EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

AGENDA

4th Meeting, 2004 (Session 2)

Tuesday 24 February 2004

The Committee will meet at 2.00 pm in Committee Room 2.

1. The Irish Presidency of the European Union and the priorities of the Scottish Executive: The Committee will hear from—

   Mr Andy Kerr MSP, Minister for Finance and Public Services
   Alastair Wilson and Tim Simons, External Relations Division, The Scottish Executive

2. The Scottish Executive’s European Strategy: The Committee will hear from—

   Mr Andy Kerr MSP, Minister for Finance and Public Services
   Alastair Wilson and Tim Simons, External Relations Division, The Scottish Executive

3. Convener’s Report: The Convener will update the Committee on the—

   Briefing paper on the Decision of the European Commission in the case of Ryanair and Charleroi Airport
   Monthly report on the external relations activities in the Scottish Parliament

4. Pre- and post-EU Council scrutiny: The Committee will discuss the agendas and information received from the Scottish Executive on the following meetings of the Council of the EU—

   Forthcoming Councils

   Education, Youth and Culture Council, 26 February
   Environment Council, 2 March
5. **Implementation of EC legislation:** The Committee will consider a proposal from the Scottish Executive to implement EC legislation using section 57 (1) of the Scotland Act, specifically the Council Regulation (EC) 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights.

**Stephen Imrie**  
Clerk to the Committee  
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The following papers are attached for this meeting:

**Agenda Item 1**
Scottish Executive’s Paper: Ministers’ EU Policy Priorities for the Irish Presidency

**Agenda Item 2**
Scottish Executive’s European Strategy
SPICe *Private* Briefing Paper: Areas of questioning *(to follow)*

**Agenda Item 3**
Convener’s Report

**Agenda Item 4**
BRIEFING PAPER: “Pre- and post-Council of the EU analysis and scrutiny”
BRIEFING PAPER: “Correspondence received from Scottish Executive on pre- and post-Council”

**Agenda Item 5**
PRIORITIES FOR THE IRISH PRESIDENCY

MINISTERS’ EU POLICY PRIORITIES FOR THE IRISH PRESIDENCY

INTRODUCTION BY THE MINISTER FOR FINANCE AND PUBLIC SERVICES

More than three-quarters of the work of the Scottish Executive and the Scottish Parliament is influenced by decisions taken in Brussels and Strasbourg. This means that it is crucial that we work hard to ensure that decisions made at the EU level reflect Scottish interests. The Executive is determined to play a positive role in influencing EU policy and to seize opportunities for Scotland that active engagement in the EU can bring, while continuing to protect Scottish interests.

The Executive’s European Strategy sets out how we will focus our efforts on prioritising and engaging on the key issues likely to have a significant impact on people’s lives in Scotland.

This paper outlines the key priorities for the next six months across Scottish Executive Departments. It brings together statements from my Cabinet colleagues of their EU policy priorities for the Irish Presidency and demonstrates that the Executive continues to be actively and dynamically engaged in the EU policy process.

I hope this paper proves helpful in assisting the European and External Relations Committee, and all Scottish Parliament Committees whose policy areas involve an EU dimension, to work with the Scottish Executive to make a positive contribution to Scotland’s engagement in EU issues.

ANDY KERR
STATEMENT BY THE MINISTER FOR FINANCE AND PUBLIC SERVICES

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for External Relations

The top priorities as stated by the Presidency

The Intergovernmental Conference: a Constitution for Europe

Following the failure of the Intergovernmental Conference (IGC) to conclude agreement on a Treaty establishing a Constitution for Europe at the December 2003 European Council in Brussels, the European Council called on the incoming Irish Presidency to hold discussions with Member States and report to the Spring European Council on the scope for agreement. The Irish Presidency is expected to conclude its series of bilaterals around mid-February. A major issue still to be resolved is arrangements for qualified majority voting. Member States will wish to protect the progress they had made in discussions on the various points of concern to them, but no agreement can be deemed to have been reached on individual aspects of the draft Treaty until the IGC reaches final agreement on the whole package.

Enlargement

The Accession of 10 new Member States\(^1\) will take place on 1 May. From this date, the new Member States will gain voting rights in the Council and ten new Commissioners from the new Member States will join the Commission. They will operate without portfolios until the new College of 25 Commissioners assumes office on 1 November. The Irish Presidency intends to take the necessary steps to integrate the new Member States as rapidly as possible into the Lisbon Strategy, Schengen Acquis and the economic policy co-ordination process.

Accession negotiations with Bulgaria and Romania will be taken forward under both the Irish and Dutch Presidencies, with a view to their joining the EU by the target date of 2007. A revised Accession Partnership with Turkey is intended to pave the way for a decision at the European Council in December 2004 to open negotiations with Turkey.

Beyond Enlargement: New Neighbours Initiative

Early in 2004 the Commission will present a detailed proposal for Action Plans with the Ukraine, Moldova, the Russian Federation, Morocco, Tunisia, Jordan and Israel. The Commission is expected to present its Communication on the New Neighbourhood Initiative to the Council and the European Parliament in May, with possible adoption of a Communication at the European Council meeting in June 2004.

\(^1\) The Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.
Important issues for the Scottish Executive to be dealt with by the Presidency

Promoting Scotland in Europe

The Executive will step up its work to promote Scotland in EU countries. It will intensify its work with Scottish partners through the Scottish International Forum, and UK partners including the FCO, the Scotland Office and the British Council. The Executive and other public sector bodies are participating in Scottish-themed events in Scotland and France as part of the "Entente Cordiale" programme, and will also undertake events in the Netherlands. The Scottish Affairs Office in the British Embassy in Washington is leading the Executive’s activity in the US to mark Tartan Day on 6 April. The Executive will also participate in the UK-wide public diplomacy campaign to mark EU enlargement, which will aim to foster links between young people in the UK and the Accession States. At the strategic level, the Executive will focus on promoting Scotland through the Fresh Talent initiative as a place in which to live, work and study, and on ensuring a coherent approach by the Scottish public sector to promoting accurate and up-to-date overseas perceptions of Scotland. The Executive will also participate in the European and External Relations Committee’s Inquiry into the Promotion of Scotland Worldwide.

Intergovernmental Conference

The Executive will continue to work with the UK Government and with other EU regions with legislative powers to ensure that the outcome of the Intergovernmental Conference respects Scottish policy interests. In particular, we will press for the proposals made by the Convention on the Future of Europe for enhancing the role of the regions in European decision-making to be incorporated in full in the Treaty to be agreed by the IGC.

Enlargement

The Executive remains strongly supportive of Enlargement. It is working with partners on a series of events to mark Enlargement and on fostering closer working relationships with the new Member States on an ongoing basis.

Prospects for Economy and Public Finance

The top priorities as stated by the Presidency

Future Financial Perspectives

A Commission Communication on the future financing of the Union from 2007 onwards is expected early in 2004. Discussion of the Communication in the Council should inform the subsequent preparation by the Commission of a full package of financial and legislative proposals.

Important issues for the Scottish Executive to be dealt with by the Presidency
The Irish Presidency is urging a more concerted effort in the pursuit of the objectives set by the Lisbon strategy, which aims to make the European economy the most dynamic in the world by 2010. It intends to review and refocus the Lisbon process on improving competitiveness, boosting jobs and reaching sustainable economic development. The cross-cutting nature of the Lisbon agenda means individual workstreams relate to a variety of Ministerial portfolios. The Irish Presidency is looking to deliver concrete progress towards the Lisbon goals. This includes work on the following issues:

- Boosting investment in research and development and advancing the internal market (ELL portfolio);
- Supporting infrastructure investment by continuing to lever private sector and European Investment Bank backing for investment in transport, energy and IT networks (FPS, Transport and ELL portfolios);
- Enhancing job creation and promoting investment in training (ELL portfolio);
- Strengthening social protection and inclusion (Communities Portfolio);
- Furthering sustainable development – particularly through the promotion of innovation and investment in clean technologies (ELL and ERAD portfolios).

The Scottish Executive welcomes the continued commitment of successive Presidencies to the Lisbon strategy. The Lisbon strategy mirrors the Executive’s goal of creating the conditions to maximise sustainable economic growth in Scotland. Our economic strategy aims at improving productivity, competitiveness and growth, while respecting the environment and strengthening the social fabric.

We especially welcome the Irish Presidency’s goal to deliver tangible progress and prioritise EU action on the basis of the evidence laid out in the “Synthesis report” adopted on 21 January. We see evidence-based programmes and the setting of achievable targets at the heart of accountable policies that deliver concrete benefits.

ANDY KERR
STATEMENT BY THE DEPUTY FIRST MINISTER AND MINISTER FOR ENTERPRISE AND LIFELONG LEARNING

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

The top overall priorities as stated by the Presidency – applies to the whole portfolio

- The Presidency is keen to maintain momentum on the Lisbon Agenda which aims to make the European Union the most competitive and dynamic knowledge-based economy with improved employment and social cohesion by 2010.

Prospects for Enterprise and Internal Market Policy

The top priorities as stated by the Presidency

The Irish Presidency will also look to complete the Financial Services Action Plan which is regarded as vital in completing the Lisbon Agenda to allow further financial integration in the Union. The Presidency will work with the Parliament to push forward with the financial services legislative programme.

Important issues for the Scottish Executive to be dealt with by the Presidency

The Financial services sector is a significant part of Scotland’s economy and the Action Plan will impact on Scotland’s firms. Financial Services regulation is reserved, but the Scottish Executive is working with key sector leaders to ensure Scottish interests are recognised.

The Scottish Executive is aware of the detail of the Entrepreneurship Action Plan which currently fits with the approach the Executive is already taking under the Framework for Economic Development (FEDs) and Smart Successful Scotland (SSS).

The expected proposal for a Directive on the Internal Market in Services is for a wide-ranging framework Directive that will eliminate the obstacles to freedom of establishment for service providers and the free movement of services between Member States. Given the scope of the proposals contained in the Directive (including as it does the provision of a broad range of professional, legal, business, employment, security, environmental and health services), the Directive has the potential to be an important issue for all Member States. It is unclear as yet if there will be any specific Scottish interests as the full implications of the proposed Directive are still being considered. The Executive will be working closely with the Department for Trade and Industry (DTI) to ensure that Scottish interests are represented, and that the distinctive qualities of Scottish service sectors are fully considered.

Implementation Issues

None.
Prospects for Employment Policy

The top priorities as stated by the Presidency

Progressing the Lisbon Agenda (see above).

Important issues for the Scottish Executive to be dealt with by the Presidency

Whilst the lead in Employment and Industrial Relations is reserved, Scottish Executive officials will continue to work with Whitehall colleagues and contribute on any Scottish interests arising from the 2004 Employment Package.

The Presidency is arranging an exchange of views at the March Council on the recently published Communication on the Working Time Directive. The two recent Court judgements (SiMAP and Jaeger) concerning the definition of working time have particular impacts on the UK and on Scotland, especially in the health sector. Whilst the Scottish Executive Health Department are dealing with the front line implications, the recent rulings may also have a bearing on other sectors with a resident/on call element, including the Fire Service and offshore oil workers.

Implementation Issues

None.

Prospects for Lifelong Learning Policy

The top priorities as stated by the Presidency

The Presidency will focus on making progress with the Directive against Unfair Commercial Practices and the Directive on Mutual Recognition of Professional Qualifications. The Irish Presidency also regards education as a central element of the Lisbon Strategy and its theme for the education and youth aspect of the presidency is ‘Building an Inclusive and Competitive Europe’.

The Presidency will continue the work begun in Italy on the preparation of the draft joint interim report on the work programme for the pursuit of the objectives of education and training systems in Europe. They will also begin discussions on the next generation of education and training programmes for the years after 2006 (Socrates, Leonardo da Vinci, Tempus) and plan to reach Political Agreement on the ‘Europass’ proposal.

Important issues for the Scottish Executive to be dealt with by the Presidency

We continue to support the Mutual Recognition of Professional Qualifications Directive’s purpose in simplifying processes in order to improve worker mobility throughout the EU. However, it is important that issues relating to public safety, quality standards and professional consultations continue to be taken into account.

Also, the Scottish Executive is keen to maintain formal mechanisms with framework developments in the UK and in Europe to ensure the Scottish Credit and Qualifications
Framework (SCQF) can influence framework developments where possible. We support any policy which simplifies processes to allow mobility and transferability between different types of learning, and between nation states.

**Implementation Issues**

None.

**Prospects for Energy Policy**

**The top priorities as stated by the Presidency**

The Irish Presidency will devote great attention to the recent package of Commission proposals on *Energy Infrastructure and Security of Supply*. The package contains proposals on gas cross-border regulation, modifications to the Trans-European Energy networks (TENs) guidelines, safeguarding security of electricity supply and infrastructure investment, and energy end-use efficiency and energy services. The Presidency is also committed to ensuring sustainable development of energy.

**Important issues for the Scottish Executive to be dealt with by the Presidency**

See top priorities above.

**Implementation Issues**

The Scottish Executive is committed to developing Scotland’s renewable energy resource as this can provide environmental and economic benefits as well as promoting security of supply. We have set renewable electricity generation targets of 18% and 40% by 2010 and 2020 respectively and a funding mechanism for community and domestic scale renewable energy schemes has also been successfully introduced.

Our energy system is today facing a number of substantial challenges posed, in particular, by the threat of climate change, the implications of reduced UK oil, gas and coal production, and the need to update or replace much of the UK’s energy infrastructure. The Scottish Executive is working closely with the UK Government to address these issues in order to maintain the secure and reliable energy system that is vital to our modern economy.

We are fully committed to the further development of the UK energy markets and we are working closely with the UK Government, Ofgem and the industry on the development of the British Electricity Trading and Transmission Arrangements (BETTA). BETTA will create a unified wholesale electricity market across Great Britain, extending the benefits of increased competition to Scottish consumers and generators.

The Scottish Executive is committed to promoting the environmental and economic benefits of energy demand side management through its funding of the Energy Saving and Carbon Trusts in Scotland, and its support for local measures and initiatives through the Enterprise network. It fully supports policies that will help to improve the energy efficiency of enterprises and public sector organisations such as the proposed Directive on End Use...
Efficiency and Energy Services, although such a directive would require close scrutiny in consultation with DEFRA and with industry stakeholders.

Prospects for Telecoms and Information Society Policy

The top priorities as stated by the Presidency

The Presidency’s top priority in this area is to encourage the universal availability of affordable broadband as part of the mid-term review of the eEurope Action Plan, which is part of the Lisbon strategy. The aim of the current action plan (eEurope 2005) is to stimulate secure services, applications and content based on a widely available broadband infrastructure throughout the Union by 2005.

Important issues for the Scottish Executive to be dealt with by the Presidency

See top priorities above.

Implementation issues

The Executive is making good progress towards this priority. Broadband coverage in Scotland has risen beyond commercial projections from 57% in December 2002, at the update of the strategy and launch of new initiative, to 70% at the present time. The public sector contribution to this to date has largely taken the form of demand stimulation through awareness-raising programmes, incentives and facilitating the development of service suppliers.

Whilst continuing to stimulate demand for broadband over the remainder of this financial year and in the next, the Executive is currently considering whether and how a supply intervention could be implemented to reach the most remote homes and businesses in Scotland. This is clearly in line with the eEurope 2005 aspirations, and received further encouragement recently when the Commission launched the Growth Initiative last year with €50 billion European Investment Bank (EIB) support to boost private investment in trans-European networks in broadband and transport. Although expansion of broadband infrastructure is strongly encouraged by the Commission through strategies such as eEurope, direct interventions on the supply side by the public sector are restricted by State Aids regulations.

Prospects for Research Policy

The top priorities as stated by the Presidency

The Irish Presidency regards the mobility of researchers and the Action Plan to achieve 3% of GDP funding of research by 2010 as high priority. The Presidency has pledged to advance the creation of a European Research Area and has stressed the importance of this in the context of the Lisbon Strategy for a competitive and dynamic Europe. They also plan to facilitate discussion on basic or fundamental research and to examine measures to improve the mobility of researchers and the development of an effective intellectual property framework.
Important issues for the Scottish Executive to be dealt with by the Presidency

The May Council will examine the 2nd Progress Report on the implementation of the Life Science and Biotechnology Strategy. In the context of the Lisbon Agenda, the Commission announced to the Stockholm European Council in March 2001 its intention to set out in a Communication a strategic vision for life sciences and biotechnology up to 2010, and propose how to address ethical issues. On 5 March 2003, the Commission adopted the first report on the progress made on the implementation of this strategy. It sets out what has been achieved in policy development and on the ground, and anticipates emerging issues. The Second Report is expected soon. It is unlikely to contain any surprises and will again set out what has been achieved and look at emerging issues and future orientations. In the cases of GMOs and ethical stem cell research, not much progress has been made so there may be some repetition! The Strategy also refers to the Community Patent and Intellectual Property Protection but these are reserved areas.

Implementation issues

Scottish Enterprise is currently finalising its new biotechnology cluster Framework for Action to replace the original framework which ran from 1999 – 2003. The main thrust of the Commission’s strategy was very much in tune with the approach taken by the original framework and should again be reflected in this new one.

Also, the Strategy points up the opportunities available to companies and Higher Education Institutions (HEIs) under the Commission’s 6th Framework Programme: the Executive has introduced the SPAF and PACER programmes to assist companies and HEIs respectively to access these funds.

Prospects for European Structural Funds

The top priorities as stated by the Presidency

Progressing the Lisbon Agenda.

Important issues for the Scottish Executive to be dealt with by the Presidency

A debate has already begun on the future of the Structural Funds after the current programming period ceases at the end of 2006. The European Commission is expected to publish its Third Report on Economic and Social Cohesion in February. The Report will indicate its thinking ahead of the Commission’s formal proposals for reform, due in late spring. Negotiations between Member States will then begin in Council Working Groups and should culminate in agreement in the European Council of Ministers around late 2005/early 2006.

The Irish Presidency is holding an Informal Ministerial Meeting on Regional Policy on 27 February, which is expected to discuss the Third Cohesion Report. The Commission will then host a Cohesion Forum on 10-11 May. The Deputy Minister for Enterprise and Lifelong Learning is expected to attend the Forum, along with a number of Scottish partners.
Implementation Issues

The Scottish Executive is the managing authority for Structural Funds in Scotland, which are worth around £1 billion in the current 2000-2006 period. Under the Irish Presidency, the Scottish Executive and partners will continue to ensure that Scottish Structural Funds Programmes are spent effectively.

Prospects for State aid reform

The top priorities as stated by the Presidency

Progressing the Lisbon Agenda.

Important issues for the Scottish Executive to be dealt with by the Presidency

The European Commission is taking forward its commitment to State aid reform – both policy and procedural - and substantial progress is expected during the course of the Presidency. Draft proposals have been issued for measures which would provide simplified notification and approval procedures for aid which is not considered to have a significant impact on competition and trade. The UK can expect support, at least for the principle if not all the detail, from all Members States and the Accession countries given that the proposals should reduce the lengthy delays in getting Commission approval for new initiatives involving state aid which is classed as neither significant nor distortive. This represents tangible progress towards the commitment to focus Commission resources on unlawful and distortive state aids, which are anti-competitive and can hinder export efforts.

In addition the Commission has sought views from Member States on the regional aid guidelines which will apply post-2006. A Commission Communication outlining their thinking is expected to be issued during this Presidency. The DTI and the Treasury have the policy lead and the Executive is keeping in close contact with them to ensure that Scottish interests are fully reflected.

Implementation Issues

None.

JIM WALLACE
STATEMENT BY THE MINISTER FOR JUSTICE

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for Justice and Home Affairs

The top priorities as stated by the Presidency

The Irish Presidency has presented a programme of work in which it makes clear that one of its four priority objectives will be to develop the EU as an Area of Freedom, Security and Justice with the aim of a Safer Union for all citizens. A key focus of the Presidency will be to build on what has already been achieved and to take forward work on those measures specified by the Treaty of Amsterdam and the European Council in Tampere. The Tampere Programme will be coming to an end during 2004 and the Presidency will initiate the process leading to the development of the post Tampere agenda in the Justice and Home Affairs sector.

The Irish programme confirms that the Presidency will seek to:

• Improve security for Europe’s citizens by implementing action plans and work programmes including those directed to combating organised crime, drugs and terrorism as well as other forms of crime which pose a threat to the security to the citizens of the EU. Also making full use of Europol, the European Police College (CEPOL) and the Police Chief’s Task Force.

• In the field of judicial co-operation, the Presidency will focus on measures which take forward the principle of mutual recognition as the cornerstone of judicial co-operation in both civil and criminal matters.

• On the criminal side the Presidency will aim to finalise work on the Framework Decision on the application of the principle of mutual recognition to the execution in the EU of confiscation orders and also the Framework Decisions on the application of the double jeopardy principle and on a European Evidence Warrant.

• Work in the civil area will be directed toward the principle of mutual recognition and to facilitating better access to justice. The Presidency will prioritise work on the Council Regulation creating a European Enforcement Order for uncontested claims in conjunction with the European Parliament and will take forward work on the Directive dealing with Compensation to Crime Victims.

Important issues for the Executive to be dealt with by the Presidency

Justice Department Priorities in JHA

The Minister for Justice will work to ensure that EU JHA legislation is compatible with the principles of Scots criminal and civil law and that Scotland does not become a safe haven for criminals. Work will also be undertaken to increase the exchange of best practice with EU partners on areas such as tackling youth crime and cross border access to justice.
Scottish Justice Ministers will attend Council meetings during the Irish Presidency, where this is appropriate.

Civil Judicial Co-operation

- Top priority for the Presidency will be the Council Regulation creating a European Enforcement Order for uncontested claims. In practical terms agreement of and adoption of the proposal would speed up and simplify the recognition and enforcement of decisions in uncontested civil and commercial cases. Some court rule changes will be necessary. The Executive has been closely involved in negotiations on this dossier and officials have attended working groups in Brussels.

- The Regulation on the law applicable to non-contractual obligations (Rome II) will be taken forward during the Presidency. The regulation will decide which country’s law would apply to resolve an international dispute concerning a non-contractual obligation – anything from a negligence action arising from a road traffic accident to defamation to a claim based on environmental pollution. The most difficult area is likely to be defamation because of the need to balance freedom of expression against protection of reputation in a way which is acceptable across Europe.

- Following last years Green Paper further consideration will be given to the creation of European Small Claim and a European Order for Payment procedures. The Executive will be involved in negotiations on both these dossiers. Such procedures are considered beneficial in that they seek to simplify proceedings and, through the engagement of minimum standards and mutual recognition, will promote access to justice throughout the EU.

Criminal Law

- We expect the Commission to publish Green Papers on Bail and on Sentencing during the Irish Presidency. For the first time on criminal issues the Executive will be responding directly to the Commission on Green Papers as opposed to contributing to the UK response. The Executive has met with the Commission in advance of publication to discuss the likely scope of the Green Papers. It is anticipated that the Papers will consult on the principles and practicalities of extending the principle of mutual recognition to certain aspects of bail and sentencing. With regard to sentencing it is also anticipated that there will be consultation on the degree to which an element of harmonisation should form part of any future programme of measures.

- The Executive will also be involved in discussions with the Home Office on establishing the UK negotiating line on the Framework Decisions on the European Evidence Warrant and on Minimum Standards in Criminal Proceedings. The European Evidence Warrant is an order which would be issued by a judicial authority in one Member State to obtain evidence in another Member State. The Framework Decision on Minimum Standards in Criminal Proceedings will also be important as there is likely to be implications for Scots Law in a range of areas arising from these particular proposals. To consider these implications the Executive is planning to invite academics in the Scottish law schools to assist it in its work.
Police Co-operation

- Key issues for the Executive during the Irish Presidency will include the ongoing development of the European Police College, whose secretariat, following a decision at the end of last year, will now be located at Bramshill. The Presidency will be focussing on what customers need from the College and the Executive will be feeding in the views of the Scottish Police.

- The aim of the Presidency to make the Police Chief’s Task Force more effective is of interest to the Executive and we will again, in consultation with the Scottish police, want to feed in our views and take part in this debate to reflect Scottish interests.

- We will be involved in a Presidency-led initiative designed to remove obstacles on the use of joint investigation teams, which can be set up to tackle serious and organised crime affecting two or more Member States.

- We will ensure that the Scottish Police Service is represented at a key Joint Investigation Teams event being held in Dublin in February.

- And finally, we will be involved in exchanging best practice in the fields of youth crime and crime prevention through the organisation of a conference on the policing of youth crime.

Asylum and Immigration

A key area in the JHA field with the Presidency aiming to resolve outstanding issues on the Asylum Qualifications and Procedures Directive. Although asylum and immigration is reserved there may be implications for Scotland from some of the proposals and Justice and Social Justice colleagues are keeping in close touch with the Home Office on this dossier.

Implementation

Recent measures that have been agreed and are or are in the process of being implemented in Scotland include:

- The Regulation on Parental Responsibility which will apply from March 2005, and we are in the early stages of considering its implementation. This is likely to require an SSI, new Rules of Court and, more importantly, awareness raising with relevant interest groups, especially the legal professions. The Regulation itself is concerned with setting common rules of jurisdiction and ensuring rapid recognition and enforcement of court orders relating to matrimonial issues or residence of/contact with children.

- The Regulation on Taking of Evidence came into force on 1 January and the Executive has completed the legal work to bed this particular Regulation in.

- The Framework Decision on the European Arrest Warrant, which was agreed on 13 June 2002, has been implemented into Scots law by means of the Extradition Act 2003. The new Act came into force in 1 January 2004 and aims to simplify procedures for seeking extradition across the EU. As the Crime (International Co-
operation) Act 2003 is brought into force during 2004, the Crown Office will become the Central Authority for mutual legal assistance in criminal matters in Scotland. The Crown Office is now working with Scottish enforcement bodies to ensure the benefits of the new simplified process can be properly realised.

Best Practice

We are undertaking a number of measures in the order to exchange best practice with other Member States:

- Partners with Northern Ireland in a twinning project to improve the training and development of the Latvian State Police

- Working with partners to host a Policing of Youth Crime Conference in Scotland in July 2004

- Closer links with the Commission through visits, presentations to DG JHA on Scots Law and facilitating a visit to Scotland.

CATHY JAMIESON
STATEMENT BY THE MINISTER FOR EDUCATION AND YOUNG PEOPLE

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for Education and Youth

The education theme chosen for the Irish Presidency is ‘Building an Inclusive and Competitive Europe’. Accordingly, a major review of the Lisbon strategy will take place with the aim of achieving consensus among Member States on education and training issues and the preparation, for the Spring 2004 European Council, of the joint interim report on the work programme for the pursuit of the objectives of education and training systems in Europe.

The Presidency will begin discussions on the next generation of education and training programmes (for example, Socrates, Leonardo da Vinci, and Tempus) for the years after 2006.

At the May Council, the Presidency plans to progress the ‘Europass’ proposal for a single framework for the transparency of qualifications and competencies.

The Presidency also plans to agree a Council Resolution on Lifelong Guidance and Counselling, and Council Conclusions on quality assurance in vocational education and training and the validation of non-formal and informal learning.

Important issues for the Scottish Executive to be dealt with by the Presidency

The EU does not have competence over education and youth policies. However, the Executive will continue to monitor how the recommendations of the Commission or the Presidency impact on, or agree with, our existing policies, and current and future priorities in education and youth. For example, at a strategic level it is clear that the Irish Presidency regards education as a key driver for increasing competitiveness. This is wholly consistent with the acknowledged synergy between the Executive’s comprehensive plans to improve education in Scotland and the life opportunities of our children, and our commitment to growing Scotland’s economy.

During the Irish Presidency, areas of more particular interest and relevance include:

- **ICT in schools**, because of the relationship to a number of the National Priorities in Education, and to ongoing developments with the National Grid for Learning, where the Executive is working on several of the topics that will be covered by the Irish Presidency’s conference *New Futures for Learning in the Digital Age*;

- **Education funding programmes**, because Scottish schools, colleges and other organisations already participate in the current phase of European exchange programmes, which are beneficial in raising the European dimension in education. Exchanges of this nature have tremendous mutual benefits for pupils, students,
foreign language assistants, teachers, lecturers and others who are involved in such activities, and are obviously to be welcomed and encouraged.

- **The ‘Europass’ proposal** to establish a single framework guaranteeing transparency of qualifications and skills across Member States. It is intended that a coherent framework will emerge by bringing together a number of existing transparency instruments, such as the European CV, and establishing a Europass National Agency in each Member State. The Scottish Executive is keen to maintain formal mechanisms with other framework developments in the UK and in Europe to ensure the Scottish Credit and Qualifications Framework (SCQF) can influence framework developments where possible. We support any policy which simplifies processes to allow mobility and transferability between different types of learning, and between nation states.

- **Quality assurance in vocational education and training and the validation of non-formal and informal learning**, because of the potential relationship to the Executive’s plans enable 14-16 year olds to develop vocational skills and improve their employment prospects by undertaking courses in further education colleges as part of the school-based curriculum. The school/college review will consider, among other things, the arrangements for assessing and assuring the learning experience of school pupils undertaking college courses. The Scottish Credit and Qualifications Framework (SCQF) development partners have recently commissioned a consultant to commence an 18 month project to develop guidelines for recognising prior experiential, informal and formal learning. This work will be completed by 2005. Therefore, we would be particularly interested in any developments under the Irish Presidency which may inform this work.

**Implementation**

The Executive is not subject to EU obligations and priorities in this area.

**PETER J PEACOCK**
STATEMENT BY THE MINISTER FOR HEALTH AND COMMUNITY CARE

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for Health Policy

Top priorities as stated by the Presidency

The Irish Minister for Health and Children has identified three key themes in field of health:

- cardiovascular health;
- e-health; and
- patient mobility within the EU.

The main legislative issue will be a proposal to establish a European Centre for Communicable Disease Control. An EU Tobacco Control Conference is planned in Limerick in June 2004. Finally, the Presidency will want to complete work on and launch the European Health Card.

Important issues for the Executive to be dealt with by the Presidency

The most important issues to the Executive that will be dealt with by the Presidency are:

Cardiovascular health

Cardiovascular health is a priority for NHSScotland. We have a national Strategy for CHD and Stroke which covers the complete spectrum from primary prevention to rehabilitation. We have a similarly over-arching Scottish Diabetes Framework. There is an emphasis across the Executive on health promotion and disease prevention. One of the national demonstration projects, ‘Have a Heart Paisley’, is about translating into the Scottish context the benefits from the North Karelia experiment in a Scottish community which is the country in microcosm. The lessons from that project, and others of the same kind across the country, are being brought together and disseminated by a web-based Heart Health Network funded by NHS Health Scotland. The Executive’s Social Justice milestones include a reduction of 50% in premature mortality from cardiovascular disease by 2010, using 1996 as the baseline. At present, we appear to be on target to meet these milestones. Scotland will be particularly interested in learning about the progress the Irish Presidency makes in this area.

e-health

e-Health refers to the use of modern information and communication technologies to meet needs of citizens, patients, healthcare professionals and policy makers. Many eHealth issues, such as data privacy and public health, have a European dimension. A series of Ministerial Conferences has been established; the first took place in May 2003, with the second planned for 2004 in Ireland when the Irish Government will take stock of eHealth developments. eHealth is a component part of eEurope which has an action Plan setting out a number of policies and targets for both the European Commission and EU Member States:

“The European health insurance card (containing health information) will be adopted in 2008, replacing the paper-based forms citizens need for health treatment when in
other Member States. The eEurope 2005 target is to build upon this, using Commission proposals for a common approach to patient identifiers and electronic health record architecture, and create an European electronic health card.”

Scottish Executive Health Department has an eHealth Strategy which recognises the urgent need to establish an eHealth culture driven by clinical leaders and supported by Ministers. Specifically the Strategy commits to explore the use of the use of The 21st Century Government Citizen’s smartcard as a tool for accessing health records where they are required.

“Citizens should be able to access online health services (information on healthy living and illness prevention, electronic health records, teleconsultation and e-reimbursement, etc.) by the end of 2005. Member States are to develop these networks between points of care (hospitals, laboratories and homes), rolling out broadband connectivity where required.”

As part of Scotland’s eHealth Strategy we are developing plans for a ‘single information portal’ for citizen access to health information. This work will build upon the success existing projects such as Scottish Health On the Web (SHOW).

An additional strand of activity under eHealth is to make better use of modern information and communication technology in the area of joint working and integration across agency boundaries. This also fits under The Modernising Government Fund which helps to take forward projects involving the innovative provision of improved services to the public and contributes to the development of 21st Century Government for Scotland. A programme of work, eCare, is being supported in the Scottish Executive to take electronic information sharing forward between the public service agencies of Health and Local Government. This work is providing the electronic integration delivery mechanism for policies such as Joint Future and Changing Children’s Services. Part of the citizen empowerment activity will enable children to have direct access to their own assessment and service information on the web.

**Patient Mobility and the Future of Health Care Development in the EU**

The June 2002 Health Council set up a High Level Process of Reflection (HLPR) to look at patient mobility and the single market. The main focus was patient mobility in the light of recent European Court of Justice cases which suggested that the provision of health care services is subject to single market/freedom of movement EU rules. The HLPR also considered more generally the future directions of Health Care in the EU and what part the EU will play. The HLPR reported in December 2003, with a variety of recommendations aimed at Member States, European bodies and institutions and others.

The recommendations are divided into 5 main sections on:

- European Cooperation – looking at how cooperation could bring about a better use of resources and avoid duplication of effort. The recommendations mainly focus on information sharing, mapping exercises and mutual recognition of qualifications
- Information – looked briefly at data protection, e-health and information sharing
- Access and Quality. The UK chaired the working group on this. The group made recommendations aiming to better establish the motivations of patients who receive treatment abroad and how accessing other Member States health systems differed across Europe.
• Reconciling National Objectives with European Obligations. The UK was involved in this working group too. This looked at the interplay between the single market based ECJ rulings and Member States desires to operate equitable and financially sustainable health systems.
• Health related issues and the Union’s Cohesion and Structural Funds. The Accession States proposed looking at this issue.

Professional Mobility

A working group on Professional Mobility was also set up as part of this process. The report reflects this, with several recommendations on improving levels of data on motivations and effects of professional mobility.

The Commission is currently in the early stages of drafting a communication following up the HLPR report: this is expected to issue in March. This will be discussed at an Informal Ministers meeting under the Irish Presidency in May 2004. The Irish Presidency will be looking to make progress in taking this forward through the Public Health Working Group with a view to agreeing Council Conclusions at the June Council.

John Hutton is the DH Minister representing UK interests on the Group, DH continue to liaise with the Devolved Administrations on EU health matters.

Council Conclusions on Childhood Asthma

Draft Council Conclusions on Childhood Asthma are currently being considered in the Public Health Working Group. There is a conference on childhood asthma in Cork on 22 - 23 April and it is expected that further consideration of the draft conclusions will take place after that, to allow any messages coming out of the conference to be taken into account.

Following the conference, and after taking its proceedings into account, the Irish Presidency hopes to agree Council Conclusions on Childhood Asthma (not legally binding) at the June Council.

At present the Scottish Executive Health Department's Women and Children Unit are having preliminary discussions with NHS Quality Improvement Scotland (QIS) on developing child health standards. The initial work will focus on children with asthma as this condition involves a wide range of services and could cover a child's journey as a patient from home / life in the community through to emergency and specialist care.

WHO Framework Convention on Tobacco Control

Commissioner Byrne and the Greek Presidency were among the first to sign the World Health Organisation Framework Convention on Tobacco Control (FCTC) in Geneva on 16 June 2003. All Member States have now signed up for this Convention, which needs to be ratified both by Member States and by the EU. Ratification of the Convention by the EU will be sought at the June Council. A conference on tobacco control will be held in Cork in June. This whole area is of great interest to the Irish government: the ban on smoking in public places in Ireland commences in 2004.
Tobacco control is a key priority for the Irish Government. They are expected to drive forward implementation of the first international, legal instrument designed to counter the effects of tobacco consumption, the FCTC, during their presidency. Ratification of the Convention by the EU is expected to be sought at the June Council.

FCTC is significant also because it is the first ever treaty devoted to health adopted by almost all the countries of the world (all 192 WHO Member States). It covers a whole range of issues such as a comprehensive ban on tobacco advertising and sponsorship, controls on labeling of products, education about the health affects of tobacco, tackling smuggling, protection of the public from the effects of second-hand smoke and measures to reduce the availability of tobacco to young people. The measures contained in the FCTC are very much in line with our own domestic policies. The new Tobacco Control Action “A Breath of Fresh Air for Scotland” welcomes UK support for the Convention and commits the Executive to continuing to work closely with the UK Government to promote tobacco control at UK and international level.

Commissioner Byrne is an out spoken supporter of statutory controls on smoking in public places and we can expect a particular focus on that issue may arise during the Irish presidency. The Irish Government is proposing to effect a ban- through Health and Safety at Work regulation- on smoking in all enclosed places of work, with certain exceptions (e.g. prisons, hotel bedrooms, residential care homes etc). This was expected to be introduced in January 2004 but has been subject to delay and is not now expected to be delayed until mid-February. Plans to conduct a public debate in Scotland this year on the issue of smoking in public places were announced the Tobacco Control Action Plan.

European Centre for Disease Prevention and Control

In July 2003 the Commission issued a draft regulation to establish a European Centre for Disease Prevention and Control. This has been subject to detailed consideration at working group level. The December European Council decided that the new Centre should be located in Sweden (precise location yet to be determined). The Presidency hopes to reach political agreement on the proposal at the March Council. More generally on infectious diseases, the Commission propose to issue a working paper on preparedness for influenza. The Commission also intends to draft a preparedness plan for all pandemics later in 2004.

The Executive already recognise the benefits of collaboration on a UK and European level in public health matters and NHSScotland contributes to these networks. The Executive is also, in collaboration with other Health Departments, contributing to the development of the European Centre for Disease Prevention and Control, taking into account the emerging plans for health protection in Scotland, following consultation earlier this year.

Reform of the Community System for Medicine Authorisation and Traditional Medicines

Reform of the Community System for Medicine Authorisation

As the regulation of medicines is a reserved matter, the Medicines and Healthcare products Regulatory Agency is representing UK interests.
The Commission has issued proposals for a new Regulation and two proposed amendments to current Directives to review the procedure for licensing of human and veterinary pharmaceuticals/medical devices. The three proposals are:

- Draft Regulation on procedures for authorisation of marketing and operations of the European Agency for the Evaluation of Medicinal Products.
- Draft directive on Medicinal Products for human use.
- Draft directive on Medicinal Products for animal use.

The second reading on the review proposals was agreed by the European Parliament on 17 December 2003 clearing the way for adoption.

**Traditional Medicines**

As the regulation of medicines is a reserved matter, the Medicines and Healthcare products Regulatory Agency is representing UK interests.

The proposed Directive on Traditional Herbal Medicines is making rapid progress. The legislation will provide a regulatory framework for the approval of traditional herbal medicines so that they will meet systematic safety and quality standards. Political agreement on the proposal was reached at the end of its first reading on 4 November 2003. Subsequently, the European Parliament supported the Directive during its second reading in plenary on 17 December 2003. Formal agreement on the current text is expected soon.

**Proposal for a Regulation of the European Parliament and of the Council on medicinal products for paediatric use**

As the regulation of medicines is a reserved matter, the Medicines and Healthcare products Regulatory Agency is representing UK interests.

The European Commission has discussed its draft proposals to introduce a system of regulatory requirements and incentives with the Member States and non-industry stakeholders. It meets the pharmaceutical industry next month. The report of the extended (regulatory) impact assessment is due in March, and will be followed by a short public consultation on the proposal, a Commission inter-service consultation and then formal adoption. The formal legislative process will start at this point but, because of the re-election of the European Parliament and the College of Commissioners, formal discussions in Council will not start before September 2004. This means that the Regulation will not be in place before 2006.

**Social Protection**

Implementation of the **European Health Card** is set for June 2004. This will replace the current E111 form, which allows short term access to health care in other EU member states for short stays. There is, however, a possible extension for implementation to December 2005, for Member States not currently using an insurance card system.

It has been agreed that the UK will implement the card by the 31 December 2005. DH, who are leading on this matter, is conducting a scoping study into the possible options for introducing this card. There have been meetings with officials from all of the devolved administrations. There will be consultation with DA Ministers on the preferred option for producing and distributing the card.

MALCOLM CHISHOLM
STATEMENT BY THE DEPUTY MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for Environment

The top priorities as stated by the Presidency

The Presidency will focus on three main environmental themes:

- Environmental aspects of the Spring European Council;
- Development of a range of current environment proposals; and
- Increasing the visibility of the EU in an international context.

A number of dossiers relating to Waste, Climate Change and Air policy will be prioritised and progressed. In addition, a First Reading agreement on an extension to the LIFE funding programme on nature conservation and environmental protection projects in the EU and a Second Reading agreement on the proposed Directive on Volatile Organic Compounds in Paints may be reached. The conciliation process on the proposed Directive on Environmental Liability should also be concluded.

The Presidency will strive to make progress on the proposed Regulation on Chemicals (REACH) and the proposed Groundwater Daughter Directive. Following the deadlock at December Council, progress is unlikely to be made on the revision to the Bathing Waters Directive.

Important Environmental issues for the Scottish Executive during the Irish Presidency

The Executive has considerable interest in the Commission Communication “Towards a Thematic Strategy on Prevention and Recycling of Waste”. The Communication addresses issues such as how to avoid generating waste, how to reduce the use of resources and which wastes to recycle. The Executive contributed to the UK response to the Commission consultation on the Communication (which concluded 31/11/03) and ensured that key stakeholders in Scotland were aware of the consultation being carried out. The Presidency will arrange for discussions on the Communication and adopt Council Conclusions in June. The full Thematic Strategy, setting out a proposed approach to encourage recycling and waste prevention, will be adopted by the Commission in September.

The European Parliament is due to deliver its First reading on the proposed Groundwater Daughter Directive at the 19-23 April plenary. The Daughter Directive should provide for measures in line with the Water Framework Directive’s objectives for groundwater: to prevent or limit the input of pollutants; to prevent the deterioration of the status of groundwater bodies; and to reverse significant and sustained upward pollution trends. Groundwater is used for drinking water relatively less in Scotland, compared to England and other European countries. We will accordingly look to ensure that protection should be risk-based and proportionate. Substantive progress is however unlikely to be made on the proposal during the Irish Presidency.
The Scottish Executive has an interest in the recently proposed Regulation to establish a system for the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). Negotiations are now underway in the ad-hoc group established under the Competitiveness Council; these are likely to take a considerable time and the Presidency is thus discussing handling of the dossier with future Presidencies. The Scottish Executive has three priorities regarding the REACH proposal:

- to develop a fast, efficient and workable process to test and screen chemicals and tackle those of most concern;
- to minimise animal testing; and
- to maintain the competitiveness of the chemicals industry and downstream users.

We have significant interest in the proposed Directive on Environmental Liability, which should go through the conciliation process under the Irish Presidency. The final text is likely to closely resemble the Council Common Position, which the Scottish Executive supports. The proposed Directive will provide for an EU liability regime dealing with damage to biodiversity, pollution of water and damage to land. We expect the Directive to come into effect in 2007-08, allowing for preparatory activity by public authority and business sectors affected.

The Executive supports the proposed Regulation to extend from 2004-2006 the period of the LIFE funding programme, supporting projects for nature conservation and environmental protection measures in Member States. The Irish Presidency is in discussions with the European Parliament about the dossier and hopes to be able to agree the dossier at First Reading. This proposal will allow, for example, major innovative environmental projects to continue to be funded while the EU plans arrangements for the period beyond 2006. One such project was approved last year in Scotland and two bids have been made for a start in 2004.

Finally, given the extent of Natura 2000 protected species and habitats in Scotland, we will have considerable interest in the imminent Commission Communication on Financing Natura 2000. This will consider how to ensure the future financing of the network, looking at the possibility of obtaining money from existing Community funds and from elsewhere. The Communication will build on the conclusions of the EU working group chaired by John Markland, Chairman of Scottish Natural Heritage.

Prospects for the Agriculture Policy

The top priorities as stated by the Presidency

While the framework for CAP reform was agreed in June 2003, the Irish Presidency faces the challenge of concluding work on the detailed implementing rules. These need to be in place quickly to allow Member States to develop the mechanisms necessary to introduce the much changed CAP package from 1 January 2005. In addition, the Presidency will hope to conclude arrangements for reform of the olive oil, hops, cotton and tobacco regimes.
Elsewhere, the emphasis is on a package of Veterinary and Food Safety matters the most pressing of which relate to welfare of animals in transit and tightening up of food and feed controls.

**Important issues for the Scottish Executive to be dealt with by the Presidency**

**CAP Reform**

Development of the **CAP Reform Implementing Regulations** is a key priority for the Presidency and of considerable importance to all Member States. It is important that these regulations are finalised as soon as possible to allow the Executive to take final detailed decisions on the shape of CAP reform in Scotland and to develop the systems required for implementation from 1 January 2005. As part of this process, we must participate fully in the development of the detailed implementing regulations to ensure that they will meet the needs of Scotland.

**Welfare of animals during transport**

Under the Italian Presidency the Commission proposed a package of measures designed to improve the welfare of animals during transport. The Irish Presidency considers this issue to be a high priority and is aiming to have new measures agreed at the April Council. These proposals have been discussed at Council Working Groups and two CVO meetings so that much of the detail has already been considered and general agreement reached. The two outstanding issues of importance to livestock farmers in the remote parts of Scotland relate to travel times and rest periods. The original Commission proposals for a 12 hour rest period, on board the vehicle after every travel period of 9 hours has received very little support from Member States. The general preference is to reduce considerably the first rest period and to allow the second travel period to be increased to 12 hours to reach the destination. The Scottish Executive will, within the Council Working Group, continue to argue the case for such a change but if unsuccessful will seek to secure a derogation for geographically remote areas.

**Implementation issues**

A very considerable amount of work will be required in preparation for the implementation of the CAP Reform agreement in January 2005. That apart, there are no major implementation issues to be addressed.

**Prospects for Fisheries Policy**

**The top priorities as stated by the Presidency**

The Irish Presidency will focus on maximising sustainable fishing opportunities for the European Union’s fishing industry. This will be achieved by the implementation, in consultation with stakeholders, of development, conservation and control measures which take full account of regional socio-economic and environmental policy.
On external policy, the Presidency will seek to conclude new fisheries agreements with a number of third countries. Advancing the interest of the Community in Regional Fisheries Organisations with a view to enhancing the role such organisations play in the sustainable management of international fisheries will also be a key area for the Irish Presidency.

Particular aims of the Presidency include the following:

- To establish Regional Advisory Councils under the Common Fisheries Policy
- To establish measures for the recovery of cod stocks
- To establish an observer scheme for NAFO (the Northwest Atlantic)
- To establish measures for the recovery of the Northern hake stock
- To regulate the management of fisheries in the Mediterranean Sea
- To modify the Fourth Protocol with Greenland
- To decide Community financial contribution to fisheries control programmes
- To fix the fishing effort in Western Waters
- To protect the Darwin Mounds
- To lay down measures concerning incidental catches of cetaceans
- To lay down detailed rules for structural assistance in fisheries ("FIFG")
- To debate technical measures for environmentally friendly fishing
- To debate the recovery of sole stocks
- To debate the recovery of Southern hake stocks
- To debate the recovery of Norway lobster
- To debate the recovery of stocks in the Cantabrian Sea
- To debate eco-labelling of fishery products
- To debate fishery resources in third country waters
- To debate technical measures in the Baltic Sea, the Belts and the Sound

Important issues for the Scottish Executive to be dealt with by the Presidency

The development of Regional Advisory Councils, which are designed to give stakeholders a proactive role in fisheries management, is of prime importance in achieving the continuing reform of a Common Fisheries Policy. The Scottish Executive actively promoted the development of such Advisory Councils in preceding Presidencies, and expects the regulation to be adopted during the Irish Presidency – with the establishment of an Advisory Council for the North Sea soon thereafter.

We will also contribute to deliberations on the planned establishment of an EU Fisheries Control Agency, where it appears a decision in principle has been taken (including to site the Agency in Spain), but decisions about its scale and remit remain to be taken following detailed examination and discussion.

The establishment of additional measures for the recovery of cod stocks should include resolution of some issues flowing from decisions taken at the December 2003 Council on days at sea (effort control) measures; agreement on haddock management measures (“spatial management”, to allow prosecution of increased haddock fishing opportunities); and the development and adoption of a more flexible system of fishing effort, based on kilowatt days rather than simple (average) days at sea. This change of approach would permit account to be taken of differing vessel circumstances and be of benefit to the Scottish whitefish fleet.
There will also be detailed discussions on arrangements (including benchmarks) for monitoring cod recovery measures, with implications for enforcement practices and resources.

Scottish Executive will maintain an active interest in the ongoing review of the FIFG (Financial Instrument for Fisheries Guidance) Regulation. This will include ensuring that the laying down of additional, detailed rules for structural assistance to aquaculture will continue to allow necessary measures in support of the Scottish salmon-farming industry in line with the Strategic Framework for Scottish Aquaculture.

Measures to protect the Darwin Mounds from damaging trawling activity have been actively promoted by the Scottish Executive. Long term protective measures are required to replace the emergency measures that were successfully introduced under the preceding Italian Presidency; the Scottish Executive’s promotion of this issue reflects a policy commitment to sustainability through the adoption of the ecosystem approach to fisheries management.

Environmental policy underpins the Scottish Executive’s active support for measures concerning incidental catches of cetaceans (including dolphins and porpoises) in fisheries. Fisheries Research Services, with the active co-operation of the Scottish fishing industry, observes the relevant Scottish fisheries. Consultation on a strategy for reducing incidental catches of cetaceans has issued, pre-empting Community measures.

Scottish Executive maintains an interest in the forthcoming report on conservation value of the access restrictions allowed under the Common Fisheries Policy, including the Shetland Box. Although adjustments to the rules governing access restrictions will not be made under the Irish Presidency, the Shetland Box is an area of ecological importance and local economic significance; it is essential to ensure that fishing effort in the area is not increased in the future.

Implementation issues

The priority for the Irish Presidency with a significant impact on delivery plans is that for Regional Advisory Councils: an operational Advisory Council for the North Sea is expected to come into being soon; it will require both technical and financial support. Full representation of the Scottish fishing industry can only be assured if such support is forthcoming from the Scottish Executive. The development of Regional Advisory Councils offers an opportunity to promote any appropriate recommendations for the regional management of the fisheries, as are expected to be made by the Cabinet Office’s forthcoming study of the fishing industry.

The Scottish Executive will maintain a strong interest in the sustainable development of aquaculture as we implement the strategic framework. We have submitted a safeguards application in co-operation with Ireland. This application is designed to provide short term stability in the European salmon market, as we seek to provide a breathing space to allow the Scottish industry to develop and diversify into areas such as new species.

ALLAN WILSON
STATEMENT BY THE MINISTER FOR COMMUNITIES

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for the Communities Policy

The top priorities as stated by the Presidency

Progressing the Lisbon Agenda of Social, Economic and Environment Reform.

Important issues for the Executive to be dealt with by the Presidency

A key issues paper on employment and social policy related to the Lisbon process will be prepared by the Presidency, working with the Commission and the Social Protection and Employment Committees. This will be of great significance to Communities portfolio priorities for building safe strong communities and closing the opportunity gap.

The 2004 Employment Package, incorporating the annual Employment Guidelines to be adopted in April, and the Recommendations to Member States, will be adopted at the June Council. The UK must take full account of the employment guidelines in preparing its National Action Plan on employment. Key challenges will be:

- the promotion of greater investment in education and innovation
- the encouragement of greater adaptability and flexibility on the part of workers and companies
- the removal of disincentives to employment.

Led by the Minister for Enterprise and Lifelong Learning, these developments will have relevance to the work of the Cabinet Delivery Group on closing the opportunity gap, which I chair.

The outcome of discussions on Making Work Pay at the Informal Council held on 16-17 January will be of relevance. Four key policy areas have been prioritised for action:

- increased access to training for workers aged 55-64
- providing more flexible working arrangements
- ensuring that pensions and social welfare systems provide the right incentives; and
- continued and greater investment in education and training.

The Third Report on Economic and Social Cohesion to be adopted in February will set out the Commission’s vision for the next Structural Funds programming period (from 2007). Led by the Deputy First Minister, proposals for future initiatives eg accessibility and support for services of general interest, and employment and training, will be monitored for their impact on the Communities portfolio.

The Scottish Executive will continue to feed in its views to the UK Government for the negotiations over the proposal for a Directive on Equality of Access to Goods and Services
on the grounds of gender which is a key priority for the Irish Presidency. The majority of the discriminatory activities covered in the draft Directive are already unlawful in Great Britain under the Sex Discrimination Act 1975, but the Directive as drafted would have a potentially significant impact on the insurance industry because it would stop the widespread practice of calculating premiums based on gender. Legislating about equal opportunities is reserved; the Scottish Executive’s interest is to contribute to the process of ensuring that the Directive will contribute to gender equality without having any unintended consequences, particularly for the Scottish financial services sector.

MARGARET CURRAN
STATEMENT BY THE MINISTER FOR TOURISM, CULTURE AND SPORT

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for Cultural Policy

The top priorities as stated by the Presidency

One of the great strengths of the European Union is its cultural diversity and this is an aspect that will be further enhanced with enlargement. The Irish Presidency recognises the importance of placing culture at the heart of European integration and is committed to fostering debate on the shape of future European cultural actions.

Key actions will include commencing discussion of the Commission’s proposals for a post-2006 EU support programme; and advancing the review of the Television without Frontiers Directive.

Important issues for the Scottish Executive to be dealt with by the Presidency

The Executive fully supports the decision to extend the ‘Culture 2000’ programme to 2006. In terms of the proposals for the post-2006 ‘Culture 2000’ framework, we welcome in particular the proposal to consider overall information provision and the improvement of dissemination of this to eligible parties.

Implementation issues

Scotland should be well placed to participate in cultural co-operation projects in all artistic and cultural sectors. We shall take account of the Commission’s proposals in looking at Scotland’s future cultural strategy.

We also believe that links can be forged with then Accession States through cultural exchanges and joint projects. Throughout 2004 a series of films from Accession and applicant countries will be hosted by the Executive’s Scotland House in Brussels. In addition, the Executive is planning to host a meeting to discuss cultural policy and politics in smaller EU countries, Accession States and key EU regions in Brussels as part of the Executive’s review of cultural policy.

Prospects for Sport Policy

The top priorities as stated by the Presidency

The EU does not have competence over sport (although this is likely to change if a new European Constitution is agreed) and therefore the Irish Presidency has not indicated any specific sports priorities. However the Irish Presidency will see the launch in Dublin on 28/29 January of the European Year of Education through Sport.

Important issues for the Scottish Executive to be dealt with by the Presidency

None.
Implementation issues

There will be a formal launch of EYES2004 in Scotland on Monday 10 February at Hyndland Secondary school in Glasgow hosted by the Minister for Tourism, Culture and Sport. The Year will be launched in the other home nations on the same day.

The aim of EYES2004 is to increase awareness of the connection between sport and education and in particular the benefits for young people of participation in sport for educational, social and cultural purposes; sporting activity as a vehicle for integration; increased exercise, through sport, as a means for improving health; and sport as a potential contributing factor for improving standards of education, both formally and informally.

The launch in Scotland will demonstrate the advantages that can be gained in Scotland from participation on the EYES programme. It aims to show examples of funded projects in Scotland and outline the plans for the year as well as reinforce the Government’s commitment to the development of physical education and sport.

There are currently no projects from Scotland approved by the EU although a number of projects will be submitted to the EU for approval prior to the final deadline of 1 March 2004. The launch will give details of a proposed Scottish project as well as a UK-wide project from which Scotland will benefit.

Prospects for Tourism Policy

Tourism is not within the competence of the EU, and therefore does not feature in the priority list of the Irish Presidency. However the EU has a small Tourism Unit within DG Enterprise, and has issued a Communication on Tourism recently which recognises its economic importance to Europe. The EU Tourism Unit organises an annual European Tourism Forum, which my officials attend in order to keep abreast of tourism developments in other member states.
STATEMENT BY THE MINISTER FOR TRANSPORT

MINISTERIAL PRIORITIES FOR THE IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for Transport Policy

The Presidency’s particular priorities are agreement on the revision of the ‘Eurovignette’ Directive, GALILEO, the 2nd Rail Package, and Criminal Sanctions for Ship-source Pollution. The Executive’s priorities will be the revision of the ‘Eurovignette’ Directive and discussion on a proposed Regulation on Public Service Requirements in land transport.

Eurovignette Directive

This Directive would revise the 1999 regulation which currently permits only either a time based or distance based charge for lorries on the motorway network of any Member State. Agreement on the interoperability of Member State systems is important for implementation of the UK’s plans to introduce Lorry Road User Charging (LRUC) effectively and within a realistic timescale (currently targeted to be introduced in 2006). LRUC is, in fact, a tax and its implementation is reserved for Westminster. However, the haulage industry in Scotland is keenly interested in LRUC and its possible effects here. We are therefore keeping in touch with HM Customs and Excise (who have the implementation lead in the UK). In terms of developing LRUC technology there may also be an overlap with the Executive’s policies on road user charging. The UK Government supports the principle of amending the Directive to become consistent with an EC White Paper issued in 2001 and with Department for Transport (DfT) plans. At this stage, we see no reason why the Executive’s view should vary from that of the DfT.

GALILEO (the satellite navigation system) is a reserved matter on which the DfT lead.

Second Rail Package

Interoperability is intended to harmonise technical and other processes governing the supply of equipment and the through running of trains on Trans European Networks (TENS) (between and within Member States). A large proportion of Scotland’s rail network is part of TENS. The Government has already implemented the first Interoperability Directive which covered new or upgraded infrastructure and rolling stock on High Speed Lines (East Coast Main Line and West Coast Main Line).

The Government have recently issued a consultation document seeking stakeholder’s views on extending the Interoperability to many conventional lines. This could impact on development proposals currently being supported by the Executive and any future rolling stock deals we may wish to support. The closing date for responses is 16 April. The Executive will contribute. This is a reserved issue.
Prospects for Public Service Requirements for Rail Policy

An issue for possible policy debate is the Proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport.

This issue is reserved, but could have implications for Glasgow Underground. The Executive made representations to the UK Government which led to Glasgow Underground being exempt from having to comply with the proposed public sector requirements which aimed at introducing the re-tendering of contracts on a regular basis. Its exception was based on its unique infrastructure and effectively brought Glasgow Underground into line with London Underground.

However, a case was brought by a German company, Altmark, which complained about the distortion of competition in the award of bus service contracts in Germany. This case was considered by the European Court of Justice, whose judgement could have serious implications for the way public transport is run. The Council has still to set out their view of the main implications of the judgement.

Criminal Sanctions for Ship Source Pollution

The proposed Directive is designed to strengthen the criminal law framework for enforcement of the law against ship-source pollution as a consequence of grossly negligent behaviour. This follows the sinking of the oil tanker ‘Prestige’ off the north-west coast of Spain in November 2002. The issue is reserved, with DfT having the lead interest. The UK Government position is that it cannot support the Directive in its current form as it takes the view that matters relating to criminal law, including the imposition of criminal sanctions, fall to member states, and not the Community.

Specific concerns include the possibility that the Directive could result in some lawful discharges being treated as criminal. The UK Government doubts the necessity of including imprisonment among the penalties for offences of the sort envisaged, and the Directive fails to distinguish clearly between criminal liability and compensation.

The DfT approach is very much in line with our wishes - we are not aware of any major issues from a justice or environmental perspective – and argues that the Directive should not impose a regime which conflicts with or is more stringent than MARPOL (International Maritime Organisation convention for the prevention of pollution from ships).

European Maritime Safety Agency (EMSA)

This agency provides technical and scientific assistance in the field of maritime safety and prevention of pollution by ships. Glasgow was the UK bid for the permanent location of the agency HQ. It was recognised that Glasgow was up against stiff competition, particularly from Mediterranean states. At the December meeting of the EU Heads of State and Government in Brussels, the decision was taken to award the agency HQ to Lisbon.
EC Access to Port Services Directive

The proposal for a Directive on market access to port services sought to establish more comprehensive rules through competition. The main impact of the Directive would have been to allow competition for the provision of services such as cargo handling, pilotage and passenger services in ports which handle a certain level of freight and passengers a year. In November 2003, the European Parliament rejected the proposed Directive. No significant impact on the ports industry in Scotland is expected as a result. While there is little immediate prospect of the Directive measures being revived, measures based on competition within and between ports are likely to emerge in the medium term.

Maritime Cabotage Regulations

The European Commission has now completed its review of the regulations on maritime cabotage and the related guidelines on maritime state aids. This is a subject of great importance to Scotland. The Executive’s main interest is in relation to the provision of Scottish Lifeline Ferry Services and the rules relating to Public Service Obligations and Contracts.

The Executive broadly welcomes the thrust of the Commission’s thinking which introduces greater flexibility. It is also helpful that the rules now recognise mainland-to-mainland routes, tendering the routes as a single bundle and the need to ensure the availability of vessels where these are unique. This represents significant progress and recognises representations we have made to the Commission. The proposals for small islands are interesting. However, given the requirement to aggregate carryings where several small islands are served by a single operator, most of Scotland’s routes are unlikely to benefit from the flexibility proposed.

The consequences for ferry services of the decision, last year, by the European Court of Justice in the Altmark case are far from clear. Altmark deals with the interaction between the Treaty and the relevant state aid regulations for bus services. Subsidies relating to ferry services are covered by separate but similar EC maritime regulations and guidelines. The Executive has examined the implications of the Altmark decision and the potential impact for tendering the Caledonian MacBrayne (CalMac) services. Following these considerations, we have now raised the issue with the European Commission. In the meantime we will continue to prepare for tendering.

Aviation

The Irish Presidency would like to reach agreement on a Recommendation setting out the basis for the mandate for the negotiation of air service agreements between the EU and third countries. It awaits a Commission proposal which is expected soon. The Presidency also hopes to reach agreement on the EU-US air service agreement at the March Transport Council.

The Presidency would also like to reach agreement on the long-blocked proposal on harmonisation of technical requirements and administrative procedures (JAR-OPS). The purpose of this is to adopt harmonised operational standards for crews. The Presidency accepts, however, that it does not appear to have a particular solution.
The Presidency also intends to reach agreement on the way forward for an increased EU role in the International Civil Aviation Organisation (ICAO), essentially giving the Commission a permanent observer role at ICAO’s Headquarters in Montreal.

Of particular interest to Scotland is the proposed revision of the Air Slots Regulation. Political agreement was reached at the December 2003 Transport Council on a proposal for a Regulation amending common rules for the allocation of slots at Community airports. However, this concerned technical amendments to the existing rules on the allocation of airport slots, with market measures left to a later phase (see following paragraph). The protection of regional access to the major London hubs is a big issue for Scotland. The Executive welcomes the Air Transport White Paper’s recognition of the importance of regional access to London hubs. The Executive will respond to any further Department for Transport (DfT) consultation about the definition of what constitutes an “adequate” service. The Executive has made it clear the criteria by which regional access should be assessed i.e. peripherality (the absence of any fast alternative link to London); the necessity of a minimum 3 rotations a day service; and access to London hub without financial penalty.

Of great interest to Scotland is market mechanisms in slot allocation/review of the “Third Aviation Package” i.e. inclusion in the 3rd Aviation Package of EC Regulation 2408/92 on PSOs. The Executive wants to see a mechanism in place which would protect regional access to London hub airports but without financially penalising the regions. It is not satisfactory to have a voluntary mechanism for slots/access. There would be no guarantee that it would be adhered to or applied consistently. The south east hubs are a UK asset and it would be wrong to require financial intervention from the regions to secure access.

The Executive is in regular contact with the UK Government about a wide range of aviation matters. DfT is fully aware of our particular interest in the Slots Regulation and our interest in the PSO aspect of the Third Package Regulations. If is unlikely that a new Regulation on PSOs will be in place for some considerable time.
THE SCOTTISH EXECUTIVE’S

European Strategy

Scottish Executive
Edinburgh 2004
Foreword by the Minister for Finance and Public Services

Europe is of massive importance to Scotland.

The European Union (EU) passes laws and takes decisions in many areas of policy that are devolved to the Scottish Executive and Parliament to implement. These include devolved responsibilities for Agriculture, Fisheries, the Environment, Regional Policy, Health, Justice and Transport. In addition, EU decisions and policies in many areas which are, in the UK terms, wholly or partly reserved to Westminster can also have a major impact on the people of Scotland. Over three-quarters of the work of the Scottish Executive and the Scottish Parliament is, to a greater or lesser extent, influenced by decisions taken in Brussels. So we must continue to ensure that EU decision-making reflects Scotland’s interests.

But we are determined also to play a proactive role in Europe. Over the first Parliament the Scottish Executive substantially raised its profile in the EU. Scotland is now firmly established as a leading legislative region in Europe. In the second Parliament we will build on that success.

Following the May 2003 election, the First Minister established a Ministerial Group on European Strategy with the remit to map out a clear framework for the Executive’s work on EU issues over the next 4 years. This Strategy, approved by Scottish Ministers, sets out that framework. It states our strategic goals for the Executive’s engagement in Europe, outlines our key priorities, and identifies how we plan to set about achieving our goals. The strategy is ambitious and demanding. It applies to the whole Executive, as well as its Agencies and Non-Departmental Public Bodies.

We are determined to seize the many opportunities for improving the lives of the people of Scotland that active engagement in Europe brings. We will promote Scotland, with its new Parliament, as one of the leading regions in the EU, with a thriving and dynamic economy. We will also continue to protect Scottish interests. We will work with our strategic partners in Scotland to achieve the best results for Scotland.

Andy Kerr, MSP
Minister for Finance and Public Services
THE SCOTTISH EXECUTIVE’S EUROPEAN STRATEGY

Introduction

1. This Strategy sets out a framework for the work of the Scottish Executive, and its NDPBs and Agencies, on European Union (EU) issues during the second Scottish Parliament. Specifically, this strategy:-

- sets out the strategic goals for the Executive’s engagement on EU issues;
- outlines the EU policy priorities on which Scottish Ministers plan to engage; and
- identifies the key levers that the Executive plans to use to achieve its goals.

Background

2. In June 2003 the First Minister established a Ministerial Group on European Strategy with a remit to build on the Executive’s achievements in the first Parliament and to set out a strategic framework for handling European issues over the next 4 years. The report of the Group was approved by the Scottish Cabinet and forms the basis of this Strategy.

Strategic Goals for our European Policy

3. This Strategy sets out a proposed framework to guide the work of the Scottish Executive, and its NDPBs and Agencies, on EU issues. It starts from the premise that activity must be focused on growing the Scottish economy as a primary objective. The Executive’s European Strategy must bring – and be seen to bring – tangible economic benefits to Scotland.

4. Over the next four years the Executive’s over-arching goals for its European activity are:-

(i) to position Scotland as one of the leading legislative regions in the European Union, with a thriving and dynamic economy; and

(ii) to bring effective influence to bear on the UK Government, EU Member States, regions and institutions on EU policy issues affecting Scotland.

5. The Executive’s EU policy will therefore be focused on:-

(a) Promoting Scottish policy interests in Europe. As well as working through the UK, Scottish Ministers will continue to seize opportunities to promote, represent and advocate Scotland’s interests directly in Europe. This will be accomplished by working:
♦ Bilaterally, by promoting Scotland’s interests directly with the EU institutions (in particular Scotland’s MEPs, and the European Commission), Member States and Regions; and

♦ Multilaterally, by winning an enhanced role for the legislative regions within the EU, with Scotland at the inner core of an influential group of Regions with Legislative Powers (REGLEG).

(b) **Maximising our influence with the UK Government on EU issues.**

We will work effectively with the UK Government to exert influence in the Council of Ministers. Our aims are to:

♦ Secure a culture of automatic recognition and understanding of Scottish interests on EU issues across the board within the UK Government; and

♦ Add value to the UK effort to shape Europe’s future by reinforcing and forging new links across Europe.

(c) **Enhancing the profile of Scotland in Europe.** Promoting Scotland enhances our profile - as a major regional player with real and growing influence on the EU agenda; contributing to the democratic process in Europe, not just reacting to EU law; a tourist and business destination of choice, and an attractive place in which to live and work. We will also advocate Scotland as a dynamic country in which to invest. Our aims here are to:

♦ Build strong regional ties of economic, political and cultural benefit to Scotland, with EU enlargement offering a unique opportunity to position Scotland and underpin future relationships;

♦ Support and expand business connections with Europe; and

♦ Attract fresh talent and tourists to Scotland.

6. To achieve these objectives the Executive will:

♦ Focus its effort on prioritising and engaging on the key short and medium-term EU issues likely to have a significant impact on people’s lives in Scotland. We will work to seize opportunities and head off threats. To do this we will draw on the annual Commission and 6-monthly Presidency work programmes, and deploy analysis and intelligence from the Scottish Executive EU Office (SEEUO) and the UK Permanent Representation to the EU (UKRep) in Brussels;

♦ Clearly define our desired outcome(s). We recognise limitations in terms of our resources and negotiating flexibility. We will not try to fight too many battles or spread our effort too thinly. We will ensure that EU work is mainstreamed in the Executive’s priorities so that the impacts for Scotland are fully addressed;
Identify the most appropriate and effective strategies for achieving outcomes and delivering positions that reflect Scotland’s interests, including intervening early;

Regularly review progress on specific priorities and as appropriate intervene with Whitehall or in Brussels to meet the Executive’s EU objectives; and

Work closely with the Scottish Parliament on EU issues. The Parliament is engaged in a wide range of EU-related external relations activity, including welcoming visitors from abroad; examining EU policy; and building links and contacts with the EU institutions, other European nations and regions, and European regional organisations. Scottish Ministers will seek to ensure, through joint working with the Parliament, that together we maximise the benefits of our effort for the people of Scotland.

The EU Policy Priorities on which we need to Engage

7. The Scottish Executive Partnership Agreement (Partnership for a Better Scotland 2003) underpins Ministers’ strategic objectives for EU policy throughout the current Parliament. These are the main EU priorities on which the Executive will engage:

(i) Growing Scotland’s Economy: This is central to the Executive’s goal of creating a dynamic, enterprising and sustainable land of opportunity for all. We will also work to secure the long term viability and prosperity of our rural communities. It is critically important that the focus and range of activities of Scottish Enterprise and Scottish Development International reflect Ministers’ strategic European priorities, including securing economic benefits for Scotland from EU Enlargement. Equally, any Executive activity in promoting Scotland in the EU with a view to economic spin-offs should be consistent with the Global Connections Strategy which aims to achieve maximum economic benefit from Scotland’s links with the rest of the world by fostering two-way flows of knowledge and investment, focusing on industry sectors where Scotland has international strengths. The key EU issues are:

(a) Increasing Scottish trade and EU investment in Scotland. The EU’s Lisbon Agenda of economic and social reform - focusing on boosting growth in the EU, creating a more effective economic area, with more and better jobs, modernising the social welfare model and fostering a knowledge-based economy – will be a crucial determining factor in delivering increased trade and investment. We need to make this agenda real for Scotland. The long-term success of the UK Government’s economic policies and the Executive’s Framework for Economic Development in Scotland and Smart Successful Scotland strategies are also critical.
(b) **Increasing tourism from Europe.** With VisitScotland and using the Route Development Fund, we will build on recent successes: the Rosyth – Zeebrugge ferry and several new direct air links to Europe. Mainland Europe presents enormous opportunities for Scottish tourism, particularly in view of the growing trend for short breaks. In view of this trend, VisitScotland will continue to focus on markets with direct routes to Scotland, and these will be targeted with thematic campaigns which will aim to develop business especially outside the peak season. Campaigns will be enhanced by attractive carrier messages, presenting Scotland as accessible and affordable. VisitScotland will continue to work with partners through the Route Development Fund to assess the scope of opportunity for new routes. In doing so, VisitScotland considers the strength of the inbound/outbound potential and partnership opportunities. As new routes into Scotland are announced, VisitScotland will continue to be proactive in working up partnerships and promotions with carriers.

(c) **Structural Funds.** Much of the Structural Funds budget in the next period (2007–13) will inevitably go to the new, rather than the old, Member States. Formal proposals on the post-2006 period are expected from the European Commission in spring 2004, with negotiations continuing to 2006. Securing the most advantageous outcome for Scotland will be a high priority throughout this period.

(d) **Transport.** Although much of EU transport policy is, in UK terms, reserved, EU transport measures have the potential to have a significant impact on Scotland. We will work to ensure that Scotland’s interests are safeguarded. The expected proposals for a charging framework for infrastructure use, further work to develop the Trans European Networks and the legislative framework for slot allocation at airports are also likely to affect Scotland.

(e) **Fisheries policy.** Work will continue on implementing reform of the Common Fisheries Policy. In particular, we will continue to play a lead role in moves to decentralise decision-making away from Brussels by means of Regional Advisory Councils, as a first step towards effective regional management of fisheries. A priority for the period ahead will be to secure recovery plans for depleted whitefish stocks which reflect Scottish objectives: to deliver sustainable fisheries for the long term while avoiding excessive economic disruption of the industry.

(f) **Agricultural reform.** The June 2003 reform of the Common Agricultural Policy represents a success story of our EU engagement achieved by working in partnership with Whitehall. The reform package agreed contains flexibilities below Member State level. This provides significant opportunities to achieve our objectives for Scottish agriculture as set out in *A Forward Strategy for Scottish Agriculture.* The main challenge for Scotland is to use these opportunities, following extensive consultation, to benefit Scottish agriculture and rural areas more generally.
(ii) **Delivering excellent public services.** New EU legislation on the award of public contracts for goods, works and services will be a priority during this period. The new public procurement Directive makes significant changes to the current rules and we will seek to ensure that implementation in Scotland is consistent with Best Value and that Scottish public bodies receive appropriate support in adapting to these changes. We will also seek to ensure that proposed EU initiatives on Services of General Economic Interest support Scottish Ministers’ policies on public services.

(iii) **Supporting Stronger, Safer Communities.** The key EU drivers here are:

   (a) **Justice and Home Affairs (JHA) policy.** A fast growing area of EU action is in the field of Justice and Home Affairs, promoting cross-border co-operation on matters directly affecting devolved policy areas such as co-operation against serious crime, civil judicial co-operation, drugs policy and police co-operation. The Minister for Justice will work to ensure that EU JHA legislation is compatible with the principles of Scots criminal and civil law and that Scotland does not become a haven for criminals. She will also work to increase the exchange of best practice with EU partners on areas such as tackling youth crime and cross-border access to justice.

   (b) **The Environment.** EU environmental legislation needs to be implemented in Scotland by the Executive. New obligations will continue to be proposed by the Commission in the context of the Sixth Environmental Action Programme. We will work closely with the Commission, UK Government and MEPs to ensure that Scottish views and circumstances are taken fully into account.

(iv) **Developing a Confident, Democratic Scotland.** An outward-looking, confident country must engage effectively with others to achieve its goals. The key EU issues here are:

   (a) **Follow-up to the Intergovernmental Conference (IGC).** Ongoing work following the IGC will in part determine the extent to which legislative regions like Scotland will have influence in the new institutional structure of an enlarged Europe. We will make the most of this opportunity to ensure that Scotland’s interests are fully taken into account and to re-energise democracy in the EU more widely. Our priorities will be to ensure the maximum use by Scotland of the new opportunities offered to us by the new EU Governance provisions, such as the new commitment to wide pre-legislative consultation and extended impact assessments of draft legislation; and to work towards early agreement on other proposals from the Future of Europe Convention for reinforcing the subsidiarity principle. These are all developments that the Executive was in the lead in pressing for. The challenge now is to use them for the benefit of the people of Scotland. Our Presidency of REGLEG offers an immediate opportunity to influence positively the development of such helpful innovations.
Expanding the role of Scotland in Europe. We will build on the last 4 years and our rise in influence as a key EU regional player, particularly through our membership of the Committee of the Regions, our work with our MEPs and our leading role in REGLEG. We will develop our co-operation agreements with Catalonia, Tuscany, North Rhine-Westphalia and Bavaria and consider entering into further partnerships where they are likely to deliver benefits for Scotland.

Key Mechanisms for Delivering our Top Priorities

8. There are many levers available to help the Executive achieve its priority objectives. We will focus our effort on securing our priorities. We will maintain a consistent view of which activities are the most important, which we should prioritise, who should carry them out, and the resources which should be devoted to each. We will also put in place robust procedures for ex-post evaluation and analysis, to ascertain whether the correct choices have in fact been made.

9. The key mechanisms to achieve our priorities are grouped into 3 categories: working with Europe and Brussels; the UK; and Scotland.

10. Working with Europe and Brussels. We will work closely with the UK and represent our interests to the institutions and Member States of the EU. In taking this forward we will not overlook the opportunities afforded for influencing EU policies by inviting representatives of the EU institutions and other Member States to visit Scotland to discuss issues of mutual interest.

(a) Working with Scottish MEPs. The European Parliament already has in many areas powers of co-decision over EU legislation comparable to those of Member States in the Council. These co-decision powers are likely to be extended into new areas in the future. We will continue to work with Scotland’s MEPs in pursuit of Scotland’s interests. This will include a series of 6-monthly meetings to consider the priorities of Scottish Ministers.

(b) EU and Bilateral meetings. At EU and international meetings we will exploit opportunities to engage with other Member State delegations and use bilaterals to support our objectives.

(c) Engagement with the Commission. We will seize opportunities to influence the process from the very start by meeting directly with Commission officials and Commissioners. We will also respond to, and engage fully with, the new EU consultation and Impact Assessment processes.

(d) Building political and economic links. The Executive’s European Links Strategy – building strong and mutually beneficial links with other regions and countries in the EU – is central to the delivery of economic, trade, political and cultural benefits to Scotland. The 4 existing formal Co-operation Agreements (with Catalonia, Tuscany, North Rhine-Westphalia
and Bavaria) have already helped to promote Scotland in Europe, build political alliances and develop networks to deliver practical projects of benefit to Scotland. We will ensure that there is greater co-ordination of the various formal and informal activities and a clearer fit with Executive policies, in particular with Partnership Agreement priorities in terms of economic development, public service delivery and cultural dynamism. We will ensure that the new links that we forge with the Nordic countries (building on the Nordic-Scottish Action Plan) and Accession States fit with our political, economic and cultural objectives.

(c) Committee of the Regions (CoR), the Council of Local and Regional Authorities of Europe (CLRAE), and Conference of Peripheral and Maritime Regions (CPMR). We will ensure that our membership of these bodies provides clear longer-term potential for building alliances with European regional and local authorities. We will seek to prepare those CoR Opinions that help us to secure our EU policy objectives, and use our membership of CPMR to promote our interests.

(f) REGLEG (the European Group of Regions with Legislative Powers). The First Minister’s presidency (from November 2003 – November 2004) provides an important opportunity for Scotland to play a key role on the EU stage. It will allow us to build allies for Scotland’s interests among the leading legislative regions of the EU. Our REGLEG activity is principally about advancing Scotland’s position as a major legislative region in Europe. Our REGLEG role complements and reinforces the UK position. We will build on the Presidency to consolidate the position of the legislative regions in the follow-up to the IGC, through a proactive REGLEG programme.

(g) Scottish Executive EU Office (SEEUO). The Executive’s Brussels office in Scotland House is a crucial asset. It will present Scottish views directly to the EU institutions and provide crucial and early intelligence to secure Scotland’s interests. Specifically, it will seek to influence EU decision-making on dossiers of importance to Scotland, working in collaboration with Departments and UKRep, and advise on opportunities for being more proactive in Brussels by, for example, suggesting policy initiatives where Scotland has innovative ideas to offer. The SEEUO will report to Ministers on EU intelligence and the delivery of the Executive’s European strategy in Brussels, and liaise with secondees from the Executive working in the EU institutions.

11. Working with the UK

(a) Whitehall. We will improve the understanding and appreciation of Scottish views in Whitehall. We will build on the recognition that Scottish Ministers can bring added value to negotiations. We will increase contact and liaison with UK counterparts – at Ministerial and official level - and maintain this throughout the duration of negotiations. We will also report back on meetings attended in Europe and with Whitehall counterparts to secure a co-ordinated approach to Whitehall on EU matters across the
Executive. We will use the new EU Impact Assessment and consultation processes to present our views on the detail of EU proposals to Whitehall Departments.

(b) **Joint Ministerial Committee (Europe) (JMC(E)).** JMC(E) is an important forum for formal discussion by UK and Devolved Administration Ministers of strategic EU issues. As from December 2003 it incorporates the Ministerial European Coordination Committee (MINECOR) which deals with presentational aspects of EU policy. We will use JMC(E) meetings to further strengthen links with Whitehall Ministers and to maximise influence on the UK line on EU issues of importance to us.

(c) **EU Council meetings.** The first priority is to influence the UK’s negotiating position. Ministerial attendance at Councils will take place where there is a Scottish policy issue to pursue.

(d) **Devolved Administrations.** We will collaborate closely on EU issues with the Welsh Assembly and the Northern Ireland Assembly (when it is reconstituted) to increase our influence on negotiations in Brussels.

(e) **UK Presidency of the EU.** We will work closely with the UK Government to ensure the Scottish Executive and Scotland play a full role during the UK Presidency, from July – December 2005.

12. **Working within Scotland**

(a) In the **Scottish Executive:**

   (i) **Mainstreaming EU policy.** We will ensure that EU business is mainstreamed in the work of Departments and policy Divisions in the Executive, and in the Executive’s NDPBs and Agencies. We will also improve co-ordination to exchange information, best practice and to ensure a common approach on EU business.

   (ii) **Tracking EU issues.** We will ensure that Departments track those EU initiatives that are coming up in the Commission, European Parliament and Council that could affect Scotland (directly or indirectly), and assign priorities. We will also monitor the transposition and implementation of EU obligations.

   (iii) **Consular Corps.** We will increase our engagement with EU Consular Missions in Scotland to inform other Member States about Scotland in general and Executive positions in particular. Focused and well-timed interventions with the Corps have the potential to achieve influence on European initiatives affecting Scotland.
(b) In the Parliament:

(i) **Mainstreaming EU policy.** We will support and encourage mainstreaming in the Parliament to ensure that EU business is appropriately scrutinised by the members of subject Committees which have an European element to their work.

(ii) **Making a reality of subsidiarity.** We will work closely with the Parliament to develop procedures that would allow Scotland to derive maximum benefit from the subsidiarity arrangements contained in the Convention’s proposed EU Constitutional Treaty.

(iii) **Debates.** We will be proactive and exploit opportunities to debate EU policies and developments likely to have a crucial bearing on Scotland.

(iv) **EMILE.** We will work closely and effectively with the European Elected Members’ Information Liaison and Exchange group (EMILE), including with Scotland’s MEPs, with a view to fostering a “team Scotland” approach to EU opportunities and threats.

**Targets and Milestones**

13. It is difficult to quantify or measure the direct benefits of our engagement with the EU – especially the intangible benefits in terms of increased influence on key EU policies affecting Scotland. To measure the benefits of our engagement with the EU over the course of this Parliament, we will identify key activities and develop a monitoring and evaluation framework.

14. For **Strategic Goal 1** - positioning Scotland as one of the leading legislative regions in the EU, with a thriving and dynamic economy:

- We shall ensure that the Global Connections Strategy and our European priorities are properly aligned;

- Through our Fresh Talent initiative and the activities of VisitScotland, we will actively promote Scotland as a place in which to live and work and to visit;

- Through our European links and networks, including those of the UK Government, we will promote Scotland to EU businesses and administrations as a country to do business with; and

- Through our Co-operation Agreements and the further links that we forge with other countries and Accession States, we will seek to secure tangible political and economic benefits for Scotland.
15. **Strategic Goal 2** is to bring effective influence to bear on the UK Government, EU Member States, regions and institutions on all EU policy issues affecting Scotland. For this goal:

- We will employ the mechanisms outlined in the Strategy, including where relevant the preparation of Impact Assessments, to:
  
  (a) Work with the UK Government and REGLEG partners to ensure that the Convention’s proposals for greater regional involvement in the EU are implemented through the Governance programme where possible, or taken forward in the follow-up to the IGC;

  (b) Promote an effective regional policy in Europe, and communicate clearly the Scottish interest in the debate about Structural Funds reform;

  (c) Make effective use of the enhanced flexibilities under the new Common Agricultural Policy regime coming into force in 2005 to make Scottish agriculture more competitive and sustainable;

  (d) Establish Regional Advisory Committees successfully covering key Scottish fisheries in the North Sea and West of Scotland as a first step towards effective regional management within the framework of the Common Fisheries Policy. Negotiate a cod recovery plan which delivers conservation objectives, whilst respecting the need to retain economic viability in the Scottish whitefish fleet;

  (e) Engage with the Commission to deliver lifeline ferry services which meet Scotland’s unique needs; and

  (f) Ensure that Scottish interests, including respect for the basic principles of Scots criminal and civil law, are properly reflected in the development of new EU legislative proposals in the field of JHA, and to promote the exchange best practice with EU partners in areas such as youth crime, cross border access to justice and action to tackle drugs.

**Conclusion**

16. It is difficult to exaggerate how important an influence the EU is on the lives of the people of Scotland. We need to ensure that we take full advantage of the many opportunities offered by the EU. We want to promote Scotland, with our new Parliament, as one of the leading regions in the European Union, with a thriving and dynamic economy. We also need to ensure that, when necessary, Scottish interests are vigorously protected.

17. This paper has set out the strategy for the Scottish Executive – and its Agencies and NDPBs – to achieve these goals. We shall achieve the best results for the people of Scotland if other Scottish organisations, whether public or private, join with us in a collaborative effort to secure Scotland’s interests.
CONVENER’S REPORT

1. Briefing paper on the Decision of the European Commission in the case of Ryanair and Charleroi Airport. Members will be aware that on the 3 February the European Commission issued a Decision in relation to the case of Ryanair and its use of Charleroi airport, Brussels South Charleroi Airport (BSCA) (the airport’s managing body) and the Walloon Region (Belgium). A copy of the Press Release issued by the European Commission is set out in Annex A.

At the previous meeting of the Committee, it was agreed that this issue be placed on the agenda with a view to further discussion. In doing so, Members should be aware that the decision may yet be appealed and exercise caution when discussing the issues raised by the decision. The Convener now recommends that:

Members consider the information presented in Annex A and discuss the possible courses of action outlined.

2. Monthly report from the Clerk/Chief Executive and the Parliament’s External Liaison Unit on inward/outward visits to the Scottish Parliament (Annex B). The Convener now recommends that:

The Committee welcomes this report and thanks all those involved in the continual submission of this useful information.

Richard Lochhead MSP
Convener
12 February 2004

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1 Members may wish to be aware of potential “sub judice” issues and also those relating to “parliamentary privilege”. The Clerk to the European and External Relations Committee will be happy to provide advice on these areas if requested.
ANNEX A

COMMISSION DECISION IN THE CASE OF RYANAIR AND CHARLEROI AIRPORT

Options for the Committee

1. In light of the information below, Members are requested to consider the following options for further action by the Committee:

   **Option A** – note the information provided, but take no further action.

   **Option B** – appoint a Reporter to the Committee to look further into the issues raised by the Commission’s Decision, seek the views of the Scottish Executive and other interested parties on the possible implications for Scottish airports and air services and report back to the Committee in due course.

   **Option C** – refer the issue to the Parliament’s Local Government and Transport Committee for its interest, copying in the Enterprise and Culture Committee.

2. The Convener recommends that Option B be chosen initially, with a view to Option C after the Committee’s reporter has reported back.

European Commission’s Press Release (3 February, IP/04/157)

The European Commission today took a major decision of significance for the future of air transport by ensuring full competition between carriers operating out of regional airports. It authorises certain forms of aid which permit genuine development of new routes under clearly defined conditions. However, other direct aid granted by the Walloon Region and partly by BSCA is incompatible with the proper functioning of the internal market and will have to be repaid. The Commission is thus committing itself firmly to promoting increased competition which will enable low-cost carriers to establish themselves throughout the European Union, subject to compliance with uniform rules on competition between carriers, and for the maximum benefit of consumers. “This legal decision is well balanced: it brings greater transparency into contractual relations between airlines and airports, especially regional airports”, stressed Loyola De Palacio, Vice-President of the Commission with responsibility for energy and transport. “It will also help the development of ‘low-cost’ operations, which are very clearly what consumers want, whilst also ensuring equitable conditions of competition for all airlines. All players in the same arena must be able to play by the same ground rules. All airlines must be aware of the possibilities offered and only genuine competition is truly capable of safeguarding consumers’ rights”, she explained.

Today’s decision is good for regional development and will result in increased development of low-cost airlines throughout the European Union, for the maximum benefit of consumers. Thus, there will be a level-playing field for all air transport sector operators, in order to ensure fair competition.

The case of Charleroi:

The Commission was required to deliver its opinion on a complaint lodged in 2001 concerning the advantages granted to Ryanair at Charleroi airport by *Brussels South Charleroi Airport* (BSCA), the
airport’s managing body, and the Walloon Region (Belgium). When considering this case, the Commission took full account of the main thrusts of European policy and law in the context of the single market for air transport.

The Commission had to determine whether the measures taken in favour of Ryanair by the Walloon Region and BSCA, a public undertaking controlled by the Walloon Region, were compatible or not with the private market investor principle.

In the case of Charleroi, the Commission concluded that no private operator in the same circumstances as BSCA would have granted the same advantages. Since the private market investor principle had not been adhered to in this case, the advantages granted to Ryanair constitute State aid\(^2\) which could distort competition in favour of Ryanair.

Compatibility of the aid granted

The Commission, however, took the view that the aid granted to Ryanair at Charleroi could be compatible with the common market in the context of transport policy\(^3\), insofar as they permit the development and improved use of secondary airport infrastructure which is currently underused and represents a cost to the community as a whole\(^4\).

Today’s decision should allow Ryanair to keep some of the aid already granted to it. This is the aid intended for the launch of new air routes (marketing and publicity), to which may be added one-shot incentives, provided that the Belgian authorities meet the conditions imposed by the Commission.

However, certain forms of aid cannot be authorised, in particular the discounts on airport charges such as were granted at Charleroi, which go beyond the discounts already foreseen in the Belgian legislation, which are non-discriminatory and fully transparent, the reduced ground handling fees, which are not offset by possible surpluses from other, purely commercial activities (parking, shops, etc.), one-shot incentives paid when new routes were launched, where no account was taken of the actual costs of launching such routes, and the aid provided in respect of the Dublin-Charleroi route, which is not new, because it was launched in 1997.

In general terms, the European Commission aims to guarantee that the advantages granted at a particular airport are not discriminatory and benefit from a greater transparency.

Appendix

Content and impact of the Commission’s decision on Charleroi airport

1. Why did the Commission need to take a decision?

The Commission received a complaint in January 2002 concerning advantages granted at Charleroi airport. As guardian of the Treaties, it had to verify the legality of the agreements that had been entered into and their compatibility with European law. A formal investigation\(^5\) into the advantages granted to Ryanair by the Walloon Region and by the airport management body BSCA (Brussels South Charleroi Airport) was launched on 11 December 2002. The Commission is today announcing the conclusions of

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2 Within the meaning of Article 87(1) of the EC Treaty.
3 By reference to Article 87(3)(c) of the EC Treaty: ‘The following shall be compatible with the common market: … aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.’
4 Such development benefits the regions by ensuring a better return from existing public goods and facilitating regional economic development, in particular through job-creation and tourism; it benefits the Member State concerned by encouraging spatial planning and better use of existing airports as opposed to the construction of new infrastructure or extensions; and it benefits the European Union whose need to develop airport capacity was pointed out in the White Paper on Transport and which provides part of the financing for airports through its regional policy, the TENs and the EIB.
the formal investigation, during which it received twelve contributions from airlines, including Ryanair, airport management bodies and other parties.

2. What advantages were granted at Charleroi airport?
The advantages granted to Ryanair in 2001 may be summarised as follows:

- The Walloon Region granted Ryanair, under a private-law contract, a preferential rate for landing charges at Charleroi of EUR 1 per boarding passenger, which is about 50% of the standard rate set in a decree which had been published in the Official Journal. No other airline benefits from this.

- BSCA granted various types of advantages to Ryanair:
  - a contribution towards promotional activities of EUR 4 per boarding passenger, over 15 years and for up to 26 flights daily. No other airline benefits from this.
  - initial incentives amounting essentially to EUR 160 000 per new route opened, for 12 routes, or EUR 1 920 000 in total; EUR 768 000 in reimbursements for pilot training; EUR 250 000 for hotel accommodation costs. No other airline benefits from this.
  - a preferential rate of EUR 1 per passenger for ground handling services, whereas the rates normally charged to other airlines is EUR 8-13. No other airline benefits from this.

3. What is the prudent private investor criterion?
The Commission had to determine whether the measures taken in favour of Ryanair by the Walloon Region and BSCA, a public undertaking controlled by the Walloon Region, were or were not in keeping with the private investor principle.

According to this principle, which has been repeatedly endorsed by the Court of Justice, aid is not considered to include investments or advantages which are granted if, at the time when an investment or a commercial contract is being considered, the public undertaking is in the same situation as a comparable private firm, guided by the same objectives of long-term profitability. This principle helps ensure equal treatment between public-sector operators, such as BSCA, and private firms.

It is thus necessary to verify:

- whether the level of profit expected when the advantage was granted is in line with what a private firm would expect. In order to do this, it is necessary to analyse the risk associated with the market concerned, the cost of the capital, the information which the undertaking possessed when it took its decision and risks inherent in the operation;

- the undertaking cannot exploit certain advantages deriving from its public status, such as easier access to financing or the absence of the risk of bankruptcy;

- the public undertaking cannot also decide to take account of indirect positive effects, such as regional economic development or job creation, to underpin its analysis, for they would not have been used by a private investor as criteria for taking a decision.

4. Did BSCA take the prudent private investor approach?
In the Charleroi case, the Commission concluded that no private operator in the same circumstances as BSCA would have granted the same advantages.

The investigation showed that when the contract was signed with Ryanair, BSCA was exposed to the risk of losses exceeding the company's aggregate current result over a ten-year period, which is estimated to be about EUR 35 million, and this would have wiped out any hope of a fair return on the investment over the reference period.

Moreover, BSCA signed the agreements with Ryanair on the basis of a business plan which, in the Commission’s view, does not conform to the private investor criterion, for it had factored in substantial future revenue, amounting to almost EUR 27 million, not arising from the contract signed with Ryanair but received from hypothetical carriers which were assumed to be regular users. It also omitted to take into account its contribution to the marketing of all 26 potential flights agreed with Ryanair, amounting
to more than EUR 6 million. These two factors were sufficient to reduce almost to zero the result expected for the period in question.

Lastly, BSCA also used its special connections with the Walloon Region and the advantages stemming therefrom in order to improve the profit forecast. This is particularly true with regard to the subsidy to cover maintenance costs and fire, for which there was no longer any legal basis when the contract was signed. BSCA had allowed not only for its continued existence but also for a future increase, amounting to a benefit of nearly EUR 14 million over the ten years of the business plan. The same is true of the transfer of 35% of the aviation charges into the environment fund, because the maximum level of this charge was assumed to have been fixed, when in fact the legal act formally setting the amount was not adopted by the Walloon authorities until six months after the contract was signed, resulting in a risk to the value of EUR 9 million. The Commission takes the view that these last two assumptions, which were subject to the political discretion of the region, would not have been made by a private investor in the absence of formal clarification of the legal situation.

Since, therefore, the private market investor principle was not adhered to in this case, the advantages granted to Ryanair constitute State aid\(^6\) which could distort competition in favour of Ryanair. It should be noted that this aid does not correspond, either, to investment in airport infrastructure and cannot therefore be deemed compatible with classic instruments of Community law such as regional development aid. In fact, it takes the form of operational aid.

### 5. What aid at Charleroi is compatible with the common market?

The Commission considered that some of the aid granted to Ryanair may be compatible with the common market in the context of transport policy\(^7\), insofar as it fosters the development and improved use of secondary airport infrastructure which is currently underused and represents a cost to the community as whole\(^8\).

Today’s decision should therefore mean that Ryanair can keep part of the aid already granted, net of the money to be recovered. This includes BSCA’s contribution to the financing of a joint promotion and publicity company with Ryanair, which could be considered to be aid to the start-up of new air routes. It encourages better use of regional airports, in keeping with the Community’s objective for air transport. To the sums received by Ryanair in 2001-2003, could be added part of one-shot incentives referred to above provided that the Belgian authorities comply with the conditions imposed by the Commission.

In order for such aid to be authorised, the Belgian authorities must ensure that it meets the following conditions:

- **It must be necessary for the opening of new routes**, serve as an incentive, be proportional to the objective pursued, be granted with due regard for the principles of transparency, equal treatment and non-discrimination between operators, be accompanied by a mechanism for imposing penalties should the carrier fail to comply with his commitments, and it must not be aggregated with aid which serves a social objective or with public service compensation payments.

- **It must be of limited duration** (five years in the case of point-to-point European routes, and not 15 years) and correspond to a maximum intensity of 50% of the net start-up costs incurred, and the airport must have control over such costs and the aid must be available in the future to any airline which is established at Charleroi. This being the case, Ryanair could also be granted similar aid in

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\(^6\) Within the meaning of Article 87(1) of the EC Treaty.

\(^7\) By reference to Article 87(3)(c) of the EC Treaty: ‘The following shall be compatible with the common market: … aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’.

\(^8\) Such development benefits the regions by ensuring a better return from existing public goods and facilitating regional economic development, in particular through job-creation and tourism; it benefits the Member State concerned by encouraging spatial planning and better use of existing airports as opposed to the construction of new infrastructure or extensions; and it benefits the European Union whose need to develop airport capacity was pointed out in the White Paper on Transport and which provides part of the financing for airports through its regional policy, the TENs and the EIB.
the future, albeit limited to five years in each case, for the opening of new routes excluding routes which replace previously operated routes.

6. Which aid is incompatible?
However, the Commission has no alternative but to request the recovery of other aid which distorts competition in the common market, namely:

- **Reduced airport charges.** Reductions are possible only if they are granted in a manner which does not discriminate against any user, and if they are granted for a limited period. If these conditions were met, the discounts would not count as State aid (cf. the ‘Manchester’ case). They are not met in this case, as Ryanair is the sole beneficiary and is to receive such treatment for a period of 15 years.

When granting advantages exclusively to Ryanair through a bilateral deal which received no publicity, in particular landing charges below the standard rate, the Walloon Region acted in a regulatory capacity and not as an undertaking. This aid must be recovered from the recipient, except for the part of the official rebate already foreseen in the Walloon legislation. The guarantees given to Ryanair in this connection for the future must be withdrawn.

**In future, the Walloon Region will obviously still be able to introduce a new standard rate which acts as an incentive, but it must be applied transparently to all airlines.**

- **Reduced ground handling fees.** Reductions are possible if an airport can demonstrate that any losses made on this service, provided in a competitive environment, are not offset by revenue from airport authority tasks or airport services of general economic interest, for which separation of accounts is required.

The reductions granted to Ryanair by BSCA, which take the form of a preferential tariff for ground handling services and would not enable the airport to cover its costs in respect of this activity, must therefore be recovered. The amount concerned could be at least EUR 4 million for the 2001-2003 period. However, as long as the two million passengers per annum threshold laid down in Directive 96/67 liberalising the ground handling sector is not reached, BSCA could also use any surpluses there may be from its other, purely commercial activities (parking, shops, etc.) to cover its deficit on the ground handling side.

- **One-shot incentives provided for the opening of new routes.** Such incentives which do not take account of the actual costs of opening the routes concerned are not justified. Contributions of this kind were paid to Ryanair in respect of staff recruitment, training and accommodation costs, the opening of new routes and the provision of premises. In principle, there is nothing about them which would prevent them from being treated like start-up aid, as described below. However, since in this case they have been provided on a flat-rate basis and are not tied to any objective, it might be necessary to recover them.

- **Aid provided for the Dublin-Charleroi route.** This route is not “new” within the meaning of start-up aid (it opened in 1997); the aid granted in respect of this route must therefore be recovered.

7. What is the impact on low-cost airlines?
With this decision, the Commission gives a clear signal in favour of the extension of the model of low-cost airlines. Since 1992, using all the political, legal and legislative means at its disposal, the Commission has always encouraged the opening-up of the air transport market to competition. In fact, it is thanks to liberalisation in that competition has increased in the European Union, allowing new low-cost airlines to develop and Ryanair to expand. The wider and more affordable range of services on offer benefits Europe’s consumers: the existence of low-cost airlines is proof that this Commission policy has succeeded. The Commission intends to proceed further along this path and will therefore continue to ensure fair competition for everyone in the single market for air transport.

8. Will the decision be good for regional development?
The Commission’s decision does not prevent agreements between regional airports and low-cost airlines. Quite the contrary, for the Commission encourages any initiative which enables better use
to be made of airport infrastructure which is under-used and welcomes any arrangement which would help to solve the problems of air transport congestion and give Europe’s citizens greater choice when it comes to flying: in this connection, secondary airports are extremely well-placed to play a key role. They are also a very significant factor in regional economic development. Today’s decision by the Commission helps to clarify the framework within which the two parties may collaborate, which should facilitate the conclusion of many more agreements throughout the European Union.

9. Will this decision impact on fares?

No. A low-cost airline which is in good financial health must be able to offer cheap fares without using State aid. The Commission is convinced that Ryanair is, and will continue to be, following this decision, quite capable of offering its service at low cost, just as other low-cost carriers do and will continue to do. Today’s decision does not have an impact on market offerings or prospects for lower fares. By authorising start-up aid under certain conditions, the Commission is paving the way for agreements which make new routes serving regional airports viable. It will help in particular in the long term to introduce increased competition which should result in the development of low-cost carriers throughout the European Union, especially at regional airports, for the maximum benefit of consumers.
ANNEX B

MONTHLY REPORT BY THE CLERK/CHIEF EXECUTIVE AND EXTERNAL LIAISON UNIT

Inward/Outward Visits and Events Organised on Behalf of the Scottish Parliament by External Liaison Unit

JANUARY 2004 INWARD VISITS

Wednesday 07 January

Visit by Dr Dennis MacShane MP
Dr Dennis MacShane, UK Minister for Europe appeared before the Europe and External Relations Committee (evening meeting) to discuss this year's Inter Government Conference. (Organised by the Committee team.)

Wednesday 14 January

Select Committee of the Dutch Parliament
Delegation met Alasdair Morgan MSP as Convener of the Enterprise and Culture Committee and Alex Neil MSP. Also received tour of Visitor Centre and Holyrood Information Centre

Wednesday 14 January

Azerbaijan Government
Request from the British Council to meet with MSPs from the Public Petitions and Communities Committee followed by tour.

Thursday 15 January

The Democratising Ukraine Programme
Direct request from the the Select Committee of the Dutch Parliament. The Select Committee of the Dutch Parliament visited the Scottish Parliament and met with the Education Committee to discuss education issues.

Monday 19 January

Turkish Delegation
Delegation led by the Deputy Speaker, which includes 8 others plus Ambassador, First Secretary and 2 from the Inter-Parliamentary Union. Mary Mulligan MSP, Deputy Minister for Communities hosted evening dinner in Edinburgh castle attended by the Presiding Officer.
Thursday 22 January

Mr Bruno Chiaverini, Director of International Relations, Rhone-Alpes Region, France
A visit to the Scottish Parliament by Mr Bruno Chiaverini, Director of International Relations and Mme Lucette Dixon, Director of Higher Education, Rhone-Alpes Regional Council, France. As well as a briefing on the Scottish Parliament and devolution, the visit also included a meeting with the Clerk to the European and External Relations Committee to discuss how the Rhone-Alpes Regional Council can engage with Scotland at various levels in the future and a meeting with Clerks from both the Education Committee and Enterprise and Culture Committee to discuss Higher Education and the work of both Committees on education as a whole.

Friday 23 January

Mr Paul-Erik Rummo, Estonian Minister for Population and Ethnic Affairs
Meeting with Mr Paul-Erik Rummo, Estonian Minister for Population and Ethnic Affairs and the Estonian Honorary Consul and Estonian Consul, Estonian Embassy. Other participants were representatives of the Gaelic speaking community in Scotland. To discuss links between Estonia-Scotland, Gaelic Language, and languages in Estonia

Wednesday 28 January

Royal Embassy of Saudi Arabia, Prince Turki Al-Faisal
Visit to the Scottish Parliament as part of wider programme in Scotland (visiting Edinburgh and St Andrew's universities). Courtesy call on Presiding Officer and meeting with other Members and officials.

Thursday 29 January

Tanzanian Delegation
Delegation from Tanzania visited the Scottish Executive from 28 - 29 January.

Friday 30 January

Scottish/Scandinavian Committee Workshop
1-day Seminar requested by Professor David Artur to bring together parliamentary officials from across Scandinavia with the Scottish Parliament to compare and discuss Committee practice in Scotland and Scandinavia.

Outward Visits

Tuesday 13 January

Access and Information Directorate - Spain
Delegation visited Basque and Catalanian Parliaments. In particular to investigate the Basque Parliament's 'Zabalik' email alerting system, and in Catalonia to explore the potential for closer research co-operation and to investigate their broadcasting services.
FEBRUARY 2004 INWARD VISITS

Thursday 05 February

CPA UK Branch
Visit by to the Scottish Parliament by the Chair of CPA (UK Branch). Visit will provide the opportunity to introduce the new secretary Andrew Tuggey to Members of the CPA (Scotland Branch) Executive Committee.

Monday 09 February

Romanian Government
Mr Constantin Stoinescu, Secretary of State, Ministry of Labour, Social Solidarity and families (MoLSS&F) will visit the Scottish Parliament with a delegation of officials from the Romanian Government. Further details to follow on receipt of Visit Enquiry Form

Thursday 12 February

Irish Trade Union Congress
A delegation from the Irish Congress of Trade Unions, accompanied by Bill Speirs, Deputy General Secretary of the Scottish Trade Union Congress (STUC), will visit the Scottish Parliament. Further details to follow on receipt of the Visit Enquiry Form

Thursday 12 February

Irish Ambassador
The Irish Ambassador, His Excellency Daithi O’Ceallaigh will visit the Parliament. (Organised by the Europe and External relations Committee.)

Wednesday 25 February

Phillip Gawne MHK Parliament of the Isle of Man
Philip Gawne MHK, a parliamentarian from the Isle of Man, will be in Edinburgh to give a lecture in the Department of Celtic, Edinburgh University and will visit the Scottish Parliament. Mr Gawne will observe proceedings from the VIP Gallery plus meeting members from the Cross Party Group on Gaelic

Thursday 26 February

Swedish MPs
Initiated through the office of Helen Eadie MSP in conjunction with the Scotland and Europe cross-party pro European Campaign Group. This is a return visit by Swedish MPs, subsequent to an outward visit by MSPs to the Swedish Parliament during their recent referendum on joining the Euro. The main focus of the programme is an overview of the Scottish Parliament and its’ experiences of devolution but also includes a meeting with the Presiding Officer.
Outward Visits

Saturday 14 February

BIMR Regional Conference Falkland Islands
5 day Annual Regional Conference held by the Commonwealth Parliamentary Asc (Falkland Islands Branch). David Davidson MSP will represent Scotland Branch with Margaret Neal attending as secretary.

Monday 16 February - Thursday 19 February

Enterprise and Culture Committee – Study Visit to Denmark
This is in line with their case study in Campbelltown on Jan 19 & 20. The Enterprise and Culture Committee will undertake an investigation of policy and development of renewable energy using wind farms and the consequent objections being raised in Denmark.

NB: Information about the work of the External Liaison Unit and full ELU-organised visits programme and reports of outward delegations are available on

- SPEIR at http://intranet/speir/services/elu/elu.html

Further background notes on international issues are available on

- SCAN at http://intranet/speir/services/scan/sub-in.htm#cm

Status of outward visit reports this session:

Introduction

1 One of the core scrutiny tasks that the European and External Relations Committee conducts is the analysis of information received from the Scottish Executive on meetings of the various Council of the EU formations (formerly known as the Council of Ministers).

2 Two types of information are shared with the Committee under the agreement between the previous Committee and the Executive. First, a few weeks in advance of a Council meeting, the Committee is provided with an annotated agenda of the Council. This sets out the nature of the agenda and the Executive’s views on the items in question where it has a competence. The Executive’s views tend to be italicised so as to stand out for the reader. Members should be aware that often the agenda is a ‘best guess’ and second, the views provided are designed not to prejudice the UK’s negotiating position whilst still providing sufficient information for Members to have an understanding of the subject.

3 Second, following the meeting of the Council, within a few weeks, the Executive provides the Committee with a post-Council report, detailing attendance and the discussions that took place.

4 These two types of information give rise to the shorthand terminology of ‘pre-and post-Council scrutiny’ for this particular task of the Committee. In scrutinising the material, the Committee has a range of options:

   - note the material having placed it into the public domain for others to use
   - ask for more written information from the Executive
   - invite the relevant minister to attend the next committee meeting for further discussions

5 The nature of the scrutiny to be undertaken by Members should be focusing on two distinct areas. As a first priority, the Committee should aim to focus on the Council agenda items that make reference to early,
formative discussions (e.g. on Green Papers, White Papers, Commission Communications, orientation debates etc.) in the Council. This is an indication that the decision-making process for these agenda items in the Council is at an early stage. It is here that the Committee might best influence the minister’s thinking early on.

6 As a second priority, to be used perhaps only occasionally, the Committee may choose to focus upon agenda items nearing final decisions.

7 In a new development for session two of the Parliament, the relevant sectoral information is being sent directly by the relevant minister to other subject committees. This means, for example, that in addition to this Committee receiving fisheries information, the Environment and Rural Development Committee is simultaneously in receipt of the same information.

8 What this means for this Committee is that any further dialogue with the Executive is best done in co-ordination and co-operation with the dialogue that another committee may choose to undertake. Members should note that such as system does not preclude the European and External Relations Committee from engaging with all the material and information received. On occasions, it may be that an issue is pressing, but a subject committee has no time in which to deal with it and therefore this Committee may tackle the issue. This system requires good communication between conveners and between clerks, and close co-operation between the clerks and officials in the Executive.

This paper

9 Based on experience from session one of the Parliament, these papers are best sub-divided into two sections. Annex A contains a summary table, with the Convener’s recommendation(s) for each Council agenda/report. Annex B contains the full information provided by the Executive for each of the Councils being considered at today’s meeting.

Action requested

10 Members are requested to consider the recommendations set out in the table in Annex A in light of the information provided by the Executive, set out in Annex B.

Richard Lochhead MSP
Convener
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# SUMMARY TABLE OF CONVENER’S RECOMMENDATIONS

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<th>Notes and recommendation</th>
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<tr>
<td>Education, Youth and Culture Council, 26 February</td>
<td>Yes</td>
<td>Welcome the information and ask the Scottish Executive whether if a decision is taken to establish “Europass National Agencies” it has had any discussions with the UK Government on locations in Scotland for this Agency.</td>
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<tr>
<td>Environment Council, 2 March</td>
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<td>Employment, Social Policy, Health and Consumer Affairs Council, 4-5 March</td>
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<td>ECOFIN Council, 9 March</td>
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<td>ECOFIN Council, 20 January</td>
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ANNEX B

ANNOTATED AGENDAS/REPORTS

Education, Youth and Culture Council, 26 February

1. Objectives Report Process
   – Joint interim report on the implementation of the work programme on the follow-up of the objectives of education and training systems in Europe
      = Exchange of views
      = Adoption

The Irish Presidency will continue the work begun by Italy on the preparation of the draft joint interim report on the work programme for the pursuit of the objectives of education and training systems in Europe (‘the Lisbon Objectives’, which seek to make Europe the most dynamic knowledge-based economy in the world by 2010). This report must be ready for the Spring 2004 European Council. The report will set out future directions on how best to pursue the education, training and skills aspects of the Lisbon Strategy.

The interim report, produced by the Commission prior to the last Education Council in November 2003, has been subject to further discussion since Ministers exchanged views on the subject at the Council, and has been revised to take account of Ministers views and subsequent discussions at official level.

   – Exchange of views

The ‘Europass’ proposal for a decision to establish a single framework for the transparency of qualifications and competencies across Member States emerged at the beginning of January 2004. This would bring together a number of existing instruments, such as the European CV, into a coherent framework enabling qualifications and competencies gained in one country to be recognised and understood in another country. The decision would also require Member States to establish Europass National Agencies.

The Irish Presidency aims to reach political agreement on a Common Position on this at the May Council; however, an exchange of views at Ministerial level is scheduled to take place at the February Council.

3. Proposal for a Decision on the new operational rules for the Advisory Committee on Vocational Training (ACVT)
   – Adoption

These new operational rules relating to this 40 year old committee, aimed to streamline processes in advance of the accession of the 10, new Member States have been discussed at official level in Education Committee meetings and unanimously agreed by the Presidency at the committee meeting on 11 & 12 December 2003. The rules will be formally adopted by Ministers at the February Council.
Environment Council, 2 March

Awaiting information from the Executive
Employment, Social Policy, Health and Consumer Affairs Council, 4-5 March

Awaiting information from the Executive
Transport, Telecommunications and Energy Council, 8-9 March

Awaiting information from the Executive
ECOFIN Council, 9 March

Awaiting information from the Executive
Competitiveness Council, 11 March

Awaiting information from the Executive
Post-Council Report – General Affairs and External Relations Council, 26-27 January

Awaiting information from the Executive
Post- Council Report - ECOFIN Council, 20 January

Awaiting information from the Executive
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER

“Correspondence received from Scottish Executive on pre- and post-Council scrutiny”

Introduction

1 At various meetings held previously, the Committee asked for further information on a variety of subjects following its analysis of material on pre-Council of the EU annotated agendas. On behalf of the Committee, the Convener sent letters to various ministers in the Scottish Executive seeking more information. Copies of these letters for which replies were outstanding are attached as Annex A. Where replies have now been received, these are set out next to the appropriate letter from the Committee.

Action requested

2 Members are requested to consider the letters and the responses set out in Annex A.

Richard Lochhead MSP
Convener
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LETTER SENT TO THE SCOTTISH EXECUTIVE BY THE CONVENOR (DATED 29 SEPTEMBER)

TO JIM WALLACE MSP, DEPUTY FIRST MINISTER AND MINISTER FOR ENTERPRISE AND LIFELONG LEARNING

Following the recent meeting of the Committee, it was agreed that further information be sought on various items relating to the information you kindly provided on the Council of the EU agendas. This request was originally sent to Ross Finnie MSP, but it would appear that the matter is more a competence of your department.

Transport and Telecommunications Council

1. To ask the Scottish Executive to share with parliamentary committees the material collated on the EU experience of the roll out of 3G telecommunications systems and the siting of masts.

As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. I would be grateful therefore if you could arrange to provide this material in time for the Committee’s meeting of the 4 November*. If this is not possible, could I be informed as to the reasons for the delay and your suggested solutions, which would enable responses to be received from one meeting of the Committee to the next.

NB. *this was subsequently extended to 1 December due to mis-posting by the clerk of the initial request to the incorrect minister.

EXECUTIVE’S RESPONSE

Awaiting response from the Executive
LETTER SENT TO THE SCOTTISH EXECUTIVE BY THE CONVENOR (DATED 5 NOVEMBER)

TO ROSS FINNIE MSP, MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT

Following the recent meeting of the Committee, it was agreed that further information be sought on various items relating to the information you kindly provided on the Council of the EU agendas.

Agriculture and Fisheries Council

1. To ask the Scottish Executive why no annotated notes were provided on the Fisheries aspects on this agenda, setting out the Executive’s initial view of the Council agenda item. This prevented the Committee from understanding the nature of the agenda items and the Executive’s view.

2. To ask the Scottish Executive for a statement on its position vis-à-vis the establishment of Regional Advisory Councils and whether these will, as agreed by a previous Committee, have now or in the fullness of time delegated decision-making powers and be inclusive of all stakeholders.

3. To ask the Scottish Executive for a view on whether it is possible and whether it will seek a financial contribution to the new build within the Scottish fishery protection fleet under the proposed scheme amending the financial contribution by the Community to Member States’ expenditure incurred in implementing the control, inspection and surveillance systems applicable to the CFP. Additionally, could such a contribution be sought to assist with the contribution made by the Scottish fishery protection fleet in the North East Atlantic?

4. To note developments relating to the discussions on animal welfare during transportation and to ask that the post-Council report sets out the discussions on this agenda item in full, including the views put forward by the UK delegation at the Council and any decisions taken.

As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. In this respect, if possible, may we have a reply in time for the next meeting of the Committee. To this extent, a response by Monday 1 December would be greatly appreciated.

EXECUTIVE’S RESPONSE

Awaiting response from the Executive
LETTER SENT TO THE SCOTTISH EXECUTIVE BY THE CONVENOR (DATED 20 NOVEMBER)

TO JIM WALLACE MSP, DEPUTY FIRST MINISTER AND MINISTER FOR ENTERPRISE AND LIFELONG LEARNING

Re. Economic and Finance Council (ECOFIN), 24-25 November

Following the recent meeting of the Committee, it was agreed that I write to you to ask for more information in relation to the Investment Services Directive (ISD). I agree with you that the ISD is of significant importance to Scotland given that it aims to revise and update the 1995 directive, which established the legal framework governing firms and markets conducting specific types of investment business within the EU, and ensured their ability to operate across borders.

In your report to the Committee, you note that political agreement on the Directive was achieved at the last ECOFIN, but unfortunately the UK's blocking minority on mandatory quote disclosure rules fell apart here. May I ask you to provide some further information that explains how this occurred, what implications this may have for the Scottish financial industry and what options are open to the Executive and the UK Government to ensure the best possible outcome to Scotland during the conclusion of any outstanding negotiations. I would be grateful if this information could be supplied by 12 December.

I shall endeavour to copy this letter and your response to Alasdair Morgan MSP, Convener of the Enterprise and Culture Committee, for his interest.

EXECUTIVE’S RESPONSE

Awaiting response from the Executive
LETTER SENT TO THE SCOTTISH EXECUTIVE BY THE CONVENOR (DATED 23 JANUARY)

TO ALLAN WILSON MSP, ACTING MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT

Re. Agriculture and Fisheries Council, 26-27 January 2004

As I am sure you are aware, the above-mentioned Council was in fact cancelled. However, in the information kindly provided to the Committee by the Executive we noted that this would have been, "an opportunity to clarify any confusion remaining over the agreement reached at the December Council". We also noted the proposed agenda item on animal welfare legislation.

At our meeting of 20 January, it was agreed that the Committee would ask the Executive to provide more detail on the areas of the agreement reached at the December Council that it considered needed to be clarified and why. Furthermore, in relation to the animal welfare legislation, we agreed to ask for more detail on the Executive’s plans to ensure that the more remote parts of Scotland are not unduly disadvantaged by the Commission’s proposals and on the efforts more generally to ensure a level playing field across the EU with regards to adherence to animal welfare legislation already on the statute books.

I would be grateful if this could be supplied by the 20 February 2004, which would enable us to consider the material at our meeting of the 24 February. I look forward to your reply.

I am copying this letter to Sarah Boyack MSP in her capacity as Convener of the Environment and Rural Development Committee.

EXECUTIVE’S RESPONSE

Awaiting response from the Executive
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER


Introduction

1. One of the Committee’s core roles is to consider and report to Parliament on the transposition and implementation of EC/EU law in Scotland. Following agreement of the Committee, this is a role currently being reviewed with a paper expected from the Clerk shortly.

2. In the interim, the Committee continues to monitor the transposition and implementation of EC/EU law in Scotland according to two criteria:

   - The Executive’s performance in adhering to the timetables and deadlines for the transposition and implementation of our Community obligations.
   - The Executive’s reasoning behind a recourse to section 57 (1) of the Scotland Act. This section is the power that enables Westminster to implement EC obligations in a devolved area on an UK- or GB-wide basis.

3. It is in respect to this role for the Committee and in particular its historic interest in the amount of times section 57 (1) is used and the reasons why, that the Executive has written to the Committee with regard the following piece of Community legislation.

   - Council Regulation (EC) 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights

4. Annexes A sets out details provided by the Executive on this piece of Community legislation and the Executive’s reasoning behind a recourse to implementation UK- or GB-wide through section 57 (1) of the Scotland Act.
Recommendation

5. The Committee is asked whether it considers that the Executive has provided sufficient explanation and justification as to why in its view it is necessary to implement these regulations UK- or GB-wide and not have recourse to specific Scottish legislation.

Further observations

6. The Committee may wish to recall that its predecessor had no objection in principle to a recourse to section 57 (1) – i.e. to use UK- or GB-wide legislation in devolved areas – provided that there were no specific localised interests that need to be accommodated and which may therefore need the legislation to be made separately in Scotland.

7. Making a judgement on the merits or otherwise of a recourse to section 57 (1) was seen as ensuring that where occasions arose, “Scottish solutions to Scottish problems” could be accommodated within the framework of Community legislation. For example, in dealing with the disposal of animal carcasses, different solutions may be required in remote or island areas compared to mainland Britain. In this case, a “one size fits all approach” may not be the best option. Alternatively, in the case of certain legislation, it may be that there is a case to be made in order to have a level playing field. Each case should be judged by the Committee on its merits and the explanation provided by the Scottish Executive.

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ANNEX A

LETTER FROM THE SCOTTISH EXECUTIVE, DATED 9 FEBRUARY

REVISED BORDER REGULATION – INVOKING SECTION 57 OF THE SCOTLAND ACT.

I am writing to keep the Committee informed about the transposition of the Council Regulation (EC) 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights.

EU Regulation 1383/2002 is directly applicable in member states and implementing regulations at national level are not required to implement its substantive measures. However, it is necessary for national regulations to provide for its administration and enforcement. In this respect the Executive has asked the UK Government to transpose a number of elements of the Council Regulations, in exercise of Section 57 of The Scotland Act.

While intellectual property rights is a reserved matter this includes national plant breeders rights (PBRs) and Community plant variety rights (PVRs) which are devolved. Even so, they are managed in the UK by the Plant Variety Rights Office based in Cambridge which is a cross-border public authority designated under Section 88 of The Scotland Act 1998. Statutory Instruments on plant variety rights are already subject to Westminster procedure with the consent of Scottish Ministers. Her Majesty’s Customs and Excise (HMCE) has proposed that a single set of administration and enforcement regulations be produced for the UK. HMCE will police the regulations and it is likely to be difficult to separate the provisions relating to PBRs/PVRs from the other provisions. As the Council Regulations (see Appendix A) deal primarily with customs controls this seems a sensible arrangement.

I have also written in similar terms to the convenor of the Environment and Rural Development Committee.

ALLAN WILSON


The following is a brief summary of the EC Regulation, which refers to the main provisions of the Regulation only.

The EC Regulation provides for customs action to be taken against goods that infringe specified intellectual property rights (IPRs), or are suspected of infringing the specified intellectual property rights. The IPRs covered by the EC Regulation are as follows:

(a) patents;
(b) supplementary protection certificates;
(c) national plant breeders rights (PBRs);
(d) Community plant variety rights (PVRs);
(e) designations of origin or geographical indications; and
(f) geographical designations.

The EC Regulation also applies to counterfeit and pirated goods.
Under the Regulation, goods suspected of infringing the specified IPRs could be detained by HMCE for the period necessary to determine whether IPRs have been infringed. Infringing goods could be destroyed under the Regulation where the person to whom they belong admits that his goods infringe IPRs and agrees to abandon them for destruction or where destruction has not been specifically opposed within a specified period.

Action could be initiated in one of two ways:

(a) The holder of IPRs could make a written application to HMCE for measures to be taken against goods that the rights holder considers to infringe his IPRs; or
(b) HMCE could take action against goods suspected of infringing IPRs. This provision would enable goods to be detained by HMCE for three working days to enable an IPR holder to make an application to HMCE for action to be taken. If no such application is made, the goods will be released after three working days.

Where an application is made by a rights holder, the rights holder must accept liability towards the person whose goods are to be detained if the goods are found not to infringe his IPRs, or if an act or omission on the part of the rights holder means that procedures initiated in relation to the goods have to be discontinued. The rights holder must also agree to bear the costs of keeping the infringing goods prior to destruction, and the costs of destruction itself.

Customs officers will be able to take samples of the goods and, at the request of the rights holder, hand or send the samples to the rights holder for the purpose of analysis only. The relevant national legislation is to be used in determining whether an IPR has been infringed under national law.

Following completion of certain specified formalities, a person whose goods have been detained will be able to have his goods released on payment of a security that is sufficient to protect the interests of the rights holder.

Where goods are found to infringe IPRs, the Regulation provides that the goods shall not be:

(a) allowed to enter into the Community customs territory;
(b) released for free circulation;
(c) removed from the Community customs territory;
(d) exported;
(e) re-exported;
(f) placed under a suspensive procedure; or
(g) placed in a free zone or free warehouse.

The EC Regulation would therefore enable a PBR or PVR holder to apply to HMCE to have plants or plant material held at points of entry where he knows or suspects that material that is being imported or exported infringes his rights. The onus would be on the rights holder to show that his rights have in fact been infringed, but if he is able to do this successfully he would be able either to have the material destroyed or returned to the ‘owner’. This would mean that the infringing goods would not go on sale and his rights would therefore be protected.