Scottish Parliament EU Subsidiarity Scrutiny

Thank you for our meeting on 13 November, which I believe was useful in beginning to develop a closer understanding and cooperation between your European & External Affairs Committee and COSLA as the national and international voice of the 32 Scottish Councils.

As discussed, COSLA has a dedicated European function which we use to identify and express our policy positions on a range of EU dossiers which have a direct impact upon Scottish local government. COSLA’s internal political structures quite early on will reach cross-party positions on the likely impact of proposed EU legislation and will be ready to lobby for possible alternatives that in our view would be more suitable for Scottish Local Government and indeed the Scottish public more generally. Because of the close contact we have with the Commission and its staff we are often in a position where we will have formulated our response to the detail of such proposals well before they are formally tabled.

Also expressed in prior exchanges, COSLA welcomes the new prioritisation method that the Scottish Parliament launched two years ago, together with the approach of appointing EU rapporteurs acting on behalf of other Parliamentary Committees. This has already enabled a better, wider and deeper scrutiny of a larger range of subject matters than would otherwise be possible. Looking forward to 2014 we will shortly write to you with our assessment of the EU legislative work programme agreed by the full COSLA Convention in December.

However, I am writing to you specifically on the way the Scottish Parliament handles EU dossiers and, in particular, subsidiarity issues. We welcome the fact that the Standards, Procedures and Public Appointments Committee is at the moment conducting an inquiry on that very issue, to which we understand your Committee will be submitting evidence.

You may be aware that COSLA responded to the consultation held by your predecessors prior to this new EU monitoring and subsidiarity scrutiny being launched. In it we recognised Parliament needs to identify and react to the breadth of EU dossiers, including those that have a direct and often unique impact on local government. COSLA suggested it would be helpful if a system could be devised so that we could formally raise with Parliament concerns on the compliance of EU law with the principle of subsidiarity or, more generally, could formally highlight the impact on Local Government of EU legislation so that the Parliament can reflect these concerns in its scrutiny and subsidiarity work.

We regret that our proposal was not considered at that time. In our view, this means that the detailed cross-party local government views on EU issues, and in particular
on subsidiarity, cannot reach Parliament in enough time to enable MSPs formally consider these, even when they directly and exclusively affect local government and a position is available.

You will be aware that Scottish Local Authorities are bound by the principle of Treaty of the European Union law of “passive legal capacity” (articles 258 TEU to 260 TEU). For local authorities this means that they could be brought to the European Court of Justice for infringing EU law (with the UK Government acting on their behalf). Were a UK council to be tried and fined for such infringement, such penalties will eventually be passed down to them under section 2 of the UK Localism Act 2011 which also covers Scotland on reserved matters related to local government. These type of infringements will often be caused by the European Commission’s limited understanding of the local ramifications of its proposals. This is one of the reasons it is essential that parliamentary scrutiny of such proposals is done in full knowledge of such local consequences.

Both Scottish Parliament and COSLA nominate 4 members each to the Committee of the Regions, whose main task is to ensure that the Subsidiarity Principle is enforced by the other EU Institutions. Through their ongoing work and contacts in Brussels, the eight Scottish CoR members are in an ideal position to learn of and alert the Scottish Parliament to subsidiarity issues or more generally any EU legislation with a significant impact on Scottish devolved or local institutions.

To allow local government concerns to be addressed, I’d specifically like to highlight rule 2.1 of the Standing Orders “Chapter 10A: Proposals for European Union Legislation” which states:

Where the UK Government, the UK Parliament or the Scottish Government brings to the attention of the Parliament any EU legislative proposal (or part of such proposal) as raising a concern in relation to compliance with the principle of subsidiarity, the proposal shall be considered by the committee within whose remit the subject matter of the proposal falls (―the lead committee‖).

It could usefully be amended to explicitly add to the first part “Scottish Members of the Committee of the Regions of the European Union and Scottish Local Authorities”. This would emphasise that subsidiarity also applies to the local authority sphere and not only the UK and Scottish tiers of government. It would also help place the Scottish Parliament practice alongside the more robust EU scrutiny arrangements that exist in countries such as Denmark or Finland. I am sure we are both keen to see that the best of European intergovernmental practice is made available here.

I hope that both the European and External Affairs Committee and the Standards, Procedures and Public Appointments Committee could consider these proposals in light of the clear advantages, both in terms of better EU parliamentary scrutiny and an enhanced respect of subsidiarity for the benefit of Scottish local communities.

COUNCILLOR DAVID O’NEILL
COSLA PRESIDENT
27 NOVEMBER 2013