

## **BREXIT AND COMMON FRAMEWORKS – EXAMPLES FROM OTHER COUNTRIES**

The Finance and Constitution Committee has commissioned research examining common frameworks operate in four countries: Canada, Germany, Norway and Switzerland.

This paper summaries some of the key points arising from the commissioned papers.

### **Constitution**

The research sets out the different tiers of government in each of the case studies. Key points to note are:

- The policy areas that the 10 provinces in **Canada** are responsible for are set out in legislation (the Constitution Act 1867).
- The 16 Lander in **Germany** have representation in the Bundesrat which is composed of representatives of each Land Government.
- Despite **Norway** having a two-tier system of local government (counties and municipalities), it is identified as a unitary state.
- **Switzerland** is a federal state with powers divided between the Confederation, the Cantons and the communes. The Cantons are responsible for all powers which are not specifically identified as the competence of the federal government.

### **Types of Common Framework**

The four pieces of research approach the idea of common frameworks in different ways.

The **Canadian** research sets out the example of common frameworks in the field of economic development focussing on cooperation between federal and provincial government agencies labelling it “cooperative federalism”. These could also be described as non-governmental common frameworks.

The research on **Germany** states that common frameworks are rare in Germany and as such they do not exist in the way envisaged in the UK. Instead, according to the research, the German federal system:

“offers various mechanisms by which national policy coherence is achieved, even in areas which are not regulated by EU legislative frameworks.”

A number of ways in which policy coherence is achieved in Germany without the need for common frameworks are identified including the role of the Bundesrat; an integrated civil service, which also works to the principle of fidelity to the federation; tight fiscal rules on the ability of Land-level governments to spend their way towards huge differences in approach and a legal regulatory system which ensures national coherence on standards.

The research into Germany also focusses on the role of lander in international affairs though this is not identified as a common framework.

There is no direct **Norwegian** analogy to common frameworks, and the research adds that “the relations between the different levels of the state are quite different from those in the UK”. It added that in relation to EEA related competences the national competence is located in the regional state (Norwegian government) rather than the publicly elected regional bodies

The **Swiss** research focusses on two different approaches to common frameworks; joint responsibilities shared by the federal government and the cantons and also agreements between the cantons without federal involvement.

Relations between the federal government and the cantons are regulated by the National Fiscal Equalisation (NFE) whilst inter-cantonal relations are governed by cantonal concordats.

As a result of the NFE, the federation and the cantons are obliged to revise the actual allocation of responsibilities every four years. The federal council submits a report on NFE implementation and effectiveness to Parliament every four years.

### **Governance of common frameworks, including parliamentary oversight, information sharing and institutional arrangements**

In the cases of **Canada and Norway**, the approaches indicate systems where the national government use their resources in the provinces or counties to support devolved competences. This approach means that the national government can influence (to an extent) the development of sub-state policies.

However, the research showed a gap in the parliamentary scrutiny of common frameworks, particularly at the sub-state level.

In **Canada**, each of the federal regional development agencies (RDA's) is overseen by the federal Ministry of Innovation, Science and Economic Development, through which the agencies report to the Canadian Parliament. The two key parliamentary reporting instruments are the agencies' Departmental Plans and Departmental Results Report.

The **Lander** Governments are represented in the Bundesrat – the upper chamber of the federal parliament. Each Land Government can exercise scrutiny there but in contrast the Landtage (Lander parliaments) are not directly involved in Germany's executive federalism. They are instead limited to implementing national legislation which relates to Lander competences.

In **Norway**, the research shows that as a result of the Norwegian state operating in areas usually within the competence of the counties and municipalities this arguably exacerbates the democratic deficit that emanates from Norway's distinct EU affiliation.

Like Germany, the upper chamber of **Switzerland's** federal parliament (Council of States) was established to represent the cantons. However, unlike in Germany, members representing the Cantons are independent of the cantonal institutions, as a result, cantonal governments have less influence on Council of States policies.

This has led to the Cantons establishing their own intergovernmental mechanisms, the Conference of the Cantonal Governments (CCG) of Switzerland and 16 conferences of

cantonal ministers which are based on the EU's Council of Ministers model. Each conference is devoted to a specific policy area enabling the ministers from all the cantons to meet in order to exchange information and coordinate their interests. The most significant of these is the Swiss Conference of Cantonal Directors of Education.

In Switzerland, both the NFE and cantonal concordats must be ratified by the appropriate parliaments.

### **Common Frameworks and EU/International Agreements**

Most of the research on **Germany** focusses on the Lander's role in international relations including relations with the EU. According to the research:

“The Länder have a claim to be involved in the external relations of the federal nation state, and these are in many areas fixed by law particularly in areas where the Länder are competent domestically. Three separate articles of the Basic Law explain how the Länder are permitted to engage in the international arena.”

The relevant articles of the Basic Law are 23, 24 and 32.

- Article 23 of the Basic Law regulates Federal Government / Länder relations with regard to European policy. Paragraph 3 provides the Bundesrat with a specific role in terms of the right to be consulted and when legislative powers exclusive to the Länder concerning matters of school education, culture or broadcasting are primarily affected, the exercise of the rights belonging to the Federal Republic of Germany as a member state of the European Union shall be delegated by the Federation to a representative of the Länder designated by the Bundesrat.
- Article 24 states that “Insofar as the Länder are competent to exercise state powers and to perform state functions, they may, with the consent of the Federal Government, transfer sovereign powers to transfrontier institutions in neighbouring regions.”
- The precise role of the Länder in international treaty negotiation is set out in the Basic Law. Article 32 of the Basic Law (Foreign Relations)

Article 32 states that:

- (1) Relations with foreign states shall be conducted by the Federation.
- (2) Before the conclusion of a treaty affecting the special circumstances of a Land, that Land shall be consulted in timely fashion.
- (3) Insofar as the Länder have power to legislate, they may conclude treaties with foreign states with the consent of the Federal Government.

Despite having these powers, the research argues that they have remained largely insignificant with Lander not signing international treaties for the following reasons:

- several factors have contributed to the reality that few significant legislative powers remain with the Länder alone
- federal governments in Germany have jealously guarded their prerogatives over foreign relations.
- the federal government must give its assent to Länder treaties to make them domestically binding, and Foreign Office opposition thus goes a long way towards halting any Land initiative in this regard.

- Most importantly, the federation and the Länder have devised a practical arrangement for dealing with the international treaties which touch on domestic issues falling under Länder or concurrent jurisdiction, the Lindauer Abkommen (Lindau Agreement), created in 1957. This sets out a process for securing the full approval of the Länder directly (outside of the Bundesrat framework in the normal legislative process) on international agreements.

The Lindau Agreement assigns the federal government the leading role in negotiating with Germany's foreign partners in areas of joint Länder-federal jurisdiction or with respect to such treaties in which Länder jurisdiction is affected in only a minor way. In this way, the Länder are consulted before a treaty is concluded, especially on matters in which they have unquestioned expertise and also because the domestic implementation of those treaties is frequently their responsibility.

For matters that are exclusively under Länder jurisdiction, primarily culture and education, the federal government must have Länder consent before a treaty is concluded with the foreign partner state, and the Länder representatives participate in formulating the German position.

The central institution in the operation of the Lindau Agreement is the Ständige Vertragskommission der Länder (Permanent Treaty Commission of the Länder). It meets monthly and consists of civil servants from the Länder representations to the federation in Berlin (one from each of the 16 representations). Their function is to communicate demands of the Länder concerning draft treaties to the federal government and to coordinate their recommendations both within and between the Länder (the function of coordination within the Länder is mostly performed by the cabinet offices, which then convey the results to the Missions).

In **Switzerland**, the federal Constitution allows the cantons to participate in the decision-making process of the federation: Article 45 of the federal Constitution regulates general participation, in particular legislation, while Article 55 specifically enshrines the participation of the cantons in foreign policy. According to the research:

“The federation is, therefore, obliged to attach particular attention to claims by cantons that their competences are affected. In the preparation of international negotiations, early involvement by the cantons is particularly important. Only in this way can the cantons participate effectively in foreign policy projects that affect their responsibilities or key interests.”

Reforms in 2013 led to greater requirements on the federal government to provide information to the Cantonal governments in relation to foreign policy issues. The reforms sought to achieve three things:

- To ensure that the federal level (Federal Council, Parliament and administration) has a comprehensive duty to provide information.
- To introduce a standard deadline of three months for the submission of cantonal comments on government proposals. This period is only to be shortened in cases of urgency justified in writing.
- To ensure cantonal statements on European policy projects concerning cantonal competences should be given more weight.

The government's ability to act in matters of European policy should not be disproportionately restricted and the effectiveness of the reforms has been slow to materialise.

### **Funding of common frameworks**

According to the **Canada** research paper, the most distinctive element of the federal-provincial economic development agreement relates to funding mechanisms to pursue policies. In the West of Canada, funding mechanisms consist of partnership agreements, direct agreements, and national agreements.

- partnership agreements often involve funding arrangements to address broad policy issues such as inner-city revitalization, strengthened innovation or sustainable economic development
- direct agreements allocate funds that support economic development and innovation initiatives in universities and other post-secondary academic institutions, research institutes, industry associations and other not-for-profit organizations
- national agreements govern several national programs that WD delivers such as the Economic Development Initiative, a \$3.2 million investment over five years to support business and economic development that encourages sustainable growth in Western Canada's Francophone communities

The research found that the Canadian provinces "expanded their policy autonomy while drawing extensively from federal funds".

In **Germany, Switzerland and Norway**, systems are in place to re-distribute funding across sub-state entities to meet need.

In **Germany** fiscal federalism helps to integrate policy and decision making ensuring wide variations in policy are contained and "not tolerated" within the system.

Historically a system of financial equalisation was in place which involved a transfer of funds predominantly from the rich west to the poor eastern Lander after re-unification. However, in 2016 a new agreement was reached between the federal government and the Lander on a post-2020 framework for fiscal relations. In return for a sizeable sum of €9.7 billion per year per Land extra ostensibly to "carry out" their obligations under the terms of the Basic Law, the Länder governments will in future see horizontal solidarity payments being redistributed on the basis of population size benefitting the larger Lander.

From 2020, the Lander will also be required to implement Germany's new "debt brake". This was introduced following agreement on a package of federal reforms in 2009. It is now enshrined in the Basic Law and was designed to prevent excessive borrowing by individual Länder.

**Norway** has a system of ensuring funding across the counties and municipalities through an incomes system whilst **Switzerland's** NFE seeks to ensure fiscal equalisation across the Cantons. The money is redistributed vertically from the Confederation to the cantons and horizontally among the cantons.

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