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**Regional Participation in EU Affairs:**  
**Lessons for Scotland from Austria, Germany & Spain.**

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## **INTRODUCTION**

A new dawn is breaking in Scotland - a dawn that not only will herald the birth of the new Scottish Parliament, but will fundamentally change Scotland's relations with Europe. These relations will bring new ways of interacting, new challenges and new opportunities at all levels of the political spectrum. By meeting these yardsticks for political change, Scotland has the potential to become an important player on the European playing field both in her own right, as well as through her role within the UK Member State. What then are the pre-requisites for building the political and administrative machinery necessary for influencing Scotland's new role within the structures of Europe, which is itself presently undergoing significant and exciting changes in its political and economic outlook?

This paper will consider (1) how other regional systems of government within three EU Member States have met these yardsticks for political change in their relations with Europe, and (2) the lessons that Scotland can learn from their experiences. The Austrian, German and Spanish systems will each serve as examples of regional representation at the European level.

Firstly, the paper will begin by examining the role the regions in Austria, Germany and Spain have played in EU matters in terms of their constitutional positions and relations with their respective States; their ability to influence and implement European legislation through various mechanisms of co-ordination; and their relationships with EU institutions. These Member States have been chosen as their internal structures in relation to regions have elements that are most comparable to that of the post-devolution United Kingdom. Comparisons will then be made of these examples to determine the appropriate structures and mechanisms Scotland could implement to ensure that her interests are properly represented in Europe.

Before beginning, it is worth just commenting on the use of the word 'region'. The term 'region' or 'regional' is generally used to speak about entities within member states that have some level of autonomy or administrative responsibility. What is designated by this label is broad, encompassing the largely artificial and administrative, such as Birmingham and West-Midlands, through to the 'accident-of-history' region that has most or all of the aspects of a nation without being an independent state. The use of the term 'region' in this paper is to convey a technical meaning recognised within the EU and is not intended to make any inference about Scotland's current or future standing.

Scotland is, however, towards the stateless nation end of the spectrum. Having a distinct history, culture, language, legal system, education system and even football team, it is very much more of a cohesive unit than most sub-member state entities within the EU. However, as this paper will discuss, it is not entirely unique, sharing similarities with other significantly autonomous entities, such as the Länder in Germany and Austria and the Comunidades Autonomas in Spain.

## **SECTION ONE: REGIONAL REPRESENTATION IN EUROPEAN MATTERS**

### ***1.1. Constitutional Powers of the Regions***

Regional involvement in European affairs depends in many respects on the domestic constitutional position of the regions and the kind of relationship they have with the central state. Within the EU member states of Austria, Germany and Spain, the constitutional status and powers of their regional tier of government are guaranteed and protected by their respective written constitutions. However, the nature and extent of their powers vary.

Both the Austrian Federal Constitution and the German Basic Law provide for a federal system of government with decentralisation of power to their constituent states (Länder), all enjoying sovereign and equal rights. In contrast, the Spanish Constitution of 1978 sets out an asymmetrical system of regionalised government in which power is shared between the central state and the seventeen Autonomous Communities. Spain differs from Austria and Germany for the simple reason that it is not federal. Unlike the equal status enjoyed by the Austrian and German Länder, the Spanish regions each have their own specific set of competencies. This is further complicated by the fact that the process of devolving power away from the central state to Spain's regions is still ongoing. Not only do powers, therefore, vary between the regions, but they also differ even within the same region over periods of time. The evolving nature of the system of regional government in Spain means that the distribution of power in Spain lacks clarity and is not as clear-cut as it is in Austria and Germany<sup>1</sup>.

Under the division of powers between the central state level and the level of the regions, certain important matters remain the exclusive preserve of the state (foreign affairs, defence and monetary affairs) while others are either shared with the regions (regional policy in Austria, environmental protection in Spain, public health, agriculture and fisheries in Germany) or are classified as 'framework' (nature conservation, regional planning, etc. in Germany)<sup>2</sup>. It is usually the case in Austria and Germany that where there is no federal competence specified in their written constitutions, then the Länder states have legislative authority. However, dividing their respective powers in such a way limits the number of areas in which the Länder states can legislate freely from the central state<sup>3</sup>. Nevertheless the exclusive competencies of the German Länder include some significant issues, such as broadcasting, education, police and public order, environmental protection, research, and vocational training. These extend far beyond those of the Austrian Länder, where with less powers than their German counterparts they are mainly confined to legislating in the fields of regional economic development policy and nature protection.

In a similar vein to the Austrian and German Länder, the 'historic regions' of Catalonia, Andalusia, Galicia and the Basque Country enjoy a number of powers and exclusive competencies. For instance, the Catalan statute of Autonomy specifies that Catalonia has exclusive responsibility for areas such as culture, transport within Catalonia, fisheries, and agriculture and even to maintain its own police force. Similar exclusive powers are laid down in the statutes of Autonomy for the other three regional Communities; although the Basque Country enjoys the further right to raise its own taxes. These regional powers, however, are qualified by the Spanish Constitution granting the central state legislative powers to establish general principles in a range of specific areas (e.g. environment, transport, employment, economic planning, agriculture, health, education, etc.) with the autonomous governments exercising the

power to develop legislation within these frameworks. This is to ensure that both the central and autonomous governments do not concurrently hold jurisdiction over the same issue (Heywood, 1995; Morata, 1995).

Membership of the European Union challenges this domestic distribution of powers between the centre and the regions in Austria, Germany and Spain in several ways. Firstly, the deepening of the process of European integration, especially since the Maastricht and Amsterdam treaty reforms of 1992 and 1997, has led to an expansion in the competencies of the EU into areas of exclusive regional power. Secondly, EU incursions into the responsibilities of the regions limits the capacity of the regions to legislate in their own domains, even more so since they are obliged to implement and apply European legislation in these areas. Lastly, despite the fact that decisions taken within the framework of the EU are now an integral part of domestic policy, they still essentially remain the prerogative of the central state under its foreign policy domain (although see the recent changes to this circumstance in Germany below).

Since it is the states themselves that are members of the EU and are signatories of the various treaties rather than the regions, it is therefore the central government that represents the whole state in its dealings with the EU institutions. The regional level of government could therefore find itself in a position where it is bound by European legislation that it has had little or no opportunity to influence.

To safeguard their ability to contribute to the EU decision-making process, the regions have sought constitutional guarantees from the central state level for their right to participate in decisions on EU matters whenever their exclusive powers or interests are affected. Indeed, the Austrian Länder made their agreement to joining the EU in January 1995 incumbent on their participatory role in EU affairs being given legal status. The extent of these legal provisions varies. Germany with its Länder states has been a member of the EU from its beginnings as the European Economic Community in 1957. Both Spain and Austria, therefore, have the advantage of learning from the experience of the German Länder and the impact EU membership has had on Germany's domestic federalism.

In their constitutional amendments of 1992, both Germany and Austria strengthened the legal status of their Länder in EU matters (Jeffrey, 1997; Morass, 1997). The involvement of Germany's sixteen Länder in EU affairs is explicitly provided for in a new Article 23 inserted into the Basic Law. Article 23 enables the Länder to participate in the EU process through the Bundesrat, the upper chamber of the German federal parliament in which the Länder governments are represented, insofar as the latter would have to be 'involved in a corresponding internal measure, or insofar as the Länder would be internally responsible'.

The position of the Länder in EU affairs is reinforced by the Federal Government's obligation to keep the Bundesrat fully informed and to consult it during the formulation process of the Government's own European policy. However, these consultation rights depend on the policy field concerned. For instance, where the legislative or administrative competencies of the Länder are affected, the Bundesrat's view is 'decisive' and binding, while in those areas of exclusive competence to the central state, the Bundesrat's views need only be taken into account by the federal government. Where an EU issue affects shared powers, the federal government can only deviate from the Bundesrat's opinion for reasons of relevant foreign or security policy considerations.

As in Germany, the Federal Government of Austria must inform the Austrian Länder immediately

and in a comprehensive manner about all EU proposals that may touch on their competencies or affect their interests. Despite the weak position of the Austrian Bundesrat in comparison to the central role played by the German Bundesrat in representing the interests of its regional states in the EU policy process at the national level, the Constitution provides the Austrian Länder with the right to give a 'binding' opinion to the Federal Government on any EU proposal that affects their interests. In practice, the Austrian Länder have limited their opinions to those EU proposals that directly impinge on their own legislative or administrative competencies. Thirty opinions have so far been adopted and in most cases the Federal Government has made a serious attempt to take them into account. This may be due to the generalised nature of such opinions. In some instances the Länder opinions were identical to the position of the Government, in other cases the pressure from the Länder was so strong that the Government decided to adopt the Länder position (Morass, 1997; *ibid.*, 1996).

A far more extensive constitutional power guaranteed to the Austrian and German Länder concerns the right of a regional minister to represent formally Austria or Germany as a whole in the EU Council of Ministers whenever their exclusive competencies are touched on substantially. This is reinforced by Article 146 of the EC Treaty of Rome as amended by the Maastricht Treaty of 1992 which enables Member States to delegate their vote in the Council to a ministerial representative of a sub-national tier of government. Subsequently, Austrian and German regional ministers nominated by their upper chambers (i.e. the Bundesrat) can now chair some of the negotiations in the Council of Ministers and lead their respective national delegations.

However, several factors are likely to restrict the applicability of this power. In the first instance, the actual scope of the legislative powers of the Länder is limited. This is particularly the case in Austria where regional representatives have so far only represented Austria at one informal Council meeting of the Ministers of Regional Planning. In Germany, the constitutional principle of *Bundestreue* (federal comity) could, in theory, limit the regional position since it requires the Länder to be loyal to the Federal line when negotiating abroad.

Spain's lack of constitutional arrangements for dealing with EU issues ensures that the Spanish regions have limited scope for action in EU matters. The constitutional position of the Autonomous Communities is, however, still fluid and the upper chamber of the Spanish bicameral parliament, the Senate, is still too weak for any adequate representation of regional interests at the national level, or even at the EU level. Furthermore, the Autonomous Communities are not formally incorporated into relations between the Spanish State and the EU in direct contrast to the Austrian and German Länder. It has so far been left to each of the regions themselves to regulate their participation through their own Statutes of Autonomy, which establish the right of the Autonomous Communities to be informed of international treaty and agreement negotiations. However, Spain's regional ministers do attend regular meetings with their central government counterparts to discuss EU issues. This enables them to feed the regional viewpoint on European matters into the Spanish policy-making process. Additionally, they can also present their views via the Representative of the Regions in the Spanish Permanent Representation to the EU in Brussels.

## ***1.2. Ability to influence European Legislation.***

To overcome the rigidities established by the constitutional provisions securing the position of sub-national governments in European matters, administrative agreements between the national and regional levels of government set out the practicalities of how their various arrangements for dealing with EU issues will work. Through such agreements a vast array of informal and formal mechanisms of co-ordination have been devised at each of the regional, national and European levels which provide the regions with far greater opportunities to participate in and influence the national government's policy on Europe, than written constitutions. The involvement of the Austrian and German Länder and the Spanish regions in EU affairs will be examined in relation to their participation at the above three levels.

### **Participation at the regional level**

#### *Ministries of the regional governments*

Each of the regional governments in Austria, Germany and Spain play a crucial role in developing the regional position on European legislation and in ensuring that this position is taken into account at both the national and European levels of decision-making. The key to performing such a role lies in their ability to co-ordinate the various regional interests and views. European policy co-ordination units or sections have, therefore, been created in almost all of the regional governments' ministries. These units have responsibility for examining all relevant European legislation in their particular policy field. Overall responsibility for the development and management of European policy is usually located in a separate, often central, department for European affairs. Such a department also performs important co-ordinating tasks in terms of relations between the EU, the national government, the regional government and the regional parliament. For instance, within the German states of Hessen and Lower Saxony, European matters are co-ordinated through separate EU departments attached to their Ministries for Justice and European Affairs. In the state of North Rhine-Westphalia, EU affairs were, until June 1998, handled within the Ministry for Federal and European affairs. The EU department is now incorporated into the office of the Minister-President.

Substantial scrutiny of EU issues is carried out on a subject-specific basis by the various sectoral departments of regional administrations. In Hessen the Ministry of Trade deals *inter alia* with structural funds and community initiatives while the Ministry of Social Affairs looks after social fund matters, and the Ministry of Finance is in charge of EU matters such as the harmonisation of VAT. Many of these departments are also in charge of the implementation of EU legislation by their region.

The scrutiny process within both the German and Austrian Land governments is further aided by the use of EU policy experts. These are very often civil servants, who have been employed to deal with EU affairs exclusively, as EU policy advisors or as EU policy co-ordinators for a particular Land government in its individual Ministries. Their trained knowledge in subject-specific policy areas is exceedingly useful for understanding and identifying the implications of European legislative proposals for their particular regions. It is important for the effective representation of the interests of the regions that the regional governments can, therefore, respond to EU issues efficiently, especially within their negotiations with the national government.

Since many EU proposals transcend different ministerial departments, meetings are held on a weekly basis to reach a co-ordinated view. A simple recommendation is then made to the Land Cabinet and once agreed, the Länder representatives therefore have a negotiating mandate for the Bundesrat.

### Regional Parliaments

Regional parliamentary assemblies have an important role to play in the scrutiny of European legislation, even more so since many EU issues need to be administered and implemented by them at the regional level. As democratically elected bodies operating at the level closest to the electorate, their participation in the EU policy process occurs mainly by holding the executive accountable for its actions in EU policy fields. However, the extent to which regional parliaments are involved in the scrutiny of EU issues depends on their respective Land constitutions. The tendency in the past for member state governments to treat European issues as matters of foreign policy restricted the amount of influence and control regional parliaments could exert *vis-à-vis* their executives. Although these assemblies have devised a number of controlling mechanisms (e.g. oral and written questions, debates, hearings, confidence votes, etc.), the role they play is still marginal compared to that played by regional governments within the EU process.

Since regional parliaments are dealing with increasing European legislation concerning the interests of their particular regions, they have adapted and strengthened their internal parliamentary procedures. This enables them to have significant input into the EU process before decisions are reached at the regional, national and European levels (Straub & Hrbek, 1998; Algeri & Schmuck, 1992). These procedural changes, arising from resolutions passed by the regional parliaments and incorporated into their own parliamentary rules of procedure, or from agreements between the regional government and parliament, have been protected within many of the Constitutions of the Länder and the Autonomous Communities.

For instance, while many of the Austrian and German Landtage have established separate EU affairs committees, other parliaments have chosen to use their own permanent specialist committees for scrutiny and control of European legislation. Some examples of this are the Austrian Land of Kärnten, and the German Länder of Baden-Württemberg and Lower Saxony. A similar situation persists in Spain, whereby seven of the regional parliaments have their own EU Affairs committees, including Catalonia and the Basque Country, whilst the remainder (e.g. Andalusia and Galicia) deal with European matters through other parliamentary committees.

Regional parliaments in Austria, Germany and Spain have the right to be informed by their regional governments on EU proposals as well as the right to put forward opinions and adopt resolutions on EU issues. These rights are more extensive in Austria, where the Land governments must inform the Landtage, at the earliest possible date, about every EU proposal affecting each of the Länder's own areas of influence, and which are of fundamental importance. The position of the Austrian Landtage is strengthened further by their ability to issue Land Ministers with binding mandates whenever the legislative competencies of the Länder are at stake. Here, governments can only deviate from opinions issued by the Landtage for compelling foreign and integration policy reasons. The government must advise the Landtag of these reasons as soon as possible.

Since 1989, the German Land government of Baden-Württemberg has tried to keep its Landtag informed on a regular basis about all EU proposals of political importance. Although it provides the Landtag with the opportunity to formulate a viewpoint on such matters, the fact that this opinion has no binding force does tend to weaken the position of the Landtag *vis-à-vis* the Land

government. However, in 1995 internal agreements were adopted by some of the Länder, including Baden-Württemberg, Lower Saxony, Bavaria and Hessen which provide for an improvement in the level of co-operation between these governments and their parliaments over EU affairs. In the example of Baden-Württemberg, such an agreement extends the information rights of the Land parliament by obliging the Land government to inform the former *'at the earliest date possible of all EU proposals which are of the utmost political importance and are of essential interest to the Land'*<sup>4</sup>.

This also includes any proposed changes to the EU treaties (such as intergovernmental conferences) possibly affecting the legislative competencies of the Land. Additionally, the government must inform the relevant parliamentary committees of the results of their demands, either orally or in writing, in those cases where the negotiations in the Council of Ministers are led by a Länder representative. After discussing EU issues in the Bundesrat, Länder Ministers, including the Prime Minister of the Land, are required to report back to the Landtag on the results achieved.

To further aid the scrutiny process, the Land parliament receives the six monthly reports of the EU Council Presidency from the Land government. However, the central element in the scrutiny process is the presentation of the government's yearly EU report to the parliament, which outlines the main EU policy activities of the government and thus provides the parliament with the opportunity to debate the EU policy of the Land government. Ministers can also come before relevant parliamentary committees to answer questions and give evidence (Straub & Hrbek, 1998).

The Baden-Württemberg government is also obliged to take the Landtag's opinion on EU proposals into account whenever they affect the competencies of the Land. In those cases where EU proposals affect the exclusive competencies of the Länder and, where the negotiations in the Council of Ministers are being led by a Länder representative the government must take account of the Landtag's opinion. However, the Land government is still not bound by the Landtag's opinions on EU proposals, unlike the regional governments in Austria. If the government deviates from the Landtag's opinions, the government must notify the responsible committee, after its meetings in the Bundesrat, of its reasons. In view of the kind of dialogue existing between the government and the parliament, experience until now has shown that the formal position of the Landtag on EU proposals has almost without exception been in agreement with the position of the Land government.

Despite these various controlling devices which enable the regional parliaments to feed their views into the position of regional governments on EU matters, links with alternative channels of input, such as their counterparts in the national parliaments, remain weak. The EU committees of the various regional parliaments have no formal relationship with the EU committees of their national parliaments *per se*. However, in Germany the Secretary of the Committee for European Affairs of the Landtag in North Rhine-Westphalia does attend the meetings of the Bundestag's EU Affairs Committee but on an informal basis only. As the representative for all the Länder, the President acts as an observer and reports back to the other German Landtage about current activities in the EU Committee at the national level. However, any contact there is with the national parliament is usually through regional government officials.

## **National Level**

### *National Parliaments*

Regional representatives can attend parliamentary working groups of their respective political parties. For example, a German civil servant from the Bavarian government administration where the CSU (Christian Social Union) party has a majority usually attends the CDU/CSU working group relevant to his portfolio. This enables the Länder to develop contacts with Bundestag members and to influence their thinking. Furthermore, it also provides for the identification and discussion of possible tensions and conflicts between the federal position and the Länder position. To supplement this level of contact, members of the German Bundesrat have access to all meetings of the Bundestag and its committees.

A further opportunity to influence the national government's way of thinking on an EU issue lies with the representation of regional governments in the Upper Houses of their bicameral parliaments. Within the German Bundesrat, the Länder can use the Europakammer for urgent cases alongside the Bundesrat's own special EU affairs committee, which receives all the necessary EU documents. Although it was set up to consider and scrutinise EU proposals, it would appear that the specialist committees of the Bundesrat take the lead role in the consideration of proposed EU legislation. With regard to the situation in Spain, there is no real role for the Spanish regions in national parliamentary scrutiny procedures apart from the presence of Catalan MPs in the Joint Committee on EU affairs of the Spanish Senate and the Congress of Deputies.

### *National Governments*

Civil servants from the regional government administrations are frequently seconded to national governmental ministries as another way of cultivating contacts between the two levels of government. Such collaboration is essential if the regions are to secure the representation of their interests in the EU policy position of the national government. Regional representatives can participate in meetings of the Federal Ministries affected by proposed EU legislation, which aim to co-ordinate the national position on EU issues. Although the Länder attend such meetings in an informal capacity as observers only, it does enable them to keep up to speed with developments in the EU policy of the Federal Government.

In Austria, for example, the national position on an EU policy issue results from weekly inter-ministerial meetings chaired by officials of the Federal Chancellery and the Foreign Ministry. Representatives from the Joint Länder Office in Vienna and in Brussels, Austria's social partners and representatives from the local communes and cities participate regularly in national co-ordination meetings between the federal ministries preparing the Austrian position for EU Council groups, Coreper and ministerial meetings. This provides the Länder with the ideal opportunity to have input into Austria's negotiating line before Government Ministers attend Council meetings in Brussels.

In Spain, the key mechanism for co-ordination between the regional government and the central government is the sectoral conferences that reflect the various ministerial departments at both levels of governments. Spanish Ministers of the central government now meet with the Autonomous Communities' Regional Ministers to discuss EU policy issues under a collective forum, 'Conferencias Generales de Asuntos Europeos'. Discussion normally takes place at these sectoral conferences whenever an EU issue covers an area belonging to the exclusive competencies of any of Spain's regions.

For instance, if there is an EU proposal relating to agriculture, the Spanish Agricultural Minister would meet with the regional ministers of agriculture in order to take the position of the Autonomous Communities into account when establishing the national position of the central government. If there is no agreement, the central government does have the right to step in under the constitution in view of the fact that foreign policy is an exclusive power of the Spanish state. Despite this, Catalonia regards sectoral conferences as an effective means of influencing Spain's national EU policy, and believes they have the potential for further improvement in practice.

In those instances where an EU issue is still of interest to Catalonia but does not belong to its exclusive competencies, Catalonia can approach the Spanish Government at an early stage if it becomes aware of such an issue and request an input to the Spanish opinion. With the agreement of the central government, Catalonia can either receive the necessary information via Spain's Permanent Representation or the central government will discuss Catalan's interest within the framework of the sectoral conferences.

The Autonomous Communities of both the Basque Country and Catalonia enjoy an additional advantage in their relationship to the national government. There is an agreement that the Central Spanish Government will hold bi-lateral meetings between itself and the Basque and Catalan governments above and beyond the usual consultations with the autonomias. In preparation for these meetings, the desk officers of the Basque Delegation (located in Brussels) brief the Basque Government. However, there is still no direct part for the Basque government to play in EU Council level discussions, although the Spanish regions are now pushing to allow regional Ministers to represent Spain in Councils of Ministers where appropriate.

#### Interministerial Conferences

A fundamental element in the ability of the regional governments to have an impact on the national government's position on EU matters is their delivery of consensus views. In this respect, interministerial conferences, which bring the regional ministers together, are essential for co-ordinating the positions of the regions in particular policy fields vis-à-vis the central government. Conferences of European Affairs Ministers have been used by both the German Länder and the Spanish regions to formulate common positions on general EU issues, such as the Amsterdam Treaty, the single currency, structural funds reform. Specialised conferences of regional ministers usually deal with specific EU policy issues, i.e. transport, the environment, etc.

Although these conferences are a more formal means for developing common strategies among the regions themselves, they have served a far greater purpose than the somewhat unwieldy mechanisms established by the Austrian Länder for co-ordinating their viewpoints on EU issues, such as the Integration Conference of the Länder (composed of Länder Prime Ministers and Presidents of the Land parliaments) and the Permanent Integration Committee (made up of Länder civil servants).

To counter-balance their lack of formal co-ordination mechanisms, the Austrian Länder make extensive use of informal networks and semi-official co-ordinating bodies. This is most aptly reflected in its treatment of regional policy issues at the EU level. Since regional policy is a competence of both the Länder and the Federal Government, it requires close co-operation between the federal, regional and local levels of government to enable the development of common strategies. In the context of EU regional policy, co-ordination is conducted through the Austrian Conference for Regional Planning (ÖROK) in which the Federal Government, the Länder, the central association of communes and cities as well as the social partners are all represented. While the ÖROK takes the main decisions, specific issues are dealt with in direct

contacts between the Federal Government Ministries and the individual Land administrations. These informal networks have managed to be fairly flexible and productive, especially in relation to the administration of EU policy (Faludi, 1997; Huber, 1997; Morass, 1997).

#### Liaison Offices

Each of the German Länder has a Ministry or representation to the Bundesrat in Bonn. The main function of this department is essentially to take part in and to observe the current EU activities of the Federal Government, the national parliament, the Bundesrat and other Länder. It passes on information which it receives from the EU co-ordination units within the Federal Ministry of Economics and the Foreign Office to both the Bundesrat committees and to the European units within relevant Länder governmental departments, and lobbies these bodies on behalf of the Land.

In contrast to the individual German Länder offices of representation, the Austrian Länder have a Joint Länder Office in Vienna that performs similar functions. Representation in these offices does, however, tend to be more political than official. This adds further weight to the Länder representatives and at the same time, allows them to exploit party political links.

### **Participation in National Delegations to the European Union**

#### Council and Commission Working Groups

Representatives from the Austrian and German Länder administrations are included in every Council and Commission working group at the EU level as part of their national delegations. These groups afford the regional representatives an opportunity to shape EU legislation at the draft stages. Although, in principle, the German Länder usually require the consent of the Federal Government to attend working group meetings, the Federal Government is obliged to invite Länder representatives where an EU issue under discussion affects the interests of the latter. As members of their national delegations regional representatives must follow the national line and speak as one. They cannot put forward their own opinions during Council discussions and can only speak with the agreement of the Federal Government's Head of Delegation in those areas where the Länder would ultimately have responsibility for implementing the proposed measure. However, when exclusive Länder competencies are involved the Regional Minister leads the German delegation in the Council. This is also the case in Austria, although here the Austrian provisions do not go as far as Germany's in safeguarding the position of the Länder.

Austrian Länder representatives can request to participate in these meetings on demand if the EU subject under discussion concerns any of the Länder's competencies or affects their essential interests. Despite this provision, the Austrian Land governments have tended to be quite selective in signing up for national delegations to Council and Commission working groups. Furthermore, there have also been some complaints that regional participation was not granted. This may be due to the fact that at the end of the day it is up to the responsible federal ministry to decide whether participation is actually possible or not.

In Spain, the regions participate in the Spanish delegation to the advisory committees of the EU Commission by representing all the other regions whenever EU issues affect their legal competencies.

#### Regional Observers to the EU

Germany, Austria and Spain have a regional representative within the offices of the national Permanent Representations to the EU in Brussels. Acting as the 'eyes and the ears' of the regions

over the EU decision-making process, their main task is to inform the regional governments and parliaments of all EU policy developments which could affect their exclusive competencies or essential interests. This is aided by their receiving all EU documents from the Council secretariat and other EU institutions. Equally important is the task of bringing regional interests or concerns about EU proposals to the attention of their colleagues in the Permanent Representations. These regional representatives tend to be senior civil servants responsible to the regional governments. However, they are not to be confused with staff seconded from the Länder administrations to work in the office of the Permanent Representation as members of the Federal Ministry for Foreign Affairs.

The German Länder have had an Observer at Council of Ministers meetings since the 1950s. Although the Observer shares premises with the German Permanent Representation, it is by no means a part of that institution. There has been some discussion over the years about incorporating the German Observer into the Federal Representation with a separate 'Länder Affairs' section. However, these discussions have so far come to nothing. In spite of this, there are regular co-ordination meetings between the Federal Representation and the Länder with briefings by the German Ambassador on the state of play in Coreper. As a 'non-speaking' member of the German delegation in the Council meetings the Länder Observer is ideally placed to observe if and how the German government considers the position of the Bundesrat in the negotiations. The Observer does not negotiate actively on behalf of the Länder but reports back to the Länder via the Bundesrat and the Länder offices in Brussels. Such a role is reinforced by their participation in the preparatory meetings of the national government for its position in Council sessions.

However, the German Land Observer does not go as far as Austria's Joint Länder representative who may attend all Council, Coreper and working group meetings on request, and may speak with the permission of the Head of Delegation. Based within the Permanent Representation itself, the Joint Liaison Office, with its two counsellors, is involved in the internal work of the Permanent Representative whenever EU proposals affect Länder competencies and reports directly to the Vienna office of the Länder. It also functions as the secretariat for Austria's delegation to the Committee of the Regions. In this respect, the Austrian Land Observer is in a much stronger position than the German Land Observer, whose role is of a more supervisory nature.

Similarly, within the Spanish Permanent Representation there is a specific Counsellor, for Autonomous Affairs, appointed by the central government, with the function of co-ordinating the affairs of interest to the Spanish Autonomous Communities, in Brussels. It is interesting to note that he is not a regional official but a career diplomat appointed from the central government Foreign Office. It has been suggested that the Basque Country and Catalonia each have a counsellor devoted to the concerns of their particular regions. However, this is so far only conjecture.

### ***1.3. Implementing European Legislation.***

The domestic distribution of powers between the centre and the regions also applies to the implementation of EU policies. As discussed earlier in this paper, regional governments and their administrations are responsible for implementing and applying European legislation within their own areas of regional competence, otherwise it falls on the central government. However, this conflicts with Articles 169 and 170 of the EC Treaties, which enable the European Court of Justice to proceed against a member state for failure to fulfil its EU obligations following a recommendation from the European Commission. From an EU point of view, responsibility for complying with EU obligations rests exclusively with the central state. This is likely to give rise to tensions emerging between the central and regional levels of government, particularly if the latter level fails to implement EU legislation in those areas of regional competence.

In Germany, the federal government could ultimately oblige the Länder to take the necessary measures to implement EU legislation by means of ‘federal coercion’ under Article 37 of the Basic Law. Rather than use this extreme option, the German government prefers informal means of resolution. For instance, when Bavaria was granted what the EU Commission considered to be an illegal state aid, all formal contact was between the Federal Government and the Commission, with the Bavarian Ministry in close contact with their federal equivalents. The Bavarian administration did, however, have considerable contact with the Commission on an informal basis only.

Like Germany, Spain tends to rely on informal negotiations if an Article 169 or 170 action is brought due to the failure of one of its Autonomous Communities, such as Catalonia, in implementing EU legislation in an area for which it is competent. If the European Court of Justice fines Spain under Article 171 EC as a result of Catalonia’s continual failure to transpose EU law, the central government and Catalonia negotiate over who is liable to pay the fine. In this instance, there appears to be no formal mechanism by which the central government could pass on any fines to the regions imposed by the Court of Justice. Although in principle, the responsibility for payment is determined by who has responsibility for the area under which an EU law falls, this is not always so clearly defined, especially where competencies are shared. A further problem facing the central government is its lack of any constitutional sanction against the Spanish regions for their failure to implement both domestic and European legislation. However, such a device has never been needed given the healthy nature of co-operation between the two levels of governments.

Only Austria has any constitutional guarantee that legally obliges the Land governments to enact all implementation measures required by European legislation. In accordance with Article 23d (5), the federal government may adopt the necessary implementation measure, for example, by issuing a federal law, if the European Court of Justice has brought an action against Austria for failing to apply EU law in a matter of Land competence. If the subsequent Land measures fully comply with the Court’s judgement, they replace the respective federal law. This provision is reinforced through a monitoring system set up by the Federal Chancellery and the Foreign Ministry, whereby the Länder governments are required to report back from time to time on their progress in implementing EU law.

#### ***1.4. Direct Representation through Regional Offices in Brussels.***

Most of the German, Austrian and Spanish regions have established their own regional offices in Brussels for the purpose of lobbying and collecting information at the EU level. Such offices have proved extremely useful as another means for the regions to exert influence over European policy via informal channels and links with the EU institutions. Their very presence in Brussels signifies the determination of the regions to pursue an active role in EU matters.

Offices differ in their status, staff, equipment and priorities. Following the opening of the first German Länder offices in Brussels in 1985 by Hamburg and Saarland, some Land governments wanted their own representations in Brussels with formal links back to the region. Concerned about the possible threat that these 'parallel embassy' offices could place on their constitutional role in foreign affairs, the central authorities in Germany were initially opposed to their establishment as offices of 'Representation'. Nevertheless, offices were opened under the auspices of another organisation, often Länder banks (Gerstenlauer, 1995). Some offices, such as Baden-Württemberg still choose to use the title of 'Information Office', while others prefer to describe themselves as 'Liaison Offices'.

However, the usefulness and practicalities of the regions having their own offices of information in Brussels was finally recognised by the German Federal Government in 1993. In 1995 the Hessen Information Office in Brussels renamed itself as The Representation of the State of Hessen to the EU. Other Länder using the title 'Representation' include Bavaria, Lower Saxony and North Rhine-Westphalia and Rheinland-Palatinate. There are also joint offices. For example, the East German Länder share the former Embassy of East Germany in Brussels, and the Hanse House in Brussels, which represents the governments of both Hamburg and Schleswig-Holstein, has its home base in Kiel.

Such unease towards the political status of these regional offices is also felt by the Austrian and Spanish Foreign Ministries. For example, the Austrian Land of Vienna is co-located within an economic development agency in Brussels and since 1996 forms what is known as the Vienna House. In Spain, the Delegation of the Basque Country Government to Brussels finally received official status as an office of representation in February 1996, having initially been an information gathering office only with the legal status of a limited trade company.

The Patronat Català Pro Europa is a public consortium in operation since 1982 and represents a variety of different Catalan institutions, such as public universities, the Regional Government, the Generalitat de Catalunya, itself, the Federal Savings Banks, a Chamber of Commerce, City Councils and the public Universities of the region. Catalonia is an interesting example in the sense that many of its operations have been decentralised, with its headquarters in Barcelona and branch delegations of the office in other parts of the region and in Brussels. This serves to make their information more accessible to a larger number of people. It is funded entirely by the Catalan government with whom the office works in close contact. Indeed, the office reports directly to the Ministry of Presidency, and in particular to the Directorate-General for External Relations (Morata, 1995).

On account of this initial opposition, the regional offices remain separate and distinct from the national Permanent Representations. They have no formal role as such and are not allowed to form part of the national delegation to the EU Council. The Delegation of the Basque Country Government in Brussels has no formal relationship with the Spanish Permanent Representation, though relations between the two are now "cordial". There is some co-operation between the

German Permanent Representation and the Länder offices mainly on an informal basis via the holding of regular meetings and the exchanging of information. However, the staff of the regional offices do not have diplomatic status unlike the staff of the national Permanent Representations. Many are seconded from their respective regional governments.

Both the Spanish and the German regional offices are well staffed unlike the Austrian offices, which are limited in terms of organisational and political resources. For instance, the Bavarian office is one of the largest with a staff of nineteen (eleven A-Grade officials), while the staffing levels of the Catalan office consists of sixteen with seven A-Grade posts (one Director and six desk officers specialised in EU affairs), five administrators, two export/commercial promoters to the Benelux countries, one promoter of Catalan culture and one at reception. It is interesting to note that the staff of the Catalan office are not civil servants.

The Delegation of the Basque Country Government has a staff of fifteen full time employees which includes seven executive staff (responsible for specific EU policy areas) who were recruited directly by the Basque Government itself, and the Head of Office, who is a political appointment by the Basque Government having worked previously as a civil servant. Assisting the executive staff are four stagiaires on a twelve-month placement who are undertaking EU courses at the main university. In comparison to the impressive sizes of the offices mentioned earlier, the Vienna office employs a small number of staff, with two A-Grades (1 director and 1 administrator) and two stagiaires. This would seem to be a typical size for the offices of the other Austrian Länder.

Nevertheless, the Brussels offices of the regions perform a wide variety of tasks to different degrees, which include some of the following:<sup>5</sup>

1. Activities at the EU institutional level
  - The lobbying of EU officials in the Commission and Commissioners' Cabinets, especially at the formulation stage of a draft EU proposal, MEPs, members of the Committee of the Regions (CoR) and the Economic and Social Committee (ECOSOC), outside interest groups, other regions and Member States, the Council Presidency and Secretariat;
  - Maintaining close contact with the EU institutions, national Permanent Representations and other organisations based in Brussels;
  - Briefing regional members of the European Parliament and Committee of the Regions and preparing reports for the CoR's commissions;
  - Providing assistance for regional representation in Council working groups;
  - Providing their regional governments, parliaments and local government bodies with general information as well as information on EU policy developments and EU funding opportunities;
  - Partner searches for EU funded projects which require partners to work together from different Member States;
2. Interregional Co-operation
  - Exchanges, projects and co-operation with other EU regions and other regional representatives in Brussels, such as the Assembly of European Regions;
3. Explaining Europe to the Region
  - Publishing newsletters or magazines and distributing to key organisations and relay centres;
  - Preparing information visits of regional ministers, deputies and officials to Brussels;

- Providing information services and conference facilities for regional parliamentarians and for regional MEPs;
  - Preparing an annual report for the regional parliament on general EU policy issues or a summary of the activities of the office;
4. Promotional, Cultural and Social Events
- Promoting the interests and activities of their own region to interested parties in Europe; Helping public and private regional interests to establish contacts in the EU institutions.

The main policy interests of the regional offices in Brussels tend to be focused in the following areas: the structural funds, transport (TENs, regional airports, etc.), research and development, agriculture and environment, energy, culture, internal market, industrial policy and competition.

### ***1.5. Relationships to other EU Institutions.***

#### **The European Commission**

The German and Austrian Länder and the Spanish regions find access to the Commission and its officials relatively easy and therefore lobby the Commission quite intensively. For example, politicians and officials from the German Land of Baden-Württemberg meet Commissioners and Commission officials regularly, with the minister-president of the Land lobbying Commissioners (including the Commission President) directly. Such meetings occur both in Brussels and within the Land itself. The Catalan office also enjoys very good relations with the Commission, which they believe have been strengthened by their two-way nature; they feed back information to the Commission on programmes and opinion in Catalonia. These tend to be personal relationships built up over time, hence the importance of a fairly stable staff complement in a representative office. Indeed, Commission officials often canvass the opinion of Catalonia on draft proposals and ask them to supply experts.

Close contact with the European Commission is perhaps facilitated by the Commission usually being more sympathetic towards the concerns of the regions, especially since it is the latter that have the experience in implementing EU legislation at the local level. However, there is still a tendency for regions to use those EU officials who come from their own region as their main contacts in the Commission.

#### **The European Parliament**

Regional contact with MEPs is on the whole limited. Most of the regions used in this study have very little direct contact with their MEPs, with the exception of the Land politicians in Baden-Württemberg who meet with their own MEPs regularly. While, the Landtag and its committees make information trips to the EP in Brussels, the Secretary of State for EU Affairs, along with an EU representative from each of the Land's government departments, meets with the MEPs from Baden-Württemberg twice a year to establish a tight agenda for their working together. The Head of the Brussels office also meets with the region's MEPs once a month in Strasbourg to establish how they intend to vote in the EP. The Prime Minister of North Rhine Westphalia also meets the MEPs of his region and the Brussels representation office provides them with information as required. MEPs also appear before regional parliament committee meetings, as necessary.

In contrast, the Austrian Land of Vienna seems to confine contact with its MEPs to the provision of information by its Brussels based office. However, MEPs do have political party links with their regional parliaments. For example, Christian Democrat MEPs from Lower Saxony meet with their fellow party members in the Land parliament (CDU MdLs). Similarly, Social Democrat MEPs from Hessen meet together with SPD members in the EU committee of the Landtag two to three times a year.

Although Spanish MEPs are briefed on those EU issues affecting regional competencies by civil servants from the central government, the main difficulty confronting their use by the regions as an informal channel is that Spain's MEPs do not represent a regional constituency. In representing Spain as a whole, their representation is therefore along political lines rather than territorial lines. However, MEPs from Catalonia do meet together whenever they wish to promote an initiative of importance to Catalonia. The Catalan office in Brussels has some amount of contact with its MEPs, especially since the General Secretary of the Patronat is a MEP. This is underpinned by a frequently used two-way communication system between Catalan MEPs and the office, thus ensuring that the regional viewpoint is put forward in the EP's committees.

### **The Committee of the Regions and The Economic and Social Committee**

Austrian and some German Länder are represented in the Committee of the Regions by their Prime Ministers and Spanish regions by their regional Presidents. They therefore tend to have high profile politicians, such as Edwin Teufel, the Minister President of Baden-Württemberg, Edmund Stoiber, the Bavarian Minister President, and the Catalan President, Jordi Pujol as their main regional representatives and the Presidents of the regional parliaments as alternates. This reflects the importance such regions attach to their perception of the Committee of the Regions eventually developing into a European 'second chamber' which would safeguard the interests of Europe's regions (Loughlin, 1997). However, the one drawback in using such heavy weights is that they are unlikely to attend many commission sessions due to time pressures and other commitments back in their own regions. Local government representatives and members from the regional parliaments make up most of the composition of the Committee of the Regions.

For example, in Vienna, the Prime Minister of the Land serves as the principal representative with the Minister of Economic Affairs as the alternate. Representatives of the CoR from the Austrian Land of Vienna are normally briefed in Vienna before every CoR session and the Austrian position is co-ordinated by all the Länder at both administrative and political levels. The representatives attending the Committee are aided by the staff of Vienna's office in Brussels who put together a programme and will attend CoR meetings with the representative. A similar practice is conducted in the Catalonia office, where the staff work closely with the Spanish delegation to the CoR.

Linked to the Committee of the Regions is another advisory body, the Economic and Social Committee. In representing the different categories of economic and social activity (i.e. employers, workers and interest groups from the sectors of agriculture, transport, trade, small enterprises, the professions and consumers) in the legislative process at the European level, ECOSOC offers a further useful channel of influence for the regions. Such influence mainly comprises the regional offices lobbying ECOSOC members on behalf of their particular region. For example, Germany's regional offices in Brussels together with their counterpart offices in Bonn will normally lobby members of ECOSOC, whenever its discussions concern legislation of relevance to Länder interests. Furthermore, to ensure there is feedback, some of the representatives in ECOSOC will report back to their respective Land parliaments; but this does not always happen.

## **SECTION TWO: LESSONS SCOTLAND CAN LEARN**

If Scotland is to have her interests properly represented in the EU policy process, there are many lessons she can learn from the experiences of the Austrian, German and Spanish sub-national governments in their dealings with European matters. Lessons arise from those instances where the regional governments in those countries have been successful in securing some degree of regional input into EU decision-making, but equally, areas should be noted also where they have been less than successful. The following section discusses these lessons in relation to the kind of arrangements Scotland may wish to implement for her participation in EU affairs and which are already foreseen in the White Paper, '*Scotland's Parliament*'. It then investigates the extent to which these will enable Scotland to have a voice at the European negotiating table.

### ***2.1. Constitutional Issues***

There are some fundamental differences between Scotland and the three EU Member States studied, not least in the constitutional position Scotland will occupy in relation to the rest of the United Kingdom after devolution. The devolution process underway in the United Kingdom will not lead to the creation of a federal structure, such as in Austria and Germany where all the Länder states have equal constitutional status. On the contrary, the UK will have a partially devolved system of government in which the powers, functions and status of the sub-national units (Scotland, Wales and Northern Ireland) will differ as will their relationships with the central government at Westminster. Such a system is similar to the Spanish system of asymmetrical devolution.

A further difference concerns the absence of a written constitution in the UK, thus making the UK unique in comparison to the rest of Europe. Unlike the situation in Germany, Austria and Spain where the regional states are 'entrenched in a highly formalised and structured constitutional order...the UK situation does not allow entrenchment and UK devolution is located within an unusually informalised constitutional structure' (HC 460-ii, session 1997-98: 39(par.80)). Despite this weakness in the legal status of Scotland, its constitutional position in legislating for those areas devolved to the Scottish Parliament would appear to be far stronger than that of either the German and Austrian Länder or the Spanish Autonomous Communities.

The Scotland Act, which received Royal Assent in November 1998, provides for the separation of legislative powers between Edinburgh and Westminster. In so doing, it defines the powers reserved to the UK Government and Parliament as the Constitution, foreign policy, defence and national security, immigration, central economic and monetary policies (including business taxation), common markets for UK goods and services, employment legislation, social security, regulation of certain professions (such as architects, medical, estate agents, etc.), transport safety, and other matters presently subject to UK regulation, such as broadcasting. All other powers will come under the responsibility of the Scottish Parliament. This includes the power of the Scottish Parliament to increase or reduce taxes by up to 3%. Since the residual power is left to the Scottish Parliament, there is a widely held view that the legislative autonomy of the Parliament in Scotland is likely to be far more extensive than that of the German Länder. An additional strength stems from there being no provision in the Scotland Act for shared powers. This means that the scope of devolved power to Scotland is wider than in Austria, Spain or Germany, where the exclusive powers of their regions are qualified by the constitutional provisions for concurrent and framework powers.

Similar to arrangements in Austria, Germany and Spain, Scotland will be responsible for implementing and administering legislation that not only falls under its own devolved areas, but also falls under fields reserved to Westminster. One crucial area of reserved power that requires the involvement of Scotland concerns the UK's relations with the European Union.

To the extent that the implementation and observance of EU obligations concern the devolved areas, Scotland will be involved in accordance with Schedule 5 of the Scotland Act, which states that 'observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law are not reserved to Westminster'. Furthermore, the Act itself does not specify how this provision will work in practice despite the fact that many of the areas devolved to the Scottish Parliament (agriculture, fisheries, economic development, training and environment to name but a few) will be affected by European legislation. Although such a provision does secure Scotland's involvement in EU matters up to a point, it does not compare with the constitutional arrangements of the Austrian and German Länder for dealing with EU issues at both the domestic and European level. In this sense, Scotland is similar to Spain.

Given the arguably weak constitutional position of Scotland in relation to Europe, it is likely that much heavy reliance will be placed on formal and informal mechanisms of co-ordination and co-operation between Edinburgh and Westminster. These will be especially important if Scotland is to have any influence over and input into the UK government's policy on Europe. However, to safeguard these mechanisms from abuse by either level, they are to be laid down in special administrative agreements or 'concordats', such as is already the case in the other three systems of regional government. Both Austria and Germany, and to a lesser extent Spain, lead the way through the vast array of formal and informal arrangements they have established with regard to their regional government's relationship with the central government and in their relationship to the EU.

### ***Mechanisms of Co-ordination***

Mechanisms of co-ordination between the central and regional levels of government as shown earlier by the Austrian, German and Spanish examples, could be exceedingly useful to Scotland for several reasons. In the first instance, informal meetings and discussions during the formulation stage of the national position on an EU issue would enable the two levels of government at Edinburgh and Westminster to be aware of each other's positions on the EU issue at stake, and for common ground or any possible problems or disagreements to be identified at the early stages of the negotiations. Secondly, they would provide a framework through which the two sides can work together to resolve any disputes and reach common solutions that satisfy both levels. In the last instance, the various mechanisms used by Spain, Austria and Germany do go some way towards ensuring not only that regional interests are properly taken into consideration by the national government at this early stage, but that they also act as an essential safeguard to protect the regional position if it disagrees with the final view of the central government.

## **The Scottish Executive and the Scottish Parliament**

The Scottish Executive will have a key role to play in developing Scotland's strategy and approach to Europe. Of central importance to this role will be its ability to co-ordinate EU issues amongst its various departments. At present, there is a separate European section within the Scottish Office. Given that EU issues are now forming a large part of domestic policy, many of the other regional governments co-ordinate their scrutiny of EU draft legislation either through the establishment of European units within various sectoral departments or through attachment to a separate Ministry for European affairs, or to the office of the Minister-President.

For instance, how the administration of Lower Saxony organises its departments for the handling of European matters would be a useful example for Scotland to consider. Within the Ministry of Justice there is a central European (and International Affairs) Unit, which co-ordinates all the EU information the Land government receives from the federal government and its office of representation in Brussels to the smaller European units attached to other government departments. This Unit is subdivided into five separate departments, each of which assign a number of officials responsible for specific EU policy issues, such as agriculture, environment, law and research; social, economy and finance, domestic affairs, education and interregional co-operation. The representative office of Lower Saxony to the EU in Brussels is also part of the European Unit.

The Scottish executive may wish to explore the possibility of having a specific European department reporting to a Minister for Europe. A Ministry for European Affairs could serve as an important reference point not only for maintaining contacts with the UK government and the Scottish Parliament, but also for developing contacts within the EU institutions, particularly the EU Commission and its Commissioners. In so doing, it could contribute towards raising Scotland's profile within Europe.

Operating from within a Ministry for European Affairs, the European Unit would have responsibility for co-ordinating and channelling EU documents to relevant executive departments. The Unit would decide, in regular consultation with the heads of the other departments, which of the EU policy documents merit further consideration. This would require the ability to identify whether a particular EU legislative proposal could possibly present any problems for Scotland, and if so, what its implications might be, or if there were any contentious issues involved that might affect Scotland's essential interests. Given the technical nature of EU proposals, there should be a team of officials specialised in dealing with European matters. External experts with relevant technical expertise in specific EU policy areas could support the EU work of both the Unit and the other departments involved. This could provide the Scottish Executive with the necessary technical background and knowledge for responding quickly to EU Commission proposals in its negotiations with the UK Government.

Further co-ordination by the Unit would be required for monitoring the implementation of European legislation in Scotland. Within the Scottish Executive, regular meetings could be held between officials from the European Unit and the heads of the various government departments to check their progress in transposing European law, and to identify any problems they may have. Close working relations between the European Unit and its counterparts at Whitehall and the UK's Permanent Representation in Brussels, as well as with Scottish Parliament officials would be crucial for this monitoring process and for ensuring that Scotland implements EU law correctly and on time. This is especially important given the specific nature of the Scottish legal system.

Similar to the regional governments in Spain, Austria and Germany, much of what the Scottish Executive will do with regard to EU matters will depend on the kind of relationship it has with the Scottish Parliament. A concordat between the Scottish Executive and Parliament will set out the practical administrative arrangements required for Scotland's handling of European business.

The White Paper, '*Scotland's Parliament*', at paragraph 5.7 explains that, 'The Scottish Parliament will be able to scrutinise EU legislative proposals to ensure that Scotland's interests are properly reflected. The UK Government will take into account the views of the Scottish Parliament and the UK Parliament may also wish to do so in its scrutiny processes'. Similar to other parliaments at both the regional and national levels, the Scottish Parliament will have various devices at its disposal for holding the Scottish Executive to account for its actions, i.e. the right to hold debates, to question Ministers, adopt resolutions, pass votes of no confidence, and the right to invite witnesses to give evidence at parliamentary committees and hearings.

While the Parliament is still to decide in its rules of procedure how it will deal with EU matters in its structure and the kind of expertise it may wish to utilise in its scrutiny of European legislation, such as Scottish local government representatives, Scottish MEPs and members of the Committee of the Regions and the Economic and Social Committee, or representatives from the UK, the most serious problems it faces concern the volume of EU documents it is likely to receive and the timing for scrutiny. For instance, the regional parliament in Baden-Württemberg receives about 350 documents a year whilst national parliaments receive around 800 documents relating to European matters. From the experience of other parliaments, it has often been the case that a decision has already been taken by the national governments within the Council of Ministers prior to national and regional parliaments completing their scrutiny of EU draft legislation (Norton, 1995).

Although, the Amsterdam treaty sets a minimum six week delay between the Commission depositing draft legislation and its consideration by the Council, this time limit still remains exceedingly tight for the Scottish Parliament to undertake thorough scrutiny and formulate its views. If the Scottish Parliament is unable to consider EU documents quickly, then it could lose its opportunity to influence the UK's negotiating position before this enters Council meetings in Brussels.

Given the speed with which decisions are taken in Brussels, a good and early flow of information concerning EU matters to the Scottish Parliament would be required. For instance, the electronic transmission of EU official documents to the Scottish Parliament, especially those such as Commission Communications, Green and White Papers, and the Commission's annual legislative programme, would be useful for alerting the Parliament to EU legislative proposals currently in the pipeline. This could enable the Parliament to make an early start in its preparations for scrutiny. Indeed, internet access to the web sites of all the EU institutions and additionally, *intranet* access to the Westminster sites would allow the Scottish Parliament to track EU legislative proposals as they progress through the different stages of the European policy process.

Since the Scottish Parliament may not have sufficient time to consider all EU documents it receives in any substantial detail, a fairly tight sifting process would need to be in place. The European Committee could have an important role to play in identifying items of most relevance to Scottish interests, as well as those items over which the Parliament could exert influence. It may be that once an initial short list of documents has been drawn up by the Committee Chair and the Committee clerks, MSPs of the EU Affairs Committee could decide whether or not the items selected would require further consideration and debate by the Parliament. To reduce the

possibility of important EU documents being overlooked, other MSPs could consult the full list of documents deposited and comment on those items not selected for scrutiny. The selection process could be aided by the factual notes that are prepared by Whitehall officials and submitted to Westminster outlining the affect of EU proposals on the UK as a whole. Where the importance or impact of a particular EU issue for Scotland differs from the rest of the UK, factual notes would be prepared by the Scottish Executive and submitted to Holyrood.

As the parliamentary mechanism for co-ordinating and sifting European matters within the Scottish Parliament, it is proposed that membership of the European Committee could be drawn from members of other relevant Parliamentary committees, such as Fisheries, Agriculture, Environment etc<sup>6</sup>. This would ensure some element of cross-consultation and dialogue between the committees, and would allow members to develop an understanding of, and expertise in, the EU policy issues involved. From the experience of other regional parliaments operating systems of dual committee membership, e.g. the German Landtag of North Rhine-Westphalia, co-ordination of different committee views into a single parliamentary resolution would be vital for the Scottish Parliament's influence at an early stage.

Since there is a need for the EU Affairs Committee to respond quickly and flexibly as issues arise, the Scottish Parliament should then have a procedure in place for dealing with European matters that require urgent consideration. One solution would be to follow the example of the Austrian Landtag of Tyrol, whereby its EU committee has the jurisdiction to take a decision on behalf of the plenary and the other parliamentary committees.

The Scottish Parliament may also wish to consider another the example from the Austrian Landtage, where the latter have the power to issue their Land governments with binding mandates whenever their vital interests are at stake. Although this would be one possible way for the Scottish Parliament to ensure its opinions were fully incorporated into the EU policy position of the Scottish Executive, such a mandate may weaken the bargaining position of the Scottish Executive in its negotiations with the UK Government.

Close working relations between all departmental sections of the Scottish Executive and the committees of the Scottish Parliament would form an essential component in the process of European scrutiny within Scotland. Meetings between Scottish Executive Ministers and MSPs would provide the Parliament with an early opportunity to have its views taken into account by Scotland's Executive. This could be done through Ministers attending the Parliament's committees, particularly the European Affairs Committee on a regular basis. For instance, in Hessen the Minister for Justice and European Affairs reports to the EU affairs committee once a month on all Hessian European activities.

Such Ministerial attendances would also be important prior to and after meetings they attend at the Council of Ministers. This would be highly applicable where items on the Council's agenda are of relevance to a devolved competence or where they have been subject to scrutiny by the Scottish Parliament. Informing the Parliament of relevant discussions held and outcomes reached would be one way for the Scottish Parliament to monitor current developments in these meetings. Further parliamentary control could be exerted by holding regular EU debates prior to the six-monthly meetings of the European Council Presidency, and by the Scottish Executive presenting regular reports on its activities in EU matters, as already occurs in the Spanish, Austrian and German regional parliaments.

Apart from its links with Scottish Executive Ministers and officials, another channel of input the

Scottish Parliament could exploit more fully its relationship to Westminster. Regular meetings of co-ordination between the Convenor, members and staff of the European Committee with their counterparts within the European Select Committees of the House of Commons and the House of Lords would enable Holyrood and Westminster to discuss issues of common concern relating to their scrutiny of EU legislation. Joint committee meetings could also be held, perhaps alternating between Edinburgh and Westminster, especially in those instances where EU legislation overlaps devolved and reserved areas of power. This would enable Scotland's views to be fed into the Westminster Committees prior to completion of the latter's own scrutiny of European legislation. To date similar links of co-operation between national and regional levels of parliaments do not exist in the Spanish, German and Austrian parliamentary systems.

One way of dispelling any tensions arising between the UK and Scotland over EU policy issues, is to implement a similar example to the Austrian experience which uses informal co-ordinating bodies to reconcile the position of different interests and establish a broad policy consensus. The example discussed earlier in the context of the influence of the Austrian Länder over EU regional policy may provide Scotland with some valuable guidelines on how to harmonise a diversity of interests, and at the same time develop a common strategy to bring these interests together in an all-encompassing forum.

For instance, a European Forum which brings together MSPs of the EU Committee, MSPs from any other relevant committees that have dealt with a particular EU issue; Scottish Executive Ministers and civil servants; Scottish members of the EP, the CoR, and the ECOSOC; as well as representatives from local government (incl. COSLA), interest groups, the voluntary sector (SCVO), the business community, Social Partners (STUC) and the Scottish Law Society could meet possibly at six monthly intervals to discuss wider European issues of importance to Scotland (e.g. the implications of the single currency). As part of the wider consultation process, this forum would act as a platform for the exchange of information, views and opinions on EU issues by its representatives.

The convening of the European Forum and possible topics for discussion could be at the initiative of the Scottish Parliament's EU Committee, in consultation with the other parliamentary committees and the Presiding Officer. This would enable the Scottish Parliament to build on practices currently used in other regional parliaments, where the latter can hold debates on a wide variety of EU themes. For instance, the Landtag within the German Land of Hessen has debated such topics as the Intergovernmental Conference of 1996, the Treaty of Amsterdam agreed in 1997, the reform of the structural funds and the introduction of the single currency.

Linked to this Forum would be a series of smaller advisory groups, meeting on a regular basis to discuss specific EU legislative proposals rather than wider European issues. These groups would have specialist expertise in specific aspects of Scottish society, such as the environment, quality of life, transport, rural development, business, industry, agriculture, fisheries, education, etc. For example, whenever a particular EU policy issue is under discussion in the Scottish Parliament, the relevant group(s) could be consulted for advice on the effect that such a measure would have on different sectors of Scottish society. Communication with these groups would be a two-way link. On the one hand, it would enable the Scottish Parliament to raise awareness of and disseminate information on Europe and its policies across Scottish society. On the other hand, it would give the advisory groups opportunities to feed their views into the Scottish policy-making process in the early stages of scrutiny.

One other area of influence that could be explored would concern developing further direct links

with the EP through the secondment of an EP official to work in the Scottish Parliament for a specified time. Their experience and expertise of the EP's internal procedures and legislative mechanisms for dealing with European matters would be particularly useful during the initial setting-up and running of the Scottish Parliament. Such an official could follow the scrutiny activities of the Scottish Parliament's committees, giving particular assistance to the work of the European Committee. He or she would also act as a reference point for Scotland's own MEPs when they are attending committee meetings within Holyrood. A similar link does not exist within any of the other regional parliaments. If the European Parliament's office of representation in Edinburgh is to remain a permanent fixture, the Scottish Parliament should consider developing close contact with this office. Given the recent establishment of an EP regional information office in Barcelona, it is still too early to comment on the extent and level of contact that the Catalan regional parliament has with such an office.

In addition to developing links with officials from the EP, the Scottish Parliament could enlist the advice and support of other EU officials, such as European Commissioners, Commission officials, Scottish members of the Committee of the Regions and of the Economic and Social Committee. Similar to other regional parliaments, officials from the EU institutions could be invited as witnesses to give evidence at relevant parliamentary committee meetings when these are debating EU matters affecting the particular interests of Scotland.

Another possible mechanism that the Scottish Parliament may wish to pursue concerns links with other regional parliaments involved in EU affairs. Co-operating with regional parliaments could prove useful for the Scottish Parliament when it is formulating its views on European legislation. Scottish MSPs could meet with other regional parliamentarians, who may be concerned with the same EU policy issue, to exchange information and ideas. Establishing contacts with regional parliaments may enable MSPs to build up their expertise on specific EU policies. The information gathered through this level of co-operation would also benefit the Scottish Executive. A good example for showing how this cross border co-operation could work in practice is the Austrian system.

For instance, the parliament within the Austrian Land of Salzburg has for many years been aware of the position of other regional parliaments on the EU via its contacts with the German Landtag of North Rhine-Westphalia. Additionally, the Land parliament within Tyrol together with representatives from the Italian provinces of South-Tyrol and Trentino meet to discuss various EU issues. These discussions are also attended by the Land parliament of Vorarlberg as an observer. Another example concerns the various meetings that are held between the transport committees of the parliaments in Tyrol, Bavaria and Salzburg to discuss transit questions and its EU dimension.

With these mechanisms in place, the Scottish Parliament could develop an effective system of scrutiny and control to ensure that it has a voice within the EU policy-making process. In this way it would avoid the Parliament becoming an institutional body confined to being merely informed and consulted on EU issues. However, the key to the success of the Scottish Parliament in ensuring the views of the Scottish people are fed into the UK national position on EU matters will be that it maintains good working relations with the Scottish Executive and receives the necessary information at an early stage to enable it to formulate its views within the tight time-scale for scrutiny.

### **Relations with the UK Government - at the national level**

The relationship between the UK Government and the Scottish Executive will hold the key to the

extent of Scotland's influence in the policy decisions of the EU. Indeed, the White Paper underlines the importance of effective and early co-operation between the UK Government and Scottish Ministers and officials in formulating UK policy in respect of EU matters. This is all the more important given the speed at which negotiations in the Council of Ministers can call for Member State's positions on EU policy to be modified. Close liaison at the level of civil servants and at the ministerial level would be essential for keeping both levels informed about current developments at Westminster and for ensuring that the Scottish point of view is taken into account.

In addition to direct contacts between Scottish Executive and UK Government Ministers, links could also be developed through the secondment of civil servants from the Scottish Executive to UK Government Ministries in Whitehall and the UK Permanent Representation in Brussels (as Scottish Office officials do at present). The full involvement of civil servants and Scottish Ministers in preparatory meetings with those UK Ministries (especially the Foreign Office) which aim to co-ordinate the national negotiating position on draft EU legislation would be vital. This would not only enable the Scottish viewpoint to filter through informal channels in Whitehall, but it would also give Scottish representatives an opportunity to feed the views of the Scottish Executive and of the Scottish Parliament into the UK's negotiating line before Council meetings in Brussels.

Under the Austrian co-ordination system, none of the regional or national government representatives have claimed that their views were ignored during the formulation of Austria's national position on EU policy. Indeed, the influence of regional governments was considered to be greatest at this stage rather than in the final negotiations at the European level. To ensure the Scottish Parliament is kept informed of developments in these national co-ordination meetings, Scotland's Ministers should report back to the plenary on the state of play in the negotiations.

Another possibility worth considering is the use made by the Austrian and German Länder of Representative Offices in their respective capital cities. There is something to be said for the Scottish Parliament establishing a similar kind of office at Westminster, where further monitoring of the EU activities of the UK Government and Parliament could be undertaken and close contacts established with national-level officials. Here, the exploitation of party political links to the full would be of crucial importance. This would, therefore, require tight co-ordination between the political parties in Edinburgh and at Westminster, especially if the political administration in the Scottish Parliament differs from the one at Westminster. Indeed, the latter scenario could lead to tensions developing in the relationship between the UK Government and the Scottish Executive. An Office of Representation of this nature could act as an early warning system for alerting the Scottish Executive and the Parliament to issues that may give rise to possible conflicts.

## **Relations with the UK - in the EU Council of Ministers**

A central feature of the representation of Scotland's interests in Europe is the provision, in the White Paper, for the participation of Scottish Executive Ministers and officials in relevant meetings of the Council of Ministers as members of the UK delegation. While, it may also be possible for Scottish representatives to speak during Council meetings where appropriate, Scotland's Ministers will not speak for Scotland but for the UK as a whole and in this sense would be required to toe the UK policy line. The dominant position of the UK Government in Council negotiations is further reinforced by the inability of Scotland to represent the UK alone, unlike the situation of the German and Austrian Länder representatives.

The closed nature of Council deliberations may give rise to quite heated debate about how Scotland's views were represented in Council. It will be important for Scottish Executive Ministers to offer feed back on Council meetings to the Scottish Parliament. This should ensure some degree of parliamentary accountability.

Although these provisions concerning Scotland's participation at the EU negotiating table are much looser than those of the Austrian and German Länder, the experience of the latter at Council meetings underlines the importance of regional influence during pre-Council negotiations with their respective national governments. As already stated, the involvement of the Scottish Executive in formulating the UK policy line on Europe in co-operation with the UK Government is of vital importance to the securing of Scotland's interests in the national position, and therefore of its influence at the EU level prior to Council meetings. The experiences of the other regional governments show that they tend to have more success in influencing the national policy position on Europe before it reaches the Council of Ministers. Indeed, it is much more difficult for regional governments to exercise influence during the final stages of the negotiations in Council meetings.

## **Regional Observer within UKRep?**

In addition to the presence of Scottish Executive Ministers at Council meetings, the Scottish Office seconds staff to the UK's Permanent Representation as part of the UK's negotiating team in Brussels. As these officials also attend meetings of Council working groups, contact links with UKRep officials would be of high importance for the Scottish Executive and the Parliament if Scotland is to make its voice heard as early as possible at the European level.

Similar to the regional observers used by the Spanish, Austrian and German regional governments, Scotland could have two representatives within UKRep, who would perform specifically the role of watchdog at relevant Council meetings, working groups and Coreper. It may be that one of the regional representatives could come from Scottish local government, as is presently the case in Austria's regional representation to its national Permanent Representation office in Brussels

Monitoring the internal work of UKRep whenever EU proposals affect Scotland's devolved competencies would enable these representatives to observe if and how the UK Government considers the Scottish position in its negotiations. It would also ensure that the relevant information is obtained and fed back to Scotland via the Scottish Executive Office in Brussels, the Office of Representation at Westminster, the European Unit of the Scottish Executive and the European Committee of the Scottish Parliament. In addition, it could serve as another channel for bringing Scottish concerns about specific EU policy proposals to the attention of UKRep

officials.

### **A Scottish Executive Office in Brussels**

The very fact that the vast majority of Europe's regions have set up their own regional offices in Brussels testifies to the growing influence they enjoy at the European level. In many respects, they act as a focal point for the representation of their region in Europe. With direct access to the EU institutions, regional offices are ideally placed for representing and channelling their specific regional interests through such activities as lobbying EU officials and information gathering.

On 9 February 1999, the Scottish Secretary of State, Mr. Donald Dewar, announced that a new office representing the Scottish Executive and the Scottish Parliament, to be called 'Scotland House', will open in Brussels on the first of July. Such an Office, which is to be co-located with the offices of Scotland Europa, will be vital for the promotion of distinctively Scottish interests, for developing and maintaining direct contacts with EU institutions, including UKRep, as well as with other European regions, and for obtaining information of relevance to facilitate Scotland's scrutiny of European legislation. This would complement the work so far undertaken by the Scotland Europa Centre, which was established in 1992 as an umbrella organisation representing Scottish public and private sector interests in Brussels.

Since the Scottish Executive and Parliament will be seeking to establish a position on proposed European legislation to ensure this is adequately reflected in the UK's position, especially in Council, there are a number of functions Scotland House could perform to facilitate this. The experiences of the other regional offices in Brussels could offer Scotland House some important guidelines concerning the role it should play at the European level. Indeed, Scotland House could easily perform many of the functions already undertaken by these regional offices. However, a few activities are particularly worth noting.

While Scotland's office in Brussels would report directly to the central European Unit within the Scottish Executive, the office should remain in direct contact with the relevant Executive departments where specific EU matters are concerned. Here, information could simply be e-mailed to the relevant officials dealing with a particular policy area in Edinburgh. To ensure there is adequate feedback to the Scottish Parliament, Scotland House officials could prepare regular reports for the European Committee and attend its meetings once a year to inform the Parliament of the work of the Brussels office and its plans for the following year.

Scotland House officials could also be responsible for assisting in the co-operation between the Scottish Parliament and the European Parliament. A separate department could be established for monitoring the legislative agenda of the EP, including Committee agendas through *inter alia* the EP's Conference of Committee Chairmen and for gathering related documentation<sup>7</sup>. Such a task could be exceedingly useful for the early identification of issues affecting Scotland's vital interests that are coming onto the EP's agenda and for finding out the time-tabling of the EP's scrutiny.

However, monitoring alone may not be sufficient. Where EU legislation might have major consequences for Scotland, such an official should attempt to decipher the EP's probable amendments through contact with rapporteurs, Scottish MEPs, Committee secretariats (particularly, regional policy, transport, agriculture, fisheries, environment, etc.) and conciliation committee members and staff. This intelligence would allow the Scottish Parliament an opportunity to seek to influence where appropriate, or at least to anticipate the shape the proposal

is taking in the EP, especially those proposals subject to the co-decision procedure. It would also enable officials to be well briefed on the background to the legislative process, which would be of fundamental importance when feeding information about current European legislative developments back to the European Committee and to the other specialist committees of the Scottish Parliament.

Performing these functions efficiently would require Scotland House to be organised into specific policy sections. An example of how one of the regional offices in Brussels has organised its work is the Basque Country Government Delegation to the EU. This office operates through seven administrative departments, each of which assigns a regional officer responsible for the handling of a variety of European issues within that department. For instance, one of the departments deals with Social Affairs, Employment, Education, Training, Structural Funds, Urban Policy and Transport, while another looks after agriculture. There is also a separate department for the press service, general information and public relations work of the Office. The possibility exists for staff to move around from each department, as is also the case in the Catalan office. Enabling staff to gain an insight into, and to develop further expertise in, other EU policy issues can only add to the benefit of the regional government and parliament.

Scotland House should also be in a good position to build direct relationships with other regional governments, especially if there are particular areas of mutual interest. While the office would act as a reference point for Scottish representatives and officials within the EU institutions, its assistance in organising the visits of parliamentary committees and executive departments to Brussels would be one way for the office to raise awareness of Europe in Scotland. In conclusion, the presence of a Scottish Executive and Parliament Office in Brussels would establish a two-way link of co-operation. On the one hand, it would enable Scotland to gather all the necessary EU information it requires for influencing and contributing to the EU policy-making process. On the other hand, it would allow Scotland to pass on its views and ideas to the EU institutions, thereby ensuring that its concerns are heard at the EU level.

### ***2.3. Implementation of European Legislation in Scotland***

It is in the area of EU implementation that frequent tensions between the central state and the regional level of government have arisen. Although the Scotland Act gives the Scottish Parliament and the Executive the responsibility for observing and implementing EU obligations in Scotland, it reserves certain rights to the UK Parliament to take measures against the Scottish Parliament should it fail to implement European legislation for which it is responsible. Indeed, clause 28 of the Act provides that an Act of the Scottish Parliament will be *ultra vires* if it conflicts with EU law.

To ensure that Scotland fulfils its EU obligations concerning the devolved areas, there would need to be some form of co-ordination and co-operation not only within the Scottish Executive (as discussed earlier) but also between the Whitehall Ministries and the Scottish Executive Ministries as there already is in the Austrian, German and Spanish systems of government. Such a form of co-ordination and co-operation would be especially important in view of Scotland having its own legal system that is separate from the rest of the UK. Implementation of EU law in the UK would therefore need to consider distinctive Scottish conditions and requirements. This could involve the establishment of a monitoring system at the level of the UK Government which would monitor progress made and resolve any problems of implementation that may arise at an early stage, as is the case in Austria. Such a system would further act as a safeguard between the two levels of government.

It is questionable as to how effective this monitoring system would be in keeping track of developments in Commission implementing and expert committees. There are over 800 of these committees, comprising national experts, which oversee the implementation of EU law. For example, there are 48 different types of agricultural committees involved in the implementation of the EU's Common Agricultural Policy, 35 for transport, 34 for the environment, and 25 for the fisheries sector<sup>8</sup>. The situation within these committees is further complicated by their subject to different decision-making procedures depending on whether they can be classified as advisory, management or regulatory.

With little transparency surrounding the discussions and outcomes of these committee meetings it would be exceedingly difficult for both Westminster and Holyrood to control the implementing activities of these committees should they wish to do so. Indeed, the European Parliament also has similar difficulties. Although MEPs can now ask to attend comitology committees as observers, committee members have to agree to this unanimously. In any event, this does raise the question as to whether Holyrood could have access to feedback from those committees involved in matters of implementation affecting Scotland's devolved powers.

#### ***2.4. Scotland's Relations with other EU Institutions.***

##### **The European Commission**

EU Commissioners and their officials are viewed as a particularly important channel through which regional governments can seek to influence EU legislation at the pre-formulation stage. Relatively easy access to Commission officials therefore makes for intense lobbying on the part of the regional governments. Scottish Executive Ministers, including the First Minister, could meet with Commissioners and officials from the various Directorates-General on a regular basis. This would offer another chance for Scottish input before an EU issue reaches the Council.

For example, some of the German Länder have regular working contact with the Commission's Directorate-General for regional affairs. Such contact provides the Land governments with a good opportunity to discuss the implications a particular proposal in the area of EU regional policy may have on their region, and to bring their specific concerns about EU issues to the attention of the Commission when it is still being discussed in Commission working groups. At the same time, these meetings with the Regional Affairs Commissioner and his officials also enable the region to elicit information on the way the Commission is thinking, on how the proposal would develop, and the time-tabling for its adoption as a formal EU proposal.

It is also frequently the case that the Spanish, Austrian and German regional governments lobby their own nationals in the Commission, particularly Commission *cabinets* which usually comprise nationals from the Commissioner's own Member State. Given the significance of the Commission's role in formulating European legislative proposals and its role in overseeing the implementation of Community policies, it would be in Scotland's best interests if it established similar close links of contact with UK Commissioners and Commission officials. An additional mechanism worth considering is the possibility of EU Commissioners giving evidence to the European Committee within the Scottish Parliament.

##### **Scotland's Members of the European Parliament**

Although other regional governments and parliaments have so far failed to use their MEPs to any

great extent in relation to Europe, the European Parliament is another exceedingly useful channel for lobbying and representing Scottish interests. This is especially the case given the increased role and influence of the EP in the EU decision-making process under the co-decision procedure. Such a procedure effectively allows the EP to veto legislation and to use that veto power as a lever to obtain amendments. Indeed, ratification of the Amsterdam treaty will mean that about 80% of EU legislation will be adopted through co-decision.

Since some of the areas devolved to the Scottish Parliament fall under co-decision (i.e. education, environment, health, transport, etc.), both the Scottish Executive and the Scottish Parliament should seek to influence the EP as a co-legislator with the Council. This could be done through close liaison between the European Committee at Holyrood and Scotland's eight Euro-MPs. However, closer contacts will become all the more important following the introduction of the new electoral system for the 1999 European Elections in the UK, when the UK MEPs will lose their traditional constituency link. Scotland's eight MEPs will no longer represent individual constituencies but instead will represent the region of Scotland.

Many of the regional parliaments in Austria, Germany and Spain as well as the European Parliament are presently looking at some practical ways that would enable regional parliaments to become more involved in the legislative work of the EP. One such area that is presently under consideration is the idea of regional parliaments sending a representative to the six monthly meetings of COSAC (comprising representatives from the various European Affairs Committees in the national parliaments of the fifteen EU Member States and representatives from the EP)<sup>9</sup>. This body usually meets in the country holding the EU Presidency to discuss issues of common concern and exchange information. So far, the Flemish regional parliament in Belgium is the only regional-level parliament that sends a representative to COSAC, though the Spanish regional parliaments are quite keen to have representation at this body also. By attending COSAC meetings, the Scottish Parliament would be able to obtain information about EU matters under discussion in the national parliaments and could possibly share the views of the Scottish Parliament with other national and regional parliaments, and not just Westminster.

Other mechanisms that could prove beneficial to the development of links between the EP and the Scottish Parliament include building contacts between the specialist committees of both parliaments, for example through exchanging information and visits to relevant committee meetings (in particular those of regional affairs, agriculture, fisheries, transport, social affairs and the environment). This would enable Scottish parliamentarians direct access to follow the progress of EU legislative proposals of interest to them at the committee stage of the EP's scrutiny. For example, delegations from Baden-Württemberg's parliament have visited the EP's regional affairs committee and found this to be useful, in terms of establishing a dialogue between regional-level politicians and MEPS and in obtaining relevant information and documents for the purposes of their own scrutiny. Additionally, EU Commissioners also now attend such meetings.

Although bilateral meetings of parliamentary committees occur quite frequently between the EP and the national parliaments, these have not been exploited by the other regional parliaments to any great extent. However, this may change given the EP's recent proposal to reserve six places in its regional affairs committee for representatives from regional parliaments with legislative powers. Bilateral co-operation with the EP could be further strengthened by the Scottish Parliament having access to the EP's database system. This would ensure that the EP's documents in Brussels, Strasbourg and Luxembourg are made available to Holyrood at an early stage of scrutiny.

Scottish MEPs could be given the status of experts with speaking rights within the EU affairs committee of the Scottish Parliament and for dealing with EU questions in the other specialist committees. Some of the German regional parliaments have already established a similar practice for allowing their regional MEPs to attend meetings of European affairs committees. If there is a particular EU policy issue under discussion in the EP, which affects a devolved area and is of interest to Scotland, MEPs involved with this issue should be invited to give evidence to the relevant parliamentary committee. The participation of MEPs in the work of these committees on a regular basis would allow an exchange of information and would open up another avenue for Scottish views to be fed into the EU policy process. While MEPs would be made aware of Scottish views concerning EU legislative proposals, they would also be able to impart on MSPs the current situation in the European Parliament.

In addition to Scotland House officials following the work of the EP, the Scottish Parliament could consider seconding parliamentary officials to work within the EP for a short period of time, either by means of a traineeship or by a working visit to the EP. Traineeships with the EP usually run from one week to three months, the cost of which is covered in part by a daily allowance provided by the EP. This form of professional traineeship has so far only been used by some of the national parliaments (e.g. the UK, Finland, Sweden & Denmark). However, it is highly regarded for enabling officials from national parliamentary committees to gain a useful insight into the EU's legislative process, and more importantly, to establish direct contacts with their European colleagues<sup>10</sup>.

### **The Committee of the Regions (CoR) & The Economic and Social Committee (ECOSOC)**

Scotland's links with its own members in the Committee of the Regions and the Economic and Social Committee would also serve a useful purpose if Scotland's interests are to be heard in Europe. Under the Amsterdam Treaty the consultative role of each of these two advisory bodies would be enhanced to give them a direct say in policy areas such as employment, social policy, public health, transport, environment and vocational training. In addition, the EP can now also consult both bodies. Given the significance of some of these policy areas to the Scottish Parliament, Scottish members in the CoR and the ECOSOC should be used by the Parliament and the European Forum for their expertise and experience. To this end, it would be particularly useful for these members to keep in close contact with the Scottish representative office in Brussels and to report back to Scotland's Parliament on EU developments in their respective bodies.

At the present time, Scottish representation on the Committee of the Regions is confined to local government (four full places and four alternate places). However, this may change after 2002 when the CoR comes to the end of its four-year term of office. It will be for the Scottish Parliament to decide on Scotland's delegation. In view of the problems experienced by Spain and Germany in sending political heavy weights, such as Land Prime Ministers, to the Committee, it is essential that the Parliament chooses the right level of politician to act as representative. To this end, the Scottish Parliament could decide to appoint representatives from both the Parliament itself, which would perhaps help the position of the Parliament in European matters, and from local government. This is already the case in the German Land of Lower Saxony, where the Chairman of the Federal and European Affairs Committee is also at the same time one of the two representatives of Lower Saxony in the Committee of the Regions.

## **Concluding Remarks**

Only time will tell how successful Scotland will be in developing and maintaining its influence in Europe. Whilst each of the examples of established regional governmental systems discussed in this paper have both their strengths and weaknesses, they can provide Scotland with key guidelines on how it could maximise its influence within the policy processes of the European Union. It is argued here that Scotland's influence can only develop through skilful exploitation of the various formal and informal networks and channels that exist at Scottish, UK and European levels. In addition, Scotland will have to be open to new innovative ways forward through efficient mechanisms that provide two-way channels for effective representation of the interests of the Scottish people.

In strengthening its links with Europe, it will be crucially important for Scotland to have the key mechanisms for co-ordinating these networks and channels in place at the onset of its devolved status. With the creation of a new political system, Scotland will have an opportunity to learn from the European experiences of the Spanish, Austrian and German regional governments in terms of the mechanisms each of them have implemented.

Firstly, close co-operation between the regional government and the regional parliament would allow the Scottish Executive and the Scottish Parliament to work together in the formulation of strong policy positions on proposed European legislation. This would ensure that the Scottish Parliament could play a proactive role in European affairs, and not simply be informed and consulted by the Scottish Executive.

Secondly, close co-ordination between regional government and national government officials during the formulation stage of the national position on EU policy proposals, will be crucial for enabling the two different levels of government to reach a joint position in which regional interests are clearly represented. This would provide Scotland with the best opportunity of feeding its views into and influencing the national position prior to the UK government entering formal negotiations within the Council of Ministers.

A third example is the need for regional officials to have the necessary knowledge and a strong understanding of EU policies and how the institutions and processes of the EU work. Gaining this expertise would be particularly important for Scottish regional officials, thus providing them with the ability to identify the implications of EU proposals for Scotland, and to participate more effectively in their discussions with officials from the UK Government and the EU.

Another example concerns the availability of comprehensive and concise information at the earliest stage of scrutiny. Feedback from 'early warning' officials, e.g. Scotland House (once it is in place) would be vital for Scotland in raising awareness of relevant EU policy developments, and formulating its views within the strict time-scale for scrutiny.

Finally, innovative networks (such as the European Forum); efficient channels of communication; and effective co-ordination and co-operation, within and across regional, national and European levels, will be essential for safeguarding the interests and views of Scotland and ensuring their adequate representation at each of these levels.

These are the mechanisms which represent the foundation stones that Scotland can build on to meet the challenges of participation and influence in the European policy process through its devolved power within the United Kingdom, and as a respected voice in Europe.

**Note**

This paper originates from a seminar organised by Scotland Europa in June 1998 on 'The Representative Role played by the Regional Offices in Brussels'. Research for the paper was much aided by the collection of briefing papers presented at this seminar, by internal reports produced by Scotland Europa itself and by official papers supplied by many of the offices of the regional governments and parliaments. I am particularly grateful for the comments made by Jane Aitken, Joanna Goodburn and Sam White and for their assistance in the preparation of this paper at its different stages.

This paper expresses the personal views of the author and does in no way reflect those of Scotland Europa.

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<sup>1</sup> See the evidence given by Professor Paul Heywood to the inquiry of the House of Commons Scottish Affairs Committee into the 'Operation of Multi-Layer Democracy, HC460-ii, session 1997-98: 40.

<sup>2</sup> Articles 70 - 75 of the German Basic Law outline the different categories of exclusive, concurrent and framework legislation.

<sup>3</sup> See in particular the evidence provided by Dr. Charlie Jeffrey to the same inquiry held on the 25th of February 1998, HC460-ii, session 1997-98: 22-23.

<sup>4</sup> Author's own translation of the official agreement between the government and parliament of Baden-Württemberg, amended on the 15<sup>th</sup> of September 1995. Agreements of co-operation between regional governments and regional parliaments in both Germany and Austria can be found in Straub & Hrbek, 1998

<sup>5</sup> The list of activities performed by the regional offices in Brussels to varying degrees was compiled from some of the briefing papers presented at Scotland Europa's seminar in June 1998 on the representation role played by the regional offices in Brussels.

<sup>6</sup> 'Scotland's Parliament: Handling of European Business', report prepared by the Scottish Office European Affairs Division to the Consultative Steering Group Committee. October 1998 CSG (98) (74).

<sup>7</sup> The chairpersons of each of the EP's committees meet together regularly as the Conference of Committee Chairmen to review the progress of work in the committees and are involved in the drafting of EP plenary agendas.

<sup>8</sup> These figures are taken from a series of papers produced by the European Institute of Public Administration for a seminar it held in the autumn of 1998 on '*Committees and Comitology in the Political Process of the European Community*'.

<sup>9</sup> Under the Amsterdam treaty, COSAC is given treaty status for the first time since its establishment in 1989. Here, COSAC 'may make any contribution it deems appropriate...in particular on the basis of draft legal texts which...the Member States may decide by common accord to forward to it'. Protocol on the Role of National Parliaments in the European Union, II (4 - 7). For a commentary on this protocol and the rest of the treaty provisions, see Duff, Andrew.

<sup>10</sup> The extent of the EP's cooperation with national parliaments is outlined in a Report to the President and the members of the Conference of Presidents and the members of the Bureau of the European Parliament on '*Cooperation between the European Parliament and the National Parliaments. Assessment and New Proposals*'. Rapporteurs: Nicole Fontaine & Renzo Imbeni. Brussels, 6 October 1997, PE263.059/BUR.