

## CoR Consultation on Multi-Level Governance

### COSLA response

The COSLA Convention approved on 23 October COSLA's general approach to institutional issues over the next term including the Multi Level Governance provisions of the new Treaty, which can be summarised in the below key political messages:

i. The **Convention of Scottish Local Authorities** (COSLA) is the representative voice of all Scottish Local Authorities both nationally and internationally. It is a keen advocate of the position that European Union legislation should fully respect the local competences and autonomy of Councils in organising and providing local services.

ii. COSLA also believes that EU involvement should take place only when it has clear EU Treaty competence (the principle of conferral), and where its' actions can provide real EU added value;

iii. COSLA strongly defends the **subsidiarity principle** whereby *"the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level"* as well as the principle of proportionality. COSLA looks forward to participating in the Subsidiarity Early Warning Mechanism with the Scottish Parliament and UK Parliaments as well as the Committee of the Regions. COSLA also calls on the European Commission to establish robust mechanisms of **pre-legislative consultation** to local stakeholders in matters that affect them directly.

iv. We advocate that the European Union should fully incorporate into its policy development and implementation process a **Multi-Level Governance ethos**, whereby Local, National and EU institutions work together on cross cutting issues; We believe that the Scottish model of **Single Outcome Agreements** between the Scottish Councils and the Scottish Government intended to address common problems and establish mutual accountability could be helpful in the development of a wider European Union approach to similar areas of shared competency.

v. COSLA calls on the European Commission to fully implement the Protocol of Services of General Interest and in so doing enable local authorities to decide the best way of providing local services both individually and jointly.

### **Detail**

1. COSLA has a range of work linked to the EU institutions, the majority of which is managed at an Executive Group level, with subject specific attention being given to them. For example the Regeneration and Sustainable Development Executive group deals with waste, transport, cohesion and rural development; Resources and Capacity manages procurement and specific legislation on public services; and Strategic Human Resources Management deals with employment matters such as the working time directive, A series of subject lobbying lines have been referred to these Executive Groups for consideration.

2. Recent developments on EU Institutional Issues have arisen from both the new EU Legislative Term 2009-2014 and the incoming EU Lisbon Treaty. The latter includes reinforced provisions for local authorities to protect their attributed powers and freedoms to provide local public services. Despite this protection over the next period EU local government associations are likely to continue to be concerned about the legislative proposals that emerge from the Commission and the effects of past European Court of Justice decisions that effect compromise the role of public services.
3. In the European policy area COSLA works with Scottish MEPs, Scottish CoR members, the other UK Local Authority Associations, our EU Wide umbrella body the Council of European Municipalities and Regions (CEMR) and the Scottish and UK Governments to advance a range of political messages that are outlined below.
4. This report lays out a number of key areas that policy is likely to develop in over the preparation for both the probable effects of the Lisbon Treaty, and the increasing pressure on local government in a variety of policy areas. The key political messages above ratify and update existing COSLA positions.
5. These will be useful in our work in the Scottish scene, COSLA remains keen to ensure that the **COSLA-Scottish Government Concordat** commitment to joint policy development has an increasing impact on the way EU dossiers are managed in Scotland between Scottish Government and Local government. The development of a specific set of positions will help form the basis of a stronger "Team Scotland" approach.
6. Lastly, the COSLA EU workplan delivered by both the Brussels Team and the theme teams based in Scotland could be usefully publicised amongst our membership is only part of what the combined membership does. Those with membership of amongst others the Conference of Peripheral Maritime Regions (CPMR) and Eurocities also deliver distinct work programmes.

#### **Draft Lisbon Treaty and Subsidiarity Scrutiny**

7. In February 2008 Leaders agreed to welcome the provisions in the draft Lisbon Treaty that benefit Local Government. These include powers being given to the Committee of the Regions (where COSLA has four members) and to National Parliaments (and associated with them any devolved legislatures such as the Scottish Parliament) to counter and even block EU legislative proposals which might violate the principle of subsidiarity and proportionality.
8. Should the Treaty come into force, COSLA should aim to play a full role in this process, particularly via the Committee of the Regions. There is also going to be **an opportunity to work with both the UK Parliament and the Scottish Parliament in the new subsidiarity scrutiny arrangement, the "Early Warning Mechanism"**. This could see us working closely with our other UK local authority association colleagues on reserved matters in particular, but also where we have common interests in any infringements in the devolved areas.
9. In Scotland, this form of activity might also be strengthened further assuming that there will be cross-party support on the specific European Union recommendations that have come from the Calman Commission. These include:

*"Closer involvement between Scottish MEPs and the Scottish Parliament is needed, and Scottish MEPs should be invited to attend, and should attend, the Scottish Parliament European and External Relations Committee regularly on a non-voting basis. The Committee should schedule its meetings to facilitate their regular attendance". (Recommendation 4.18)*

*"Scottish MPs should actively demonstrate appropriate oversight and stewardship of the constitution by way of regular scrutiny of the shape and operation of the devolution settlement" (Recommendation 4.20)*

10. **COSLA would be keen to ensure that the Scottish CoR Members participate in the above arrangements alongside the MEPs.** This would provide a useful opportunity for Local Government to

provide our well established political weight, international contacts and technical knowledge on the proposed subsidiarity scrutiny process.

### **Ex-ante and ex-post evaluation**

11. As indicated in the above point III COSLA calls on the European Commission to establish robust mechanisms of pre-legislative consultation to local stakeholders in matters that affect them directly. Therefore the White Paper proposals for setting up a technical “high level group” responsible for evaluating the territorial impact of major Community policies in order to adopt measures likely to improve legislation, simplify administrative procedures and increase the acceptance of Community policies by the citizens is worth considering. Crucially, the European Commission would need to propose early in the new mandate how it aims to implement the pre-legislative consultation provisions of the Subsidiarity Protocol.
12. Similarly, as we advocated during the EU Green Paper on Territorial Cohesion consultation, we would welcome strong **Territorial Impact Assessments**, undertaken with robust and transparent assessment criteria. Subsidiarity Impact Assessment should look at the local and regional powers and competences, financial means as well as their territorial, economic and social dimensions. Improved regional, and particularly sub-regional (NUTS III and below) should be a priority.
13. At strategic level, the proposed idea of Road Maps established to measure the progress of certain key policies for European integration, to include the variable of multilevel governance so as to evaluate the true impact of Community intervention is worth pursuing, particularly as regards to the need to reinforce the **local and regional dimension of the Internal Market road map.**
14. Also, the proposal for local and regional access to the activities of the comitology processes as well as the diversity of advisory bodies that are set up to implement EU legislation and funding programmes is very much worth exploring.
15. Finally, it is advisable to create robust **an ex-post evaluation processes** in order to examine the local and regional impact of certain directives, or even the transposition to local and regional level of European legislative acts, as the White Paper proposes

### **Draft Lisbon Treaty & the Protocol on the Services of General Interest (Public Services)**

16. On January 2008 COSLA Leaders’ *“noted the signing of the new EU Lisbon treaty and welcomed the new opportunities for local government contained within it”*, without prejudice to individual party political positions as regards to the Lisbon Treaty as a whole.
17. Even before the entry into force of the Treaty, the general principles of subsidiarity are slowly gaining support through the more recent decisions made by the European Court of Justice (ECJ). For instance, the “*Stadtreinigung Hamburg*” ruling of this year upheld a complaint made against the European Commission which believed that compulsory tendering should be applied to arrangements between councils who were developing a shared services approach to their waste management. The decision supported the right of councils to cooperate in these types of arrangements without interference.
18. Now approved, the draft Lisbon Treaty will considerably boost this area for local government. For the first time there will be a specific *“Protocol on services of general interest”*. This, was added at the request of Member States that wanted to define the EU’s ability to regulate local public services. The Protocol, which has a legally binding nature, stresses that any future EU legislation shall respect:
  - *The essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;*

- *The diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;*
- *A high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.*

### **Multi-level Governance – EU ‘Single Outcome Agreements’**

19. In 2001 the “White Paper on European Governance” proposed the idea of tripartite contracts between the EU, National and Local levels at an EU level. The idea was to reach a working arrangement between the different levels of government so that a given objective could be met, with reduced or no legislative processes being brought to bear on the arrangements. The intention was to experiment in a relaxation of the more restrictive EU requirements. The pilot work primarily concentrated on environmental and transport matters. While the activity was generally felt positive, there has been little progress in rolling out such arrangements over the EU.
20. The Committee of the Regions has thrown its weight behind the initiative. We welcome the proposed official definition of multilevel governance (MLG) meaning "*coordinated action by the European Union, the Member States and regional and local authorities, based on partnership and aimed at implementing EU policies. It leads to responsibility being shared between the different tiers of government concerned and is underpinned by all sources of democratic legitimacy and the representative nature of the different players involved*".
21. Recently there have been further moves to reintroduce the idea of these arrangements and to see how they could be extended to other areas, such as the EU Cohesion Policy. There are strong obvious parallels between what is being considered at an EU level and our own **Single Outcome Agreements**.

#### **Case Study: Scottish Single Outcome Agreements**

- *The Scottish Government and COSLA have jointly developed what it called a Single Outcome Agreement (SOA) that each Council and the Scottish Government have jointly signed. It encourages each council and their community planning partners to address 15 key national outcomes, and decide on which local indicators are used to measure their achievement at a local level. Each SOA covers a rolling three year period.*
- *The approach gives a genuine element of local flexibility as each Council and their partners is ultimately free to prioritise the national outcomes according to local needs, circumstances and priorities. This can mean that a council chooses not to report around national outcomes they do not believe to be a particular priority in their area, and to invest much more heavily in those that are.*
- *Mutual Accountability: each party to the Agreement (local authority, Scottish Government, and Community Planning Partners) has a shared interest in the delivery of the agreed outcomes, and they will jointly take ownership and responsibility for their respective contributions to these outcomes.*
- *Therefore, the parties to the Single Outcome Agreement will be able to measure performance, and crucially, to hold each other to account for the delivery of specific commitments they make to enable the delivery of the agreed outcomes.*

22. COSLA is keen to argue for parallel developments to be promoted across the European Union and to volunteer to take part in any pilots that are of interest to our membership.

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