

**Finance and Constitution Committee visit to Brussels  
17-18 September 2018**

**Summary note of discussions**

<b>Monday 17 September</b>	<b>Tuesday 18 September</b>
UK Law Societies	Public/Private Sector organisations
Canada Mission to the EU	Non-Government organisations
DG AGRI	German Mission to EU
DG REGIO	Switzerland Mission to EU
EFTA Surveillance Agency	Norway Mission to EU
	German Lander Missions to the EU – Bavaria, Thuringia and Brandenburg

**Key themes arising during discussions**

A number of key themes arose in discussions throughout the visit which have been summarised below. The term “Common Frameworks” is not a term widely used in Brussels, the focus on this visit was therefore on learning about experiences of other types of agreements (such as between members states or within member states) which may then provide insights into the types of matters that future UK common frameworks should include.

Meaningful engagement

A common theme amongst all those we met with was the value of undertaking meaningful engagement between governments early on and often which then endures throughout the agreement and implementation process. This approach also helps to build relationships and trust.

By identifying early on who would be impacted by or would benefit from the agreement governments were able to ensure that both Government and stakeholder level were actively engaged throughout the process. Engaging early on with stakeholders such as the public, private and third sector was seen as leading to stronger agreements.

Another key theme was the value of positive engagement where partners are actively looking to reach an agreement (the value of opting in) and collaborate so that agreements focus on the best outcome for everyone involved whilst recognising that some compromises might be necessary.

Ownership

A number of benefits arising from meaningful engagement were identified including delivering a greater sense of ownership of the final agreement by all those who were party to its negotiation.

It was also highlighted that this provided greater transparency over the progress and nature of negotiations but also of the compromises that might be necessary to deliver

the agreement. As a result, the final agreement was well understood and those party to it were able to explain why particular approaches had been adopted.

### Flexibility and fixed mechanisms

A number of those we met with highlighted to us the value of having clear fixed formal mechanisms, throughout the negotiations and agreement process, which were well understood and recognised by all involved.

These structured formal mechanisms (often statutory) served to bring together state and sub state governments; and organisations to facilitate discussion about differing needs, provide updates, and seek views on emerging issues. Alongside these formal mechanisms were informal discussions, consultation and meetings providing for engagement, discussion and consensus building.

This dual approach also supported greater transparency (particularly of intergovernmental relations) and supported more effective implementation. From what we heard, in general, Parliaments (at National and sub state level) seek to influence at the EU level directly (such as by having an office in Brussels).

### Monitoring and Enforcement

A key theme that arose was that if meaningful engagement is undertaken early on and throughout the process then disputes are very unlikely (many of those we met with were surprised that disputes might even arise).

As was emphasised to us a well understood and clear monitoring and enforcement regime is important to ensure that the rights of citizens and others such as businesses are properly safeguarded by enabling them to make complaints where they consider an agreement hasn't been adhered to. The value of building a collaborative, proportionate and robust approach to monitoring was stressed as well as building on existing valued agencies as these approaches support trust and enable any implementation issues to be quickly remedied.

## **Monday 17 September**

### UK Law Societies

In a wide-ranging discussion, the following areas were discussed:

- The hierarchy of members states over sub states in EU decision taking which means it is they who are held accountable for compliance with agreements (and not sub states).
- The role of courts in arbitrating on disputes and the potential role of courts in Common frameworks.
- The role of dispute resolution – for example in Italy and Germany where there is a constitutional court.

- Value of having a single route for dispute resolution (such as the European Court of Justice rather than lots of different routes).
- The approach adopted by the different law societies across the UK in managing differences in views (strength in a single voice but also able to represent different views).
- European Parliamentary oversight of proposals which are provided to national and regional Parliaments (and their opinions are made available to the EU)- the difference arises in the weight given to the opinion
  - Some countries e.g. Germany may require Parliamentary debate at state level for some aspects of EU work;
  - The role of the Lisbon treaty in moving the European Parliament from a consultation role to now requiring agreement.
- The European Parliament is first port of call for external bodies as it is open and public.
- The importance of principles underpinning common frameworks works to provide a shared approach;
  - The challenges for those states where they have a substantial number of agreements – which increases their complexity to execute e.g. Switzerland where there is a move towards common principles.
- The role of a constitution setting out clear areas of responsibility for National Government which can help provide greater clarity more quickly in those areas of policy complexity (i.e. whether that policy areas is at National or substate level).
- The UK is moving from European to international law and that has consequences on access to information, ability influence and judicial structures.
- The challenges for scrutiny when intergovernmental decisions are taken in private.

### Mission of Canada to the EU

More detailed briefing on multilayer governance in Canada (which informed this discussion) is provided in comparative research by Professor Charles Conteh which is published separately to this summary note.

The discussion initially focused on free trade agreements concluded by Canada and in particular:

#### CETA

- In preparing for agreements on international trade (such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA)) the initial approach is to establish the ambition of the agreement and the likely 'landing zones' (those provinces/sectors most likely to benefit) before then seeking to achieve a balance given some provinces/territories and business sectors may benefit more than others.
- CETA was ambitious from the start, including services, goods, government procurement, and professional qualifications
- Provincial/ territorial governments were involved and consulted prior to negotiations being launched. The Chief Negotiator for Canada also undertook extensive engagement with civil society and business across Canada.

Involvement of provincial/territorial governments in discussions was also a request by the EU given their responsibility for implementation in subject areas under their jurisdiction.

- Interested provincial and territorial governments were present as observers during negotiations. Their presence was helpful in reaching concurrence within the delegation, moving the negotiations forward and facilitating final agreement and implementation. (Those provinces most affected had been present during the discussions and understood the reasons for the approach in the final agreement.)

#### Provincial or Territorial government involvement with respect to international trade agreements

- The extent of involvement by provincial and territorial governments with respect to international trade agreements varies with the agreement. Their involvement with respect to CETA was particularly extensive. Their involvement varies based on the coverage of the agreement and the sensitivity of implicated business sectors. Views are always sought, either through formal consultation processes, including those published in the Canada Gazette, and informal and ad hoc means. This approach is also used by Departments with civil society and business etc. to secure their views.
- Negotiators are aware of changes that may be needed to domestic laws and policies as negotiations are carried out. Before Canada ratifies or accedes to a treaty, it must implement its provisions. Implementing legislation for international trade agreements is normally required at the federal level but not at the provincial/territorial level. If provincial measures (e.g. policies) are required, there is some scope for minor policy variations to arise.
- Concluding international treaties is a federal power. However, Canada will not normally consent to be bound at international law in matters falling under provincial/ territorial jurisdiction without attaining their concurrence within the domestic system. See, for example, provisions in the Trade and Environment Chapter of the modernized Canada – Israel Free Trade Agreement (not yet in force) that indicate the Agreement only applies to provinces within their area of jurisdiction if Canada has provided Israel with a notification to that effect.

#### Disputes regarding division of powers

- Division of powers is set out in the constitution. There have been relatively few instances of disputes regarding division of powers (e.g. jurisdiction over the natural resources of the continental shelf). These disputes can be referred to the Supreme Court of Canada. Often political solutions are negotiated by the involved governments.

#### Funding for economic development

- Six Regional Development agencies target communities that can benefit from economic development with their geographic area.
- There is a range of funding provided by the federal government for economic development with few conditions attached. Provincial/ territorial governments also provide funding. There is collaboration in determining the disbursement of funding and the projects. Where a development agency covers more than one province or territory, they are all at the table and the projects supported usually encompass priorities for more than one province/territory.

## Directorate General Agriculture and Rural Development (DG AGRI) – European Commission

One of the key responsibilities of DG AGRI in the European Commission is in managing the operation of the Common Agricultural Policy (CAP). In meeting with members, the following was discussed:

### Flexibility for regions in a national context

- DG AGRI explained that already currently EU sets main objectives for the policy whereas Member States and regions are allowed to choose the actions best suited for their specific situation. The future EU policy will provide even more subsidiarity to the Member States as the policy is proposed to move from compliance based budgeting to result based budgeting.

### Hearing processes

- Any EU policy reforms are based on a hearing process, where particularly European Parliament, member States and general public (stakeholders) are given the opportunity to provide their inputs. In the specific CAP context it is often seen that farmers and environmentalists are considered being on opposite sides, and therefore it is important to get these parties talking together.
- DG AGRI referred to the civil dialogue groups, which meet 2-3 times a year, and feed into policy development and implementation. DG AGRI also referred to the Scottish Rural development programme monitoring committee where different stakeholders and the relevant administrations participate.

### Role of national parliaments in the EU level work

- In the EU context the national parliaments' role is quite limited and mainly indirect. In most Member State's the position on policy initiatives will have to be approved by the national Parliament prior negotiations at the EU level.

### Budget

- DG AGRI explained that EU proposes budget division by policy areas (MFF). For CAP, budget distribution is proposed at Member State level, and for the two pillars. Member States may transfer additional financing between pillars, and decide potential regional distributions.

### Institutional structure and rules for monitoring and control of the use of Funds

- DG AGRI emphasised that overall, international rules on auditing and financial management will have to be followed. At this moment, well-functioning monitoring and control structures for CAP implementation are in place in the member states as the error rate for CAP expenditure is at 2.4% as found by the European Court of Auditors. This is also the case in UK. Therefore, building on existing institutional structures and adapting them to the new reality would be a possible way forward that would ensure a smoother transition.

### Role of Scotland in the future trade agreements with EU

- When questioned as to whether Scotland could have a possibility to opt in-opt out on parts of a potential future trade agreement (which is understood to be

the case for CITA and certain Canadian territories) DG AGRI was quite sceptical that such an approach would be possible in the potential trade agreement negotiations observing that such regional differentiation would likely be a national affair to be solved internally in UK.

#### Directorate General Regional and Urban Policy (DG REGIO) – European Commission

This is the Commission department responsible for EU policy on regional and cities – commonly known as DG REGIO. A range of matters were discussed at the meeting focussing initially on the support provided by DG REGIO in implementing Commission regulations and directives before then moving to the audit functions (on which a slide show was provided and which has been provided separately).

Matters discussed included:

- Current functions in Scotland;
- The role of match funding;
- The extent to which members states may seek views from substate levels to inform policy approaches;
- It was acknowledged that as regulations can be complicated it can be challenging to implement them correctly when there is a high turnover of staff;
- Role of the DG REGIO is therefore to provide guidance and more intensive support where appropriate;
- Whilst there may be differences within members states as to the organisational set up/ level of responsibility and priorities, it is the members state who is accountable for implementing policy in accordance with regulations and directives;
- Different mechanisms may be used to inform implementation such as the Growth Programme Board which is the Programme Monitoring Committee in England for the 2014-2020 European Structural and Investment Funds growth programme. It comprises of a range of stakeholder interests - public and private. Other mechanisms included Partnership Boards to share experiences of policy implementation.

Audit Functions (please also see the separately provided slide show)

- Key component was the principle of shared management with a control framework.
- European-level regulation sets out what is audited and the rules.
- The members state is the key agent for management and control.
- A collaborative approach is adopted building on the relevant audit authority's working with the member state.
- There are intense contacts between the member state audit authority and DG REGIO audit teams.
- Clearly established role for audit authority (who look at the programme) and the DG REGIO audit who then consider the outcomes from the audit Authority. DG REGIO Audit can investigate programmes directly if substantive issues arise.
- Whilst it is for member states to implement programmes, it is the role of the European Commission to sign off expenditure from programmes informed by

audit reports. These reports equip the DG with the information to say money has been spent according to the rule of that programme.

- Parliamentary oversight is at the members state level and by the European Parliament with an annual budget discharge procedure.
- The more inclusive the discussions are (e.g. seeking views from third sector or business) the better the implementation and oversight is. In that regard the oversight of the Welsh Assembly of EU programmes was highlighted as being of particularly good quality.
- Two key issues
  - Proportionality – same approach to audit is taken irrespective of the programme size (may be unduly burdensome for smaller organisations or sums of money);
  - Impact of gold plating – can be challenging when members states go above and beyond the terms of the original programme or regulation.

### EFTA Surveillance Agency

The European Free Trade Association (EFTA) Surveillance Agency (ESA) monitors compliance with the European Economic Area (EEA) rules in Iceland, Liechtenstein and Norway, enabling those states to participate in the internal market of the European Union. These states were referred to in the discussion as the EFTA states, or more accurately as the EEA-EFTA States (to reflect the fact that, while Switzerland is an EFTA state, it is not a party to the EEA Agreement and does not participate in the EEA).

The ESA is independent of the EEA-EFTA states and its role is to safeguard the rights of individuals and undertakings under the EEA Agreement, ensuring free movement, fair competition and control of state aid. The ESA's role of monitoring and enforcement mirrors that of the European Commission within the EU.

The EFTA Court fulfils the judicial function within the EFTA system, interpreting the Agreement on the European Economic Area with regard to the EFTA States party to the Agreement.

In a wide-ranging discussion, the following matters were highlighted:

#### Overview of EEA and EFTA

- The EEA has 31 members: the 28 EU Member States and the 3 EEA-EFTA states. The Commission enforces the EU and EEA rules in respect of the EU Member States, and the ESA enforces the EEA rules in respect of the EEA-EFTA states.
- While EFTA member states are subject to EEA rules in the same way as EU Member states are subject to EU rules, EEA law does not have supremacy in quite the same way as EU law has supremacy for its own Member states.
- A role for EFTA is to establish parallel systems for some things e.g. vet checks to facilitate ease of access between EEA-EFTA and EEA-EU. Its aim is to ensure a level playing field between those within the EU and those within EEA-EFTA.
- There are some areas which fall outside EEA competence, such as Agriculture and, in addition, there is also flexibility to allow some differences in approach

between EFTA states e.g. Norway has higher tariffs for the import of cheese. It was noted that there were no customs unions between EEA-EFTA and the EU.

- Any derogation from the EEA approach by an EFTA state must be based upon a clear objective reason (political perspective not enough - needs to be objectively justified). A derogation can apply to a sub state if it is reflected in the relevant agreement.
- Trade agreements with EFTA countries are negotiated so as to focus on issues of particular importance to the EFTA country(ies) concerned, e.g. fisheries.
- It was observed that the ad hoc approach Switzerland had adopted to agreements led to complexity in updated legislation.
- The ESA has 75 staff compared with the European Commission which has 32,000 so, while ESA has its own experts, where necessary it draws on the technical expertise of the Commission.

#### EEA and EFTA policy development

- During EU policy development:
  - EFTA states have a consultation role (but ESA has no role). EFTA countries can give technical input into EU policy development but to some extent this can depend upon the level of impact of that policy in each EFTA country and the level of resources that country has e.g. some have large civil service and can contribute to EU policy development. For example, Norway is very active on free movement of labour whilst Liechtenstein is active in areas of Financial services.
  - Bring EU legislation into EEA and then some tweaks.
- Main issue is if EFTA countries miss that opportunity to influence the EEA policy development. Once regulations in place there is a Joint Committee of EU and EFTA states to consider them – where EFTA speaks with one voice. That Committee can agree to adopt some aspects of the regulations to take account of specific impacts such as in relation to geographic remoteness.

#### Compliance and Justice

- ESA monitors compliance and responds to complaints from individuals – sometimes those complaints can signal something more structural is wrong.
- ESA give views first informally, then by a letter of formal notice, and finally by issuing a reasoned opinion. Following the reasoned opinion there is 2 months for rectification by the EFTA member country before ESA can then, if necessary, go to the EFTA Court.
- It was the EEA Agreement that foresaw that a surveillance agency was needed so the three EFTA countries agreed a surveillance and court agreement which set up ESA and the EFTA Court. It requires each state to abide by its rulings and EFTA countries are accountable to the EFTA Court.
- It was explained that EFTA internal market rules and surveillance rules were necessary because, in part, they provide enforceable rights for individuals with binding effects on public bodies. This is a different approach to World Trade Organisation rules for Free Trade Agreements (FTA) where the system encourages countries to settle their differences through consultation.
- ESA can take up complaints on behalf of individuals and companies. The position adopted by ESA can also e.g. be invoked by such complainants before national courts.



- ESA can prioritise enforcement action to areas where more relevant. Who causes the issue dictates which country is responsible for rectifying that issue.
- EFTA is self-policing and its court has a judge from each EEA-EFTA country. The EFTA Court operates in English.

#### Parliamentary oversight

- EEA-EFTA works mainly through intergovernmental collaboration with each Country's Parliament scrutinising, should they wish to, their country's role.
- ESA is not accountable to any national Parliament in part because it has no legislative function.
- Each country agrees its own budget but also has a formal role in setting ESA's budget.
- Each National Parliament ratified the establishment of ESA.
- Micro states e.g. Monaco are from time to time looking at joining EEA-EFTA.
- In considering the UK Common frameworks it was observed that if enforceable rights for companies and individuals are wanted then a surveillance agency might be needed to monitor how these rights are guaranteed by State(s), although there are different ways of doing it depending upon outcomes wanted.
- It was also noted that a degree of surveillance may be inevitable if the EU wanted that as part of any future trading arrangement.

## Tuesday 18 September

### Public and Private Sector organisations meeting

The Committee met with representatives from the Convention of Scottish Local Authorities, EPPA, British Chambers of Commerce, and the East of England European Partnership to discuss their experiences of engaging and influencing at the EU level:

#### Approaches to influencing:

- Pull strategy where you seek to pull in information such as through public consultations, stakeholders meetings or workshops. Use those events to seek views.
- Push strategy which is a more informal approach whereby members states push policy ideas.
- It is also not clear who would speak for those in England in future common framework discussions given the UK Government represents the UK view. Currently any engagement that takes place can be informal and adhoc and subject to who those at English Local Government level knowing people at UK Government or Parliament level.
- There is a need for a more structured approach to engagement going forward with clearer more accountable lines.
- The approach in the s EU is changing with the internal market already being rowed back to give member states more flexibility. This has negative implications for good policy outcomes as member states focus on what they each want from the deal rather than what will deliver a good overall outcome.

- Systems that provide a wide degree of variation are not desirable – potential to create a barrier to economic relations.
- The European Parliament is the backstop for decision taking. Crucially it is the Commission which takes the policy initiative that is the key policy influencer.
- In terms of a continued UK-EU27 trade, economic, security and political relationships all EU trade and association agreements have mechanism for ministerial, civil servant, parliamentary and stakeholder dialogue. It was suggested that the UK legislatures (UK and Devolved) could be part of a interparliamentary committee with MEPs similar to that which exists with other major EU trade and association agreements. In the case of local government work is already advanced to set up a Joint Committee between UK authorities and the EU Committee of the Regions. The UK has yet to confirm its acceptance to this EU proposal.

#### Research and Technical knowledge

- Role of good research and technical knowledge was emphasised and is where policy development should begin so that a wide range of approaches can be considered. Then it is used to inform politicians.
- In that regard the loss of technical committees – specialists – is the biggest loss from the UK leaving the EU as UK specialists will no longer have informal/formal meetings with members states as part of that process. Many sectors had benefited from those relationships and a key focus for UK and EU specialists in the future was how to retain those relationships.
- The Institute for Government highlights that a formal structure for ongoing stakeholder engagement could be necessary in negotiating trade deals with the EU27 and beyond, just as they exist in other large economies (USA, Australia, Canada, etc.).
- For local government this is particularly relevant: COSLA assessment of the 153 EU returned powers shows that no less than 64 out of these powers concern local Government.

#### Intergovernmental working and agencies

- Whatever develops has to take account of political reality and as yet the final areas (and competence) for UK common frameworks have not been agreed.
- If there is no legal underpinning to framework areas then there is a risk of instability.
- In Italy (Conference State-Regions and Local Governments)– is a statutory weekly intergovernmental body that enables all aspects of shared powers and EU/International matters to be agreed – its frequency allows a level of trust and dialogue on those areas in contrast with other areas of Italian politics.
- The Swedish “Remiss” consultation procedure /Danish Government Committees and the Parliamentary hearing system provides a two-way exchange and is how government is fed views by local government and many other key public, private and voluntary stakeholders.
- Partnership Council in Wales – is a formal way for Local Government and Welsh Government to exchange views without curtailing Welsh Government powers.

- Creativity is a key tool in influencing – being able to provide solutions that everyone can coalesce round – decisions can then come about through discussions.
- In order to avoid potential fracturing with local differences in frameworks– the new UK-wide bodies that will deal with some of the Common Frameworks should be strong and have ownership from UK, Devolved and Local governments so that that everyone agrees has a legitimate right to decide – everyone has an input – and it takes into account differences. Concern was expressed that in relation to State Aid the UK Government would not be developing, with the Devolved and Local governments, a new regulatory body (instead using the existing UK body).
- A statutory right to consult would support framework development.
- Some suggested that the JMC structure may provide a good basis for working in the UK but that it should perhaps be supported by a joint ministerial secretariat office. Its meetings should be able to be convened by any partner.
- The UK Government has already issued a statement to Parliament so that the current consultative roles currently exercised by the Committee of the Regions are replicated in the UK to deal with EU returned powers concerning local government. However, it has yet to be launched and similar arrangements should exist in Scotland as well.

#### Dispute resolution

- Courts are a costly and time-consuming approach to dispute resolution and if used there is a risk it can destabilise the agreement making process. As the European Union (Withdrawal) Act will make EU returned powers shared powers there will be a step change in the uniqueness of the Scottish Devolution model. Members heard that international experience shows that when central and devolved/autonomous/federal governments share powers political differences end up in high level of litigation in the national Supreme or Constitutional courts. This may be an additional risk for the future evolution of the UK as a Union.
- In the Austrian model there is a Conference of regional governors (Länderhauptleutekonferenz) which makes sure that no national policy that has impact on regions is decided by only one tier of government. It meets regularly which is essential in order to develop relationships.
- Similarly, as a recent UK Parliament report on interparliamentary dialogue highlights it is necessary to develop more stable mechanism of interparliamentary cooperation between the Devolved and UK parliaments – both to ensure consistency in their respective legislative and scrutiny work.
- It takes will to share the powers – risk is if partners only meet when there are disputes then they can break down – it is important to establish and reinforce those relationships.
- Countries have stronger bargaining power if they are able to band with their sub states/regions in presenting their views.
- Multiple approaches to policy make trade more difficult – it is better if there is a common approach albeit that is easier for some sectors than others.

#### German Permanent Representation to the EU meeting

More detailed briefing on multilayer governance in Germany (which informed this discussion) is provided in comparative research by Dr Carolyn Rowe which is published separately to this summary note.

The discussions began with an overview of the legislative and governance of Germany. Matters raised in discussion included:

- Legislation sets out clearly the role and responsibilities of Federal and Lander governments.
- German Lander may have a role in Federal legislation process but otherwise are kept informed. There is a law which sets out co-operation between Federal Government and Lander.
- During negotiations to define German position – Lander views are always included. Hearings (required by law in some instances) are held with by Lander/NGOs and at national level and then with other ministries.
- One Lander can act as the voice of all Lander in a policy area at both National and EU Level.
- Disputes happen very rarely but ultimately they can be resolved at the constitutional court. However, as the Lander are embedded in process disagreement is less likely.
- Recently a new process for agreeing funding to Lander was rolled out.
- First pillar of spending is direct payment to farmers but Lander can define any second pillar measures which are co-financed by the EU and the Lander.
- Education, Culture and media are devolved responsibilities to Lander so the Lander would send the representative to Brussels (rather than a Federal Minister) – there is a Council of Cultural Ministers and the head of that is the person who represents Germany in Brussels.
- The 16 Lander are in charge of implementation of a large proportion of EU regulations and directives so there are 16 systems of administration and implementation agencies along with extensive working parties and federation groups to co-ordinate their systems – all of which supports coherence.
- Alongside this there is a constant review process and a mutual dependence between Federation and Lander – intensive relationships on all levels of Government;
- Bundesrat also provides a voice for Lander at National level. It has a vote on some legislation therefore it is important that the Federal Government includes them within its development of policy.
- The regulatory bodies are separate from each other but there are also some federal agencies responsible for implementation.

#### Mission of Switzerland to the EU meeting

More detailed briefing on multilayer governance in Switzerland (which informed this discussion) is provided in comparative research by Dr Florian Keller, Dr Christophe Ebnother and Dominique Ursprung published separately to this summary note.

#### Approach of Switzerland

- Emphasis on pragmatic solution.

- Not in the EEA but are in Schengen. Switzerland tries to reach common solutions with the EU.
- Swiss society is a very consensus driven political system.
- Not in the customs union but have regulatory alignment to enable free trade with the EU.
- Every bill can be voted on – voters are sovereign rather than the Parliament therefore Government needs to have stakeholders on board.
- Apply the acquis to avoid market hurdles – there is a test of equivalence and if necessary legislative changes equivalent to new EU legislation are made. The Parliament legislates in a friendly EU manner.
- There remains tension between sovereignty rights and market access.

#### Relationship between the Federal State and the cantons

- Federal government has to inform and consult with the cantons when negotiating international treaties; Cantons are embedded in the process. The Federal government drafts a mandate for negotiating international treaties with the cantons involved in the process from the start but on a consultative basis – Cantons do not have a veto.
- Foreign policy is a competence of the federal state which wasn't an issue until Switzerland joined the common market - most of the EU competences are within the competence of the cantons. Cantons wouldn't support Schengen if their competencies were changed so membership of Schengen remained within their competencies. There is a formal right (set out in Article 55 of the Federal constitution) for the cantons to be consulted on foreign policy with direct impact on the cantons competences as well as basic principles for the participation of cantons (Federal law on the participation of cantons in external affairs).
- The Federal government consults with the conference of cantonal governments which meets 4 times a year – decisions taken by 18 out of 26 (qualified majority)
- Cantons have an interest in agreeing a single common position as that is therefore a stronger position in negotiating with the Federal government.
- Each of the ministries also have their own Cantonal Conferences to consult eg finance and health.

#### Disputes

- Disputes are resolved through negotiation.
- The Swiss authorities carry out the monitoring role which the Commission does for the EU – there is an indirect role for the ECJ – Swiss courts will apply the same law as the ECJ .
- Voters have a veto right on every treaty (eg on company taxation) as well as legislation. If 50,000 don't agree (within 3 months) it goes to a public vote – EU weapons directive likely to go to such a vote.

#### Mission of Norway to the EU meeting

More detailed briefing on multilayer governance in Norway (which informed this discussion) is provided in comparative research by Professor Fossum and Jan Edøy published separately to this summary note.

### National and regional relationships

- All legislation is adopted on national level, including adoption of EU legislation.
- The legal framework for local government is laid down by the Norwegian Parliament through legislation and decisions, and Parliament decides on the division of duties between the levels of local government authorities. In addition, the government can impose new duties on municipalities and counties by legislation or Parliamentary decisions.
- The legislative framework for the local government sector is stipulated in the Local Government Act. The purpose of this legislation is to facilitate functional municipality and county democracy, with efficient and effective management of municipality and county duties with a view to sustainable development.
- Regions/ municipalities have a degree of freedom in respect of which policies to prioritise and adopt local budgets. A rough estimate is that EU legislation has implications for 60-70% of decisions on regional/local level.

### Relationships between EFTA states

- EFTA is a traditional international cooperation; decisions can only be made through consensus. This applies to the free trade negotiations (EFTA 4) and the EEA Agreement (EFTA 3 + EU).
- Normally EFTA states can find solutions between them but one EFTA state cannot force another to accept a solution – it has to be agreed by all.
- If there is a disagreement between member states of EFTA it may take many years to be solved.
- There is a solid process for involvement of Parliament which is consulted. In addition, the Norwegian Parliament has an office in Brussels in order to influence policy as early as possible – that is, before legislation is incorporated into the EEA Agreement.
- Norwegian Parliament follows EU developments quite closely and shares info with Government and Parliamentarians. Politicians (Government and Parliament) also meet with European Parliament representatives through informal meetings.
- Trade policy – EFTA states will try to negotiate free trade agreements with the same countries as the EU.
- In relation to EFTA approaches, Norway has to consult the Norwegian Parliament's European Committee and the Parliament has to ratify agreements.

### Engagement across Norway

- There are a range of well-developed consultation systems and views are listened to:
  - Regular meetings between the Norwegian equivalent of COSLA and ministries to discuss topics;
  - Role of informal contacts – Norwegian cities are active in Brussels
  - Regions interact with national government through direct consultations, public consultations, informal meeting etc).
- Agreements are provided at an early stage for consideration with concrete proposals.
- Requires a level of homogeneity in the country to minimise disputes.

### Funding and compliance

- The accounting and budgeting processes of municipalities and counties are subject to extensive control by the central authorities. The state's administration of the local government sector aims to balance national interests and the principle of local democracy. This involves giving municipalities and counties scope to prioritise and adapt services in response to local conditions and needs. The Ministry of Local Government and Modernisation is responsible for implementing policy in the local government sector. The Ministry is also the owner of KBN.
- The Local Government Act stipulates that local government authorities are not permitted to declare themselves insolvent. In addition, the legislation gives central government the authority to make changes to a local government authority's budget and financial plan in order to ensure that its activities are on a financially sound basis within a reasonable time.
- ESA undertakes very detailed monitoring and there is no way to deviate from agreed policy approach. ESA sets its own priorities for scrutiny without reference to its members states.
- National level has funded regional participation in European cross border and regional co-operation through Interreg (European Territorial Co-operation)
- National level has funded participation in Horizon Europe. Municipal level may apply on calls on identical terms as EU municipalities).
- Regions and Cities may finance their own participation in other EU-programmes (f.ex. EU Urban Agenda).

#### Meeting with the representations to the EU from Bavaria, Thuringia and Brandenburg

More detailed briefing on multilayer governance in Germany (which informed this discussion) is provided in comparative research by Dr Carolyn Rowe published separately to this summary note.

In a wide-ranging discussion, the following matters were highlighted:

#### The role of Lander

- Separation of competencies between Lander and Federal State arose because, post war, regions states created first then the Federal Government;
- Education and Culture are devolved to Lander - Lander allowed to participate in meetings of the Council of Ministers and do so in devolved areas (for example the Bavaria is the lead on the Council group on media).
- Lander have staff in ministries.
- To be heard at EU level Lander need to have one voice – as a result each Lander recognises that they sometimes lose part of deal in order to maintain that single voice – the final position is set out in a detailed document.
- Once the Lander reach a consensus this tends to hold – emphasis on compromise and reaching an agreement – public have faith in the process due to its transparency.
- The approach taken of adding in new East German Lander did not help the system and it is still a problem. There was no transition period and it was just rolled out overnight.

- The EU's approach assumes that member states are centralised – which is not good a Federal system as it doesn't provide enough time for the Lander to engage and decide.
- There are different working groups at the council level - the Lander are represented where they have competence.
- Lander can influence Federal Government approach through the Bundesrat and through regional representation in Brussels. They can build alliances and networks without contradicting the federal government. Lander are organised in working groups on different policy areas in Brussels e.g, health.
- There is also the Conference of the prime ministers of each of the lander which meets with the federal government and which is very important in influencing policy development at EU level – Lander can take initiative in the policy development process.
- More generally regions within countries can have impact for example – in relation to the Cohesion policy - 180 regions produced an opinion for consideration by the EC.

#### Bundesrat

- The Bundesrat takes the lead when it comes to the competencies of the Lander and to provide collaboration between the Lander, as well as developing good working relationships so that they reach the same view.
- The number of members from each Lander in the Bundesrat is proportionate to each Lander's population. There has been a review of funding arrangements with equalisation of funding – there was a massive change last year when the Federal Government took over responsibility of funding mechanism so all Lander have a similar level of living.
- In some areas where the Federal Government wants to legislate the Bundesrat will explain that that area is for the Lander which have a different view.
- Approach to decision taking wasn't meant to be efficient but rather the focus is on decentralisation. Reform in 2005 simplified the process by enabling some Federal legislation to be approved without Bundesrat agreement.

#### Courts and Parliaments

- The Constitutional Court is arbiter of disputes.
- The Federal Parliament has representatives in Brussels and Parliament has to be informed about activities in Europe.
- In relation to EU legislation every Lander Parliament has responsibility for executing it and ensuring compliance even though it is the member state which is held responsible.
- There is a statutory requirement for Lander Parliaments to be notified of activity in Brussels.