

**The Isle of Man's Tynwald and Europe: Missed Opportunities.  
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The 25 EU Member States gathered on 29 October to sign the Treaty establishing a Constitution for Europe, in the hope that it will then be domestically approved by each of them so that the new constitutional arrangements can be brought into force in November 2006. This may be a good time to take stock of the Manx relationship with the European Union.

There is debate over whether, and to what extent, the Isle of Man should be integrated in the European Union. That debate ebbs and flows here, as it does in Member States, notably still in the United Kingdom. However, alongside that debate there is also continuing consideration in those states of how they can best institutionally relate to the EU. That consideration remains curiously lacking in important quarters in the Isle of Man, and it is that lack which may represent "missed opportunities".

The Isle of Man Government, with the UK Government, has monitored the discussions leading to the new EU Treaty to see how it may affect our present constitutional and legal relationships with the Union. In the outcome, the satisfactory and safe, if not dynamic and demanding, result has been that these relationships (and those of the Channel Islands) will remain fundamentally the same as those in Protocol 3 to the Act of Accession annexed to the 1972 Treaty of Accession of the UK and others to the Union. This is achieved by Art IV-4 (6)(c) of the draft Constitution Treaty which provides, slightly enigmatically, that the new treaty will apply to the Isle of Man "only to the extent necessary to ensure the implementation of the arrangements" in Protocol 3. However, recent experience with tax harmonisation has reminded us all that the scope of those arrangements can be circumvented by a combination of economic and political weight and of EU legislation which place obligations on the UK to persuade its Crown dependencies (within the framework of its constitutional relationship with them) to implement EU legislative provisions which fall outside the scope of Protocol 3. We can expect this technique to remain part of the political and legal landscape. The Isle of Man Government will no doubt continue to seek to ameliorate the implications of this in its direct and indirect contacts with Whitehall and Brussels.

The task of representing Manx interests in the EU steadily becomes more onerous as more areas of its activity are determined by qualified majority vote in the Council of Ministers rather than by unanimity. The new Constitution Treaty will extend these areas, if and when it comes into force. The consequence is that increasingly even where the UK, in representing our "external affairs" is willing to press the Manx position it may simply be outvoted on the matter.

## **What role is Tynwald, the parliament of the Isle of Man, playing in this?**

It is a common characteristic of parliamentarians everywhere to prefer the high profile of debating the broad social and political issues. That is an important parliamentary function, but so is the often more muted, tedious and onerous task of systematically scrutinising in an informed manner Government policy and administration, and more particularly draft legislation - both of the Government and of others. This is not an easy or palatable task where, as in the Isle of Man, the government and the parliament are largely composed of the same public representatives, but it is particularly important in respect of the EU which is only slowly clawing its way out of an institutional structure which is widely regarded as having a "democratic deficit" in its decision-making processes.

So, has Tynwald missed opportunities in this? The answer, to date, is regrettably that it has, in at least three areas - with a fourth on the horizon.

### **1. Obtaining draft EU legislation and information on its implications, and holding the Manx Government to account**

Shortly after it joined the EEC in the early 1970s, following reports by UK Parliamentary committees, the UK Government undertook to provide the UK Parliament with draft EU legislation and also with a UK Government memorandum on each piece of legislation outlining its implications, legal and political, for the UK. This enabled a system of committees to be established for the purpose to examine systematically the draft legislation and, where necessary, and for the UK Parliament to express its views on the legislation for the UK Government to take into account in its negotiating position in Brussels. A similar arrangement exists in the devolved Scottish Parliament.

The Isle of Man Government scrutinises draft EU legislation, in liaison with Whitehall Departments and with the aid of the explanatory memoranda prepared by those Departments for the UK Parliament. Tynwald - as the parliament of the Isle of Man - has neither attempted to obtain this information, directly from Westminster or indirectly from the Isle of Man Government, on a formal and systematic basis; nor has it set up any committee structure to examine EU draft legislation relevant to the Island. Although the Isle of Man Government does report to Tynwald when it deems it appropriate, there is thus no systematic mechanism by which Tynwald holds the Manx Government to account on the position it had adopted or the action it has taken in respect of draft EU legislation. It might be said that Tynwald has no essential role in the EU legislative process, but that is at present also true of the UK Parliament and the national parliaments of the other Member States. Furthermore setting up such a structure might have other advantages. The EU scrutiny committees of national parliaments hold their own regular meetings and this arrangement is due to be more formally recognised and expanded under the Constitution Treaty. Tynwald might well find it advantageous to seek an association, however tangential, with that arrangement.

## **2. Implementation of EU law**

In limited areas the Isle of Man is required to implement EU directives. This may be done either administratively or by using existing powers, but commonly it requires either primary legislation (Acts of Tynwald) or delegated legislation (in the form of statutory documents).

In other areas, the Isle of Man Government may choose to introduce draft primary or delegated legislation which closely replicates UK legislation, and the UK legislation may, in whole or part, be implementing EU legislation which the UK - but not the Isle of Man - is required to do.

At present, the members of Tynwald receive no systematic advice independent of the Isle of Man Government on legislation with an EU dimension in either of these categories; nor does it seek, with that objective, to systematically scrutinise such legislation. Indeed, Tynwald (unlike many parliaments) has no committee that systematically scrutinises and reports on delegated legislation of any sort, although delegated legislation is a significant element of Manx legislation generally, and very significant in terms of volume when compared to primary legislation.

## **3. The European Parliament**

In successive institutional reforms over the years the European Parliament has steadily moved from a position that it commonly only had the capacity to express an opinion on draft legislation, which could be ignored by the Council (of Ministers) in adopting it, to a position that legislation is adopted by a process of co-decision of the Parliament and the Council. This development was stimulated by the Parliament moving in the late 1970s from a nominated membership to one that is directly elected. This has, of course, given the Parliament an increasing political significance.

However - although some of its legislation applies to us directly and others have indirect impact on us - the Isle of Man does not participate in elections to the European Parliament and is not formally (nor, in reality, informally) represented in it. This is not true of Gibraltar (which is admittedly more integrated in the EU legal system) whose citizens participate in the election of a UK MEP, who then represents their interests in the Parliament, Tynwald has shown no sign of seeking a relationship, by that or other means, with the European Parliament - beyond occasional educational visits of members to Brussels.

## **4. The future of national parliaments in the EU legislative process**

The Constitution Treaty for the first time will create a formal role for the national parliaments of Member States in the EU legislative process. In short, it provides for draft EU legislation to be submitted to national parliaments at the same time as it is submitted to the European Parliament and the Council. If a third of the national parliaments report within six weeks that EU draft legislation is in breach of the

principles of either proportionality or of subsidiarity - the latter, put simply, is that it would be better for the legislation to be enacted at national rather than EU level - the Council will be required to reconsider its position on the legislation. This is obviously a limited power in formal terms, but is likely to be more powerful politically.

One feature of this procedure is that "it will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers". Assuming that it could negotiate such a consultative arrangement with the UK Parliament, it would be for Tynwald to determine whether the indignity of being characterised as a "regional" parliament was a price to be paid for an involvement in the EU legislative process, to this limited degree. Even in terms of information flow, the practical answer must be that it would.

It might well be said that these "missed opportunities" are only missed because Tynwald is a parliament with a small number of members, many of whom have roles in government, and the members only have a limited support available to them. Neither of these arguments is wholly persuasive.

The task that members of Tynwald set themselves, both in substantive and institutional terms, is a matter of priority. If it has the will to do it, a parliament that can find the time to consider in committee the pros and cons of locating a post office in Castletown, can find the time to consider in committee developments in the EU that may impact on the Isle of Man.

Similarly, the use to which members put those that are paid to advise them is a matter for them. In the last three years, Tynwald has increased its complement of clerks from two to three, and they are now also assisted by two unestablished part-time clerks. However, in the same period they have reduced the range of advice sought from their clerks, in that they no longer require their independent systematic analysis on primary and delegated legislation. Whatever else, this at least demonstrates that members are the masters of the use to which they put those that are paid to support them, and to a lesser but still significant extent, are the masters of the level of that support available to them.

Tynwald has the means and mechanisms to take its parliamentary role more seriously in respect of the European Union. It has missed opportunities to do so in the past, and the question is what will the future bring?

#### **About the author**

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