The Committee will meet at 2.00 pm in Committee Room 3.

1. **Informing the people of Scotland of the impact of the EU’s constitutional treaty on Scotland - revised proposals for civic engagement:** The Committee will discuss revised proposals for civic participation events across Scotland to inform people about the treaty.

2. **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**

   - Agriculture and Fisheries Council (13-14 October)
   - Employment, Social Policy, Health and Consumer Affairs Council (20 October)
   - Environment Council (27 October)

   and discuss the correspondence received from the Scottish Executive in response to previous queries.

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

   Executive’s response on the impact of the draft EU Hallmarking Directive.
   Executive’s response on the implications of the European Commission’s Internal Market Strategy (Priorities 2003-2006) on the ownership of the Scottish water industry.
   Proposals for a revised reporting arrangement by the Clerk/Chief Executive and External Liaison Unit on the Parliament's external relations activities.
Proposals for piloting postal voting for the next elections to the European Parliament, prospects for the number of MEPs in Scotland and funds for the promotion of efforts to encourage voting.

Role of Scottish Executive ministers and the Scottish Executive in providing market analyses of the proposed new members of the EU and in leading trade delegations.

Proposal for a meeting/conference with representatives of parliamentary committees from the accession states and wider events across Scotland to mark enlargement.

Feedback from the Committee’s visit to Brussels.

4. **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.

5. **Revising the sift of EC/EU documents and draft legislation**: The Committee will consider proposals for revising the sift process.

   **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: “Informing the people of Scotland of the impact of the EU’s constitutional treaty on Scotland: revised proposals for civic engagement”  

BRIEFING PAPER: “Information note on the ratification procedures used in Member States for EU treaties, the role of sub-state nations/regions and options for the Scottish Parliament”  

For information: COM(2003)548, European Commission’s view on draft Treaty

**Agenda Item 2**

BRIEFING PAPER: “Pre- and post-Council of the EU analysis and scrutiny”  

BRIEFING PAPER: “Correspondence received from Scottish Executive on pre- and post-Council scrutiny conducted on 23 September”

**Agenda Item 3**

Convener’s Report, including:  
- Executive’s response on the impact of the draft EU Hallmarking Directive  
- Executive’s response on the implementation of the Waste Electric and Electronic Equipment Directive in Scotland  
- Executive’s response on the implications of the European Commission’s Internal Market Strategy (Priorities 2003-2006) on the ownership of the Scottish water industry  
- Proposals for a revised reporting arrangement by the Clerk/Chief Executive and External Liaison Unit on the Parliament’s external relations activities  
- Proposals for piloting postal voting for the next elections to the European Parliament, prospects for the number of MEPs in Scotland and funds for the promotion of efforts to encourage voting.  
- Role of Scottish Executive ministers and the Scottish Executive in providing market analyses of the proposed new members of the EU and in leading trade delegations  
- Proposal for a meeting/conference with representatives of parliamentary committees from the accession states and wider events across Scotland to mark enlargement.  
- Feedback from the Committee’s visit to Brussels

**Agenda Item 4**

Sift of EC/EU documents and draft legislative proposals

**Agenda Item 5**

BRIEFING PAPER: “Proposals for revising the sift of EC/EU documents and draft legislation”
EUROPEAN AND EXTERNAL RELATIONS
COMMITTEE

BRIEFING PAPER

“Informing the people of Scotland of the impact of the EU’s constitutional treaty on Scotland: revised proposals for civic engagement”

Introduction

1 At its 4th meeting 2003, the Committee considered again proposals to take forward the idea of engaging directly with a cross-section of the people of Scotland on the draft EU constitutional treaty. The purpose of the original proposals was to consult and contribute towards a debate in Scotland, in the UK and across the EU on the draft treaty.

2 During discussions, there appeared to be a majority view that there was insufficient time to hold such meetings during October and November 2003 in order to consult with a cross section of the public and to influence the IGC debate and the UK’s contribution to it.

3 However, it was agreed that the Committee should invite Scottish and UK Ministers to give evidence on the progress of the IGC, preferably during October/November. This is being followed-up and invites are being issued. As stated, the proposals for civic engagement events as originally described were not agreed to. The Clerk was asked to re-consider how such an engagement could take place. Revised proposals are set out in this paper (see Annex A).

4 These proposals have been drafted on the basis that the objective is to inform the people of Scotland about the nature of the constitutional treaty once it has been agreed to as part of the intergovernmental (IGC) process.

Action requested

5 Members of the Committee are requested to consider the proposed options set out in Annex A. Members may also wish to note the publication by the European Commission of its response to the draft treaty. This can be found at:

and has been distributed as part of today’s committee papers.

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

PROPOSALS AND OPTIONS – INFORMING THE SCOTTISH PEOPLE ABOUT THE IMPACT OF THE EU CONSTITUTIONAL TREATY

Background

Following the successful completion of the European Convention, a draft constitutional treaty for reform of the European Union (EU) has now been published. Depending on your view, this contains quite radical ideas for reform and/or is a substantial ‘tidying-up’ exercise, which revises the workings of the EU for years to come. The main provisions are:

- **legal personality** for the European Union, allowing it to sign international treaties in its own right;
- a **full time President** of the European Council;
- a **European Union Minister for Foreign Affairs**, who would chair the Foreign Affairs Council but also serve as a Vice President of the Commission;
- a separate **Legislative and General Affairs Council**;
- Presidencies of other **sectoral Councils** to last for periods of at least a year and rotate among all Member States equally;
- extension of **qualified majority voting** (QMV), except for a few politically sensitive areas such as taxation, social security and foreign policy;
- from 2009, the introduction of **double majority** voting, requiring assent from at least half of Member States representing at least 60% of the Union’s total population;
- membership of the **Commission** limited to 15, rotating among Member States equally, with further non-voting Commissioners;
- incorporation of the **Charter of Fundamental Rights** into the Constitutional Treaty;
- bringing provisions on **freedom, security and justice** into a common general legal framework according to the Community model, thus including for the first time police and judicial co-operation on criminal matters;
- provisions on **subsidiarity** which recognise the **role of regional government**;
- a fuller role for **national parliaments** through enhanced consultation;
- a new provision under which a minimum of **1 million EU citizens** could demand that the Commission bring forward a proposal on a specified issue.

On 9 September, the UK Government published a White Paper setting out its views on the proposed constitutional treaty. On the same day, the Scottish Minister for Finance and Public Services, Andy Kerr MSP, appearing before the Committee gave Members his perspective on the treaty. During this meeting, the minister indicated his support for a ‘national debate’ in Scotland on the draft treaty.

The Committee has a long track record in considering the implications of the work of the Convention and the treaty on interests in Scotland. Since 2001, two major inquiries have been undertaken, culminating in two well-received parliamentary reports.
For the second of these, a major civic event – the Scottish Parliamentary Convention on the Future of Europe – was held on the 16 September 2002, in order to gauge the mood and views of a cross-section of the populace on the prevailing debate at the time. This proved a very successful event.

Since then, the European Convention has reported and an intergovernmental conference (IGC) is set to start to consider the Convention’s draft treaty from October 2003. It is expected that the IGC will conclude before the end of the year or early next year.

Objectives of civic engagement

As agreed to, in principle, at the 4th meeting of the Committee, the objective of any events is to inform the people of Scotland about the impact of the treaty once this has been agreed to. Prior to these events, evidence will be taken from relevant Scottish and UK Ministers vis-à-vis the draft treaty and the IGC process, but the timing of the civic engagement events will be post-agreement of the new treaty.

Options for civic engagement and options for further activities by the Scottish Parliament

There are various options that Members may wish to consider:

Option 1: hold an event, similar to the Scottish Parliamentary Convention on the Future of Europe, some time in the early months of 2004 (depending on the outcome of the IGC) to inform people about the agreed treaty. The emphasis would be on inviting a mix of representatives of civic Scotland, academics etc., with a sizeable proportion of the delegates coming from the general public (including young people).

Option 2: organise a series of (1-2hr) public meetings/hearings across Scotland on the agreed treaty. Previous proposals suggested between three and five meetings/hearings. These public meetings/hearings would have the same aim of informing people about the treaty agreed to at the IGC. They could be held in early-2004, again dependent on the outcome of the IGC. It is proposed that the locations of the public meetings/hearings might be: Edinburgh or Glasgow, North East, Ayrshire, Inverness and Stirling. One or more MSPs from the Committee would attend and host.

Option 3: to combine options 1 and 2.

Option 4: to combine options 1 and 2 with a request to the Parliamentary Bureau under Standing Orders Rule 6.8.2 that the Committee recommends that there should be a debate held in the Chamber on the draft Treaty and/or the progress of the IGC in relation to the Executive’s priorities.

NB. The first three options would usefully benefit from a request to use the Parliament’s civic participation fund with a view to contracting a third party to help organise the events.
NB. It may be that any events organised by the Committee should be linked with activities encouraging people to vote in the subsequent elections to the European Parliament.

Recommendation

The Convener recommends that option 4 be chosen. If the Committee agrees, a bid for civic participation funds will be made and discussions with possible third parties concluded.

Members may also wish to note the publication by the European Commission of its response to the draft treaty. This can be found at:


and has been distributed as part of today’s committee papers.
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER

“Information note on the ratification procedures used in Member States for EU treaties, the role of sub-state nations/regions and options for the Scottish Parliament”

Introduction

1 At its 4th meeting 2003, the Committee asked for further information on the ratification procedures used in Member States for EU treaties and also on the role of sub-state national/regional administrations.

2 The Clerk has collated such information available and set this out in Annex A. In addition, a separate information note prepared by the Directorate of Legal Services on the options for further involvement of the Scottish Parliament in the ratification of any constitutional treaty is attached as Annex B.

Action requested

3 Members of the Committee are requested to note the information set out in Annexes A and B.

Richard Lochhead MSP
Convener
Tel: 0131 348 5234
Email: europe@scottish.parliament.uk
INFORMATION NOTE ON THE RATIFICATION PROCEDURES USED IN MEMBER STATES FOR EU TREATIES AND THE ROLE OF SUB-STATE NATIONS/REGIONS

Background – the IGC

On Friday 13 June 2003, the Convention on the Future of Europe approved the text of the Draft Constitutional Treaty of the European Union which was submitted to the European Council meeting in Thessaloniki, Greece on 20 June 2003. At their meeting in Thessaloniki, EU leaders established an Intergovernmental Conference (IGC) which will examine the Convention draft in detail and amend the text as necessary.

Currently, any changes to the treaties or a new treaty have to be agreed upon by an Intergovernmental Conference (IGC). Such a conference consists of representatives of the governments of each of the EU Member States. An IGC will meet over a period of time in order to draft and agree treaty amendments. During the drafting and negotiating phase governments are normally represented by Ministers with special responsibility for European Affairs.

During the final phase when an IGC agrees to the new treaty, the IGC is most likely to be made up of the various government leaders. The European Commission and the European Parliament are often involved as observers during the preparatory phase of an IGC although they have no formal power to affect the outcome.

Ratifying the treaties

Once an IGC has approved the new treaty, the text then has to be approved by each of the existing Member States. It is up to each Member State to determine how such approval is organised - in some cases a Member state will hold a referendum, in other cases the changes will be subject to a vote in the national parliament. The Treaty can only enter into force once it has been ratified by all Member States and this is unlikely to happen before 2005 or even 2006.

In the majority of member states the traditional constitutional process for ratifying EU treaties is by parliamentary procedure. This has been the case in the UK in the past. In Ireland, for example, it is not only normal practice but a constitutional requirement to hold a referendum on EU treaties before ratification. In some countries, however, such as Denmark, new treaties require a referendum only if they involve a transfer of sovereignty. It should be noted that in the case of the Nice Treaty, Denmark did not hold a referendum. The Danish authorities at the time were clear that Nice did not represent a transfer of authority.

The following table (Table 1) is a very simplified overview of the ratification procedures in each member state. Please note that, as indicated by the Danish experience with the Nice Treaty, the decisions on whether to hold referendums are not absolute.
**TABLE 1: TREATY RATIFICATION PROCEDURES**

<table>
<thead>
<tr>
<th>Member State</th>
<th>Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>The Austrian government has discretion to determine the legal basis of the parliamentary ratification to be followed. According to Art. 50 of the Federal Constitution, political treaties must be ratified by the assent of the Nationalrat (lower house) with simple majority. If competencies of the Länder (administrative regional subunits) are concerned, political treaties (Staatsverträge) have to be approved by the Bundesrat (federal upper house) with simple majority. According to Art. 44 (3) of the constitution, 1/3 of the members within one of the houses are required for submitting a bill amending the constitution to a binding referendum. Both parliamentary chambers have control over the decision to involve the electorate. According to Art. 45 (1), for a referendum, the absolute majority of the validly cast votes is decisive.</td>
</tr>
<tr>
<td>Belgium</td>
<td>According to Article 167 of the revised 1994 Belgian constitution, all treaties must be approved by the legislatures of all levels - federal state, communities or regions concerned. The ratification process begins with providing the government with the possibility to ask the Council of State for an interpretation of the treaty and for the constitutional provisions to be applied. Otherwise, it is within the discretion of the government to decide the administrative levels to be concerned and therefore to be involved. According to Art. 77 of the constitution, a treaty affecting the national level must be approved by both houses of the national parliament. The ratification bill requires an absolute majority in both houses (Art. 53). Despite not excluding advisory referenda, the Belgian constitution does not provide the possibility of a binding referendum.</td>
</tr>
<tr>
<td>Denmark</td>
<td>The Danish constitution lays down the provisions for transferring “powers vested in the authorities of the realm under this constitution to international authorities” in § 20 (1) of the constitution. This paragraph has been applied for the ratification of all treaties on European integration since the EC accession bill in 1972. According to § 20 (2) the Folketing (the Danish parliament) must adopt the ratification bill with a 5/6 majority of its total members. If this quorum is not reached, but a simple majority votes in favour of the bill, a referendum has to be carried out. If no simple majority is reached, the ratification process ends. According to § 42 of the constitution, the result of the referendum is binding. Due to the constitutional tradition of applying § 20 for ratifying treaties on European integration, no actor involved during the ratification process is provided with discretionary leeway.</td>
</tr>
<tr>
<td>Finland</td>
<td>According to § 33 of the Constitution Act, treaties must be approved by the Eduskunta (the Finnish parliament) with simple majority, “if they contain provisions within the legislative sphere of the Eduskunta” (§ 33 (1)). According to § 69 of the Parliament Act, a 2/3 majority of the attending members of the Eduskunta is necessary, if an international treaty requires an amendment of the constitution. The constitution gives the government control over the decision which of the procedures to be applied. § 22a of the constitution provides the possibility of nonbinding referenda.</td>
</tr>
<tr>
<td>France</td>
<td>The French ratification process begins with providing the government the possibility to ask the Constitutional Council whether an amendment of the constitution is necessary. If the government already refuses this necessity, or if the Council states, that an amendment is not required, the regular ratification procedure continues. According to Art. 89, a revision of the constitution must be approved by both chambers of the parliament with absolute majority. An approval by referendum is required unless the president transfers the revision to the Parliamentary Congress, the joint session of the Assemblée Nationale (lower house) and the Senate (upper house), where a 3/5 majority is needed to approve a constitutional amendment without submitting it to a referendum.</td>
</tr>
<tr>
<td>Country</td>
<td>Description</td>
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</tr>
<tr>
<td>Germany</td>
<td>Pursuant to the ratification design as laid down in the revised Art. 23 (1) of the German Basic Law, Art. 79 (2) &amp; (3) has to be applied when the Basic Law is to be amended. Accordingly, a 2/3 majority in the Bundestag (parliament) and the Bundesrat (representation of the regional Länder), respectively, is required for the ratification. The constitution provides the possibility to appeal the Federal Constitutional Court in order to examine the constitutional compatibility.</td>
</tr>
<tr>
<td>Greece</td>
<td>The Greek government has discretion to choose the legal procedure for the ratification of treaties. According to Art. 36 (2) of the Greek constitution, treaties “relating to the participation in international organizations” must be ratified by a law passed with absolute majority in the Vouli (the Greek parliament). As stipulated by Art. 28 (2), a 3/5 majority is required “to recognize the competence of bodies of international organizations by virtue of treaties”. Alternatively, according to Art. 44(2) it is possible to hold a referendum on “national questions of crucial importance”. In this latter case, the government has the possibility to introduce a proposal for holding a referendum into the Vouli. If the Vouli accepts the proposal by an absolute majority, the president is provided the right to submit the treaty to a binding referendum.</td>
</tr>
<tr>
<td>Ireland</td>
<td>In accordance with Art. 29 (5) of the constitution, international agreements must be accepted by the Irish parliament with simple majority in both houses. Following the decision of the Supreme Court on the occasion of the Single European Act, every extension of European jurisdiction additionally requires the constitution to be amended. This provided, the ratification process is completely predetermined by the constitution. As stipulated by Art. 46, an amendment of the constitution must be passed with simple majority in both houses of parliament and then requires the approval of the electorate in a referendum.</td>
</tr>
<tr>
<td>Italy</td>
<td>Although the practice to submit policy proposals to a referendum is commonly used in Italy, Art. 75 of the constitution explicitly precludes applying this procedure for the ratification of international treaties. As stipulated by Art. 72 of the constitution, the ratification procedure follows the ordinary parliamentary legislative process, where each house has to approve a bill by simple majority.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>According to Art. 83bis, the Council of State is called to express its opinion on every legislative act. The government has to formally consult the Council of State which of the constitutional provisions are to be applied to ratify a treaty. The Council of State has to decide, whether there are parts of the treaty requiring an amendment of the Luxembourg constitution. As stipulated by Art. 114, in case of amending the constitution, a newly-elected Chambre des Députés (the Luxembourg parliament) has to approve the amendment with a 2/3 majority. If the treaty implies vesting “powers reserved by the Constitution to the legislature [...] in institutions governed by international law” (Art. 49bis), in accordance with Art. 37, the ratification bill requires a voting majority as defined in Art. 114, para. 5: a 2/3 majority in the Chambre provided that at least 3/4 of all members are present. However, the election of a new chamber, in this case, is not necessary. If the Council considers neither an amendment of the constitution to be necessary, nor a transfer of powers implied, an ordinary law requiring simple majority is sufficient.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>As stipulated by Art. 91 of the Dutch constitution, international treaties must be approved by the Generalstaaten (the Dutch parliament). If a modifications of the constitution is implied, the treaty has to be approved by each of the houses with a 2/3 majority (Art. 91 (3)), otherwise a simple majority is sufficient (Art. 91 (1)). In accordance with Art 73 (1), the government has to consult the Council of State, who has to provide a recommendation which of the paragraphs to be applied. In constitutional practice, this recommendation is binding for the government.</td>
</tr>
<tr>
<td>Country</td>
<td>Ratification Process</td>
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<tr>
<td>Portugal</td>
<td>According to Art. 161 (i) of the constitution, a treaty must be ratified by the approval of the Assembleia da República (the Portuguese parliament) with simple majority. Alternatively, according to Article 115 (5), it is possible to submit the treaty to a binding referendum, which has to be approved by the Assembleia with simple majority. Then, the president has to decide whether to perform the referendum or not (Art 115 (1)). In accordance to the constitution, the president has to submit the referendum proposal to the Constitutional Court who has to examine its compatibility with the constitution (compulsory review).</td>
</tr>
<tr>
<td>Spain</td>
<td>In Spain, the ratification of treaties implies a vote sequence that involves both houses of the Spanish parliament. According to Art. 94 of the constitution, treaties of a political nature must be approved by the parliament with simple majority. According to Art. 92 of the constitution “political decisions of special importance may be submitted for a consultative referendum”.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Chapter 10 of the Swedish constitution provides four different ways to ratify treaties. According to Chapter 10, §2 treaties must be ratified by the Riksdag (the Swedish parliament) with simple majority. Second, according to Chapter 10, § 5, para. 2, any treaty that transfers “any right of decision-making which is directly based on the constitution [...] to an international organization” must be approved “by a majority of no less than five sixths of those present and voting and no less than three fourths of the total membership of the Riksdag”. The provisions for the amendment of basic rights can be used to ratify treaties as defined in Chapter 10, § 5, para. 2, however they require a second vote on the ratification bill in a newly-elected parliament (Chapter 8, § 15). Third, according to Chapter 10, § 5, para. 4 a 3/4 majority is required if a treaty implies the transfer of sovereign rights not directly based on the constitution to international bodies. Finally, according to Chapter 10, § 5, para. 1, “the Riksdag may entrust the right of decision-making to the European communities” with a “majority of three fourth of those present and voting”.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Due to the constitutional principle of parliamentary sovereignty, the ratification of treaties in GB reduces to the standard legislative process, requiring a simple majority in the parliament. The House of Lords (the upper house) has the right to suspend ratification for a maximum of one year by vetoing the treaty.</td>
</tr>
</tbody>
</table>

NB. The information above was drawn from an analysis of the various procedures used to ratify the Amsterdam Treaty.

Table 2 below, has been reproduced from academic research¹ into the “power” and role of the electorate in a treaty ratification process.

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¹ “Comparing Ratification Processes within EU Member States: The Identification of Real Veto Players.”, Paul W. Thurner et al, University of Mannheim
**TABLE 2: ROLE OF THE ELECTORATE**

<table>
<thead>
<tr>
<th>Referendum excluded by the constitution</th>
<th>Consultative referenda possible</th>
<th>Binding referenda possible</th>
<th>Referendum required in case of sovereignty transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>Belgium</td>
<td>Austria</td>
<td>Ireland</td>
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<tr>
<td>Italy</td>
<td>Finland</td>
<td>France</td>
<td>Denmark (if no 5/6 majority)</td>
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<td></td>
<td>Luxembourg</td>
<td>Greece</td>
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<td></td>
<td>Netherlands</td>
<td>Portugal</td>
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<td>Spain</td>
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<td></td>
<td>UK</td>
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</tbody>
</table>

INFORMATION NOTE PREPARED BY THE DIRECTORATE OF LEGAL SERVICES ON THE OPTIONS FOR FURTHER INVOLVEMENT OF THE SCOTTISH PARLIAMENT IN THE RATIFICATION OF A CONSTITUTIONAL TREATY

NB. This note has been prepared by the Parliament’s Legal Services Directorate. It sets out possible options for a further involvement of the Scottish Parliament in the ratification of any new constitutional treaty. Before doing so, Members may like to be aware of the position agreed unanimously by the previous Committee:

“We also consider it important to consider the involvement of ‘regions’ in the ‘ratification’ of any new Treaty, and their role in the consideration of subsequent amendments once the Treaty is adopted. There must be greater scrutiny of the ways in which Treaties are amended, not less.”

The process of ratification of the draft Treaty establishing a Constitution for Europe – What role for the Scottish Parliament?

Summary: In accordance with Article 48 of the Treaty on European Union and Article 313 of the Treaty establishing the European Community, to enter into force the text which will emerge from the IGC negotiations will need to be ratified by all the Member States in accordance with their respective constitutional requirements. On average, the ratification process takes 20 months.

At present, there is no formal role for the Scottish Parliament within the UK constitutional requirements governing ratification of EU Treaties.

However, there is no legal impediment in the Treaty on European Union to the development at national level of arrangements for increased scrutiny over the way European Union business is handled, including the way in which Member States conduct IGC negotiations. In fact, in some Member States where powers are exercised by different levels of government, every level is involved in the ratification process. In addition there is no limitations in the Scotland Act to the Scottish Parliament forming views on this matter.

Given the relevance of EU issues and Community law in fields devolved to the Scottish Parliament, the Committee may want to consider approaching Westminster in order to secure a level of input into the UK’s ratification process. Members may wish to note that in the previous session, the European Committee made a recommendation to the effect that there should be greater scrutiny of the ways in which Treaties are amended.

**The procedure for revision of the Treaties**

The Treaty on European Union provides for a procedure of revision. Amendments to the text of the Treaty will take the form of a new treaty.

A declaration on the Future of the Union annexed to the Treaty of Nice referred to a new IGC, to be held in 2004 following a broad public debate and preparation by a Convention on institutional reform. The Convention established by the Laeken European Council in December 2001 reported on its work in June 2003, as a starting point for the IGC negotiations. In Thessaloniki on 19 & 20 June 2003, the European Council decided that the text of the Draft Treaty was a good basis for the IGC to start its work. Accordingly, it invited the Italian Presidency to launch in July the procedure established by Article 48 TEU so that the IGC could start its work in October 2003. The IGC is expected to complete its work and approve the new Treaty “in time for European Citizens to familiarise themselves with its content before the European Parliament elections of June 2004”. The Accession countries are expected to take full part in the IGC. It is hoped the new Treaty should be signed sometime in May 2004.

To enter into force the new Treaty will need to be ratified by all the Member States in accordance with their respective constitutional requirements (Article 48 of the Treaty on European Union and Article 313 of the Treaty Establishing the European Community). Unless all the contracting parties ratify, it cannot enter into force.

**Constitutional arrangements and disputes in other Member States**

Constitutional requirements governing treaty making powers and ratification vary from Member State to Member State. As a general rule, treaties are made and ratified by Heads of State, but in most Member States, the Constitutions require parliamentary approval in the form of a resolution or special law. Only in Ireland is there a constitutional requirement to hold a referendum. This followed a ruling by the Irish Supreme Court which held that it would be contrary to the requirements of the Irish Constitution to ratify the Single European Act without a referendum (Crotty v An Taoiseach [1987] 2 CLMR 666).

There have been instances where national constitutions have had to be amended in order to allow for ratification of the Treaty on European Union. In addition, in a number of Member States, national constitutional/supreme courts have had to consider challenges to the constitutionality of the ratification process.

**Constitutional arrangements and disputes in the UK**

In the UK, the power to make treaties is a Prerogative power vested in the Crown. There is also a practice (the ‘Ponsoby rule’) whereby after signature and before ratification important treaties are placed before the Westminster Parliament for

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3 In the case of the would-be Member States, the Accession treaties contain a provision empowering the Council to make the necessary adjustments in the event that a smaller number of Member States actually join. Such a decision was adopted each time Norway found it impossible to ratify the Accession Treaty.
examination and debate. This has been the practice followed in relation to the European Economic Community Treaty (972).

The Westminster Parliament can fetter the Crown’s Treaty making power. Thus, section 6 of the European Parliamentary Elections Act 1978 prohibits ratification of any treaty which provides for any increase in the powers of the European Parliament without the approval of the UK Parliament. Given that the Single European Act, the Maastricht, Amsterdam and Nice Treaties provided for such an increase in the EP powers, they were all made subject to Parliamentary approval. The Nice Treaty, was ratified at Westminster by an Amendment Act to the European Communities Act 19724.

In the UK there have been a number of unsuccessful independent challenges of the decision to ratify the Treaty. In Blackburn v Attorney General ([1971] CMLR 784), and McWhirter v Attorney General ( [1972] CMLR 882) attempts were made to prevent entry into the Community. However, the Court of Appeal declined to review the exercise of the treaty-making power. A challenge to the ratification of the Maastricht was also unsuccessful (Regina v Secretary of State for Foreign and Commonwealth Affairs, Ex parte Rees-Mogg [1994] QB 552).

In conclusion, in the UK there is parliamentary involvement in the ratification process of amendments to the EU Treaty through Westminster. There is currently no formal role for the Scottish Parliament within this process. However, there is no barrier in the Treaty on European Union to the development at national level of constitutional arrangements for increased scrutiny over the way European Union business is handled, including the way in which Member States conduct IGC negotiations. Furthermore, in other Member States where powers are shared between different levels of government, these levels have secured involvement in the ratification process through representation in the second chamber. Given the relevance of EU issues and Community law in most fields devolved to the Scottish Parliament the Committee may want to consider approaching Westminster in order to input into the UK’s ratification process. In fact, Members may wish to note that in the previous session, the European Committee made a recommendation to this effect on the ground that there should be greater scrutiny of the ways in which Treaties are amended5.

Directorate of Legal Services
1st October 2003

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4 The European Communities (Amendment) Bill was introduced to Parliament on 21 June 2001 and was given Royal Assent on 26 February 2002.

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. The December Fisheries Council is a good example of this. It is here that the Committee may wish to have a final engagement with a minister prior to critical decisions being taken. It must be recognised that with QMV, it is not always a simply case of the UK delegation objecting to a final proposal that can prevent decisions being taken.

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

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

This paper

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

Action requested

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

Richard Lochhead MSP  
Convener  
Tel: 0131 348 5234  
Email: europe@scottish.parliament.uk
## 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>Agriculture and Fisheries Council (13-14 October)</td>
<td>Yes</td>
<td>Ask Scottish Executive why a statement was not provided covering its views on the measures for the recovery of cod stocks set to be adopted.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ask Scottish Executive which aspects of the proposed regime for Sheep Identification and Traceability are “unworkable” and why. Furthermore, ask what alternatives are preferred, whether they are supported by the UK Government, whether they are supported by the Commission and/or other member state governments.</td>
</tr>
<tr>
<td>Employment, Social Policy, Health and Consumer Affairs Council (20 October)</td>
<td>Yes</td>
<td>To note that the Committee has asked the Health Minister for a statement on the “Amended proposal for a Directive of the European Parliament and of the Council amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products”.</td>
</tr>
<tr>
<td>Environment Council (27 October)</td>
<td>Due on 6.10.03</td>
<td></td>
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<tr>
<td><strong>Post-Council scrutiny</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>There are no post-Council reports to cover this meeting</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
ANNEX B

ANNOTATED AGENDAS/REPORTS

Agriculture and Fisheries Council (13-14 October)

NB – No agenda for this Council is available as yet and the September Council has still to take place. The following has been prepared on the basis of what we consider might feature on the agenda.

**Fisheries**

The Commission is likely to bring forward Regulations for technical measures to protect juvenile marine organisms; establishing measures for the recovery of cod stocks; fleet management in the outermost regions and agreement with Greenland over fishing opportunities. *These regulations will be presented for adoption.*

The Commission may propose Regulations establishing measures for the recovery of a stock of hake and Recovery plans for Southern hake, sole in the Bay of Biscay, *Nephrops* in the Bay of Biscay and Western Iberian Peninsula, sole in the Western Channel, Rockall haddock. *No decisions are expected at this juncture.*

Council Regulation on the management of the fishing effort relating to certain Community fishing areas and resources modifying Regulation (EEC) 2847/93 ("Western waters"). *Possible political agreement*

Communication from the Commission towards uniform and effective implementation of the CFP and the setting up of a Joint Inspection Structure. *Possible Council decision*

**Agriculture**

**Common Agricultural Policy Reform Package**

Further discussion and possible agreement on some of the detailed legislative texts required to implement the CAP reform package which was agreed in June 2003. Texts are currently being developed through the Special Committee for Agriculture.

*The CAP reform package agreed by EU Agriculture Ministers in June 2003 has been generally welcomed by Scottish Ministers and by the farming industry as providing a much better deal than had initially looked likely. Discussions on the detailed rules for implementation of the CAP package are likely to occupy much of this Council’s work over the next few months at least.*

**Sheep Identification and Traceability**

Discussion on the Commission’s proposals for sheep identification and traceability which were published late in 2002 but which have not yet been discussed in detail.
The Executive supports moves to improve the traceability of sheep but regards the Commission’s proposals for manual tagging of individual animals as unworkable – a view shared by many Member States. Negotiations may well continue into next year.
Employment, Social Policy, Health and Consumer Affairs Council (20 October)

EMPLOYMENT AND SOCIAL POLICY

1. Council Conclusions on Streamlining of the implementation of the open method for coordination in the social protection and inclusion area
   • Adoption
   Council will agree conclusions following discussions at the Informal meeting of EU Employment Ministers in Varese in July, and there was broad agreement amongst Ministers to increase the synchronisation of Social Protection Process with that of the Broad Economic Guidelines, but that different working methods needed to be retained in the different areas. [Ref: COM(2003)261]

2. Council Resolution on the undeclared work
   • Adoption
   In 1998 the Commission issued a Communication on undeclared work and published a study on it in February 2002. The Commission sees a direct link between combating undeclared work and hitting the Lisbon target of full employment by 2010. Undeclared work affects all Member States and is one of the issues of common concern in the employment field. It risks undermining the financing and delivery of social protection and public services. It is a reserved matter with no specific Scottish issues.

   • General approach on a chapter (to be defined by the Italian Presidency)
   This is a proposal for updating Regulations which co-ordinate Member States’ social security schemes for workers and members of their family who move within the Community; and lay down the procedures for implementing the co-ordination measures. It is a reserved matter.

4. Council Conclusions on Immigration, Integration and Employment
   • Policy debate
   All matters concerning immigration are reserved, and the responsibility of the Home Office, including employment of asylum seekers. Integration of refugees and asylum seekers dispersed into communities is a devolved responsibility. In Scotland, we are implementing the Scottish Refugee Integration Forum Action Plan which has over 50 key actions aimed at improving services to refugees and asylum seekers. There is a £2.9m budget for implementation.

5. Proposal for a Decision of the EP and of the Council establishing a second phase of a programme of Community action (2004-2008) to prevent violence against children, young people and women and to protect victims and groups at risk (the Daphne II programme)
   • Political agreement

6. Amended proposal for a Directive of the European Parliament and the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields and waves)
   • Political agreement
   In April 1993 the European Commission published a proposal for a Directive on the
minimum health and safety requirements regarding the exposure of workers to the risks arising from Physical Agents. A Directive on electromagnetic fields and waves (EMFs) will create a harmonised level of protection for workers in Member States and will form the next step in completing the original proposal. This is a reserved matter with no particularly Scottish interest.

7. (poss.) Council Resolution on trafficking in women
   • Adoption
   This document encourages Member States to consider provision of various services for victims of trafficking. This is in line with HMG policy on victims as set out in the UNTOC protocol on trafficking, which the UK has signed, and as set out in the White Paper ‘Secure Borders Safe Haven’. This is a reserved matter.

8. (poss.) Council conclusions on Women and Human Rights
   • Adoption
   This item has now been removed from the agenda.

CONSUMER AFFAIRS

   • Political agreement/Common position

   Political agreement is being sought on the proposal as a Decision must be approved by the Council and European Parliament, by co-decision, by the end of 2003. [Ref: COM(2003) 44 final]

   This is a reserved matter and responsibility lies with the Secretary of State for Trade and Industry.

10. (poss.) Proposal for a Regulation of the European Parliament and of the Council on co-operation between national authorities responsible for the enforcement of consumer protection laws
    • Policy debate
    On the 18 July 2003 the Commission adopted a proposal for a Regulation on Consumer Protection Co-operation. The objective of this regulation is to eliminate barriers to effective cross border enforcement of EU consumer protection legislation. It will do this by removing existing barriers to information exchange and co-operation, as well as giving enforcement authorities the right to seek and obtain action from counterparts in other Member States. Formal consultation is due to start in September 2003. [Ref: COM(03) 443 final]

   This is a reserved matter and responsibility lies with the Secretary of State for Trade & Industry.
HEALTH


- **Political agreement**

As the regulation of veterinary medicines is a reserved matter, the Veterinary Medicines Directorate is representing UK interests. The Directive proposes to require veterinary prescriptions for all medicines for use in food-producing animals. The Government has been successful in gaining Member States’ support for a compromise proposal to allow Member States to permit exemptions for categories of medicines on a list to be developed under comitology procedures.


- **Political agreement**

As the regulation of medicines is a reserved matter, the Medicines and Healthcare Products Regulatory Agency is representing UK interests. The legislation would provide a regulatory framework for the approval of traditional herbal medicines so that they will meet systematic safety and quality standards. Good progress has been made under the Italian presidency which is aiming for political agreement at the October Council.

13. (poss.) Health and nutrition claims - **Policy debate**

14. Recommendation on cancer screening

This recommendation covers population based screening programmes for cervical, breast cancer and colorectal cancer screening. The Executive has in place well established breast cancer and cervical screening programmes which are population based. The age ranges recommended by the Council are 50-69 (breast) and for cervical to start pap smear screening between the ages of 20 and 30. The Scottish Breast Screening Programme routine upper age range of invitation is currently being extended over a three year round of screening to women between 50 to 70 so action is being taken which will mean we will in the future meet the recommendation. Routine invitation for cervical screening begins from age 20, where appropriate, so that one is met. However in line with evidence from a Scottish pilot, Liquid Based Cytology is being introduced into the cervical screening programme by Spring 2004 and will replace the Pap smear test.

The recommendation on colorectal cancer screening is more complex. The Evaluation Report on the Colorectal Cancer Screening pilot (Scottish arm in North East Scotland and English arm in Coventry and Warwick) confirmed the potential benefits of colorectal cancer screening and that faecal occult blood testing can work in an NHS setting. The age range for screening used in the pilot was 50-69 whereas the Council recommends 50-74. In line with Cancer in Scotland - Action for Change and taking into account the findings of the Evaluation Report the Executive has re-affirmed its commitment to introduce a national colorectal cancer screening programme subject to the advice of the UK National Screening Committee. The planning process to support the screening programme is expected to take around 5 years and will involve the detailed consideration of a range of issues including the age range for invitation for screening.
Environment Council (27 October)

The information for this Council is note due to be sent by the Executive until 6.10.03.
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER

“Correspondence received from Scottish Executive on pre- and post-Council scrutiny conducted on 23 September”

Introduction

1 At its 4th meeting 2003 (23 September), the Committee asked for further information on a variety of subjects following its analysis of material on pre-Council of the EU agendas. On behalf of the Committee, the Convener sent letters¹ to various ministers in the Scottish Executive seeking more information. Copies of these letters are attached as Annex A.

2 No responses to any of the Committee’s letters have been received from the Scottish Executive. The Clerk has made the all efforts that he can to have encouraged such correspondence to be sent. Discussions have taken place with officials in the Executive that the principle of sending such correspondence relating to the scrutiny of EU legislation, as opposed to more general correspondence, should be one that enables the committee to issue letters at one meeting and receive replies in time for the next meeting (14 days later). If this principle is not adhered to, it will build in substantial delays to the scrutiny of the Executive and furthermore, would render the Scottish Parliament’s participation in any future ‘early warning system’ that scrutinises the subsidiarity principle virtually inoperable.

Action requested

3 Members of the Committee are requested to note the failure of the Executive (by 2 October) to have responded to any of the Committee’s requests for information. Members may wish to record their dissatisfaction. Members may wish to endorse the principle governing ‘turn around times’ as set out in paragraph 2 above.

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

¹ Originally, letters were sent by the Clerk to officials in the Executive on 24 September. However, at the request of the Executive, these were redrafted as letters to ministers and sent on 25 September.
MINISTER FOR TRANSPORT

Dear Nicol,

Re. Information sought relating to a Council of the EU meeting

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

Transport Council

1. To congratulate the department on the excellent and informative information previously provided.

2. To ask the Scottish Executive to keep parliamentary committees informed on the progress of the EU’s minimum safety standards for HGVs in tunnels which may have implications for the Clyde Tunnel.

3. To ask the Scottish Executive for a statement on whether the proposals on the charging of the use of road infrastructure and fees collection in road transport have any implications for the Skye Bridge.

As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. Furthermore, the meeting subsequent to our meeting of the 7 October does not take place until 4 November (due to recess). I would be grateful therefore if you could arrange to provide this material in time for the Committee’s meeting of the 7 October.

If this is not possible, could I be informed as to the reasons for the delay and your suggested solutions, which would enable responses to be received from one meeting of the Committee to the next.

Yours sincerely,
MINISTER FOR HEALTH AND COMMUNITY CARE

Dear Malcolm,

Re. Information sought relating to a Council of the EU meeting

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

Competitiveness Council


2. To ask for the Executive’s view whether the G10 Medicines/Pharmaceuticals agenda item contains any provisions governing the use of generic medicines and, if so what implications this has for NHS bills but also for the ability of firms to conduct research.

As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. Furthermore, the meeting subsequent to our meeting of the 7 October does not take place until 4 November (due to recess). I would be grateful therefore if you could arrange to provide this material in time for the Committee’s meeting of the 7 October.

If this is not possible, could I be informed as to the reasons for the delay and your suggested solutions, which would enable responses to be received from one meeting of the Committee to the next.

Yours sincerely,
Dear Ross,

Re. Information sought relating to a Council of the EU meeting

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

**Agriculture and Fisheries Council**

1. To ask the Scottish Executive for a progress report on the reform of the EU sugar industry and regulatory regime, including implications for Scotland.

2. To ask the Scottish Executive for a progress report on the moves to reform the EU tobacco industry and regulatory regime.

3. To ask the Scottish Executive for a progress report on the current state of the debate on GMOs, including a statement on the Executive’s preferences for any new regulations set to be adopted with regard to banning GM-free zones and allowing the "co-existence" of GM crops with conventional crops.

4. To ask the Scottish Executive for a statement on the outcome of the WTO talks and the implications for Scotland.

It was also agreed that the Scottish Executive be asked for a progress report on the various plans with regards to veterinary medicinal products.

As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. Furthermore, the meeting subsequent to our meeting of the 7 October does not take place until 4 November (due to recess). I would be grateful therefore if you could arrange to provide this material in time for the Committee's meeting of the 7 October.

If this is not possible, could I be informed as to the reasons for the delay and your suggested solutions, which would enable responses to be received from one meeting of the Committee to the next.

Yours sincerely,
MINISTER FOR JUSTICE

Dear Cathy,

Re. Information sought relating to a Council of the EU meeting

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

Justice and Home Affairs Council


As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. Furthermore, the meeting subsequent to our meeting of the 7 October does not take place until 4 November (due to recess). I would be grateful therefore if you could arrange to provide this material in time for the Committee’s meeting of the 7 October. If this is not possible, could I be informed as to the reasons for the delay and your suggested solutions, which would enable responses to be received from one meeting of the Committee to the next.

Yours sincerely,
MINISTER FOR EDUCATION AND YOUNG PEOPLE

Dear Peter,

Re. Information sought relating to a Council of the EU meeting

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

The Committee is seeking a view from the Executive on how it plans to engage with the proposed EU action plan for language learning and linguistic diversity.

As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. Furthermore, the meeting subsequent to our meeting of the 7 October does not take place until 4 November (due to recess). I would be grateful therefore if you could arrange to provide this material in time for the Committee’s meeting of the 7 October. If this is not possible, could I be informed as to the reasons for the delay and your suggested solutions, which would enable responses to be received from one meeting of the Committee to the next.

Yours sincerely,
MINISTER FOR ENTERPRISE AND LIFELONG LEARNING

Dear Jim,

Re. Information sought relating to a Council of the EU meeting

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

Competitiveness Council

1. To ask the Scottish Executive for its view with regards the Scottish biotech industry and the agenda item - Biotechnology: State of play of implementation of Strategy and Roadmap.

As these information requests are to do with the scrutiny of EC/EU legislation, it is my view that they are not covered by the usual timescales set out in the relevant concordat. Furthermore, the meeting subsequent to our meeting of the 7 October does not take place until 4 November (due to recess). I would be grateful therefore if you could arrange to provide this material in time for the Committee’s meeting of the 7 October. If this is not possible, could I be informed as to the reasons for the delay and your suggested solutions, which would enable responses to be received from one meeting of the Committee to the next.

Yours sincerely,
CONVENER’S REPORT

1. *Executive’s response on the impact of the draft EU Hallmarking Directive*. A letter requesting further information from the Executive was sent on 10 September. By 2 October, no information has been received from the Executive regarding the Committee’s queries into the possible impact of the draft Hallmarking Directive in Scotland. The Convener now recommends that:

   Members note the lack of information from the Executive and urge that this be provided to the Committee at the earliest possible opportunity. Furthermore, the Committee calls upon the Executive to review its systems for replying to such correspondence by this committee.

2. *Executive’s response on the implementation of the Waste Electric and Electronic Equipment Directive (WEEE) in Scotland*. A letter requesting further information from the Executive was sent on 10 September. By 2 October, no information has been received from the Executive regarding the possible impact of the implementation of the WEEE Directive in Scotland, particularly whether Scottish or GB Regulations are to be used and why. The Convener now recommends that:

   Members note the lack of information from the Executive and urge that this be provided to the Committee at the earliest possible opportunity. Furthermore, the Committee calls upon the Executive to review its systems for replying to such correspondence by this committee.

3. *Executive’s response on the implications of the European Commission’s Internal Market Strategy (Priorities 2003-2006) on the ownership of the Scottish water industry*. A letter requesting further information from the Executive was sent on 10 September. Information has been received from the Executive regarding the Committee’s queries into the possible impact of the implications of the European Commission’s Internal Market Strategy (Priorities 2003-2006) on the ownership of the Scottish water industry. This is set out in Annex A. The Convener now recommends that:

   Members thank the Executive for receipt of the information and consider the material received.

4. *Proposals for a revised reporting arrangement by the Clerk/Chief Executive and External Liaison Unit on the Parliament’s external relations activities*. At the
previous meeting, Members asked if the information provided by the Clerk/Chief Executive and External Liaison Unit on the Parliament’s external relations activities could be built upon. Ideas for this are set out in Annex B. The Convener now recommends that:

Members agree the ideas set out in Annex B.

5. Proposals for (i) piloting postal voting for the next elections to the European Parliament, (ii) prospects for the number of MEPs in Scotland and (iii) funds for the promotion of efforts to encourage voting. Under the European Parliamentary and Local Elections (Pilots) Bill introduced last week, the Government announced plans for 3 of the 12 European electoral ‘regions’ in the UK to pilot innovative voting methods. The Electoral Commission’s consultation responds to the UK Government’s request for advice on where all-postal and e-voting should be trialed on a ‘regional’ basis. Pilot schemes to test innovative voting methods at local elections have been running for three years. The Commission will build on its experience evaluating these pilot schemes to point the way forward as electoral pilots are introduced for elections to the European Parliament for the first time. The ten ‘regions’ the Electoral Commission will consider are: East Midlands, Eastern, North East, North West, South East, South West, West Midlands, Yorkshire and the Humber, Scotland and Wales. The deadlines for any submissions to the Electoral Commission is 12 November 2003.

Second, it is understood that the decision on the number of MEPs that Scotland has out of the UK’s total may be taken and announced next month.

Finally, it is also understood that the Electoral Commission may have funding available to promote non-party political efforts to increase turnout for the elections to the European Parliament.

The Convener recommends that Members consider (i) whether to make a submission to the Electoral Commission on the use of postal voting in Scotland, (ii) whether they wish to make further comments on the prospective number of MEPs in Scotland and (iii) consider whether to give any views on the use of the funds available in the Electoral Commission to promote turnout within Scotland.

6. Role of Scottish Executive ministers and the Scottish Executive in providing market analyses of the proposed new members of the EU and in leading trade delegations. At the Committee’s 3rd meeting 2003, Members questioned the Finance Minister on the activities of the Scottish Executive in relation to organisation of ‘trade missions’ when making international visits (Official Report, 9 September, Col 63). The Minister stated, “Scottish Development International will be taking care of most of the trade missions. I am advised that no minister-led missions are planned, but there will be trade missions and I will come back to you with the details”.

This issue may prove to be a feature of the Committee’s inquiry into the Executive’s efforts to promote Scotland. However, in the interim, Members may
wish to congratulate the Executive on organising a parallel ‘trade mission’ as part of the ministerial visit to the ‘Scotland with Catalunya’ events and enquire into the general principle for such activities within the Executive. The Convener now recommends that:

The Convener writes to the Executive to ask what its principle is vis-à-vis the organisation of minister-led ‘trade missions’ alongside ministerial visits, whether there should be an objective of normally doing so, whether such missions could go beyond commercial interests into areas such as the arts and to ask for the further details promised by the Executive.

7. Proposal for a meeting/conference with representatives of parliamentary committees from the accession states and wider events across Scotland to mark enlargement. From mid 2004, ten new countries will join the European Union and become Member States. As one of a series of ideas to mark enlargement within Scotland, the Committee could host a meeting/conference with representatives of parliamentary committees from the accession states. This could be part of a wider series of activities across Scotland. The Convener now recommends that:

Members consider this proposal and agree in principle. Furthermore, Members task the Clerk with investigating how it can be arranged, what sources of funds may be available and the level of interest amongst parliamentary representatives of the ten accession states.

8. Feedback from the visit to Brussels. Six Members of the Committee visited Brussels on 29-30 September for a ‘familiarisation visit’. The programme included meetings with representatives of the various EU institutions as well as a reception for a wide variety of people, hosted by Scotland Europa and the Scottish Executive’s EU Office. The Convener now recommends that:

Members thank all those organisations and individuals who helped organise the visit or who participated in the meetings with the MSPs. Members may also wish to give feedback on the visit and follow-up.

Richard Lochhead MSP
Convener
26 September 2003
LETTER RECEIVED FROM THE SCOTTISH EXECUTIVE ON THE WATER INDUSTRY

Thank you for your letter of 10 September, requesting a statement on any issues raised by the EC’s market strategy, the Executive’s position on the ownership of the Scottish water sector and the proposed role of the private sector (as outlined by the Commission.).

As the Commission’s strategy paper makes clear, the water industry will be the subject of further study and review by the Commission and that review will respect Treaty guarantees for services of general economic interest. Any review will therefore respect the fact that under the General Agreement on Trade in Services (GATS) there is no requirement for services of general interest (public services) to be privatised or deregulated. Public services are excluded from the scope of GATS and the EC’s initial offer to the World Trade Organisation on 29 April did not contain any commitments on water services.

The Executive is already involved with providing background information for the Commission about the water industry in Scotland and we will continue to be closely involved with any review which is undertaken. The Executive is also in regular contact with the UK Government on trade issues, which are a reserved matter, to ensure that Scottish interests are fully take account of.

The Executive and the Parliament made their position on the ownership of the Scottish water sector clear in a debate on the 19 June 2003, by agreeing that having established Scottish Water as a public corporation in 2002 it is the best way of delivering cost-effective and improved services. Water and waste water services are the responsibility of the Executive and we are committed to keeping them in the public sector. Accordingly we have announced our plans to legislate to prohibit anyone other than Scottish Water from serving domestic customers on the public networks or from putting water into, or drawing wastewater from, the public networks.

In terms of the role of the private sector in financing infrastructure and modernising services, the Executive’s view is that investment in the water industry in Scotland should be funded by a mixture of customer charges (for maintenance) and borrowing from the Executive (for improving assets.) However, I do believe that the private sector has a role in providing expertise for modernising the water industry. That is why Scottish Water recently established a subsidiary company which will use ‘state of the art’ private sector expertise to secure more efficient and timely delivery of its capital investment programme.
ANNEX B

PROPOSALS TO IMPROVE THE LEVEL OF INFORMATION PROVIDED BY THE EXTERNAL LIAISON UNIT TO THE COMMITTEE

The Clerk/Chief Executive and the Parliament’s External Liaison Unit (ELU) currently provide the Committee with a monthly update on the implementation of the Parliament’s external relations policy. This update provides information on recent developments, inward and outward visits etc.

Members should also be aware that they are also provided, informally, with a copy of any review of, or proposals for, the strategy and policy within the Parliament on external relations. A copy of the newly proposed strategy for the second parliamentary session was shared as a draft with Members of the Committee prior to its submission to the Bureau. Members were, therefore, able to provide their comments in advance if they wished. This approach is consistent with the undertaking that although the Committee has no formal role in scrutinising the external relations policy of the Parliament, Members do have valuable views and are some of the leading players in the Parliament in this area.

At the previous meeting of the Committee, Members tasked the Clerk with finding out whether further information could be provided. The following revisions are proposed for Members agreement.

Reports on inward and outward visits

- Although all reports of inward/outward visits are placed onto the internet and intranet, the ELU propose to make a direct ‘hyperlink’ to new reports as part of their regular monthly reports to the Committee. In this way, Members can more easily find the relevant report of a visit that they may be interested in.

Notification of visitors

- The Committee Clerks are informed by ELU of most visitors to the Parliament and of outward delegations, even where these do not necessarily involve the Committee or Members of it. However, as requested, the Clerks will send details of all incoming/outgoing visits that they are aware of to Members on a monthly basis. Members will be invited to express a view as to whether they wish to be involved in the programmes. It is incumbent on the Members to inform the Clerks as to their availability at the earliest opportunity. A failure to indicate an interest will be taken as a ‘nil return’.

- The Clerks and ELU will endeavour to provide as much notice of the visit as possible and details of the programme and biographies of the visitor(s). By and large, such incoming visits are organised at times most likely to be suitable to MSPs.
Three-way meetings with the Presiding Officer and Scottish Executive

- The Convener will write to the Presiding Officer suggesting an early resumption of the meetings between the Presiding Officer, Executive ministers and the Convener on external relations. These informal meetings supplement the meetings at official level attended by the Clerk, officials from ELU and civil servants from the Executive’s External Relations Division. The Convener will report back to the Committee on progress and on any meetings held.
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 too. 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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<td>Environment and Rural Development</td>
<td>334</td>
<td>11145/03</td>
<td>Proposal for a Regulation of the European Parliament and of the Council on shipments of waste</td>
<td>This may be relevant to the Inquiry by this Committee into national waste policy and plans</td>
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<tr>
<td>Environment and Rural Development</td>
<td>348</td>
<td>12448/03</td>
<td>Proposal for a Council Regulation amending Regulation (EC) No. 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in an area north west of Scotland</td>
<td>This document may be of interest as it affects the Scottish Fishing Industry</td>
</tr>
<tr>
<td>Justice Committees</td>
<td>362</td>
<td>12507/03</td>
<td>Draft Framework Decision on the application of the &quot;ne bis in idem&quot; principle.</td>
<td>This may have an impact on Scots law and has been highlighted by the Executive in the past as being a priority issue to it.</td>
</tr>
<tr>
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<td>Audit</td>
<td>338</td>
<td>12658/03</td>
<td>Communication from the Commission to the Council, the European Parliament and the Court of Auditors - Financial information on the 6th, 7th and 8th European Development Funds 2002</td>
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<td>12282/03</td>
<td>Opinion of the Commission on the European Parliament's amendments to the Council's common position regarding the proposal for a Directive of the European Parliament and of the Council coordinating the procedures for the award of public works contracts, public supply contracts and public service contracts.</td>
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<td>Enterprise and Culture</td>
<td>337</td>
<td>12680/03</td>
<td>Proposal for a Council Decision on the position to be taken by the Community within the Association Committee established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, with regard to the adoption of a Regional aid map on the basis of which regional aid granted by the Czech Republic will be assessed.</td>
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<td>344</td>
<td>12753/03</td>
<td>Communication from the Commission to the Council, the European parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital &quot;switchover&quot; to analogue &quot;switch-off&quot;)</td>
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<td>345</td>
<td>126753/03 ADD 1</td>
<td>Commission Staff Working Paper on the extended impact assessment of the Commission Communication on the transition from analogue to digital broadcasting (from digital &quot;switchover&quot; to analogue &quot;switch-off&quot;)</td>
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<td>12337/03</td>
<td>Proposal for a Council Decision on the position to be taken by the Community within the Association Committee established by the Europe Agreement between the European Communities and their Member States, of the one part, and Slovakia, of the other part, with regard to the adoption of a regional aid map on the basis of which regional aid granted by Slovakia will be assessed.</td>
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<tr>
<td>357</td>
<td>12137/03</td>
<td>Council Decision on the repeal of the decision authorising the Secretary-General of the Council in the context of the integration of the Schengen acquis into the framework of the European Union to act as representative of certain Member States for the purposes of concluding contracts relating to the installation and the functioning of the &quot;Help Desk Server&quot; of the Management Unit and of the Sirene Network Phase 11 and to manage such contracts.</td>
<td></td>
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<tr>
<td>358</td>
<td>12138/03</td>
<td>Council Decision on the repeal of the Financial Regulation governing the budgetary aspects of the management by the Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the &quot;Help Desk Server&quot; of the Management Unit and of the Sirene Network Phase 11.</td>
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<tr>
<td>360</td>
<td>12440/93</td>
<td>Second Commission Report based on Article 11 of the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro.</td>
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<td>371</td>
<td>12188/03</td>
<td>Proposal for a Council Regulation amending Regulation (EC) No 527/2003 authorising the offer and delivery for direct human consumption of certain wines imported from Argentina which may have undergone oenological processes not provided for in Regulation (EC) No 1493/1999.</td>
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<td></td>
<td>372</td>
<td>12190/03</td>
<td>Opinion of the Commission pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty, on the European Parliament’s amendments to the</td>
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<td></td>
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<td></td>
<td>Council’s common position regarding the proposal for a Regulation of the European parliament and of the Council establishing common rules on</td>
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<td></td>
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<td>compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing regulation (EEC) No 295/91.</td>
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<tr>
<td></td>
<td>376</td>
<td>12282/03</td>
<td>Opinion of the Commission on the European Parliament’s amendments to the Council’s common position regarding the proposal for a Directive of the</td>
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<td></td>
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<td>European Parliament and of the Council coordinating the procedures for the award of public works contracts, public supply contracts and public service contracts.</td>
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<tr>
<td>Environment and Rural Development</td>
<td>349</td>
<td>12550/03</td>
<td>Amended proposal for a Council Regulation amending regulation (EC) No 973/2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species.</td>
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<td></td>
<td>354</td>
<td>11146/03</td>
<td>Amended proposal for a Council regulation laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources.</td>
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<td></td>
<td>368</td>
<td>12256/03</td>
<td>Proposal for a Council Regulation amending Regulation No 79/65/EEC setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Economic Community.</td>
</tr>
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<td></td>
<td>369</td>
<td>12302/03</td>
<td>Proposal for a Council Decision approving the accession of the European Community to the International Plan Protection Convention, as revised and approved by Resolution 12/97 of the Twenty-ninth Session of the FAO Conference in November 1997.</td>
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<tr>
<td>Justice</td>
<td>363</td>
<td>11039/03 REV 1</td>
<td>Draft proposal from the Italian Republic for a Council Decision to make provision in the Common Manual for a standard form for refusal of entry at the border, for use by all EU Member States, and to amend Section 1.4.1a of the Common Manual so as to include a requirement to show reasons for such refusal.</td>
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<tr>
<td></td>
<td>364</td>
<td>12244/03</td>
<td>Draft Council Decision concerning control measures and criminal sanctions in respect of the new synthetic drug 2C-1</td>
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<td>365</td>
<td>12245/1/03 REV</td>
<td>Draft Council Decision concerning control measures and criminal sanctions in respect of the new synthetic drug 2C-T-7</td>
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<td>366</td>
<td>12246/03</td>
<td>Draft Council Decision concerning control measures and criminal sanctions in respect of the new synthetic drug 2C-T-2</td>
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<td>367</td>
<td>12247/03</td>
<td>Draft Council Decision concerning control measures and criminal sanctions in respect of the new synthetic drug TMA-2</td>
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<td>336</td>
<td>12701/03</td>
<td>Amended proposal for a Directive of the European Parliament and of the Council relating to the protection of pedestrians and other vulnerable road users in the event of a collision with a motor vehicle and amending Directive 70/156/EEC.</td>
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<td>12736/03 ADD 1</td>
<td>Commission staff working document on the extended impact assessment on information and communication technologies for safe and intelligent vehicles.</td>
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<td>341</td>
<td>12736/03</td>
<td>Communication from the Commission to the Council and the European Parliament on information and communications technologies for safe and intelligent vehicles.</td>
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<td>373</td>
<td>12198/03</td>
<td>Opinion of the Commission pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty on the European Parliament's amendments to the Council's common position regarding the proposal for a Regulation of the European Parliament and of the Council establishing an interim transit system applicable to heavy goods vehicles travelling through Austria for the year 2004.</td>
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<td>374</td>
<td>12243/03</td>
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**Document Title**

# Sift of EC/EU legislative proposals and other documents

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**07-Oct-2003**

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<td></td>
<td>335</td>
<td>12707/03</td>
<td>Proposal for a Council regulation protecting against the effects of the application of the United States Anti-Dumping Act of 1916, and actions based thereon or resulting therefrom.</td>
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<td>356</td>
<td>12622/03</td>
<td>JSB opinion in respect to draft agreement between Europol and Romania.</td>
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<td>Draft Council Decision concerning control measures and criminal sanctions in respect of the new synthetic drug 2C-1</td>
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Sift of EC/EU legislative proposals and other documents

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER

“Proposals for revising the sift of EC/EU documents and draft legislation”

Introduction

1 At its meeting of the 9 September 2003, the Clerk informed the Committee that, following its away day, a short paper would be brought forward with options for revising the process whereby the Committee has a regular look at recent developments in the EU with regards draft EC/EU legislative proposals. This process is known as ‘the sift’.

2 Annex A sets out a short overview of the history of the sift process, discusses what the aims and objectives could be for the process and presents a ‘roadmap’ to revise procedures.

Action requested

3 Members of the Committee are requested to consider the information presented in Annex A and the roadmap proposed. The Convener recommends that the proposals set out in the roadmap be agreed to. The Convener further recommends keeping the system under review.

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

PROPOSALS AND A ROADMAP FOR THE SIFT OF DRAFT EC/EU LEGISLATION

1. BACKGROUND

During the discussions leading to the creation of the Scottish Parliament the question of the competence of this new institution vis-à-vis Community obligations was a central feature. It was recognised that if the new institution was to have a devolved competence of transposing and implementing Community legislation, then it needed to have a role in the formation of policy during the negotiation stages.

As a contribution to the work of the Consultative Steering Group (CSG) a variety of papers were drawn up which stressed the need for: (i) the creation of committee of the Scottish Parliament to scrutinise draft EC/EU legislation, (ii) for this committee to work with other subject committees who would also have a role in scrutiny and, (iii) for all committees to be selective and to ‘sift’ through all the EC/EU legislative processes to identify ‘issues of importance to Scottish interests’.

In the CSG’s final report – Shaping Scotland’s Parliament – its says:

“It is this essential that scrutiny procedures are able effectively to sift documents, to identify which are of most interest to Scotland and to identify those where the Parliament’s influence can best be brought to bear”

For a further review of the history of the sift process, see the article by Gordon Heggie, University of Strathclyde in Scottish Affairs (No 44, summer 2003).

2. SESSION ONE – THE SIFT IN ACTION

2.1 Initial design of the sift process and its problems

When it was initially designed, the ‘sift’ of EC/EU legislative proposals was a very time consuming and resource intensive task. In simple terms, the clerk and legal adviser would seek to advise the Convener and Deputy Convener on a fortnightly basis with regards to legislative proposals of most interest. The details of the documents (titles, dates received etc.) were entered into a database. At a meeting with officials, the Convener and Deputy Convener would sign off an agreed list of EC/EU legislative developments, ‘sifted’ or classified according to priorities for further action.

The classifications were that the European Committee itself should look at the legislative proposal as a matter of urgency and possibly seek further information from the Scottish Executive. Alternatively, the European Committee could refer the legislative proposal to another committee, seek further information before deciding or just take no further action. For those documents recommended as requiring further
analysis, the legal adviser would produce a comprehensive, written legal/policy analysis. This was a very resource intensive task.

At the subsequent Committee meeting after the official’s meeting with the Convener/Deputy Convener, the ‘sift’ list was placed on the agenda to be amended or endorsed by the whole Committee. Although not common, the list was occasionally amended by the Committee.

The objective as outlined by the CSG report was:

“The Scottish Parliament will be able to scrutinise all EU documentation deposited at Westminster, to ensure that Scotland’s interests are properly taken into account in the development of the UK line”

However, within a few months, it was clear that this initial process was not satisfactory and the objective was not being met. It proved difficult to hold the sift meeting with the Convener/Deputy Convener due to pressures of time. Additionally, officials had no clear idea or guidance from Members as to what to look for to identify ‘the Scottish interest’. Also, the legal/policy briefs produced by officials were mostly unread and finally, the feedback from subject committees regarding referred documents was negligible (again lack of time, resources and knowledge of the subject matter were key factors).

2.2 1ST attempt at revising the sift.

Consequently, it was agreed that the sift system should change. This also came about at a time when the Committee became more active in conducting inquiries, which also led to other pressures on time and resources.

The first attempt at a new, revised system was a move away from a system of ‘active scrutiny’ towards a system of more ‘passive intelligence gathering’. That is, instead of actively trying to look into the details of each and every one of the 1,200+ documents received each year, the Committee sought to use the information as one source of keeping abreast of legislative developments. It was recognised that this sift list contained details of interesting legislative proposals, which could then trigger broader inquiries or other work by the Committee.

The revised system, as used until very recently, was one where the list of new EC/EU legislative proposals received between meetings of the Committee is classified into subject areas (Justice, Health, Transport etc.). This list is presented to the Committee for endorsement. It can be used as one way of keeping abreast of the publication of new legislative proposals. An extract of the sift list, once endorsed, is sent to the relevant subject committee clerks/convener, for their interest. This can be used as a trigger for their own inquiries in the subject committees.

The revised system has been designed with a number of basic objectives in mind:

- It places into the public domain on a fortnightly basis a list by subject area of recent legislative developments. From feedback we know that it is not easy for
external bodies in Scotland to find this information in one place and in an easily accessible format.

- It enables the convener/clerk of other committees to have an idea of legislative developments.
- It is one source of information on legislative developments for the European and External Relations Committee.

It is important to stress - a point made at the away day - that the sift is not an objective in itself. It is a tool to achieve the above objectives. However, it is only one tool and problems still remain.

3. SESSION 2 – RECENT REVISIONS TO THE SIFT PROCESS

3.1 Documents of special importance

Currently, the list produced, although classified according to subject area, is still a simple quantitative list with no sense of prioritisation or useful qualitative information. At recent meetings in the new session of parliament, the clerks have provided a new, revised sift list. This sorts out ‘documents of special importance’ from the basic listing, moves these to the front of the paper and gives some brief explanatory, qualitative notes as to why they are considered important documents. It is hoped that this may make the sift list a more useful document and perhaps improvements should be considered.

The ‘documents of special importance’ could be used as a shortlist for some of the subjects for the proposed ‘Breakfast Briefings’ (mentioned at the away day), where the Committee would host a short meeting, perhaps over a breakfast, at the Parliament for groups to come together and debate proposed EU legislation (e.g. to ask in employers and temporary agency workers to debate the merits of the Temporary/Agency Workers Directive). This would help the Committee understand the merits of the legislation from the perspective of different stakeholders. This would in a sense be a use of the sift as a means of providing qualitative information to the people of Scotland and seeking feedback through a range of activities, such as the ‘Breakfast Briefings’.

One further benefit of this new revision (documents of special importance) should be the ability of other subject committees to receive more useful information. A key feature of session 2 of the parliament is an emphasis that subject committees should be more pro-active and have more of a role in deciding for themselves their European priorities. Many subject committees now have, or are about to have, their own monitoring and tracking systems to keep abreast of relevant legislative developments in the EU (e.g. Environment and Rural Development, the Justice Committees etc.). This revised sift list is an integral element of those tracking systems, along with direct receipt to the subject committee from the relevant minister of pre- and post-Council information.

Subject committees could use the sift list and the ‘documents of special importance’ section to contact their own networks of stakeholders and interested groups, to ask
for more advice on the implications of the legislative proposal on their remit. In this way, the European and External Relations Committee acts as a catalyst and an information provider, but it is up to the subject committee to delve deeper or consult with others (including the Executive) if it wishes.

### 3.2 Remaining challenges

However, some problems still remain with even this new system. Whilst it is mostly a matter of common sense, the identification of ‘documents of special importance’ is not without its problems. Partly it is ‘instinct’ that can help officials identify key documents. Whilst the sift list is still cleared by the Convener before it becomes a committee paper, there is still little guidance to the officials on political priorities to enable the sifting out of key documents. Additionally, perhaps the section on ‘documents of special importance’ should contain only those documents which are at a pre-legislative stage (e.g. Commission consultations) or at an early stage in the decision-making process (e.g. green papers etc).

Finally, perhaps UK Government Departments in Whitehall could be encouraged to add a ‘flag’ to EC/EU legislative proposals showing which were potentially of interest to the UK Government as a whole, to Scotland or to neither. Some of this information is provided in the UK Government’s Explanatory Memoranda that accompany legislative proposals but not always. But perhaps the documents themselves could be ‘flagged’ which would make identification of ‘documents of special importance’ easier.

### 4. WHAT NOW – DEVELOPING A ROADMAP FOR FURTHER REVISIONS

#### 4.1 Basic objectives for the sift process

The basic objectives of the sift process for the future, if it exists at all, should be to:

- Enable the Committee to keep abreast of all legislative developments in the EU and their stage in the decision-making process in a fairly simple and effective manner and, in doing so, to focus in on ‘documents of special importance’ which would in the main be self-selecting as consultation documents, green papers, white papers etc.
- Enable the Committee to advise and encourage other subject committees, in a qualitative way, of legislative developments in the EU and for them to then decide whether and how to engage with the Committee’s advice.
- Enable the Committee to fulfil its desire to increase the transparency of the EU decision-making process by placing in the public domain useful, qualitative information on all legislative developments in the EU.
- For the Committee itself to use the information in the sift lists as: (a) guides as ideas for new inquiries, (b) guides to where it may wish to respond directly to a Commission consultation or green/white paper (i.e. pre-legislative scrutiny targeted at the Commission), (c) in due course, a guide to documents that the committee may choose to engage with as part of the ‘early warning system’ to monitor subsidiarity/proportionality and to then work in close co-operation with the UK Parliament.
4.2  A new roadmap for the sift

At the Committee’s away day, the sift process was initially ranked as the lowest of the Committee’s priorities in terms of its core tasks/functions. When discussed further, however, it was clear that many of the activities of the Committee (e.g. choices for inquiries) can stem from the process itself.

Whilst there was a groundswell of opinion for further revision, there did not seem to be a majority in favour of simply ceasing some kind of work in this area. The need for ‘early intelligence’ on legislative developments is still one of the Committee’s overriding challenges.

4.3  Key principles

It is suggested to the Committee that the core principles of a new, revised sift process should be as follows:

- That it is a core responsibility of the Committee to scrutinise draft proposals for EC/EU legislation and that some kind of process to sort through the various proposals and identify priority topics is required.
- That the European and External Relations Committee acts as the main parliamentary ‘gateway’ for receipt of information on draft EC/EU legislation
- That the Committee then seeks to inform Parliament via its own work and its liaison with other subject committees
- That the system enables and requires a constant and effective dialogue with the Scottish Executive
- That all information generated through the sift process be placed into the public domain for others to benefit from
- That the sift process be an integrated and co-ordinated part of the Committee’s other core functions relating to scrutiny of the Executive’s role and views in relation to Council of the EU meetings and to the transposition and implementation of EC/EU legislation in Scotland.

4.4  The role of the sift process as part of the Committee’s core tasks

As set out previously in the Committee’s legacy paper, aside from own initiative parliamentary inquiries, the Committee has two key core tasks:

(i) scrutinise draft EC/EU legislative proposals and the role of/views of the Executive, particularly at the early, policy formulation stage of the decision-making process

(ii) scrutinise the transposition/implementation of EC/EU legislation in Scotland

It is possible to set out these core tasks as part of a ‘map’ or flowchart, which identifies how a proposal for EC/EU legislation gets adopted and transposed into
national law (see Figure 1). It is proposed that the Committee’s tasks as defined within the ‘map’ be adopted as the way of working for session two.

Figure 1: A ‘map’ of the (very simplified) EC/EU decision-making process and where the Committee fits in.

Committee’s Role
Use sift to track issuing of EC consultations papers
Committee can then (i) agree to respond to a consultation (ii) encourage another committee to do so, (iii) seek views from Executive and/or (iv) begin its own full or reporter inquiry

Committee’s Role
Use sift to track adoption of new legislative proposals
Use ‘documents of special interest’ section to alert other committees
E&E Committee can use this as a trigger to (i) seek more views from Executive and/or (ii) begin its own full or reporter inquiry

Committee’s Role
Use pre- and post-Council info to (i) assess Executive’s views at first discussion stage in Council, (ii) gauge extent to which Scottish interest is in eventual UK negotiating line and/or (iii) assess outcome of Council on Scottish interests

Committee’s Role
Use Executive’s twice monthly report to monitor and interact with Executive on (i) use of S57 of Scotland Act (ii) lateness of transposition and implementation (iii) evidence of use of derogations, differential implementation etc.

Commission issues consultation paper

Commission adopts proposal for legislation

EP & Council of EU discussions and decisions

Transposition and implementation by Executive

NB. S57(1) of the Scotland Act enables Westminster to pass UK- or GB-wide legislation to meet Community obligations whose implementation is the responsibility of the Scottish Parliament.
4.5 **Better information to subject committees**

It has been proposed that one of the key principles of the new sift system is that the Committee uses the sift process as a tool to inform Parliament of EC/EU legislative developments via its own work and its liaison with other subject committees. To make this liaison more effective, it is proposed that a **pro-forma cover sheet** be developed to accompany any ‘document of special interest’ brought to the attention of a subject committee during the course of a committee meeting. This pro-forma (preferably 1-2 pages) would set out:

- Short description of the EC/EU document 
- Type and nature of the document (consultation paper, proposal for Directive or Regulation etc) 
- Indication of the stage of the decision-making process 
- Statement on potential impact on Scotland 
- Statement on the ability of the Scottish Parliament to influence the draft legislation 
- Note on useful contacts and interested parties.

4.6 **For the future**

One issue for the future (subject to IGC process) is how to integrate the new role for sub-state parliaments as part of subsidiarity monitoring into the core tasks of the Committee. Clearly there will be an overlap with the sift process. In due course, this will need to be looked at by the Committee.

The basic system being proposed for the ‘early warning system’ is set out in Figure 2 below.

**Figure 2: the proposed early warning system (simplified version)**

* 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. 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.

NB. It is likely that this process will need to occur within 4-6 weeks.
Additionally, the proposed creation of a Scottish Parliament office in Brussels, subject to agreement in the Parliament, will need to be considered in terms of how it can be best utilised in some of these roles.

5. IN SUMMARY

In summary, what is being proposed as part of a new ‘roadmap’ for the sift process is as follows. That the Committee agrees to:

- Adopt the key principles and basic objectives set out above for the sift process
- Adopt as a means of working the processes described in Figure 1 above, showing how/when/with whom the Committee intervenes in relation to draft EC/EU legislation and the scrutiny of the Executive’s role and views
- Retain the ‘documents of special importance’ section in the sift papers and to supplement the information sent to subject committees on these particular documents with a pro-forma as set out above
- Propose a concordat with the subject committees setting out how the European and External Relations Committee intends to assist them (to be agreed at Convener’s Group)
- Seek an agreement/understanding with the Executive on appropriate response times for letters and requests for briefing issued by the Committee if the system is to work most effectively
- Liaise with the UK Parliament, other devolved institutions and other parliaments across the EU to see what lessons there are in common and how to work closer together on common tasks
- Authorise the Convener to seek the necessary approvals within the various parliamentary bodies to implement the roadmap for revising the sift
- Review the system again by summer 2004 and have regard to the integration of the ‘early warning system’ into the Committee’s working practices

6 CONVENER’S RECOMMENDATION

The Convener recommends that the proposals set out in the above roadmap be agreed to and that a further review of the new system, including feedback from subject committees and external bodies that may use the information, be completed before summer 2004.
Thank you for your letter of 10 September which sought to clarify some issues following my appearance before the European and External Relations Committee on 9 September. I am pleased the Committee found my appearance useful.

You asked for clarification on a number of issues, I have already addressed the issues you raised on the EU Constitutional Treaty in a separate letter dated 22 September.

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You asked for an update on the Executive’s plans and activities to promote trade with the new accession states. As I told the Committee, I hope to report back by the end of the year on developments involving our partnership involvement in relation to economic development. You also asked about research into the possible effects of enlargement on the movement of populations. The answer is that no research has looked specifically at migration between the accession states and Scotland.

**Structural Funds post 2006**

You asked for the Scottish Executive’s views on the UK proposals for the future of European regional policy once the current Structural Fund Programmes cease in 2006. As you know, a response to UK consultation paper ‘A Modern Regional Policy for the United Kingdom’ went forward to the UK Government from Lewis Macdonald, the Deputy Minister for Enterprise and Lifelong Learning on behalf of the Scottish European Structural Funds Forum. The response welcomed the consultation and its commitment both to regional policy and to a continuing important role for the EU in regional policy. The response highlighted a number of key principles which it felt should be addressed by future regional policy, most important of which was recognising and addressing regional disparities. The response also recognised the need for further discussions with the UK Government as it developed its proposed European Framework for regional policy.
The Scottish Executive supports the UK’s key objectives for regional policy and the principles behind its proposed EU Framework. However as your Committee recognised in its recent discussion, there is still much work to be done in developing the EU Framework proposals and the detail of how the Framework would work in practice has still to be clarified.

Committee members will now have seen the statement made by Patricia Hewitt on 17 September, which provided an outline of the outcome of the consultation and confirmed that the proposed EU Framework will form the basis of the UK negotiating position. The UK Government is expected to make a further, more detailed statement on the proposals this autumn. In the meantime, Executive officials are working closely with Whitehall colleagues to ensure that concerns raised by Scottish partners in the consultation are taken into consideration in developing the proposals.

This is an early stage in the debate and we await publication of the European Commission’s third Cohesion Report due towards the end of the year which should provide a clearer indication of the Commission’s thinking ahead of its formal proposals expected next Spring. These proposals will then be subject to a prolonged debate among Member States over the coming years and I would like to reassure the Committee that the Executive will continue to work with Whitehall and Scottish partners to ensure the best possible deal for Scotland.

**Lessons for External Relations Policy**

At the Committee you asked if there were any lessons the Scottish Executive has learned in terms of achieving progress on its top five priorities (the IGC, Structural Funds, the Common Agricultural Policy, the Common Fisheries Policy and the Bathing Water Directive). The key lessons we have learned from the first four years of devolution are that we need to identify all EU policies and initiatives that have the potential for an impact on Scotland and then prioritise them in terms of those with potential for the greatest impact. We then need to allocate appropriate resources to these key policy priorities to ensure our objectives are met, whilst still keeping abreast of EU developments in other policy areas. That is why we have outlined the five priorities (above) as key areas where the Scottish Executive can influence work.

Our objectives for these policy areas have varied, depending on the issue and the stage of development, but by and large they include influencing the direction of EU policy through the UK (as the Member State) to ensure that Scottish circumstances are fully taken into account in the negotiations. We have also learned that intelligence is vitally important, and here the SEEUO and UKRep have a crucial role to play. In addition, it is important that the Scottish Executive works more closely with groups such as the European Elected Members Information Liaison and Exchange (EMILE) to ensure that initiatives coming from Brussels are picked up at an early stage.

**World Trade Organisation**

You asked for further information on the implications of the discussions of the WTO meeting in Cancun. Given that the regulation of international trade and international development assistance are reserved matters the UK Government takes the lead in WTO negotiations. However, the Scottish Executive maintains close contact with Whitehall officials on trade issues including WTO negotiations and any impact that there may be on the Executive's responsibilities.

The fifth Ministerial Conference of the WTO was held on 10-14 September 2003 at Cancun, Mexico. Talks broke down on the last day of the Conference without agreement following discussions on launching WTO negotiations on investment, competition, trade facilitation and transparency in government procurement. (These issues are commonly known as the 'Singapore' issues as the matter
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At the close of the Conference a new deadline of 15 December 2003 was set to try and resolve those issues outstanding from Cancun.

In addition to the discussions on the Singapore issues, negotiations on services under the General Agreement on Trade in Services (GATS), and Non-agricultural Market Access Negotiations (NAM) will continue under the Doha agenda. The Scottish Executive will continue to work with DTI officials to ensure that Scottish interests are fully taken account of in formulating the UK position in these areas.

In respect of the GATS, which provides for periodical multilateral negotiations aimed at progressive liberalisation of trade in services, DTI issued a consultation document in which the Scottish Executive was involved in October 2002 primarily to seek views on the requests received in the current round of negotiations from other WTO members to the EC which could impact on the UK. The consultation ended on 3 January 2003 and responses were considered, with input from the Scottish Executive, to formulate the UK position and to feed into discussions of the EC’s initial offer. Scottish Ministers were also consulted by the UK Government on the UK position.

The Non-agricultural Market Access Negotiations (NAMA) seek to agree multilateral tariff liberalisation. This is a significant issue for Scotland given that manufactured goods are 64% of all exports. The Scottish Executive is working with DTI to ensure that any particular Scottish sectoral interests in these negotiations are taken account of and that there is appropriate consultation with stakeholders.

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You asked if I could provide information on the means by which the Executive prioritises its links and co-operation Agreements with other nations / regions. This issue has recently been discussed at the Ad Hoc Group of Ministers on European Strategy, and will be considered further when the Ad Hoc Group reports to Cabinet later this year. Accordingly, we will be very happy to report back to you on the outcomes of our discussions and conclusions on this matter in due course.

**NGOs, international development and disaster relief**

The voluntary sector is a major service provider, which also plays an important role in developing hard to reach communities and building capacity. The Scottish Executive views the sector as a key social partner and is committed to modernising the legal and financial frameworks for the voluntary sector and to developing its infrastructure to enable the social economy in Scotland to reach its full potential.

You asked about the Executive’s past activities or future plans to encourage Scottish based NGO’s to be more involved and supported world wide. In 2002-3, the Executive allocated almost £229m directly to over 700 voluntary groups in Scotland. This included some £10 million to support voluntary sector infrastructure and central initiatives. A further £131m was provided indirectly
(through NDPBs), giving a funding total of approximately £360m to the voluntary sector. For 2003-4, the Network of International Development Organisations in Scotland (NIDOS) has been provided with a one off Scottish Executive grant of £30,000. This grant has been provided so that the organisation can develop its infrastructure in order to respond more effectively to the humanitarian crisis in Iraq.

In addition to the above, there were also some further issues not raised in your letter which I promised to come back to you on during my appearance at the Committee. Specifically these were the Scottish Executive’s Fresh Talent project and making greater use of the ERASMUS programme.

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I hope you find this information helpful.

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