to help formulate UK common positions regarding EU policy matters which affect us directly. It has a similar role to German, Belgian and Austrian Federal states and Spanish autonomous regions who both implement EU law and help formulate common positions on EU proposals within their respective states. However, devolution in the UK is also different in a number of respects. The powers which have been devolved to the Scottish Parliament and the Assemblies of Wales and Northern Ireland differ from administration to administration. This asymmetric approach is flexible and is guided by agreements between the devolved administrations and the UK Government, which are known as Concordats. The Concordats are not legally-binding, but provide a framework within which relations between the different administrations can be managed.

EU policy matters are of central concern to local government in Scotland too, as it has an important role in both the implementation of EU policy and development of projects for EU funding programmes. Scottish local government is responsible for the implementation of large amounts of EU legislation, ranging from health and safety measures and environmental law to trading standards and copyright law. Furthermore, local government in Scotland is involved in many local and transnational funding partnerships where projects are partly funded by the EU. The situation in Scotland reflects that across the EU as a whole, in that many of the project ideas which make up EU funding programmes come from local government.

B IMPROVING DEMOCRACY: Multi-level democracy

The Commission's starting point in its Work Programme is that:

"it is clear that the reform of European modes of governance is all about improving democracy in Europe."
(SEC (2000) 1547/7 final, p.4)

Example: In Scotland, a Scottish Parliament has been established to bring decisions closer to the citizen, and Scottish local government is also going through a period of modernisation. As a new institution, the Scottish Parliament has been able to make use of modern information and telecommunications in its drive to communicate better with the citizen. Proceedings are documented on a public website and hearings are broadcast by webcam as well as on network television. Additionally, a public petitions committee has been established, to which any member of the public can make an appeal (in writing or via an e-form) for an issue to be raised with one of the subject-specific committees, should it be considered appropriate.

All tiers of government face similar challenges in terms of democratic legitimacy. In the Scottish context, a major initiative has been taken to address this issue by the establishment of the Scottish Parliament in 1999. At local government level, Scottish local authorities are undertaking a wide range of initiatives to provide for wider involvement of communities in the democratic process (e.g. Community Planning, Community Councils). For example, Edinburgh has established Local Development Committees for each of the 6 Parliamentary constituency areas in the city. These Committees form part of the Community Planning process and aim to increase public participation in local decision-making.

The democratic "deficit" is a term sometimes used in an EU context. It must also be recognised that such democratic "deficits" can exist at all levels of government, and it is crucial that efforts are made to address this from the bottom up.

A particular problem for the EU is that many of the regional and local actors (and citizens they represent) affected by EU policies feel unable to exert effective influence over the decision-making process. Indeed, they may be unaware that important EU policies which will affect them are being formulated or negotiated. We therefore suggest, as a fundamental principle:

Principle 1: Effective European governance should facilitate citizens' participation in and influence over EU policy-making.

While recognising the efforts of the European institutions to represent the views and interests of EU citizens, we agree with the Commission that there is room for improvement. One of the aims of the White Paper must be to ensure that the institutions of the EU connect with the everyday concerns of its citizens so that the citizen is

Example: The Scottish Executive's Programme for Government, "Making it work together", has streamlined the Executive's priorities and made them accessible to the citizen. It is available in hard copy or on the Internet for all to view.

put at the heart of all forms of governance, whether this occurs at the European, national, regional or local levels.

It is particularly important in this context to involve regional and local levels of government. There are three key reasons for this:

- They are **democratically elected** by the citizen, form the closest link to the citizen and are best placed to represent citizens' interests and concerns
- They are **implementing authorities** for the majority of EC legislation and for many common policies
- In the particular case of Scotland, we now have substantial **legislative powers** devolved to us. Given the prospect of enlargement, we think it is essential that the EU Governance debate addresses the potential for giving a greater role to Scotland and the other regions with legislative powers.

Democratic election by itself is not enough to ensure sufficient citizen participation. Opportunities for direct involvement in decision-making which affects their communities must be increased if we are to address the problem of citizens' sense of distance from government and the EU. 'Participation' must include a real possibility of influencing decisions made.

We therefore suggest as second and third principles:

Principle 2: We need to find ways of better engaging regional and local organisations in the EU decision-making process.

Principle 3: It is particularly important to involve regional and local levels of government, because they are democratically elected and implement much EU legislation. We think it is essential that the EU Governance debate addresses the potential for giving a greater role to Scotland and the other regions with legislative powers.

Example: In Scotland, Community Planning is a process used to achieve policy objectives whereby a local authority, public agencies and other local bodies and interests (community, voluntary and private sector) come together to develop and implement a shared vision for promoting the well-being of their local area.

The relationship between the different tiers of government should not be seen as a strictly hierarchical one. Rather than being dominated by hierarchical models, governance should be more participative and engaging and recognise overlapping spheres of influence. In many policy areas, a partnership between the different tiers of government, public agencies, private and voluntary sectors is required to achieve effective governance. Important as partnership between different tiers of government can be in areas where there are shared competences, relationships should also take account

of the basic principle of subsidiarity. This is that decisions should be taken at the lowest level consistent with effectiveness.

As the Commission states in its Report on Better Lawmaking (1998), “the sharing of responsibilities should evolve towards an ‘active’ subsidiarity.” Although the subsidiarity principle is now stated in the Treaty, and each new legislative proposal includes a ‘statement of grounds’ with regards to subsidiarity, many still feel that it is not, in reality, used as a guiding principle integral to EU policy-making.

Example: Scottish local authorities, for example, use a variety of networks to work with public and private sector partners, such as Structural Fund and Community Initiative Partnerships; the membership of regional bodies such as the Conference of the Peripheral and Maritime Regions (CPMR); or less formal networks, such as the European Rural Exchange (formerly the EU and UK 5B Partnerships). Where appropriate, they would welcome Commission participation in such networking, in order to share ideas at the grassroots level.

We therefore suggest as a proposal that **the principle of subsidiarity should be elaborated in greater detail to make it clear to citizens and authorities at all levels what is actually means. Amongst other things this means addressing the issue of how to act when competences are shared between different levels of government, recognising the modern reality of partnership and community participation.**

We suggest as a fourth principle:

Principle 4: Decisions should be taken at the lowest level (i.e. closest to the citizen) consistent with effectiveness (the subsidiarity principle). This becomes all the more important with enlargement.

Article 5 (ex. Article 3b) TEC:

The Community should act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it herein.

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 insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of scale or the effects of the proposed action, be better achieved by the Community.

Relations of subsidiarity between the EU institutions, Member States and, as appropriate, sub-national authorities might be enshrined in a Statement of Subsidiarity Principles. This document would elaborate on the definition of subsidiarity and would set out the obligation of the EU institutions to abide by this principle. However, in any such statement – as in other areas of innovation under the Governance heading – it is important that the EU respects the basic

principle that it is for the Member State itself to decide the internal allocation of competences between it and sub-national authorities.

We suggest a fifth principle:

Principle 5: The EU institutions must respect the Member State’s role in deciding the internal allocation of competences between it and sub-national authorities.

Committee of the Regions in its Opinion on "Developing a culture of subsidiarity" (March 1999):

"The subsidiarity principle... in the sense of proximity, with decisions being taken as close to grassroots level as possible, thereby ensuring that tasks can be performed to maximum effect."

There is little point in having a statement of principles if there is no means of enforcing them. **We therefore propose that a body at European level should have the power to ensure that the elaborated principles of subsidiarity are enforced. This means it would be able to reject or review proposed legislation that did not accord with the subsidiarity principles.** This body could comprise representatives of national and sub-national **implementing authorities**. There are a number of options for such a body, ranging

from a modified Committee of the Regions to a second chamber of the European Parliament. It would provide checks and balances in the light of the agreed Statement of Principles. It would provide the means of recourse – in a political rather than a legal way - if an authority felt the agreed principles had been breached. Such a structure would provide a direct link with democratic structures in Member States, which we feel would be more appropriate than entrusting such functions to a Court. We appreciate that institutional change of the nature discussed here is a matter for the 2004 Intergovernmental Conference rather than the Governance White Paper, but we feel that, in some areas, the Governance debate is inextricably linked with the whole post-Nice/ IGC 2004 process.

Example: In the UK, relations between the UK government and the Scottish Parliament and Executive were legally codified in the Scotland Act 1998. However, following devolution, a series of Concordats were drawn up between the Scottish Executive and departments of the UK government to provide a guide for working relations and exchange of information under the new constitutional arrangements. These Concordats sit beneath an over-arching Memorandum of Understanding. They can be viewed at: <http://www.scotland.gov.uk/concordats>. Additionally, a Protocol has been agreed between the Convention of Scottish Local Authorities (COSLA) and the Scottish Parliament. A similar document is being discussed with the Scottish Executive.

C HANDLING THE PROCESS OF PRODUCING AND IMPLEMENTING COMMUNITY RULES (Theme 2 of the Work Programme)

i) Effective Consultation

The Scottish Executive and COSLA very much welcome the Commission's wide consultation on the Governance issue itself. In its Work Programme, the Commission acknowledges that there could be a vital role for those bodies which are actually present "on the ground" in the Member States. We agree that at present legislative proposals are often drafted within the Commission and put to the Council and Parliament with insufficient prior consultation with those affected. That means not simply levels of government, but also as appropriate public agencies (for example in the environmental field), commerce and industry, relevant socio-economic groups, voluntary organisations and indeed citizens themselves. We therefore suggest a sixth principle:

Principle 6: A greater sense of participation can only be achieved if there is wider consultation of all those affected by proposed legislation before final versions are drafted by the Commission. Enlargement will make wide consultation more challenging but even more necessary.

Regional and local government **implement** a large amount of European policy, and it is therefore important and appropriate for these authorities to have a strong voice in policy development. Local and regional authorities act as the collator and filter of opinion at the local level. Their views must be listened to in order to take into account the views of the citizens. As implementing authorities, we therefore feel we are in a special position in terms of consultation. We have to take responsibility for – and often bear heavy costs from – EC legislation. Moreover, we have to trade off different interests in a way that single issue interest groups do not. Such a trade-off, e.g. between economic, social and environmental concerns, is at the heart of democratic government, whether at national, regional or local level. It is also at the heart of an effective sustainability policy. Thus we feel our views need to be given appropriate weight.

In practice what this may mean is implementing authorities like ourselves contributing our opinions on proposals to policymakers in the Commission much earlier in the policy formulation process, certainly before adoption of legislative proposals by the College. This would allow us to help spot fundamental flaws or omissions in the legislation. Such a screening becomes much more challenging once a proposal exits the Commission and goes into the Council and Parliament, and everyone moves mentally from "formulation" mode into "negotiation" mode.

Consultation should not be conducted as a token exercise. Nor should it be incumbent on the local and regional authorities or other affected parties to seek to influence the Commission proactively. The Commission should be required to seek the views of all implementing authorities (including those at regional and local level) in a structured and comprehensive

way, and not just by means of the Committee of the Regions. Above all, **consultation must take place before the negotiation process**. Moreover, where – as is often the case – a proposal is modified substantially during the negotiation process, a further round of consultation may well be necessary.

This cuts both ways – it becomes equally important for these authorities and parties to pay much greater attention than before to early Commission documents such as Green and White papers, and invest substantial efforts in commenting on the feasibility and desirability of EU legislation as far as their community is concerned. As implementing authorities we need to ensure that all interested parties in Scotland – whether in the public or private sector – have a proper opportunity to make an input.

We therefore suggest a seventh principle:

Principle 7: Any policies with an impact at the regional or local level (e.g. agriculture, fisheries, environment, education) should be made available on a consultative basis to the relevant authorities at the earliest possible stage (i.e. before adoption by the College of Commissioners).

We propose that the Commission agree a Code of Practice on Consultation. Such a document would include the commitments of the Commission to include sub-national authorities in policy-making and to take the position of local authorities and their local partner bodies (socio-economic groups) into account with regard to policy implementation. In framing such a code, judgement should be used to ensure that items for consultation are relevant and important to the consultees, thereby avoiding an unworkable consultation overload.

Example: Ostensibly, the current text of the maritime cabotage regulations stipulate that subsidy cannot be given to “mainland to mainland” ferry services. Furthermore, there are no linkages to peripherality or social or economic factors as one might have expected in the legislative text. It is simply stated thus. This makes little sense on the indented Scottish coast where a 15 minute ferry journey can save a 1-2 hour detour along minor roads. Such ferry services are vital to the economic and social well-being of Scotland’s remote and island communities. A longer and more open process of consultation might have avoided such difficulties.

The Commission must be able to demonstrate that it has consulted fully and incorporated the results of that consultation when presenting a proposal to the Council/ European Parliament. The body discussed in Section B (a ‘subsidiarity watchdog’) might also have a role in ensuring that the Commission abides by the Code of Practice and allows significant time for, and pays appropriate heed to, the views of implementing authorities.

We also propose that Information Technology should be used to facilitate and speed up the consultation process and information flows between the Commission and national, regional and local authorities and other affected parties, particularly as the Union approaches Enlargement. Consultation questionnaires could be distributed by email.

Commission offices in Member States could be used as sounding boards, as could regional authorities, national and regional associations of local government, and Brussels-based regional offices.

ii) The decision-making process

The workings of the Council of Ministers are still relatively opaque to outsiders, and Scottish local authorities, for example, find it difficult to know the stage that negotiations have reached. We commend the Finns and the Swedes for their initiatives under their respective Presidencies to achieve greater transparency in the Union's workings.

The legislative process itself brings uncertainty to its outcomes. Final texts seldom reflect the spirit of the original proposal. **We therefore propose that the legislative process (from Commission to European Parliament and Council) should be more transparent to enable interested bodies to know how the draft legislation is being modified.**

We welcome the steps that have recently been taken by the Commission to improve the setting of strategic priorities. In terms of prioritisation, there is room for the involvement of regional actors in the process. Progress in prioritising has been made in this year's Commission work programme (where the number of new proposals has dropped from around 750 to around 400) but we feel there is further to go. From a regional perspective, we would welcome greater continuity and longer-term planning. The current rotation of Presidencies lends dynamism to the Union, but can change the priorities every six months and thus add to the overall volume of legislation. **We suggest that the policy development role of the Troika might be strengthened in order to provide continuity between Presidencies. There is a need to look at longer term planning than 6 months – perhaps the next 4 Presidencies in each period could propose strategic directions to policies for consideration by the institutions.**

iii) The impact of EC legislation

As implementing authorities, we – and our taxpayers – have to bear the financial consequences of much EC legislation, for example in the environmental field. We are not convinced that the EU institutions pay sufficient attention to the cost implications of their proposals. **We therefore propose that a proper cost assessment and scrutiny of the cost of compliance with new legislation - in relation to the benefits - should be conducted at all stages of the legislative process. This should take into account results from research and consultation to ensure that legislation is evidence based and should apply whether the costs fall to the public or private sector. The impacts and outcomes of legislation should be monitored and evaluated regularly to review the legislation if necessary.**

The Commission should undertake more in depth study of the costs of implementation against potential benefits when considering policy options. This should take into account results from research and consultation to ensure that legislation is evidence based. The impacts and outcomes of legislation should be monitored and evaluated regularly to, if necessary, review the legislation. **Both the Commission and the European Parliament should review their systems in order to take full account of the potential costs and benefits of draft legislation and proposed amendments to it.** An interesting principle to bear in mind is that of “he who decides, pays” While this cannot be implemented literally in a system of European Governance, it highlights the dangers in systems of governance that may

not take sufficiently seriously the question of costs being imposed on third parties. **We suggest that a further role of a ‘subsidiarity watchdog’ body could be to reject or review legislation where it believes the potential costs of implementation, when measured against the potential benefits, are too high.** We therefore propose a further principle:

Principle 8: The EU institutions should take better account of the potential financial impact of legislation on the implementing authorities and other concerned parties (whether private or public sector).

iv) Using non-legislative mechanisms

We welcome the proposal in the Work Programme to look closely at **non-legislative mechanisms**, although in some areas (e.g. internal market or competition) the rule of law is essential. We also commend the work done under the SLIM (simpler legislation for the internal market) Programme

Because the institutions have been set up essentially to make law, it is all too easy to ignore more appropriate non-legal instruments. We therefore strongly commend the expansion and greater use of non-legal instruments in achieving EU policy aims, such as:

- i) soft law approaches
- ii) co-regulation
- iii) self-regulation
- iv) voluntary agreements
- v) open method of co-ordination
- vi) benchmarking
- vii) exchange of best practice
- viii) use of market forces

However, benchmarking must be used sensibly and not lead to the construction of “league tables,” which could have negative consequences.

Moreover, if implementing authorities are not consulted at the inception stage of Community initiatives, principles and targets can be set without a real concept of how practicable the initiatives are. If the new “Open method of Co-ordination” is to be effective, it is essential that targets for implementation by local and regional authorities are drawn up in consultation with those authorities. For these reasons we suggest a ninth principle:

Principle 9: Those involved in the attainment of targets should be involved in setting them.

iv) Simplifying legislation

Perhaps because of the complexity of the negotiation process, Directives may become over-prescriptive and not offer sufficient flexibility at the stage of implementation. How can this be avoided?

The original concept of the directive – a short, strategic document which left considerable discretion to implementing authorities on how to implement in the light of their own circumstances – sometimes seems to have become lost. Even Framework directives can be over-prescriptive. Moreover, the text of many directives is often ambiguous, and not clarified in advance of implementation. The Commission's interpretation of a Directive (which, in the absence of going to Court, is normally the decisive factor) may emerge many years after the Directive became law, and may involve an implementing authority in major expenditure which has not been planned for. We therefore propose that

The Commission should re-examine the forms of its law-making to identify an effective way of creating short and strategic laws with unambiguous objectives which leave genuine scope for flexible implementation.

The interpretation of what constitutes implementation of Directives should be agreed at the outset between the Commission and the implementing authorities, and not be revisited years later.

To take a concrete example, Scotland is not alone in the Community in having had a significant number of "infraction" cases in the Environment field, some dealing with very detailed matters. We entirely accept that legislation must be implemented properly, but a drive for uniformity must not replace the objective of practical and cost-effective results. Forcing compliance through the threat of legal means on a regular basis is not good governance and may ultimately be counter-productive. The Court should be the last, not the first, resort. We therefore very much welcome the Commission's developing approach in the Environment field of working closely with the Member States in the early stages of implementation, in order to avoid legal disputes later. As we share the Commission's environmental objectives, we would prefer to have a partnership relationship with the Commission, which takes account of our particular circumstances on the ground. We therefore propose as a further principle:

Principle 10: The Commission and implementing authorities should aim for a consensual approach whereby the Commission assists in achieving the objectives of a policy (e.g. cleaner rivers) rather than simply resorting to infraction proceedings if there appears to be a problem.

Example: The Scottish Executive welcomes the initiative by the Commission to work with Member States on the implementation of the Water Framework Directive. A "Common Strategy" on implementation is being developed jointly and a result of that will be a series of projects looking at individual aspects of the Directive. From these projects will flow guidelines about how particular parts of the Directive will be implemented. This recognition of the challenge that such a Directive poses to all Member States is to be welcomed. It is an approach that would usefully be extended to other initiatives in the environmental field and beyond.

Example: Persistent failure at Ayrshire's bathing waters has been apparent to the Scottish authorities for some time. Prior to the Commission commencing infraction proceedings against the UK for failure to comply with the Bathing Waters Directive (76/160/EEC) comprehensive research into the causes of failure at these bathing waters was initiated. This research accompanied massive investment in sewage treatment facilities. Representatives of the Commission were invited to Ayrshire in September 2000 to familiarise themselves with the engineering and research work being undertaken to address the problems at the local bathing waters. The representatives welcomed the approach being taken and are now examining the research for its potential for wider application. This provides an example of building understanding with the Commission to work in concert to address the circumstances faced by the Member State, while providing information useful for work across the EU.

D IMPROVING THE EXERCISE OF EUROPEAN EXECUTIVE FUNCTIONS THROUGH DECENTRALISATION (Theme 3 of the Work Programme)

i) Vertical Decentralisation of implementation

Principle 11: In the present Union, and especially after enlargement, the Commission needs to find more flexible ways of implementing policy which draw on the resources and expertise present at Member State and sub-Member State level, allowing implementation to take account of local needs on the ground. This should apply to policies such as agriculture, environment and fisheries.

We strongly support the Commission's proposals to extend vertical decentralisation of implementation. Vertical decentralisation should allow for more flexibility and for national, regional and local authorities to adapt policies to suit local circumstances (e.g. in the areas of agriculture, rural development, fisheries and the environment). This does not mean permitting failure to implement agreed laws – rather this is about more framework as opposed to detailed legislation, or the use of non-legislative instruments. The Commission would remain the ultimate guardian and should be able to manage the process to everyone's benefit. It should certainly lead to better governance and less recourse to the Court. For these reasons, we fully support these initiatives and would like to see a lot more like them.

Example: The EC Rural Development Regulation takes account of differing agricultural, rural and environmental needs, enabling distinctive plans to be drawn up for different regions.

We have also been encouraged by the indications of a future development of the local dimension of the European Employment Strategy and feel that this approach could be used in other policy areas, with prominent examples being social, regional and environmental policy. The dialogue between local government and the Commission has been a very useful one in the formulation of policies which achieve the objectives of the EU and address local needs. Local government has much practical experience of implementing policies which affect the daily lives of citizens and the economic and social characteristics of local and regional diversity. Again we would stress that the formulation of 'soft legislation' approaches must fully involve those actors who will be expected to take responsibility for them, and allow sufficient time for them to make their input.

The approach becomes all the more important with enlargement. **We therefore propose that this more flexible and decentralised approach to implementation should be used more widely in policy areas such as environment, fisheries and agriculture.**

Example: Scotland has been using vertical decentralisation with much success on the management of the Structural Funds, and the Commission are experimenting with it on rural development. The approach at present can be overly labour-intensive, but it has the great merit of recognising national and regional differences.

Example: The Commission is obliged to review the CFP by the end of 2002 and is due to issue a Green Paper on initial proposals by March 2001. One of the chapters of the Green Paper is likely to be about improved governance, with two broad themes: - a greater involvement of stakeholders and an enhanced regional dimension to the CFP.

Last year 2 major UK fishermen's organisations produced a joint report on 'Zonal Management'. This document envisaged the setting up of so-called Zonal Management Committees (ZMCs) based on discrete areas of sea such as the North Sea or the Mediterranean Sea and made up of scientists, officials and fishermen from the countries that have a quota for fishing in that area (for example, Greece would not be represented for the North Sea and the UK and other northern countries would not be represented for the Mediterranean Sea).

The UK is supportive of ZMCs if they act as advisory bodies with the final decision making powers remaining with the Council of Ministers. To some degree this has already happened. Last year Member States who had quota in the Irish Sea (UK, Ireland, Belgium, Netherlands and France) got together to draw up emergency measures for the protection of cod in the Irish Sea. The subsequent regulation was approved at Community level as an emergency Commission Regulation. This year the same approach is being used for the North Sea and the West of Scotland and again for the Irish Sea, with decisions being either Commission or Council Regulations. The EU institutional and legal structure is evidently robust enough to absorb such changes without fragmenting.

CFP also allows for Member States to manage exclusively their inshore fisheries (out to 6 miles) and the CFP is implemented at Member State or even local level. This illustrates the flexibility of the system in allowing for local decision making.

ii) Horizontal decentralisation of service provision

Horizontal decentralisation should be approached with caution, as it raises issues of accountability and public confidence. From the standpoint of local and regional authorities there is a risk that the use of agencies will make it more rather than less difficult to influence Community policy-making.

E CONCLUSION

This paper has addressed a variety of ways in which Scotland, with its new legislative powers, can play a bigger role in EU Governance as the EU moves towards enlargement. We have suggested possible improvements in consultation, the legislative process, and in implementation. Such greater involvement should include the Scottish Executive and Parliament, and also Scottish local authorities and the many other Scottish bodies – private and public – with a stake in what the EU does. In this way we can help reach the ultimate goal of Scottish citizens having more participation in, and influence over, EU policy-making.

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