The Committee will meet at 2.00 pm in the Chamber, Assembly Hall, The Mound, Edinburgh.

1. Promoting Scotland worldwide - an Inquiry into the external relations policy, strategy and activities of the Scottish Executive: The Committee will hear from—

   As a panel (Education and international promotion)

   Professor John Archer, Convener-Elect, Universities Scotland and Principal and Vice Chancellor, Heriot Watt University
   Michael Bird, Director, British Council Scotland
   Mark Simmons, Manager, Education UK Scotland, British Council Scotland


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

   Progress with the invitation to the Scottish Executive to brief the Committee on the work of the Regions with Legislative Power Group (Regleg)
   Proposed co-operation agreement between the Scottish Executive’s Department for Education and Young People and the French Ministry of Youth, Education and Research
   Outline of a briefing paper on the subsidiarity ‘early warning system’ and its implementation within the Scottish Parliament
   Progress towards the establishment of a Scottish Institute/Forum for EU affairs
Monthly report by the Clerk/Chief Executive and the External Liaison Unit on external relations activities in the Parliament

4. Petition (PE 738): The Committee will discuss the petition on vitamin and mineral supplements passed for information to the Committee by the Public Petitions Committee.

5. 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**

   Environment Council, 28 June

   **Previous Councils**

   Competitiveness Council, 17-18 May
   General Affairs and External Relations Council, 17-18 May
   Agriculture and Fisheries Council, 24-25 May
   Education, Youth and Culture Council, 27-28 May
   Justice and Home Affairs, 8 June

6. Implementation of EC legislation: The Committee will consider the decision of the Scottish Executive to implement EC legislation using section 57 (1) of the Scotland Act, specifically the—

   End of Life Vehicles Directive
   Statutory Instrument on Organic Products

7. Sift of EC/EU documents and draft legislation: The Committee will consider the latest list of EC/EU documents and draft legislative proposals received for this meeting.

**Stephen Imrie**
Clerk to the Committee
Tel: 0131 348 5234
Email: europe@scottish.parliament.uk
The following papers are attached for this meeting:

**Agenda Item 1**
BRIEFING PAPER: “Written submissions of evidence for today’s meeting” EU/S2/04/14/1

**Agenda Item 2**

**Agenda Item 3**
Convener’s Report EU/S2/04/14/3

**Agenda Item 4**
BRIEFING PAPER: “Petition (PE 738) on vitamin and mineral supplements” EU/S2/04/14/4

**Agenda Item 5**
BRIEFING PAPER: “Pre- and post-Council of the EU analysis and scrutiny” EU/S2/04/14/5
BRIEFING PAPER: “Correspondence received from Scottish Executive on pre- and post-Council scrutiny” EU/S2/04/14/6

**Agenda Item 6**

**Agenda Item 7**
Sift of EC/EU documents and draft legislation EU/S2/04/14/8
Introduction

1 This paper contains, in Annex A, the written submissions of evidence (where one has been received) from today’s witnesses. Most submissions received so far for this Inquiry can be seen on the Committee’s homepage within the Parliament’s website:

http://www.scottish.parliament.uk/european/index.htm

Recommendation

2 Members are requested to refer to these witness submissions to assist them in their preparations for the meeting.

Stephen Imrie
Clerk to the European and External Relations Committee
The Scottish Parliament
Tel: 0131 348 5234
Email: europe@scottish.parliament.uk
Introduction

Universities Scotland is the autonomous representative voice of Scotland’s twenty one universities and colleges of higher education.

It is probably fair to say that Scotland only has three industries which would be considered among the best of their type in the world; financial services, the production of luxury goods such as textiles and whisky, and higher education. This submission will explain how Scotland’s higher education sector promotes Scotland in the world, and why the Scottish Executive and other organisations should feature higher education more prominently in its overseas promotional activity.

How does higher education promote Scotland worldwide?

• Attracting Students

Going to university in Scotland is a very attractive prospect for people across the world. Figures for 2001 show that almost 22,000 students from other countries came to Scotland and the number of overseas applications to Scottish universities has risen by almost a quarter since 2000.

Apart from the many social and cultural attractions drawing overseas students to Scotland’s universities, the reputation Scottish higher education has for high quality learning and teaching, supported by its strong research base, is internationally acknowledged.

• New ways of learning

Scottish higher education also provides courses to a large number of students based in their own countries, many of which are tailored to ensure relevance to the context of the students’ country. Email and web based communication technologies have been developed by Scottish academics to improve the delivery of undergraduate and, more commonly post graduate, courses over great distances. Developments generated by Scottish universities in e-learning have raised standards in this important new area worldwide.

• Discovery

The higher education sector in Scotland conducts cutting edge research that enables new understanding throughout the world. The results of the last Research Assessment Exercise (RAE) report that over 200 individual university departments in Scotland are working on research of international excellence. In 2002 Scottish universities won £36 million in research funding from sources outside of the UK, beating competition from higher education institutions worldwide. Our academics are constantly in the world’s top ten most cited list and our universities are among the most quoted in Europe. These
achievements help to promote a perception of Scotland as a place of innovation, ingenuity and excellence.

- **Working with Industry**

Scottish higher education doesn’t just impact on academic circles across the world. We also have strong working partnerships with international business and industry. Thousands of research contracts from overseas companies are won by Scottish universities each year. We help businesses solve problems to improve their core functions and working practices. International companies working in the life sciences, digital animation, energy, nanotechnology and optoelectronics have used technology developed in Scottish universities to advance their business.

Providing initial training and continuing professional development is another way in which our universities engage with industry worldwide. This happens on a significant scale within the oil and gas industries, medicine and education. Apart from specific technical learning, we have also developed degree programmes to ease the cultural barriers for UK nationals wanting to conduct business in countries with different working practices and protocols.

- **Collaboration**

Scottish universities collaborate with universities worldwide on projects that involve all aspects of university activity. The effect of Scottish based academics working with colleagues overseas builds relationships between institutions that lay foundations for future economic, social and cultural activities between countries.

- **Defining Scotland**

Every year Scotland’s universities host events of international importance that bring the world’s leading thinkers to Scotland and each year we actively participate in similar international events around the world. This large scale of exchange has innumerable positive repercussions for Scotland, both economically and culturally, and helps to define the country’s voice and standing in the world.

Centres of specialist teaching and research focusing on Scottish music, art, history and sociology also work to define thinking about Scotland and its culture around the world.

**Benefits of higher education for Scotland**

- Attracts highly skilled people to live, study and work in Scotland. If it wasn’t for the large number of students coming to Scotland each year, many of whom stay, Scotland would revert to being a country of net emigration (while Scotland’s population is falling, it is due to a decline in birth rate rather than migration).
- Builds a far-reaching and diverse range of relationships with individuals, organisations and governments overseas
- Sustains a positive international profile of Scotland as a place of thinking and creativity
- Engages Scotland with international business and industry
- Spreads new and existing knowledge around the world
- Promotes Scotland as an outward looking country that has a lot to offer the world.

The direct benefit of overseas students to the Scottish economy is significant. Overseas student off-campus expenditure is estimated as £101.95 million. This generates a further 1,665 FTE jobs across Scotland. Overseas visitors’ off-campus expenditure is estimated as £40.7 Million. This generates a further 594 FTE jobs across Scotland. The off-campus expenditure of overseas students and visitors also represent export earnings for Scotland. The additional export earnings associated with overseas students and visitors amounted to over £142 million.

Conclusion

There are several agencies working to promote Scotland overseas, including the Scottish Executive, and they should take advantage of the big impact made by Scottish higher education in the world. Scottish higher education’s international success is remarkable and Scotland’s promotional voices need to feature it more prominently as a Scottish identifier overseas.
British Council

The British Council builds mutually beneficial relationships between people in the UK and other countries and increases appreciation of the UK’s creative ideas and achievements.

We have offices in 110 countries, 7,300 staff worldwide and a turnover of £430 million.

We manage a wide range of activity in the arts and creative industries, education and training, English language teaching, governance, law and human rights, knowledge and information, science and technology.

The British Council is a non-departmental public body - we receive a grant-in-aid from the UK Government through the Foreign and Commonwealth Office, but we operate independently.

British Council Scotland

The British Council is committed to representing both the UK as a whole and each of its constituent countries, and to working in partnership with the devolved administrations.

The British Council is the largest organisation with a global network of offices, a remit to represent Scotland internationally and a base in Scotland.

We currently have 50 staff based in Edinburgh, where we relocated in May 2002 to The Tun in Holyrood Road, adjacent to the new Parliament site.

In Scotland we work in partnership with:

- the Scottish Executive Education Department and with schools, colleges and universities to enhance the quality of education in Scotland through international contact
- the Scottish Executive Enterprise and Lifelong Learning Department and the education sector to promote Scottish education and training internationally through our joint venture, EducationUKScotland
- Scottish Development International to enhance the experience of international postgraduates in Scotland and create an international network of young professionals through our Scottish Networks International programme
- the Scottish Arts Council to showcase Scotland's arts and culture to international audiences
- the Royal Society of Edinburgh to raise international awareness of Scottish excellence in scientific research and innovation
- the Scottish Parliament, the Scottish legal system and civil society in Scotland to share best practice in governance, law and human rights
- the British Council's networks worldwide

For more information please visit our website at www.britishcouncil.org/scotland
British Council Scotland and Scottish Executive

Two senior Scottish Executive officials are invited to sit on British Council Scotland’s advisory committee which is chaired by Dr Andrew Cubie.

Within the Scottish Executive, we have particular relationships with four key departments:

External Relations Division, Finance and Central Services Department

British Council Scotland has worked and is working with External Relations Division and other partners, notably the Scottish Arts Council, on a range of initiatives to promote Scotland internationally, including:

- Distilled: Live Scotland in New York, as part of Tartan Day 2002
- Scotland in Sweden in 2002
- The first Scottish national representation at the Venice Biennale in 2003
- The 100th anniversary of the Entente Cordiale with France in 2004

We have learned that Scotland is promoted most effectively when:

- we work together, for example with the Executive, Scottish Development International, VisitScotland and the Scottish Arts Council
- there is adequate lead time to plan, resource, deliver and exploit an initiative, and when as a result we are able to take the fullest advantage of the British Council's partnerships in the target country
- our initiatives are based on the principle of mutually beneficial two-way exchange, as opposed to one-way export
- there are clear objectives, agreed between all the partners involved, linked to concrete evaluation measures

We are committed to developing our relationship with the new Promotion of Scotland Division. British Council Scotland is a member of the Scottish International Forum, and we welcome the Executive's initiative, firstly in bringing together those organisations which share a remit to promote Scotland internationally, and secondly - we hope - in taking an active lead in terms of consulting on and articulating Executive strategy and providing a framework for long-term planning and resource allocation.

The Director of British Council Scotland is on the steering group for the Fresh Talent initiative, and we welcome the additional impetus and resources that this may provide to promote Scottish education internationally, as well as the focus on improving and updating international perceptions of Scotland.

We also welcome the First Minister's St Andrew’s Day speech, with its commitment to harnessing creativity as a force for individual and social change, and believe that we have a contribution to make in providing an international dimension to this vision. The British Council is listed in the recent report on the implementation of the National Cultural Strategy as one of the "leading agencies and organisations in Scotland which assist those wishing to participate in Scottish culture".
British Council Scotland is working with SEED within the framework of a 3-year plan for 2002-05:

- to build a strategy for international education, in partnership with SEED and local authorities, that reflects the five national priorities for school education
- to embed international activity firmly within the school ethos
- to ensure that Scotland accesses relevant UK and European initiatives for education, training and youth, and that, where appropriate, distinctive Scottish models are created
- to help develop a framework for international continuing professional development opportunities for teachers in Scotland
- to promote opportunities available to the widest possible audiences across all phases of education, vocational training and youth work
- to ensure that ICT is used to the fullest possible extent in developing international links

We manage the Language Assistant scheme for Scotland (100th anniversary in 2005) and the EU-funded Socrates and Connect Youth programmes.

At the invitation of SEED, and on behalf of the UK’s four education departments, the British Council organised the Parallel Symposium of educationalists within the recent 15th Conference of Commonwealth Education Ministers in Edinburgh.

We have learned that the quality of education in Scotland is enhanced most effectively when
- we approach our international engagements understanding that we have as much to learn from the experience of other countries as we have to contribute
- there are good links between SEED, the local authorities and other key players
- there are effective links between SEED, DfES in England, NATED in Wales and DENI in Northern Ireland - there are occasions when Scotland needs to promote itself on its own, and there are times when it is advantageous to operate as part of the UK

British Council Scotland is a member of SEED’s International Education Advisory Group.

British Council Scotland works with SEETLLD and the education sector in Scotland under the banner of EducationUKScotland - a brand created to align the international promotion of Scottish education and training with the Education UK brand and to increase brand impact with potential international students - and within the framework of a 3-year strategy for 2003-06:

- to attract more international students to Scotland, within the framework of the Prime Minister's Initiative for the UK as a whole
- to promote the education sector in Scotland through targeted activity in key markets and in general throughout the British Council network worldwide
- to undertake competitor analysis and provide statistical analysis of international students in Scotland, and to undertake a mapping exercise to highlight collaborative and articulation links between the HE and FE sectors - an area in which Scottish education has a competitive advantage
• to build and maintain the EducationUKScotland website as an effective resource and gateway to the education sector in Scotland
• to work in partnership with the education sector in Scotland to facilitate an open environment which supports institutions to work collectively and collaboratively to ensure quality and long-term sustainability

We have learned that Scottish education is promoted most effectively when:

• we represent the whole sector, which, with the involvement and support of SEETLLD, Universities Scotland, the Association of Scottish Colleges, SCIS and SELTIC, we do
• the framework for our international engagement is agreed and set out clearly, as it is in the Executive's Framework for Higher Education
• the international dimension is taken into account in all policy developments, as it is, for example, with the Scottish Credit and Qualifications Framework

Justice Department

British Council Scotland works with the Justice Department, the Parliament and a range of civil society organisations:

• to share Scottish experience and expertise in governance, law and human rights with international audiences
• to draw on international experience and expertise for the benefit of Scottish organisations and individuals
• to enhance Scotland’s reputation internationally as a devolved, diverse, inclusive and modern society
• to position Scotland for strategic partnerships internationally

We have learned that Scotland contributes and gains most in these areas when:

• we share our difficult experiences as well as our successful interventions

Summary

We intend the above to communicate:

• the British Council’s commitment to working in partnership with the Scottish Executive and its agencies
• the areas in which we believe that this partnership is working well
• our desire to see a wider, deeper, more strategic and more ambitious approach to the international dimension, for the benefit of Scotland, the UK and our international partners
• our willingness to contribute further evidence, if required, to the parliamentary enquiry
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER


Introduction

1 At its meeting of 24 February 2004, the Committee agreed that Mr Phil Gallie MSP would act as its Reporter in investigating the Decision of the European Commission in the case of Ryanair and Charleroi Airport and what effect this decision could have on low cost flight operators in Scotland.

2 Subsequently, at its meeting of 30 March 2004, the Committee agreed the Terms of Reference presented by Phil Gallie MSP (see Appendix 2), and the approach put forward. That approach consisted of two phases, and the Committee agreed that Phase 1 would be carried out, subject to two points being incorporated from Phase 2. Following the completion of Phase 1, the Reporter agreed to provide the Committee with a report on the information gathered to enable the Committee to take a decision on the best way to proceed. That Report is presented in this paper by Phil Gallie MSP together with his conclusions and recommendations.

Recommendation

3 That Members review the information contained in the Report provided by the Reporter in Annex A and agree on the best way to proceed with the Inquiry.

Richard Lochhead MSP
Convener
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Email: europe@scottish.parliament.uk
Annex A

Report on initial findings to consider what effect the Decision of the European Commission in the case of Ryanair and Charleroi Airport may have on low cost flight operators from Scottish Airports

Background

1 The European Commission received a complaint in January 2002 concerning subsidies and incentives awarded by the Charleroi Airport management (BSCA) and the Walloon regional government to Ryanair for the operation of flights to and from Charleroi airport in Belgium. On 11 December 2002, the European Commission launched a formal investigation into these payments.

2 In February 2004, the European Commission determined that elements of the commercial arrangements made between the publicly owned Charleroi Airport management and Ryanair contravened EU Trading regulations in that there was a failure by the Charleroi management to meet “prudent private investor criteria”.

3 Recognising the importance of low cost airline carriers to Scotland and the importance of Ryanair to Glasgow Prestwick Airport in particular, the European and External Relations Committee discussed the issue at a regular meeting of the Committee on 24th February 2004. A decision was taken to appoint a Reporter to carry out a phased investigation into the impact that the Charleroi decision might have on Scotland.

4 At a further meeting of the Committee on 30th March 2004, it was agreed that the first phase of the investigation be carried out (see Appendix 2). It was suggested by the Committee that the first two parts of Phase 2 be incorporated into Phase 1. I discuss other Parliamentary Inquiries elsewhere in this report. However, the task of assessing existing and proposed EU regulations with respect to Competition and Transport was an enormous one that would have involved commissioning research from outwith the parliament. I did not consider it necessary to pursue that at this stage, due to both time issues and the amount of work involved compared to the benefit to the report at this stage. I therefore submit phase 1 findings and recommendations within this report for consideration.

Low Cost/Low Fares/No Frills Carriers Operating from Scottish Airports

5 There is no generally agreed definition of what constitutes a “low cost”, “no frills” or “low fares” airline. For the purposes of this report it is assumed that the following carriers operating from Scottish airports can be considered as “low cost” airlines as they do not offer a facility for through-ticketing, are not members of an airline alliance and do not include the price of meals or drinks in the price of a ticket.
- **Air Scotland**: Air Scotland is a UK private limited company. It does not provide any air services rather it carries out ticketing, marketing and administration for other airlines which provide the actual air services – at present this is a function provided by Greece Airways, an airline based in Athens and licensed by the Greek Civil Aviation Authority.

- **BMI Baby**: A wholly owned subsidiary of BMI which is a UK private limited company that is 50% plus one share owned by BBW, 30% minus one share by Lufthansa and 20% by SAS (Scandinavian Airline Services).

- **Duo**: Duo is a UK private limited company, formed by a management buyout of Maersk Air Ltd in June 2003 and was placed into administration on 1 May 2004. The airline ceased flights from that date and all but a skeleton staff were made redundant.

- **Easyjet**: Easyjet is a UK public limited company traded on the London stock exchange.

- **FlyBE**: FlyBE is a UK private limited company.

- **Germanwings**: Germanwings is a wholly owned subsidiary of Eurowings Luftverkehr AG, which is itself partly owned by Lufthansa which is a publicly listed company traded on all German stock exchanges.

- **Globespan**: Globespan is a UK public limited company traded on the London stock exchange.

- **Ryanair**: Ryanair is a publicly listed company traded on the London, New York (NASDAQ) and Dublin stock exchanges and licensed by the Irish Commission for Aviation Administration.

- **Snowflake**: Snowflake is a wholly owned subsidiary of SAS (Scandinavian Airline Systems) which is a publicly listed company traded on the Stockholm, Oslo and Copenhagen stock exchanges. The route will be withdrawn by Snowflake on 23 July 2004.

### Airports in Scotland

There are 54 airports in Scotland. 18 receive scheduled air services, out of which five are served by low cost airlines. Details of the ownership of these five Scottish airports are as follows:

<table>
<thead>
<tr>
<th>Airport</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeen</td>
<td>BAA: UK Plc</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>BAA: UK Plc</td>
</tr>
<tr>
<td>Glasgow</td>
<td>BAA: UK Plc</td>
</tr>
<tr>
<td>Inverness</td>
<td>Highlands and Islands Airport Ltd: State owned</td>
</tr>
<tr>
<td>Glasgow</td>
<td>Infratil: New Zealand Plc</td>
</tr>
<tr>
<td>Prestwick</td>
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</tbody>
</table>
## Routes operated by Low Cost/Low Fare/No Frills Carriers from Scottish Airports

The following table details the routes operated by low cost airlines from Scottish airports and identifies the owner of the destination airport.

<table>
<thead>
<tr>
<th>Airline</th>
<th>Departure Airport</th>
<th>Arrival Airport</th>
<th>Ownership of Arrival Airport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Scotland</td>
<td>Edinburgh</td>
<td>Alicante</td>
<td>Aeropuertos Espanoles y Navegacion Aerea AENA (Public enterprise organisation, state owned)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Malaga</td>
<td>AENA</td>
</tr>
<tr>
<td>Glasgow</td>
<td></td>
<td>Alicante</td>
<td>AENA</td>
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<td></td>
<td></td>
<td>Barcelona</td>
<td>AENA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Girona-Costa Brava</td>
<td>AENA</td>
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<tr>
<td></td>
<td></td>
<td>Malaga</td>
<td>AENA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Palma de Mallorca</td>
<td>AENA</td>
</tr>
<tr>
<td>BMIBaby</td>
<td>Edinburgh</td>
<td>Nottingham-East Midlands</td>
<td>Manchester Airports Group (10 local authorities)</td>
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<tr>
<td></td>
<td></td>
<td>Cardiff</td>
<td>TBI (Plc listed on London stock exchange)</td>
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<tr>
<td>Glasgow</td>
<td></td>
<td>Nottingham-East Midlands</td>
<td>Manchester Airports Group</td>
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<td>Cardiff</td>
<td>TBI</td>
</tr>
<tr>
<td>Duo</td>
<td>Edinburgh</td>
<td>Geneva</td>
<td>Public Autonomos Establishment (State government owned but managed as a separate entity by board of directors)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nice</td>
<td>State owned, managed by Nice Cote d'Azur Chamber of Commerce</td>
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<tr>
<td></td>
<td></td>
<td>Oslo</td>
<td>Avinor (State owned limited company)</td>
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<tr>
<td></td>
<td></td>
<td>Milan Malpensa</td>
<td>Società Esercizi Aeroportuali (SEA) 85% Municipality of Milan, 15% Province of Milan</td>
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<tr>
<td></td>
<td></td>
<td>Munich</td>
<td>Federal Government 26%, State Government 51%, City of Munich 23%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Zurich</td>
<td>49% Canton of Zurich, 5.41% City of Zurich and 45.59% private ownership. Managed by Unique.</td>
</tr>
<tr>
<td>Easyjet</td>
<td>Aberdeen</td>
<td>London Luton</td>
<td>TBI</td>
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<tr>
<td>Location</td>
<td>Company/Owner Details</td>
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<tr>
<td>Edinburgh</td>
<td>Amsterdam Schiphol Group, 75.8% State Owned, 21.8% Amsterdam Municipality, 2.4% Rotterdam Municipality</td>
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<tr>
<td>Belfast International</td>
<td>TBI</td>
<td></td>
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<tr>
<td>Bristol</td>
<td>Joint venture between Macquarie Bank Group and Cintra Concesiones de Infrastructuras de Transporte, a subsidiary of Grupo Ferrovial</td>
<td></td>
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<tr>
<td>Nottingham-East Midlands</td>
<td>Manchester Airports Group (10 local authorities)</td>
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<tr>
<td>London Gatwick</td>
<td>BAA</td>
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<td>London Luton</td>
<td>TBI</td>
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<td>London Stansted</td>
<td>BAA</td>
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<tr>
<td>Glasgow</td>
<td>Amsterdam Schiphol Group, 75.8% State Owned, 21.8% Amsterdam Municipality, 2.4% Rotterdam Municipality</td>
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<tr>
<td>Belfast International</td>
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<tr>
<td>Nottingham-East Midlands</td>
<td>Manchester Airports Group (10 local authorities)</td>
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<tr>
<td>London Luton</td>
<td>TBI</td>
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<tr>
<td>London Stansted</td>
<td>BAA</td>
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<tr>
<td>Inverness</td>
<td>London Gatwick and Devon County Council owned by Devon County Council and managed by Exeter and Devon</td>
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<tr>
<td>FlyBE</td>
<td>Edinburgh Belfast City 100% owned by Ferrovial, a Spanish public company traded on the Madrid stock exchange</td>
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</tr>
<tr>
<td>Birmingham</td>
<td>7 local authorities 49%, Aer Rianta 24.125%, Macquarie 24.125% and Employee Share Trust 2.75%</td>
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<tr>
<td>Exeter</td>
<td>Owned by Devon County Council and managed by Exeter and Devon</td>
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<tr>
<td>Airline</td>
<td>Location</td>
<td>Ownership Details</td>
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<tr>
<td>Airport Limited, a company owned by Devon County Council.</td>
<td>Jersey</td>
<td>100% States of Jersey owned.</td>
<td></td>
</tr>
<tr>
<td>London City</td>
<td>Private limited company, owner Dermot Desmond.</td>
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<tr>
<td>Southampton</td>
<td>BAA</td>
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</tr>
<tr>
<td>Germanwings</td>
<td>Edinburgh</td>
<td>Cologne-Bonn Federal Government 30.94%, 30.94% State government and 38.12% shared between 2 city and 2 district councils</td>
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</tr>
<tr>
<td>Globespan</td>
<td>Edinburgh</td>
<td>Alicante AENA</td>
<td>Barcelona AENA</td>
</tr>
<tr>
<td>Glasgow</td>
<td>Alicante AENA</td>
<td>Barcelona AENA</td>
<td>Faro Aeroportos de Portugal ANA (State owned company)</td>
</tr>
<tr>
<td>Ryanair</td>
<td>Glasgow</td>
<td>Prestwick</td>
<td>Rome (Ciampino) ADR</td>
</tr>
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</table>
Scottish Executive Interim Route Development Fund

8 The Scottish Executive’s Interim Route Development Fund, which amounts to £6.8m over the three financial years 2002/03-2004/05, provides funding to the operators of Scottish airports to allow them to offer discounts to airlines on airport and landing charges. The funds come from:

- £5m ‘End year flexibility’ from the Scottish Executive
- £500,000 from the Scottish Executive’s Integrated Transport Fund
- £1m from Scottish Enterprise
- £300,000 from Highlands and Islands Enterprise

9 The terms of each individual agreement are subject to commercial confidentiality clauses, meaning that the Executive, airport operators and airlines cannot release any details of the amounts paid.

10 To ensure that the Fund meets European competition rules monies are available to all airlines establishing routes from all Scottish airports where they can demonstrate that a new route will improve one, or more, of the following:

- business connectivity
- inward investment prospects

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1 Charges are levied on airlines for aircraft landing and parking. Charges are also levied on departing passengers, which are collected by airlines/agents.
• in-bound tourism.

11 The Fund is administered by Scottish Enterprise on the Executive’s behalf in partnership with VisitScotland and Highlands and Islands Enterprise. Scottish Enterprise hired the following consultants to support it in the operation of the fund, after advertising/tendering in the Official Journal of the European Communities:

• Aviasolutions: project managers
• York Aviation: prepare economic evaluations of proposed routes
• Booz Allen Hamilton: prepare a strategic study of the operation of the Fund

12 The Executive is still to decide whether to make the Fund permanent. The following routes have received support from the Interim Route Development Fund:

### Scottish Executive Interim Route Development Fund Supported Routes*

<table>
<thead>
<tr>
<th>Airline</th>
<th>Route</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bmi</td>
<td>Edinburgh to Jersey</td>
<td>Began 19 May 2003</td>
</tr>
<tr>
<td>Bmi</td>
<td>Aberdeen to Groningen</td>
<td>Began 4 May 2004</td>
</tr>
<tr>
<td>Continental</td>
<td>Edinburgh to New York (Newark)</td>
<td>Begins 10 June 2004</td>
</tr>
<tr>
<td>duo</td>
<td>Edinburgh to Oslo</td>
<td>Ceased 1 May 2004</td>
</tr>
<tr>
<td>duo</td>
<td>Edinburgh to Milan</td>
<td>Ceased 1 May 2004</td>
</tr>
<tr>
<td>duo</td>
<td>Edinburgh to Geneva</td>
<td>Ceased 1 May 2004</td>
</tr>
<tr>
<td>duo</td>
<td>Edinburgh to Zurich</td>
<td>Ceased 1 May 2004</td>
</tr>
<tr>
<td>duo</td>
<td>Edinburgh to Munich</td>
<td>Ceased 1 May 2004</td>
</tr>
<tr>
<td>Eastern</td>
<td>Inverness to Birmingham</td>
<td>Began 27 October 2003</td>
</tr>
<tr>
<td>Eastern</td>
<td>Aberdeen to Groningen</td>
<td>Never operated</td>
</tr>
<tr>
<td>Emirates</td>
<td>Glasgow to Dubai</td>
<td>Began 12 April 2004</td>
</tr>
<tr>
<td>Germania</td>
<td>Glasgow Prestwick to Berlin</td>
<td>Never operated</td>
</tr>
<tr>
<td>Germanwings</td>
<td>Edinburgh to Cologne-Bonn</td>
<td>Began 30 March 2003</td>
</tr>
<tr>
<td>Loganair (BA)</td>
<td>Kirkwall to Bergen (summer only)</td>
<td>Ran summer 2003, no plans to run again</td>
</tr>
<tr>
<td>Ryanair</td>
<td>Glasgow Prestwick to Stockholm (Skavska)</td>
<td>Began 4 April 2003</td>
</tr>
<tr>
<td>Ryanair</td>
<td>Glasgow Prestwick to Girona</td>
<td>Began 22 May 2003</td>
</tr>
<tr>
<td>Ryanair</td>
<td>Glasgow Prestwick to Gothenburg</td>
<td>Began 16 October 2003</td>
</tr>
<tr>
<td>Ryanair</td>
<td>Glasgow Prestwick to Milan (Orio al Serio)</td>
<td>Began 7 January 2004</td>
</tr>
<tr>
<td>Ryanair</td>
<td>Glasgow Prestwick to Rome (Ciampino)</td>
<td>Began 29 April 2004</td>
</tr>
<tr>
<td>Snowflake</td>
<td>Inverness to Stockholm (Arlanda)</td>
<td>Will cease on 23 July 2004</td>
</tr>
</tbody>
</table>

*It is important to note that no Interim Route Development Fund payments have been made for flights that have ceased, or were never operated, as payments are made
retrospectively, in the form of discounts on airport fees and landing charges paid by airlines, which are based on the number of passengers flown.

European State Aid Rules

13 There are strict European rules governing the award of state aid, particularly in relation to transport operations. Article 87 of the Treaty Establishing the European Community prohibits any aid granted by a Member State or through State resources in any form which distorts or threatens to distort competition by favouring certain firms or the production of certain goods. The aid in question can take a variety of forms, including:

- grants
- interest relief
- tax relief
- state guarantee or holding
- provision by the state of goods and services on preferential terms

14 By giving certain firms or products favoured treatment to the detriment of other firms or products, state aid can disrupt normal competitive forces. State aid that distorts competition in the Common Market is prohibited by the Treaty Establishing the European Community. However, exceptions to this ban are allowed where:

- the aid has a social character, granted to individual consumers
- aid is intended to make good the damage caused by natural disasters or exceptional occurrences
- the aid is designed to:
  - promote the economic development of underdeveloped areas (regarded as particularly backward in accordance with Community criteria) - this includes the designations of PSOs to such areas
  - promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State
  - facilitate the development of certain activities or areas
  - promote culture and heritage conservation

15 In the last two cases, such aid must not affect trading conditions and competition in the Community to an extent that is contrary to the common interest. Exclusive authority for scrutinising the state aid schemes of EU governments was conferred on the European Commission by the Member States. The Commission’s role is to monitor proposed and existing state aid measures by Member States to ensure that they are compatible with EU State Aid legislation and do not distort intra-community competition. The Commission has the
power to require that aid granted by Member States which is incompatible with the Common Market to be repaid by the recipients.

The Commission has adopted a number of "guidelines" or "frameworks" to clarify its state aid policy in the following areas:

- Regions lagging behind in terms of development
- Research & development
- Employment
- Protection of the environment
- Rescue and restructuring of firms in difficulty

16 The Commission has also adopted a number of "block exemption" regulations for state aid to:

- Small and medium-sized enterprises
- Aid for training
- Aid for employment

Aid granted in conformity with all the conditions set out in these regulations is automatically considered compatible with the single market.

European State Aid Rules and Airlines

17 The European Commission pursued a programme of liberalisation of European air transport in the early 1990's. Following the completion of this work, the Commission laid down the principles and criteria for its evaluation of State Aid to airlines with the publication of "Guidelines on application of Articles 92 and 93 [now 87 and 88] of the EC Treaty" during 1994.

18 The guidelines require the Commission to decide whether the public funding constitutes state aid under Articles 87 and 88 of the Treaty or whether it can be compared to a normal commercial transaction by a private shareholder interested in investing in a company. This is known as the "market economy investor principle". The Commission must decide, considering the state of the company and its market prospects, whether a private investor would have invested the same amount of money in the company. If the Commission decides that no private investor would have made such an investment then the public aid is considered State Aid.

19 However, the Commission may approve the aid to an airline, subject to a series of conditions:

- The aid must form part of a comprehensive restructuring programme of limited duration to restore the airline's health and long-term viability
• The restructuring programme must be self-contained, in the sense that no further aid will be necessary for the duration of the programme or in the future. The aid may be granted only once (the "one time, last time" principle)
• The programme must include capacity reductions, if necessary in order to restore the company to financial and commercial viability
• The programme must not be targeted on expansion, i.e. must not lead to any increase in the number of aircraft or seats.
• The government must not interfere in the management of the company, which must be run according to commercial principles.

20 Since 1991, seven airlines have received public funding for restructuring which was considered State Aid under Article 87, these were Sabena, Iberia, Aer Lingus, TAP, Air France, Olympic Airways and Alitalia. The European Commission gave the go-ahead for this funding as an exceptional measure to support restructuring of the airlines concerned. Most of the airlines which needed such restructuring have now completed the process. However, the Commission now considers that State aid for airlines is no longer necessary and is unlikely to approve any further awards.

The Charleroi Airport Case

21 The European Commission received a complaint in January 2002 concerning subsidies and incentives awarded by the airport management (BSCA) and the Walloon regional government to Ryanair for the operation of flights to and from Charleroi airport in Belgium. A formal investigation into these payments was launched by the Commission on 11 December 2002

What advantages were granted at Charleroi airport?

22 The payments and incentives granted to Ryanair in 2001 can be summarised as follows:

The Walloon Region granted Ryanair:

• a preferential rate for landing charges of EUR 1 per boarding passenger, approximately 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 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.

Did the state aid meet the prudent private investor criterion?

23 The Commission had to determine whether the payments and incentives offered to Ryanair by the Walloon Regional Government and BSCA were in keeping with the private investor principle. The Commission published its decision on 3 February 2004, details of which are briefly summarised below:

The Commission concluded that no private operator in the same circumstances as BSCA would have granted the same advantages. The Commission based this decision on three key points:

• When BSCA signed the contract with Ryanair it was exposed to the risk of losses exceeding the company's aggregate current result over a ten-year period, which would have wiped out any hope of a fair return on the investment over the reference period.

• 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.

• BSCA used its special connections with the Walloon Region and the advantages stemming there from in order to improve the profit forecast.

The Commission also noted that the incentives were operational aid rather than investment in the airport infrastructure, which would be compatible with classic instruments of Community law such as regional development aid.

24 Following this decision the Commission required Ryanair to pay back the following payments and incentives:

Reduced airport charges: Reduced airport charges are allowable where they are freely available to all operators. In this case Ryanair was the sole beneficiary for a period of 15 years. The guarantees given to Ryanair in this connection for the future must be withdrawn.

In future, the Walloon Regional Government can introduce a new standard rate which acts as an incentive, but it must be applied to all airlines.
Reduced ground handling fees: Reductions in ground handling fees are allowed if an airport can demonstrate that the fees charged are enough to cover the cost of providing the service provided. The reductions granted to Ryanair by BSCA, which take the form of a preferential tariff for ground handling services and did not enable the airport to cover its costs and must be recovered.

The amount concerned could total EUR 4 million for the period 2001-2003. 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 use any surpluses there may be from other commercial activities to cover its deficit on the ground handling side.

One-shot incentives provided for the opening of new routes: Incentives are allowed as long as they take account of the actual costs involved in opening new routes. However, contributions paid to Ryanair in respect of staff recruitment, training and accommodation costs, the opening of new routes and the provision of premises were provided on a flat rate basis and are not tied to any objective, and the Commission considers “it might be necessary to recover them.”

Aid provided for the Dublin-Charleroi route. This route is not “new”, as it opened in 1997. The aid granted in respect of this route must therefore be recovered.

However, the Commission did consider that some of the aid granted to Ryanair was compatible with EU transport policy, based on the fact that it fostered the development and use of underused secondary airport infrastructure which represents a cost to the community as whole. The Commission therefore allowed Ryanair to keep part of the aid already granted, net of the money to be recovered, including 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.

Ryanair could also keep some of the one-shot incentives referred to above provided that the Belgian authorities comply with conditions imposed by the Commission, principally the aid:

- must be necessary for the opening of new routes
- must be of limited duration

UK Registered Airlines Operating from the UK

In order to carry passengers, cargo or mail for payment, air operators based in the European Economic Area (EEA) must hold an Operating Licence granted by the Member State in which they have their principal place of business.
Any UK based person or company that operates an aircraft that carries passengers or cargo for remuneration requires an Operating Licence from the Civil Aviation Authority (CAA). The CAA grants two classes of Operating Licence – Type A and Type B.

- **Type A**: Required by operators of aircraft with 20 or more seats
- **Type B**: Required by operators of aircraft with 19 or fewer seats

A full list of UK Air Operating Licence holders can be found in Appendix 1.

Holders of UK Operating Licences are entitled to take advantage of EU Market Access Regulations (EU Regulation 2408/92), which enables airlines registered in an EEA country to fly on most routes within the EEA, without the need for any further licences.

Operating Licences do not themselves authorise air operations. Operations by UK registered airlines outside the EEA will normally require a carrier to hold an additional licence (a Route Licence), which is also granted by the CAA.

**Overseas Registered Airlines Operating from the UK**

Any air operator holding an operating licence from an EEA Member State can fly on most routes from the UK without the need for further certification from the CAA. This includes the four foreign-owned low cost airlines operating from Scottish airports at present (including Air Scotland), e.g. Ryanair which received its operating licence from the Irish Commission for Aviation Regulation.

Flights to and from the UK operated by overseas airlines registered in countries outwith the EEA are governed by numerous Air Service Agreements, effectively treaties between the countries involved, which grant airlines bilateral rights to fly between the two states. This is dealt with by the Department for Transport at a UK level.

**Parliamentary Inquiries**

In November 2003, the House of Commons Transport Committee launched an Inquiry into “European Union Competence and Transport”. This Inquiry is still taking evidence to date and oral evidence taking sessions to date have covered the Charleroi decision and the nature of the Scottish Executive’s Route Development Fund. I recommend that a copy of this report is obtained as soon as it is available, and brought to the attention of the Scottish Parliament’s Local Government and Transport Committee.

I am not aware of any actual Inquiries into this issue by the relevant Committee of the Walloon Parliament. However, several questions on this issue have been asked on the floor of the Walloon Parliament.
Further to this, I am not aware of any other Inquiries specifically looking at Low Cost Carriers in any other Parliamentary Committees across the EU.

Details of Meeting with Michael Cawley, Operations Director and Deputy Chief Executive, Ryanair

33 The situation at Charleroi is now under appeal\(^2\). It appears that the Commission, while it received submissions from the owners of the airport, did not actually visit the airport despite many invitations from Ryanair and the management. The deal at Charleroi was totally dependant upon volume and would have been open to any other private or state airline if similar volumes could be attained. Charleroi, Mr Cawley suggested, was open to further contact from any other airline and similar deals would be on offer along the lines of that agreed with Ryanair.

34 Ryanair have a ten year deal with Glasgow Prestwick Airport and are keen to seek new destination airports elsewhere if suitable and attractive routes from a passenger viewpoint are identified. The Ryanair philosophy revolves around aircraft spending as much time as possible in the air. Ryanair’s average flight time currently is 1hr 15mins and sees sufficient business within a 2.5 to 3 hour flight distance to maintain its 20% growth in passenger numbers for the next 10 years.

35 In asking about routes from other Scottish airports, it appears that Ryanair already have a flight on the Aberdeen/Dublin run albeit, overall, Edinburgh, Glasgow and Aberdeen are uncompetitive with respect to airport charges. Similarly, this comment extends to Inverness where an added charge of £8.00 per passenger is required to meet PFI conditions at that airport.

36 With respect to the Charleroi decision, it appears that, of the eleven destinations flown by Ryanair from Glasgow Prestwick, four – Barcelona, Dublin, Shannon and Charleroi – are owned by the public sector. There is no room, it would appear, for Ryanair to change relationships with Dublin Airport but, if the Charleroi Commission decision were upheld, Ryanair would obviously have to consider implications further with respect to all public sector airports.

37 Following on from the decision, Ryanair announced suspension of their Stansted-Charleroi flight albeit retained the Glasgow Prestwick link. The reasoning behind this is, perhaps, an indication of Ryanair’s intention if, indeed, their appeal on Charleroi were to be lost.

38 Concern was expressed about future judgements being made on compensation payable for over-booking and cancellations. Ryanair does not operate a compensation support scheme for those using their

\(^2\) Members may wish to be aware of the Standing Order provisions covering the rules on sub judice
service, this being a feature of the full -fair airline philosophy. The point was made if, indeed, such schemes were to be introduced, Ryanair would reflect this in airfares albeit they feel that any compensation paid must be proportional to such airfares (therefore, allowing them to continue their practice of offering a range of low cost options).

39 Ryanair appreciate the availability of Scottish Executive grant for new routes. This does allow them to experiment and test new options and certainly will have an effect on growth of airline services from Scotland in Ryanair's view. They accept the logic of limited duration grants but feel that, with the passage of time, there may, in some circumstances, be scope for review.

40 It was interesting to note that Ryanair feel that VisitScotland has improved Scotland's image in recent times and is achieving a rise in external interest in Scotland as a destination, particularly when linked to low cost flight operator activities.

What next?

41 Ryanair has appealed the decision to the European Court of First Instance. On 26 February 2004, Ryanair announced a 10% reduction in the number of flights to Charleroi. Ryanair announced on 13 April 2004 that it had reached agreement with BSCA and the Walloon Regional Government to maintain its operations at Charleroi, at the same cost base, in a manner that it considers meets the requirements of the European Commission.

Details of Meeting with Ian Cochrane, Glasgow Prestwick Airport Operations Manager

42 Mr Cochrane kindly agreed to meet with me given the absence of the Airport’s General Manager, Tom Wilson, who was in Japan at the time promoting both Glasgow Prestwick and Scotland's business interests.

43 The Charleroi decision, at this point, does not affect Glasgow Prestwick since Glasgow Prestwick is an independent free-standing airport which establishes business arrangements with air operators which are mutually attractive. The service from Glasgow Prestwick to Charleroi has continued throughout since the Commission made its decision, albeit a threat was recognised if the Stansted hub status were to be affected to any extent by the European Commission’s decision.

44 The public licence held by Glasgow Prestwick Airport does demand that the Airport offers deals to airlines which do not discriminate against any. The licence does recognise, however, commercial realities with respect to the striking of individual agreements.
Regular services from Glasgow Prestwick currently are offered by Ryanair to Gothenburg, Charleroi, Hahn, Stansted, Dublin, Oslo, Stockholm, Bournemouth, Barcelona, Milan and Paris. A regular service is offered by BMI to Cardiff.

Scheduled flights by Globespan to various European destinations during the summer period have been lost to Glasgow Airport for the current year, leaving Ryanair as the major airline customer by far at Glasgow Prestwick.

Chartered companies regularly use Glasgow Prestwick as a location for their activities. This year, the passenger throughput at Glasgow Prestwick is likely to exceed 2 million passengers; this is a four time increase on the number of passengers travelling from Glasgow Prestwick in its heyday as the Atlantic Gateway.

The 2 million mark, however, does induce a ‘penalty’ of sorts in that service provision, e.g. baggage, tickets etc. under European Regulation must be opened up for tender. Given the long term contract agreed with Ryanair, at this point, there could well be some disadvantage for Glasgow Prestwick Airport by such a move albeit it is unlikely to affect Ryanair in detrimental fashion.

Scottish Enterprise Ayrshire published a report in November 2003 titled “Impact of Ryanair on the Ayrshire Tourism Economy, 2002-2003: Economic Impact Study” which shows that the net value, on balance, of Ryanair routes at Glasgow Prestwick Airport support a positive contribution to the Ayrshire economy of:

- £8.7m to £13.3m in additional output
- £2.9m to £3.9m in additional income
- 499 to 605 Full Time Equivalent jobs

Note that “output” provides an estimate of the net additional expenditure or sales generated, and “income” provides an indication of the value of the expenditure that is retained within the specific economy. For a copy of the full Scottish Ayrshire Report please contact the Clerk.

Summary and conclusions

The Charleroi decision affects only those airports that are owned by public authorities, be they state, local or another management structure based upon public ownership.

The only public authority owned Scottish Airport currently providing low cost operator services is Inverness. A high number of flight destinations serviced from Scottish Airports are publicly owned and this could provide a brake on development of existing and new routes.
The Charleroi decision appears not to take account of the fact that all airlines are in a position to strike similar deals providing they can meet the volume requirements of the contract. It also fails to recognise the overall financial and social advantage that the Ryanair contract provides for the public sector owners in their wider remit.

There could well be some element of protectiveness which lies behind the Brussels Airport-Charleroi situation, thus leading to the complaint by Brussels to the European Commission.

If the Charleroi decision stands there could be lost services between Scotland and Barcelona in addition, perhaps, to Charleroi as offered currently by Ryanair.

In noting the withdrawal of the Stansted to Charleroi service by Ryanair, there could be further services withdrawals from Stansted thereby reducing traffic on the Glasgow Prestwick/Stansted route albeit in the short term. However, pending the outcome of the Ryanair appeal, there should be minimal effect.

The Scottish Executive’s scheme of support for new routes complies with EU regulations and is welcomed by low cost flight operators and airports.

**Recommendations**

That the Committee takes note of this report and suspends further action and investigations into the Charleroi Decision, pending the outcome of the appeal to the European Courts.

That the Committee draws to the attention of the Scottish Executive the concerns expressed over the effect on low cost air lines of European legislation currently being considered on passenger compensation.

That the Committee continues to take an interest in the development of the proposed legislation as it emerges.

That the Committee commends the Scottish Executive for its initiative in providing the Interim Route Development Fund and recommends the extension of availability.

The Committee takes note of the Scottish Enterprise Ayrshire Report which identifies the economic and social benefits that result from ongoing development and activity at Glasgow Prestwick airport and urges the Scottish Executive to ensure that maximum advantage accrues to the Scottish economy from airline and airport operations.

The Committee draws the attention of the Scottish Executive to discriminatory charges made at the publicly owned Inverness airport that limit low cost operational interest.
That the Committee pass this Report to the Local Government and Transport Committee for interest.

I would like to thank both SPICe and the European and External Relations Committee Clerks for their assistance with this Report.

Phil Gallie MSP
Reporter
## Appendix 1

### UK Registered Airlines

The following UK registered airlines have been awarded a “Type A” operating license:

<table>
<thead>
<tr>
<th>Airline Name</th>
<th>Airline Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Atlanta Europe Ltd</td>
<td>Duo Airways Ltd</td>
</tr>
<tr>
<td>Air Cordial Ltd</td>
<td>easyJet Airline Company Ltd</td>
</tr>
<tr>
<td>Air Southwest Ltd</td>
<td>Emerald Airways Ltd</td>
</tr>
<tr>
<td>Air Wales Ltd</td>
<td>European Aviation Air Charter Ltd</td>
</tr>
<tr>
<td>Air Kilroe Ltd t/a Eastern Airways</td>
<td>Excel Airways Ltd</td>
</tr>
<tr>
<td>Astraeus Ltd</td>
<td>First Choice Airways Ltd</td>
</tr>
<tr>
<td>Atlantic Air Transport Ltd</td>
<td>Flightline Ltd</td>
</tr>
<tr>
<td>BAC Express Airlines Ltd</td>
<td>Flyjet Ltd</td>
</tr>
<tr>
<td>bmibaby Ltd</td>
<td>GB Airways Ltd</td>
</tr>
<tr>
<td>Bristow Helicopters Ltd</td>
<td>Global Supply Systems Ltd</td>
</tr>
<tr>
<td>Britannia Airways Ltd</td>
<td>Jersey European Airways (UK) Ltd</td>
</tr>
<tr>
<td>British Airways plc</td>
<td>Loganair Ltd</td>
</tr>
<tr>
<td>British Airways CitiExpress Ltd</td>
<td>Monarch Airlines Ltd</td>
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<tr>
<td>British Mediterraneane Airways Ltd</td>
<td>MyTravel Airways Ltd</td>
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<tr>
<td>British Midland Airways Ltd</td>
<td>Suckling Airways Ltd t/a Scotairways</td>
</tr>
<tr>
<td>British Midland Regional Ltd</td>
<td>TAG Aviation (UK) Ltd</td>
</tr>
<tr>
<td>British Regional Airlines Ltd</td>
<td>Thomas Cook Airlines UK Ltd</td>
</tr>
<tr>
<td>Buzz Stansted Ltd</td>
<td>Titan Airways Ltd</td>
</tr>
<tr>
<td>Channel Express (Air Services) Ltd</td>
<td>Twinjet Aircraft Sales Ltd</td>
</tr>
<tr>
<td>Cougar Leasing Ltd t/a Flyglobespan</td>
<td>Veritair Ltd</td>
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<tr>
<td>DHL Air Ltd</td>
<td>Virgin Atlantic Airways Ltd</td>
</tr>
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The following UK Registered airlines have been awarded a “Type B” operating licence:

<table>
<thead>
<tr>
<th>Airline Name</th>
<th>Airline Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>A D Aviation Ltd</td>
<td>British North West Airlines Ltd</td>
</tr>
<tr>
<td>Aeromega Ltd</td>
<td>Cabair Helicopters Ltd</td>
</tr>
<tr>
<td>Air Charter and Travel Ltd</td>
<td>Cambridge Aero Club Ltd t/a</td>
</tr>
<tr>
<td>Air Charter Scotland Ltd</td>
<td>Marshall Executive Aviation</td>
</tr>
<tr>
<td>Air Medical Ltd</td>
<td>Capital Trading (Aviation) Ltd</td>
</tr>
<tr>
<td>Air Mercia Ltd</td>
<td>Carill Aviation Ltd</td>
</tr>
<tr>
<td>Air Montgomery Ltd</td>
<td>Castle Air Charters Ltd</td>
</tr>
<tr>
<td>Air Taxis Ltd</td>
<td>Cega Aviation Ltd</td>
</tr>
<tr>
<td>Airlong Charter Ltd</td>
<td>CHC Scotia Ltd</td>
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<tr>
<td>Alan Mann Helicopters Ltd</td>
<td>Cheqair Ltd</td>
</tr>
<tr>
<td>All Charter Ltd</td>
<td>Cheshire Flying Services Ltd</td>
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<tr>
<td>Aravco Ltd</td>
<td>Clasair Ltd</td>
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<tr>
<td>Arena Aviation Ltd</td>
<td>Cooper Aerial Surveys Ltd</td>
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<tr>
<td>Atlas Helicopters Ltd</td>
<td>Currie Neil t/a Arran Heli-Tours</td>
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<tr>
<td>Awyr Cymru Cyf</td>
<td>Dash Aviation Ltd</td>
</tr>
<tr>
<td>Barnes Olson Aeroleasing Ltd</td>
<td>Directflight Ltd</td>
</tr>
<tr>
<td>Bond Air Services Ltd</td>
<td>DFS-UK Ltd</td>
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</table>
Eastern Air Executive Ltd
EBG Helicopters Ltd
Edinburgh Air Centre Ltd
Eurojet Aviation Ltd
European Executive Ltd
Excel Charter Ltd
Executive Aviation Services Ltd
Executive Jet Charter Ltd
Falcon Jet Centre Ltd
Fast Helicopters Ltd
First City Air (London) Ltd
Flying Pictures (Aerial Film Services) Ltd
Forth & Clyde Helicopter Services Ltd
FR Aviation Ltd
Gama Aviation Ltd
GeminAir Ltd
Go One Airways Ltd
Gold Air International Ltd
Haughey Air Ltd
Hebridean Air Services Ltd
Hecray Co Ltd/Direct Helicopters
Heli Air Ltd
Heli-Charter Ltd
Helicopter Training & Hire Ltd
Heliflight (UK) Ltd
Heliscott Ltd
Hields R C t/a Hields Aviation
Highland Airways Ltd
Houston Jet Services Ltd
HJS Helicopters Ltd
Hughes Helicopter Company Ltd
Interflight (Air Charter) Ltd
Island Aviation Ltd
Isles of Scilly Skybus Ltd
Keen Airways Ltd
Kingmoor Aviation Ltd
Lomas Brothers Ltd
London City Airport Jet Centre Ltd
London Executive Aviation Ltd
London Helicopter Centres Ltd
Looporder Ltd t/a East Midlands Helicopters
Lydd Air Ltd
MFH Helicopters Ltd
Xclusive Jet Charter Ltd
Magic Aviation Ltd
Manhattan Air Ltd
Mann Air Ltd t/a Mann Air Charter
Markoss Aviation Ltd
MAS Airways Ltd
MB Air Ltd
Moorgoods Helicopters Ltd
Northern Executive Aviation Ltd
O.T.L Ltd t/a London Air
Oxford Air Services Ltd
Palmer Aviation Ltd
Patriot Aviation (Charter) Ltd
Pennine Helicopters Ltd
PLM Dollar Group Ltd
Police Aviation Services Ltd
Polo Aviation Ltd
Pool Aviation (NW) Ltd
PremiAir Aviation Services Ltd
Pritchard W.G.T. t/a Mayfair Dove
Rangemile Ltd
Redhill Aviation Ltd
Rees J t/a Haverfordwest Air Charter Services
RotorMotion UK Ltd t/a RotorMotion
Signchose Ltd t/a Helicentre Coventry
Skydrift Ltd
Sloane Helicopters Ltd
Solent Helicopters Ltd t/a Elite Helicopters
Specialist Helicopters Ltd
Specialist Flying School Ltd
Starspeed Ltd
Sterling Helicopters Ltd
Tayflite Ltd
Tiger Helicopters Ltd
Total Air Management Services Ltd
Triair (Bermuda) Ltd
V21 Ltd t/a Helicopter Services
Virgin H.E.M.S. (London) Ltd
Westward Airways (Land’s End) Ltd
Woodgate Executive Air Charter (UK) Ltd
PROPOSED TERMS OF REFERENCE FOR REPORTER’S INQUIRY

Overall objective

To determine the effect of existing and developing EU regulations on the extension of the highly successful low-cost carrier trade to/from Scotland.

Phase 1

I would propose that the timescale, from the date of approval to presentation of findings of this first phase to the Committee would be about 2 months.

Role of the Clerks/SPICe during Phase 1

- To help the Reporter gather information on Low Cost Carriers (LCC) and confirm ownership.
- To list current LCC destination airports within Europe and their ownership.
- To list current scheduled airlines operating from Scotland and the UK and their ownership status; private or state owned.
- To provide information on the rules and regulations with reference to the operation of new route support schemes operating in Scotland and advise how this fits in with EU rules etc.

Role of the Reporter during Phase 1

- To make contact with senior Ryanair management representatives to establish:
  
  What effect the Charleroi Decision has had on that service and what potential effect it may have on other routes currently flown from Scottish airports?

  What other restrictive regulation has been put in place that may add to customer costs when using Ryanair?

  What factors exist in determining which Scottish airports are attractive to them for scheduled flights?

  What blocks there are in setting up further flights from Scotland?

  What plans they have, that are not commercially sensitive, for further expansion of flight destinations from Scottish airports?
• Make contact with senior management at Glasgow Prestwick airport to determine:

  What concerns they have arising from Charleroi Decision and what effect the judgement has had?

  What effect other regulations recently implemented or intended may have with their relationship with LCC?

  What potential is there for increased LCC business, which is not commercially sensitive, for Glasgow Prestwick airport?

Dependent on the responses to the questions raised, the Reporter plans to contact senior management at Charleroi to assess the impact of recent Decisions on Charleroi. This will be done through written communication only at this stage.

The Reporter will then report back to the Committee on his findings and ask for approval to proceed further with investigation if deemed desirable.

**Phase 2**

The findings of this second phase will be presented once conclusions drawn from the above activities have been considered by the Committee. Possible activities in this phase could include:

  Assess existing and proposed EU regulations with respect to Competition and Transport.

  Find out what other parliamentary inquiries may be in hand of a similar nature within EU.

  Make contact other low-cost carriers to assess their views.

  Establish the potential for use of new destination airports in the new Member States.

  Make contact with selected airports to assess views.

  Ask for the views of other elected representatives, such as MPs and MEPs, who may have an interest in this area.

  Hold discussions with Scottish Enterprise and Tourist Boards.

  Phil Gallie MSP
CONVENER’S REPORT

1. Progress with the invitation to the Scottish Executive to brief the Committee on the work of the Regions with Legislative Power Group (Regleg). On 7 May 2004, the Convener wrote to the First Minister to invite him to address the Committee on progress during his presidency of Regleg. An initial response was received from the Executive but the Committee noted that its written questions on Regleg had not been answered and that the First Minister had not explicitly declined to attend the Committee. At its meeting of 25 May 2004, the Committee agreed to write again to the First Minister. A further response has now been received from the Executive (see Annex A for exchange of correspondence). The Convener now recommends that:

Members note the response from the First Minister and further note that the Committee’s written questions have not yet been answered. Members may wish to consider what further steps can be taken to ensure that a Minister from the Executive appears before the Committee at the earliest opportunity to take questions on the work of Regleg and provide in advance, as requested, a written briefing addressing the questions originally posed on 7 May 2004.

2. Proposed co-operation agreement between the Scottish Executive’s Department for Education and Young People and the French Ministry of Youth, Education and Research. The Committee has received a letter from the Executive outlining a proposed co-operation agreement with the Republic of France (see Annex B for Executive’s letter). The Convener now recommends that:

Members welcome the information provided and these developments and ask that the Department for Education and Young People keep it and other committees informed of progress with the agreement and its implementation, including the provision of copies of the agreement when signed and any action plans or progress reports.

3. Outline of a briefing paper on the subsidiarity ‘early warning system’ and its implementation within the Scottish Parliament. Members will recall that in September 2003, the Committee discussed an initial paper on the potential implications of the constitutional treaty’s provisions that enable greater parliamentary involvement in the scrutiny of subsidiarity. The clerks were invited to bring forward a further paper (see Annex C). This has been developed with
the kind assistance of Professor Drew Scott of Edinburgh University. The Convener now recommends that:

Members welcome the progress that is being made to bring into operation the system to scrutinise EU draft legislation from the perspective of the subsidiarity principle. Members may also wish to give the clerks a steer towards their initial thoughts on the need for new parliamentary procedures. Members may wish to agree that the Convener works with the clerks to bring forward a final paper with clear recommendations that can be pursued in due course.

4. *Progress towards the establishment of a Scottish Institute/Forum for EU affairs.* Members may recall that its predecessor supported unanimously the principle that a wide cross-section of interested bodies and individuals from across the political spectrum be encouraged to consider establishing a loose, umbrella grouping to debate EU issues\(^1\). This was referred to as the Scottish Institute/Forum for EU affairs. The Convener now recommends that:

Members reaffirm their support in principle for an independent forum bringing together a range of organisations, bodies and individuals from across the political spectrum that have an interest in EU affairs. This forum/institute would be open to both elected members and civic society and be a place in which EU issues can be openly discussed and debated. It could meet regularly across Scotland and be managed by a small steering group. A possible model is the template used by the Republic of Ireland and its Institute of European Affairs.

5. *Monthly report by the Clerk/Chief Executive and the External Liaison Unit on external relations activities in the Parliament.* The Committee has received the latest update from the Clerk/Chief Executive and External Liaison Unit (Annex D). The Convener now recommends that:

Members welcome the information provided.

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EXCHANGE OF LETTERS WITH THE EXECUTIVE ON REGLEG

Committee's Letter to the First Minister (7 May 2004)

I write following our consideration of the briefing material received from the Scottish Executive on the progress of your involvement in Regleg. We were grateful for the briefing sent so far, but agreed at our meeting of the 27 April to write and request some additional information from you. We also agreed to remind you of our letter of the 18 November 2003 and the reminder sent on 25 February 2004 where we have invited you to speak to the Committee on your plans and priorities for Regleg in your personally-held capacity as President of Regleg. I would be grateful for a reply to these letters.

In doing so, I would also be grateful if you could elaborate on the briefing material sent previously. The points raised at our meeting were as follows:

1. Do you have any further information on the planned events and publications of Regleg between now and November 2004?

2. Can you give us some more information on the planned conference in November 2004 (including draft programmes, invitees, objectives and planned outputs/declarations etc)? Would there be a role for a joint event with the Committee (perhaps a reception) and could Members of the Committee be involved in the conference itself?

3. Can you give us some more information on the meetings of the Regleg troika and co-ordination committee (including details of when they met and the minutes of these meetings, and when they plan to meet in the future)?

4. How do you plan to represent the views of the regions with legislative power in relation to relevant Commission initiatives and how is that process undertaken? We know that you have visited a number of regions, but how do you gather the work and views together and thus represent the views of Regleg to the Commission? In responding, can you give us specific examples of how the views of Regleg have been fed into a Commission legislative proposal, which regions provided information to you and what did the Commission do in response?

5. In due course, can you provide us with details of your discussions with President Prodi and other EU Commissioners which we believe will take place in mid May? In particular, we would be interested to know how President Prodi responds to your call on behalf of Regleg for direct consultation rights; something on which you have my personal support.

I very much look forward to your reply.
Executive’s Response from the First Minister (May 2004)

Thank you for your letters of 18 November and 25 February inviting me to address the Committee on REGLEG’s work programme for the coming year. Please accept my apologies for the delay in responding to you. The failure of the Intergovernmental Conference to reach agreement last December on a new Treaty and subsequent reopening of the process following March’s European Council have meant that we have, with our partners in REGLEG, been tailoring our work to an often shifting agenda. Now that it has been agreed by the EU’s Member States to finalise a text for consideration in June, the opportunity to address the Committee about the work of REGLEG that is already underway is timely.

Although you are right in asserting that the Chair of REGLEG is a role I fulfil as First Minister, I do so, of course, in light of Scotland’s participation in the Group. As you are aware, the Minister for Finance and Public Services, Andy Kerr, has portfolio responsibility for external relations and is therefore well placed to address the Committee on the work of REGLEG under the Scottish Presidency, during one of his regular appearances at the Committee.

Committee’s Letter to the First Minister (26 May 2004)

Thank you for your recent letter regarding Regleg. This was considered at our meeting of the 25th May. Whilst we welcomed your comments, we noted that you had not in fact explicitly declined to address the Committee and give evidence to us on your efforts to promote the work of Regleg through your personal role as President of this group. We noted also that the questions we had set out in our letter of the 7 May had not been answered in your subsequent correspondence.

Consequently, it was agreed by all that I write to you to ask if you could reply to us indicating whether it is indeed the case that you are unable or unwilling to address us on the work of Regleg. In this eventuality, we would be pleased to extend the invitation to the Minister for Finance and Public Services to take up this offer at the earliest opportunity, given that we are now over 6-months into your 12-month presidency. I will ask the Clerk to liaise with civil servants accordingly.

Prior to any ministerial appearance, either by you or the Finance Minister, we would be grateful if the questions set out in my letter of 7 May could be addressed, as well as providing material on what you perceive to have been the demonstrable successes of Regleg since November 2003.

I look forward to an early reply, given the importance I know you place on Scotland’s place in the world through this and other activities.

Executive’s Response from the First Minister (9 June 2004)

Thank you for your letter of 26 May concerning REGLEG.

As I said in my letter of 7 May, the Minister for Finance and Public Services, Andy Kerr, has portfolio responsibility for external relations and is extremely well placed to address the Committee on the work of REGLEG, and to answer the committee’s questions then.

I therefore repeat my invitation to you to contact Mr Kerr’s private secretary to take forward the necessary arrangements.
I am writing to inform you of our intention to pursue a co-operation agreement on education with the French Ministry of Education.

As you may know, the French Ministry of Youth, Education and Research signed a co-operation agreement with their English counterparts in February last year. The French subsequently approached Cathy Jamieson MSP, the then Minister for Education and Young People, shortly before the last elections to the Scottish Parliament to suggest developing a similar agreement between Scotland and France.

After two subsequent exploratory meetings involving officials from both countries, the French Consul-General and myself received formal notification from Paris that the French Government is agreeable to pursuing a co-operation agreement on education between our two countries. It is our intention to sign an initial agreement during the Entente Cordial 100 celebrations, with an action plan to follow by spring 2005. The agreement and action plan will cover exchanges of good practice and joint co-operation at official, practitioner and learner levels.

As discussions evolve and the agreement develops I would of course be happy to share further information with you. I have also written to the Conveners of the Education Committee and the Enterprise and Culture Committee on this matter.

Euan Robson MSP
ANNEX C

BRIEFING PAPER ON THE SUBSIDIARITY EARLY WARNING SYSTEM

Background

One of the features of the debate on the reform of the EU and the draft constitutional Treaty has been the role of national Member State parliaments in EU affairs. Traditionally their role has been one of scrutiny of their own governments, particularly in relation to the European Council, Council of the EU and the plethora of working groups.

However, a proposed feature of the new Treaty and its Protocols and provisions, if adopted and ratified, is to provide for an ‘early warning system’ that involves national (that is Member State level) parliaments. This is intended to enable these parliaments to raise concerns regarding subsidiarity issues on any given EU legislative proposal, relatively early in the decision-making process.

In article 9 of the proposed Treaty itself, it states, “ […] Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.” It further states that, “The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.”

The proposed Protocol on subsidiarity states that the European Commission shall justify its proposal with regard to the principles of subsidiarity and proportionality. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the ‘regional’ legislation.

Any national Parliament (i.e. at Member State level) or any chamber of a national Parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity [N.B. not subsidiarity and proportionality, but only the former].

It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, other parliaments with legislative powers within the Member State.

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one-third of all the votes allocated to the
Member States’ national Parliaments and their chambers, the Commission shall review its proposal (the so called “yellow card” option). This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article III-165 of the Constitution on the area of freedom, security and justice. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

It is important to note that this ‘early warning system’ refers only to subsidiarity not subsidiarity and proportionality, that it refers to scrutiny of legislation before adoption, that it confers this right only on national Member State parliaments and that it is up to each national Member State parliament to decide whether to consult with other parliaments/assemblies within the Member State.

The Committee has previously written in favourable terms to the proposal from the House of Commons (HoC) European Scrutiny Committee that (i) when HoC staff encounter a document to which an objection may be made, they alert the devolved bodies as early as possible, and (ii) the HoC European Scrutiny Committee makes it clear that if the devolved bodies identify subsidiarity problems which it has missed, it will be willing to rescind clearance of the EU legislative proposal and initiate the procedure for objecting on subsidiarity grounds. It is understood the Welsh Assembly's European and External Relations Committee has written in similar terms to the House of Commons. Final decisions on parliamentary procedure in the Commons are still to be made².

**Key issues and initial thoughts for the Scottish Parliament**

*How do you actually assess a piece of EU legislation for subsidiarity?*

By and large, subsidiarity is both a technical and a political concept as well as a process for assigning competence between different levels for policy-making. You can define it by assessing which level of EU governance – national or EU-level (supranational) - should act in policy areas in which competence was shared. You can also clarify this in political terms by suggesting that the ‘best level’ approach implies a general disposition favouring ‘lower’ as opposed to ‘higher’ levels of government in legislating for policy areas characterised by shared competence.

Thus the European and External Relations Committee could begin to establish a set of criteria that it can use when assessing draft EU legislation. **An initial proposal suggests four assessment criteria:**

1. **Level** - what is the ‘best level’ of government at which to legislate, taking into account whether: (i) there is a legitimacy for the EU to act at all in that policy area, (ii) there are economies of scale to suggest the EU-level is better, (iii) there is any national or local variation in socio-economic conditions that suggests EU legislation is not the best way to proceed, particularly from the perspective of the Scottish 'way of life'

² The Modernisation Committee in the House of Commons is undertaking and inquiry into scrutiny of European matters.
2. **Type of instrument** – what is the best type of instrument (Regulation, Directive etc.) to give effect to the policy objectives and is the correct legal base being used?

3. **Disproportional costs** – does the proposed EU legislation have costs (including opportunity costs) that disproportionally affect Scotland?

4. **Consistent policy failure in the EU** – can we point to a consistent policy failure in the EU to legislate in the policy area in question, which then suggests that other types of legislation (i.e. national) might be more appropriate or that other approaches (e.g. non-legislative) might be better.

**How can you prioritise?**

Assessing any proposal for EU legislation against the above four criteria would be a significant undertaking for the Parliament, exacerbated by the sheer volume of proposals. Without a huge increase in legal and policy resources, there is very little scope for an in-house assessment. It would also be a duplication of some of the analysis that the Scottish Executive will be undertaking in its consideration of subsidiarity. Therefore, it might be best if the Parliament sticks to its function of holding the Executive to account rather than trying to duplicate its work. The Parliament could ask the Executive for a ‘**check-list**’ and regulatory impact assessment covering the four criteria for each new legislative proposal from the EU.

This approach would be helpful, but might not tackle the volume issue. Thus, even though clear information was being provided to the Committee, a system of prioritising further analysis would need to be put in place. The Committee could perhaps consider a ‘**traffic light**’ grading system operated by the Executive for each new legislative proposal from the EU. In its check-lists, the Executive could grade each legislative proposal as:

- **Green** – doesn’t raise any issues and take no further action
- **Amber** – some concerns against one or more of the four criteria but for the Committee to consider if it wants to suggest issuing an objection to the EU through Westminster
- **Red** – raises substantial concerns and the Executive suggests issuing an objection to the EU through Westminster

Obviously, the rationale would be that “red” graded proposals would not appear very often, especially if pre-legislative consultation by the European Commission was made as effective as possible.

**How can you take decisions in the Scottish Parliament on whether to object?**

Timing will be fundamental. Member State national parliaments will have a six-week window in which to object. In reality, given that the House of Commons or Lords will have its own procedures to go through, the window will be much smaller. Therefore,
it is unlikely that the Scottish Parliament will have any more than 2-3 weeks in which to assess a proposal, consider whether to object and ratify this consideration.

There are a series of options that Members can consider as to how the decision-making process in the Scottish Parliament might work:

**Option 1** – that any consideration and decision on whether to object is done within the European and External Relations Committee alone. However, where is the role for subject committees and can the Committee take a decision on behalf of the Parliament?

**Option 2** – as option 1, but ask that subject committees be informed of considerations before any final decisions are taken and have a chance to ‘have their say’.

**Option 3** – as option 2, but suggest also that the European and External Relations Committee uses its powers under standing orders to refer an issue to the Bureau and ask that it allocates time in the Chamber for either a short debate or a motion without debate on the issue of whether to object to a piece of EU legislation. However, would the Executive be prepared to give up time in the Chamber for such an issue?

There is, however, a further issue that needs consideration, namely the role of the Executive in this process. If decision-making involves a Chamber debate or motion, then the Executive is likely to command a majority. Therefore, would it make more sense to ensure at the committee stage that the relevant minister is invited along to any meeting at which the issue of whether to object to a piece of EU legislation is being considered (this is not dissimilar to subordinate legislation procedures)?

*How should this decision be communicated to Westminster?*

The most effective would be for the Convener or the Presiding Officer to write to the Committee Chair or the Speaker in the House of Commons and House of Lords with final decisions. The clerks would liaise with their counterparts in advance to speed up the process.

*What are the wider issues?*

Even if the process can be designed, there are some wider issues that need considered:

- **Trust** – for the system to work well, the Parliament will need to ‘trust’ the information and assessment being made by the Executive against the various criteria that can be used to decide whether to object and the Executive’s ‘traffic light grading’. Conversely, the Executive will need to provide the Committee and Members with detailed, useful and timely information if Parliament is to be able to work within what is in effect a 2-3 week window.

- **Volume of objections** – for the Parliament to be considered as having taken logical and objective decisions to object, it may be advisable for this provision to
be used very sparingly, which could then increase any perceptions of legitimacy for EU action in that particular area.

- **Involvement of local authorities and other actors** – how can Scotland’s local authorities also have their say in this process, given that they too have some role in meeting EU obligations?

- **Better intelligence and pre-legislative scrutiny** – is there a role here for using any Scottish Parliament presence in Brussels, using MEPs more effectively and ensuring that any thoughts on the problems of proposed EU legislation are addressed earlier by the European Commission through effective and direct pre-legislative consultation with bodies such as the Scottish Parliament?

- **Other ‘regions’** – could the Committee usefully work in co-operation with European Affairs Committees in other regional or sub-state national parliaments to lend weight to any proposal to object?

- **Timing of delivery of UK Government documents** – the European and External Relations Committee cannot afford to wait up to 10 days for the UK Government Memorandum (EM) to follow the original EU legislative text as the EM is a very important document to have in any consideration of the EU’s text.

- **Procedures and resources** – although not strictly a matter that needs consider now, it will be important to review what, if any, effect this has on parliamentary procedures and resources and make the necessary adjustments.

- **Lack of a constitution** – regardless of what happens to the constitutional treaty the principles behind the subsidiarity mechanism are likely to be salvaged. The Committee could use the basic thrust of greater parliamentary scrutiny of EU affairs to push for the inclusion in UK Explanatory Memoranda of information on the implications to devolved institutions of draft EU legislation.
MONTHLY REPORT FROM ELU AND THE CLERK/CHIEF EXECUTIVE

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

MAY 2004 - INWARD VISITS

**Monday 10 May** The Deputy Prime Minister of Estonia visited the Scottish Parliament. The programme included a tour of the new Parliamentary building, a courtesy call with the Presiding Officer and a meeting with members to discuss the “Scottish Parliament and Devolution” and “Scotland and Estonia”.

**Wednesday 12 May - Thursday 13 May** - A delegaton of French Senators visited the Scottish Parliament. The visit included meetings on the Scottish Parliament and devolution, a courtesy call with the PO, a presentation on Holyrood and meetings with the Enterprise and Culture and European and External Relations Committees. Whilst visiting Scotland, they also met with the Scottish Executive and COSLA.

**Wednesday 12 May** - Members from the Ekiti State House of Assembly, Nigeria, visited Westminster, National Assembly for Wales and the Scottish Parliament. They met with MSPs to learn and engage about the workings of the Parliament.

**Thursday 13 May** - At the request of the Swiss Consul General in Edinburgh, the Ambassador of Switzerland to the UK, Mr Bruno Spinner, met with the Presiding Officer for a courtesy call.

**Thursday 13 May** - A small delegation from Tanzania visited for a briefing on the Scottish Parliament, tour of Visitor Centre and to observe a Committee in action.

**Monday 17 May - Wednesday 19 May** - Director of Security Planning, Australian Parliament met with various Parliament directors to discuss security and other areas of mutual interests.

**Tuesday 18 May** - The Westminster Health Select Committee visited the Parliament's Health Committee over lunch. They were in Edinburgh in connection with their inquiry into palliative care.

**Wednesday 19 May - Thursday 20 May** - Senior Professional Administrative Training Scheme (SPATS) visited the Scottish Parliament to learn how devolution works and the differences with other Parliaments looking at their strengths and weaknesses. The programme included a wide variety of meetings with various Directors and a question and answer session with the Chief Executive, Paul Grice.

**Wednesday 19 May - Friday 21 May** - Wilhelm Molterer, Member of the Austrian Parliament and Chief Whip of the Austrian People's Party visited the Scottish Parliament with a delegation from the Whips office. The programme included meetings on devolution and the Scottish Parliament, especially Parliamentary
procedures and working practices, as well as attendance at Plenary and a tour of the Holyrood site.

**MAY 2004 - OUTWARD VISITS**

**Sunday 23 to 30 May** - Sarah Boyack MSP represented the Scotland Branch during the 16th CPA Seminar in Malaysia to discuss Commonwealth, Parliamentary and democratic issues.

**JUNE 2004 - INWARD VISITS**

**Wednesday 02 June** - His Holiness The 14th Dalai Lama will lead Time for Reflection followed by an address and question and answer session with MSPs and an audience of school children in Committee Room 2. Presiding Officer to host lunch with party leaders and leaders of Scottish faiths.

**Thursday 03 June** - The Vice President of the Assembly of AP Vojvodina in Serbia and a delegation of their highest officials will visit the Scottish Parliament to discuss Scotland and devolution and to learn about the working practices and procedures of the Scottish Parliament. Further details to follow on receipt of the visit enquiry form.

Thursday 03 June - The Secretary General of the Flemish Parliament, Wim Tessier, will pay brief calls on the Presiding Officer and Clerk/Chief Executive whilst in Edinburgh on another business.

Monday 07 June - European Parliament official, Sten Ramstedt, responsible for relations with UK legislatures will visit for familiarisation and meetings with the clerk/Chief Executive and other staff, including EERC clerks in connection with EP study into links with devolved legislatures.

**Wednesday 09 June** - AmorVerw, a study group of civil servants working for the government of the State of Lower Saxony in Hannover, will visit the Scottish Parliament on Wednesday 9 June 2004. Each year the study group visit a famous European city and Edinburgh has been chosen for the 2004 study visit. The Scottish Executive are the lead organisers and further details will follow on receipt of the visit enquiry form.

**Thursday 10 June** - A delegation of 25 to 30 participants in the 2004 John Smith Fellows Programme will visit the Scottish Parliament. Further details to follow.

**Wednesday 23 June** - The Speaker of the Croatian Parliament, Dr Vladimir Seks, and delegation will visit the Scottish Parliament on Wednesday 23 June 2004. Further details to follow on receipt of visit enquiry form.

**Wednesday 23 June** - His Holiness Sri Sri Ravi Shankar (does not confine himself to one particular religion believing that everyone has the right to choose their own paths whilst respecting the chosen paths of others) will lead Time for Reflection, prior to that he will meet MSPs over lunch.

**Monday 28 June - Tuesday 29 June** - Speaker Bissonnet, National Assembly of Quebec, accompanied by 4 senior members, plus their Chiefs of Staff and Secretary
N.B: 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](http://intranet/speir/services/elu/elu.html)
- SCAN at [http://intranet/speir/services/scan/sub-in.htm#cm](http://intranet/speir/services/scan/sub-in.htm#cm)

Status of outward visit reports this session:

- March 2004: Encounter Round Table – Helen Eadie MSP’s report at [http://www.scottish.parliament.uk/sp/elu/elu_pub.htm#del](http://www.scottish.parliament.uk/sp/elu/elu_pub.htm#del)
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER

“Petition (PE 738) on vitamin and mineral supplements”

Introduction

1 The Public Petitions Committee considered Petition 738 (see Annex A for a full copy of the Petition) at its meeting of 26 May and agreed to seek further information from the Scottish Executive and to pass a copy of the Petition and all correspondence to the European and External Relations Committee for interest, given our previous consideration of a related Petition (PE 584)\(^1\).

2 As of 16 June, no copy of the letter from the Scottish Executive regarding the Petition has been received, although concerns have been expressed to the Clerk by the Petitioners regarding the time left available to the Parliament to consider the matter.

3 The Clerks have been asked to produce a short brief on the issues raised by the Petitioners (see Annex B). This annex contains also the various items of correspondence from the Petitioners to the Convener.

Recommendations

4 The Convener recommends that the Committee considers the following options:

- **Option A** – take no further action and inform the Petitioners accordingly

- **Option B** – await ministerial letter and reconsider the Petition at the next available opportunity and the urge the Executive to provide a prompt reply

- **Option C** – appoint a Reporter to meet with the Petitioners and bring back a short report/note on the issues in light of their discussions and any correspondence received from the Executive. The Reporter's report/note could be cleared by the Committee through correspondence if necessary,

\(^1\) European Committee, 3\(^{rd}\) Report 2003, “Report on Food Supplements and Traditional Herbal Medicine (A Report into Petition 584 by Mr Douglas Robison)”
given that the Committee is not set to meet again until September 2004. Alternatively, the Clerk could be asked to meet with the Petitioners.

**Option D** – agree with the points raised by the Petitioners and write accordingly to the Scottish Executive, reaffirming the findings of our predecessor Committee.

Richard Lochhead MSP  
Convener  
Tel: 0131 348 5234  
Email: europe@scottish.parliament.uk
PE 738

PETITION BY JOANNA BLYTHMAN,
DOUGLAS ROBISON, AND JOHN McKEE
CALLING FOR THE SCOTTISH PARLIAMENT
TO PRESS THE EUROPEAN COMMISSION TO ESTABLISH MAXIMUM
PERMITTED LEVELS OF NUTRIENTS BASED ON SCIENCE RATHER THAN
‘NUTRITIONAL NEED’

We petition the Scottish Parliament to ensure that the voice of Scottish consumers of vitamin and mineral supplements is heard as the European Commission prepares to set maximum permitted levels as part of the Food Supplements Directive.

We are concerned that levels will be set by taking into account the much more restrictive levels currently available in the majority of Member States. They may, therefore, be based on political expediency rather than a reasonable scientific assessment of the risk that such products actually carry.

Whilst no substance is completely risk free, the potencies of food supplements currently available under UK law are generally accepted as safe and adequately regulated. It is unacceptable that those who choose such supplements should potentially lose the option to buy them. For many it is simply freedom of choice that is at risk, for some it is their actual health that will suffer if these products are only available at reduced potencies, or from overseas internet outlets without the protection of EU or UK law.

We petition the Scottish Parliament to press the European Commission to consider all options, including a derogation, that would allow Scots consumers access to the safe vitamin and mineral potencies currently available.

Joanna Blythman
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ANNEX B

BRIEFING NOTE

Background

Petition PE738, from Joanna Blythman and others, calls on the Scottish Parliament to urge the Scottish Executive to ensure that the voices of consumers of vitamin and mineral supplements are heard as the European Commission prepares to set maximum permitted levels as part of the food supplements Directive and to consider all options, including a derogation, that would allow Scottish consumers access to the vitamin and mineral potencies currently available. These were expected to be set within the next 12-18 months. However, some feedback from DG SANCO in the European Commission suggests it will complete its work by the end of 2004.

Under the Directive, the Commission has the power to amend the list of vitamins and minerals and set the minimum and maximum amounts that can be contained with a food supplement and which must appear on the label as recommended for daily consumption. The suggested principles put forward by the Commission that will be taken into account when setting the maximum limits are:

- upper safe levels of vitamins and minerals established by scientific risk assessment based on generally accepted scientific data, taking into account, as appropriate, the varying degrees of sensitivity of different consumer groups;
- intake of vitamins and minerals from other dietary sources.

On the issue of maximum limits, the UK Government’s view, which the Food Standards Agency are pressing strongly in Brussels, is that maximum limits for nutrients in food supplements should be set at levels which protect public health, but which neither unnecessarily limit consumer choice nor unduly restrict trade.

Previous Committee Report and Executive’s Response

When one of the Petitioners previously petitioned the Parliament on this matter in December 2002, the Petition was referred to the European and External Relations Committee, which published its “Report on Food Supplements and Traditional Herbal Medicine (A Report into Petition 584 by Mr Douglas Robison)” in March 2003.

In the Executive’s response to the report, Malcolm Chisholm stated:

"I am firmly committed to the view that, in the interests of consumer choice, the law should allow food supplements that are safe and properly labelled to be freely marketed."

He went on to say:

"I will continue to press the case for maximum levels to be set according to the best scientific evidence."
In the view of the then Petitioners to the Committee’s predecessor, Article 5 of the Directive allows maximum levels to be set close to what they currently are, but it does not require this to be the case. France and Germany with more restrictive legislation would, in their view, push for a much lower level. If this were to happen, it would lead to a restriction of choice to use high strength supplements.

One example of such usage was provided to the previous Committee’s Reporter (Helen Eadie MSP) by a constituent with epilepsy who was proscribed a programme of alternative medicine after conventional medicine did not help his condition. He takes many vitamins, two of which are vitamin B6 at 200 mg and vitamin C at 3g per day. He is very concerned that the Directive will eventually lead to the loss of these supplements in such high doses, and he will therefore lose an effective treatment for his illness.

Some feedback from contacts that have a knowledge of the discussions in Brussels on the maximum limits suggests that the position that the French Government were proposing of a restrictive regime (between 1x and 2x the RDA as a maximum) has been rejected. However, the next step perhaps is a coalescence around a view of limits at about 3 x RDA. In the case of Vitamin C, this would result in tablets of 180mg. According to contacts in the health food sector, the most popular strength of Vitamin C purchased is 1000mg.

Recommendations in previous Committee report

The following are the recommendations on the issue of maximum limits agreed to by the previous Committee in March 2003:

113. The Committee recognises that for some, taking higher than normal doses of supplements is, in their view, necessary to tackle any illnesses or conditions they may have. The Committee recognises the statements made by the Food Standards Agency and the Deputy Minister for Health and Community Care to press for, “maximum levels to be set at levels that protect public health but that neither unnecessarily limit consumer choice nor unduly restrict trade”.

114. The Committee Members are not specialists in the health and safety matters that such a judgement requires. However, as a matter of principle the Committee recommends that unless it can be demonstrated that the levels of doses currently the norm in Scotland, even for sufferers of chronic illnesses, have a detrimental impact on public health, then these levels should be the maximum permitted levels suggested by the UK to the EU’s Scientific Committee.

115. Furthermore, the Scottish Executive should be actively engaged and do all in its power to ensure that the maximum permitted levels agreed to by the EU are consistent with the principle set out in the paragraph above.

116. Should the eventual outcome of the discussions on maximum permitted levels not be consistent with this principle, then the Committee
recommends that the Scottish Executive follow the procedure suggested in paragraphs 90 to 94 (repeal the Directive).

117. This would consist of the Scottish Executive and its agencies, perhaps through the UK Government, lobbying the European Commission and/or approaching Scottish MEPs to suggest to the European Parliament that it should make such a request to the Commission (bearing in mind that Article 192 EC requires that a request has to be made by a majority of MEPs) to repeal the existing Directive.

118. Additionally, the Scottish Executive and its agencies, perhaps through the UK Government, should encourage the European Commission to have recourse to Article 4 (8) which provides that the Commission must report to the European Parliament and the Council on the advisability of making ‘any proposals for amendments to this Directive, which the Commission deems necessary’. This report must be submitted no later than 12 July 2007. Therefore, an approach to the Commission to that effect might be appropriate and should be encouraged by the Scottish Executive and its agencies, if the European Commission is not minded to repeal the Directive.

Powers of Scottish ministers

Scottish ministers have responsibility for transposing any instrument into Scots law (unless they decide to ask Westminster to pass GB-wide legislation) and, in exercising these powers, could seek a derogation from the Commission’s Directive. Alternatively, the Executive could try to convince the UK Government to argue in the various working groups with other member states to retain existing levels of active ingredients in currently available products.
LETTER FROM THE PETITIONERS TO THE CONVENER (26 MARCH 2004)

Dear Richard,

EU Food Supplements Directive

When our petition on the above Directive was referred to the European Committee in 2003 the Committee were appreciative of our concerns about the impact of the Directive upon the Scottish consumer’s access to safe vitamin and mineral supplements but felt unable to do anything at such a late stage.

The Health Committee passed the SSI into law with the argument that the final strengths of vitamin supplements had still be decided and it would be possible, and desirable, to influence the setting of these levels. We are now lobbying the Health Committee directly to pay more than mere lip service to our concerns and take action before the Directive establishing maximum permitted levels is finalised.

The European Food Safety Authority is currently gathering ‘evidence’ with the intention of producing the subsequent Directive to set maximum vitamin and mineral levels. We understand that the EFSA estimate their deliberations will continue for at least 18-24 months so there is ample time for the views of Scottish consumers to be represented.

We are desperately concerned that the EFSA will bring forward proposals based on political expediency based on current levels of supplementation in continental Member States rather than the rigorous and compelling scientific evidence that Scottish consumers demand. As consumers and retailers we are not persuaded that the Commission nor the Scottish Executive have shown any convincing evidence why we should not currently buy or sell the potencies currently available in Scotland.

This is happening against a backdrop of a nation with some of the worst public health in the world. All of the chronic diseases that Scots suffer from in their droves, cardiac disease, arthritis, cancers, infertility, and asthma, have all been shown to be reduced to some degree by superior nutrition. To take away the option of educated Scottish consumers to continue to use high strength nutritional supplements at this time is lunacy.

The government’s own research shows that levels of the trace mineral selenium are particularly low in the Scottish diet. This is not the case in most of the rest of Europe. Selenium has been shown to reduce the risk of a number of cancers and also extends the life of antioxidant nutrients. It is unlikely that unless the Scottish Parliament takes action to protect the access of consumers to supplements with the dosages of selenium currently on offer, that Scottish interests will be served.

We request that the European and External Affairs Committee monitor closely the efforts of the Executive to ensure that representations are made now to ensure that any measure that restricts the rights of the Scottish consumer is opposed and that without powerful evidence of health risk there should be no change to the vitamin and mineral potencies currently available.

Yours sincerely,

Douglas Robison, Treasurer-Scottish Health Food Retailers Association
John McKee, Vice-Chairman-National Association of Health Stores
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.

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## ANNEX A

### SUMMARY TABLE OF CONVENER’S RECOMMENDATIONS

<table>
<thead>
<tr>
<th>Council</th>
<th>Did Executive meet deadline for sending information?</th>
<th>Notes and recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pre-Council scrutiny</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environment Council, 28 June</td>
<td>Yes</td>
<td>Particularly welcome this informative and comprehensive briefing in advance of the Environment Council. We recommend that the relevant Executive’s officials send this out to all departments with a note that this is an excellent brief and the standard that the Committee wish to see attained for all relevant Councils, particularly those dealing with devolved competences.</td>
</tr>
<tr>
<td><strong>Post-Council scrutiny</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competitiveness Council, 17-18 May</td>
<td>Yes</td>
<td>Welcome information provided, remind the Executive that details of ministerial attendance should feature in these reports and note developments on the REACH proposals</td>
</tr>
<tr>
<td>General Affairs and External Relations Council, 17-18 May</td>
<td>Yes</td>
<td>Welcome information provided.</td>
</tr>
<tr>
<td>Agriculture and Fisheries Council, 24-25 May</td>
<td>Yes</td>
<td>Welcome information provided, remind the Executive that details of ministerial attendance should feature in these reports and note political agreement on the creation of Regional Advisory Councils.</td>
</tr>
<tr>
<td>Education, Youth and Culture Council, 27-28 May</td>
<td>Yes</td>
<td>Welcome information provided and remind the Executive that details of ministerial attendance should feature in these reports.</td>
</tr>
<tr>
<td>Justice and Home Affairs, 8 June</td>
<td>Delivered 10 days early</td>
<td>Welcome the information provided and its early delivery, for which the division should be commended</td>
</tr>
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Pre-Council Report - Environment Council, 28 June

Annotated Provisional Agenda

   -Political agreement

Regulation 259/93 (the Waste Shipment Regulation), which deals with waste shipments among member states of the European Union, and between the European Union and non-member states, is implemented in the UK by the Transfrontier Shipment of Waste Regulations 1994. The competent body for the enforcement of the Regulations with respect to shipments of waste from outwith the UK to Scotland is SEPA. Nevertheless, the 1994 Regulations themselves are a reserved matter. The 1994 Regulations do not apply to movements of waste among the countries of the UK.

   -Political agreement

The aim of the proposed Directive is to limit the amount of sulphur permitted in marine fuel, in order to reduce the amount of sulphur dioxide emitted by ships. This will protect human health and the built environment, and reduce acidification, which damages sensitive ecosystems. The key proposals are to:

- Introduce a 1.5% sulphur limit for marine fuels used by all seagoing vessels in the North Sea, English Channel and Baltic Sea, in line with MARPOL Annex VI sulphur limits, in order to reduce the effect of ship emissions on acidification in Northern Europe and on air quality.
- Introduce a 1.5% sulphur limit for marine fuels used by passenger vessels on regular services so or from any Community port, in order to improve air quality around ports and coasts, and create sufficient demand to ensure an EU-wide supply of low sulphur fuel.
- Limit the sulphur content of marine fuels used by ships on inland waterways and at berth in Community ports to 0.2% sulphur (0.1% from 2008), and to prohibit the sale of marine gas oils having over 0.2% sulphur (0.1% from 2008).

A number of key changes have been agreed to the original text including: better definition of “at berth”, an exemption to allow ferries with a fast turn around in port to use 1.5% fuel rather than 0.2% fuel and acceptance of trials of abatement equipment. The Presidency’s intention is to seek political agreement at June Council.

   -Political agreement

The Commission has again sought to obtain a revision of the Bathing Water directive (BWD) which would significantly raise compliance standards. The ability to manage variations in BW quality – as recommended by the World Health Organisation – could make the
**revision practical in Scotland.** The proposal was lost in December 2003 and has been revised under the Irish presidency, following pressure from the Commission.

The most recent round of negotiations were held on the 3rd June, and there appears to be a degree of disagreement between the presidency of the Commission regarding the standards for freshwaters. This disagreement is deepened by the position of Germany and Austria, who wish to have more restrictive standards than those proposed by the Commission. The situation is currently very fluid, with further meetings due on the 9th June. If the Commission cannot accept the Presidency compromise the Council would have to act by unanimity which is unlikely if Germany and Austria oppose the Presidency text. UKREP advise that the Presidency is clear a deal will only be possible if the Commission sign up to their text. However, the Commission are unlikely to sign up if Germany maintains its current position. Therefore, at the Environment Council meeting, there 3 possible outcomes currently available: -

- a common position emerges, based on the Presidency’s text  
- a common position emerges on the basis of the Presidency’s text, with the Commission’s standards for freshwater, or  
- no agreement is reached, because (a) the Presidency takes the proposal off the agenda or (b) because the Commission blocks agreement or withdraws its proposal

4. **Proposal on the Registration, Evaluation, Administration and Restriction of Chemicals (REACH)**

   - *Policy debate*

The Scottish Executive supports the overall objective of the EU’s Chemicals Strategy known as **REACH (Registration, Evaluation, and Authorisation of Chemicals)**, the aim of which is to protect human health and the environment by phasing out chemicals of concern. The Executive shares three key objectives with the UK Government. These are:-

- to see a fast, efficient and workable process to test and screen chemicals and tackle those of most concern  
- to ensure that a working system is developed that maintains the competitiveness of the chemicals industry and downstream users, and  
- to ensure that animal testing is kept to a minimum

REACH will replace the 1976 Marketing and Use of Certain Dangerous Substances and Preparations Directive which has proved somewhat cumbersome, and it is hoped that REACH will speed up the regulation and authorisation process for both existing and new chemicals

REACH is expected to come into force in early 2006 and the Executive believes that REACH can be made to work cost effectively. It is expected that REACH will cover a mixture of reserved and devolved issues and so implementation will be taken forward on a UK basis.
   -Policy debate

This is the latest proposal arising from the European Climate Change Programme. If adopted, the proposed Regulation would introduce measures on the containment, use and recovery of certain fluorinated greenhouse gases (HFCs (hydrofluorocarbons), PFCs (perfluorocarbons) and SF6 (sulphur hexafluoride), restrictions on the placing on the market of some applications containing these gases, and measures on the reporting of data on these gases. In addition to the text of the Regulation having legal effect in the UK, additional national legislation will be needed in the UK to provide for new offences and penalties for non-compliance. The proposed Regulation is a complex package of measures (a mix of reserved and devolved matters) some of which may have significant implications for UK industry. Key sectors affected are manufacturers and operators of equipment containing fluorinated greenhouse gases, such as refrigeration and air-conditioning equipment (including mobile air-conditioning – MAC – equipment in some vehicles).

The Dutch Presidency are seeking to achieve a common position by the end of this year with a formal Conciliation with the Parliament falling possibly to the UK Presidency next year.

6. Proposal for a Regulation of the European Parliament and the Council on the management of waste from extractive industries
   -Policy debate

The proposed Directive arises from the Waste Framework Directive (Council Directive 75/442/EEC as amended) (the 'WFD'). The stated aim is specific rules laying down minimum requirements to control the management of waste resulting from the extraction, treatment and storage of mineral resources, in order to prevent or reduce, as far as possible, negative effects on the environment or to human health. The proposal deals with waste materials that are removed to gain access to the mineral resource, or are produced during the initial processing of minerals.

The proposal was developed because of failures of tailings dams at metalliferous mining sites (Spain and Rumania). The UK already regulates the extractive industry through Health and Safety/Town and Country Planning legislation. The incidence of significant operational failure of waste facilities leading to major damage is very rare – with no specific cases since the Aberfan disaster in 1966. The HSE reported two dangerous tip failures since 1988 leading to limited environmental damage. Incidences of operational failure of waste tip and pond facilities leading to significant environmental damage are also rare, with no more than 1 or 2 cases on average per decade in the extractive sector in the UK.

   - (poss) Policy debate

Groundwater Daughter Directive

Groundwater is a water resource of increasing importance in Scotland. Some 5% of drinking water in Scotland is from groundwater, but it is 20% in the Republic of Ireland, 30% in England and higher percentages in other countries.
A draft Directive, deriving from the 1980 Groundwater Directive and from Article 17 of the Water Framework Directive, was published in 2003. It should provide for the appropriate protection of groundwater in EU for the risks of pollution, which can come from many sources. However, the UK Departments (and indeed some others such as the Netherlands) have serious concerns that the Daughter Directive as drafted is not suitable. It would not give adequate protection, but could involve excessive costs in monitoring and compliance. The Directive might perhaps be risk-based, rather than seeking to set EU-wide standards. The Directive has not yet had its first reading in the European Parliament.

8. Commission Communication on ‘Financing Natura 2000’
- (poss) Council conclusions

We understand that the Communication is being finalised by the Commission in inter-service consultation.

The Communication is based on the findings of a EC Working Group chaired by John Markland, Chairman of Scottish Natural Heritage and subsequent consultation undertaken by the Commission with stakeholders. John Markland’s Group quantified the financial needs of the Natura network (Special Protection Areas for birds and Special Areas of Conservation for habitats and non-bird species of European importance) and made recommendations on how Article 8 of the Habitats Directive should be used by the European Commission in future. Article 8 provides a mechanism for the Commission to co-finance conservation measures for Natura 2000 sites.

In the past the Commission has made funds available for Natura sites through the LIFE-Nature fund. The current round of the LIFE Regulation provided €300 million for LIFE-Nature for the period 2000 – 2004 and the EC has recently submitted a proposed extension to LIFE-Nature which will provide a similar level of funding for the period 2005 – 2006. The funds provide limited support for the network of sites that comprises 17.5% of the territory of the EU-15 and 60 million hectares.

John Markland’s Group estimated that the costs of the managing Natura sites were between €3.4 billion and €5.7 billion per year until 2013. It outlined 3 options on how Article 8 could be used to provide adequate levels of support:

- using existing EU funds (particularly RDR of CAP, structural and cohesion funds and the LIFE-Nature funds) but modifying these to ensure better delivery against Natura 2000 needs
- enlarging and modifying the LIFE Nature instrument to serve as the primary delivery mechanism, or
- creating a new funding instrument dedicated to Natura 2000

Issues

As the process of designating Natura sites for terrestrial habitats and non-bird species listed in the Habitats Directive nears its end the Commission has identified a need to focus on arrangements for management of Natura sites.
It is unlikely that the Commission will propose new funds. A recent SE study (the report is on the SE website at http://www.scotland.gov.uk/library5/environment/ean2k-00.asp) on the costs and benefits of the 379 Natura sites in Scotland was well received by the European Commission. The study estimated that the benefits were 7 times greater than the costs over a 25 year period. This included estimates of the non-use values of Natura sites based on innovate techniques to quantify people’s willingness to pay for sites they do not necessarily visit. The benefits reduce substantially when non-use values are excluded and this demonstrates that costs cannot be met fully from a reliance on visitor expenditure

Consultation responses suggest that environmental NGOs and the agricultural and landowning interest preferred option three.

A particular issue raised by stakeholders in responses to the consultation that the Commission has undertaken was concern over the eligibility of conservation action in the forestry sector under option one.

The costs estimates in John Markland’s report are very rough estimates from individual Member States.


-Council conclusion

Scotland supports the emphases on waste prevention in the thematic strategy while recognising that, due to the high level of import/export across Europe, product design can only be influenced effectively at EU level. The Scottish Executive, in collaboration with others, intends to draw up a domestic waste prevention plan for Scotland and seeks to benefit from the experience of other Member States in developing its plan. Scotland has a comprehensive National Waste Plan which outlines waste reduction, reuse and recycling proposals and on waste education and awareness the Scottish Waste Awareness Group (SWAG) are designing ‘Waste Aware Scotland’ campaigns. These campaigns are targeted at householders and are principally aimed at recycling and are strongly linked to the roll-out of new recycling infrastructure such as local authorities access money for the Strategic Waste Fund. The Scottish Executive aims to halt the growth in municipal waste by 2010 and has set a target to recycle or compost 25% of municipal waste by 2006, and 55% by 2020. There are no immediate plans to introduce direct charging for waste in Scotland.

Draft Council’s Conclusions

- waste arisings are continuing to increase across Europe, to date there has only been limited success in decoupling overall waste generation from economic growth
- there is a need to address production processes and product life cycles with a strong focus on the sustainable use of natural resources
- there is a key role for education and awareness initiatives in supporting waste prevention and recycling, particularly through enhanced producer and consumer responsibility
- the Council recognises the potentially useful role of waste prevention plans, but highlights the need for further examination of issues relating to the development of appropriate and meaningful targets
the Council has reservations regarding applying ‘Pay As You Throw’ schemes i.e. waste charging at the Community level and considers that where such schemes are developed, this should take place at the regional/local level in order to ensure they can be tailored to local circumstances and potential negative impacts can be avoided.

10. Decision on the conclusion of the protocol to the Barcelona Convention for the protection of the Mediterranean sea against Pollution, concerning cooperation to prevent pollution by ships and, in cases of emergency, to combat pollution of the Mediterranean Sea
- Adoption

We know nothing about the Barcelona Convention on the Mediterranean on this issue beyond the description given in the agenda. The Convention has no significant impact on the UK and DfT has advised that the decision being sought will enable the Community to ratify the new Protocol to the Barcelona Convention.

AOB

(poss) Biodiversity Stakeholders conference
- Information from the Presidency

Information on this issue will be given by the Presidency.
Post-Council Report – Competitiveness Council, 17-18 May

Summary

Broad support for competitiveness and better regulation agenda outlined in Presidency summary of informal meeting at Dromoland in April. On REACH, most Member States ready to see further work done on UK’s one substance, one registration ideas, though Commission remains sceptical. Agreement reached on Unfair Commercial Practices (without mutual recognition), Patents for Computer-implemented Inventions, Mutual Recognition of Qualifications, and changes to the Customs Code. Sales Promotion blocked, and Community Patent deadlocked again. Brief progress report on ITER. Fairly general support for special entry regime for third country researchers.

Competitiveness and Innovation/Better Regulation

The Council held a debate on competitiveness policy based on a number of documents covering structural change (deindustrialisation), the strategy for life sciences and biotechnology, proactive competition policy and the latest state aid scoreboard. Ministers endorsed the findings of the Commission Communication on industrial policy – that although there is no evidence of deindustrialisation, there are some worrying trends, such as weak productivity growth, which if sustained could undermine the competitiveness of the EU industry with severe consequences for the EU. Two sets of council conclusions on better regulation and competitiveness were formally agreed.

REACH

Ministers exchanged views on the Presidency paper on three key areas of the Commission’s proposals; registration, manufacturers’ duty of care and the role of the EU chemicals agency. Ministers stressed the importance of striking the right balance between ensuring that the EU chemicals industry remains competitive and the delivering benefits for human health and the environment. Commissioner Liikanen expressed doubts about the legality and workability of the UK’s proposals for one substance, one registration (OSOR). He was particularly concerned about negative impact on intellectual property for innovative companies and the effect of compulsory data sharing on the proposal’s compatibility with competition law. Commissioner Wallstrom focused on the necessity of REACH as a replacement for the current regulatory system for chemicals which does not work. Member states expressed support for further work on OSOR by endorsing the presidency paper. There was broad support for giving the chemicals agency more powers. The Presidency invited the UK to bring forward its proposal for OSOR as soon as possible, said that they would reflect on duty of care, and invited the working group to do further work on the other aspects of registration and the role of the agency.

ITER

The Council took note of information provided by Commissioner Busquin on the state of play of the ITER project and asked the Commission to keep the Council informed on the ongoing international negotiations.
THIRD-COUNTRY RESEARCHERS IN THE EUROPEAN UNION

The Council held an exchange of views on the Commission proposals on the admission of third country nationals to carry out scientific research in the EU. Delegations intervened on the proposed Directive and two Recommendations in order to provide key messages from the competitiveness point of view, to be taken into account in the detailed examination of the proposals by the Justice and Home Affairs Council. The Council warmly welcomed the objectives of the proposals, which will contribute significantly to the creation of the European Research Area and to European competitiveness in general. It noted their relevance for Europe’s performance within the Lisbon process, in which context the Commission maintains that 700,000 additional researchers are needed in Europe by 2010, and achieving the Barcelona target for investment in research of 3% GDP. In this context, further work on the proposals is required, in particular in relation to the role and responsibilities of the host organisation and the need for a fast procedure for entry of third-country researchers and their immediate families into the Union.

REGULATION ON CONSUMER PROTECTION CO-OPERATION

This measure promotes co-operation between national authorities (and in some instances private consumer organisations) on the enforcement of the consumer protection acquis. The Presidency confirmed that the First Reading Deal text previously agreed by Coreper had been accepted by the European Parliament. The Council noted that the necessary procedures are in course to allow both Institutions to adopt the text as soon as possible.

UNFAIR COMMERCIAL PRACTICES

This proposed directive aims to harmonise national consumer protection laws against unfair marketing and advertising (subject to a number of major exceptions). There were three main outstanding points: the Presidency’s compromise proposals of deleting the mutual recognition clause (with the result that host state legislation would apply to traders from another Member State); demands from the Scandinavians for an unlimited derogation for retention of stricter national consumer protection laws; and deletion of references to the “average consumer” as the benchmark for judging if practices are unfair. The Council reached political agreement by a qualified majority on the draft directive.

SALES PROMOTION IN THE INTERNAL MARKET

This proposed Regulation aims to create a harmonised regime for sales promotions involving offers of discounts, free gifts, premiums and promotional games and contests, and so allow cross-border marketing campaigns. After the intervention of a blocking minority of Member States, the Council decided to instruct its preparatory bodies to further examine the proposal in order to agree on a common position at one of its future meetings.

RECOGNITION OF PROFESSIONAL QUALIFICATIONS

The Council reached political agreement by a qualified majority on the proposal for a Directive on the recognition of professional qualifications. Once the text has been formally adopted it will be submitted to the European Parliament for second reading. Discussions focused on the issue of cross-border provision of services on a temporary and occasional
basis, and in particular on the requirements for the declaration to be made in advance by a service provider who moves from one Member State to another.

**PATENTABILITY OF COMPUTER-IMPLEMENTED INVENTIONS**

The Council reached political agreement by a qualified majority. The agreed text contains provisions for patentability of computer-implemented inventions stipulating that a computer program as such cannot constitute a patentable invention. For a computer-implemented invention to be patentable it must be susceptible of industrial application and involve an inventive step.

**COMMUNITY PATENT**

The Council did not reach agreement by unanimity, as required, on the Presidency’s compromise proposal for a Council Regulation on the Community patent. Noting that all compromise solutions for the only outstanding issue – which concerns the translation of patent claims – had been tried, the Presidency stated its intention to refer this matter to the President of the European Council.

**COMMUNITY CUSTOMS CODE**

The proposal forwarded by the Commission aims to provide improved security at the external borders, simplified procedures and information exchange between customs authorities. Political agreement was reached by a qualified majority.

**OTHER**

The following items were noted without discussion:

- Services in the internal market
- European Consumer Day
- Conference on Competitiveness and Sustainability of European Tourism
- Consumer problems caused by modem hijackers
- The future of European RTD policy
The Foreign Secretary and the Minister for Europe represented the UK at the General Affairs and External Relations Council (GAERC) in Brussels on 17 May 2004. Conclusions were agreed on the Middle East Peace Process, Western Balkans, ESDP, Iraq, International society based on the rule of law, Sudan, and Burma.

GENERAL AFFAIRS SESSION

Progress of Work in Other Council Configurations

The Council took note of a progress report from the Presidency on work under way in the its various configurations, covering meetings held since the last report on 26 April (Agriculture and Fisheries Council, Justice and Home Affairs Council, and an Economic and Financial Affairs Council.)

1. Preparation for The 17-18 June European Council

The Council examined an annotated draft agenda prepared by the Presidency for the 17-18 June European Council meeting. The key items will be:

- Appointments: next President of the Commission, Secretary General of the Council/High Representative for Common Foreign and Security Policy (CFSP), and Deputy Secretary-General of the Council.
- EU area of freedom, security and justice.
- Terrorism.
- EU enlargement.
- EU financial perspective for the 2007-13 period.
- Economic issues and employment.
- External relations, CFSP and European Security and Defence Policy.

EXTERNAL RELATIONS SESSION

This section relates to reserved issues.

2. ESDP

EU Defence Ministers discussed military capabilities development and the European Defence Agency in parallel to the General Affairs session in the morning. The joint meeting of Foreign and Defence Ministers approved conclusions on ESDP and High Representative Solana gave a short update on progress on setting up civilian-military planning cell centre.

Western Balkans

Conclusions were agreed on Serbia and Montenegro, Macedonia, and the Annual Review of the Stabilisation Process. Discussion was short as UNSG Special Representative Holkeri (who had been due to address the meeting for a debate on Kosovo) was unable to attend owing to illness. It was agreed that the Council would return to the subject of Kosovo at its meeting in June.

Iraq

The Council held a brief discussion and adopted Conclusions. The Council addressed the terrorist violence in Iraq; the reports of abuse towards Iraqi detainees; and the transfer of sovereignty in Iraq to
a transitional government. Conclusions also condemned the assassination of the Chairman of the Iraqi Governing Council, Mr. Abdul Zahra Othman Mohammad, which happened earlier that day.

**Middle East Peace Process**

The Council had a brief discussion on 4 May Quartet meeting and Statement. Short Conclusions welcomed the Statement and also condemned the recent out-breaks of violence, which have lead to the deaths of numerous Palestinians and Israelis.

**Latin America and the Caribbean: Preparation of EU-Lac Summit**

The Council assessed final preparations for the 28 May EU-Latin America and Caribbean summit, due to be held in Guadalajara (Mexico). The Council approved a text which will form the basis for a Political Declaration at the meeting. The Commission also gave a short brief on the trade aspects of the summit.

**Russia: Preparation of EU-Russia Summit**

The Council took note of preparations for the 21 May EU-Russia summit in Moscow. There was a very short discussion, during which, the Commission briefed on prospects for Russian accession to the WTO.
Post-Council Report – Agriculture and Fisheries Council, 24-25 May

On fisheries, the Council reached political agreement on the Regulation establishing regional advisory councils (RACs). The creation of RACs is a key element in the continuing reform of the Common Fisheries Policy; the regulation represents an important step towards greater regional management of Europe’s fisheries and it reflects the important work that has been undertaken by the North Sea Commission’s Fisheries Partnership. RACs will now bring together fishermen, scientists and all those with an environmental or economic interest in fisheries, to advise on the fisheries management issues within their designated areas. The Council of Ministers decided to establish seven RACs, including those for the North Sea; the North Western Waters; and the widely disbursed Pelagic fisheries (mackerel, herring, blue whiting and horse mackerel). The Regulation provides RACs with the operating principles and guidelines that are necessary to perform their work, and also provides each RAC with Community financial assistance for start-up and operating costs. Discussion at Council concerned the appropriate level of funding and the requirement for RACs to work transparently, in public. A compromise agreement on these issues was reached – and supported by the United Kingdom.

The Council also reached a political agreement on amending the current FIFG regulation (2792/1999), in order to further specify the detailed rules regarding structural assistance for the fisheries sector. The amendment was technical and detailed, and limited in its scope. It was proposed to clarify arrangements, especially for the benefit of new Member States, and also to support implementation of the Community’s recently agreed strategic framework for aquaculture. Discussions in Council centred on proposed changes to the regulation concerning circumstances for socio-economic assistance, support for environmentally friendly fishing methods, the appropriate level of private contribution rates, compensation for shellfish farmers and available assistance to vessels affected by stock recovery plans. The United Kingdom raised concerns that interventions could lead to unfair competition and, with the support of others, secured a compromise agreement that ensured any such interventions would only apply either in exceptional circumstances or within specified set limits.

Both the regulations will now be adopted without further discussion, at a later date, following the translation of the political agreements into all Community languages.

Under any other business, the United Kingdom provided written information and a statement to Council on ‘Net Benefits’, the UK Cabinet Office’s recent report to government on the future of the fishing industry and the Commission reported the development of increased enforcement activity by Canadian authorities in the NAFO (North Atlantic) regulatory area.

There was no substantive discussion on agriculture matters.

EDUCATION

   – General approach/Political agreement

   Political agreement was reached unanimously on a Common Position for a single framework for the transparency of qualifications and competencies. This will now go to the European Parliament for second reading in the Autumn.

2. Lifelong Guidance & Counselling
   – Council Resolution


3. Quality Assurance in Vocational Education & Training
   – Council conclusions

   The Council adopted Conclusions on “Quality Assurance in Vocational Education and Training”. The Conclusions stemmed from the Working Groups set up to take forward work on the Lisbon Objectives, and were in response to the Interim Report adopted at the previous Education Council on 26 February, which formed part of the Report to the Spring European Council in March 2004.

4. Validation of non-formal and informal learning
   – Council conclusions

   The Council adopted Conclusions on “Identification and Validation of Non-formal and Informal Learning”. The Conclusions stemmed from the Working Groups set up to take forward work on the Lisbon Objectives, and were in response to the Interim Report adopted at the previous Education Council on 26 February, which formed part of the Report to the Spring European Council in March 2004.

5. Proposal for a Regulation amending Regulation (EEC) No 337/75 establishing a European Centre for the Development of Vocational Training (CEDEFOP)
   – Political agreement/Adoption

   The Council proposal to use Article 308 to amend the Cedefop Regulations was adopted unanimously. There was some concern from the UK about the use of Treaty Article 308 to amend this Regulation, since our lawyers took the view that Treaty Article 150 was the proper legal base, rather than Article 308. However, along with Germany, we agreed exceptionally to the use of Article 308, providing this was not used as a precedent, either in the education field or generally, in relation to future proposals in respect of Cedefop. A joint UK and German Declaration was issued at the Council meeting to this effect.
   – Presentation
   – Exchange of views

This was the main item on the agenda during the Council’s Education session. The Council Conclusions were adopted. Plans to merge the Socrates and Leonardo Programmes were welcomed. We also suggested that the integrated programme should focus on vocational training, improving employability, encouraging social cohesion through the use of ICT and exchanging best practice between policy makers and educational institutions. Most Ministers supported proposals to extend the Tempus Programme to schools and vocational training. We agreed with Malta that there should be some coherence between Tempus and Erasmus Mundus, and that the Programme should be complementary to national priorities and other EU objectives, with budgets focussed on access to education for disadvantaged groups. Commissioner Reding hoped the Commission’s legislative proposals would be presented by mid July.

YOUTH

7. Social Inclusion in a Youth context
   – Council Resolution

The Council adopted a Resolution on Social Inclusion, which emphasised the importance of considering the needs of young people in the EU’s Open Method of Co-ordination. It also adopted a Declaration calling for the Commission, Member States, youth organisations and other stakeholders to combat racism and intolerance amongst and towards young people, which committed the Council to report on progress during 2005.

8. Proposed Common Objectives for voluntary activities among young people
   – Exchange of views

The Commission’s Communication on volunteering was welcomed, and several Ministers agreed with the UK that it was useful for volunteers to have a record of their voluntary work, as a means of helping employability. It was also recognised that volunteering amongst young people helped to foster personal development and promote European Citizenship.

   – Presentation
   – Exchange of views

Commissioner Reding outlined the Commission’s plans for the new Youth Programme, to run from 2007 to 2013. There was broad agreement on having a Youth Programme separate from Education and Training Programmes. The UK supported a target group of 15 to 25, rather than 13 to 30 years, to ensure that resources were properly focussed, with the Programme having more focus on socially excluded young people.
Post-Council Report – Justice and Home Affairs Council, 8 June

SUMMARY

This was the final JHA Council of the Irish Presidency. The UK was represented by Caroline Flint MP, the Home Office Parliamentary Under Secretary of State. There was recognition of the good work on Tampere completed by the Irish Presidency and Commissioner Vitorino, and general agreement was reached on a number of issues, such as the European Refugee Fund, Visa Information System (VIS), researchers and Confiscation Orders. However, the Council was still unable to agree over who should be appointed Director of Europol.

DISCUSSION ON THE SUCCESS OF THE TAMPERE PROGRAMME

A new 5-year programme will be developed, which will include better evaluation of Member States implementation of EU legislation. Issues that are central to the future programme were identified as: the integration of new Member States into the Schengen agreement; preventing illegal immigration; criminal procedure and cross-border prosecutions. France, Finland, Spain and Austria made it clear that mutual recognition of judicial decisions will be key to future co-operation. Austria also re-emphasised that it is opposed to the European Public Prosecutor. Sweden and Finland hoped that Qualified Majority Voting (QMV) would help to speed up progress on asylum and immigration measures. It was agreed that a key factor in this area will be the development of the European Borders Agency.

The Dutch Presidency aims to hold final discussions of the new programme at the October JHA Council, prior to an agreement at the December European Council, and invited written comments from Member States.

POLICE AND JUDICIAL CO-OPERATION & OTHER MISCELLANEOUS ITEMS

A consensus was reached with regard to an approach on the Framework Decision on Mutual Recognition of Confiscation Orders. An agreement on the Director of Europol could not be reached, but the Presidency will try to find a solution by the end of June. With regard to the EU drugs strategy for 2005-2012, Finland wants higher co-operation with third countries such as Russia.

IMMIGRATION AND ASYLUM ITEMS

There was general agreement on how to deal with the Council Decisions on establishing the European Refugee Fund, and the Visa Information System, and the Council Recommendation on researchers. The Commission also presented its Communication on international protection, which was compatible with international opinion; the UK was positive about this, and will no longer be pressing for zones of protection. The Commission’s other Communication relating to the links between legal and illegal migration, included discussions on biometric passports, the general consensus being that fingerprinting could be used in addition to facial imaging. As a result of some German concern about the Communication, the Presidency decided that the issues involved will be debated in July’s Council.
FOLLOW UP TO THE EUROPEAN COUNCIL DECLARATION ON TERRORISM

The Secretary General’s report recommended that there should be close links between the Situation Centre (SitCen) and Europol. This approach was welcomed by the UK, who supported a greater exchange of information driven by the Counter-Terrorism (CT) Co-ordinator. Germany supported an exchange between police, security and intelligence services, but only if Member States were prepared to include sensitive information. Germany also expressed concern about the role of the CT Co-ordinator, who they wanted to co-ordinate work within the Secretariat, rather than interior ministers.

AOB

Concerns about whether the Border Regulation Agency will be in place by January 2005 were raised, as a result of Spain’s reserve over Gibraltar. The UK clarified its stance on Gibraltar to ensure it will not be held responsible if the Regulation is not adopted in time.
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
Tel: 0131 348 5234
Email: europe@scottish.parliament.uk
LETTER SENT TO THE SCOTTISH EXECUTIVE BY THE CONVENOR (DATED )

TO ANDY KERR, MINISTER FOR FINANCE AND PUBLIC SERVICES

Thank you for your letter of 7 June in which you helpfully provided information on the location of EU agencies. This was considered at our meeting of 8 June 2004. During our discussions it was felt that certain questions relating to the Fisheries Control Agency had not been answered in your letter. These were:

1. Whether the Executive was aware of the creation of this Agency?
2. Whether efforts were made to secure the location of the Agency for Scotland?
3. What efforts were undertaken by the Scottish Executive and/or the UK Government and how any bid develop? For example, did the UK Delegation offer Scotland as an appropriate location at the relevant Council or preparatory working group?

I would be grateful if you could address these specific questions and also agree to keep us informed with any deliberations the Executive has about prospective EU agencies in the future. Our last meeting before the recess is 22nd June. If possible, a reply before then would be gratefully received. If that is not possible, we would be grateful for a reply shortly thereafter.

EXECUTIVE’S RESPONSE

Awaiting response of the Executive
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 in the autumn.

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 pieces of Community legislation:
   - End of Life Vehicles Directive
   - Statutory Instrument on Organic Products

4. Annex A sets out details provided by the Executive on these pieces 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.

Richard Lochhead MSP
Convener
Tel: 0131 348 5234
Email: europe@scottish.parliament.uk
I wrote to you on 15 January about the transposition of the last remaining elements of the End-of-Life Vehicles (ELVs) Directive, and explaining that the Scottish Ministers were considering allowing the UK Government to extend its transposing Regulations to Scotland by virtue of s.57 of the Scotland Act 1998.

Transposition of this Directive cuts across a range of reserved and devolved matters, and implementation to date has entailed the making of Regulations of the Scottish Parliament and UK Government Regulations which address both the reserved issues and matters which are devolved, but where the interests of clear and effective regulation demand a single legislative instrument.

In my letter of 15 January I explained that I was minded to ask the UK Government to extend its implementing Regulations to Scotland, but reserving decision until consultation with stakeholders had been concluded. That is now the case. The Scottish response to the consultation proposals was minimal and did not raise any concerns relevant as to whether or not there ought to be separate Scottish Regulations. Neither did the response as a whole raise any concerns which ought to be addressed separately.

Consequently, I am affirmed in my initial view that the most practical way of implementing these measures in Scotland will be for the UK Government to exercise section 57 of the Scotland Act and extend its own transposing Regulations to Scotland. I have therefore written to the Secretary of State for Trade and Industry asking her to do so.
LETTER FROM THE SCOTTISH EXECUTIVE, DATED 14 JUNE (ORGANIC PRODUCTS)

I am writing to inform you that I have agreed that a Statutory Instrument on Organic Products can be introduced on a UK basis which replaces the existing Organic Products Regulation 2001 and the Organic Products Regulation 1992 as amended.

Existing controls on organic product standards are set out in Council Regulation 2092/91 (Article 9). From its implementation in 1992 this Regulation has required that all Member States shall implement an approved inspection system for all organic products. Council Regulation 2092/91 (Article 9 (4)) stipulates that member states designate an authority to control approved inspection bodies. The Organic Product Regulations 2004 replace the existing Organic Products Regulations of 2001 and the Organic Products Regulation 1992 as amended.

The demise of the United Kingdom Register of Organic Food Standards (UKROFS) meant that DEFRA assumed the role of the designated authority in consultation with other UK Rural Affairs Departments. In carrying out this function DEFRA is advised by the Advisory Committee on Organic Standards. The existing UKROFS standards have been replaced by a Compendium of UK Organic Standards which was published by DEFRA in December 2003. The new regulations ensure that organic products legislation reflects these changes on a uniform UK basis.

As organic standards are dealt with as part of the UK remit of ACOS it makes sense to legislate on that basis. As the approved inspection bodies operating in Scotland are also able to operate on a UK basis it also makes sense that the designated authority should operate with a UK remit. I can confirm that the Scottish Ministers reserve the right to be consulted on matters affecting Scotland.

I have therefore agreed that it is prudent to approach regulating on these issues on a UK basis. This approach also allows UK coverage to be achieved at an earlier date than if we were to adopt the approach of having a separate SI for Scotland.

I shall ensure the Environment and Rural Development Committee are kept abreast of any future development on this issue.

I am sending a copy of this letter to the Convenor of the European and External Relations Committee.
Background
This document contains the list of EC/EU documents received by the European and External Relations Committee for this meeting, classified according to which committee(s) the particular document is most relevant to. The document is sent by the European and External Relations Committee to each of the Scottish Parliament’s committees for their attention.

Table of Contents

Note
As a new feature, this list of recent legislative proposals and developments in the EU contains a preface to the Committee Relevancy lists. This preface highlights certain documents considered of ‘Special Importance’ by the European and External Relations Committee, along with a short explanatory note of why they have been highlighted as such.

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# Documents of Special Importance

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<tr>
<td>Enterprise and Culture</td>
<td>1207</td>
<td>COM (2004) 366</td>
<td>Communication from the Commission to the Council and the European Parliament - The share of renewable energy in the EU: Commission Report in accordance with Article 3 of Directive 2001/77/EC, evaluation of the effect of legislative instruments and other Community policies on the development of the contribution of renewable energy sources in the EU and proposals for concrete actions</td>
<td>These documents may be of interest to these Committees, especially to the Enterprise and Culture Committee in light of their Inquiry into Renewable Energy. Document SP 1207 assesses the state of development of renewable energy in the European Union and outlines its three purposes as:</td>
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<tr>
<td>Environment and Rural Development</td>
<td>1208</td>
<td>SEC (2004) 547</td>
<td>These documents may be of interest to these Committees, especially to the Enterprise and Culture Committee in light of their Inquiry into Renewable Energy. Document SP 1207 assesses the state of development of renewable energy in the European Union and outlines its three purposes as:</td>
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<td>-The formal report that the Commission is required to make under Article 3 of Directive 2001/77/EC, evaluating the progress made by the EU15 towards achieving national targets for 2010 for electricity from renewable energy sources;</td>
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<td>-Assessment of the prospects for achieving the target of a 12% share of renewable energy in overall energy consumption in the EU15 in 2010 (including heating, electricity and transport), taking into account EU legislation since 2000 and other measures in renewable energy and energy efficiency;</td>
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<td>-Proposals for concrete actions at national and Community level to ensure the achievement of EU renewable energy targets for 2010, in the context of the Bonn World Renewable Energy Conference (June 2004) and, building on this, the line to take on</td>
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Commission staff working document: The share of renewable energy in the EU Country profiles Overview of Renewable Energy Sources in the Enlarged European Union
Document SP 1208 is a Staff Working Document which gives an overview of the different situations of renewable energy sources in the European Union. It includes part of the formal report that the Commission is required to make under Article 3 of Directive 2001/77/EC on electricity from renewable energy sources, and it completes the overall picture with information at a country level on the heat produced from renewable energies and biofuels in the transport sector.

UK Government Explanatory Memorandum available on request.


This is a Green Paper which may be of interest to this Committee. Five years ago, huge impetus was given to the fight against discrimination in the European Union when new powers were granted to tackle discrimination on grounds of sex, racial or ethnic origin, religion or belief, age, disability and sexual orientation. This Green Paper sets out the European Commission's analysis of the progress that has been made so far. It seeks views about how the EU can continue and reinforce its efforts to combat discrimination and to promote equal treatment. In so doing, it responds to calls from the European Parliament and others to organise a public consultation on the future development of policy in this area. 

Responses to this Green Paper will be collected principally using an on-line questionnaire. The public consultation period
begins on 1 June 2004 and ends on 31 August 2004. Further instructions about how to participate in the consultation process are set out in Section 5 of the Green Paper.

UK Government Explanatory Memorandum available on request.
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<td>Communities</td>
<td>1173</td>
<td>COM(2004) 383</td>
<td>Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The Social Dimension of Globalisation - the EU's policy contribution on extending the benefits to all</td>
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<td>SEC(2004) 659</td>
<td>&quot;Turning the Corner - preparing the challenge of the next phase of European capital market integration&quot; Tenth Report by the Commission</td>
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<td>1173</td>
<td>COM(2004) 383</td>
<td>Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The Social Dimension of Globalisation - the EU’s policy contribution on extending the benefits to all</td>
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<td>1178</td>
<td>9464/04</td>
<td>Amended proposal for a Regulation of the European Parliament and of the Council concerning sales promotions in the internal market - Political agreement/Public deliberation</td>
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<td></td>
<td>1172</td>
<td>SEC(2004) 621</td>
<td>Communication from the Commission to the Council and the European Parliament entitled: &quot;Decommissioning of nuclear installations and waste management - Nuclear liabilities arising out of the activities of the Joint Research Centre (JRC) carried out under the Euratom Treaty&quot;.</td>
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<td>1199</td>
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<td>Finance</td>
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<td><em>Turning the Corner - preparing the challenge of the next phase of European capital market integration</em> Tenth Report by the Commission</td>
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<td>1195</td>
<td>10215/04</td>
<td>Draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the member States of the European Union, in particular as regards serious offences including terrorist acts</td>
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<td>1196</td>
<td>COM(2004) 412</td>
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<td>Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection capacity of the regions of origin “Improving access to durable solutions”</td>
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<td>Proposal for a Council Decision granting a Community guarantee to the European Investment against loans for certain types of projects in Russia and the Western New Independent States (WNIS)</td>
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<td>Proposal for a Council and Commission Decision on the conclusion of the Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the European Union.</td>
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<td>Communication from the Commission - A stronger partnership for the outermost regions</td>
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<td>1201</td>
<td>COM(2004) 372</td>
<td>Proposal for a Council Decision on the signing of a Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the European Union</td>
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<tr>
<td>1203</td>
<td>COM(2004) 399</td>
<td>Communication from the Commission on the modification of the European Community's import regime for bananas</td>
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<tr>
<td>1204</td>
<td>COM(2004) 411</td>
<td>Proposal for a Council Decision on the fulfilment of the conditions laid down in Article 3 of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Bulgaria, of the other part, with regard to an extension of the period foreseen in Article 9(4) of Protocol of the Europe Agreement.</td>
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### Committee Relevancy: Next Meeting 22-Jun-2004

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<tr>
<th>Committee</th>
<th>SP Ref</th>
<th>EU Ref</th>
<th>Document Title</th>
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