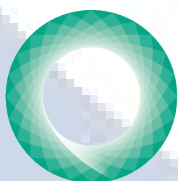


Reforming Intergovernmental Relations in the United Kingdom

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**CENTRE ON
CONSTITUTIONAL
CHANGE**

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Introduction

- i. This report seeks to inform the review of intergovernmental relations (IGR) initiated by the Joint Ministerial Committee (JMC) in March 2018. It offers a number of recommendations, drawing on evidence from the UK and other, broadly comparable, countries.
- ii. Since the devolution reforms of the late 1990s the UK has gradually developed a multi-level political system. The devolution settlements set out a relatively clear distinction between matters reserved to the Westminster parliament and matters which are devolved, with all three now conforming to a reserved powers model. Nonetheless, there is significant interdependence between reserved and devolved matters, and many policy challenges defy the constitutional division of powers. Policy interdependence makes intergovernmental relations vital to the effective functioning of multi-level government in the UK.
- iii. IGR are likely to assume even greater importance in light of the UK's exit from the European Union. Yet, the machinery of IGR has arguably been the neglected dimension of devolution, and current practice has been found wanting. Criticisms have become even louder of late. Since 2015, notable interventions calling for reforms to the system of UK IGR have come from – among others – the Welsh Government¹, Cabinet Secretaries and Ministers within the Scottish Government², the Scottish Parliament Finance and Constitution Committee³, the National Assembly for Wales Constitutional and Legislative Affairs Committee⁴, the House of Commons Public Administration and Constitutional Affairs Committee⁵, the House of Lords Constitution Committee⁶, the House of Lords EU Committee⁷, leading politicians including Scottish Conservative leader Ruth Davidson MSP⁸, Lord McConnell of Glenscorrodale⁹ and Peter Robinson (as First Minister of Northern Ireland)¹⁰, as well as constitutional experts including the Institute for Government¹¹ and the Bingham Centre for the Rule of Law¹².

¹ Welsh Government, *Securing Wales' Future: Brexit and Devolution* (Cardiff, 2017).

² See, for example, John Swinney, MSP, Deputy First Minister and (then) Cabinet Secretary for Finance, Constitution and Economy, *letter to Bruce Crawford, MSP, Convenor of Devolution (Further Powers) committee*, 23 March 2015

³ Finance and Constitution Committee, *European Union (Withdrawal) Bill LCM – Interim Report*, SP Paper 255, January 2018.

⁴ Constitutional and Legislative Affairs Committee, *UK governance post-Brexit*, February 2018.

⁵ Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships?*, HC 1485, July 2018.

⁶ House of Lords Constitution Committee, *Inter-governmental relations in the United Kingdom*, HL Paper 146, March 2015

⁷ House of Lords EU Committee, *Brexit: Devolution*, HL Paper 9, July 2017

⁸ R. Davidson. *Prospects for Scottish Unionism*. (Policy Exchange: 21 May 2018)

⁹ Lord McConnell of Glenscorrodale, *Corrected oral evidence: Brexit: devolution*, Select Committee on the European Union, 28 March 2017

¹⁰ Peter Robinson, (then) First Minister of Northern Ireland, *Oral Evidence to Lords Constitution Committee Inquiry: Intergovernmental Relations in the United Kingdom*, 11 February 2015.

¹¹ A. Paun and R. Munro, *Governing in an Ever Looser Union: How the four governments of the UK cooperate, negotiate and compete* (London: Institute for Government, 2015).

¹² Bingham Centre for the Rule of Law, *A Constitutional Crossroads Ways Forward for the United Kingdom* (London, 2015).

- iv. The joint review initiated by the Joint Ministerial Committee in March 2018 presents an opportunity to make the system fit for the challenges ahead. This includes developing more robust and transparent machinery, whilst retaining the flexibility required to adapt to changing circumstances. The review takes place against the backdrop of a period during which relations between the UK, Scottish and Welsh Governments have at times become strained, especially in the context of negotiations relating to the process and implications of leaving the European Union. Several commentators have identified an underlying lack of trust between governments as both a cause and a consequence of the recent difficulties.¹³
- v. Brexit presents some major challenges for the processes and machinery of IGR. Discussions and negotiations are ongoing regarding potential UK-wide frameworks to replace existing EU frameworks in repatriated policy areas, such as agriculture and fisheries, environmental protection, and justice and home affairs. Agreeing to, implementing, governing and reviewing common frameworks may require IGR institutions to take on a collective decision-making role. The UK Government also intends to negotiate international trade deals. Although trade is a reserved matter across all three devolution settlements, trade deals are likely to have implications for devolved competences. There may be mutual interest on the part of the UK and devolved governments in maintaining intergovernmental discussion during their negotiation and implementation.
- vi. This report assumes that the UK will be leaving the European Union on 29th March 2019. We recognise the many uncertainties regarding the medium and longer-term relationship between the UK and the EU, and the implications these may have for UK IGR. Some of the weaknesses within the current system of IGR in the UK were evident before the Brexit referendum, though the process of negotiating and preparing for Brexit has shone a particularly strong light on them. We therefore regard the challenges of the Brexit process as an opportunity to re-examine the system of IGR, with a view to establishing a more robust and transparent IGR machinery which commands the confidence of all of those involved in its key forums and processes.
- vii. The report makes no assumptions about the status of devolution in Northern Ireland, but we recognise the additional challenges in reaching multilateral agreements that arise in the context of the absence of a Northern Ireland Executive. We also recognise that the outcome of UK-EU negotiations, and the prospect of a Northern Ireland backstop, could have implications for the geographical scope of some common frameworks, and bring added complexity to post-Brexit IGR. However, given the many uncertainties surrounding these distinctive challenges, we exclude specific consideration of them from our analysis.
- viii. We also recognise that the current devolution settlements are not set in stone. Since 1999, devolution arrangements have evolved in the different parts of the UK and

¹³ R. Rawlings, *Brexit and the Territorial Constitution: Devolution, Reregulation and Inter-governmental relations* (London: Constitution Society, 2017); N. McEwen, 'Still better together? Purpose and power in inter-governmental councils in the UK', *Regional & Federal Studies* 27:5 (2017), pp 667-690; A. Paun, 'The EU Withdrawal Bill has serious implications for devolution', Institute for Government, 26 Sept 2017, <https://www.instituteforgovernment.org.uk/blog/eu-withdrawal-bill-has-serious-implications-devolution>, accessed 20 September 2018.

may change in the future. The recommendations made in this report are neutral with respect to possible constitutional futures, but we expect the proposed reforms to remain pertinent even if devolution settlements are revised further.

- ix. Although we refer to bilateral IGR, we focus our analysis and recommendations on multilateral relations between the UK's administrations, as these are the focus of the joint review. We exclude consideration of the status, and present and future use, of the British-Irish Council.
- x. Our report offers a comparative perspective, seeking to derive insights from intergovernmental systems in five broadly comparable multi-level political systems – Australia, Belgium, Canada, Italy and Spain. These case studies were chosen because they include a mix of federal and quasi-federal systems, some within and outwith the EU, and which display a variety of models and experiences of IGR practices. In some of these cases, the machinery of IGR is heavily institutionalised, while in others it is more informal and *ad hoc* in character. In each case, IGR arrangements reflect the political and constitutional environment within which they have been established, but they nevertheless offer many useful insights of relevance to the contemporary UK context.
- xi. The report is structured in three main parts. In Part 1 we identify weaknesses in the UK's current IGR arrangements. In Part 2 we present our analysis and recommendations in six key areas which, we suggest, should be addressed by the review. These are: the principles of IGR; the structure of IGR machinery; co-decision; dispute avoidance and resolution; asymmetries and English representation; and transparency. Finally, Part 3 comprises an annex that provides more detailed information about IGR arrangements in each of our case studies.
- xii. We are very grateful to officials in the UK and devolved governments for inviting us to produce this report to inform the review process, and for making themselves available to us during its production. This research is part of a collaborative project, *Between Two Unions: The constitutional challenge in the UK and Ireland after Brexit*. We gratefully acknowledge the support of the ESRC (Project Reference: ES/P009441/1). We would also like to thank the following individuals for their comments and assistance: Prof César Colino, Ian Davidson, David Guldemont, Luke Impett, Neill Jackson, Prof Andre Lecours, Dr Sandra Leon, Hugh Rawlings, Prof Rick Rawlings, Dr Carlotta Redi, Prof Julie Simmons, Lucy Smith, Patrick Utz and Dr Alice Valdesalici.

Part One

Re-examining UK Intergovernmental Relations

1. The existing IGR machinery in the UK contains various valuable elements that ought to be preserved and built upon. The shared civil service ethos and commitment to good communication have helped foster positive working relationships across administrations. Informal bilateral interactions are routine, and often an effective means of sharing information or raising particular concerns between administrations. With respect to more formal engagement, the flexibility within the system has enabled it to adapt to new developments and needs. These include the development of bilateral forums such as the Joint Exchequer Committees in Scotland and Wales, and the Scottish-UK Joint Ministerial Working Group on Welfare, which have benefited from focused and task-oriented remits associated with the transfer of new competences and their implementation.
2. As this report is intended to inform the ongoing review of multilateral IGR, we devote the bulk of our attention to areas that have been identified as weaknesses in the current system, and pay particular attention to areas where new challenges have been created by the UK's planned departure from the EU. This first Part of the report summarises these weaknesses.

Principles

3. The Explanatory Note to the latest Memorandum of Understanding and supplementary agreements describes these documents as '*setting out the principles which underlie (intergovernmental) relations*'.¹⁴ The subsequent documents do not, however, include a clear statement of what these overarching principles are, independent of the purpose, functions and practices of IGR.
4. Our reading of the MoU identifies the following broad principles:
 - A commitment to '*good communication*', with sufficient time to allow representations from partner administrations to be fully considered before any one administration makes decisions that may have a bearing on the responsibilities of others;
 - That information will be exchanged where practicable, available, and its provision would not involve disproportionate cost;
 - Respect for discretion and legal obligations on confidentiality and disclosure;
 - That the UK Parliament remains sovereign, but the UK Government will proceed in accordance with the convention that the UK Parliament would not

¹⁴ UK Government, *Devolution: Memorandum of Understanding and Supplementary Agreements*, October 2013.

normally legislate with regard to devolved matters except with the agreement of the relevant devolved legislature(s);

- That informal IGR should be the norm, with business conducted through normal administrative channels '*wherever possible*';
 - That the MoU and supplementary agreements are non-binding.
5. Some of these values are very broadly stated and are likely to be interpreted very differently by the various parties involved. For example, what amounts to 'good' communication and what is 'practicable' with respect to information exchange are matters of (often diverging) judgement. The paucity and lateness of information flow has been a concern among officials, especially in the devolved governments, during recent intergovernmental discussions, for example, over the EU (Withdrawal) legislation.
 6. Westminster parliamentary sovereignty is a legal fact and is written into the devolution settlements. Although this has been qualified to some extent by the inclusion of the Sewel convention in the MoU, and more recently in the Scotland Act (2016) and the Wales Act (2017), recent experiences and submissions from the respective governments to the Supreme Court have revealed rather different interpretations of the convention's scope.
 7. There is increasing concern that the emphasis upon confidentiality and discretion carries too high a price in terms of lack of transparency, with implications for the ability of legislatures to hold governments to account for their actions in the intergovernmental arena.
 8. The emphasis given to informality, and a wariness about establishing a routinised schedule of meetings across much of the formal machinery of IGR, may make planning and organising meetings more challenging. It also fails to capture the collaborative working culture and 'outside of the room' networking that often come with regular meetings, and which can foster the mutual trust and interpersonal relations upon which IGR in every country depend.

Purpose

9. The stated purpose of the JMC is:
 - (i) to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
 - (ii) to consider devolved matters if it is beneficial and mutually agreeable to discuss their respective treatment in the different parts of the United Kingdom;
 - (iii) to keep the arrangements for liaison between the UK Government and the devolved Governments under review; and
 - (iv) to consider disputes between the administrations.¹⁵

The emphasis upon *consideration* is indicative; the JMC was not intended to be a forum for co-decision, nor even routine coordination. As a result, it is unlikely to be a sufficient vehicle

¹⁵ *Ibid.*

in its current form for the coordination that is likely to be necessary during and after the Brexit process.

10. Our review of the working of the different JMC forums, and intergovernmental machinery in other multi-level political systems, suggests the importance of establishing clarity of purpose. JMC formats with a clearer rationale, such as the JMC (E), have been more widely utilised, whilst those lacking such clarity, such as the early functional formats or the JMC (D), have tended to fall into abeyance.
11. The inter-ministerial forums established in the wake of the Brexit referendum have benefited from a clearer sense of purpose - preparing for the UK's departure from the European Union. The longer-term purpose and durability of such forums, however, remains uncertain.

The machinery of multilateral intergovernmental relations

12. The UK's intergovernmental machinery is characterised by its largely *ad hoc* nature. In contrast to the detailed legislative underpinning of the systems of devolution introduced since 1998, the design of the machinery for intergovernmental cooperation appears more of an afterthought, taking a variety of forms as and when needed, or in response to demand. This *ad hoc* approach has aided a flexible response to new challenges as they emerge, and we regard this flexibility as a strength rather than a weakness. However, the relative absence of a routinised schedule of intergovernmental meetings among member administrations of the UK – which is notable when compared with most of the other cases documented in this report – can have repercussions for the administration, operation and transparency of IGR.
13. The JMC remains the central pillar of the UK's intergovernmental architecture. Its most recent report observes that: '*The JMC meets in Plenary, EU negotiations, Domestic and European formats*'.¹⁶ In the early years of devolution, the JMC met only a few times in plenary and functional formats before becoming largely redundant in 2002. It was only resurrected, accompanied by the new Domestic format (JMC D), when deepening party political differences between governments across the UK after 2007 removed the less formal party channels that were being employed to manage and co-ordinate relationships.
14. That the JMC (P) did not meet between December 2014 and October 2016 was as much a reflection of the difficulties in agreeing mutually convenient dates as a lack of will. Such timetabling challenges emerge from the lack of routine scheduling and add organisational burdens that are less apparent in systems with more routinised meetings.
15. The JMC (D) has suffered from the absence of a clear overarching purpose, with apparent difficulties in identifying agenda items that could engage all participants. As a result, it has not met since March 2013.
16. By contrast, the JMC (E) has benefited from greater clarity of purpose and an agreed schedule – feeding into the development of the UK Government's EU policy-making process ahead of European Council meetings. However, even in this case, doubts

¹⁶ UK Government, 'Report of the Joint Ministerial Committee: 2015–2018', March 2018.

remain over the quality of deliberations, with meaningful opportunities for consultation and ‘good communication’ potentially undermined by the late circulation of papers, the brevity of meetings, and the lack of follow-up and feedback after Council meetings.¹⁷ The Brexit process now overshadows the discussions of the JMC (E).

17. The JMC (EN) has also benefited from a clear purpose and more frequent, if not always routinised, meetings. However, it did not fulfil its declared remit to ‘*seek to agree a UK approach to, and objectives for, Article 50 negotiations*’.¹⁸ The Prime Minister’s Lancaster House speech setting down some parameters of the UK approach to Brexit was delivered without consultation, let alone agreement, with the devolved governments. Devolved government ministers also complained about the absence of consultation on the content or detail of the Article 50 letter sent to the President of the European Council that formally opened the negotiations.
18. Even with a relatively clear purpose in place, the responses of different participants reveal an apparent gap in perceptions of the scope and functioning of the JMC (EN). Participants from the devolved governments complained about a lack of consultation and information-sharing, and the poor organisation of JMC (EN) meetings, particularly during its first phase. The Cabinet Secretary for Finance and Local Government in the Welsh Government described the JMC (EN) as a ‘*frustrating experience*’ that has ‘*failed to give confidence to devolved Administrations that... (their) views are making a genuine impact on the thinking of the UK Government*’¹⁹, while the (then) Minister for UK Negotiations on Scotland’s Place in Europe described it as ‘*unnecessarily frustrating, and a wasted opportunity*’.²⁰ The (then) Secretary of State for Exiting the European Union perceived discussions differently, suggesting that the UK Government had ‘*bent over backwards*’ to take heed of concerns in the devolved nations.²¹
19. We recognise that perceptions of intergovernmental discussions will inevitably be coloured by differences in political preferences and priorities. We also recognise that the unprecedented intensification of intergovernmental relations in the context of negotiating and preparing for Brexit has brought administrative challenges which officials have sought to overcome in more recent JMCs and the new Ministerial Forum on Brexit. However, the early experiences of the JMC (EN) reveal the extent to which the legitimacy of intergovernmental forums requires not just a clear purpose and remit, but also efficient organisation and a shared understanding of their scope.
20. The JMC process is generally perceived by the devolved governments as being unduly determined by the priorities and interests of the UK Government, and this also inhibits the prospects for the development of an IGR machinery that is perceived by all partners to be legitimate and effective. Plenary sessions are chaired by a UK

¹⁷ McEwen, op cit.

¹⁸ UK Government, ‘Joint Ministerial Committee communiqué: 24 October 2016’, 24 October 2016.

¹⁹ Exiting the European Union Committee, *Oral evidence: The UK’s negotiating objectives for its withdrawal from the EU*, HC 1072 2016-17, 7 March 2017, Q1296.

²⁰ M. Rhodes, ‘Mike Russell on the fight to stay in Europe’, Holyrood, 12 April 2017, <https://www.holyrood.com/articles/inside-politics/mike-russell-fight-stay-europe>, last accessed 25 September 2018.

²¹ House of Lords European Union Committee, *Oral evidence: David Davis evidence session*, 11 July 2017, Q7.

Government minister and, after its resumption in 2007 until 2017, it always met in London. Despite the joint secretariat, the primary authority for the conduct of meetings lies with the UK Government. Senior ministers from the devolved governments sometimes feel that they are 'brought in' to meetings with the UK Government, instead of the JMC operating as a forum in which the four administrations could work together. The First Minister of Wales described the JMC as:

'basically a Westminster creation that is designed to allow Westminster to discuss issues with the devolved Administrations. It is not jointly owned... and it is not a proper forum of four Administrations coming together to discuss issues of mutual interest'.²²

21. The rationale for the distinction between JMC forums and other inter-ministerial forums is not always clear, and the latter are seen as affording even less parity of esteem. The Finance Ministers' Quadrilateral (FMQ), for example, is regarded as useful for sharing relevant financial information by both the UK Government and at least some of the devolved governments.²³ However, one former Secretary of State for Scotland described it as *'a vehicle for the Treasury to hand out announcements to the devolved administrations... without any negotiation... Protest was heard, but this was not a place for negotiation and agreement'.²⁴*

Decision-making and disputes

22. The absence of any decision-making function within the UK's intergovernmental forums has contributed to the JMC being dismissed as merely a *'talking shop'*, with meetings lacking a clear purpose or outcomes.²⁵ A number of calls have been made for a decision-making role to be introduced, including from the Welsh Government²⁶, the Institute for Government²⁷ and prominent Scottish Conservative, Professor Adam Tomkins²⁸. In the post-Brexit context, the absence of a co-decision function may be problematic, given the agreed need to negotiate, implement and govern some common frameworks.
23. Consideration of disputes was one of the core functions of the JMC when it was established. The *Protocol for the Avoidance and Resolution of Disputes* introduced in 2010 brought some formality to this function. However, there is scepticism about its effectiveness, especially on the part of the devolved governments.

²² House of Lords Constitution Committee, *Oral Evidence: Inter-governmental Relations in the UK*, 21 January 2015, Q46.

²³ Constitution Committee, *Inter-governmental relations in the United Kingdom*, HL Paper 146 2014-15, p. 28.

²⁴ M. Moore, 'Uncertainty is the new certainty: charting Scotland's course in an age of disruption', University of Strathclyde International Public Policy Institute, October 2016.

²⁵ Welsh Government, *Securing Wales' Future: Brexit and Devolution* (Cardiff, 2017), p. 17.

²⁶ *Ibid.*

²⁷ M. Thimont Jack *et al.*, *Devolution after Brexit: Managing the environment, agriculture and fisheries* (London: Institute for Government, 2018).

²⁸ A. Tomkins, *Shared Rule: What Scotland Needs to Learn from Federalism* (Melting Pot: Edinburgh, 2016). Adam Tomkins was elected as a Conservative Member of the Scottish Parliament in 2016 and serves as the party's spokesperson for the Constitution. He is also Deputy Convenor of the Scottish Parliament Finance and Constitution Committee.

24. Criticisms have been directed at the final stage of the procedure, which stipulates that a UK minister – who as far as possible should not have a departmental interest – chairs JMC meetings when in dispute resolution mode. The process has been regarded by the devolved administrations as unduly weighted towards the UK Government. For example, the former First Minister of Northern Ireland described the dispute resolution procedure as ‘*meaningless*’: ‘*At the end of the day, the Cabinet Office will decide whether the Treasury was right. We do not think that is a very impartial court to take our case to*’.²⁹ A former Secretary of State for Scotland referred to the JMC as ‘*a forum for dispute declaration, if rarely for dispute resolution*’.³⁰

Should England be represented within the UK’s IGR?

25. The UK’s territorial structure is highly asymmetrical. This feature poses various challenges for IGR, particularly in light of the anticipated negotiation of frameworks that would apply across the whole of the UK after Brexit.
26. In particular, concerns have been raised from several different perspectives about the implications of the UK Government’s ‘dual hatted’ role as representative of both the UK’s and England’s interests in IGR forums. Ministers in the devolved governments have suggested that the ‘dual hat’ presents a conflict of interests for UK ministers. Some English commentators and campaigners claim that England is denied a national voice by the current IGR machinery, at a point when there is considerable evidence that the English are becoming more conscious of their own national identity and territorial interests.³¹ In particular, regional political leaders in England feel that their concerns are overlooked. The House of Commons Public Administration and Constitutional Affairs Committee (PACAC)³² and the outgoing First Minister of Wales have both recently called for this issue to be addressed by the review of IGR.³³

Transparency and accountability

27. IGR often operates in a relatively opaque fashion, given the executive-dominated, closed-door nature of negotiations, and the abiding requirement for confidentiality. The lack of transparency can have implications for the ability of both parliaments and the electorate to hold governments to account, and to judge between competing accounts and interpretations of the conduct of intergovernmental meetings. The implications for democratic accountability may become more pronounced if the use and functions of intergovernmental forums increase after the UK leaves the EU.
28. The lack of routinised IGR processes also potentially hinders scrutiny, with limited advanced information about the timing and agendas of meetings, and little information in post-meeting communiqués regarding the content and outcome of discussions. Minutes, where they are taken, are generally not published. The JMC ‘annual report’ is not always published annually, and the level of detail it provides is

²⁹ Constitution Committee, *Oral evidence: Inter-governmental Relations in the UK*, 11 February 2015, Q87.

³⁰ Moore, *op cit.*, p.11.

³¹ M. Kenny, *The Politics of English Nationhood* (Oxford: Oxford University Press, 2014).

³² Public Administration and Constitutional Affairs Committee (2018).

³³ Carwyn Jones, AM, First Minister of Wales, ‘Brexit and devolution: Stresses, strains and solutions’, speech at Institute for Government, 10 September 2018.

typically limited to dates of meetings, agenda items and notifications of disputes invoked under the dispute protocol. Neither the communiqués nor the annual report offers much insight into the substance of discussions or disputes, or the contributions of each administration.

29. Parliamentary committees in Westminster and the devolved legislatures have increased their scrutiny of IGR through numerous inquiries, with subsequent reports generating demands for greater transparency in relation to the operation and outcomes of intergovernmental forums.
30. As the outcomes of intergovernmental discussions are currently non-binding, they do not require the consent of the UK or devolved legislatures. Unlike in some other countries with multi-level government, there is no central register of outcomes or agreements, and no general requirement or commitment to ensure that outcomes and agreements be reported to parliament, except in the Scottish Parliament (see para 135).
31. In Part 2 of this Report, we examine each of these areas in more detail, drawing insights from the comparative case studies we have considered, and offering recommendations for how some of the weaknesses identified in the current system may be addressed.

Part Two

Recommendations for Reform

Principles of IGR

32. IGR in multi-level political systems is usually underpinned by a set of principles. These are articulated explicitly in some systems but left implicit in others. They can be practically focused or more aspirational in kind. They can be legally enforceable or have the status of conventions.
33. These core principles are often set out in the founding documents of intergovernmental forums, and in agreements reached between governments on the conduct of IGR. The Memorandum of Understanding (MoU) between the UK and devolved governments contains reference to certain principles, including good communication and information exchange, confidentiality, Westminster parliamentary sovereignty and the Sewel convention (see para. 4).
34. The JMC (EN) agreed three broad principles specifically in relation to the proposed establishment of UK-wide frameworks in policy areas currently managed at EU level and which fall within devolved competence.³⁴ These were:
- (i) that frameworks will be employed where necessary - to fulfil certain functions related to the internal market, the UK's international obligations, international agreements and trade deals, cross-border justice issues, the management of common resources, and the UK's security;
 - (ii) that frameworks would respect the devolution settlement and the democratic accountability of the devolved legislatures; and
 - (iii) recognition of the economic and social linkages between Northern Ireland and Ireland and adherence to the Belfast/Good Friday Agreement.
35. Principles were also referenced in the Fiscal Framework Agreement between the UK and Scottish Governments.³⁵ These included practical components – the continuation of the Barnett formula, the need for agreement on borrowing powers – as well as the principle of 'no detriment'.
36. There have been various calls for IGR principles to be revised and reinforced. For example, the House of Lords Constitution Committee called for core principles to be included as part of a statutory framework for IGR in the UK.³⁶ The Welsh Government advocated that the process of agreeing common frameworks should respect the principle of subsidiarity.³⁷ Their report, *Brexit and Devolution*, also made reference to the principles of autonomy, solidarity and the need to protect the 'collaborative

³⁴ UK Government, 'Joint Ministerial Committee (EU Negotiations) Communique', 16 October 2017.

³⁵ UK Government and Scottish Government, *The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework* (London: HM Treasury, 2016).

³⁶ House of Lords Constitution Committee (2015), §86.

³⁷ Welsh Government (2017), p. 14.

democratic principle’ in intergovernmental negotiations.³⁸ The Scottish Government has promoted the principle of parity of esteem. The Deputy First Minister, for example, stated that good intergovernmental machinery ‘*must be based on “parity of esteem”, and mutual respect and trust*’, noting that ‘*The UK Government and devolved administrations are equals in their areas of competence*’.³⁹

37. Core principles are a feature of IGR processes across all cases we examined.

- In Belgium, the principle of federal loyalty is enshrined in the Constitution. Article 143 declares that ‘*in the exercise of their respective responsibilities, the federal State, the Communities, the Regions and the Joint Community Commission act with respect for federal loyalty, in order to prevent conflicts of interest*’.⁴⁰ In effect, this means that the constituent units of the Belgian state (including the federal government) must consider the effect of their activities on the others and should abstain from activities which would cause undue detriment. If a unit believes that another has violated the principle of federal loyalty, it can invoke a conflict of interest procedure.
- The principle of ‘*in foro interno, in foro externo*’ also has particular significance for IGR in Belgium. This principle empowers regions and communities to determine policies internationally, including EU policy-making and mixed trade agreements, in areas where they have competence domestically. In practice, the principle ensures that the regions and communities engage intensively with the federal government in shaping external policies which impinge upon their spheres of jurisdiction.
- In Spain, principles of IGR are set out in statute. These include: institutional loyalty; adherence to the distribution of powers; collaboration in pursuit of a common purpose; cooperation, coordination on common frameworks; efficiency in the use of public resources (including sharing common resources); and inter-territorial solidarity. Statutes of autonomy agreed with each autonomous community additionally refer to principles of institutional loyalty, coordination with the central state and mutual assistance.
- In Australia, the Constitution specifies some important principles of inter-territorial relations. These include that trade among states should be ‘*absolutely free*’ and that the federal government should not ‘*give preference to one State or any part thereof over another State or any part thereof*’.⁴¹ The founding document of the Council for the Australian Federation (CAF), formed on a horizontal basis by the states and territories, also states key principles which are viewed as integral to

³⁸ *Ibid.*, p. 18.

³⁹ J. Swinney, *Letter to Bruce Crawford, Convenor of Devolution (Further Powers) committee*, 23 March 2015.

⁴⁰ Constitution of Belgium, Article 143..

⁴¹ Constitution of Australia Constitution Act, s.92 & s.99.

federal relations, including: respect for constitutions and the division of powers; recognition of diversity in policy priorities and implementation; and the freedom to consult and co-operate on matters of common matters ‘*where this promises the best outcome*’.⁴²

- There is no statement of overall principles underpinning Canadian intergovernmental relations, but agreements reached between the federal and provincial governments generally tend to be underpinned by recognition of the diverse social, cultural and economic characteristics of the Provinces, and respect for the constitutional authority of the federal and provincial parliaments. Box 1 provides a recent example of how these principles were applied in the 2017 Canadian Free Trade Agreement, which is intended to reduce barriers to trade and mobility across Canada.

BOX 1: Application of Principles in the Canadian Free Trade Agreement 2017

The Parties recognize:

- (a) *the right to regulate is a basic and fundamental attribute of government, and the decision of a Party not to adopt or maintain a particular measure shall not affect the right of any other Party to adopt or maintain such a measure;*
- (b) *the need to preserve flexibility in order to achieve public policy objectives, such as public health, safety, social policy, environmental or consumer protection, or the promotion and protection of cultural diversity;*
- (c) *the need for full disclosure of information, legislation, regulations, policies, and practices that have the potential to impede an open, efficient, and stable domestic market;*
- (d) *the need for exceptions and transition periods; and*
- (e) *the need for dispute resolution procedures and compliance mechanisms that are accessible, timely, credible, and effective*

38. We are of the view that IGR in the UK would benefit from a review of its underlying principles. We make no specific recommendations about what these should be, but suggest that the following principles may offer a useful starting point for discussion:

- ***Respect for the authority of different governments across the UK.***

This includes respecting the devolution settlements; respecting the UK parliament’s legislative authority in reserved matters; and respecting the authority and democratic legitimacy of each government to determine their own policy priorities in their respective spheres of competence, recognising that these may generate divergent policy preferences.

- ***Recognising that the reality of modern government in a multi-level political system requires some degree of intergovernmental cooperation.***

As Lord McConnell of Glenscorrodale put it, ‘*the modern, 21st-century UK is, even more than it was before, a shared sovereignty operation*’.⁴³ The interdependence between reserved and devolved matters points to the benefits of

⁴² Council of the Australian Federation, *An Agreement to Establish the Council for the Australian Federation*, 13 October 2006.

⁴³ Lord McConnell of Glenscorrodale, *Corrected oral evidence: Brexit: devolution*, Select Committee on the European Union, 28 March 2017

intergovernmental cooperation in areas of shared interest. These may be in fields designated in law as either devolved or reserved matters.

- **Proportionality**

Respecting the autonomy and authority of each legislature involves adopting a proportionate approach to the development of inter-governmental processes or regulatory bodies. The proportionality principle would help to ensure that intergovernmental mechanisms and forums are established only when necessary to serve a mutually agreed purpose. Their reach and remit should not have a debilitating effect on the authority of participating administrations.

- **Transparency**

While we recognise the importance of confidentiality and a safe space for the exchange of ideas and frank opinions between governments, the effective functioning of IGR in a democracy requires that governments ultimately be accountable for their actions. A commitment to greater transparency where appropriate should serve as a guiding principle in IGR.

39. Agreed principles have an important role to play in *informing* the design, process and practice of IGR. However, there is a risk that prolonged deliberation over principles might represent an unnecessary obstacle to more practically-focused reforms to the design, process and practices themselves. Where agreements on declarations of principle are difficult to reach, we suggest more emphasis be given to developing forums and practices that enable co-operation and deliberation between the various governments.

Reforming the machinery of IGR

40. Intergovernmental machinery is more *ad hoc* in character in the UK, and less frequently utilised, than in any of the other cases considered in this report. This mattered less in the early years of devolution when policy agendas were broadly aligned, and political parties were the conduit through which relations between governing administrations could be managed. Since 2007, however, there has been increasing concern that the machinery of IGR is insufficiently robust to deal with relations between governments led by competing political parties. More recently, different parliamentary enquiries examining IGR in the context of the UK's preparations for Brexit have suggested that the existing machinery is not '*fit for purpose*'⁴⁴, and is '*inadequate for the new challenges we face*'.⁴⁵

Statutory underpinning

41. There have been calls to provide a statutory underpinning for intergovernmental relations, notably in the House of Commons PACAC report on *Devolution and Exiting the European Union*⁴⁶ and the House of Lords Constitutional Committee's report on

⁴⁴ Public Administration and Constitutional Affairs Committee (2018).

⁴⁵ Welsh Government (2017), p.17

⁴⁶ Public Administration and Constitutional Affairs Committee (2018).

*Inter-Governmental Relations in the United Kingdom*⁴⁷. The latter argued that legislation should provide a basic framework for the conduct of formal and informal IGR, and include clauses setting out the existence, membership and core structure of the JMC, its key sub-committees, as well as its core principles. The 2018 report from the National Assembly for Wales Constitutional and Legislative Affairs Committee also proposed a statutory underpinning for the JMC.⁴⁸ In its 2015 report on intergovernmental relations and parliamentary scrutiny, the Scottish Parliament Devolution (Further Powers) committee acknowledged the advantages of establishing a statutory basis for IGR but stopped short of fully advocating statutory underpinning.⁴⁹

42. In some of the overseas cases we examined, intergovernmental forums are underpinned by statute. The Belgian Concertation Committee was founded as part of the Second State Reform in 1980.⁵⁰ The law created the committee and outlined its institutional membership but did not set out the purpose or frequency of meetings. These were elaborated upon in internal regulations agreed by representatives of the federal, regional, and community governments as well as the sixth state reform, agreed in 2011. The functions, remit and scheduling of Italy's State-Regions conference are underpinned by statute, with a legal requirement to meet every six months. The legislation includes a mandatory requirement for the conference to be consulted on bills, regulations and decrees which relate to regional matters, but there is no legal requirement for its opinions to shape the actions and decisions of central government. In Spain, the principle of cooperation is written in statute, with the statute noting the existence of sectoral conferences and bilateral cooperation commissions, but not prescribing their internal organisation or the frequency of meetings.
43. **Whilst we recognise the arguments for placing elements of the JMC and IGR more generally in statute, these should be balanced against the advantages associated with maintaining a flexible approach which can allow governments to adapt intergovernmental forums to new challenges as they arise.**
44. **We would thus recommend limiting any statutory underpinning to the presence and membership of the JMC, the expectation of annual or biannual meetings, and a requirement to report to parliaments. We note, however, that our comparative analyses suggest that a legal underpinning in and of itself is unlikely to transform IGR. In our judgement, the commitment of the respective governments, as well as the culture and rules of engagement, are in practice more important.**

Heads of Government forums

45. Each country case we examined has a peak intergovernmental forum which brings together the relevant heads of government. These vary across cases with respect to the regularity with which they meet. For example, the Belgian Concertation Committee meets monthly, with additional meetings as necessary. The Council of Australian

⁴⁷ Constitution Committee (2015).

⁴⁸ Constitutional and Legislative Affairs Committee (2018).

⁴⁹ Devolution (Further Powers) Committee, *Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations*, SP Paper 809, October 2015.

⁵⁰ Ordinary Law of 9 August 1980 on the institutional reform of Belgium.

Governments (COAG) meets twice per year, supplemented by occasional 'special' meetings. The Italian State-Regions conference is required by law to meet at least twice per year, but in practice meets much more frequently.⁵¹ In Canada, a First Ministers' Conference is typically held annually, but this is dependent upon the will and the agenda of the Prime Minister of the day. Periods of heightened constitutional politics have coincided with more frequent heads of government meetings. Premiers are also often at the table when negotiating significant intergovernmental agreements, such as those on internal and external trade. PM Stephen Harper, by contrast, convened only two First Ministers' Conferences during his 9 years in office, preferring to engage with provinces on a bilateral basis. In every case we examined, these meetings are chaired by the Prime Minister or the leading federal/central government minister.

46. IGR councils can serve as a tool of centralisation and/or centrally-coordinated countrywide action. In Australia, COAG has been used by the Commonwealth Government to establish country-wide frameworks and regulations in areas of state (regional) or territory jurisdiction, backed by Commonwealth funding. For example, in 2010, the governments agreed a coordinated programme of health care reform in exchange for increased hospital funding.⁵² IGR councils can also be a vehicle for sub-state governments to influence policies of central government that intersect with, or have an impact upon, sub-state domains. In Canada, although the federal government has exclusive authority on trade matters, the provinces have utilised inter-governmental mechanisms to influence the federal government's negotiating positions where prospective trade deals impinge upon provincial matters.
47. **We see no particular benefit to replacing the Joint Ministerial Committee in its plenary format with a new 'heads of government' forum. However, we recommend making some changes to its function and operation, including incorporating a decision-making function and a more robust system of dispute resolution.**
48. Some minor changes to the convening of the JMC (P) can help counteract the perception among devolved governments that they are 'brought in' to meetings led by the UK Government. The first two plenary meetings of the JMC (P) were held in Edinburgh and Cardiff respectively, with the third meeting in London. This implies that the original intention was to rotate the location of meetings. Since it was reconvened in 2008, however, only one meeting of JMC (P) has been held outside London.

We recommend a commitment to rotating the location of meetings between London, Cardiff, Belfast and Edinburgh, with consideration giving to rotating the chair accordingly, or operating a co-chair system.

49. JMC (P) has been beset by various organisational challenges. To alleviate some of the problems associated with scheduling meetings, **we recommend a regular schedule of annual or biannual meetings, according to need, with an additional opportunity for member governments to call extraordinary meetings where**

⁵¹ Although the State-Regions conference is intended to bring together the heads of government, the Italian PM rarely attends.

⁵² M-A. McQuestin and S. Woods, 'The Tension Between Intergovernmental Relations and Cooperative Federalism', paper presented to Australian Political Science Association Conference 2010.

necessary. Routine meetings can also contribute to building trust and empathy among ministerial representatives, as well as the officials who support them.

Inter-ministerial Forums

50. The UK has made very limited use of other formal multilateral ministerial forums, in stark contrast to the other cases examined in this report. Belgium, Canada and Spain each have more than 30 intergovernmental forums. These forums vary in the extent to which they are utilised. For example, in Spain, only 22 of the 40 sectoral forums met in 2017, the most active dealing with finance, employment and labour policy, social services and policy areas with a European dimension such as fisheries and agriculture. In the cases we examined, inter-ministerial forums spanned policy fields of federal and regional jurisdiction. These include forums on healthcare, housing, the labour market, and social services as well as international trade, the environment, and immigration.
51. Early functional formats of the JMC, and the more recent JMC (Domestic), have lacked a clear purpose, reducing the incentive for member administrations to participate and sustain them. By contrast, the JMC (Europe) has always had a much clearer purpose, meeting regularly since the introduction of devolution in 1999. These have permitted the devolved governments to raise issues of interest ahead of European Council meetings, in an effort to ensure that these are incorporated into the formulation of the UK's negotiating position.
52. **In our view, regardless of the outcome of Brexit negotiations, there will be an ongoing need to maintain a relationship with the EU, with the potential for shared, or aligned, regulations, and shared governance arrangements. Given the strong likelihood that the affected policy fields will span areas of reserved and devolved competence, we believe there is a strong case for maintaining the JMC (E) after the UK leaves the EU.**

Intergovernmental machinery after Brexit

53. In light of the agreed need to establish some UK-wide common frameworks to replace EU regulatory frameworks, the PACAC report called for either a JMC for Common Frameworks or individual JMCs linked to departmental areas.⁵³ According to PACAC's report, these would help to build experience of joint decision-making, and foster a system whereby common frameworks can be discussed, agreed, monitored and amended.
54. Common frameworks are employed in a wide range of policy fields in the cases examined here. In Canada, frameworks or agreements were reached on issues of common concern, for example childcare and public health, as well as labour mobility and the functioning of the internal market. In each case, there is an acknowledgement of the need to respect the autonomy and jurisdiction of the provincial governments and allow them to meet the unique needs of their territories. In Australia, agreed frameworks are found across a very wide range of policy areas, including health and education. These are often associated with funding packages entailing transfers from

⁵³ Public Administration and Constitutional Affairs Committee (2018).

the Commonwealth to the states, giving the latter a strong incentive to reach agreement.

55. The idea of establishing UK-wide or GB-wide frameworks has emerged as a response to the UK's anticipated withdrawal from EU regulatory frameworks, and the desire to avoid barriers to trade emerging within a UK internal market. The need to overcome, or avoid, internal barriers has periodically emerged in the two non-EU countries we examined, especially in Canada, where internal policy variation is more apparent. In 2017, the federal, provincial and territorial governments agreed a new Canadian Free Trade Agreement, establishing a Regulatory Reconciliation and Cooperation Table (RCT), within which senior officials from each administration would identify and address outstanding barriers to internal trade. Areas including occupational health and safety, transport, agriculture, and pharmaceuticals will be addressed by the RCT in the coming year. In Australia, concerns about barriers to internal trade emerging from states having divergent regulations, for example, in competition law and product standards, drove a programme of major reforms agreed through intergovernmental negotiations in the 1990s.⁵⁴ The outputs of this reform programme included a National Competition Policy, a mutual recognition scheme, harmonisation of road transport regulations and an Australia-wide rail freight system.
56. It is currently a flagship policy of the UK Government to embark upon trade negotiations with a large number of non-EU countries following Brexit. Although trade is a reserved matter, recent international trade deals suggest that these will impinge upon areas of devolved competence and interest, including government procurement, labour mobility, and sectors such as agriculture, health, energy and the environment. The marketing material of the UK Department for International Trade's *Exporting is Great* initiative (see below) indicates the extent to which external trade spans areas of reserved and devolved competence. It will be important for trade negotiators to be alert to the devolution dimension of trade issues prior to deals being reached, not least to ensure their smooth implementation.

Figure 1: *Reserved and devolved competence in DIT's promotion of trade*



⁵⁴ M. Painter, 'The Council of Australian Governments and Intergovernmental Relations: A Case of Cooperative Federalism', *Publius* 26:2, pp. 101-120.

57. The Canadian provinces were involved in the negotiations of the CETA trade deal, at the insistence of the European Union. Given that many of the sectors covered by CETA fall within provincial jurisdiction, provincial buy-in was considered crucial. Although the degree of provincial government involvement in CETA was exceptional, the provinces nonetheless have an opportunity to input into trade negotiations through the Permanent Federal-Provincial-Territorial Trade Committee (the C-Trade Committee), which meets around four times a year. In Belgium, the principle of '*in foro interno, in foro externo*' gave the regional governments consenting powers over CETA, given its implications for regional competence, necessitating further negotiations within Belgium to secure Wallonia's consent.
58. **In order to address potential barriers to the UK's internal market, we follow the suggestion of Professor Rick Rawlings⁵⁵ in recommending the creation of a JMC (Internal Market). As well as being guided by the general (revised) principles of the JMC, the governments may wish to agree specific principles when developing the purpose and remit of such a committee, following the principled approach taken during discussions of common frameworks. A JMC (IM) may be supported by sub-groups on specific common frameworks when necessary, but we would regard its central purpose as providing strategic oversight and direction, to ensure a coherent approach to avoiding unwarranted barriers to internal trade and mobility.**
59. **We are also persuaded by the case for a JMC (Trade) as a mechanism for informing the UK's position as it embarks upon international trade negotiations. This would ensure both that the devolution dimension of trade deals is recognised and considered when developing negotiating positions, and that both the UK and devolved governments are aware of the implications of trade deals for devolved matters. This could help to identify and address any issues that may present barriers to the implementation of subsequent agreements.**
60. Whilst trade agreements may be a major focus of the early years of the UK's future outside of the EU – if that involves leaving the EU Customs Union – the UK is signatory to a wide range of international agreements which go beyond trade. As with trade, international relations – including international treaty-making – are reserved to the UK parliament under the devolution settlements. But international treaties and other agreements often pertain to matters that are, within the UK, the responsibility of the devolved institutions, for example, agreements on climate change, the environment, justice and human rights.
61. The Concordat on International Relations, which formed a supplementary agreement to the Memorandum of Understanding, recognised the interdependence between international treaty-making and devolved competence. A series of commitments to share information between officials and ministers was written into the concordat to facilitate intergovernmental cooperation.
62. **In our view, Brexit provides an opportune moment to review the functioning of the concordats on international relations, and to consider whether the degree of inter-ministerial cooperation these envisage between the UK Government**

⁵⁵ R. Rawlings, *Brexit and the Territorial Constitution: Devolution, Re-regulation and Inter-governmental relations*. Report prepared on behalf of the Constitution Society.

and each of the devolved administrations may be better served by a more formal vehicle such as a JMC (International Agreements).

Administering IGR

63. The cases we examined displayed a variety of models for the administration of IGR. In some cases, notably Spain, the administration was lodged within central government. In Canada, the governments are supported by an impartial standing secretariat, the Canadian Intergovernmental Conference Secretariat (CICS). It is staffed by broadly equal numbers of seconded public servants from the federal government, on the one hand, and provincial and territorial governments on the other, most of whom serve three-year terms. It does not replace the strategic coordination and administration of IGR within governments (which in Canada tends to be coordinated internally within the Privy Council Office of the federal government and in provincial departments of intergovernmental affairs). Rather, its central objective is to *'relieve client departments of the numerous technical and administrative tasks associated with the planning and conducting of multilateral conferences, thereby enabling participants to concentrate on substantive intergovernmental policy issues.'*⁵⁶ A similar model supports the administration of the North-South Ministerial Council on the island of Ireland, the Nordic Council of Ministers and, on a considerably smaller scale, the British-Irish Council.

64. Although the existence of the joint secretariat is widely regarded as a positive feature of IGR in the UK, the primary role of these officials is to represent the interests of their respective governments. The organisational burden carried by a small number of officials during a period of unprecedented formal intergovernmental negotiation has contributed to the frustrations voiced by the devolved governments, in particular.

65. In light of the volume and intensity of intergovernmental interactions during the processes of negotiating and implementing Brexit, and the anticipated need for regular intergovernmental meetings thereafter, we recommend that consideration be given to establishing a standing secretariat, along the lines of the Canadian Intergovernmental Conference Secretariat. Like the CICS, this could be staffed by officials seconded from each of the partner administrations.

We envisage its primary role as servicing the organisation and administration of JMCs and other formal intergovernmental forums. It could also help to address some other intergovernmental challenges, including promoting transparency and facilitating dispute resolution (see below). A standing secretariat would not replace the critical role of officials within each government but would be designed to relieve them of a growing organisational burden and help serve the demand for greater transparency.

⁵⁶ Canadian Intergovernmental Conference Secretariat, <http://www.scics.ca/en/>, last accessed 1 October 2018.

Co-decision

66. Whereas co-decision is a well-established feature of IGR in each of our case studies, there is little experience of it in the UK. The current Memorandum of Understanding explicitly states that the JMC is '*not a decision-making body*'.⁵⁷ However, some form of co-decision may be beneficial following Brexit, as a result of the agreement in principle to negotiate, implement and manage some proposed UK-wide frameworks.
67. The proposed frameworks concern matters where devolved policy has hitherto intersected with EU policy. As outlined in the Cabinet Office analysis paper on Common Frameworks, many are expected to be in the form of intergovernmental agreements, while some may be given legislative underpinning.⁵⁸ The convention that the UK parliament would not normally legislate with respect to devolved matters without the consent of the devolved legislature is an established principle of devolution. The UK Government has already committed to seeking agreement with the devolved governments before establishing any legislative or non-legislative common frameworks. In October 2017, JMC (EN) agreed that it would '*be the aim of all parties to agree where there is a need for common frameworks and the content of them*'.⁵⁹ This was reiterated in the memorandum on the establishment of frameworks agreed between the UK and Welsh governments of March 2017, which stated that further discussions between governments were required '*to define the precise scope and form of future common frameworks*'.⁶⁰
68. The principal use of co-decision in the case studies we examined is in concluding intergovernmental agreements. Such agreements can serve a wide range of functions, including providing for co-operation between governments, establishing common regulatory regimes and policy initiatives, setting out arrangements for financial transfers and clarifying the division of competences. Their form varies, with some agreements followed by legislation (either passed centrally or separately by each government) and others taking non-legislative form. The proposed UK frameworks are expected to take the form of intergovernmental agreements, at least in the first instance; where legislation is deemed necessary, it is anticipated that this will be preceded by intergovernmental agreement.

The co-decision process

69. The final decision on whether to adopt an intergovernmental agreement typically follows an extended deliberative and decision-making process.
70. It is normal for technical discussions to take place at official level before formal negotiations among ministers begin, and for informal discussions to precede formal inter-ministerial negotiation. This helps to convey key priorities and identify potential obstacles to agreement. In the case of Belgium, agreements are regularly reached

⁵⁷ UK Government, *Devolution: Memorandum of Understanding and Supplementary Agreements*, October 2013.

⁵⁸ UK Government, 'Frameworks Analysis: Breakdown of Areas of EU Law that Intersect with Devolved Competence in Scotland, Wales and Northern Ireland', March 2018.

⁵⁹ UK Government, 'Joint Ministerial Committee (EU Negotiations) Communique', 16 October 2017.

⁶⁰ UK Government, 'Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks', 25 April 2018.

despite entrenched tensions between different linguistic groups. This is aided by ensuring that all governments have an input into discussions at an early stage.

71. Negotiations among ministers usually take place primarily in sectoral IGR bodies where these exist. Heads of government forums typically become involved only in the final stages of negotiations, with the aim of resolving outstanding differences and concluding an agreement. Agreements on routine issues, or those with lesser salience, may be concluded without engaging heads of government at all.
72. **The evidence from our case studies suggests that successful co-decision is more likely to occur if common objectives on the purpose and extent of agreements, and the principles underpinning the negotiation, are established at the outset, and all administrations are actively engaged from an early stage in the process.**

Co-decision rules

73. Reflecting the absence of a co-decision role, there are currently no formal rules for decision-making in UK IGR.
74. The Welsh Government's report, *Brexit and Devolution*, set out options for introducing a voting procedure to help conclude agreements, where they are deemed necessary.⁶¹ The report rejected both voting based on population share, on the grounds that this would place the UK Government in a dominant position, and voting by simple majority, on the grounds that this could result in '*perverse and undemocratic outcomes*' if the devolved governments were able to outvote the UK Government.⁶² It concluded that consensus should be sought, but where that proved impossible, the support of the UK Government and at least *one* devolved government would be sufficient to conclude agreements.
75. Evidence from our case studies demonstrates that decision-making by consensus is the norm in IGR bodies. Consensus is required to conclude intergovernmental agreements in Australia, Belgium, Canada and Spain. The key advantage of this approach is that it preserves the autonomy of governments in policy areas within their competence by ensuring that agreements cannot be imposed on governments against their will. In Australia, some of the sectoral councils do allow for non-unanimous decisions in certain specific circumstances related to functions that have been conferred on them through statute or intergovernmental agreement. For example, the Federal Financial Relations Council can make changes to the base of the Goods and Services Tax by simple majority, to maintain the integrity of the tax or prevent tax avoidance. In some Spanish sectoral forums, including the Council of Fiscal and Finance Policy, majority voting is allowed but consensus is the preferred option. Such provisions for majority voting are used extremely rarely in practice.
76. One concern about consensus decision-making in a UK context is that it might give a devolved administration the right of 'veto', preventing agreements being concluded and implemented. However, in each of our case studies, a very large number of agreements are concluded despite the requirement for consensus, usually among a larger number of partners than would be engaged in UK intergovernmental decision-

⁶¹ Welsh Government (2017).

⁶² *Ibid.*, p. 18.

making, often with firm and distinctive territorial interests. It is usually the case that compromise can be agreed through negotiations where there are initially divergent viewpoints among governments.

77. In some cases, where consensus among all governments is not possible, governments that are able to reach an agreement can proceed, with those who object given the right to 'opt out'. This is common practice in Canada, and has also happened in Australia, where, for example, Western Australia opted out of a controversial agreement relating on health care.⁶³
78. **In line with normal practice in other multi-level systems, we recommend that decision-making within the JMC and other intergovernmental forums, including reaching intergovernmental agreements, be made by consensus. Comparative examples suggest that co-decision by consensus is not an impediment to agreements being successfully concluded, even among governments with deeply-held divergent territorial interests.**
79. **We advise against adopting a voting formula to ensure that decisions could be reached by a majority in the absence of consensus. The logical conclusion of such an approach could be to impose policy or regulatory requirements on one or more devolved governments without their consent, in areas that are within their competence. In our view, this would not be compatible with respecting the devolution settlements and the authority of the devolved institutions. Having the option of majority voting could also weaken the incentive to reach consensus positions and could prove counter-productive to the objective of building trust between administrations.**
80. **Where it is impossible, after negotiation, to reach agreement, it should be possible for those governments who wish to proceed to do so, with other parties having the right to opt out. This may in practice result in separate bilateral agreements being reached between the UK Government and the 'opting-out' government, which would ensure that key underlying principles were not breached, such as the need to prevent regulatory divergence resulting in market distortions and unfair competition.**

The status of agreements reached through co-decision

81. The existing MoU underlines the non-binding nature of UK IGR. By contrast, it has been suggested that decisions made within a reformed IGR structure, including on framework agreements, be binding on all member administrations.⁶⁴
82. In both Belgium and Spain, some agreements are afforded a legal status that makes them binding and enforceable in the courts. In Belgium these agreements must first be approved by legislatures, albeit through a process that only allows a vote on whether or not to approve the agreement, with no opportunity for amendments. In the Spanish case, legally binding agreements can be entered into without parliamentary approval.

⁶³ McQuestin and Woods, 2010, op cit.

⁶⁴ Welsh Government (2017), op cit.

83. In the UK, any process that gave binding decision-making powers to IGR forums could undermine the principle of parliamentary sovereignty. In Australia and Canada, parliamentary sovereignty is combined with federalism, such that each legislature is sovereign within its sphere of jurisdiction. This does not prevent co-decision. Rather, parliamentary sovereignty renders intergovernmental agreements legally non-binding, but they are often considered politically binding. Any agreements which require legislation proceed through the central and/or provincial/state legislatures in the usual manner. Whilst parliaments may feel politically bound by the agreements reached at executive level, there is no legal bar to amendments being made, or to parliaments refusing to pass the legislation at all. In Australia, it is relatively common for legislation implementing intergovernmental agreements to run into difficulty in parliaments.⁶⁵
84. **While we recognise the appeal of ensuring that intergovernmental agreements are enforceable, we do not recommend attaching legally-binding status to co-decision procedures. In addition to requiring a fundamental shift in the prevailing political culture and practice of the UK, attaching legally-binding status to intergovernmental agreements could result in them coming into effect with limited opportunity for parliamentary input and oversight.**

Where a legal underpinning is required to give substance to co-determined intergovernmental agreements, we recommend that this be achieved through the normal legislative process, most likely in the form of legislation in the Westminster parliament, subject to devolved consent. Greater transparency over IGR should help to give weight to the status of legally non-binding agreements, rendering them binding in political terms.

Dispute avoidance and resolution

85. Relatively few formal intergovernmental disputes have emerged in the UK since the introduction of devolution. However, they have become more prevalent in recent years under conditions of political party competition between governments, heightened constitutional politics and an increasingly difficult fiscal climate. In this context, the dispute resolution procedures agreed in 2010 have increasingly been criticised by the devolved governments, parliamentary committees and various commentators.
86. Brexit creates considerable potential for more extensive disagreement between the constituent governments of the UK, given the challenges posed by the return of EU responsibilities that fall within devolved competence. Reaching agreement on the proposed UK-wide frameworks is likely to be a challenging endeavour. Even once they are agreed, there is the potential for disagreements over their implementation, interpretation and management.

⁶⁵ J. Phillimore and J. Harwood, 'Intergovernmental Relations in Australia: Increasing Engagement within a Centralizing Dynamic', in J. Poirier, C. Saunders and J. Kincaid (eds), *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics* (Ontario: Oxford University Press, 2015), pp. 42-80.

87. The possibility of intergovernmental disputes is a feature of any multi-level political system. Evidence from our case studies indicates that several different types of dispute can occur, including:
- Disputes over policy or constitutional arrangements
 - Disputes over the boundaries of legislative competence
 - Disputes over the interpretation and implementation of intergovernmental agreements
 - Disputes over funding arrangements
88. Some disputes are highly political in nature, often reflecting differences of political and constitutional outlook between constituent governments, which in turn may reflect divergent preferences between territorial communities. These disputes can be high profile and have consequences for IGR beyond the particular matter in question. Other disputes can be more technical. These will often go unnoticed by those who are not immediately involved and they tend not to have implications for wider relations between governments.

Dispute avoidance

89. Some element of disagreement is an inevitable feature of multi-level democracy, but too many disputes can have a debilitating effect on intergovernmental cooperation. It is thus common for provisions to be established in multi-level political systems to support the avoidance and management of disputes, and to help prevent disagreements from becoming more deeply entrenched.
90. One approach to reducing the incidence of disputes found in several of our case studies is to ensure that engagement between governments takes place at an early stage of the policy process, before the parties' positions become entrenched. For example, in Italy, the opinion of the State-Regions Conference, which includes all regional Presidents, must be sought through votes on draft proposals when these include matters of regional competence. While the outcomes of Conference votes can be ignored, academic commentary suggests that the process has '*unquestionably had an effect on the central State's decision-making process*'.⁶⁶ In practice, it is usual for consensus among all governments to be reached through informational exchange and negotiation before votes are held.⁶⁷ In Belgium, there are requirements for 'procedural cooperation' which, if not met, can result in a measure being struck down by the Constitutional Court. Depending on the measure in question, the requirements can include information exchange, consultation and joint deliberation.
91. Belgium has also established the Council of State, a body within which judges are specifically tasked with reviewing the constitutional competence of all legislation on its introduction. The intention behind this is to reduce the likelihood of later litigation. The Council's recommendations are advisory, but ignoring them potentially comes

⁶⁶ E. Ceccherini, 'Intergovernmental Relations in Italy: The Permanent State-Regions-Autonomous Provinces Conference', *Revista de la Facultad de Ciencias Sociales y Jurídicas de Elche* 1:4 (2009), p. 234.

⁶⁷ A. Breton and A. Frascini, 'Is Italy a Federal or even a Quasi-Federal State?', POLIS Working Paper No. 134, March 2016.

at a political cost, as well as the risk of the legislation being struck down by the courts once enacted. In practice, the key factor in minimising the number of disputes between governments in Belgium is that early engagement between them is built into the political system. Such engagement happens routinely wherever legislation is proposed, or agreement needs to be reached on a matter that is relevant to multiple levels of government. Many committees and working groups comprising representatives from the different orders of government have been established at sectoral level to help facilitate this.

92. In the UK, there has often been criticism – mostly, though not exclusively, from the devolved governments – about the nature of engagement between governments during the early stages of the policy process. Specific complaints have been raised about the way in which two major pieces of constitutional legislation with implications for devolution, the Wales Bill 2015-17 and the EU (Withdrawal) Bill 2017-18, were introduced by the UK Government without substantive consultation. In both cases, devolved governments strongly objected to parts of the legislation as originally drafted, triggering prolonged public arguments before the legislation was ultimately amended.
93. **An essential step to minimising the number of disputes is for engagement between governments to take place routinely at an early stage of the policy process, in the case of policies or legislation introduced by one government which are likely to impinge upon the responsibilities, competences or obligations of other administrations. Early engagement can help to identify potential tensions and disagreements, and to facilitate discussion before positions harden.**
94. **Building on existing practices, continuing communication and information exchange between governments throughout the policy process may also help to prevent differences of view from escalating into major disputes.**

Dispute resolution in context

95. Some dispute may be an inevitable consequence of the differing electoral mandates, policy preferences, political contexts and parliamentary environments that are associated with multi-level government. Having a robust system in place can help to ensure that disputes do not lead to polarisation, stalemate or disengagement from, and mistrust in, the IGR system. Invoking an agreed procedure for resolving disputes should not be seen as a ‘nuclear option’.
96. A distinction is often drawn between conventional dispute resolution through the courts, and other models referred to as alternative dispute resolution (ADR). In the context of IGR, it is normal for disputes relating to the boundaries of legislative competence to be resolved through the courts where necessary. Notwithstanding the preference in the UK for resolving competence disputes through administrative channels, there are provisions within the Scotland, Wales and Northern Ireland Acts for legal adjudication of disputes, which have been used on four occasions to date.⁶⁸

⁶⁸ A. Paun, ‘Westminster is taking Edinburgh and Cardiff to court – but faces difficulties even if it wins’, Institute for Government, 17 April 2018, <https://www.instituteforgovernment.org.uk/blog/westminster-taking-edinburgh-and-cardiff-court-eu-continuity-bills>, last accessed 24 September 2018.

Three of these related to legislation passed by the National Assembly for Wales, while the fourth, ongoing at the time of writing, concerns the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, passed by the Scottish Parliament in March 2018. Given the scope and priorities of the joint review of IGR, we focus here on alternative dispute resolution.

97. It is useful to distinguish between three distinct models of ADR:

- *Bilateral negotiation*: The parties to the dispute remain entirely in control of the outcome, with no external intervention. Negotiations may take place entirely informally, or in a more structured format.
- *Facilitated negotiation*: An independent third-party intervenes to assist with the process of resolving the dispute. The role of such a mediator can range from being a passive observer, acting as a ‘go between’, or actively promoting compromise.⁶⁹ A mediator is not empowered to impose an outcome. In such a negotiation, it remains for the parties to the dispute to decide whether to agree to any proposals that are presented.
- *Arbitration*: Power over the outcome of a dispute is transferred to a third-party (either an individual or a panel). The main difference between arbitration and conventional dispute resolution is that the basis for the intervention is the joint invitation of the parties rather than a legal process.⁷⁰

98. Arbitration is often provided for in international agreements involving states, as a way of resolving any disputes that arise in a neutral setting rather than one jurisdiction’s courts. The Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, for example, includes provision in the event of a dispute for a three-person arbitration panel to be established, composed of independent experts in international trade law.⁷¹ It is common for such agreements to include a requirement for negotiations between parties before arbitration is requested. CETA specifies that disputing parties must ‘*make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations*’, and consequently does not allow for an arbitration panel to be established until 45 days have elapsed following an initial request for consultation (25 days in cases of urgency).⁷²

99. The evidence from our case studies suggests that it is normal for intergovernmental agreements within multi-level states to contain a dispute resolution clause, and for systems of IGR to have recourse to agreed procedures for resolving disputes should they need to do so. The forms these take vary greatly. In Australia, dispute resolution clauses typically specify steps to be taken to resolve an issue by bilateral negotiation. By contrast, the recent Canadian agreement on internal trade specifies a detailed process involving (1) consultation; (2) a request for arbitration; (3) the establishment

⁶⁹ S. Roberts and M. Palmer, *Dispute Processes: ADR and the Primary Forms of Decision-Making* (Cambridge: Cambridge University Press, 2012), p. 91.

⁷⁰ *Ibid.*, p. 222.

⁷¹ Canadian Government and European Commission, ‘Comprehensive Economic and Trade Agreement (CETA)’, Articles 29.6-29.19, http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf, last accessed 17 September 2018.

⁷² *Ibid.*, Article 29.4 and 29.6.

of an arbitration panel, consisting of independent individuals with experience in matters covered by the agreement; and (4) an appeal of the panel's decision to an appellate panel, consisting of independent individuals with expertise in Canadian administrative law.⁷³ Belgium has a standing dispute resolution procedure for intergovernmental agreements, under which an *ad hoc* tribunal presided over by a professional magistrate can be established.⁷⁴

100. Arbitration procedures are usually seen as a last resort, to be used only where all other routes to resolving a dispute fail. Certainly, in both Belgium and Canada, these are rarely used in practice. This procedural option nevertheless serves a useful purpose in reassuring signatories to agreements that recourse to independent dispute resolution is available if needed, whilst incentivising the disputing parties to resolve their differences before ceding authority to a third party.

101. High profile examples of ADR in the UK include the processes used in seeking to resolve industrial disputes through the Advisory, Conciliation and Arbitration Service (ACAS). ACAS offers both facilitated negotiations and arbitration.⁷⁵ Within the category of facilitated negotiations, there are two options, 'conciliation' and 'mediation', with the primary distinction being that a 'mediator' is able to propose a solution to the parties, whereas a 'conciliator' performs a more limited role. Arbitration is generally used only where all other avenues for resolving a dispute, including facilitated negotiation, have been exhausted. Under the ACAS arbitration procedure, the arbitrator is an impartial and independent person appointed from an ACAS panel. Implementation of the arbitrator's decision is considered binding, even though this is not strictly the case in legal terms.⁷⁶

Intergovernmental dispute avoidance and resolution in the UK

102. The main document outlining the current process for avoiding or resolving intergovernmental disputes in the UK is the *Protocol for Avoidance and Resolution of Disputes*, published in 2011.⁷⁷ This sets out the process that should be followed in the event of a disagreement between governments. The Protocol states that '*consistently with the principle that the JMC is not a decision-making body, [...] the basis on which the procedures will operate is the facilitation of agreement between the parties in dispute, not the imposition of any solution*'.

103. The process set out in the Protocol involves up to six stages:

- 1) All efforts should be made to resolve the issue 'informally' and at 'working level' (i.e. among officials working on the matter in question);

⁷³ Canadian Free Trade Agreement, 'Agreement on Internal Trade', Chapter Seventeen, <https://www.cfta-alec.ca/wp-content/uploads/2017/06/Consolidated-with-14th-Protocol-final-draft.pdf>, last accessed 17 September 2018.

⁷⁴ J. Poirier, 'Formal Mechanisms of Intergovernmental Relations in Belgium', *Regional and Federal Studies* 12:3 (2002), pp. 24-54.

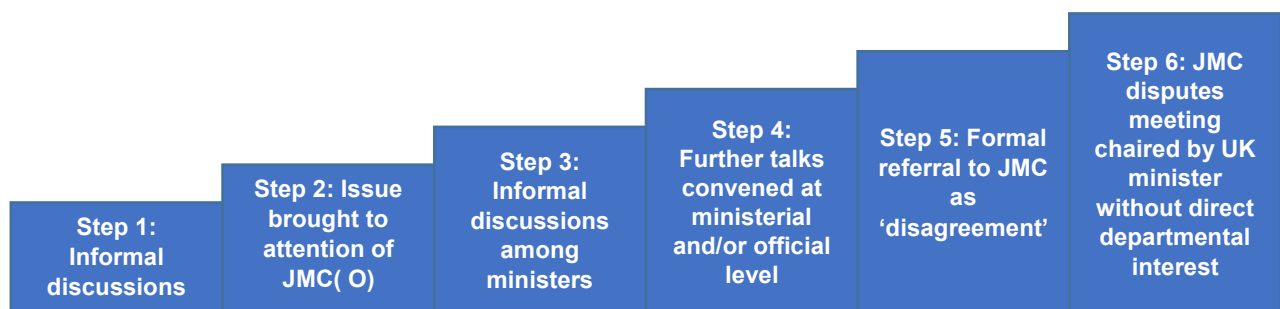
⁷⁵ ACAS, 'Collective disputes', <http://www.acas.org.uk/index.aspx?articleid=2012>, last accessed 17 September 2018.

⁷⁶ J. Gennard, 'Voluntary arbitration: the unsung hero', *Industrial Relations Journal* 40:4, pp. 309-323.

⁷⁷ UK Government, *Protocol for Avoidance and Resolution of Disputes*, 2010, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/62121/avoidance-resolution.pdf, last accessed 17 September 2018.

- 2) The issue should be brought to the attention of more senior officials, including the members of JMC (O);
- 3) Ministers should seek to resolve the issue without recourse to formal dispute resolution proceedings;
- 4) The relevant territorial Secretary of State or officials may convene further talks at ministerial or official level;
- 5) The matter may be formally referred to the JMC Secretariat as a 'disagreement', following which a meeting of officials can resolve that a proposal be put to ministers, agree a report seeking a further round of official level talks or, 'exceptionally', refer a matter to the JMC as a 'dispute';
- 6) Within one month of the declaration of the dispute, a JMC meeting should be held, chaired by a UK minister who will *'as far as possible be someone without a direct departmental interest in the issue'*. The chair seeks to *'facilitate discussion of shared interests, the options for resolving the dispute and criteria for an agreed an outcome'*. The outcomes of the meeting can be either an agreement, an agreement to hold a further round of negotiations or, 'exceptionally', an agreement to notify the JMC that the dispute is not resolved.

Figure 2: *Current Steps in Dispute Resolution in the UK*



104. Deviations from this protocol have been formulated in some agreements between the UK and devolved governments. For example, the bilateral fiscal framework agreements between the UK and the Scottish and Welsh governments provide for technical input from independent bodies to inform bilateral negotiations.⁷⁸ Where a dispute cannot be resolved under the specified processes, it can be escalated using the procedures in the *Protocol* described above. No disputes under the fiscal frameworks have yet arisen.

105. The annual reports issued by the JMC indicate that five disputes have been raised to date (see Table 1). Only one of these disputes has been escalated to a formal meeting of the JMC, relating to whether spending on the 2012 Olympics in London

⁷⁸ UK Government and Scottish Government (2016); UK Government and Welsh Government, *The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework*, December 2016.

should be treated as ‘English’ spending for the purposes of the Barnett formula.⁷⁹ Francis Maude, then Minister for the Cabinet Office in the UK government, chaired the meeting.

106. In practice there have been other disagreements between the UK and devolved governments that have not invoked the protocol, and so have not been recognised as disputes under this procedure. One reason for this might be the use of less formal means of resolving disputes, such as bilateral ministerial meetings and intergovernmental engagement between officials. However, it also seems likely that a contributing factor is the devolved administrations’ mistrust of the process.

Table 1: Intergovernmental disputes invoked via the JMC Protocol			
Date	Subject	Parties to dispute	Outcome
2010-11	Allocation of North Sea whiting quotas under Common Fisheries Policy	UK Gov, Scottish Gov	Resolved without need to convene JMC
2010-11	Barnett consequential allocations arising from certain aspects of the UK government’s <i>Building Britain’s Future</i> policy	UK Gov, Welsh Gov	Resolved without need to convene JMC
2010-11	Barnett consequential allocations to the devolved Governments from a 2012 Olympics funding package	UK Gov, Northern Ireland Executive, Scot Gov, Welsh Gov	No agreement reached by initial meeting of JMC disputes panel. Settlement eventually reached.
2010-13	£18 billion capital expenditure commitment to Northern Ireland	UK, Northern Ireland	No agreement reached initially. Eventually resolved without need to convene JMC
2017-	UK Government funding set out in the financial annex to the confidence and supply agreement between the Conservative Party and the DUP	UK, Scotland, Wales	No agreement reached as yet. UK Government has not agreed to proceed with dispute resolution process

Source: Joint Ministerial Committee annual reports 2010-11, 2011-12, 2012-13 and 2015-18.

107. As noted in Part 1 of this report, the criticisms levelled at the dispute resolution protocol have focused primarily on the role of the UK Government as both a party to the dispute and chair of the proceedings. In his recent speech at the Institute for Government, the outgoing First Minister of Wales, Carwyn Jones, asked how he could have trust in an ‘*inter-governmental disputes procedure that leaves the final*

⁷⁹ For more details about this dispute see A. Trench, ‘The 2012 Olympics and the Barnett formula: an end to the row’, 23 December 2011, <https://devolutionmatters.wordpress.com/2011/12/23/the-2012-olympics-and-the-barnett-formula-an-end-to-the-row/>, last accessed 12 September 2018.

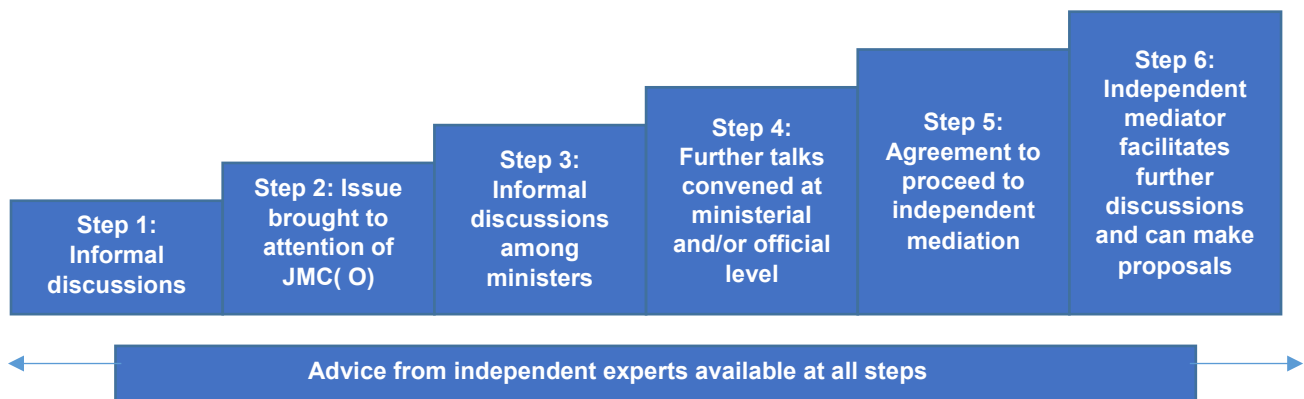
*decision-making responsibilities with the UK Government, empowered in what we might call its “federal” capacity, to mark its own homework’.*⁸⁰

108. In our judgement much of the *Protocol for Avoidance and Settlement of Disputes* sets out a useful set of steps that might be adopted in seeking to resolve disputes through bilateral negotiations between governments. A negotiated resolution should always be the first preference where disputes occur, and evidence from our case studies, as well as the body of experience associated with IGR in the UK, suggests that resolution through these less formal means is often achievable. The weakness in the current procedures are found in the final steps of the process.
109. **In our view, the *Protocol’s* provision for a meeting of the JMC in dispute resolution mode to be chaired by a UK government minister creates a conflict of interest. It is also out of step with normal dispute resolution practice in other settings in the UK and in other multi-level political systems.**
110. **We believe there is a strong case for a revised *Protocol* to make provisions for independent intervention in disputes, by agreement of the disputing parties. We regard mediation to be a more suitable than arbitration, given that it preserves the disputing parties’ autonomy in deciding whether or not to accept any proposed resolution.**
111. **Where the dispute is between two parties (for example, the UK Government and a devolved government) it may be possible for a government not party to the dispute to perform the role of mediator. Alternatively, a suitably qualified mediator could be appointed to help facilitate an agreement between the disputing parties and present compromise proposals for the parties to consider. Clearly, the disputing parties would each have to approve the appointment of the mediator, which we envisage as being a short-term appointment as and when the need arises. The mediator can be supported by the proposed standing secretariat.**
112. **Some disputes may revolve around claim and counter-claim, for example, about the effects of particular policies or decisions. Dispute resolution may be aided by having the validity of these claims tested against impartial evidence. The proposed standing secretariat would be well-placed to commission independent research from those with expertise relevant to the dispute at hand.**

These recommendations would engender a revised set of steps for dispute resolution, as set out in Figure 3.

⁸⁰ Jones (2018)

Figure 3: Proposed Revision to Steps in Dispute Resolution



Asymmetries and the Representation of England

113. The highly asymmetrical nature of the UK's territorial structure poses various challenges for multilateral IGR. In the context of the role IGR is expected to perform following Brexit, there are concerns in particular about the implications of the UK Government's 'dual hatted' role as the representative both of the UK's interests and those of England. These concerns have recently been expressed by the House of Commons Public Administration and Constitutional Affairs Committee and by the outgoing First Minister of Wales, with both calling for the issue to be addressed by the review of IGR.
114. While the extent of the asymmetrical relations between the different parts of the UK is relatively unusual, a degree of asymmetry among component units is a normal feature of multi-level political systems. There exist asymmetries in terms of population size, economic weight and strategic political significance, as well as constitutional forms of asymmetry.
115. Major variations in population size between larger and smaller units are found across our case studies. Canada for example, includes provinces with populations ranging from approximately 14 million (Ontario) to 152,000 (Prince Edward Island). Nevertheless, the UK is distinctive in the extent to which one unit is dominant in population terms, with England comprising 84% of the UK population. Among our cases Flanders in Belgium (58%) is the only other example of a territorial unit that includes more than half of the total population (see Table 3.1).

Country	Total population	Sub-state units	Largest sub-state unit	Population of largest sub-state unit	Pop. of largest sub-state unit as % of overall population
Australia	24,598,933	6 states & 2 territories	New South Wales	7,861,068	32%
Belgium	11,376,070	3 regions & 3 linguistic communities*	Flanders	6,552,967	58%
Canada	36,708,083	10 provinces & 3 territories	Ontario	14,193,384	39%
Italy	60,483,973	15 ordinary regions & 5 special regions	Lombardy	10,036,258	17%
Spain	46,572,132	17 autonomous communities	Andalusia	8,379,820	18%

Population data from estimates on www.citypopulation.de, last accessed 11 September 2018.

* For the purposes of the analysis in this table only the (territorially based) regions are included.

116. A range of other factors aside from population size contribute to asymmetry among units within decentralised political systems. Wealthier units and those that include key political and economic centres are often perceived to be more influential than poorer and more peripheral units. That England as a whole has historically outperformed Scotland, Wales and Northern Ireland economically, and contains the economically dominant city-region which is also the seat of the central government and parliament, has contributed to the perception that it is politically dominant within the UK (despite territorial inequalities within England having become increasingly salient in the last few years).
117. The political dynamics that prevail within a country can shape IGR, with some units carrying particular strategic political significance for central government. This is often the case in relation to units where nationalist and/or regionalist politics are well established, such as Quebec in Canada, South Tyrol in Italy, and the Basque Country and Catalonia in Spain. There has long been a perception that the greater prominence of pro-independence politics in Scotland as compared to Wales has led the UK Government to pay more attention to managing relations with the Scottish Government than with its Welsh counterpart. Relations with Northern Ireland have always been managed differently, given the unique nature of its politics and the desire to ensure that devolution serves to reinforce political stability.
118. Discussions of asymmetry in the UK tend to focus on constitutional asymmetry. Once again, constitutional asymmetry is commonly found in other multi-level states to varying degrees. Australia, Belgium, Canada and Italy all have two categories of sub-state unit. In Spain, each autonomous community negotiates a separate autonomy statute specifying its powers, increasing the scope for asymmetries.
119. Constitutional asymmetry in the UK is reflected in the different kinds of devolution arrangements which prevail in the UK. Some powers that are devolved to Scotland, including policing, justice and some tax powers, are not devolved to Wales.

Meanwhile, Northern Ireland has a distinctive settlement which built upon the devolution arrangements in place prior to direct rule or arose from the peace process of the 1990s. Periodic suspensions of devolution in Northern Ireland, and the current stalemate in the power-sharing arrangements, have brought added complexity and asymmetries to the UK system. However, the most notable form of constitutional asymmetry in the UK emerges from the absence of devolution in England. This poses distinctive challenges in designing intergovernmental machinery and processes, especially if these incorporate co-decision functions.

120. These asymmetries provide a distinctive backdrop to IGR in the UK context and reflect historic and ongoing political, social and economic developments. Each influences the nature and dynamics of IGR, and the relative influence governments can exert within it. We have sought to keep these asymmetries in mind when discussing options for reviewing the processes and machinery of IGR, and in our assessment of the questions of joint decision-making and dispute resolution. In this section, we focus on one direct consequence of the UK's constitutional asymmetries: the lack of a direct voice for England and the 'dual hatted' role of the UK Government as representative of both England and the UK as a whole.

Concerns arising from the UK government's 'dual hat' in IGR

121. Concerns about the implications of the UK Government representing both England and the UK as a whole in IGR have been raised from three different perspectives:

- Ministers in the devolved governments have claimed that the 'dual hat' could result in a conflict of interests and undermine the legitimacy of IGR processes. The First Minister for Wales has questioned how the devolved governments can have confidence that the UK Government will not prioritise English interests. Using the example of future negotiations over fishing quotas, he noted: *'[w]e will be in a situation potentially where DEFRA would allocate the fishing quotas to the four nations of the UK but DEFRA is also the English Department. So how could we have confidence that DEFRA would not skew the quotas in order to help England?'*⁸¹
- Some English commentators and campaigners have suggested that England is denied a national voice that is available to the other parts of the UK, and hence is disadvantaged, especially as the UK prepares to leave the EU. Professor Colin Copus of De Montfort University has noted that *'[o]ne of the glaring features of the post-EU referendum period has been the images of the First Ministers of Scotland, Wales and Northern Ireland meeting with the British Prime Minister to discuss how Brexit will affect their parts of the UK'*, but that there has been no-one speaking for England.⁸² Similar arguments about the lack of separate representation for England drove the 'English votes for English laws' procedures introduced in the House of Commons in 2015.

⁸¹ Public Administration and Constitutional Affairs Committee, *Oral evidence: Devolution and Exiting the EU*, HC 484 2017-19, 5 February 2018, Q202.

⁸² C. Copus, 'In the post-Brexit world, England deserves its own Parliament', LSE Brexit, 11 January 2018, <http://blogs.lse.ac.uk/brexit/2018/01/18/in-the-post-brexit-world-england-deserves-its-own-parliament/>, last accessed 23 September 2018.

- Regional political leaders in England have argued that their interests are neglected by IGR processes, and that consequently their perspectives are not taken as seriously in Whitehall as those of the devolved governments. This case was made in evidence to PACAC by three of England's 'metro mayors' – Andy Burnham (Greater Manchester), Sadiq Khan (London) and Andy Street (West Midlands). Khan stated that there is a '*lacuna in the representation of England when it comes to the JMC*' and called for the Government to consider '*a way of accommodating English needs*'.⁸³ As he put it:

'My point is that if you live in Luton, Hounslow, Burnley, Manchester or Liverpool, who is your person around the JMC arguing on behalf of your needs? I do not criticise the Scottish or Welsh Governments, or the Northern Irish representatives, arguing on behalf of their constituencies. My point is, who is the English person doing that for us?'

122. Historically, the absence of separate English representation in IGR has been a problem that has existed more in theory than in practice, due to the JMC and its sub-committees being used primarily for discussion and information-sharing rather than to make substantive policy decisions (and attracting little public attention or awareness). However, as suggested elsewhere in this report, a greater emphasis on co-decision within IGR may be requisite following Brexit. Frameworks agreed through IGR processes will apply to England as well as to the devolved territories, and English priorities can be expected to differ markedly from those of Northern Ireland, Scotland and Wales in some of the areas up for negotiation. One example where this is likely to be especially evident is agriculture, given very different conditions for farming in England compared to the other parts of the UK.⁸⁴ In this context, it is unsurprising that the devolved governments are concerned that the UK Government will be faced with a conflict of interests in its role as chair that could undermine its neutrality, and equally understandable for English stakeholders to be concerned that there will be nobody specifically tasked with advocating their interests.

123. In the context of Brexit and the prospect of an increase in the scope and significance of IGR, we support calls for the question of how England is represented within IGR processes to be addressed within the current review.

124. Addressing the issue of English representation in IGR undoubtedly raises various practical difficulties and institutional challenges in the absence of an English administration equivalent to those in Scotland, Wales and Northern Ireland.⁸⁵ Nevertheless, we believe that there are various ways in which some of the issues arising from the absence of separate English representation in the JMC structure might be addressed. In the following sub-sections, we consider two distinctive and

⁸³ Public Administration and Constitutional Affairs Committee, *Oral evidence: Devolution and Exiting the EU*, HC 484 2017-19, 26 June 2018, Q889-891..

⁸⁴ M. Keating, *The Repatriation of Competences in Agriculture after Brexit* (Edinburgh: Centre on Constitutional Change, 2018).

⁸⁵ In this report we take no position on whether an English government accountable to an English Parliament should be established, as this falls far outside the remit of the review. For detailed discussion of this option see M. Russell and J. Sheldon, *Options for an English Parliament* (London: The Constitution Unit, UCL, 2018).

viable approaches. These are not mutually exclusive; both can be considered as part of the review.

Option 1: Reform of the UK Government's dual role in IGR

125. One approach is to have a more overt distinction between the UK Government's UK-wide and English roles. Such a demarcation was suggested by the First Minister of Wales in his recent intervention: '*there will have to be a clearer demarcation, both publicly and within Whitehall, of the differing responsibilities the UK Government has for England and for the UK as a whole*'.⁸⁶
126. A separation of UK and English roles in IGR could be achieved by the appointment of a Minister for England within the UK Government, whose responsibilities would include attending plenary meetings of the JMC and other forums, where appropriate, to advocate for England. The establishment of a Minister for England was proposed by one of the two main UK parties in its 2017 election manifesto.⁸⁷
127. Alternatively, demarcation could be achieved by tasking a relevant sectoral minister with representing England's interests in JMCs where this is appropriate. Such an arrangement may be most suited to sectoral IGR forums established for the negotiation of UK-wide common frameworks. For example, in discussions relating to fisheries, the UK Government's fisheries minister could attend with a brief to speak for the English fishing industry, alongside the Secretary of State for Environment, Food and Rural Affairs who would focus on seeking agreements that take account of all national perspectives. We are aware that a similar format to this is already used in some official-level meetings and is considered to work well by some of those involved.
128. Either or both of these reforms may fail to address the concerns held from different perspectives about the UK Government's dual role as the representative of the UK and the English interest, but **we nevertheless believe that changes of this kind are an achievable way of mitigating the issues associated with English representation in the short-term. We recommend that their implementation be considered in advance of further intergovernmental negotiations on UK-wide frameworks.**

Option 2: Providing an institutionalised opportunity for English sub-national government to engage with the UK Government

129. Another approach would be to establish institutionalised opportunities for sub-national political leaders within England to engage with the UK Government. This could be an alternative, or a complement, to reforming the representation of England within the UK Government and/or within IGR. It would explicitly recognise the diversity of interests within England, and address concerns that English regional interests are neglected in IGR, as expressed by the 'metro mayors' in evidence to PACAC.

⁸⁶ Jones (2018).

⁸⁷ Labour Party, *For the Many not the Few: The Labour Party Manifesto 2017* (London: Labour Party, 2017).

130. PACAC's report proposes that the English regions be represented on the JMC and in other IGR forums.⁸⁸ It did not put forward detailed proposals for how this could be achieved, but sketched out two possible models involving the metro mayors and other English city and county leaders.⁸⁹ An alternative option for local government representation in IGR may take inspiration from the Australian system, where a representative of the local government association is included within both heads of government and sectoral forums.
131. **While including English sub-national representatives alongside UK and devolved government ministers in IGR forums might carry some symbolic significance, we are not convinced that this is an appropriate response to this issue. Metro mayors and other sub-national English leaders have very different, and diverse, powers compared to the devolved governments, and their inclusion would exacerbate, rather than mitigate, the challenges of constitutional asymmetry in IGR.** They lack equivalent responsibilities in key areas, such as agriculture and fisheries, where frameworks are to be negotiated, implemented and governed. Furthermore, no single sub-national English actor could credibly represent England as a whole, while multiple English representatives from different regions would become numerically dominant – a situation that would be unlikely to alleviate the concerns of the devolved governments.
132. **A more meaningful way of providing English sub-national leaders with an institutionalised opportunity to engage with the UK Government would involve creating an English Leaders' Forum. This body would be separate from the JMC structure, with regular meetings to focus on important matters of relevance to English sub-national government such as funding, regional investment and the further devolution of powers.** Its meetings could also be scheduled to align with a more routinised schedule of JMCs, providing an opportunity for regional leaders to input into the representation of English interests within the JMC, much as the devolved governments currently voice their interests within the JMC (E) in advance of European Councils. The precise membership of an English Leaders' Forum would require careful thought but might include the eight 'metro mayors' and representatives of other tiers of local government, elected among themselves. The role of chair could be taken by the Secretary of State for Housing, Communities and Local Government, or a Minister for England should one be appointed, with other UK Government ministers free to attend as appropriate. A relevant precedent for such a forum exists in Italy, where the Conference of State, Cities and Localities brings together central government ministers, 14 city mayors, five provincial presidents and representatives of the National Association of Italian Municipalities and the Union of Provinces.

⁸⁸ Public Administration and Constitutional Affairs Committee (2018), §94.

⁸⁹ *Ibid.*, §137.

Transparency

133. Intergovernmental relations are usually dominated by executives, typically negotiating in private, away from the media and wider political scrutiny. Although it is necessary for governments to have a safe space to negotiate in confidence, it is also appropriate that there is sufficient transparency to enable parliaments and the electorate to hold governments to account for their decisions and agreements. The lack of transparency in UK IGR, and the difficulties of ensuring effective parliamentary scrutiny, have become issues of increasing concern, not least among parliamentary committees across the UK.
134. Issues of transparency are evident in all cases, but nowhere is the problem more pronounced than in the UK.⁹⁰ The lack of routinised IGR, and limited details about intergovernmental deliberations, hinder the visibility of IGR processes and undermine the ability of parliaments to offer scrutiny. Our case studies, and the broader literature, suggest opportunities to increase the transparency and accountability of IGR processes.
135. Transparency and scrutiny are distinct but closely interrelated concepts.
- Transparency has been defined as '*the ability to look clearly through the windows of an institution*'⁹¹, a process of '*lifting the veil of secrecy*'.⁹² It can be assessed by the degree of information available about processes and outcomes.
 - Scrutiny is the '*exercise of power by the legislative branch to control, influence, or monitor government decision making*'.⁹³
136. Academic commentary suggests that the ability to scrutinise IGR is shaped by three key factors:⁹⁴
- (1) the timing of, and access to, relevant information relating to intergovernmental cooperation and co-decision;
 - (2) the tools and procedures available to legislatures to engage in scrutiny and influence outcomes;
 - (3) the transparency and publicity associated with both the intergovernmental and scrutiny processes.

⁹⁰ N. McEwen, B. Petersohn and C. Brown Swan (2015), *Intergovernmental Relations & Parliamentary Scrutiny*. Edinburgh: Centre on Constitutional Change.

⁹¹ M.G.W. den Boer, V. Deckmyn and I. Thomson (1998), 'Steamy windows: Transparency and openness in justice and home affairs', in V. Deckmyn and I. Thomson (eds), *Openness and transparency in the European Union*, pp.91-105. European Institute of Public Administration.

⁹² J. Davis (1998), 'Access to and Transmission of Information: Position of the Media', in V. Deckmyn and I. Thomson (eds), *Openness and transparency in the European Union*, pp.121-126. European Institute of Public Administration.

⁹³ R. Holzhaecker (2008), 'Parliamentary scrutiny', in P. Graziano and M.P. Vink (eds), *Europeanization*, pp. 141-153. Palgrave Macmillan, London.

⁹⁴ K. Auel. (2007). Democratic accountability and national parliaments: Redefining the impact of parliamentary scrutiny in EU affairs. *European Law Journal*, 13(4), 487-504.

Timing and accessibility of information

137. The availability of information about the existence of intergovernmental meetings, their agendas and their outcomes can contribute to, or inhibit, transparency and subsequent scrutiny. Information made available in advance of meetings can permit participants, stakeholders, and parliamentarians to contribute to wider discussions before intergovernmental positions are formed or decisions reached. Information provided after meetings facilitates *ex post* analysis and scrutiny of government performance.
138. Alongside other benefits discussed elsewhere in this report, more routinised IGR can enhance transparency. In Belgium, meetings of the Concertation Committee take place at a set time each month. As a matter of routine, participants are informed of the agenda at least two weeks in advance of the meeting and, following the meeting, a report is filed with each parliament. Depending on the topic, the meeting might be concluded with a press release and may receive some media coverage. Although less regular, Spanish intergovernmental forums typically publish the agenda beforehand and issue a brief communiqué at its conclusion.
139. **Convening JMC meetings according to a set schedule can enhance access. Governments can further enhance transparency by making agendas and position papers available in advance of the meeting – using online platforms to disseminate details. We acknowledge the need to maintain confidentiality but believe that the publication of agendas and briefing papers can be compatible with this goal.**

Tools and procedures

140. A formal role for parliament in discussing IGR can enhance scrutiny. In some of our case studies, parliamentary approval is required for intergovernmental agreements. In Spain, changes to regional statutes of autonomy – negotiated bilaterally between the Spanish government and the autonomous community government, require approval from the Spanish and autonomous community parliaments. In Belgium, regional and community parliaments are required to consent to cooperation agreements which meet certain criteria (if they contain financial implications, create obligations for individuals, deal with matters governed by legislation rather than regulatory instruments, or do not contain a provision for amendment).
141. Procedures for the scrutiny of intergovernmental relations remain a matter for each parliament to decide, but the process can be supported by procedural requirements for information sharing. The agreement negotiated between the Scottish Parliament and the Scottish Government commits the latter to give advanced notice of meetings and their agendas, as well as a written summary of its participation in the meeting. The Scottish Government also agreed to maintain a record of all formal agreements and prepare an annual report on intergovernmental relations. These reports have been more informative than the occasional annual report of the JMC. Correspondence with ministers in relation to IGR is also shared with, and subsequently published by, the Finance and Constitution Committee, which includes

the scrutiny of IGR in its remit.⁹⁵ This agreement does not tie the hands of government in negotiations, nor does it breach the confidentiality of discussions with its counterparts. Its intention was to enhance the ability of the Committee to conduct scrutiny, including taking evidence from ministers in advance of, and following, meetings of IGR forums. A similar agreement is currently being considered between the National Assembly for Wales and the Welsh Government.⁹⁶

142. **The processes through which individual governments provide information about their activities within the intergovernmental arena to enhance the scrutiny process is a matter for them, rather than for the joint review. We also recognise that some (but not all) of the commitments made in the Scottish Government-Scottish Parliament agreement (e.g. advance notice of meetings) could be delivered by greater transparency in IGR processes more generally. Nonetheless, we suggest that the agreement in place in Scotland be seen as a model of good practice that other administrations may wish to consider.**

Transparency and publicity

143. The amount of information made public about the processes and outcomes of intergovernmental relations varies from country to country. In Australia, the Council of Australian Governments and Australian sectoral ministerial councils each have their own website, which includes information about their composition and terms of references, as well as published announcements, communiqués and agreements.⁹⁷ In Italy, each of the main intergovernmental conferences has a similar website.⁹⁸ The Spanish Ministry for Territorial Politics and Public Administration maintains a single website on cooperation between the state and the autonomous communities, with details of the key bilateral and multilateral forums, their internal documents, and an annual register of cooperation agreements. The Canadian Intergovernmental Conference Secretariat (CICS) provides information only in relation to those meetings it services.⁹⁹
144. In countries in which formal agreements are signed, there is often a requirement that these be published in an official gazette or lodged with parliaments. Spain, Italy and Belgium maintain registers of intergovernmental agreements, but in Australia and Canada, records are patchier and their availability varies according to the forum involved.
145. **In order to enhance transparency and contribute to greater understanding of intergovernmental relations, we recommend that the UK and devolved governments each create a searchable website on which the role and remit of IGR forums are outlined, and details of meetings, as well as any agreements**

⁹⁵ Finance and Constitution Committee, 'Intergovernmental Relations', <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/102067.aspx>, last accessed 27 September 2018.

⁹⁶ National Assembly for Wales, Constitutional and Legislative Affairs Committee. 'UK governance post Brexit', last accessed 8 November 2018.

⁹⁷ Council of Australian Governments, <https://www.coag.gov.au/about-coag>, last accessed 27 September 2018.

⁹⁸ Conferenza Stato Regioni ed Unificata, <http://www.statoregioni.it/>, last accessed 27 September 2018.

⁹⁹ Canadian Intergovernmental Conference Secretariat, <http://www.scics.ca/>, last accessed 1 October 2018.

reached, are published. An alternative, or complementary, option would be for the proposed standing secretariat, recommended elsewhere in this report, to maintain a publicly accessible digital source of formal intergovernmental meetings and outcomes. Such a source would also aid parliamentary scrutiny.

Summary of Conclusions and Recommendations

The recommendations made in Part 2 of the report are summarised below.

Principles of IGR

- 1. We are of the view that IGR in the UK would benefit from a review of its underlying principles. We suggest that the following principles may offer a useful starting point for discussion:**
 - **Respect for the authority of different governments across the UK.** This includes respecting the devolution settlements; respecting the UK parliament's legislative authority in reserved matters; and respecting the authority and democratic legitimacy of each government to determine their own policy priorities in their respective spheres of competence, recognising that these may generate divergent policy preferences.
 - **Recognising that the reality of modern government in a multi-level political system requires some degree of intergovernmental cooperation.** As Lord McConnell of Glenscorrodale put it, *'the modern, 21st-century UK is, even more than it was before, a shared sovereignty operation'*.¹⁰⁰ The interdependence between reserved and devolved matters points to the benefits of intergovernmental cooperation in areas of shared interest. These may be in fields designated in law as either devolved or reserved matters.
 - **Proportionality.** Respecting the autonomy and authority of each legislature involves adopting a proportionate approach to the development of inter-governmental processes or regulatory bodies. Such a proportionality principle should help to ensure that intergovernmental mechanisms and forums are established only when required to serve a mutually agreed purpose.
 - **Transparency.** While we recognise the importance of confidentiality and a safe space for the exchange of ideas and frank opinions between governments, the effective functioning of IGR in a democracy requires that governments ultimately be accountable for their actions. A commitment to greater transparency where appropriate should serve as a guiding principle in IGR.

Reforming the machinery of IGR

- 1. We see no particular benefit to replacing the Joint Ministerial Committee in its plenary format with a new 'heads of government' forum, but we recommend making changes to its function and operation, including incorporating a decision-making function and a more robust system of dispute resolution.**
- 2. We recommend limiting any statutory underpinning to the existence and membership of the JMC, the expectation of (at least) annual meetings, and a**

¹⁰⁰ Lord McConnell of Glenscorrodale, *Corrected oral evidence: Brexit: devolution*, Select Committee on the European Union, 28 March 2017

requirement to report to parliaments. Whilst we recognise the arguments for placing elements of the JMC and IGR more generally in statute, we believe these should be balanced against the advantages associated with maintaining a flexible approach which can allow governments to adapt intergovernmental forums to new challenges as they arise.

3. We recommend that the JMC in all its formats follow a regular schedule of annual or biannual meetings, according to need, with member governments given the opportunity to call extraordinary meetings where necessary. Routine meetings can ease scheduling challenges and contribute to building trust and empathy among ministerial representatives, as well as the officials who support them.
4. We also recommend a renewed commitment to rotating the location of meetings between London, Cardiff, Belfast and Edinburgh, with consideration giving to rotating the chair accordingly, or operating a co-chair system.
5. In our view, regardless of the outcome of Brexit negotiations, there will be an ongoing need to maintain a relationship with the EU, with the potential for shared, or aligned, regulations, and shared governance arrangements. Given the strong likelihood that the affected policy fields will span areas of reserved and devolved competence, we believe there is a strong case for maintaining the JMC (E) after the UK leaves the EU.
6. To address potential barriers to the UK's internal market, we recommend the creation of a JMC (Internal Market), providing strategic focus and direction and ensuring a coherent approach. As well as being guided by the general (revised) principles of the JMC, the governments may wish to agree specific principles when developing the purpose and remit of such a committee.
7. We are also persuaded by the case for a JMC (Trade) as a mechanism for informing the UK's position in international trade negotiations. This would ensure that the devolution dimension of trade deals is recognised and considered when developing negotiating positions, thus helping to identify and address any issues that could potentially present barriers to the implementation of subsequent agreements.
8. In our view, Brexit provides an opportune moment to review the functioning of the concordats on international relations, and to consider whether the degree of inter-ministerial cooperation these envisaged between the UK Government and each of the devolved administrations may be better served by a more formal vehicle such as a JMC (International Agreements).
9. We recommend that a standing secretariat be set up to service the organisation and administration of JMCs and other formal intergovernmental forums, and to help promote transparency. A standing secretariat would not replace the critical role of officials within each government but would be designed to relieve them of a growing organisational burden and help serve the demand for greater transparency.

Co-decision

10. We recommend that a decision-making function be added to the remit of the JMC. Successful co-decision is more likely to occur if common objectives on the purpose and extent of agreements, and the principles underpinning the negotiation, are established at the outset, and all administrations are actively engaged from an early stage in the process.
11. In line with normal practice in other multi-level systems, we recommend that decision-making within the JMC and other intergovernmental forums be made by consensus. Comparative examples suggest that co-decision by consensus is not an impediment to agreements being successfully concluded, even among governments with opposing interests.
12. We advise against adopting a voting formula to ensure that decisions could be reached by a majority in the absence of consensus. The logical conclusion of such an approach could be to impose policy or regulatory requirements on one or more governments without their consent, in areas that are within their competence. In our view, this would not be compatible with respecting the devolution settlements and the authority of the devolved institutions. Having the option of majority voting could also weaken the incentive to reach consensus positions and prove counter-productive to the objective of building trust between administrations.
13. Where it is impossible, after negotiation, to reach agreement, those governments who wish to proceed can be permitted to do so, with other parties having the right to opt out. This may in practice result in separate bilateral agreement being negotiated between the UK Government and the 'opting-out' government, which could ensure that key underlying principles were not breached, such as the need to prevent regulatory divergence resulting in unacceptable market distortions and unfair competition.
14. Whilst we recognise the appeal of ensuring that intergovernmental agreements are enforceable, we do not recommend attaching legally-binding status to co-decision procedures. In addition to requiring a fundamental shift in the prevailing political culture and practice of the UK, attaching legally-binding status to intergovernmental agreements could result in them coming into effect with limited opportunity for parliamentary input and oversight. Where a legal underpinning is required to give substance to inter-governmental agreements, we recommend that this be achieved through the normal legislative process.

Dispute avoidance and resolution

15. Routine engagement between governments in relation to matters of mutual concern is an essential step to minimising disputes, by creating opportunities to identify and discuss potential barriers to agreement before positions have hardened.
16. In our judgement, much of the existing *Protocol for Avoidance and Settlement of Disputes* sets out a useful set of steps to be followed in the event of a dispute being identified. However, the final stage of the steps within the Protocol are

inadequate. Having the JMC, when in its dispute resolution mode, chaired by a UK Government minister when the UK Government is simultaneously a party to the dispute creates a conflict of interest and is out of step with normal dispute resolution practice.

17. We believe that there is a strong case for a revised *Protocol* to make provisions for independent intervention in disputes, by agreement of the disputing parties. We regard mediation to be more suitable than arbitration, as it preserves the disputing parties' autonomy in deciding whether or not to accept any proposed resolution.
18. Where the dispute is between two parties (for example, the UK Government and a devolved government) it may be possible for a government not party to the dispute to perform the role of mediator. Alternatively, a suitably qualified mediator, appointed on a short-term basis and supported by the proposed standing secretariat, could be appointed to help facilitate an agreement between the disputing parties.
19. Disputes often revolve around claim and counter-claim, for example, about the effects of particular policies or decisions. Dispute resolution may thus be aided by having the validity of these claims tested against impartial evidence. The proposed standing secretariat would be well-placed to commission independent research from those with expertise relevant to the dispute at hand. Making this research publicly available can also enhance accountability.

Asymmetries and the representation of England

20. We support calls for the question of how England is represented within IGR to be addressed within the current intergovernmental review, but some of our suggestions are directed at the UK Government alone.
21. We recognise the legitimacy of calls for English sub-national representatives (such as metro mayors) to be included alongside UK and devolved governments in IGR forums, but we are not convinced that this would be appropriate, and regard their direct inclusion as likely to exacerbate, rather than mitigate, the challenges of constitutional asymmetry.
22. We suggest two options which could permit explicitly English interests to be incorporated into the JMC. The first would be for the UK Government to task one or more ministers with the responsibility to represent England within government and intergovernmental forums. This may be a territorial Minister for England or sectoral ministers who have responsibility for England's interests as part of their brief.
23. A second complementary option would be to establish an English Leaders' Forum to provide an institutionalised opportunity for English sub-national government to engage with the UK Government. This body would be separate from the JMC structure, with regular meetings to focus on important matters of relevance English regions. Its meetings could be scheduled to align with a more routinised schedule of JMCs, providing an opportunity for regional leaders to

input into the representation of English interests within the JMC, much as the devolved governments have used JMC (Europe) to articulate their views to the UK Government ahead of European Council meetings.

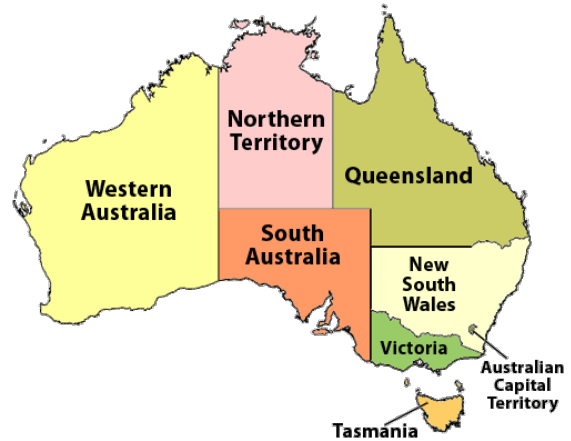
Transparency

24. Convening JMC meetings according to a set schedule will raise awareness of IGR among parliamentarians and the wider public. Governments can further enhance transparency by making agendas available in advance of the meeting and using online platforms to disseminate reports, agreements and other outcomes. We acknowledge the need to maintain confidentiality, but we believe strongly that the publication of agendas, papers (where appropriate) and outcomes can be compatible with this goal.
25. The processes through which individual governments provide information about their activities within the intergovernmental arena is a matter for them, rather than for the joint review. However, we regard the Scottish Government-Scottish Parliament agreement on IGR as a model of good practice in enhancing transparency and scrutiny.
26. In order to enhance transparency and contribute to broader understanding of IGR, we recommend that the UK and devolved governments each create a searchable website, which provides information on the role and remit of IGR forums, details of meetings and agendas, and any agreements reached. In addition, or as an alternative, the proposed standing secretariat can be tasked with maintaining a publicly accessible digital resource of formal intergovernmental meetings and outcomes.

Reforming Intergovernmental Relations in the United Kingdom

Case Study Annex

Australia



Constitutional structure

1. The Australian federation was formed in 1901. It includes the federal level (known as the Commonwealth), six states and two self-governing territories. The populations of the sub-state units range from 8 million (New South Wales) to 250,000 (Northern Territory).
2. Powers are distributed between the Commonwealth and the states, with the latter having symmetrical powers. The Commonwealth holds most power. The Constitution gives the Commonwealth some exclusive competences, but most are held concurrently with the states, subject to a provision that Commonwealth law takes precedent in the event of conflict. The states hold all residual powers and are sovereign within these fields. The territories have very similar powers to the states, but these are conferred by federal statutes and their legislation can be overridden by the Commonwealth.
3. A key dynamic in the relationship between the Commonwealth and the states is the imbalance in their respective revenue-raising capacity and spending responsibility (vertical fiscal imbalance). The Commonwealth collects over 80% of tax revenues, but key public spending responsibilities such as health and education are state and territory competences.¹ This leaves the states and territories dependent on Commonwealth funding, which is often made conditional on agreeing to federal policy frameworks. Central encroachment into the responsibilities of Australian states has been tolerated in pursuit of beneficial policy outcomes.
4. The activity of the Commonwealth government in areas outside its formal competence has made intergovernmental relations an important feature of the Australian federal system.

¹ J. Phillimore and J. Harwood (2015), 'Intergovernmental Relations in Australia: Increasing Engagement within a Centralizing Dynamic', in J. Poirier, C. Saunders and J. Kincaid (eds), *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics*, pp. 42-80. Ontario: Oxford University Press.

Division of Competences: Australia	
Commonwealth (s 51 of the Constitution)	External affairs Defence* Currency* Taxation, customs and excise*, Borrowing Trade and commerce Foreign corporations Naturalisation, Immigration and emigration Pensions and welfare benefits Marriage and divorce Post and telecommunications Railway construction and extension (with state consent) Conciliation and arbitration for preventing and settling industrial disputes extending beyond one state Banking (other than internal state banking), and insurance (other than internal state insurance) Bankruptcy and insolvency Weights and measures Lighthouses, astronomical and meteorological observations Quarantine Fisheries in Australian waters beyond territorial limits Census and statistics Intellectual property Public service* Other matters where referred by state. <i>*Exclusive power of the Commonwealth</i>
States/territories	All residual powers, including education, health, agriculture, environmental protection, law and order, energy, housing, transport. <i>States also legislate in areas allocated to the Commonwealth, subject to s.109 of the Constitution under which Commonwealth law takes precedent.</i>

The principles and purpose of intergovernmental relations

5. The Australian Constitution makes little reference to IGR processes but specifies some important principles that underpin IGR. These include that *'trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free'*.² The Constitution also stipulates that the Commonwealth *'shall not, by any law or regulation of trade commerce or revenue, give preference to one State or any part thereof over another State or any part thereof'*.³
6. The founding document of the Council of the Australian Federation (CAF), set up on a horizontal basis by the states and territories in 2006, makes reference to a number of principles which were viewed as integral to federal relations by the signatories. These include *'respect for constitutions and the division of powers'*, and an understanding that federalism allows both for *'diversity in policy*

² Commonwealth of Australia Constitution Act, s.92.

³ *Ibid.*, s.99.

priorities and their implementation', and for consultation and co-operation 'where this promises the best outcomes'.⁴

7. Vertical co-ordination between the Commonwealth and the sub-state units is the primary aim of IGR in Australia. Much of the work of the Council of Australian Governments (COAG) is focused on the negotiation, agreement and implementation of multilateral intergovernmental agreements. These include major agreements underpinning the division of responsibilities, regulatory frameworks, and funding arrangements in areas such as health and education.⁵ Agreements are often, though not always, followed by legislation.
8. The Commonwealth government often presents reform proposals through IGR and seeks to use its influence to secure the agreement of the states and territories. The states and territories seek to influence the details of the reform during intergovernmental negotiation, but only occasionally introduce major reform proposals of their own.⁶ States and territories sometimes seek to resist Commonwealth encroachment into their fields of competence. However, autonomy protection of this kind is less of a priority for Australian states and territories than for sub-state units in many comparable federal systems.
9. Some COAG Councils have had specific decision-making powers conferred on them through statute or intergovernmental agreements. An example is the Council for Federal Financial Relations, which has been delegated authority to approve changes to the base and rate of the Australia-wide Goods and Services Tax (GST).⁷
10. The many intergovernmental agreements that have been reached have contributed to a process that one academic commentator has described as 'cooperative centralisation'.⁸ The introduction of uniform regulatory schemes in many areas where the Commonwealth was not previously involved have constrained state and territory competences significantly. However, the states and territory governments have been actively engaged in negotiating these agreements and have put up relatively limited resistance.

The machinery of intergovernmental relations

11. IGR arrangements are mostly underpinned by informal agreements rather than being provided for in the Constitution or legislation. The key forums

⁴ Council of the Australian Federation (2006).

⁵ Phillimore and Harwood (2015).

⁶ J. Phillimore and A. Fenna (2017), 'Intergovernmental councils and centralization in Australian federalism', *Regional and Federal Studies* 27:5, pp. 597-621.

⁷ Council on Federal Financial Relations (2011), 'Intergovernmental Agreement on Federal Financial Relations: Schedule A – Definitions and Institutional Arrangements', http://www.federalfinancialrelations.gov.au/content/inter_agreement_and_schedules/current/schedule_A.pdf, last accessed 30 July 2018.

⁸ G. Anderson (2008), 'The Council of Australian Governments: A New Institution of Governance for Australia's Conditional Federalism', *UNSW Law Journal* 31:2, p. 496.

nevertheless have a relatively formal character to them, including regular meeting patterns, established procedures and an administrative infrastructure.

12. The most important IGR institutions are vertical forums – the Council of Australian Governments (COAG) at heads of government level and sectoral ministerial councils consisting of ministers with equivalent responsibilities. The Council of the Australian Federation (CAF) provides for horizontal co-operation between states and territories, but in practice has been of marginal importance in recent years.
13. The Commonwealth is the dominant actor in IGR at both heads of government and sectoral level. This is largely a result of the vertical fiscal imbalance, which creates strong incentives for the states and territories to agree to Commonwealth proposals even where they involve encroachment into areas of state and territory competence. The Commonwealth also has an institutional advantage in most IGR forums, with authority to set dates for meetings and decide which items are placed on the agenda.

Primary forums for intergovernmental relations: Australia			
Forum	Council of Australian Governments (COAG)	Sectoral ministerial councils	Council for the Australian Federation
Type of IGR	Vertical, multilateral	Vertical, multilateral	Horizontal, multilateral
Composition	Heads of government, President of the Australian Local Government Association (ALGA)	Sectoral ministers; Representatives of ALGA and New Zealand Government on some councils	Heads of government
Frequency of meeting	Approx. 2 per year	Approx 2-3 per year	Ad hoc
Decision-making	Consensus	Consensus, except certain specific cases	Consensus
Outputs	Agreements, communiqués	Agreements, communiqués	Communiqués
Supporting structures	Federal secretariat	Varies	Secretariat rotates between governments

Council of Australian Governments (COAG)

14. The Council of Australian Governments (COAG) was established in 1992, building on previous Premiers' conferences.⁹ It brings together the Australian Prime Minister, the six state Premiers, the two territory Chief Ministers and the President of the Australian Local Government Association.

⁹ M. Painter (1996), 'The Council of Australian Governments and Intergovernmental Relations: A Case of Cooperative Federalism', *Publius* 26:2, pp. 101-120.

15. COAG meetings are called and chaired by the Australian Prime Minister. They typically happen twice per year, although the exact scheduling varies. The majority are hosted in Canberra, but some take place in other state and territory capitals.
16. COAG is administered by a secretariat staffed by officials from the Commonwealth's Department of Prime Minister and Cabinet. The most senior officials in each government and the Chief Executive Officer of the Australian Local Government Association meet before each COAG meeting to prepare agenda items, and again afterwards to agree next steps.¹⁰
17. The functioning of COAG has varied greatly over time, depending on personalities and political conditions. The approach of the Prime Minister has been identified by academics as a particularly important factor.¹¹ Notably intense phases of co-operation in pursuit of ambitious reform agendas, in the early 1990s under Bob Hawke and Paul Keating and during the initial years of Kevin Rudd's 2007-10 premiership, have been interspersed with periods of less activity and a more coercive approach. Under the Coalition governments led by Tony Abbott and Malcolm Turnbull between 2013 and September 2018 relations between governments were poor, in part because of reductions to state and territory funding that have generated a backlash.¹²

Sectoral ministerial councils

18. Sectoral ministerial councils are a longstanding feature of IGR. An Agriculture Council met from 1934 and there have at various points over recent decades been as many as 40 councils in operation, despite attempts at streamlining.¹³
19. A reform in 2013 established eight councils under the auspices of COAG, known as COAG Councils. These focus primarily on areas of state and territory competence where the Commonwealth government has become active. Seven cover Disability Reform, Education, Energy, Federal Financial Relations, Health, Industry and Skills, and Transport and Infrastructure.¹⁴ The eighth brings together Attorneys-General. The Council system is reviewed biennially to consider alignment with COAG priorities and check progress.¹⁵
20. Membership of all COAG Councils includes the relevant sectoral minister(s) in the Commonwealth government and their equivalents in each state and territory

¹⁰ Phillimore and Harwood (2015), op cit.

¹¹ J. Menzies (2013), 'Reducing Tensions in Australian Intergovernmental Relations through Institutional Innovation', *Australian Journal of Public Administration* 72:3, pp. 382-389.

¹² Phillimore and Harwood (2015), op cit.

¹³ L.C. Botterill (2007), 'Managing Intergovernmental Relations in Australia: The Case of Agriculture Policy Cooperation', *Australian Journal of Public Administration* 66:2, pp. 186-197; S. Jones (2008), 'Cooperative Federalism?: The Case of the Ministerial Council on Education, Employment, Training and Youth Affairs', *Australian Journal of Public Administration* 67:2, pp. 161-172; Phillimore and Harwood (2015).

¹⁴ Council of Australian Governments, 'Role of COAG Councils', <https://www.coag.gov.au/coag-councils>, last accessed 30 July 2018.

¹⁵ Department of Prime Minister and Cabinet (2016), 'Guidance on COAG Councils'.

government.¹⁶ The Australian Local Government Association is also represented on the Transport and Infrastructure Council. Several of the Councils include a representative from the New Zealand government.

21. Meeting patterns vary between Councils but most meet around 2-3 times per year. Five of the COAG Councils are chaired by the Commonwealth representative. The chairs of the Education and Health Councils and the Council of Attorneys-General instead rotate on an annual basis among state and territory jurisdictions. Hosting arrangements differ, but often include a mixture of meetings in Canberra, other Australian cities and by video conference.
22. Most COAG Councils have a secretariat drawn from the relevant department in the Commonwealth government.¹⁷ The Education, Health and Attorneys-General Councils are again exceptions, with joint secretariats drawn from the respective state and territory departments. Officials from each government with equivalent sectoral responsibilities meet on an 'as needed' basis, including to discuss agendas ahead of COAG Council meetings and to act on Council directions.¹⁸
23. In addition to the eight COAG Councils, other ministerial councils continue to operate outside of the COAG structure. These are organised by the relevant Commonwealth department and include an Agriculture Ministers Forum and a regular Fisheries Ministers' Meeting.¹⁹
24. In 1996, a Treaties Council was established for discussion of international treaties with relevance to the states and territories. This consists of the Prime Minister and state/territory heads of government. It has met only once, in 1997.²⁰ Aspects of treaties are discussed in the relevant ministerial councils. Treaties can also potentially be considered at a regular COAG meeting, but this has not happened in recent years, despite the signing of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership in 2018.

¹⁶ Each COAG Council lists its membership on its website.

¹⁷ Phillimore and Harwood (2015), op cit.

¹⁸ *Ibid.*, p. 57.

¹⁹ Department of Agriculture and Water Resources, 'Communiqués', <http://www.agriculture.gov.au/about/media-centre/communiques#agriculture-ministers-forum>, last accessed 30 July 2018.

²⁰ Phillimore and Harwood (2015).

Council for the Australian Federation (CAF)

25. The Council for the Australian Federation (CAF) was established in 2006 by the state Premiers and territory Chief Ministers. It is a horizontal forum in which the Commonwealth does not participate, modelled on the Canadian Council of the Federation (see below).²¹ The chair and secretariat rotates between members and the agenda for meetings is agreed collectively.
26. CAF meets on an ad hoc basis. It was initially an active forum, but has met infrequently in recent years. At the time of writing its website lists only one meeting – in February 2018 ahead of a COAG meeting later the same day.²²

Decision-making and dispute resolution

Decision-making and agreements

27. All intergovernmental agreements are reached by consensus. Where there is not consensus among all governments it is possible for an agreement to be signed by some governments only. For example, the 2010 National Health and Hospitals Network Agreement was not signed by Western Australia²³ (see Box A.1).
28. Some COAG Councils allow for non-unanimous decisions in specific circumstances. One instance of this is the agreement establishing the Federal Financial Relations Council, which indicates that changes to the GST base to maintain its integrity or prevent tax avoidance can be made by simple

Box A.1: Health reform under Kevin Rudd

On taking office as Prime Minister, Labor's Kevin Rudd promised to end the 'blame game' between the Commonwealth and the states over health. In 2010, he proposed a highly centralising reform, under which the Commonwealth would take on full policy responsibility for primary health care, financed by the Commonwealth taking over from states one-third of revenues from the Goods and Services Tax (GST). Negotiations took place over seven weeks, against the background of tense relations between governments. The key breakthrough came when the states and territories secured additional funding from the Commonwealth, including \$800 million for sub-acute hospital beds.

A compromise agreement was reached between the Australian Government, five of the states and both territories. Western Australia - the only Liberal-led government at the time - opted out of the agreement, objecting to the plan to withhold one-third of GST revenue.

The agreement was ultimately renegotiated in 2011 after Julia Gillard replaced Rudd as Prime Minister and following changes of government in two states. The episode nonetheless serves as a vivid illustration of how the Commonwealth can use its financial dominance to coerce the states and territories into reaching agreements that involve ceding power in return for financial benefits.

²¹ A. Tiernan (2008), 'The Council for the Australian Federation: A New Structure of Australian Federalism', *Australian Journal of Public Administration* 67:2Tiernan (2008), pp. 122-134.

²² Council for the Australian Federation, 'Meeting of the Council of the Australian Federation, Canberra, 9 February 2018: Communiqué', <https://www.caf.gov.au/Documents/CAF-Communique2018-02-09.pdf>, last accessed 30 July 2018.

²³ M-A. McQuestin and S. Woods (2010), 'The Tension Between Intergovernmental Relations and Cooperative Federalism', paper presented at Australian Political Science Association Conference.

majority.²⁴ The intergovernmental Australian Energy Market Agreement provides for certain decisions relating to the National Electricity Market (NEM) to be made only by members of the Energy Council from the six jurisdictions connected to the NEM.²⁵ Where votes are held in COAG Councils the principle of one vote per jurisdiction applies, even though some jurisdictions have multiple representatives on some Councils.

29. Intergovernmental agreements do not have legally enforceable status unless this is provided for by subsequent statute. While agreements are generally viewed as a significant form of 'soft law', they are nevertheless vulnerable to being reneged upon on occasion.²⁶ This is most likely to occur following a change of government. For example, the federal Coalition government that came to power in 2014 announced it would not fully meet intergovernmental commitments on health funding made by Labor in the 2011 National Health Reform Agreement.²⁷

Dispute resolution and avoidance

30. IGR in Australia combines competitive and consensual features. Relations between governments can be acrimonious, especially when different parties are in power in them.²⁸ However, within COAG and sectoral ministerial councils, governments are prepared to work together to seek consensus on reforms. Where there are disputes relating to the implementation of intergovernmental agreements, these are usually resolved through negotiations, either informally or in meetings of the relevant ministerial council.
31. The competence of legislation is subject to judicial review by the High Court of Australia. The Court has traditionally taken a generous approach to the legislative competence of the Commonwealth, contributing to the expansion over time of the range of policy fields in which the federal government is active.²⁹
32. Some intergovernmental agreements include a dispute resolution clause. However, this usually specifies the steps to be taken in seeking to resolve the issue by negotiation rather than providing for independent mediation or

²⁴ Council on Federal Financial Relations (2011), *'Intergovernmental Agreement on Federal Financial Relations: Schedule A – Definitions and Institutional Arrangements'*, http://www.federalfinancialrelations.gov.au/content/inter_agreement_and_schedules/current/schedule_A.pdf, last accessed 30 July 2018

²⁵ COAG Energy Council (2013), 'Notice of Amendment to the Australian Energy Market Agreement', http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Australia_n%20Energy%20Market%20Agreement%20-%20Dec%202013_1.pdf, last accessed 30 July 2018.

²⁶ Saunders (2005).

²⁷ Phillimore and Harwood (2015).

²⁸ J. Phillimore and A. Fenna (2017), 'Intergovernmental councils and centralization in Australian federalism', *Regional and Federal Studies* 27:5, pp. 597-621.

²⁹ B. Selway and J.M. Williams (2005), 'The High Court and Australian Federalism', *Publius* 35:3, pp. 467-488.

arbitration, with little indication about how the dispute should be resolved if negotiations fail.

33. Past health agreements have included a dispute resolution procedure that involves a further step, under which an independent person could be appointed to consider submissions from each party, with recommendations made in a subsequent report. The independent person is appointed by the disputing parties, or if no agreement on a suitable individual can be reached, by the Commonwealth Government's independent Productivity Commission, a review and advisory body which conducts studies and public inquiries on issues related to public policy. Such a procedure was included in the 1998 health agreement and invoked by the states in relation to a disagreement over indexation. The recommendations were only advisory and were ignored by the Commonwealth.³⁰ No equivalent provision has appeared in more recent agreements.³¹

Transparency

34. Australian IGR is relatively transparent. COAG, COAG Councils and CAF each have their own websites on which communiqués are published following meetings, reporting the issues discussed and any agreements reached. Details of composition and terms of reference are also provided on the websites. COAG meetings are always covered by the media, and COAG Councils can also generate media interest where topical issues are on the agenda.
35. COAG's website includes an incomplete list of multilateral intergovernmental agreements and access to their full texts.³² Bilateral agreements are not always published and, in some cases, only the signatories have copies.³³ The total number of agreements in force has been estimated to be as many as 145.³⁴
36. Parliamentary scrutiny of IGR itself is limited. However, legislation agreed through IGR can sometimes run into difficulties during the parliamentary process. State upper houses, in particular, have often been critical of uniform legislation introduced across the states and territories. In Western Australia the upper house has a committee dedicated to scrutiny of this type of bill.³⁵

³⁰ Phillimore and Harwood (2015).

³¹ The 2011 National Health Reform Agreement includes a similar dispute resolution procedure to that quoted in box A.2.

³² Council of Australian Governments, 'Agreements', <https://www.coag.gov.au/agreements>, last accessed 30 July 2018.

³³ Phillimore and Harwood (2015).

³⁴ *Ibid.*

³⁵ Parliament of Western Australia, 'Uniform Legislation and Statutes Review Committee', <http://www.parliament.wa.gov.au/Parliament/commit.nsf/WCurrentNameNew/BF7B2C9193BDF5BE48257831003B03AB?OpenDocument>, last accessed 4 September 2018.

Belgium

Federalism in Belgium

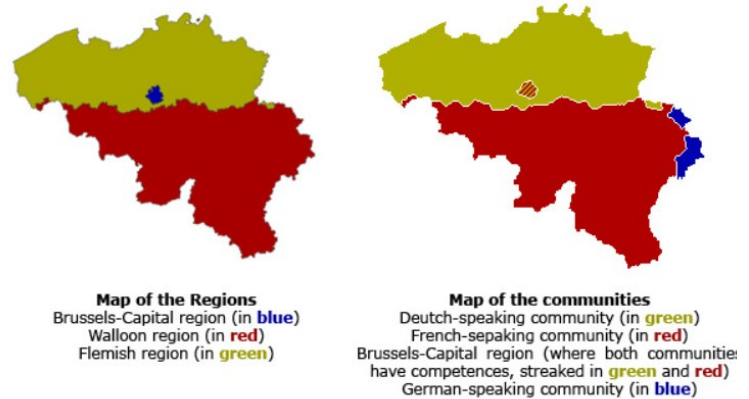


image source: reflexions.ulg.ac.be

Constitutional structure

37. Belgium has become federal over six 'state reforms' between 1970 and 2014. The federation has a complex three-part structure, with overlapping boundaries. It is composed of three territorial regions (Flanders, Wallonia and Brussels-Capital) and three linguistic communities (Flemish, French and German).
38. The division of powers was designed to provide a high degree of autonomy to each community and region. There is nevertheless considerable cooperation between governments in each of them. This is especially true in external relations, due to the principle of '*in foro interno, in foro externo*' under which the regions and communities have responsibility for external relations on matters falling within their competences. This compels governments to agree positions for Belgium to take to international meetings and negotiations.
39. The system features several different types of asymmetry, including between the communities and regions (which each have different powers), in terms of how the regional and community institutions relate to each other on each side of the linguistic divide (a single Flemish legislature and government, but separate institutions in Wallonia and the French community), and among the regions and communities in terms of population size. The Flemish region (which incorporates the Dutch-speaking community, minus those who live in the Brussels Capital-region) accounts for 58% of the Belgian population. The German-speaking community accounts for 0.7%.
40. The Constitution identifies the two types of sub-state entities - regions and communities - and allocates specific competencies to each. Their powers are further developed by 'special laws'. Communities generally have competence over 'personalised matters' relating to the individual, for example education and health, and regions have competences over 'territorial matters', for example agriculture and housing. The federal government holds residual powers. Each order of government is sovereign within its fields of jurisdiction and there is no hierarchy between them.
41. The linguistic divide between Flemish and French speakers is fundamental to Belgian federal dynamics. Almost all public institutions are split along these lines, and different party systems operate in each linguistic sphere. The division

of the party system preceded and contributed to the process of federalisation.³⁶ The federal cabinet is formed on a power-sharing basis and always contains an equal number of Flemish and French-speaking ministers, excluding the prime minister.

Division of Competences: Belgium	
Federal	Defence External relations Police and security Justice Civil, commercial, labour and fiscal law Immigration The public debt and monetary policy Social security (excluding family allowances) and social protection Nuclear issues Public enterprises Federal cultural and scientific institutions All residual powers
Community	Culture and language policy Teaching and education Issues pertaining to the 'person', including health policy, preventative medicine, and hospitals, youth protection, social and family support, family allowances, and the integration of immigrants.
Regional	Urban planning, housing, environment, water policy, economic initiatives, foreign trade, natural resources, fisheries, agriculture, employment, municipal and provincial matters, roads, public transports, and rivers, sport.
<i>The Communities and regions also have competences in external relations in areas of their competence, according to the principle of in foro, in foro externo.</i>	

The principles and purpose of intergovernmental relations

43. The principle of 'federal loyalty' is enshrined in the Belgian Constitution. Under Article 143 the federal government and each federated government is required to '*act with respect for federal loyalty, in order to prevent conflicts of interest*'.³⁷ This is interpreted as meaning that the constituent units of the Belgian state must consider the effects of their activities on others and abstain from activities that would cause detriment to others. Conflict of interest procedures (see below) can be triggered when one or more unit believes that another has violated this principle.
44. The key purpose of IGR in Belgium is to facilitate *co-ordination* between governments. This is, by necessity, particularly intense in relation to policy areas where '*in foro interno, in foro externo*' means that reaching agreement is

³⁶ J. Poirier (2011), 'The Belgian Federation: Tools of Appeasement, Instruments of Confrontation', in R. Saxena (ed.), *Varieties of Federal Governance – Major Contemporary Models*, pp. 344-377. Cambridge: Cambridge University Press.

³⁷ Constitution of Belgium, Article 143.

essential to Belgium's ability to act on the international stage. Co-ordination is also important in sectors where related matters are split between orders of government, so increasing policy interdependence, as is the case with some aspects of health and social security.³⁸

45. Meetings of IGR forums involve *information exchange* between governments. This includes discussion of topical issues of relevance to all levels of government. Draft legislation that has implications for multiple orders of government is also discussed through IGR forums.
46. The Concertation Committee, which includes the heads of regional, federal, and community governments, has an additional role as a *dispute resolution* body. Matters can be referred to it where negotiations through other forums fail to produce agreement. Legislatures and governments are also able to refer legislation to the Concertation Committee in the case of a 'conflict of interest' (see below).

The machinery of intergovernmental relations

48. IGR institutions covering heads of government, ministerial and administrative levels have been established during the course of Belgium's federalisation process. These include highly formalised bodies with regular meeting patterns and detailed procedural rules, as well as more informal forums.
49. Almost all institutionalised IGR forums provide for vertical relations involving the federal government. Horizontal IGR – especially between overlapping regions and communities – is also essential but takes place mainly outside of formal institutions.

Primary forums for intergovernmental relations: Belgium			
Forum	Concertation Committee	Inter-ministerial Conferences	Other sectoral committees, working groups etc
Type of IGR	Vertical, multilateral	Vertical (one horizontal), multilateral	Vertical, multilateral
Composition	Heads of government, other ministers	Sectoral ministers	Officials, ministerial representatives, technical experts
Frequency of meeting	Monthly, additional meeting possible	Varies	Varies
Decision-making	Consensus	Consensus	Consensus
Outputs	Agreements	Agreements	N/A
Supporting structures	Federal secretariat	Federal secretariat	Federal secretariat

50. All vertical IGR forums are hosted by central government, which also has the upper hand in terms of resources and expertise needed to shape policy,

³⁸ J. Poirier (2002), 'Formal Mechanisms of Intergovernmental Relations in Belgium', *Regional and Federal Studies* 12:3, pp. 24-54.

especially in more technical areas. Senior IGR institutions are underpinned by federal legislation.³⁹ In key sectoral policy areas where co-ordination is required detailed IGR procedures have been set out in intergovernmental agreements.

Concertation Committee

53. The Concertation Committee was established in 1980 under the Second State Reform as a heads of government council. It is designed to allow for structured consultation between the federal government and federated entities on issues which require collaboration between different levels of government. It finalises significant agreements, and discusses financial arrangements and draft legislation where cooperation is required.
54. The Concertation Committee includes the Belgian Prime Minister, five other federal ministers, the Minister-President and a member of the Flemish government, the Minister Presidents from the French Community, the Walloon Region, and the Brussels-Capital Region, and an additional member of the latter to ensure representation from both language groups. The final composition reflects the principle of double parity, with an equal number of Dutch- and French-speaking representatives and those from the federal and federated governments.⁴⁰ The Minister-President of the small German-speaking community attends where matters of concern to it are discussed. Specialist ministers can also be invited to attend if there is an item for discussion which falls within their remit.
55. Meetings are scheduled monthly, and additionally at the request of the Prime Minister or a Minister-President. The committee meets in Brussels. *Ad hoc* meetings can be scheduled, as happened in 2016 to discuss the Walloon government's objections to the ratification of the CETA trade agreement between the EU and Canada.
56. The Concertation Committee is administered by a secretariat within the office of the Federal Prime Minister. The secretariat is charged with providing administrative and logistical support, preparing and distributing the agenda, monitoring the progress of cooperation agreements, publishing cooperation agreements, and gathering data on the inter-ministerial conferences.

Inter-ministerial conferences

57. Inter-ministerial conferences were first introduced in 1989. They comprise sectoral ministers from the appropriate orders of government. Depending on the policy area this can mean all governments, the federal government and the regions or the federal government and the communities.⁴¹ There is also one example – the Inter-ministerial Conference on Education, established by the

³⁹ *Ibid.*

⁴⁰ Belgian House of Representatives (2014), 'Cooperation and Resolution of Conflicts within the Federal State of Belgium', Briefing No. 28.00.

⁴¹ J. Schnabel (2014), 'Negotiating Federalism's Boundaries: Intergovernmental Relations as a Federal Safeguard', paper presented at IPSA World Congress.

communities in 2014 – of a horizontal conference in which the federal government is not involved, as it has no role in education policy.⁴²

58. Conferences currently cover 19 policy areas, including foreign affairs, agriculture, institutional reforms, and finance and budget.⁴³ Some conferences have regular meeting schedules, but most meet only when required.
59. In the majority of cases the chair of intergovernmental conferences rotates between members.⁴⁴ However, this does not apply to five conferences – Institutional Reform; Foreign Policy; Finance and Budget; Interior; and Security Maintenance and Management Policy – where the federal representative is the permanent chair. In all cases except for Education, the relevant federal government department provides the secretariat.
60. Inter-ministerial Conferences cannot take binding decisions but are important forums for coordination between relevant actors. They can be used for routine co-operation as well as resolving disagreements, but the extent to which this occurs varies across sectors. Many meet infrequently and sometimes only to serve as a rubber stamp for policies negotiated elsewhere.⁴⁵

Other sectoral forums

61. The co-ordination body of the Directorate-General for European Affairs is the key institution for agreeing positions for Belgium to take at EU level. This is chaired by the federal Foreign Affairs minister and includes ministerial representatives from all levels of government and officials from Belgium's permanent representation in the EU. Where an agreed position proves impossible, the matter in question is escalated to the relevant inter-ministerial conference, and then, if there is still no agreement, to the Concertation Committee. If a disagreement is unresolved prior to voting in the European Council, Belgium must abstain. It is rare but not unprecedented for this to occur.
62. There is a well-developed infrastructure of sectoral IGR forums and committees operating below the level of the inter-ministerial conferences, involving officials, ministerial representatives and technical specialists. For instance, in the climate change field, key intergovernmental institutions include the Co-ordination Committee for International Environment Policy (CCIEP), consisting of officials, and the Greenhouse Gas Effect Co-ordination Group (GGECCG), composed of technical specialists.

⁴² *Ibid.*

⁴³ International Press Center, 'Interdepartmental conferences', 16 January 2015, <http://www.presscenter.org/fr/pressrelease/20150116/conferences-interministerielles>, last accessed 16 August 2018.

⁴⁴ *Ibid.*

⁴⁵ B. Kerremans (2000), 'Determining a European Policy in a Multi-Level Setting: The Case of Specialized Co-ordination in Belgium', *Regional and Federal Studies* 10:1, pp. 36-61; J. Beyers, T. Delreux and C. Steensels (2004), 'The Europeanisation of intergovernmental cooperation and conflict resolution in Belgium: The case of agriculture', *Perspectives on European Politics and Society* 5:1, pp. 103-134,

Decision-making and dispute resolution

64. Belgium has often been likened to a permanent diplomatic conference, with highly formalised mechanisms for decision-making and clear procedures for the resolution of conflicts between governments.

Decision-making and agreements

65. All decisions made through IGR require consensus among the governments to which the decision applies. This means that all regions and communities, including the smaller units, have the potential to prevent agreement from being reached. Where consensus is not possible in more junior IGR forums, the issue under discussion can be escalated, ultimately to the Concertation Committee in the last resort.
66. Numerous co-operation agreements have been signed between the federal and sub-state governments. While a full register of agreements does not exist, there are typically several dozen signed per year. Agreements are typically made to allow for coordination between the regions and communities, and to ensure the transposition of European directives.
67. Agreements meeting certain criteria require approval from the relevant legislatures.⁴⁶ Many intergovernmental agreements focus on process rather than substance, establishing the various conferences, committees and dispute resolution procedures described elsewhere in this chapter. In some areas, such as transport, waterworks and the conduct of international relations, agreements are compulsory.⁴⁷ This is a result of negotiations during state reform, with some governments only willing to consent to decentralisation on the condition that legally binding co-operation agreements would be necessary.
68. A particularly important agreement is that underpinning arrangements that allow regional and community governments to participate as representatives of Belgium at the EU level, in line with the principle of '*in foro interno, in foro externo*'.⁴⁸ Where an EU Council has a remit covering matters applying to multiple Belgian jurisdictions, a rotation system applies, under which the representative unit changes every six months. On some Councils, a sub-state government attends as 'Assessor', alongside the federal government, or vice versa. There is precedent in the case of fisheries for Belgium to be permanently represented by Flanders, due to the presence of a fisheries industry there but not in landlocked Wallonia or Brussels. In such a role, sub-state governments are representing the Belgian position.
69. The need to reach consensus on Belgian positions in international arenas potentially places the communities and regions in a strong negotiating position in relevant intergovernmental forums (see Box A.3 for an example on climate

⁴⁶ Beyers, Delreux and Steensels (2004).

⁴⁷ Poirier (2002).

⁴⁸ Beyers, Delreux and Steensels (2004).

change negotiations⁴⁹). However, in practice it is often the federal government that takes the lead in proposing policies and securing agreement to them. One academic commentator has described the process of agreeing agriculture policies as follows:

'the federal ministry proposes a position for the Belgian delegation in the EU and a discussion ensues in which the regions attach some remarks or reservations to parts of the proposal. But most of the time a consensus is reached'.⁵⁰

This has been attributed to the extent of informal consultation that takes place before matters come before IGR forums.⁵¹

70. The Sixth State Reform, finalised in 2011, introduced a new form of horizontal agreement. Styled 'joint decrees', these are legal acts approved simultaneously by two or more legislatures with the aim of improving co-operation.⁵² Before being agreed, they are scrutinised by an inter-parliamentary committee and must be approved by the Council of State. They are of most use in the case of Wallonia and the French community, which have largely overlapping boundaries but separate political institutions.

Dispute avoidance and resolution

78. Belgian IGR has both competitive and consensual features. At political level, relations between governments across the linguistic divide are often

Box A.3: Negotiating climate change policy

Climate change policy falls largely within regional competences, necessitating intergovernmental agreement before Belgium can take a position in EU or international negotiations. This has generated several inter-governmental forums, including the Inter-ministerial Conference on the Environment (ICE), and the Co-ordination Committee for International Environment Policy (CCIEP), where officials manage routine coordination. CCIEP is in turn served by several working groups, including the Greenhouse Gas Effect Co-ordination Group (GGECG). In the event no agreement can be reached through these bodies, matters can be referred up to the Concertation Committee. If agreement still cannot be reached, Belgium may be forced to abstain from taking a position.

At the Copenhagen climate conference in 2009 several EU countries, including the UK and France, pressed for the EU to make its previously conditional offer of a 30% reduction in emissions unconditional. This led to a heated debate among the Belgian federal and regional environment ministers. The Flemish minister refused to agree to the more ambitious proposal and no compromise position could be reached, requiring the Belgian Prime Minister to support the status quo when the matter was debated with other EU leaders.

⁴⁹ S. Happaerts, S. Schunz and H. Bruyninckx (2012), 'Federalism and Intergovernmental Relations: The Multi-Level Politics of Climate Change Policy in Belgium', *Contemporary European Studies* 20:1, pp. 441-458.

⁵⁰ Kerremans (2000), p. 49.

⁵¹ *Ibid*,

⁵² W. Vandenbruwaene and P. Popelier (2014), 'Joint Decrees Between the Regions and Communities', Osservatorio sulle fonti.

antagonistic. Differences of opinion can escalate into major disputes, especially where they concern territorial and linguistic rights, such as in the conflict over the split of the Brussels-Halle-Vilvoorde electoral district. Governments are nevertheless generally able to co-operate on policy where required.

79. The Courts play a prominent role in dispute avoidance and resolution. To help prevent the emergence of disputes, the Constitution entrenches formal requirements for information exchange and consultation with other orders of government before certain categories of legislation are introduced.⁵³ Where this has not been complied with, the legislation can be struck down by the courts. In practice, the Court is very flexible. If consultation takes place at the end of the decision-making procedure, the Constitutional Court will consider this satisfactory. Legislation may also be subject to a proportionality test that involves the examination of the decision-making process.⁵⁴
80. On introduction all legislation is reviewed by the Council of State, the highest administrative court with a responsibility for considering matters of competence. The Council of State includes mainly senior jurists and is divided into Flemish and French-speaking chambers. Its conclusions are advisory, but any decision to ignore its advice comes at a political cost and risks later litigation. In practice, this ensures compliance.
81. During the course of the legislative process any of the nine different legislative bodies and executives can refer a matter to the Concertation Committee under the 'conflict of interest' procedure, where they consider that legislation or a legislative proposal will be detrimental to their region, community or to the federation. Where this mechanism is exercised, the Concertation Committee has 60 days to consider the matter, during which time the legislative process is frozen. The Senate (upper chamber of the federal legislature) then has 30 days to express a view, before the issue returns to the Concertation Committee for a further 30 days during which a final decision should be made. The procedure has been used sparingly but was invoked multiple times during the course of a dispute about electoral district boundaries in Brussels-Halle-Vilvoorde that paralysed Belgian politics between 2007 and 2011.
82. Once primary legislation has been passed, judicial reviews are considered by the Constitutional Court, which has the power to strike down legislation deemed to contravene the distribution of competences or to have been passed without compliance with the co-operation requirements. This body is composed of six French-speaking and six Flemish-speaking judges, half of whom are former politicians and half professional magistrates. Rulings are binding and final. The Council of State performs this role for secondary legislation.
83. An *ad hoc* tribunal can be established in the case of disputes relating to the implementation of intergovernmental agreements. Members of the tribunal are

⁵³ W. Lehmann (2002), *Attribution of Powers and Dispute Resolution in Selected Federal Systems*, European Parliament Directorate-General for Research Constitutional Affairs Series Working Paper AFCO 103 EN.

⁵⁴ P. Popelier and K. Lemmens (2015), *The Constitution of Belgium: A contextual analysis*. Oxford: Hart.

nominated by each party to a dispute, or by the President of the Constitutional Court in the event that membership cannot be agreed. The tribunal President is a professional magistrate. Members of the tribunal seek to negotiate an agreement. If this fails, litigation takes place before the same members. Decisions are binding and final. However, political mechanisms of dispute resolution are preferred.⁵⁵ It was intended that this would be the case – the main purpose of establishing the procedure was to reassure governments who feared IGR would become heavily politicised.

84. Belgium also operates an ‘alarm bell’ procedure, where 75% of the members of either federal chamber belonging to either of the two main language groups can raise an alarm where they believe legislation will put relations between communities at risk.⁵⁶ In this event, the cabinet must consider the matter within 30 days. If an agreement is not forthcoming, the government would be likely to fall (considering the cross-community make-up of the cabinet). The procedure has been used only twice. In the most recent case, in 2010, it was largely symbolic – coming after the fall of the government rather than as a genuine attempt to reach compromise.⁵⁷

Transparency

85. Belgian IGR facilitates parliamentary scrutiny. Records of the Concertation Committee and inter-ministerial conferences are logged with legislatures, although they are not made publicly available. Dates and times of Concertation Committee meetings are published through the Prime Minister’s public schedule. Where agreements are reached, a press release will typically be issued. IGR often receives media coverage, especially where the subject matter is contentious.
86. Intergovernmental agreements require approval by regional and community legislatures where they contain financial implications, create obligations for individuals, deal with matters governed by legislation rather than regulatory instruments or do not contain a provision for amendment. Agreements can only be accepted or rejected in full – there is no opportunity to propose amendments. In the case of joint decrees, the inter-parliamentary committee responsible for conducting scrutiny must first approve the instrument before it is voted on by the relevant legislatures. Legislatures are also able to amend joint decrees.
87. Although there is no dedicated website for intergovernmental forums, intergovernmental agreements are published in an official gazette and online. Since the instrument was introduced in 1988, nearly 600 agreements have been published⁵⁸.

⁵⁵ Poirier (2002).

⁵⁶ M. Adams (2014), ‘Disabling constitutionalism. Can the politics of the Belgian constitution be explained?’, *International Journal of Constitutional Law* 12:2, pp. 279-302.

⁵⁷ Flanders News (2010), “It’s a provocation, an aggression”, 29 April 2010, https://www.vrt.be/vrtnws/en/2010/04/29/it_s_a_provocationanaggression-1-769996/, last accessed 2 August 2018.

⁵⁸ Personal correspondence with Belgian Federal Government.

Canada

Constitutional structure

88. The Canadian federation was formed in 1867. It began with four founding provinces, and gradually expanded thereafter. Today, the Canadian political system is composed of the federal government, two provinces, and three territories. Newfoundland was the last province to join, in 1949, and Nunavut was created as a distinctive devolved territory in 1999.
89. The Canadian constitution explicitly allocates competences to the federal parliament and the provincial parliaments according to a dualist model, i.e. each level had exclusive competences in particular policy spheres. There are three areas of concurrent jurisdiction (agriculture, immigration and pensions) and the federal government also has a general power to 'make laws for the peace, order and good government of Canada'. The federal system is consistent with the doctrine of parliamentary sovereignty, inherited from Westminster. Federal and provincial parliaments are sovereign within their jurisdictions.
90. The provinces have the same constitutional competences. However, *de jure* symmetry is accompanied by *de facto* asymmetry, enabling provinces to opt out of certain administrative or legislative programmes. This is common in Québec, which negotiated opt-outs from Canada-wide social programmes. Québec also has its own tax collection agency, *Revenu Québec*, and additional powers (through the Canada-Québec Accord of 1991) over the selection of immigrants who may settle in Québec. The three Canadian territories exercise powers delegated to them by the Canadian Parliament rather than through the constitution.
91. As government functions expanded in the post-war period, increasing overlap between the federal and provincial government emerged, necessitating a higher degree of coordination. An analysis found that of 48 policy areas, only three were explicitly concurrent, but 19 additional areas involved overlapping jurisdiction, requiring a greater degree of collaboration between levels of government.⁵⁹ The federal government has also made use of federal-provincial



⁵⁹ R.L. Watts (2008), *Comparing federal systems*, 3rd ed. Kingston: McGill-Queen's University Press.

transfers to exercise influence in areas of provincial jurisdiction, notably health and social services.

Division of Competences: Canada	
Federal	<ul style="list-style-type: none"> Defence Foreign affairs Border security, naturalization, and citizenship Currency International trade Banking, public debt Federal taxation and tax collection Fisheries Interprovincial transportation, interstate trade Shipping, airlines, and railways Postal system Criminal law Employment insurance, Census and statistics, Aboriginal land and rights. <p style="text-align: center;"><i>Residual powers sit with the federal level and include the general power to 'make laws for the peace, order and good government of Canada', except for subjects assigned exclusively to the legislatures of the provinces. However, the Canadian Supreme Court has interpreted this narrowly.</i></p>
Provincial	<ul style="list-style-type: none"> Healthcare and hospitals Education Social security, social services, and charitable institutions Employment, Finance, cooperatives, and saving banks Licensing (including alcohol), Intra-provincial transport and business Courts, administrative of justice, property and civil rights, and prisons Natural resources, including energy (excluding nuclear) International representation Direct taxation for provincial purposes Local government and local works
Concurrent	<ul style="list-style-type: none"> Agriculture, pensions, immigration

The principles and purpose of intergovernmental relations

94. IGR are used by the federal and provincial governments to exchange information, exercise influence, defend their jurisdictions, and harmonise policies to allow for internal trade and consistency. The federal government describes mechanisms for intergovernmental relations as 'forums for the exchange of information, and for negotiation and persuasion'.⁶⁰

⁶⁰ Canadian Governmen (2017), 'Intergovernmental relations in the Canadian context', <https://www.canada.ca/en/intergovernmental-affairs/services/relations-canadian-context.html>, last accessed 3 September 2018.

95. Intergovernmental relations are not discussed in the Canadian Constitution and there are few mentions of principles underpinning IGR. The approach taken to IGR depends on the priorities of the Prime Minister.
96. For the federal government, these relationships facilitate securing provincial buy-in, which is vital to the implementation of policies. For provincial governments, intergovernmental relations allows them to ensure that their interests are represented in the formation of national policy or national programmes. Autonomy protection is also a core concern for Canadian provinces, who seek to prevent the federal government from encroaching on their provincial jurisdiction. However, provinces have also used intergovernmental forums to call for federal involvement, in particular through federal funding, in areas of common interest.⁶¹
97. Funding plays a role in shaping IGR. Provinces are financed through their own revenues but a vertical fiscal imbalance in revenue-raising capacity and spending responsibility, coupled with the use of the federal spending power to shape areas of provincial jurisdiction, has brought financial relations to the heart of Canadian IGR. The federal Equalization programme and Territorial Formula Financing, used to help less prosperous provinces and more remote territories to provide services comparable to other provinces, involves extensive intergovernmental negotiations, especially during periodic programme reviews.⁶²

The machinery of intergovernmental relations

98. Although the Canadian Constitution made no provision for intergovernmental relations, a variety of forums developed in response to a need for coordination. The depth and quality of IGR appears to be influenced by the preferences of individual leaders.⁶³ Prime Minister Stephen Harper eschewed multilateral forums for intergovernmental relations, holding only two First Ministers Conferences during his tenure and declining invitations to attend meetings of the Council of the Federation. Instead, he favoured *ad hoc* bilateral negotiations, and held 250 bilateral meetings and calls between 2006 and 2012. In contrast, Justin Trudeau has spoken of a new commitment to IGR, convening three FMCs to date and inviting provinces to take part in international negotiations at the COP21 climate conference.⁶⁴

⁶¹ J.M. Simmons (2017), 'Canadian multilateral intergovernmental institutions and the limits of institutional innovation', *Regional and Federal Studies* 27:5, pp.573-596.

⁶² B. Eisen, C. Lammam and F. Ren (2016), *Are the Provinces Really Shortchanged by Federal Transfers?* Vancouver: Fraser Institute.

⁶³ C. Dunn (2016), 'Harper without jeers, Trudeau without cheers: Assessing 10 years of intergovernmental relations', Institute for Research on Public Policy.

⁶⁴ J. Trudeau (2018), 'Minister of Intergovernmental and Northern Affairs and Internal Trade Mandate Letter', 28 August, <https://pm.gc.ca/eng/minister-intergovernmental-and-northern-affairs-and-internal-trade-mandate-letter-august-28-2018>, last accessed 31 October 2018.

99. At the federal level, IGR are managed by the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade. He/she does not head a fully-fledged department but there is an Intergovernmental Affairs Secretariat within the Privy Council Office. The size and resourcing of this office has varied over time, from 20 staff to over 100, reflecting priorities of the federal government.⁶⁵
100. In all but three provinces (Ontario, Québec and New Brunswick), the post of Minister for Intergovernmental Affairs is held by the provincial premier, who is supported by a department, secretariat or coordinating unit. Individual ministries often also maintain intergovernmental relations teams. In Québec, IGR are coordinated by the *Secrétariat du Québec aux relations canadiennes*, which represents the government of Québec, authorises all intergovernmental agreements signed by any public body in Québec, and maintains a repository of agreements. It also, in 2018, published a plan for the relationship between Québec and Canada, prioritising the protection of Québec’s competences and promotion of its interests.⁶⁶
101. The Canadian Intergovernmental Conference Secretariat, based in Ottawa, provides practical support for multilateral IGR, including technical and administrative assistance. Around 30 federal and provincial officials staff the CICS. It also provides translation services for Francophone participants. In 2016-2017, the CICS hosted 141 conferences, 104 Federal-Provincial-Territorial conferences and 37 provincial-territorial conferences. Bilateral meetings do not fall within the remit of the secretariat.

Primary forums for intergovernmental relations: Canada			
Forum	First Ministers’ Conferences	Council of the Federation	Sectoral conferences
Type of IGR	Vertical, multilateral	Horizontal, multilateral	Mixed, multilateral, bilateral or horizontal
Composition	Federal PM and provincial premiers	Provincial premiers	Mixed, some include federal and provincial premiers
Frequency of meeting	Ad hoc, held at request of federal government	Twice yearly meetings, conference calls	Dependent on forum
Decision-making	Consensual	Consensual	Consensual
Outputs	Non-binding statements	Communiques, reports, and action plans	Non-binding statements, plans, communiques, reports, and action plans
Supporting structures	No permanent supporting structure	Secretariat to support work	Administrative support provided by CICS, some conferences have own secretariat

⁶⁵ G. Anderson and J. Gallagher (2018), ‘Intergovernmental Relations in Canada and the United Kingdom’, in M. Keating and G. Laforest (eds), *Constitutional Politics and the Territorial Question in Canada and the United Kingdom: Federalism and Devolution Compared*, pp. 19-46. Cham: Palgrave Macmillan.

⁶⁶ Secrétariat du Québec aux relations canadiennes (2018), *Quebecers: Our Way of Being Canadian, Policy on Quebec Affirmation and Canadian Relations*.

First Ministers' Conference (FMC)

102. The First Ministers' Conference (FMC) includes federal and provincial premiers. The first FMC was first held in 1906 and it has usually convened annually since the 1960s. However, it fell into disuse under Prime Minister Stephen Harper, who called two meetings during his nine-year tenure. Administrative support is provided by CICS.
103. Meetings are convened at the request of the federal Prime Minister who also plays a key agenda-setting role. The meetings focus on the issues of the day, with relevance for the federal and provincial governments – past topics have included economic development and internal trade, federal funding, the constitution, and climate change, including the framework on clean growth and climate change, agreed in 2016 (see Box A.4).

Box A.4: First Ministers and the Pan-Canadian Framework on Clean Growth and Climate Change

In December 2016, the First Ministers issued a joint communique on climate change and released the Pan-Canadian Framework on Clean Growth and Climate Change. The framework was developed by the federal government with input from the provinces.

Participation was optional, and Saskatchewan opted out of the agreement because of an objection to carbon pricing. In doing so, the province forewent federal funding for climate change programmes that was included in the framework.

Council of the Federation (COF)

104. The Council of the Federation (previously, the Annual Premiers' Conference) serves as a horizontal forum for provincial and territorial premiers to promote cooperation between governments and assume leadership roles in key policy areas, particularly trade, energy, healthcare, and fiscal arrangements.
105. The federal government is not a member of the COF, although federal representatives have attended its conferences in the past. In 2009, the Prime Minister was invited to attend a special meeting on the economy but declined.
106. The COF is the most institutionalised of Canada's intergovernmental forums, possessing a founding agreement, a commitment to twice yearly meetings, a permanent secretariat to support its work, and a provincial premier who serves as chairperson, rotating annually. In person meetings are supplemented by frequent conference calls. Its outputs are voluntary and non-binding, taking the form of communiqués as well as more in-depth reports and action plans.

Sectoral conferences and ministerial meetings

107. Sectoral conferences take place between ministers, deputy ministers, and officials responsible for specific policy areas. These include the Forum of

Labour Market Ministers, the Canadian Council of Ministers of the Environment, and the Council of Ministers of Education.

108. The Canadian sectoral conferences vary in purpose, scope and frequency of meeting. Some conferences have websites and support from secretariats while others take the form of more informal gatherings of ministers. In 2017, the Canadian Intergovernmental Conference Secretariat provided logistical support to more than 100 meetings (in-person and teleconferences), covering 32 policy areas. The most active forums included meetings of ministers and deputy ministers for housing, the labour market, and social services. Three quarters of these meetings brought together federal, provincial, and territorial representatives while the remaining quarter were restricted to provincial and territorial representatives.⁶⁷

Agencies and other forums

In addition to forums specifically designed for IGR, a wide range of agencies exists to facilitate coordination in specific policy areas. These include the Canadian Food Inspection Agency, the National Energy Board, the Competition Bureau Canada, the Canada Revenue Agency, and the Regulatory Reconciliation and Cooperation process, a federal-provincial-territorial body created by the Canadian Free Trade Agreement (see Box A.5). The Agreement was the result of negotiations between the federal government, provinces and territories, between 2014 to 2017, and replaces an earlier agreement on internal trade. It aims to reduce interprovincial barriers to trade in goods and services, investment and mobility.

Box A.5: The Regulatory Reconciliation and Cooperation Table

The Canadian Free Trade Agreement provided for a regulatory reconciliation process as practical route to reducing barriers to interprovincial trade. Once a barrier to trade has been identified by the federal government, or one or more provincial or territorial governments, the issue is considered by the Regulatory Reconciliation and Cooperation Table (RCT), with a view to reconciliation.

Barriers may include a diverging or duplicative regulation that impedes the flow of goods, or a market distortion that disrupts the level playing field. Participating governments and regulators work towards a reconciliation agreement outlining how the barriers will be reduced, for example, through harmonization or mutual recognition. Governments may opt out of negotiations if they feel that reconciliation is not a desirable option. The current work plan has identified a range of measures on which reconciliation will be sought, including issues around occupational health and safety, interprovincial transport and trucking, food inspection, energy efficiency labelling, and the registration of businesses.

⁶⁷ Data compiled from calendar of Canadian Intergovernmental Conference Secretariat.

Decision-making and dispute resolution

109. As in most other systems, decision-making in Canadian IGR relies on finding a consensus between the federal government, the provinces and the territories. Disputes over both jurisdictional competences and funding are common.

Decision-making and agreements

110. Decision-making in Canadian intergovernmental relations is based on consensus and there are no mechanisms within intergovernmental forums for bringing decisions to a vote. While each government is expected to honour commitments made within sectoral conferences, agreements are not binding.
111. There is no guiding format for the drafting and use of intergovernmental agreements. The 2016-2017 Albertan register of international and intergovernmental agreements identified more than 200 such agreements. These were signed between the provincial government and other provinces, the federal government, foreign governments, and agencies like Global Affairs Canada, the Canadian Food Inspection Agency, and the Canadian Tourism Commission. They took the form of interprovincial agreements, memorandums of understanding, letters of intent, partnering agreements, financial agreements, and agreements for information sharing.

Dispute resolution

112. Canadian intergovernmental agreements are essentially political agreements, given adherence to the doctrine of parliamentary sovereignty. There is no legal framework for intergovernmental relations in the Canadian constitution and until the 1990s the status of these agreements was unclear.
113. A degree of legal clarity was brought by a 1991 case before the Supreme Court. Under the terms of the Canada Assistance Plan, the federal government contributed 50 percent of the costs for social assistance and welfare in British Columbia. In 1990, when the federal government introduced a cap on its contribution, the government of British Columbia referred the matter to the Supreme Court. The Court ruled that as the agreement on the Canada Assistance Plan was not legally enforceable, the federal government could not be constrained by it, and instead had a constitutional right to make unilateral changes to its contribution.
114. Historically, the role of the Supreme Court in resolving intergovernmental conflict has been more limited than in European federal systems. It can adjudicate on the constitutional division of power, but non-binding intergovernmental relations are not considered to be matters for the Court. The Court may rule on appeals and hear reference questions or abstract reviews requested by federal or provincial governments. For example, Alberta and Quebec posed reference questions to their provincial courts of appeals on whether a single national securities regulator proposed by the Securities Act in 2010 would fall within provincial jurisdiction. The Supreme Court ruled that it

went beyond the national interest, 'overreaches the legislative interest of the federal government' and was unconstitutional in its current form.⁶⁸

115. Federal funding is often a subject of dispute between provincial and federal governments. The Canada Health Transfer (CHT) is a block transfer to be used by the provinces for publicly provided health care, in accordance with priorities set by the federal government. It is an example of the federal spending power used as a tool to shape outcomes in fields of provincial jurisdiction. The amount of funding and the mechanism for annual increases were the subject of federal-provincial negotiations as part of the Canada Health Accord. In 2017, the Trudeau Government's CHT proposal was rejected by the provinces, resulting in a series of separate bilateral negotiations.
116. In order to reduce conflict, intergovernmental agreements often include a dispute resolution process, outlining the steps to be taken in the event of a conflict between the parties to an agreement. The 2017 Canadian Free Trade Agreement provided that signatories attempt to resolve disputes in a 'conciliatory, cooperative and harmonious manner'.⁶⁹ The agreement lists a process for government-to-government dispute resolution, which involves (i) consultation; (ii) a request for a panel; (iii) the establishment of a presiding body; and (iv) an appeal of the panel's decision to an appellate panel. It also sets out a similar process for person-to-government disputes. It has not yet been used but under the previous internal trade agreement, cases included interprovincial disputes over agriculture and dairy products.

Transparency

117. Canadian IGR is characterised by a low degree of transparency. There is a preference for formal executive summits and informal meetings of ministers and senior officials, with little information in the public domain.
118. Meetings hosted by the Canadian Intergovernmental Conference Secretariat have more documentation – the meeting agenda and concluding communiques are often published online. However, very little information is shared about the nature of negotiations and the positions taken by participants. Departmental annual reports issued by each province may contain the number of meetings and any notable achievements, but overall detail is limited.
119. There is no formal national register of agreements and it is difficult to estimate how many are signed each year. However, provincial governments often publish a list of agreements and in the case of Québec, are required by law to do so, with the Secretariat of Canadian Intergovernmental Affairs (SAIC) serving as a depository for all agreements. In Alberta, the Minister of the

⁶⁸ D. Pham (2012), 'Reference re Securities Act: What Are the Remaining Options for a National Securities Regime', *Ottawa L. Rev.* 44, p.561.

⁶⁹ Government of Canada (2017), *Canadian Free Trade Agreement*, p. 105.

Executive Council is required to approve all of Alberta's Intergovernmental agreements. In 2017-2018, it approved 330 agreements.⁷⁰

120. The role of parliaments in the scrutiny of IGR, either before or after meetings and agreements, is limited. Government departments may be required to file an annual report with provincial assemblies, but the level of detail provided can vary and may simply be the dates of meetings. Individual agreements are rarely scrutinised.

⁷⁰ Government of Alberta 2018. 2017-18 Executive Council Annual Report. Available at: <https://www.alberta.ca/government-and-ministry-annual-reports.aspx>.

Italy

Constitutional and political structure

122. Italy can be categorised as a ‘quasi-federal’ state. After its creation as a unitary state in 1948, the Italian Republic underwent a process of far-reaching, asymmetric decentralisation. Now, there are 20 regions in total, split into two categories - 15 ‘ordinary regions’ and five ‘special regions’ (3 Alpine regions in the north, plus the islands of Sardinia and Sicily).⁷¹
123. Since 2001, the Italian Constitution (Article 117) lists the exclusive powers of the central government. These are relatively wide-ranging, including matters such as public order and social security as well as standard central level powers such as foreign affairs and defence. A category of concurrent powers is also listed, in which the regions exercise powers within central frameworks. This includes health, education, planning and transport. All residual powers are regional powers, including agriculture and tourism.
124. The competences of each ‘special’ region are underpinned by a unique Statute of Autonomy. These statutes have constitutional status. The competences of each ‘special’ region differ from those of other (special and ordinary) regions.⁷² ‘Special’ autonomy arrangements have either been granted to appease tensions with national minorities (in the north), or to do justice to peripheral geographical situations (in case of the islands). Asymmetries have arisen as a result of differential demands and bargaining power (highest in the regions dominated by territorial minorities, especially South Tyrol; lowest in the islands). Further de facto asymmetries, also among ordinary regions, result from significant differences in economic performance.
125. All regions except Aosta Valley are sub-divided into provinces. Provinces have very limited powers. The Autonomous Province of Trento and the Autonomous Province of Bolzano-Bozen/Südtirol (South Tyrol) are an exception to this rule.



⁷¹ Map source: https://commons.wikimedia.org/wiki/File:Regions_of_Italy_with_en-wiki_names.png

⁷² T. Caponio, G. Testore and V. Wisthaler (2018), ‘Intergovernmental relations on immigrant integration in Italy: Insights from Piedmont and South Tyrol’, *Regional and Federal Studies*, online advanced access.

De facto, they function as regions in their own right. The region composed of the two provinces, Trentino-Alto Adige/Südtirol, has no relevant competences.

126. Disputes frequently arise over the management of ‘concurrent’ policies. Stemming from Italy’s unitary tradition, much of the central-state’s framework legislation is very detailed and thus substantially constrains the regions’ competence to pass complementary legislation.

Division of Competences: Italy	
State	<ul style="list-style-type: none"> Foreign policy Asylum and immigration Defence and armed forces Customs and border controls Currency State taxation and accounting systems Equalisation of financial resources Citizenship, jurisdiction and procedural law Civil and criminal law Administrative judicial system Public order and security, with the exception of local administrative police State bodies and relevant electoral laws, including state referenda and elections to the European Parliament Basic level of social benefits, social security General provisions on education Fundamental functions of the Municipalities Provinces and Metropolitan Cities Weights and measures; standard time Statistical and computerised co-ordination of public data Environmental protection Protection of cultural heritage Religious affairs.
Regions	Residual Powers
Concurrent	<ul style="list-style-type: none"> International and EU relations of the Regions Foreign trade Job protection and safety Education, subject to the autonomy of educational institutions and with the exception of vocational education and training; Professions Scientific and technological research and innovation support for productive sectors Health protection; Nutrition; Sport Disaster relief Land-use planning Civil ports and airports; large transport and navigation networks Communications National production, transport and distribution of energy Complementary and supplementary social security Harmonisation of public accounts and co-ordination of public finance and taxation system Enhancement of cultural and environmental properties, including the promotion and organisation of cultural activities Savings banks, rural banks, regional credit institutions

127. A number of recent proposals for constitutional reform have failed to progress, either as a result of a lack of consensus across the two party blocs, or by failing to secure popular support. In 2016, the proposal to reform the Senate into a chamber of territorial representation, combined with more centralising measures (e.g. the abolition of concurrent State-Regions competences and the abolition of the provinces) was rejected in a country-wide referendum.⁷³

The principles and purpose of intergovernmental relations

128. Intergovernmental conferences generally work on a consensual basis, underpinned by the constitutional principle of 'loyal cooperation'.⁷⁴ The principle was first been developed through the jurisdiction of the Constitutional Court and is now enshrined in Art. 120 (2) of the Constitution, alongside the principle of subsidiarity. The standard mode of decision-making in IGR conferences is to resolve problems in technical meetings, then bring matters to the agenda of the States-Regions and Unified Conferences only where there is already agreement.⁷⁵
129. Coordination is one of the main aims of multilateral, vertical IGR in Italy. Article 6 of the presidential decree details that the '*State-Regions Conference promotes the exchange of data and information on the activities carried out by the central and regional administrations*'.⁷⁶ For example, this channel is used to inform the regions about the state's activities at the EU-level, though often with too narrow a time frame for the regions to respond adequately.⁷⁷
130. Multilateral IGR forums predominantly serve as advisory bodies to the state government, providing a forum within which regions can be consulted on matters affecting their competence. For example, the 'Unified Conference', which brings together state, regional and local representatives, was the primary consultative body during the reform of 'fiscal federalism' in the late 2000s. The state government's aim was to organise the distribution of public funds according to the '*necessity of guaranteeing full funding of the essential levels of expenditure related to civil and social rights and the fundamental functions of local authorities throughout the entire national territory*'.⁷⁸ However, there is

⁷³ J.B. Draege and J. Dinnison (2018), 'Making sense of Italy's constitutional referendum', *Mediterranean Politics* 23:3, pp. 403-409.

⁷⁴ F. Palermo and K. Kössler (2017), *Comparative federalism: constitutional arrangements and case law*. Oxford: Hart.

⁷⁵ Breton, A. and Frascini, A., 2016. Is Italy a Federal or even a Quasi-Federal State?. POLIS Working Papers, Istituto di Politiche Pubbliche e Scelte Collettive, Alessandria, 1À30.

⁷⁶ Art. 2.c of presidential decree d.lgs. n. 281/1997

⁷⁷ M. Falcone (2015), 'Il sistema delle Conferenze regionali in funzione europea: un necessario equilibrio tra principi unitari europei e principi autonomistici interni', *Istituzioni del federalismo: rivista di studi giuridici e politici*, 3

⁷⁸ <http://www.statoregioni.it/Dossier/DossierFederalismofiscale.pdf>

no obligation on central government to consult; the state carried out many related reforms without the formal consent of the 'Unified Conference'.⁷⁹

131. Regions can articulate their preferences regarding state policies in these forums but can be overruled by the central government.⁸⁰ If the regions are able to find a united position vis-à-vis the central state, they can use the State-Regions Conference to prevent encroachment into their autonomous sphere of competences, although conflicts over the allocation of competences are more frequently adjudicated by the Constitutional Court.⁸¹ The 'ordinary regions' rarely have much opportunity to exert influence over central government.
132. 'Special' regions have very efficiently deployed bilateral forms of IGR to expand their autonomy, with the northern, minority-dominated regions particularly successful in this endeavour. The latter regions also use informal bilateral channels to bargain for differentiated ways of how to implement state legislation.

Box A.6: Managing Immigration in Italy

Competences over immigrant integration in Italy cut across different levels of government. Remits vary depending on policy fields (housing, education etc.), and the groups of immigrants (asylum seekers or economic migrants). As migration has become a more salient issue in Italian political discourse since the 2000s, IGR dealing with the issue have become more frequent and more institutionalized.

A case in point was the creation of the 'Permanent Inter-Institutional Working Group' on language and 'civic' education in 2013. The body includes officials from the state ministries of the Interior and Education, as well as officials from regional education offices. It is designed to coordinate the implementation of integration courses run by the regions, in order to help immigrants meet integration targets set at the state-level. Interestingly, South Tyrol does not participate in this Inter-Institutional Working Group because education is a regional competence there. South Tyrol has thus negotiated rules for migrant integration bilaterally, in order to meet the region's linguistic particularities.

The machinery of intergovernmental relations

133. IGR in Italy reflects the asymmetry entailed in the country's decentralised system. The State-Regions Conference that brings together the heads of government of the state, the regions and the autonomous provinces tends to be dominated by the state and usually exerts only limited influence. Generally speaking, central government has the upper hand in the Conference system. While the regions do have powers to instigate meetings and table agenda items, this is in practice always the responsibility of the central government. Most of the time the issues discussed are central government proposals, and

⁷⁹ F. Palermo and A. Wilson (2014), 'The multi-level dynamics of state decentralization in Italy, *Comparative European Politics* 12:4/5, pp. 510-530.

⁸⁰ Falcone (2015).

⁸¹ L. Dell'Atti (2016), 'La Conferenza Stato-Regioni: vizi e virtù di un organo a "geometria variabile"', *Rivista Associazione Italiana dei Costituzionalisti*, 2.

the conferences serve as an institutional mechanism for these to be agreed to by the regions.

134. On the other hand, the 'special' regions have a privileged access to state officials through bilateral forums. The latter have particularly successfully been used by the Northern, minority-dominated 'special' regions to negotiate the expansion and implementation of their autonomous powers. 'Special regions' tend to favour bilateral forms IGR over the multilateral conferences. Bilateral IGR take the form of 'paritetic commissions', composed of an equal number of state and regional representatives. They agree by-laws to the 'special' autonomy statutes that, although subject to judicial review, are of a higher legal status than ordinary legislation. Particularly in Trentino-South Tyrol and the Aosta Valley, by-laws have been used to expand regional competences beyond what had originally been envisaged in the respective statutes. The commissions convene every time the members of the commission consider that there is a necessity to do so.

Primary forums for intergovernmental relations: Italy				
Forum	State-Regions Conference	Unified Conference	Bilateral Commissions ('special' regions)	Conference of Regional Presidents
Type of IGR	Vertical, multilateral	Vertical, multilateral	Vertical, bilateral	Horizontal, multilateral
Composition	Prime Minister/other state ministers, regional presidents	Prime Minister/other state ministers, regional presidents, representatives of 'ordinary' provinces and local level entities	Equal number of representatives from state and regions (politicians or experts)	Regional presidents, presidents of the two autonomous provinces
Frequency of meeting	Once or twice per month	Once or twice per month	No legal provisions on frequency; markedly more meetings in Trentino-ST and Aosta than other 'special' regions	Monthly meetings, plus in advance of State-Regions Conference; Called by the Conference president or at the request of 3 regional presidents
Decision-making	Consensual	Consensual	Consensual	Consensual, majority votes possible
Outputs	Agreements, opinions	Agreements, opinions	By-Laws to autonomy statutes	Resolution, opinions
Supporting structures	Secretariat at state level	Secretariat at state level	none	Secretariat, sub-committees

State-Regions Conference

135. The principle heads of government forum in Italy is the **State-Regions Conference**. Originally established in 1983, this body consists of the Prime Minister (who does not usually attend), the Minister for Regional Affairs (who usually chairs in the absence of the PM), each of the 20 regional Presidents and the Presidents of Trento and Bolzano (one of whom anyway attends as the serving President of Trentino-Alto Adige/Südtirol region). Unlike similar forums in some of our other comparators, its existence is enshrined in law with a requirement to meet at least every six months. In practice, it meets more regularly – usually once or twice per month.
136. The State-Regions Conference is allocated a variety of functions by statute, including a mandatory requirement to be consulted on bills, regulations and decrees relating to regional matters. It is also empowered to be a forum for concluding agreements. The State-Regions conference also has specific competences over EU matters. The functions of the Conference can be summarised as ‘advisory, decision-making, informative, reviewing and designating’.⁸² Nonetheless, although there are requirements for it to be convened and consulted, it has no binding powers and its resolutions can be overridden by the central government.
137. Meetings are convened by central government, which also sets the agenda. In practice the meetings often have a formal character, approving agreements made outside of the Conference. The approval of both the central government and a majority of regions is required for a decision to be made. Unanimity is, however, the usual practice.

Unified Conference

138. Heads of government also participate in the Unified Conference. This brings together the State-Regions Conference and the separate Conference of State, Cities and Localities, consisting of central government ministers and local government representatives. The Unified Conference is used primarily to discuss the system of fiscal federalism, which has implications for all levels of government. As with the State-Regions Conference, this is essentially an advisory forum and central government often presses ahead without agreement in the conference.
139. Within the Unified Conference, an ad hoc commission (*‘Commissione tecnica paritetica per l’attuazione del federalismo fiscale – COPAFF’*) has been set up to draft the implementation decrees for the 2009 fiscal federalism reform.⁸³ The COPAFF is composed of fifteen members appointed by central government and fifteen members appointed by the territorial entities. Besides the implementation of law 42/2009, its tasks are to act as an advisory body for

⁸² E. Ceccherini (2009), ‘Intergovernmental Relations in Italy: The Permanent State-Regions-Autonomous Provinces Conference’, *Revista de la Facultad de Ciencias Sociales y Jurídicas de Elche* 1:4.

⁸³ Legge 5 maggio 2009, n. 42

territorial entities and as a secretariat of the Permanent Conference for the Coordination of Public Finance (*‘Conferenza permanente per il coordinamento della finanza pubblica’*).

140. In 2011 a Permanent Conference for the Coordination of Public Finances was established to deal with fiscal federalism and financial management, in particular in the context of the EU Stability and Growth Pact. The Permanent Conference for the Coordination of Public Finances is a sub-committee of the Unified Conference, and includes the Prime Minister, seven central government ministers, the president of the Conference of Regional Presidents, the President of the National Association of Italian Municipalities (ANCI), the President of the Union of Italian Provinces (UPI), six regional presidents or ministers, four mayors and two provincial presidents.⁸⁴ It was set up in 2011 to co-define budget objectives (also with regard to tax pressure and indebtedness), advise on equalisation mechanisms, monitor the territorial entities’ compliance with set objectives and to promote the enforcement of convergence programmes as well as managing the system of rewards and penalties. The links between the Permanent Conference and the Unified Conference remits have been described as ‘far from clear’.⁸⁵

Sectoral forums

141. The website of the State-Regions and Unified Conferences indicates a number of committees/working groups that report to it on specific issues. These ‘technical tables’ mostly deal with technical issues relating to implementation of particular agreements.

Joint Commissions

142. In the case of the five ‘special regions’ there are joint commissions established on a bilateral basis, consisting of an equal number of representatives of each government. The main purpose of these is to discuss changes to a region’s autonomy statutes. The Commission for Trentino-Alto Adige/Südtirol (‘The Commission of the Twelve’) includes a separate sub-commission exclusively dedicated to the Province of South Tyrol (‘Commission of the Six’). The latter is composed of an equal number of German-speakers and Italian-speakers.
143. The commissions for Trentino-South Tyrol and Aosta Valley usually include elected politicians, whereas the commissions for the other ‘special’ regions are dominated by non-elected experts. The Northern commissions have used these forums to secure further devolution.

Conference of Regional Presidents

144. Regions established the Conference of Regional Presidents for the purposes of horizontal co-ordination. All Presidents participate. The President and Vice-President of the Conference are always drawn from opposing political

⁸⁴ art. 34, d.lgs 6 maggio 2011, n. 68

⁸⁵ A. Breton and A. Frascini (2016), *Is Italy a Federal or even a Quasi-Federal State?*, POLIS Working Papers, Istituto di Politiche Pubbliche e Scelte Collettive, Alessandria, 1À30.

coalitions. It seeks to form common positions ahead of State-Regions Conferences and Unified Conferences, and often publishes joint declarations.

Decision-making and dispute resolution

Decision-making and agreements

145. There are two different types of agreements that the State-Regions Conference can reach: *intese* and *accordi*.⁸⁶ Under both mechanisms, unanimity is the norm, but majority voting can determine outcomes when unanimous decision making can't be reached.

- *Intese* are agreed in every instance where central law so requires. The central authorities have to take the initiative. If no agreement is reached within thirty days of the first session in which the issue has been placed on the Conference's agenda, the state government can proceed without consent. In such cases, the government is required to justify its actions.
- *Accordi* are used to coordinate the policies of the state and the regions in policy fields that are attributed to different levels of government.

Italian law defines which of the two instruments shall be used by which conference on which occasion.

146. The State-Regions Conference can also express 'opinions' (*pareri*). The opinions are obligatory on all draft laws, legislative decrees or Government regulations that have implications for the Regions and autonomous provinces, and when required by specific regulatory provisions (as in the case of EU legislation that affects the regions' competences). In practice, this means that the regions can request to issue an opinion, even if the legislative measure in question does not touch upon their competences.

147. Opinions are voted by majority, and must be expressed within twenty days. If the Prime Minister considers a subject to be a matter of urgency, he can proceed without previous consultation of the Conference.

148. The Unified Conference can equally express 'opinions' on and give 'intense' and 'accordi' to legal and administrative matters that concern the lower levels of government (provinces, municipalities). This is particularly important regarding the attribution of funds ('fiscal federalism').

149. Intergovernmental agreements are signed between the central government and regions. This formally happens at meetings of the State-Regions and Unified Conferences, though in practice negotiations take place outside these forums, in official-level 'technical meetings' and the Conference of Regional Presidents. Agreements do not have legal status, although the Constitutional Court has ruled that the wider principle of 'loyal cooperation' means they should be taken

⁸⁶ art.3 and 4, del d.lgs. 28 agosto 1997, n. 281

as binding. This is a well-used mechanism: over 100 agreements were signed in 2015 and logged on the website of the States-Regions conference.

Dispute resolution

150. Disputes are frequent in Italian IGR. Litigation between governments has often been used politically by regions led by coalitions in opposition at national level. This is used to get the courts to make a statement about jurisdiction, even where they know this will result in a decision in favour of the central level.⁸⁷ Central government has also used the courts where regions have sought to stretch the limits of their jurisdiction. These cases also have a partisan character, usually being brought against regions led by parties in opposition at central level.⁸⁸
151. There can sometimes be tensions between the central government and the regions as a whole. This was the case under the 2001-2006 Berlusconi coalitions, which clashed regularly with the Conferences and often ignored them or tried to avoid seeking their views. One consequence was that the amount of litigation increased. The Constitutional Court has regularly been called upon to adjudicate disputes about competence and funding. There has, however, been a decrease in litigation recently, with case law now having clarified the legal position in many previously contentious areas, and the Conference-system taking on an increasing role in dealing with disputes.⁸⁹

Transparency

152. Most intergovernmental conferences have a dedicated website, on which various information and documentation is provided. However, the published records of conference meetings provide only limited details of the content of discussions and do not include a breakdown of voting results.
153. Agreements going back to 2007 are listed on the website of the State-Regions Conference.⁹⁰ This website also features data on the number of agreements of each type reached each year.⁹¹ In the past decade it has been usual for over 100 agreements in total to be reached every year.

⁸⁷ Palermo and Wilson (2014).

⁸⁸ Caponio, Testore and Wisthaler (2018).

⁸⁹ Ceccherini (2009).

⁹⁰ Conferenze Stato Regioni ed Unificata, 'Gli Atti', http://www.statoregioni.it/Lista_Documenti.asp?tipoDocumento=2&PAG=1&CONF=CSR, last accessed 4 September 2018.

⁹¹ Conferenze Stato Regioni ed Unificata, 'L'Attività', <http://www.statoregioni.it/attivita.asp?CONF=CSR>, last accessed 4 September 2018.

Spain



Constitutional Structure

154. Spain is a quasi-federal state consisting of 17 autonomous communities (ACs) with far-reaching constitutional competences. The classification of Spain as a federation is contentious as sovereignty is not legally divided and the centre remains constitutionally superior.
155. The Spanish Constitution draws a distinction between powers exclusive to the central state (Article 149) and those which may be assumed by the Autonomous Communities (Article 148). The constitution notes that those areas not expressly assigned to the Spanish state may fall under the jurisdiction of the ACs as residual powers, but they must be claimed in the Statutes of Autonomy.
156. In practice, areas of concurrent jurisdiction have emerged. The central government has used framework legislation to set out the principles, bases and guidelines within certain policy areas, leading to limitations on the exercise of competences by the autonomous communities.
157. The development of multi-level government has resulted in periods of asymmetry and symmetry in the allocation of powers.⁹² Until the 1990s, the historic nationalities of Catalonia, the Basque Country and Galicia, along with the large region of Andalusia, Valencia and the Canary Islands, were distinctive constitutionally from the other ACs, having been fast-tracked to autonomy during the democratic transition, and allocated some additional competences. Over time, Spain became more decentralised and symmetrical, with the exception of the fiscal autonomy of the Basque Autonomous Community and Navarra. Recent and ongoing attempts at statute reform in relation to regions with strong identities suggest a return to the norm of asymmetry. The Basque Economic Agreement, derived from the medieval charter (foral) system, gives substantial tax powers to the three Basque provinces of Álava, Gipuzkoa and Biscay, in accordance with the tax and spending priorities of the Basque government. The Basque Government thus oversees the policy framework, the

⁹² C. Colino and A. Hombrado (2017), 'Spain: Complexity, Counteracting Forces and Implicit Change', in F. Karlhofer and G. Pallover (eds), *Federal Power-Sharing in Europe*, pp. 181-206. Baden-Baden: Nomos Verlagsgesellschaft.

rates of taxation, as well as the administration, collection and inspection, of all taxes levied within the Basque autonomous community, except for customs tariffs and social security contributions. An agreed payment (*cupo*) is transferred to central government to cover costs of services delivered to, or carried out on behalf of, the territory and residents of the Basque country. The *cupo* also includes a contribution to Spanish regional policy scheme according to its share of the Spanish economy. A similar agreement operates in Navarre.

Constitutional Division of Key Competences in Spain	
Spanish state	Citizenship and nationality; Asylum and immigration; Defence; International relations, including EU relations; Administration of justice, and commercial, criminal and penitentiary legislation; Foreign trade; Treasury, inland revenue, economic planning and state debt; Employment law; Social security; Key ports and airports, air traffic, and transport between autonomous communities; Merchant navy and shipping; Communications; Key public works; Basic (framework) legislation on: health; energy; environmental protection; civil legislation; public safety; cultural and artistic heritage; educational standards; professional and academic qualifications; technical and scientific research.
Autonomous Communities	Organization of institutions of self-government; Municipal boundaries, town and country planning, and housing; Public works, railways and roads (exclusively within the AC's territory); Ports of haven, recreational ports and airports; Health and hygiene; Social assistance; Promotion of culture and research, including the teaching of distinctive AC language; Agriculture and livestock raising; Inland water fishing, fish-farming and shellfish industry Woodlands and forestry, environmental protection management and water management; Promotion of economic development, culture, tourism, sports and leisure

158. The autonomous communities have a constitutional right to initiate statute reform. Reforms require bilateral agreement and the consent of both the regional and Spanish legislatures. Statute reforms may be challenged on the grounds of unconstitutionality and referred to the Spanish Constitutional Court. The Court's rejection and revision of several important articles of the 2006 new Catalan Statute of Autonomy provided the catalyst for nationalist mobilisation.

159. The Spanish Constitution recognises the autonomy of the ‘nationalities and regions’, while stressing the ‘indissoluble unity of the Spanish nation’ and the ‘common and indivisible homeland of all Spaniards’.⁹³ The drive for Catalans to have ‘the right to decide’ their future has exposed tensions in Spanish constitutional arrangements and profoundly challenged Spain’s multi-level democracy.

The principles and purpose of intergovernmental relations

160. The Spanish constitution incorporates some principles governing territorial organisation. These include the principle of solidarity, to be embodied in ‘*a fair and adequate economic balance between the different areas of the Spanish territory*’.⁹⁴ While the Constitution permits divergences between territories, it prohibits those which ‘*imply economic or social privileges*’.⁹⁵ The Constitution further underlines that all Spanish citizens have the same rights and obligations in all territories. It also prohibits measures which ‘*directly or indirectly hinder freedom of movement and settlement of persons and free movement of goods throughout the Spanish territory*’.⁹⁶
161. There is little reference to IGR in the Spanish constitution, although it attaches general principles to the Public Administration, including efficiency, hierarchy, decentralisation, deconcentration and coordination, and in full subordination to the law. Early Court rulings underlined that the principle of cooperation ‘*is implicit in the very essence of the form of territorial organization of the State that is implanted in the Constitution*’⁹⁷. Both the principle of cooperation and the principle of loyalty between all the public administrations was enshrined in Law 30/1992 on the *Legal System of Public Administrations and Common Administrative Procedure which was superseded by Law 39/2015*. This specifically applies to relations between administrative bodies, however, and was not intended to be a principle governing more political inter-ministerial relations between the Spanish government and the autonomous communities.⁹⁸
162. Nonetheless, an elaborate system of intergovernmental relations has evolved in Spain. The primary purpose of Spanish IGR is to coordinate national programming and legislation, ensure that legislation respects the constitutional division of powers, and develop common positions, particularly regarding European Union issues, the participation of the ACs in Eu bodies, and the distribution criteria for national and European funds.

⁹³ Constitution of Spain, s.2.

⁹⁴ *Ibid.*, s.138.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*, s.139.

⁹⁷ Spanish Constitutional Court, 18/1982, 4 May.

⁹⁸ V. Cuesta-López (2014), ‘Intergovernmental relations in Spain and the United Kingdom: the institutionalization of multilateral cooperation in asymmetric polities: the institutionalisation of multilateral cooperation in asymmetric polities’, *Perspectives on Federalism* 6:2, pp. E-219 – E-318.

163. Information exchange is also a central objective of Spanish IGR. Many intergovernmental agreements signed between the state and the ACs are agreements to share information or for the exchange of statistical data.

The machinery of intergovernmental relations

167. Although Spanish intergovernmental machinery developed in an *ad hoc* manner, many of these forums are underpinned by legal statutes (both the bilateral cooperation commissions and the sectoral conferences are set out in law 30/1992). However, their level of activity and efficacy is highly dependent on political dynamics, including party competition and the priorities and preferences of political actors such as central government ministers.

168. IGR are largely vertical, operating between the Spanish government and the Autonomous Communities. Attempts to establish more horizontal relations have not been fruitful. The Conference of Autonomous Community Governments was formed in 2006 but has not met since 2011 and is now inactive.

Primary forums for intergovernmental relations: Spain			
Forum	Bilateral Cooperation Commissions	Conference of Presidents	Sectoral conferences
Type of IGR	Bilateral	Multilateral	Multilateral
Composition	Representatives of central government and individual ACs	Spanish PM and Presidents of ACs	Relevant Spanish and AC ministers
Frequency of meeting	Ad hoc, dependent on AC	Ad hoc, fell into disuse between 2012 and 2017	Level of activity dependent on policy area
Decision-making	Consensus based,	Consensus based	Voluntary and non-binding
Outputs	Statutes of autonomy, bilateral agreements	Multilateral agreements (opt-in basis)	Multilateral agreements (opt-in basis)
Supporting structures	Secretariats within each government	Secretariat within central government	Secretariats, sub-committees and working groups

The Conference of Presidents

169. The Conference of Presidents includes the Prime Minister and presidents of the autonomous communities. Created in 2004, it was designed to provide a forum for the discussion and coordination of public policies and matters of national importance. It is supported by a preparatory committee and a secretariat, provided by the Minister of Territorial Politics and Public Administration.

170. Unlike the bilateral cooperation commissions and sectoral conferences, the Conference of Presidents is not founded in statute, but issued its own internal

regulations in 2009 and modified them in 2017. The Conference has three key purposes, set out in its internal regulations:

- discussing the overall direction of public, sectoral, and multilevel policies;
- strengthening the cooperative relationship between the state and the ACs; and
- promoting and guiding the work of the Sectoral Conferences and other multilateral bodies.

171. The Conference is chaired by the President of the Spanish Government (the Prime Minister), and the Spanish Government determines when to convene the conference and sets the agenda. However, a majority of ACs can call for an extraordinary meeting of the Conference of Presidents, and one third of ACs can also add a topic to an existing agenda. Meetings are *ad hoc*; it met only five times between 2004 and 2012, falling into disuse from 2012 onwards. The conference reconvened in January 2017, but neither the Catalan Government nor the Basque Government participated, a signal of their protest over the central government's refusal to sanction a Catalan referendum.⁹⁹
172. Outputs include accords and recommendations, which are made public following the meeting. ACs can opt-in to agreements, provided two thirds of ACs agree. In 2017, eleven agreements were signed on a wide range of issues, including employment, education, market unity, regional financing, and the participation by autonomous communities in EU affairs.¹⁰⁰
173. At the 2017 meeting, a revision of internal regulations was agreed. The agreement spoke to the need to routinise the Conference, including a commitment to annual meetings, an expansion of the role of the preparatory committee, and an introduction of a permanent secretariat to support its work.

⁹⁹ Spanish Government (2017), 'Concluding speech from the Spanish President', <http://www.lamoncloa.gob.es/lang/en/presidente/intervenciones/paginas/2017/20170126-rajoyconfpress.aspx/>, accessed 6 September 2018.

¹⁰⁰ Spanish Government (2017), 'Agreements signed by the Conference of Presidents', http://www.seat.mpr.gob.es/dam/es/portal/areas/politica_autonomica/coop_autonomica/Confer_Presidentes/17-01-17-ACUERDOS_CONFER_PRESIDENTES.pdf.pdf, last accessed 6 September 2018.

Sectoral conferences

174. Sectoral conferences are an important part of Spain's inter-governmental machinery, serving as a forum for multilateral cooperation. They were introduced in 1981 but given legal standing in 1992, and further developed in legislation in 2015.¹⁰¹
175. There are now 40 sectoral conferences although they vary in their degree of activity.¹⁰² In 2017, only 22 of the 40 had at least one meeting that year. The most active conferences, meeting at least three times per year, deal with finances, employment and labour policy, social services, and issues relating to the European Union, including agriculture and rural development, fisheries and the environment.
176. The outputs of sectoral conferences in 2016 include agreements on funding for agriculture and food programmes, healthcare, and social care, consultation on legislation with respect to education, housing, and social services, and reports from central government ministers and public servants on a range of matters.¹⁰³
177. Sectoral conferences are designed to facilitate the exchange of information, discussion and analysis of draft bills and draft regulations of both central and regional governments which may affect the competences of other administrations. Conferences are also used to adopt cooperation agreements. Sectoral conferences convened around a European policy area (e.g. fisheries)

Box A.7: Functions of the Sectoral Conferences (Article 148 of Law 40/2015)

- Be informed about draft laws and regulations... when they directly affect the scope of competence of the other Public Administrations...
- Establish specific cooperation plans between Autonomous Communities in the corresponding sectorial matter, seeking the elimination of redundancies, and the achievement of a better efficiency of public services.
- Exchange information on the actions planned by the different Public Administrations, in the exercise of their powers, and that may affect the other Administrations.
- Establish mechanisms for the exchange of information, especially statistical content.
- Agree on the internal organization of the Sectoral Conference and its method of work.
- Establish the objective criteria that serve as the basis for the territorial distribution of budget credits, as well as their distribution at the beginning of the fiscal year.

¹⁰¹ Law 30/1992 on the Regulatory Framework for Public Administration and the Common Administrative Procedure, gave them legal standing, expanded in Law 40/2015 (articles 137-150) on Spanish Public Law Legal System.

¹⁰² Law 40/2015 (Article 149) stipulates that meetings should be held at least annually but this has not been upheld.

¹⁰³ Spanish Government (2016), 'Report on the Activities of the Sectorial Conferences in 2016' http://www.seat.mpr.gob.es/en/portal/areas/politica_autonomica/coop_autonomica/Conf_Sectoriales/Documentacion/Conf_Sect_anuales.html, last accessed 5 September 2018.

have additional responsibilities to shape Spain's EU policy ahead of meetings of the European Council.

178. Sectoral conferences have been used in recent years to discuss harmonising regulations to meet the requirements of law 20/2013 on the Guarantee of Market Unity. This law is intended to rationalise and harmonise regulatory frameworks on economic activities not covered by EU regulations, but was regarded by many autonomous communities as a centralising measure.
179. Sectoral conferences are convened and chaired by the relevant Spanish government minister. For example, the Minister of Health, Social Services and Equality is responsible for conferences on health, social services, consumer matters, equality, and the national drug plan. A minister from an AC serves as the vice chair. The procedure for the selection of the vice chair is set out in the statutes of each conference.
180. Conferences include a plenary session, advisory councils, commissions and working groups. The conference secretary is appointed by the conference president and is charged with preparing the agenda, attending meetings where he/she can provide technical input but not vote, and perform key support functions. Agendas are circulated in advance of and each item on the agenda is identified as an item for consultation, decision-making or coordination.
181. Although the importance of sectoral conferences has increased in recent years, they are perceived by many within the autonomous communities as a political initiative of the centre. The Basque and Catalan Governments challenged early efforts to institutionalise the sectoral conferences as an unconstitutional intervention in their sphere of autonomy. While the Constitutional Court rejected this claim, it ruled that sectoral conferences could not impose a cooperation agreement on the ACs¹⁰⁴.

Bilateral cooperation commissions

182. Bilateral cooperation commissions (BCCs) were introduced in 1983 to negotiate statutes of autonomy and facilitate the transfer of competences. They are also intended to prevent conflict arising between governments.
183. BCCs were given statutory underpinning in 1992, through law 30 on the *Regulatory Framework for Public Administration and the Common Administrative Procedure* (which also set out the statutory basis for the sectoral conferences). This law set out their membership and their remit as bodies for cooperation on general issues. Each bilateral commission agreed its own statute.¹⁰⁵
184. BCC remits have since been extended, Law on the Constitutional Court and the revised Statutes of Autonomy. The Spanish Parliament expanded the

¹⁰⁴ Constitutional Court Judgement, 76/1983 5 August.

¹⁰⁵ Statutes of Bilateral Cooperation Commission. http://www.seat.mpr.gob.es/portal/areas/politica_autonomica/coop_autonomica/comisiones_bilaterales/normas_funcionamiento.html, last accessed 5 September 2018.

responsibilities of the Bilateral Commissions in *Organic Law 1/2000*, including seeking to prevent conflicts between governments and reduce the number of matters referred to the constitutional court. Bilateral commissions were further developed in the new generation autonomy statutes which set out a model for more extensive bilateral cooperation. Catalonia, Andalusia, Aragon, Castilla y Leon and Extremadura each made the BCCs permanent institutions in their reformed statutes. Some ACs have identified additional subcommittees relevant to their concerns.

185. Commissions are composed of equal representation from central and AC governments, and each party has the right to request a meeting. The presidency of the BCC rotates between the state government and the autonomous community. Their work is supported by secretariats within the respective governments (in the Spanish Government, this role is served by the Minister of Territorial Politics and Public Administration), subcommittees, and working groups. Decisions are reached by consensus.
186. Commissions do not always meet to a regular schedule. Their frequency also reflects the state of relationships between the individual ACs and the central state. The Catalan commission fell into disuse in 2011 (reconvening in August 2018), as a result of deteriorating relations between the two governments.

Decision-making and dispute resolution

187. As with many of the other cases, decision-making relies on finding a consensus between The Spanish Government and the Autonomous Communities. The principle of voluntary cooperation underpins all IGR. Decision-making is more likely in areas where technical bodies have a prominent role and within the domain of European policy. However, jurisdictional disputes are common and are often referred to the Spanish Constitutional Court.

Decision making and agreements

188. Consensus is required for decision-making in most of Spain's intergovernmental forums. However, some sectoral conferences allow for decision-making by majority, even if consensus is the preferred outcome. Agreement of both the Spanish and AC government is required for bilateral agreements, and statutes of autonomy must be endorsed by the Spanish Parliament. Bilateral agreements are binding and legally enforceable.
189. Formal agreements are common – in 2016, 375 conventions and 113 accords were signed.¹⁰⁶ Agreements were found mostly in agriculture, food and the environment (66), finance and public administration (65), defence (51) and health, social services and equality (49). The average number of agreements signed with each autonomous community was 25. This was a decline from the previous years – outputs peaked between 2006 and 2010, with more than 1000

¹⁰⁶ Spanish Government (2016), 'Report on Collaboration Agreements signed by the State and Autonomous Communities in 2016', http://www.seat.mpr.gob.es/en/portal/areas/politica_autonomica/coop_autonomica/Convenios_Colaboracion.html, last accessed 6 September 2018.

agreements signed between the Spanish Government and the ACs during these years.

190. General subscription agreements are also common. These are model agreements, signed bilaterally between the Spanish Government and an individual AC, but consistent in form. In 2016, such agreements were reached in education, industry and competitiveness, social security, and justice.
191. Within sectoral forums, there are two main outputs (outlined in the recent revision to the administrative law): agreements adopted by the approval of all members, and agreements reached by a favourable vote by the central government minister and the majority of AC representatives. Each agreement must state the objectives, actions of each administration, the contributions of personnel, material and financial resources, and mechanisms for monitoring, evaluation, and modification. These agreements are binding on consenting parties.
192. Recommendations may also be made by sectoral conferences. These recommendations express the opinion of the conference on a matter submitted to it for consultation.
193. A single or several Autonomous Communities cannot block cooperative agreements, as these are drafted on an opt-in basis. Autonomous Communities can opt in to agreements but they are not *required* to do so. They can choose to opt in at a later date.

Dispute resolutions

194. Intergovernmental agreements typically include a procedure for dispute resolution, but jurisdictional disputes are frequent in Spain and often end up before the Spanish Constitutional Court, as is evident below.

Spanish Constitutional Court: Cases 2011-2016			
Complainant	Unconstitutionality appeals	Conflicts	Negative conflicts of jurisdiction
Spanish State	77	15	3
Autonomous Community	115	21	-

195. Efforts have been made to reduce the number and intensity of disputes through *ex ante* scrutiny of legislation within bilateral commissions and sectoral conferences. In practice, however, jurisdictional conflicts are typically resolved through judicial review by the Constitutional Court.
196. One of the Constitutional Court's primary functions is to review *ex post* the constitutionality of legislation. These cases represent a large proportion of the Court's caseload. During the 10th legislature (December 2011-January 2016), 213 cases were presented. The majority of AC complains originated from

Catalonia (47) and the Basque Country (19). This was a dramatic increase from the preceding legislature and the number of cases peaked in 2013.¹⁰⁷

Transparency

197. Spanish IGR within official intergovernmental forums has typically demonstrated a very high degree of transparency. The Spanish Ministry for Territorial Politics and Public Administration provides detailed information on bilateral cooperation commissions and meetings of the Conference of Presidents. A register of cooperation agreements is published twice a year. An annual report (published up to 2016) routinely detailed the number and type of agreements made, as well as the financial commitments they entailed. Some autonomous communities maintain registries of intergovernmental agreements.
198. Until 2017, the dates, agendas, and key points of discussion of Sectoral Conference meetings were published in an annual report. Law 40/2015 stipulated that bodies formed for cooperation must be registered with the State Electronic Registry of Cooperation Bodies and Instruments. Bilateral or ad hoc discussions between governments are less visible, with fewer public records of meetings and outcomes.
199. The Spanish national legislature has oversight over agreements forged between autonomous communities. Any collaboration agreements must be communicated to the Spanish Parliament before coming into force. Agreements between the Spanish government and the ACs are not subject to these requirements.
200. The availability of information aids transparency but the legislatures of the autonomous community have very little role in the scrutiny of IGR. AC governments are often obliged to inform their respective parliaments that an agreement has been signed, but there is no requirement for parliamentary approval. Statute reform is an exception, with the regional parliament playing a role in the negotiations.

¹⁰⁷ Spanish Government (2016), 'Report on State-Autonomous Community Conflict during the 11th legislature', http://www.hacienda.gob.es/Documentacion/Publico/SGT/CATALOGO_SEFP/175_XI-LEGISLATURA_JULIO_CIERRE_2016.pdf, last accessed 6 September 2016.