



# European Movement in Scotland

## European Movement in Scotland (EMiS)

The European Movement in Scotland is Scotland's oldest dedicated pro-European organisation. We believe that in Scotland there is a great reservoir of goodwill towards Europe and we aim to inform and mobilize this goodwill to counter Eurosceptic misinformation by working to make the pro-European voice heard in the media and in government.

We are an independent, not-for-profit, non-governmental organization, funded exclusively by our members and receive no funding from any political party, nor from the UK or Scottish Governments or from any institution of the European Union. We welcome members of all political parties as well as those without affiliation.

We have outlined the recommendations below in order to ensure that the enhanced role of a devolved Scotland within the European Union is considered by the Smith Commission.

### Background

The European Union – through its legislation and policies (domestic and international) – exerts a more important influence over Scotland's economy and society than ever before. Decisions made in Brussels impact to a greater or lesser extent on a wide range of our day-to-day activities as workers, consumers, businesses and simply as citizens. Many EU rules and regulations focus on measures that are necessary to ensure the EU Single Market, an important driver of economic growth and employment in Scotland, operates as efficiently as possible.

The EU legislates on a range of other policies that directly affect Scotland's interests – including the support given to farmers, the quotas that determine how much fish can be caught in Scotland's waters, common policies aimed at boosting research in universities and investment in digital technologies, and measures to improve the employment prospects of young people, to name but a few. The EU also leads negotiations on international trade agreements that can open up new markets for Scottish businesses and takes a strong role in promoting international action to tackle carbon emissions. Developments in European energy markets make it increasingly likely that the EU will also become more active in this key sector.

Unlike the UK Parliament and Government, which exercise a self-denying ordinance not to introduce legislation in areas of devolved responsibility, the European Parliament and the Council of Ministers adopt EU legislation which directly affects the law of Scotland in a whole range of devolved matters. Unlike the position in relation to the Sewel convention, the Treaty on the Functioning of the EU provides for the co-legislators effectively to subordinate the interests of individual Member States and their regions to the needs of the Community as a whole, even though the requirement for subsidiarity involves delegation of decision-making to as low a level as possible.



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## Principle

We consider it to be vital that EU institutions are enabled to take full account of Scottish interests in the formulation of policy and legislation in areas where the Scottish Parliament and Scottish Ministers exercise devolved competence.

## Current Situation

Ministers represent the UK in the Council of Ministers. Alongside the European Parliament, the Council is the EU's most important law and policy-making body. Its principal responsibilities include passing EU laws, coordinating the broad economic policies of the Member States, signing agreements between the EU and other countries and developing the EU's foreign and defence policies.

The Council is where Ministers ensure that collective decisions over EU law and policy properly take into account the national interest of their respective Member States.

The consequence of this is that UK Ministers, under the scrutiny of the UK Parliament, have the final word over the line adopted by the UK in determining the shape of policy and legislation in devolved areas. Because the same Ministers are responsible for policy and legislation in relation to England, they face a serious potential conflict of interest. This can undermine the basis of the devolution settlement within the UK unless the arrangements for bringing Scottish influence to bear in determining the UK line operate effectively. Moreover, since Scottish Ministers bear no political accountability for the UK line in devolved areas, the Scottish Parliament may be unable to exercise effective scrutiny over EU legislation that impacts directly on the exercise of its own competence.

## Proposals

The desire for guaranteed consultation by the UK Government of the Scottish Government in negotiations with the European Union is supported by 72% of the Scottish public polled by Panelbase (Sunday Herald, 'The powers struggle: poll reveals support for devo max', 5th October 2014).

The European Movement believes that there should be a statutory obligation for the UK Government to co-operate fully with the Scottish Government and the other devolved administrations in determining and representing common UK positions. Scottish Ministers should be fully involved in determining the UK line and UK Ministers should be expressly required to take full account of Scottish views in relation to devolved matters, as well as on reserved matters impinging on Scottish Ministerial responsibilities.

The Scottish Parliament should also have delegated power to summon UK Ministers to give evidence on the UK line adopted in relation to any devolved matters. UK legislation should require



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UK Ministers to give effect to Scottish policy positions where it is feasible for Scotland to follow a different path from England in relation to matters where the UK enjoys opt-out and opt-in arrangements, whilst recognising that this may in due course require treaty change at EU level if it is to be given full effect.

The precise arrangements for implementing these statutory obligations could be laid down in a co-operation agreement. To some extent this might mirror the situation in Belgium in the 1990s whereby the Belgian regions and communities were given more powers (including for international relations), a cooperation agreement was drawn up in 1994 between the federal government and the regions and the communities which lays down the representation and the coordination of the Belgian position in the Council of the European Union. In 2003 the cooperation agreement was amended after the regionalisation of agriculture and fisheries.

One possible mechanism to facilitate this is for the shared cross-UK position to be established in advance of every Council meeting by strengthening and expansion of the Joint Ministerial Committee (JMC) on Europe to include relevant Council of Minister meetings such that it meets regularly and has a statutory duty to establish common UK positions.

Representation at the Council meetings themselves must necessarily remain primarily the responsibility of UK Government but Scottish Ministers should be encouraged to participate according to the contribution they can make to the agreed line. In turn that will reflect expertise and knowledge concerning the matters to be discussed. The arrangements should seek to maximise the abilities of the combined UK delegation in negotiations with team selection being a very practical matter. That will vary according to subject area and ultimately one might expect expertise/knowledge to reflect the relevance of the subject area to Scotland. Efforts should be made to develop capacity accordingly. We would expect Scotland to have particularly strong interests in Agriculture/Fisheries, Energy and Environment.

The scrutiny powers outlined above should be used, among other things, to verify that the appropriate level of direct and indirect engagement is being achieved.

### **EU Referendum**

The Conservative Party intend to fight the May 2015 General Election on the basis that should they be successful they will hold negotiations on a “reformed” settlement for the European Union with a referendum on these or an EU exit in 2017.

The European Movement in Scotland recommends that the Scottish Government and other devolved governments have a guaranteed role in establishing a common position in these negotiations. This might – inter alia - expressly permit the differential application of UK opt-outs and opt-ins, for example in the sphere of Justice and Home Affairs.