

Influencing EU Policy



A guide for Scottish Government officials

European Relations Division
Directorate for Culture, Europe & External Affairs
The Scottish Government

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Table of Contents

Introduction	3
Part 1: Who's Who in Brussels	4
Scottish Government EU Office	4
Working with the UK Permanent Representation and Whitehall	5
The European Institutions	7
The Scottish Parliament	11
Part 2: Early Influencing.....	12
Horizon scanning	12
EU Consultations	16
Lobbying from the start.....	18
One Scotland	20
Part 3: Formal Negotiations and Decision-Making Process	21
The EU Decision Making Process	21
How we engage in the process	26
The Joint Ministerial Committee (Europe)	29

Introduction

This guidance has been prepared by the European Relations Division in the Directorate for Culture, Europe and External Affairs, to assist policy officials in the Scottish Government in influencing EU policy in their policy areas.

This guidance explains the EU decision making process; offers advice on engaging and influencing early on in the process and engaging in the formal negotiating and decision-making process.

Additional guidance for policy officials is available at the following links:

Implementing EU Obligations

<http://www.gov.scot/Topics/International/Europe/Policies/Strengthening-Relationships/Obligations/Implementing-EU-Policy>

Explanatory Memoranda

<http://www.gov.scot/Topics/International/Europe/Policies/Strengthening-Relationships/Obligations/Explanatory-Memoranda>

Handling Infractions

<http://www.gov.scot/Topics/International/Europe/Policies/Strengthening-Relationships/Obligations/Handling-Infractions> .

Part 1: Who's Who in Brussels

Scottish Government EU Office

1. Located in the heart of the European Quarter in Brussels the Scottish Government's European Union Office (SGEEO) is in a prime position to ensure that Scotland's interests, expertise and ambition are understood by European Institutions and other Member States and Regions.

2. The Brussels based office, in collaboration with Scottish Government policy leads, provides support to Scottish Ministers travelling to Brussels to participate in European Council meetings, to meet with key stakeholders including Member States, the European Commission and the European Parliament as well as monitoring developments in EU institutions and feeding this in to colleagues in Scotland.



3. Efforts are focused on priority areas which have an impact on our domestic responsibilities and where Scotland can achieve real benefits in the long run. We also identify opportunities where we can demonstrate to the European Union that Scotland is a constructive partner that can play a leading role and contribute for the wider benefit of EU citizens. However, we strive to engage directly with the EU institutions, UK counterparts and stakeholders, in all areas of EU competence.

4. This work is complemented by a programme of policy and cultural events which usually take place in the conference centre in Scotland House. These events provide an opportunity to showcase areas of particular Scottish expertise, to share and debate best practice with European partners in areas of critical importance for Scotland, to contribute to European policy development and to invite others to share, celebrate and enjoy our rich cultural heritage and renowned hospitality.

5. The SGEEO is made up of a Head of Office; desk officers covering a wide range of policy areas; a European Parliament Liaison Officer; a Visits and Events Manager; two Finance and Administrative Officers; and two Interns who support work on events and policy.

6. To find details of the current post holders and who covers your policy area go to our [Contacts List on the Website](#) or get in touch on 0032 (0)2 28 28 330.

Working with the UK Permanent Representation and Whitehall

7. It is crucial to maintain good communications with your Whitehall colleagues, as they are a key conduit into Brussels. The UK is the member state and therefore in any negotiation taking place (see Chapter 3) it is important to have played a part in developing the UK position to ensure that it reflects Scottish interests and concerns.

8. The UK has an office of Permanent Representation in Brussels, usually known as UKRep, which works as the main interface between the EU and the UK. It can provide advice on contacting the institutions and act as a coordinating point for communication. It is headed up by the UK's ambassador to the EU, or Permanent Representative, and is supported by a staff of policy officers and legal advisors. The team in SGEUO has very close links with the UKRep office, and can help if you need to contact anyone there.

Building Trust and Good Working Relationships

I have a standing meeting with the UKRep Justice and Home Affairs (JHA) Section every two weeks, which can be anything from a short catch up with the Section Head to several meetings with desk officers on a range of topics, it just depends. The purpose is primarily to discuss SG priority dossiers, matters which affect Scotland and/or practical issues such as arrangements for upcoming Council meetings. JHA is a broad portfolio and talking to UKRep regularly helps me to cover more ground faster and often accelerates reporting to policy leads and EU coordination colleagues in Justice Directorate. It also gives me a better sense, and at times a useful heads up, on particular issues of concern to the UK Government. The personal contact with UKRep has proved to be invaluable on those rare occasions when there is a divergence of views between Scotland and the rest of the UK or there is a particular Scottish concern that I have to raise. Equally, I have been able to work constructively with UKRep when the UK Government has raised concerns. Above all, getting to know my UK colleagues and to understand the bigger picture in terms of negotiations is a crucial part of delivering on EU engagement for our Ministers. Our discussions are always professional, courteous and respectful of each other's role and policy position. I have also generally found my UK colleagues to be very helpful in terms of identifying UK policy leads and getting in touch with the right people in the institutions and other member states.

Alex Doig, Senior Policy Adviser, SGEUO

9. A [Concordat on the Coordination of European Union Policy Issues](#) is included in the Memorandum of Understanding between the UK Government and the Devolved Administrations. This states that Scottish Ministers and officials should be fully involved in discussions within the UK Government about the formulation of the UK's policy on all issues which touch on matters falling within devolved responsibilities. In return, the Scottish Government agrees to support the resulting UK negotiating line which we will play a part in developing.

10. Your UKG counterparts should keep you informed of any policy developments which might have a devolved element, but you should also take the initiative to keep yourself up to date. By being proactive you can show that you have a genuine policy interest and need to be included in the development of the UK position.

11. Don't forget the other parts of the UK either. Wales and Northern Ireland also need to be included in the UK line and it can be useful to have their support if your policy is different to the UKG position.

12. You should contact the UK Relations team if you need help engaging with your Whitehall counterparts.

The European Institutions

The European Commission

13. The [European Commission](#) is independent of national governments, instead representing and upholding the interests of Europe as a whole. The term 'Commission' can be used to refer both to the College of Commissioners as a political body and to the institution itself. The College of Commissioners consists of 28 Commissioners, one from each member state, and about 24,000 officials.

14. It has the sole right to propose legislation, although the Parliament can request that the Commission bring forward an initiative (under Article 225 of the Treaty on the Functioning of the EU). It sets objectives and annual priorities for action, drafts proposals for new European laws, and manages the implementation of EU policies and the spending of EU funds.

Commissioners

15. Although each Member State has a Commissioner, these Commissioners are not Member States representatives. Their oath of office requires them to consider the interest of the EU as a whole, and not take instructions from Member States. Overt nationalism by Commissioners is therefore rare, but they do bring their own understanding of their Member States of origin to Commission discussions and decisions.

16. Under the 2014-2019 Commission led by President Jean-Claude Juncker, a new structure or hierarchy within the Commission has been established. This sees a group of seven Vice-Presidents sitting above the remaining 20 Commissioners in groups known as 'Project Teams'. In practice this means that for many policy areas there is both a Commissioner and a Vice-President who holds sway. Among the Vice-Presidents there is a First Vice-President, who plays an important role in steering the priorities of the Commission.

17. Each Commissioner has a Cabinet – a private office/team of advisers. This team supports the Commissioner in delivering their programmes, providing advice as well as support to undertaking their daily activities. Cabinets also act as a political antenna for the Commissioner and help to mediate where there are competing interests. Cabinet Members and Heads of Cabinet are important contacts to have and can be invaluable in getting time with the Commissioner or delivering key messages.

Engaging with the Commission

18. Strong, honest and constructive relationships with the European Commission are vital to ensuring that Scotland's views and interests are known. Ensuring that Scotland's voice is heard at the very earliest possible stage in Commission policy development is crucial for effective engagement.

19. Scotland has built a strong reputation for being a positive, committed and credible partner. All of our engagement with the Commission should be strategic and well informed to maintain this critical relationship.

20. Meetings between Commissioners and Scottish Ministers and stakeholders, as well as between officials, whether in Brussels or Scotland, can be immensely helpful in explaining to the Commission the unique challenges that face Scotland. Advice on approaching Commissioners should be sought at an early stage from the Scottish Government EU Office (SGEEO).

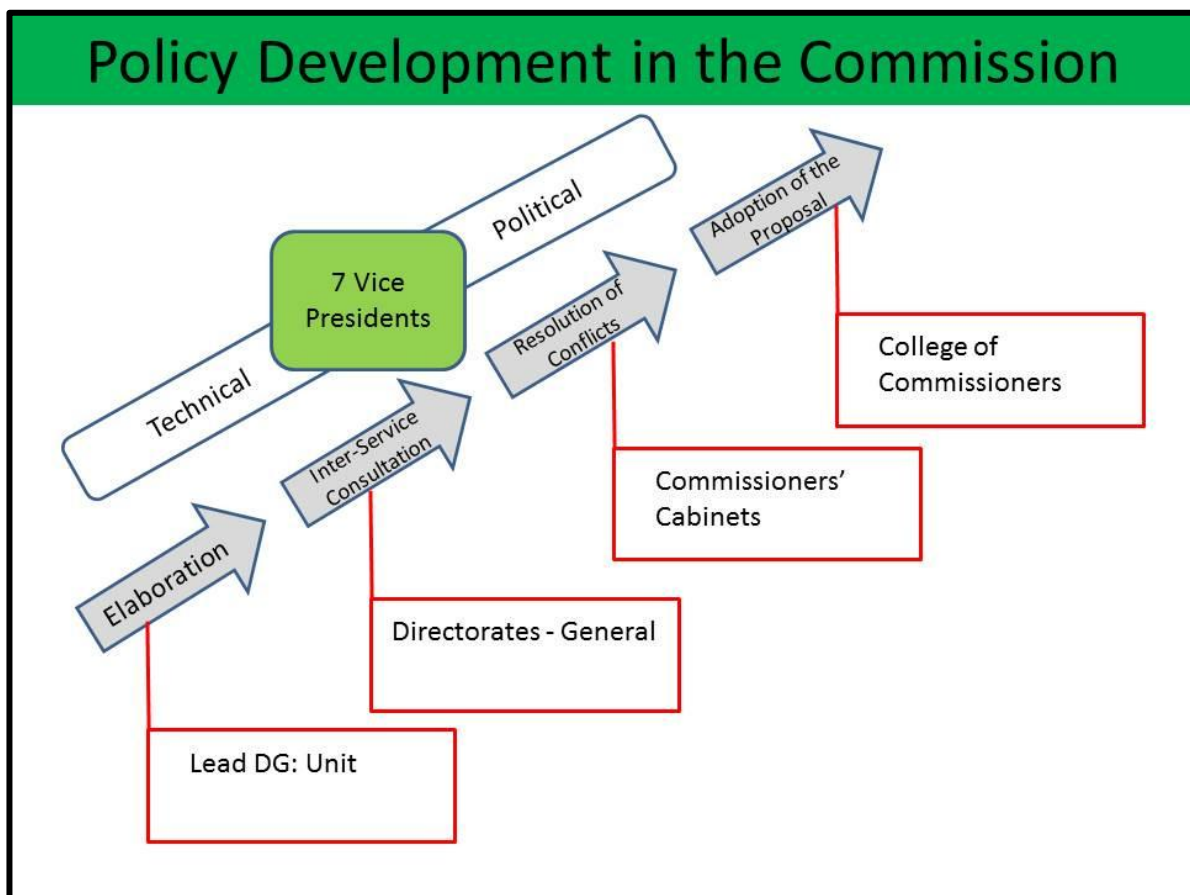
21. The Commission is a fairly open institution - you can use the link to the Commission Directory below, but do also **contact SGEEO** staff to ascertain if there are any existing links which can be used as a way in.



Who to engage in the Commission

22. There are two fields in which to engage in the Commission – the technical and the political. The Political level – the Commissioners and their Cabinets – are useful for delivering overarching and political messages. The Technical level – the relevant DGs, especially the lead units – are critical for influencing the shape of policy which is under development.

23. The sections further below cover using early influencing opportunities and the negotiations process. This diagram sets out where the different parts of the Commission are engaged in the process – however you should also recall that the Commissioners set the overarching objectives and priority dossiers for the working year as well as longer term.



The Council

24. The [Council of the European Union](#) (often just called "the Council") is a key decision-making body of the EU. This is the forum where the national interests of the Member States are represented.

25. The Council is divided up into 10 different configurations, each dealing with a particular subject matter.

26. These meetings are composed of one representative from each Member State, authorised to commit his/her government and are almost all chaired by the Member State holding the rotating presidency. The representative is supported by officials - a Senior Official often sits alongside their Minister at the table. There is a secondary row of 2 to 3 chairs for further members of the Delegation. Scottish Ministers can attend Council and do represent the UK by agreement with the lead UK Minister.

27. However, before a matter is discussed at a Council meeting it will have been developed at official level in Working Group meetings, also comprised of representatives from each Member State. Officials can attend these meetings, in collaboration with UK counterparts, or ask the relevant Scottish Government EU Office desk officer to attend on their behalf.

The Presidency

28. The Presidency of the Council of the European Union is held in turn by each Member State for a period of six months, in accordance with a pre-established rota. As this is a fairly short term, Presidencies operate in Trios and seek to coordinate priorities and work on dossiers across an 18 month period. Individual Presidencies will work closely with the previous and subsequent Presidency country across Trios. Smaller Member States particularly may ask for support from a larger Member State who follows or precedes them as well as the wider family of Member States.

29. The Presidency plays an essential role in organising the work of the institution, particularly in promoting legislative and political decisions. It is responsible for organising and chairing all meetings, including the many working groups, and for brokering compromises.

30. It is therefore useful to know what the Presidency priorities are – you can find details of the current Presidency and links to their website on the relevant [Council of the EU Webpage](#).

Engaging with the Council

31. Our interaction with the Council is of a different nature than that with the Commission and the Parliament. Engagement is primarily through the UK Government, which is responsible for representing the UK as Member State in EU Council Meetings. It is therefore essential that you have good communications with your Whitehall colleagues.

32. Scottish Ministers can and do represent the UK at Council meetings, where they will deliver the agreed UK negotiating line. This is agreed on an ad hoc basis and Ministers need to be granted permission to do so by the lead UK Minister.

33. At official level there is general acceptance that Scottish Government Officials may attend Working Parties in areas of devolved responsibility. In some subject areas this is more common than others, and does not require prior agreement.

34. Contact your Scottish Government EU Office desk officer if there are working party discussions taking place which you would like to attend, or which you think it would be useful to have the desk officer in Brussels attend.

The European Parliament

35. The [European Parliament](#) represents Europe's citizens in the EU decision making process. It is the only directly elected institution of the European Union and its members are elected every five years. The Parliament is led by its [President](#), elected by the members for 2.5 years, who represents the Parliament and oversees its procedures.

36. There are 751 members of the European Parliament, elected on the basis of the population of each member state and its constituencies, six of whom represent Scotland. Members do not sit in national delegations, but instead in transnational [Political Groups](#). About a third of the members are women.

37. Following the implementation of the Lisbon Treaty, nearly all EU legislation (around 95%) is co-decided between the European Parliament and the Council, under the Ordinary Legislative Procedure (OLP). This, in principle, puts the European Parliament on an equal footing with the Council.

38. There are still certain areas of legislation where the Ordinary Legislative Procedure does not apply, and the Parliament is only required to give its assent or to be consulted. Such areas include aspects of justice and home affairs, and taxation. In certain areas, such as the setting of annual total allowable catch limits in fisheries, the European Parliament has no input in the proceedings, with decisions taken in the Council.

39. Our MEPs can be very influential so it's good to get to know them, and their support staff. For example in the current Parliamentary session, 2014-2019, Ian Duncan, Conservative MEP for Scotland, is the rapporteur on the proposals for Phase IV the Emissions Trading Scheme.

The Scottish Parliament

40. The Scottish Parliament is responsible for scrutinising the impact of legislative proposals on the people of Scotland and voting transposing legislation into Scottish law. Subject Committees take a close interest in EU legislation coming forward in their areas, and the Europe and External Relations Committee looks at cross-cutting EU issues.

41. Scottish Ministers need to be aware of current EU issues, so that they can explain to Parliament how the Scottish Government is engaging with topical or sensitive matters. Keep your Ministers fully briefed of legislation coming forward, and be prepared for your Subject Committee to request an update from your Ministers.

42. Your local Committee Liaison Officer will be able to assist you with contacting your subject committee. If you do not know who your CLO is, you can check [here](#).

43. The Scottish Parliament has powers to scrutinise legislative proposals coming from the Commission to ensure that the proposed action is at the correct level of governance, **respecting the principle of subsidiarity**. This scrutiny happens through the Explanatory Memoranda (EM) system. For more information on handling EMs and the principle of subsidiarity, please see our EM Guidance available at <http://www.gov.scot/Topics/International/Europe/Policies/Strengthening-Relationships/Obligations/Explanatory-Memoranda>.

Part 2: Early Influencing

Horizon scanning

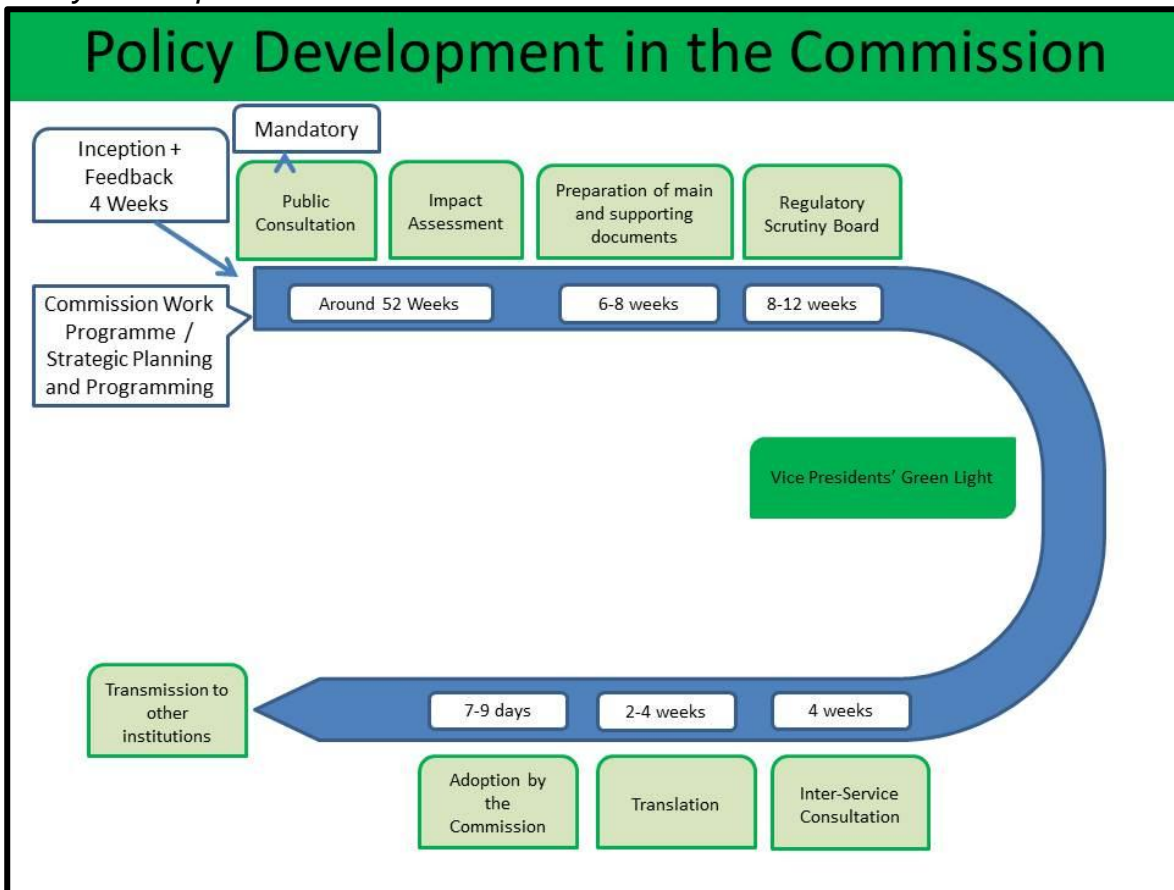
44. Looking ahead and engaging early is critical, whether this is seeking to directly talk to Commission teams developing early policy thinking, or responding formally to Roadmaps and Public Consultations, all of these are critical junctures to influence EU policy. As a non-Member State these are often the moments we can have greatest direct influence. When a legislative proposal is already on the table, not only have the options already reduced in number, but there are 28 Member States and many hundreds of MEPs who get their hands on it, and we now need to influence them to act on our behalf.

Forward looks

45. Your SGEUO Desk Officer will prepare 'Forward Looks' twice a year to coincide with the start of each Presidency (January and July). These forward looks are designed to capture not only what our interest is in the key priority dossiers of the Presidency, but also consider what the Commission is working on and what proactive interests Scotland has which can be furthered over the coming six months.

46. If you're not already on the distribution list for these forward looks you can ask your desk officer for the most recent version and to be added for the future. As part of this process desk officers are looking for feedback and keen to hear if there are proactive interests in upstream EU influencing in specific subject areas.

47. There are however other key moments in the year which allow for a look ahead at what is coming up, you can check these out yourself and ask your desk officer to include you in any updates.



48. This is not a quick process, the diagram above sets out how the majority of initiatives are developed. The estimated 18 months – 2 years is particularly true for legislative initiatives, whereas non-legislative initiatives (Communications primarily) can sometimes be produced more speedily due to their lesser impact. Although don't be fooled, a non-legislative Communication can lead to new legislative initiatives so are sometimes as important to shape in terms of setting a direction.

49. As you can see there are a number of structured opportunities to engage in the process – we cover Consultations and Feedback on Roadmaps and Inception Impact Assessments below.

50. However throughout the whole process the Commission is lobbied by interested stakeholders, including member states and other EU regions. Therefore it is also important that, in priority areas, the Scottish Government is also involved and targeting our efforts wherever possible from the very beginning.

51. The Commission may adopt communications, green papers and white papers as part of the development of a formal legislative proposal – although these documents are not in themselves legally binding it is essential to influence them as they will help to set the direction for a formal proposal. Initial lines should focus on the key principles and direction of a forthcoming proposal. These lines can then be refined further as the policy progresses.

Commission Work Programme and Strategic Priorities

52. In order to engage effectively and early enough to be useful it is important to know what legislative proposals the Commission is planning to bring forward. The current Commission set a strategic framework of 10 Priorities when they entered office. These political guidelines - A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change - and the full suite (alongside actions so far) can be accessed online on the [10 Priorities Webpage](#).

53. In implementing this streamlined approach to working, the new Commission is taking a more targeted attitude to their annual Commission Work Programme. It now only identifies new initiatives for the coming year, REFIT actions (evaluations of existing legislation), proposals being withdrawn, and existing legislation being repealed.

54. The annual work programme can be accessed on the [Commission At Work website](#).

55. Each [Directorate General](#) within the Commission also has their own web pages, with regular updates on what they are developing. Centrally the Commission publishes regular updates on [expected publication/adoption dates](#) for new initiatives.

Forthcoming Initiatives – Roadmaps and Inception Impact Assessments

56. The European Commission [publishes roadmaps or inception impact assessments](#) (IIAs) to inform stakeholders and citizens about new initiatives as well as about evaluations and Fitness Checks under the REFIT Programme. You can sign up on the website to receive alerts on Consultations and Roadmaps/IIAs for your interest areas.

57. Roadmaps for new major initiatives describe the problem to be tackled and the objectives to be achieved, explain why EU action is needed and its added value and outline alternative policy options. Roadmaps for evaluations and Fitness Checks specify the scope of the evaluation and the issues to be examined in the context of an evaluation.

58. If an impact assessment is planned, the roadmap is replaced by an Inception Impact Assessment which sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option. All initiatives likely to have significant economic, environmental or social impacts should undergo impact assessment. If no impact assessment is planned, the relevant roadmap will explain why.

59. All Roadmaps/IIAs contain information on planned stakeholder consultations and outline when and how stakeholders will have the opportunity to provide input.

60. It is now possible to give feedback on the roadmaps/inception impact assessments: after publication of a roadmap/inception impact assessment anybody can share their views – so do alert your stakeholders if you feel they may be interested. You should note that any feedback received via this portal may be published and taken into account by the Commission services when further developing the policy proposal.

EU Calendar

61. The [EU Calendar](#) gives a daily breakdown of forthcoming events and daily news.

EU Weekly Note

62. The SGEUO provides a weekly overview of key activity in Brussels and a look to the week ahead. Contact the SGEUO to sign up to the mailing list.

EU Consultations

63. A Commission consultation is an integral part of policy formation – it's an early opportunity to engage with Commission officials and help shape a proposal. All open and closed consultations can be found at the [YourVoice](#) website.

64. An EU consultation can take different forms – it might be a Green Paper (a discussion document intended to stimulate debate and launch a process of consultation, at European level, on a particular topic), a call for views on key elements of an impact assessment, or it might be a call for views on an evaluation or a fitness check.

65. Consultations may ask either open or closed questions, however the format does not need to determine how the Scottish Government may choose to respond to the consultation.

66. A response may take a number of forms, or indeed multiple forms. If in doubt as to the most appropriate, you should contact the SGEUO.

- The SG position should always be represented in an agreed UK wide response – a letter/paper which fully encompasses all UK administrations' positions. Where there are significant divergences in views and this is not reflected, you may wish to request that a UK Government response be clearly marked as such – and not as a UK response.
- A slight variation – a separate SG response is prepared but is submitted together with the UK one – as an overall package.
- A completely separate SG response, ordinarily one that does not contradict the UK response – the UK is the Member State not Scotland – but adds additional detail such as specific Scottish achievements or strengths. However, if presented with a scenario where our fundamental position on an issue is evidently different, a separate SG response, directed by your Minister and non-aligned to the UK Government response, may be required.

67. A completely separate response may simply take the form of a letter from your Minister or your Director which, depending on how the consultation is structured, could be addressing a paper, or answering a specific set of questions.

So should we provide a separate Scottish Government response?

68. This depends on a number of factors, but a good start is asking whether it will *add value* – will it raise Scottish Government profile in the Commission? Will it highlight a particular aspect of relevance to Scotland that might not be fully covered in the UK response? What view would your Scottish Parliament subject committee take?

69. By being pro-active we can play our part in the formation of EU policy with the ultimate outcome being better policy for Scotland.

70. There is no one-size-fits-all approach, but hopefully the guidance below will help you think through the main issues:

Timing

71. An obvious one but make sure you know the deadline for responses. Draw up your own schedule by working back from the deadline, incorporating sufficient time to consult and for Ministerial clearance if that is likely to be needed.

Liaison with UK Government

72. In order to decide whether a separate Scottish Government response is appropriate you will need to be aware of what the UK Government is planning. Use your day-to-day contacts, or if you are unsure who will be dealing with the consultation, [UK Relations Team](#) or your SGEUO desk officer should be able to help.

73. Having ensured you have fed into the UK response you may decide a separate SG response is also appropriate. As discussed above, submitting a SG response alongside the UK one might be the most appropriate course of action. If you decide on an entirely separate SG response you should keep the UK Government informed and it is good practice to share a copy prior to submission.

74. Likewise it will be important to work closely with the lead UK Department to ensure that they are giving proper consideration to SG views as they prepare their response and that their final version is circulated to our Ministers for formal consideration of the agreed UK position.

Industry/stakeholder consultation

75. It may be appropriate for you to consult with relevant external stakeholders to inform the SG response or to encourage them to consider making their own response to add weight to a common 'Scottish' position. The Commission's consultation process is not limited to governments, but extends to individuals and companies/organisations, although normally submissions from the 28 Member States carry the most weight.

Ministerial Clearance

76. Will the content require Ministerial clearance? This is not always necessary, but is advisable on sensitive issues.

Submitting to the Commission

77. Often the response can be submitted electronically (this can be followed up by a hard copy). However it may be worth considering whether a lead policy officer, Brussels Desk Officer, or even a Minister could deliver the submission in person to the relevant official or Commissioner in the Commission. Face to face contact with the policy makers is always useful.

Publication

78. All policy teams should publish the letter or response on their section of the Scottish Government Website (PDF form is probably best) and pass a final copy to the European and External Relations Committee of the Parliament, relevant subject committee, and also to appropriate stakeholders.

Lobbying from the start

79. Everyone in Brussels is lobbying for or against something. Don't be left out - get ahead of the game.

80. As in the previous sections, clearly identified priorities and interests in EU policy are critical to directing our resources at getting the best from the EU for Scotland. Given how long the policy development process is, it is all the better when you can get in right from the start and begin to shape the direction of travel. The closer you get to the publication of an Initiative the more rigid the framework of options becomes.

81. Throughout this process your SGEUO desk officer can help by understanding your domestic priorities and policies. They can look for risks and opportunities on the horizon and help you engage with these from the first whispers or target specific milestones in the process.

82. All Brussels Institutions can be important targets for this activity – MEPs and other member states will also be lobbying and so influencing their positions can play an important role.

83. The first section of this guidance on Who's Who also covers how best to engage with the Institutions.

Influencing the Commission

84. There are many different ways to influence the Commission. Informal contacts developed by UKRep and SGEUO can gain access to draft documents before they are available officially, and provide important conduits for sharing information and ideas.

85. The Commission often runs workshops to help develop policy. These are an invaluable opportunity to develop relationships with officials, to represent Scottish views and nip unacceptable proposals in the bud.

86. Don't ignore other DGs. If you believe that DG Agri or DG Env are making proposals that are inconsistent with the EU Smarter Regulation run by Sec Gen, then make that point to officials in that unit.

Influencing the Council/Member States

87. Building contacts with other Member States early on will help you to understand their positions and their principal concerns, and identify possible allies to work with (and perhaps use to put forward our views).

88. It's never too early to open these channels and, subject to resources, worth investing time to go to see colleagues in key member states as well as current and forthcoming Presidencies. If Scottish Ministers are attending Councils where other relevant Ministers will be present, then it may be worth considering the value of bilateral meetings where our views on initiatives still in development could be shared – and intelligence on other member states' positions obtained.

Building a Coalition of Interest

Influencing EU decisions requires not only plausible, rational argumentation, but also a broad spectrum of political backing. Both EU co-legislators, the Council and the Parliament, must be addressed to successfully promote Scottish priorities. In the case of the Parliament this requires targeting individual MEPs and their advisors. It is important to consider both the influence that any MEP has, and also the compatibility of their views with your own priorities. Lobbying is therefore not restricted to Scottish MEPs alone. For example, in promoting regionalisation of the Common Fisheries Policy UK, Irish and German MEP members of the Parliamentary Fisheries Committee were targeted. Our lobbying power was greatly enhanced by ensuring that UK colleagues also recognised regionalisation as a UK priority. Targeting NGOs, who have a considerable influence on MEP voting patterns, also added weight to our arguments as we were able to demonstrate to them the potential for regionalisation of fisheries policy to enhance the marine environment.

In the Council, the principles are the same. The most influential Member States are those with the greatest number of votes in Council. Thus it was important to win over large countries like Germany to the idea of regional fisheries management. Initially Germany was concerned that regionalisation of fisheries would create a disproportionate burden on its administration. Over a number of bilateral meetings with German representatives we were able to propose a regional system which would bring benefits without associated burdens. Winning the support of Germany was crucial in ensuring a majority in favour of regionalised fisheries management.

Andrew Brown, Marine Scotland Representative, Scottish Government EU Office

Influencing the Parliament

89. Influencing the European Parliament is just as important as influencing in the Council. The Parliament has the power to make proposals fall so needs to be taken seriously. Indeed, a particularly useful way of getting Scottish ideas into the final text without spending your negotiating capital is to convince influential MEPs to get them included in the EP's opinions.

90. You'll need to understand the dynamics of the Parliament. SGEUO can really help with this and with setting up meetings with sympathetic MEPs.

91. It is essential to make as much use of potentially helpful MEPs (particularly, but not exclusively, Scottish MEPs) as possible. If you can make early contact with key MEPs active in the area, you will be in a position to move quickly later in the negotiations when deals are being made with the EP.

92. Regulators, such as SEPA, can have high credibility with MEPs and could be used to deliver messages through face to face lobbying.

One Scotland

93. Stakeholders and partners can be a very useful aid to inform our position and promote our messages. Interested parties, such as NGOs and industry who have an interest in the proposal will be active in lobbying member states and the Parliament. Their views and the impact of their lobbying should be taken into account in developing a negotiating strategy. It is therefore very important to provide stakeholders good quality information about the proposal.

94. Where their views are consistent with Scottish Government views, they can support a negotiating strategy by reinforcing direct Government lobbying as they often have excellent communication channels, particularly in the European Parliament. Positive stakeholders can be used to persuade more sceptical members.

95. Public sector partners such as SEPA, Scottish Natural Heritage, Food Standards Scotland and others may also have views and evidence which could be relevant to the development of a Scottish position and influencing strategy. Early consultation and engagement with these partners is useful.

96. A matrix can be a very effective tool for helping you to determine how to communicate with and use your stakeholders and partners. Use this information to help develop an effective negotiating strategy which takes into account the dynamics of the negotiation: who are our allies? Can we use them to influence others? Who do we need to persuade and what arguments would they be most receptive to?

97. It's crucial to consider opportunities outside formal settings. Every opportunity to influence should be exploited, from informal coffees with relevant officials to participation in stakeholder events. If you can develop personal relationships, it can help later on when you look for compromises. Making our position known to a wider audience will help, even if they are not always sympathetic.

98. And beyond Scotland, pan-European bodies, e.g. Copa Cogeca who represent farming unions and agricultural cooperatives from across Europe, can also carry a lot of weight, sometimes more so than a small group of member states. So think about Scotland based members of these bodies and engaging with them directly.

Local Authorities

99. Where a proposal will confer powers or responsibilities on local government or will have implications for local government, the lead policy officials should consult and engage with the Convention of Scottish Local Authorities (COSLA) and other representative bodies at an early stage and consider how their views are taken account of in the development of a Scottish Government position.

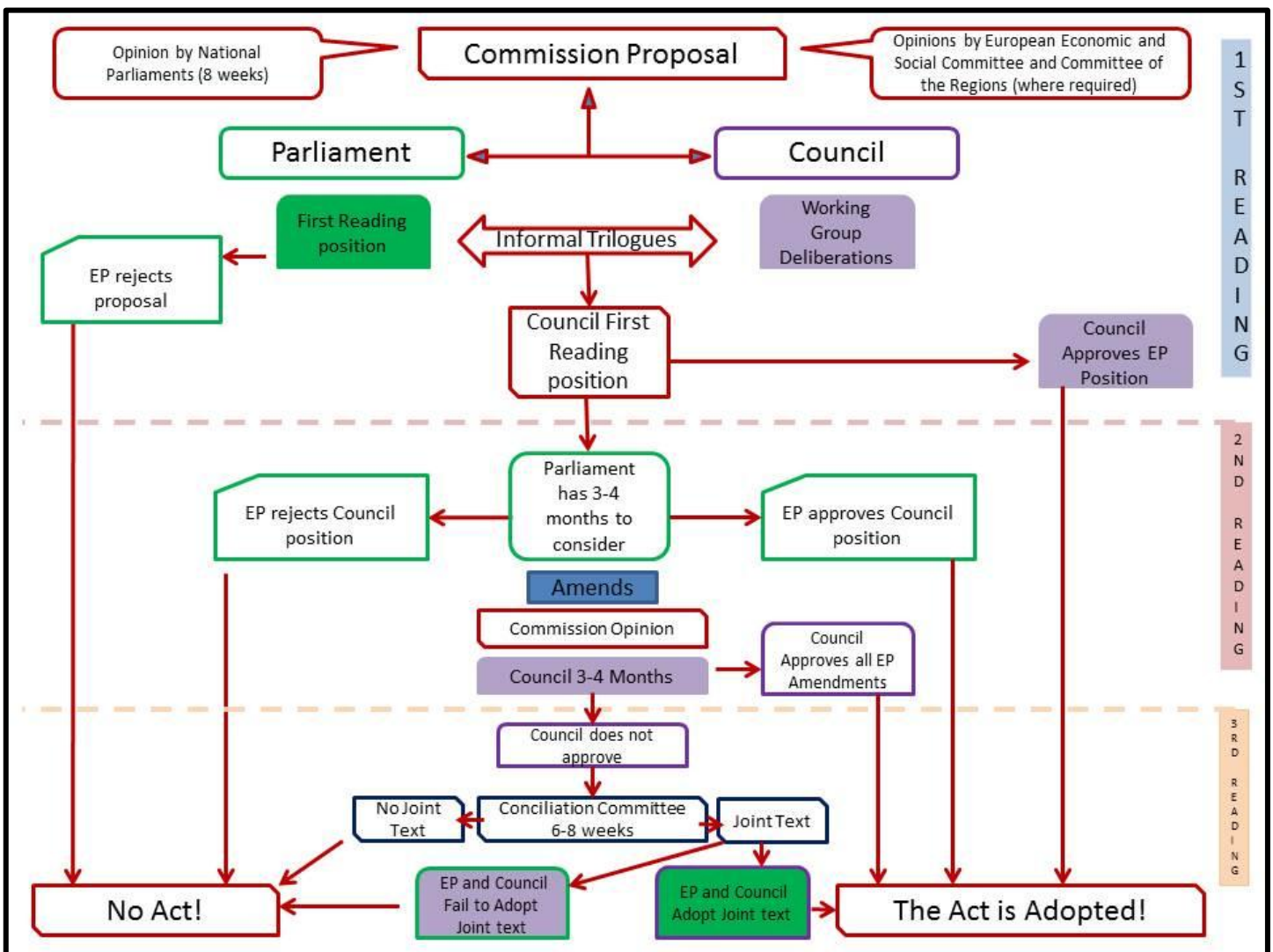
100. Lead policy officials should also consider whether the proposals may affect the Scottish islands and rural communities in a particular way and consult with the appropriate bodies as required.

Part 3: Formal Negotiations and Decision-Making Process

The EU Decision Making Process

101. This is a complex process and can be tricky to navigate. For ease this guidance focuses on the Ordinary Legislative Procedure (OLP). To drill into the detail on the process, especially with regard to a specific initiative, or to discuss Delegated and Implementing Acts (secondary legislation) talk to your SGEUO desk officer.

102. The European Parliament actually has a [useful interactive guide](#) to the whole process. However, we've also developed the diagram below – (don't be scared it's actually much simpler than it first seems). The first thing to realise is that 80% of legislation is agreed at the First Reading stage – so the bottom two sections don't apply!



➤ Initiative

103. The Commission has the sole right to initiate EU legislation and therefore formal negotiations always start with a proposal from the Commission.

➤ Council and Parliament Positions

104. Whilst on paper the European Parliament takes a position first, in practice discussions in each institution often occur concurrently and sometimes the Council will reach a position first, although this cannot be formally endorsed until the Parliament has reached a position.

Council

105. The Presidency will determine (based on their schedule and priorities) whether and when to begin holding discussions among member states on the Commission's proposal. This may take place both at a Ministerial level and at Official Level.

106. At Ministerial level, the Commission may present its proposal at a Council meeting followed by an 'Exchange of Views' among Ministers. This can often set the tone for Council level deliberations and provide useful insight into positions.

107. At Official level this takes place in the relevant Working Party, for example the Working Party on Environment can be considering any number of dossiers at any one time. The Presidency will set the schedule and agenda – often a single Working Party will meet for an entire day on a bigger dossier; but in some cases a single Working Party can cover multiple agenda items in a day or two day session.

108. When agreement cannot be reached among officials in the Working Party the Presidency may decide to put certain issues for decision to a discussion at the level above – the Committee of Permanent Representatives (either Ambassador or Deputy Ambassador level), or in the case of Agriculture to the Special Committee on Agriculture – for a political steer.

109. In this way some dossiers can be bumped up and down from the senior official/political level, including reappearing on Council agendas for a Ministerial decision on key issues – especially where the Presidency is pressing for a result on their watch.

Parliament

110. Each piece of draft legislation sent to the European Parliament is assigned to the relevant Parliamentary [Committee](#). One member is appointed as the 'rapporteur' to produce a report where amendments to the Commission's document are often suggested. Shadow rapporteurs, representing the other political groups, are also appointed. In the process of drafting the report the Rapporteur and Shadow Rapporteurs may take evidence in formal or informal proceedings and be heavily lobbied.

111. The Rapporteur needs to find an agreement within their own political group and with the other groups, so engaging with the Shadows is as critical as with the lead Rapporteur. Key people like assistants to MEPs, Committee Secretariat Staff and Political Group Advisers also play important roles.

112. Once the report is ready it is voted on in the Committee and if agreed passes for approval in a vote at the next Plenary session. This report then forms the negotiating line for the Rapporteur to take in trilogue with the Council and Commission.

➤ Informal Trilogues

113. The development of the process of informal negotiations between the Council (represented by the Presidency) and the Parliament (represented by the Rapporteur and often with Shadow Rapporteurs) with the presence of the Commission helps assure a high number of First Reading agreements – there is no time limit on a First Reading stage.

114. The representatives will hold meetings with each other to work through positions and seek to identify compromises, with each taking those compromises back to their respective institutions to be validated at official level.

115. In practice, discussions between the Council Presidency and the Rapporteur can start even before agreement on the position has been reached in either body. This takes place to facilitate the ability to find a compromise in both positions that the other institution can accept.

116. Once an overall package which can be agreed is identified, the COREPER chair will send a letter of assurance to the relevant Parliamentary Committee that the Council will accept the text as it stands, if agreed by the Parliament in Plenary.

➤ Agreement

117. Once negotiations have been finalised, and the Council and Parliament have agreed the legal text, it will be adopted and published in the EU's Official Journal. It then becomes law, and takes effect on the date specified within the document.

Non-legislative measures

118. Although the Commission has the sole right to propose legislation, the Council and the Parliament can seek to influence the Commission by preparing documents on a topic where they consider the Commission should be taking action.

119. Council conclusions and own-initiative reports from the Parliament are examples of such documents.

120. It can be useful to monitor the development of these documents to gain insight into the likelihood and nature of future action on a given topic and to seek to shape and influence, as required.

121. The Council may also produce Council Conclusions, and the Parliament a report or a resolution, in response to non-legislative documents published by the Commission such as Communications or Action Plans.

122. These Conclusions or Resolutions in 'response' to the Commission are also useful to monitor with regard to the direction of travel. In some cases we may wish to engage with the UK Government on the lines the UK will take in negotiating Council Conclusions.

123. In such instances get in touch with your SGEUO Desk Officer to discuss. Early identification of a topic of interest is key as Conclusions can be drafted quickly where the Presidency wants to see them agreed.

Justice and Home Affairs opt-in and Schengen opt-out

Protocol 21

124. Protocol 21 governs the JHA opt in, which means that the UK and Ireland are not automatically bound by JHA measures (that is those adopted under Title V of Part Three of the TFEU), but they can choose to participate (opt-in).

125. There are two ways to do that: (1) opt in at the beginning, which must be done within 3 months of the proposal being presented to the Council, or (2) opt in after the measure has been adopted. For the latter there is no timescale, but approval will be required from the Commission or the Council and conditions may be imposed.

126. Whether opting in or not, the UK is entitled to a seat at the negotiating table, but will only have a vote where the opt-in has been notified at the beginning. Clearly, this will have a significant impact on negotiating weight.

127. Opt-in decisions are irreversible. Generally speaking, they apply to the principle legal measures, i.e. Directives, Regulations and Decisions. But it can be complicated for example, if the measure has a JHA and non-JHA legal base the UK will expect to exert its opt-in privileges.

Protocol 19

128. Protocol 19 – the Schengen opt-out – is more complicated. The Schengen *acquis* is the body of law that governs the EU's borderless area, including visas, asylum, border controls and police and judicial cooperation. The UK and Ireland only participate in the police and judicial cooperation elements, with the prerogative to opt out of any new JHA measures which "build on" those aspects of the Schengen *acquis*. Again, there is a 3 month timescale for this.

129. Any complications? Yes, if the UK decides to opt out, the Commission can eject the UK from all or part of the rest of the Schengen *acquis* if that is necessary to protect the practical operability of the system. The Commission must (and will) try to retain maximum participation, but this is an important factor for the UK to consider when taking its decision.

UK Government decision making and scrutiny

130. The UK Government normally takes opt in decisions at Ministerial level, although there is also a fairly strict process for Parliamentary scrutiny – more information on that can be found [here](#).

131. The lead UKG Minister should write to Scottish Ministers seeking SG views on devolved elements. With new measures this normally happens close to the 3 month deadline. It is therefore important in dossiers with a strong devolved interest that policy leads are in touch with their counterparts in UKG well in advance of the formal correspondence.

132. For further policy advice on these matters contact the Justice EU Team, or for legal issues the SG EU Solicitors Group.

How we engage in the process

133. Once the European Commission has published its proposal for new legislation you will need to carefully consider the Scottish Government's position. If we've been engaged upstream, the work to identify our priorities, ideas and views will be immensely helpful in this analysis.

134. You'll need to:

- analyse the proposal to work out your priorities;
- assess what is negotiable and what compromises you can accept; and
- ensure you are included in the development of the UK line.

135. Essentially, if this is a priority dossier we need to develop a negotiating line – this is important to both engage with the UK Government and to engage directly on the dossier where that is relevant.

Key issues to consider when thinking about a negotiating line:

- ✓ Is EU legislation appropriate? Consider proportionality and subsidiarity. Are there alternatives to regulation?
- ✓ Is there competence creep? Again we should be challenging this via the UK as soon as possible so discuss with your lawyer.
- ✓ What is the impact of the proposal? Has the Commission produced an adequate Impact Assessment?
- ✓ Is the draft in line with Scottish objectives? What would need to be done to domestic legislation? Does Scottish legislation go beyond the EU proposal?
- ✓ Is the drafting of the proposal sufficiently clear and unambiguous? This is important to avoid problems during the transposition and implementation phase.
- ✓ Is there sufficient time allowed to transpose and implement the measure?
- ✓ Consider the practicality and enforcement of the proposed legislation.

Ensure you are included in the UK position

136. Early consultation with the lead UK Department and with regulators is extremely important to get a full picture of the potential impacts of a proposal. The Westminster European Affairs Committee (EAC) is required to approve the UK line before the UK can sign up to an agreement in Council. Scottish Ministers should be included in any EAC write-round which relates to a matter with devolved interest.

137. These write rounds can have tight deadlines so be prepared to get Ministerial clearance quickly. Close working with your UK counterparts can help this process go more smoothly and avoid surprises.

138. This is particularly important where the views of Scottish Ministers may differ significantly from the UK Government and these differences need to be discussed at the earliest possible stage in developing the UK position.

139. You should observe the Concordat on Coordination on EU Policy Issues which sets out how Whitehall departments should work with us on the negotiation and implementation of EU legislation. It is worth taking the time early in the negotiations to

build good relations with all interested colleagues in the office and the other Devolved Administrations so that you are able to call on them at short notice later on.

140. Remember that Wales and Northern Ireland can be useful allies if Scotland takes a different position on a matter to the UK Government.

141. When negotiations begin in Brussels on the legislative proposal, continue to work closely with your UK counterparts. The legislative proposal is initially discussed within the Council at the working group stage, where all member states and the Commission are represented by officials.

142. The process of getting agreement across 28 member states means that the Presidency will have to seek to narrow down issues under discussion and force member states to focus on the issues most important to them. The opportunities to influence are therefore much greater earlier in the process before positions have become entrenched.

Engaging in developing the UK Position

SGEUO policy advisers have a standing invitation to attend the Agriculture and Fisheries Council Coordination (AFCC). These meetings are held in advance of the Council itself and the Special Committee on Agriculture (SCA). These meetings involve participation from the Devolved Administration offices based in Brussels, UKREP and DEFRA policy leads back in London.

AFCC offers the opportunity to hear the latest information on agenda, advise further on the Scottish Government position and highlight areas of particular Scottish interest which may differ from the UK position. By having these meetings we are able to ensure all offices and interested parties are aware of particular concerns to mitigate possible surprises on the day when it comes to dialogue at a Minister to Minister level. The AFCC allows for colleagues across administrations to build effective relationships with counterparts and work together to build a cohesive UK position in advance of Council.

The briefing is circulated in draft in advance of the meeting, by which stage colleagues in Scotland should already have been sighted on and involved in drafting the briefs. The AFCC provides a backstop to this and an opportunity to emphasise the critical issues. The meetings also allow for intelligence gathering in terms of other Member States' positions and insight into how the DEFRA is looking at influencing proposals as they come to a climax. The intelligence gathered is fed back to policy leads.

Jonathan Robertson, Policy Adviser – Agriculture and Fisheries, SGEU Office

Attendance at Working Groups

143. You should consider the benefit of attendance at working groups if there are specific Scottish interests at stake. If you cannot attend yourself, speak to your SGEUO desk officer about attending on your behalf.

144. This allows us to gather first hand intelligence on the direction of negotiations between member states as they develop the Council position. By this route we can identify clearly if there are other member states who share specific concerns we may

have. This may be useful if we want to build alliances – for example, we could share with them our evidence to support their position.

145. In many areas we ask UKRep colleagues before attending working parties although there are some where it is common practice and almost assumed (Environment, Agriculture, Fisheries). Even if there are no Scottish-specific interests, it may be worthwhile using a visit to Brussels to attend a meeting to get a feel for the process alongside a wider programme of meetings.

146. When attending a meeting for the first time, discuss protocol issues with your SGEUO desk officer, who in most cases will be able to do the tour and get you set up in the right place at the right time.

Using Opportunities at Council

147. When proposals are being presented to Council with an early Exchange of Views or for a Policy Debate on key issues, there is an opportunity to influence the UK Speaking Note to reflect the Scottish position.

148. Scottish Ministers also regularly attend Councils in key areas – Agriculture and Fisheries; Justice and Home Affairs; Environment – and want to influence the UK position on the items being discussed. These may be updates on progress on key dossiers or general policy debates. There are also opportunities for them to hold bilateral meetings in the margins with other member states to share Scottish views and gather intelligence.

Don't forget the Parliament!

149. In almost all areas now the European Parliament also has a critical legislative role, therefore don't forget about engaging with and seeking to influence the relevant Committees and MEPs.

150. Each piece of draft legislation sent to the European Parliament is assigned to the relevant Parliamentary [Committee](#). One member is appointed as the 'rapporteur' to produce a report where amendments to the Commission's document are often suggested. Shadow rapporteurs, representing the other political groups, are also appointed. Other Committees can be asked to issue a formal opinion on draft legislation, if the policy area is of their competency.

151. Our MEPs can be very influential so it's good to get to know them, and their support staff. If a key dossier with specific Scottish interests is being discussed consider providing our Scottish MEPs with a briefing on the issue – even if they're not on the Committee we can do so with a view to asking that they engage with their political group representatives who are on the Committee.

152. Once the rapporteur's report has been produced, other committee members may also submit amendments. The report is then put to a vote in the committee - on each amendment and then whether to accept the report as a whole. This report is then used as a basis for the Parliament's negotiations with the Council and Commission (trilogues) where the European Parliament and the Council try to devise a common text. This common text has to be approved by the committee before the report is voted on by the whole Parliament in one of the plenary sessions.

153. The Scottish Government's European Parliament Liaison Officer in the SGEUO will be able to help you engage with the EP.

The Joint Ministerial Committee (Europe)

154. Another mechanism to engage with Whitehall and other devolved Administrations on European matters is through the Joint Ministerial Committee (Europe) which meets at both Official and Ministerial level.

155. As set out in the Memorandum of Understanding, the JMC(E) meets:

- “a. to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;*
- b. where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;*
- c. to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and*
- d. to consider disputes between the administrations.”*

156. The JMC(E) meets four times a year, prior to Council meetings to discuss relevant policy areas. It is chaired by the Foreign Secretary or the Minister of Europe and attended by Ministers from the Devolved Administrations and relevant Whitehall departments.

157. The Ministerial meeting is preceded by a meeting of officials from all four administrations. The Officials meeting takes place approximately 2-3 weeks prior to the Ministerial meeting and it offers the opportunity for Scottish Officials to inform Whitehall as to the position of Scottish Ministers and likewise to feed information back as to the views of both Whitehall and the other Devolved Administrations.

158. This initial meeting helps steer the focus of the Ministerial Committee, highlighting areas of interest or concern for the Devolved Administrations. This ensures that the Ministerial meeting is focused on the issues that are important and the views of the Devolved Administrations are heard prior to Council meetings.

159. For more information on the JMC(E), please contact the European Relations Division.



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