JUSTICE 1 COMMITTEE

AGENDA

7th Meeting, 2006 (Session 2)

Wednesday 1 March 2006

The Committee will meet at 9.45 am in Committee Room 4.


2. Petition PE841: The Committee will consider a petition by the Curran family, calling for the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless drivers.

Callum Thomson
Clerk to the Committee
Papers for the meeting—

Agenda item 1
Note by the Clerk on Justice and Home Affairs issues in Europe
Operational programme of the Council of the European Union 2006
[This paper is available online, at: http://www.eu2006.at/includes/Download_Dokumente/Agendas/0512draft_operationalprogrammeEN.pdf]
Hague work programme – civil justice co-operation
Hague work programme – criminal justice co-operation and policing

Agenda item 2
Note by the Clerk on petition PE841

Documents for information—
The following document is circulated for information:


Documents not circulated—
A copy of the following document has been supplied to the clerk:


This document is available for consultation in Room T3.60. Additional copies may also be obtainable on request from the Parliament’s Document Supply Centre.

Forthcoming meetings—
Wednesday 15 March, Committee Room 2;
Wednesday 22 March, Committee Room 6;
Wednesday 29 March, Committee Room 1.
Dear Monsieur Tell

European Commission Green Papers on applicable law and jurisdiction in divorce and succession and wills

Response from the Justice 1 Committee of the Scottish Parliament

Introduction
The Justice 1 Committee of the Scottish Parliament welcomes the opportunity to comment on the European Commission’s Green Papers on applicable law and jurisdiction in divorce and succession and wills.

The Committee has conducted an inquiry into the proposals contained in the two Green Papers, gathering evidence from a range of relevant stakeholders. The Committee also found helpful the opportunity to discuss with Commission officials via video conference the background to the proposals contained in the Green Papers.

Evidence received
During the inquiry the Committee gathered written evidence from relevant stakeholders representing the views of the Scottish legal profession, legal academics and members of the judiciary. The Committee understands that the majority of these submissions have already been communicated to the Commission directly.

The Committee also took oral evidence from legal academics, representatives of the Law Society of Scotland and from the Scottish Executive officials charged with drafting its response to the Green Papers which, we understand, will form part of the UK Government response.
Green Paper on applicable law and jurisdiction in divorce matters

The Committee received evidence from several witnesses, including the Family Law Sub-Committee of the Law Society of Scotland, that in their experience they had not encountered any divorce cases similar in nature to the examples set out in the Green Paper. This evidence, combined with a lack of statistical evidence presented by the Commission as to the number of “international” couples who experience such problems, leads the Committee to question the need for Community action in this area.

Scotland presently applies the principle of “lex fori” to all divorces and evidence from lawyers and the judiciary is that this works satisfactorily. Evidence from these witnesses suggests that if harmonised conflict-of-law rules were introduced, arguments could be made in favour of selecting at least two laws other than that of the forum leading to uncertainty for the litigants. Scottish courts would face the prospect of being required to apply foreign law in divorce cases, a requirement to which they are not accustomed. Witnesses considered that the added complexity of such cases would inevitably lead to delays and increased costs for the parties involved.

The Scottish Legal Aid Board, responsible for administering civil legal aid in Scotland, has calculated that if international divorce cases were transferred from our sheriff courts to the Court of Session (the superior civil court in Scotland), due to the complexity of applying the law of another jurisdiction, there would be a more than three-fold increase in the average costs incurred (Sheriff Court average case cost = £1827; Court of Session average case cost = £6649).

The Committee considers that this result would be contrary to efforts at both a Scottish and EU level to promote access to justice and, consequently, the Committee is opposed to the harmonisation of conflict-of-law rules.

In relation to the jurisdiction provisions contained in the Brussels IIa Regulation, witnesses also pointed out that the existence of several grounds of jurisdiction (without hierarchy) in the Brussels IIa Regulation may actually be the source of some of the difficulties outlined in the examples as the existence of a choice of grounds of jurisdiction can effectively result in a different applicable law.

Green Paper on succession and wills

As with the Green Paper on divorce, the lack of statistical evidence presented by the Commission as to the number of transnational successions which are problematic has prevented the Committee from making an assessment of the scale of any problem and the need to find a solution. The Committee does not, therefore, agree with the statement in the Green Paper that as succession is excluded from Community rules of private international law adopted so far, “there is accordingly a clear need for the adoption of harmonised European rules.”

The Committee is also aware that previous international attempts to harmonise choice of law in this area have not been well supported. This suggests that the chances of success at an EU level may be limited. Given this background, the Committee questions whether this area of private international law should continue to be pursued by Commission services.
The Committee is also aware that domestic succession law in Scotland is about to be reviewed by the Scottish Law Commission. This will be a medium-term project, taking perhaps 3-5 years to complete.

Unlike divorce cases, Scottish courts do have experience of applying foreign law to successions. Under Scots law, courts apply the law of the deceased ultimate domicile to moveable property and “lex situs” to immovable. Witnesses who gave evidence to the Committee considered that this system posed no practical problems.

In oral evidence, Dr Janeen Carruthers and Dr Elizabeth Crawford supported the retention of ultimate domicile as the connecting factor to determine moveable succession and lex situs for immoveables. Representatives of the Law Society of Scotland considered that while no connecting factor was ideal, habitual residence, if appropriately defined, would have limited differences with domicile. All witnesses agreed that it was important to consider what impact different connecting factors would have.

All evidence received by the Committee in response to the proposal in the Green Paper concerning registration of wills was strongly against any compulsory scheme. The Scottish system of informal wills is considered to be desirable as it encourages testacy and limits costs for citizens. Witnesses considered that formalisation through a requirement to register a will would be counter-productive particularly as it increased the possibility that potentially valid wills could be struck down in favour of a previous version that had been registered.

Ultimately, witnesses who gave oral evidence conceded that beyond some limited practical benefits which might be derived from creating more standardised documentation in relation to appointment of executors (or equivalent administrators) in relation to property, they could see no benefit from the proposals in the Green Paper.

**Conclusion**

The Committee is opposed in principle to the development of any further Community instruments in the area of family law. The Committee considers that the Commission has so far failed to provide any compelling evidence of significant need or demand from EU citizens for Community action in this area.
The Committee is also extremely concerned that no impact assessment has been carried out by the Commission to determine what the effect would be on Member States’ substantive, procedural and conflict rules from the various proposals set out in the Green Papers.

Evidence provided by Scottish stakeholders clearly suggests that a number of proposals contained in the Green Papers could have a negative impact on Scots substantive law and court processes. The Committee believes that, ultimately, this would result in added complexity in many legal proceedings, creating delay and additional cost for ordinary citizens.

The Committee is convinced that one of the most important features of family law is to ensure a high degree of certainty for the parties involved. For the vast majority of international divorces and successions in Scotland that certainty is best served by the current Scots private international law rules. The Committee believes that the Commission’s proposals would only serve to create greater uncertainty.

Given the degree of scepticism and concern expressed by witnesses to the Committee about the potential implications of proposals contained in the Green Papers, the Committee has concluded that the proposals are not in the best interests of Scotland. In light of the Committee’s views that these proposals are fundamentally flawed and unnecessary, the Committee recommends that the Scottish Executive strongly urge the UK Government not to opt in to any draft Community instruments which emerge following the conclusion of these consultation processes.

Copies of this response have been sent to the Scottish Executive Minister for Justice and Scottish MEPs.

Yours sincerely

Pauline McNeill MSP
Convener, Justice 1 Committee

Further information about the oral and written evidence received by the Committee can be found on the Scottish Parliament website at:
http://www.scottish.parliament.uk/business/committees/justice1/meetings.htm
Dear Mr Thomson,

Proposed Directive on certain aspects of mediation in civil and commercial matters

I refer to the Minister for Justice’s letter dated 28th June 2004 to Pauline McNeill MSP. In that letter the Minister welcomed the Justice 1 Committee’s active involvement in this area and advised that the Committee would be kept updated about developments regarding the proposed directive. I subsequently updated the Committee on the progress of this directive in my letter dated 26th November 2004. My letter also enclosed a copy of the proposed directive which was issued on 24th October 2004.

The proposed Directive has been considered by the EU Civil Law Committee throughout the past year. All Member States are represented on this working group and the group has been considering each article of the directive to try and obtain general agreement on its terms. A Scottish Executive official has been in attendance at the majority of these meetings. As I am sure the Committee will appreciate, during the current UK Presidency it would not be appropriate to give a UK position on the Directive.

However I can say that the Civil Law Committee has been considering the scope of the proposed Directive and whether it should apply to internal cases. A majority of delegations consider that the Directive should be limited to cross-border disputes and in consequence agreement is still to be reached regarding the scope of the proposal. Ministers at the Justice and Home Affairs Informal Council in Newcastle in September insisted that matters brought under Article 65 of the Treaty must be limited to cross-border disputes only. How such a restriction is likely to affect this proposal has yet to be determined.

Amendments have been suggested to the definitions of mediation and mediator in the directive to ensure that it will be clear which cases the directive will apply to. The Committee has been in general agreement regarding the provisions on ensuring quality of mediation although some wording still requires to be clarified.

The other main articles deal with the way mediation relates to subsequent court proceedings. For example, how to enforce mediated settlement agreements, the confidentiality of mediations and the
effect of mediation on limitation and prescription periods. The article on enforcing settlement agreements is intended to ensure that in each Member State there is a process to legally record such documents that can then be recognised in other Member States. For your information, we consider that recording in the Books of Council and Session would meet this purpose in Scotland.

With regard to Confidentiality, while there is general agreement on the important nature of confidentiality in mediation, there has been a difference of opinion in the Civil Law Committee about whether a provision should apply generally to mediation in a way that would effectively regulate mediation or whether, as in the Commission’s proposal, it should be limited to what evidence a mediator could be compelled to give in subsequent court proceedings. The latest UK Presidency text seeks to strike a balance between these positions.

Finally, the proposed directive contains a provision to ensure limitation and prescription periods do not expire when a mediation is taking place. This provision is intended to prevent such periods acting as a disincentive to parties seeking a resolution by mediation. The majority of delegations are content with the policy behind this article but discussion is ongoing regarding the most appropriate way to achieve this aim.

The last meeting of the Civil Law Committee was held on 21 October. We are now considering what further progress can be made on this proposal during the UK Presidency. You may also be interested to note that the European Parliament’s Committee on Legal Affairs had its first discussion on this proposal on 14th September 2005. Concern was expressed about the need for this Directive. This is not a position which has attracted much support in the Civil Law Committee. The European Parliament will give further consideration to this proposal in due course and it is currently undertaking a consultation exercise on the proposal. For your information details are available on the Parliament's website.( http://www.europarl.eu.int/comparl/juri/consultations/mediation.pdf)

I hope this letter is of assistance to the Committee and please contact me if you require any further information.

Yours sincerely,

Lesley Napier
## European Commission Work Programme 2006 - Synopsis

### Justice, Freedom and Security proposals

<table>
<thead>
<tr>
<th>Topic</th>
<th>Document Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict of laws in matters of matrimonial property regimes</td>
<td>Green Paper</td>
<td>Will launch a consultation on the legal and practical issues arising in international situations in the area of property rights of married and unmarried couples (inc. question of jurisdiction &amp; mutual recognition)</td>
</tr>
<tr>
<td>A European system for the attachment of bank accounts</td>
<td>Green Paper</td>
<td>Will launch a consultation on how to improve the enforcement of the monetary claims in the EU, including a proposal to create a European System for the attachment of bank accounts.</td>
</tr>
<tr>
<td>Drugs and civil society in the EU</td>
<td>Green Paper</td>
<td>Will provide a framework for working with civil society in the drugs field at EU level and ensure effective implementation of the EU Drugs Action Plan 2005-2008.</td>
</tr>
<tr>
<td>Applicable law and jurisdiction in divorce matters</td>
<td>Regulation</td>
<td>Will aim to enhance legal certainty and flexibility and meet the legitimate expectations of the citizens according to the Hague Programme 1.</td>
</tr>
<tr>
<td>Proposal for a computerised system of exchange of information on criminal convictions</td>
<td>Decision (CFSP/JHA)</td>
<td>Will aim to create the foundation necessary for a pan-European computerized system that would allow the exchange the information contained in national registers.</td>
</tr>
<tr>
<td>Conflicts of Jurisdiction and the Principle of ne bis in idem in criminal proceedings</td>
<td>Framework decision (JHA)</td>
<td>Will create a mechanism that would facilitate the choice of jurisdiction in criminal proceedings in situations where two or more Member States could be interested in the same case. It would also aim to clarify the scope, applicability and the interpretation of certain elements/definitions of the current rules on the transnational EU principle of ne bis in idem 2.</td>
</tr>
<tr>
<td>Implementation of the rights of the child</td>
<td>Communication</td>
<td>Will propose a framework to facilitate the implementation of the rights of the child within the EU.</td>
</tr>
<tr>
<td>European Cyber-security and Cyber-crime policy</td>
<td>Communication</td>
<td>An update of the Commission’s cyber-crime policy, including issues related to protection of the critical information infrastructure, terrorist use of the internet, identity theft, pan-European admissibility of electronic evidence, combating on-line child pornography, etc.</td>
</tr>
<tr>
<td>Hague Action Plan – Scoreboard</td>
<td>Implementation report</td>
<td>The first of a proposed annual report focusing on the transposition of legislative acts adopted</td>
</tr>
</tbody>
</table>

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1 There are currently no Community rules in the field of applicable law to divorces.

2 cf Articles 54-58 of the Convention Implementing the Schengen Agreement (CISA).
Background

1. The Committee has continued in recent months to engage actively in fulfilling its scrutiny role in respect of European Union Justice and Home Affairs (EU JHA) legislative developments. This has been set in the context of a work programme dominated by scrutiny of Executive legislation.

2. Most recently the Committee considered the European Commission Green Papers on applicable law and jurisdiction in divorce matters and succession and wills and submitted its views to the European Commission.

3. In terms of scrutiny of other EU dossiers, the Committee has also been following proposals relating to alternative dispute resolution (mediation) and maintenance obligations.

4. This note provides an update on progress with these areas of interest and highlights other recent EU JHA developments.

EC Green Papers - applicable law in divorce and succession and wills

5. In September, the Committee, conducted a short inquiry in relation to two European Commission Green Papers, firstly on applicable law and jurisdiction in divorce matters and, secondly, succession and wills. The Committee submitted its findings to the Commission in the form of a letter, a copy of which is attached at Annex A.

Committee conclusions

6. The Committee was unanimous in its opposition in principle to the development of any further Community instruments in the area of family law. The Committee considered that the Commission had so far failed to provide any compelling evidence of significant need or demand from EU citizens for Community action in this area.

7. Evidence provided by Scottish stakeholders suggested that a number of proposals contained in the Green Papers could have a negative impact on Scots substantive law and court processes. The Committee considered that, ultimately, this would result in added complexity in many legal proceedings, creating delay and additional cost for ordinary citizens.

8. The Committee concluded, therefore, that the proposals are not in the best interests of Scotland. In light of the Committee’s views that the proposals were fundamentally flawed and unnecessary, the Committee recommended that the Scottish Executive strongly urge the UK Government not to opt in to
any draft Community instruments which emerge following the conclusion of these consultation processes.

Applicable law in divorce

Public hearing on applicable law in divorce – Brussels, 6 December 2005

9. The Commission held a public hearing in Brussels in December to allow further discussion between Member States and other interested parties of the proposals on applicable law and jurisdiction in divorce. A majority of Member State governments were represented, generally by officials from their justice departments. National and international associations of lawyers also contributed actively in the debate. Douglas Wands, Senior Assistant Clerk, attended the meeting as an observer.

10. Discussions centred on two points: firstly whether a harmonised system of applicable law would be both feasible and desirable; and secondly whether an alternative option would be to reconsider the grounds of jurisdiction for matrimonial matters contained in the Brussels Ila Regulation.¹

Applicable law

11. Approximately two-thirds of Member States currently operate a system of applicable law in relation to divorce proceedings, effectively determining which national law to apply to a case depending on the nationality of the parties involved. In their responses to the Commission’s Green Paper, the majority of these Member States have either argued in favour of harmonising conflict-of-law rules at the EU level or defended their own current system. The remaining Member States, including the UK, currently apply the lex fori² to all divorce cases. These States are generally against harmonisation of conflict-of-law rules as this would represent a major change to long established legal tradition and would require courts to apply foreign law in some cases.

12. At the public hearing, Member State representatives from Germany, France, Italy and Spain all argued in favour of a harmonisation of applicable law rules at the EU level. In contrast, representatives from lex fori countries such as Finland and Cyprus expressed opposition to such a development.

Jurisdiction

13. The Brussels Ila Regulation harmonises EU Member States’ (except Denmark) private international law in relation to jurisdiction i.e. which Member State’s court can hear and determine a case. It does not contain rules on which Member State’s law applies in a particular case. There are seven grounds of jurisdiction contained in the Regulation, with no hierarchy between them. Article 3 of the Regulation is set out below—

² Literally “the law of the forum” meaning the law of that particular jurisdiction is automatically applied to a case.
Article 3

General jurisdiction

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.

14. At the public hearing, several Member States commented that the Brussels IIa Regulation had been in force for a relatively short period of time and it was too soon to consider further amendment. Some invited the Commission to carry out an impact assessment before deciding how to proceed. In response, the Commission pointed out that the grounds of jurisdiction have not changed since the original Brussels II Regulation came into force in 2001.

15. A representative from Resolution 3, formerly the Solicitors Family Law Association of England and Wales, suggested that a simple solution to all the concerns raised in the Green Paper would be to establish a hierarchy of the grounds of jurisdiction. This would provide certainty to a divorcing couple as to which jurisdiction would hear their case and would avoid the need for courts to apply foreign law or transfer cases between jurisdictions. He pointed out that in creating the hierarchy it would be necessary to define timescales in relation to the common habitual residence ground.

Conclusions

16. At the close of the session the Commission chairman summarised the discussion:

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3 For further details see [http://www.sfla.org.uk](http://www.sfla.org.uk)
there was a general consensus, though not unanimous, that that the current position faced by couples in an 'international' divorce can be improved;

• it will be difficult to propose a solution based only on harmonised conflict of law rules as applicable law is complex and there are misgivings among Member States;

• a review of jurisdiction rules (contained in Brussels IIa Regulation) potentially with the creation of a hierarchy of these rules, will also be considered;

• the decision on which approach is best will be left to the Council (Member State Ministers);

Next steps
17. A proposal for a Regulation is expected to be published in summer 2006, though it is possible that this might slip. Consideration and negotiation between Member States in Working Groups would then take place, lasting for perhaps a further 12 months.

18. A decision on whether to adopt such a Regulation would require unanimity among all 25 Member States.

Action

19. The Committee is invited to note the current position regarding the Green Paper on applicable law and jurisdiction in divorce matters. It is suggested that on publication of legislative proposals by the Commission the Committee may wish to consider further action.

Succession and wills

20. 54 responses to the Green Paper had been received and would be published on the Commission’s website.


22. The Commission will seek to narrow the scope of the options set out in the Green Paper in light of responses received prior to the public hearing. The hearing will concentrate on private international law matters only – proposals on registers of wills etc. will not feature. Other issues could be the subject of a further public hearing at a later date.

23. The Commission will carry out an impact assessment at the point when a specific proposal is published

24. The Commission is looking for as simple a set of rules as possible and is seeking their universal adoption (i.e. beyond EU).

Expert group
25. In August 2005 the Commission sought expressions of interest in the establishment of an Expert Group to advise the Commission on proposals in relation to succession and wills and conflict of laws in matters of matrimonial property regimes. More than 80 CVs were received (including several from the UK and at least one from Scotland) and it was expected that selection would be carried out before the end of December 2005. The Commission will seek to ensure a geographical balance in membership, including Scottish representation. A series of five meetings is anticipated during 2006, starting in February.

Action

26. The Committee is invited to note the current position regarding the Green Paper on succession and wills. It is suggested that on publication of legislative proposals by the Commission the Committee may wish to consider further action.

Committee debate

27. The Committee has secured an hour long debate in the Chamber on Thursday 23 March on the subject of the Green papers on applicable law in divorce and succession and wills. This will provide an opportunity for the Committee to highlight to Ministers and other Members, the concerns it has raised in relation to the European Commission’s proposals.

Alternative dispute resolution - proposal for a Directive on certain aspects of mediation

28. The European Commission launched its Green Paper on alternative dispute resolution in civil and commercial law in April 2002. Alternative dispute resolution (ADR) methods are extra-judicial procedures used for resolving civil or commercial disputes. These usually involve the collaboration of disputing parties in finding a solution to their dispute with the help of a neutral third party.

29. Following evidence taking, the Committee submitted its views to both the Green Paper and a preliminary draft text of a proposal for a Directive.

30. A finalised proposal for a Directive on certain aspects of mediation in civil and commercial matters was published by the Commission on 29 October 2004.

31. The Directive would apply to mediation in civil and commercial matters, including family mediation. The Commission stated that the objective of the proposal is to contribute to ensuring better access to justice by facilitating access to dispute resolution.

4 The green paper on alternative dispute resolution in civil and commercial law, COM(2002)196 final, is available online at: http://europa.eu.int/scadplus/leg/en/lvb/l33189.htm

5 Background on the green paper is available on the EU website at: http://europa.eu.int/comm/justice_home/fsj/civil/dispute/wai/fsj_civil_dispute_en.htm
Recent developments

32. The Executive wrote to the Committee in November 2005 to provide an update on progress with negotiations on the Directive. A copy of the letter is attached as Annex B. The Executive explains that the proposed Directive has been considered by the EU Civil Law Committee (working group) throughout the past year, considering each article of the directive to try and obtain general agreement on its terms.

33. A majority of delegations consider that the Directive should be limited to cross-border disputes and in consequence agreement is still to be reached regarding the scope of the proposal. Ministers at the Justice and Home Affairs Informal Council in Newcastle in September insisted that matters brought under Article 65 of the Treaty must be limited to cross-border disputes only. How such a restriction is likely to affect this proposal has yet to be determined.

34. The European Parliament’s Committee on Legal Affairs (JURI) had its first discussion on this proposal on 14th September 2005. Concern was expressed about the need for this Directive. The European Parliament will give further consideration to this proposal in due course following completion of a consultation exercise on the proposal.6

Action

35. It is suggested that the Committee may wish to ask the Scottish Executive to continue to keep the Committee updated about developments regarding the Directive.

36. The Committee may also wish to ask for further updates from the Executive following meetings of the EU Council Working Group considering the proposal.

Maintenance obligations

37. In April 2004, the European Commission published a Green Paper on maintenance obligations. This was intended to launch a wide-ranging consultation on whether there is a need for Community rules or new conventions in cases with an international element in matters of maintenance obligations.

38. The Scottish Executive submitted a response to the Commission Green Paper. The Executive considered that the proposals must be viewed in the context of the continuing negotiations in The Hague7 for a new

6 For further information see European Parliament website http://www.europarl.eu.int/comparl/juri/consultations/default_en.htm
7 The Hague Conference on Private International Law is a global inter-governmental organisation. With more than 60 Member States representing all continents, with different legal traditions, it develops and services multilateral legal instruments, which respond to global needs. Website http://hcch.e-vision.nl
worldwide Convention on Maintenance Obligations and that it is important that any new EU instrument in the same field adds value to the Hague project, and does not duplicate it. The Executive submitted that there is no point in having separate EU and worldwide regimes purely for the sake of it as this would only be liable to cause confusion and put obstacles in the way of recovery of resources for families in need. For this reason, the Executive considered it is important that EU thinking in this area proceeds in the light of what emerges from The Hague, and the timetable for the Community project needs to reflect this.

39. A draft proposal for a Regulation on Jurisdiction, Applicable Law, Recognition of Decisions and Co-operation in matters relating to Maintenance Obligations was published in December 2005. This is an attempt to reduce forum shopping and improve recovery of maintenance in cross-border cases within the Community. It runs in parallel to ongoing negotiations on a new Hague Maintenance Convention, which should improve and update existing worldwide arrangements.

40. As with divorce proposals, the applicable law aspect of this proposal is controversial. A number of Member States, including the UK jurisdictions, do not apply foreign law to maintenance claims, regardless of whether they have a foreign element. The Executive considers that changing this system would be liable to cause delay and additional expense in maintenance proceedings. The UK is however in favour of measures to ensure speedier international enforcement of maintenance decisions.

41. In addition, while accepting that in principle this instrument would have to be unanimously agreed (because it relates to family law), the Commission has published a Communication asking Member States to convert this to qualified majority voting. A decision to accept this request from the Commission would itself require unanimity.

42. Working Groups are due to begin on 13 February. The Scottish Executive will attend the meetings as part of the UK delegation.

Action

43. It is suggested that the Committee invite the Executive to provide it with regular updates on the progress of negotiations in the Working Group.
Update on other areas of interest

European Commission Work Programme 2006

44. Late last year, the European Commission published its work programme for 2006. This document sets out for each policy area the anticipated work which the Commission will initiate during the course of the year. A synopsis of Justice related initiatives is attached at Annex C.

Outcomes from UK Presidency and Ministerial priorities for 2006

45. In the past, the Scottish Executive has produced for each six month Presidency of the Council of the EU, a statement by the Minister for Justice outlining Scottish Ministerial priorities in Justice and Home Affairs for that Presidency. However, this approach has now changed and instead, the Executive will consider priorities for the full year. A paper from the Executive is expected to be published within the next two weeks and will be circulated to Members in due course.

46. In the meantime, the Executive has prepared two EU legislative tracker tables for civil and criminal dossiers. These summarise the status of current and forthcoming legislative proposals. Copies are provided as papers J1/S2/06/7/3 and J1/S2/06/7/4 respectively.

47. The Executive will also be carrying out a review of activities carried out during the UK Presidency of the EU last year. Again, the Committee will be provided with a paper in the near future.

Action

48. Subject to other work programme commitments, it is suggested that the Committee may wish to invite the Minister for Justice to give oral evidence on the outcomes from Scottish Executive activity during the UK Presidency last year and priorities for the Scottish Executive during the Austrian and Finnish presidencies. The Committee could consider undertaking this jointly with the Justice 2 Committee.

Conclusions

49. The Committee is invited to:

a) note the current position regarding the Green Paper on applicable law and jurisdiction in divorce matters and on publication of legislative proposals by the Commission consider further action;
b) note the current position regarding the Green Paper on succession and wills and on publication of legislative proposals by the Commission consider further action;

c) ask for continuing updates from the Executive following meetings of the EU Council Working Group considering the proposed Directive on mediation; and

d) ask the Scottish Executive to provide regular updates on the progress in the Working Group in relation to the draft Directive on maintenance obligations;

e) Subject to other work programme commitments, invite the Minister for Justice to give oral evidence on the outcomes from Scottish Executive activity during the UK Presidency last year and priorities for the Scottish Executive during the Austrian and Finnish presidencies. The Committee could consider undertaking this jointly with the Justice 2 Committee.
NOTE
from: The Austrian and Finnish Delegations
to: Delegations
Subject: Operational Programme of the Council for 2006 submitted by the incoming Austrian and Finnish Presidencies

Delegations will find attached the Operational Programme of the Council for 2006 submitted by the incoming Austrian and Finnish Presidencies.
INDEX

1. FUTURE FINANCIAL PERSPECTIVE ........................................................................................................... 8
2. CONSTITUTIONAL TREATY ...................................................................................................................... 8
3. MORE GROWTH AND JOBS – THE RELAUNCHED LISBON STRATEGY ........................................... 8
4. GENERAL ECONOMIC CONTEXT / POLICY COORDINATION .............................................................. 9
   Stability and Growth Pact .......................................................................................................................... 9
   Possible update of the Broad Economic Policy Guidelines ...................................................................... 10
   Enlarging the Euro area ............................................................................................................................. 10
   Reviewing transitional measures .............................................................................................................. 10
   Providing adequate EU budgetary means ................................................................................................. 11
   TENs transport and energy financing ....................................................................................................... 11
   EIB lending mandate ................................................................................................................................. 11
   Statistics .................................................................................................................................................... 12
5. STRENGTHENING COMPETITIVENESS ............................................................................................... 12
   Better regulation ...................................................................................................................................... 12
   Innovation and enterprise ......................................................................................................................... 13
   Research .................................................................................................................................................. 15
   Education ................................................................................................................................................ 16
   Intellectual property rights ....................................................................................................................... 16
6. DEVELOPING A GENUINE INTERNAL MARKET .................................................................................. 17
   Services .................................................................................................................................................. 17
   Free movement of goods .......................................................................................................................... 17
   Financial services .................................................................................................................................... 18
   Taxation ................................................................................................................................................ 18
   Company law .......................................................................................................................................... 19
   Technical harmonisation .......................................................................................................................... 19
   Fertilizers ............................................................................................................................................... 19
   Foodstuffs .............................................................................................................................................. 20
   Consumers ............................................................................................................................................ 20
   Customs ................................................................................................................................................ 20
7. INFORMATION SOCIETY, ENERGY, TRANSPORT, CHEMICAL POLICY ......................... 21
   Information society and electronic communications .................................................. 21
   Energy .......................................................................................................................... 22
   Transport ...................................................................................................................... 24
   Chemical policy .......................................................................................................... 27

8. EMPLOYMENT, LABOUR LAW, SOCIAL POLICY, HEALTH AND GENDER EQUALITY ...... 28
   Employment .............................................................................................................. 28
   Labour law, health and safety at work ......................................................................... 28
   Social policy .............................................................................................................. 29
   Health .......................................................................................................................... 30
   Gender equality and non-discrimination ..................................................................... 30
   Youth, culture and audiovisual .................................................................................. 31

9. ENVIRONMENT ......................................................................................................... 32
   Ongoing legislative work ......................................................................................... 34
   Climate change ........................................................................................................... 34
   Biodiversity ............................................................................................................... 35
   Environmental technologies ...................................................................................... 35
   Global environmental governance ............................................................................ 35

10. SUSTAINABLE DEVELOPMENT ............................................................................ 36

11. COMMON AGRICULTURAL POLICY/FISHERIES .................................................. 37

12. AREA OF FREEDOM, SECURITY AND JUSTICE .................................................. 40

13. ENLARGEMENT ...................................................................................................... 45

14. EXTERNAL RELATIONS ......................................................................................... 46

15. HUMAN RIGHTS ..................................................................................................... 58
Introduction

General

This programme sets out the main objectives for the work of the Council in 2006. It is drawn up by the future Austrian and Finnish Presidencies on the basis of the Multi-annual Programme covering the years 2004-2006. Recent debates have underlined the importance of the Union concentrating on issues which matter to citizens in their everyday lives. The two Presidencies will work closely together in order to ensure that the work of the Council during 2006 contributes to economic and social welfare, protection of environment, freedom and security of European citizens as well as strengthening the role of the Union within the world. Work underway on a number of key priorities designed to ensure that the EU responds successfully to the challenges and opportunities of globalisation will be carried forward.

To this end the Presidencies will cooperate with all the Member States within the Council, as well as with the European Parliament and the Commission to enhance overall effectiveness and continuity of the Union's action. Both Austria and Finland will pay particular attention to the smooth and effective functioning of the Council and to ensuring as much transparency as possible in the exercise of the function of the Presidency.

The debate on the future of the European Union

At its meeting in June 2005, the European Council decided to initiate a period of reflection on the future of Europe involving both the Member States through national debates and the institutions of the European Union. One of the main purposes is to stimulate a wide-ranging dialogue in order to identify issues of concern and policy areas where the Union action is regarded necessary to meet the future challenges of Europe. The debate should also focus on exploring ways and means on how decisions can be taken at the lowest possible level while still achieving effective action. Furthermore, the debate on the European way of life and its values should be carried forward.
The June European Council agreed that an overall assessment of the national debates would be
carried out in the first half of 2006. The interim report on the period of reflection submitted to the
European Council in December 2005 provides a useful starting point for this assessment. Building
on this report, and in the light of the continuing debate, the European Council in June will take
stock of the reflection process, and should aim to establish a clearer perspective for the future and
agree on how to proceed. Depending on the outcome of this stock-taking, the two Presidencies will
ensure adequate follow-up during the remainder of the year.

Future Financing of the Union

The current Financial Perspective expires at the end of 2006. The agreement reached at the
European Council in December 2005 provides the framework for the Union's finances over the next
financing period. This agreement now needs to be translated in close cooperation with the
European Parliament into the necessary legal instruments. It will be for the two Presidencies to
ensure that these legal acts are adopted as soon as possible in order to provide the basis for the
financing of the Union's policies over the period of 2007-2013.

Working for Growth and Jobs

The Lisbon strategy drawn up in 2000 continues to play an important role in helping the European
Union and the Member States to respond to the challenges of ageing and globalisation. Delivering
on this response will be one of the main priorities for the Union over the next few years. In 2005
the Lisbon strategy was adapted to help meet the key challenge of delivering on growth and creating
jobs as part of the overall objective of strengthening the competitiveness of the European economy
and securing the sustainability of the European welfare model.

In 2006 emphasis will be placed on ensuring the success of the new system of governance, and in
particular on the implementation of the first national reform programmes, drawn up and negotiated
with relevant stakeholders, as well as of action at Union level aimed at complementing national
programmes. The Council looks forward to reviewing progress in the existing multilateral
framework. Further efforts will be devoted to explaining the need for reform to the public.
Future work at the EU level should focus on growth and employment inducing measures. As an essential element for enhancing economic dynamism in Europe, the Presidencies will pay special attention to completing the internal market, especially for services, telecommunication, energy and financial services. Special emphasis will also be placed on fostering a supportive framework for research and development as well as creating an environment that encourages innovations and strengthens the knowledge based economy and skills. Attractiveness and quality of working life will be highlighted as means to raise the employment rate.

As part of the objective of strengthening the competitiveness of the Union, particular priority will be given to implementing the agenda of better regulation.

**Sustainable Development**

Economically, socially and ecologically sustainable development is a key objective of the Union policies and actions. The Union Strategy for Sustainable development will be renewed by the European Council in June 2006.

The European Union will pursue combating climate change both at the international and the Union level.

**Strengthening the Area of Freedom, Security and Justice**

Ensuring freedom, security and justice is one of the main concerns of the European citizens. The Hague Programme adopted in 2004 constitutes the framework for meeting these concerns. Implementing this programme will therefore be one of the priorities in 2006.

Efforts will concentrate on implementing the external aspects of the programme, on stepping up the Union's efforts to combat terrorism and serious crime, to improving the exchange of relevant information, on promoting mutual recognition of judicial decisions and on creating a common asylum policy as well as a common migration management. The Mid-Term Review of the Hague Programme, based on the Commission's assessment report, provides the opportunity to evaluate the programme and to assess what changes might be made so that its objectives are met more effectively.
Further steps will be taken during the year towards extending the free movement of persons by updating the Schengen Information System, and by carrying out a comprehensive evaluation of whether the new Member States fulfil the conditions for full application of the Schengen acquis.

**Enlargement**

Enlargement allows for the stability and prosperity of the Union to be extended to an increasing number of European countries. It is therefore important both for the Union and the acceding countries that the accession process takes place in the best possible conditions.

In 2006 the monitoring of Bulgaria and Romania will be stepped up as part of the preparations for their accession scheduled for 2007. In addition, the accession negotiations with Croatia and Turkey will be taken forward in accordance with the agreed negotiating frameworks.

**Strengthening the role of the Union in the world**

With almost half a billion inhabitants, a quarter of world trade and as the world's largest development aid donor, the Union has a significant role to play internationally. The principal objectives of the Union in the area of external relations are the enhancement of security, stability and democracy as well as alleviation of poverty, especially in Africa, addressing other root causes of instability and contributing to an effective multilateral system. The Union will continue in 2006 to pursue these objectives through the coherent and integrated use of the various instruments available.

A number of important summit meetings are scheduled throughout the year. These will help the Union to enhance its strategic partnerships with both the US and Russia, as well as with Latin American and Caribbean countries and with Asian ASEM partners. The Union will also concentrate on stepping up stability beyond its borders by pursuing the stabilization policy with the Western Balkans, developing its relations with its eastern and Mediterranean neighbours by giving more substance to the European Neighbourhood Policy and strengthening the Northern Dimension. The Union will also work with its partners in 2006 to achieve results in the trade talks through the Doha Development Agenda.
1. FUTURE FINANCIAL PERSPECTIVE

The agreement reached in December 2005 on the Financial Perspective 2007-2013 will be followed up. The Council will, on the basis of a proposal from the Commission, open negotiations on a new Interinstitutional Agreement with the aim of reaching a conclusion as early as possible in 2006. This agreement will be consistent with the relevant conclusions of the December 2005 European Council.

In parallel with this, work will continue on the various legal acts which will provide the basis for the financing of the Union's policies during the next financing period. This work will take into account both the outcome of the December European Council and proposals from the Commission on the breakdown of expenditure by instrument. The objective will be to finalize the Interinstitutional Agreement by June 2006 and all the individual legal acts by the end of 2006 at the latest.

2. CONSTITUTIONAL TREATY

In June 2005, following discussions by Heads of State or Government on the process of ratification of the Constitutional Treaty, there was agreement on the need to organise national debates as part of a period of reflection, and to carry out an overall assessment of these debates in the first half of 2006 and to agree on how to proceed. The necessary preparations will be undertaken to enable this assessment to be carried out. It will be followed up as appropriate during the second half of 2006 depending on its outcome.

3. MORE GROWTH AND JOBS – THE RELAUNCHED LISBON STRATEGY

Tackling the challenges of globalisation and demographic change remains at the top of the European Agenda in 2006. The European Council confirmed the validity of the Lisbon Strategy in March 2005 and agreed that it should focus on enhancing sustainable economic growth and creating more and better jobs. Europe must renew the basis of its competitiveness, increase its growth potential and its productivity and strengthen social cohesion, placing the main emphasis on knowledge, innovation and the optimisation of human capital. So the Strategy which is based on a partnership approach must now be effectively implemented in all its dimensions.
In the context of the re-launch, the new Integrated Guidelines for Growth and Jobs 2005-2008 – consisting of the Broad Economic Policy Guidelines and the Employment Guidelines – were approved in June 2005. The reformed governance framework will improve conditions to achieve real progress at Member State level as well as on Community level. Strong political commitment to deliver on the actions included in the National Reform Programmes and the Community Lisbon Programme will be required.

Building on the progress made by previous Presidencies and on the basis of the Commission's first annual progress report, the Presidencies will drive forward the Lisbon Agenda in the European Council and in the relevant Council formations. While fostering macro-economic conditions conducive to stability and sustainable growth, the Presidencies will make every effort to achieve concrete progress on key areas of the Lisbon strategy (i.e. in the area of structural/microeconomic policy and employment policy) and other areas contributing to its successful implementation (see chapters 4 to 9 below). Further work on R&D, universities, demographic challenges and energy will be carried out on the basis of the Commission interim report on the follow-up of the informal meeting of the Heads of State or Government at Hampton Court.

4. GENERAL ECONOMIC CONTEXT / POLICY COORDINATION

STABILITY AND GROWTH PACT

The Council will continue to implement the Stability and Growth Pact, on the basis of the Council report of 20 March 2005, the new Regulations adopted by the Council on 27 June 2005 and the revised code of conduct finalised by the EFC in the Autumn of 2005. 2006 will be a critical year for a number of Member States to bring their budget deficits under control, in accordance with the Recommendations already issued by the Council.
**POSSIBLE UPDATE OF THE BROAD ECONOMIC POLICY GUIDELINES**

In close cooperation with the Commission, the Council will review the implementation of the Broad Economic Policy Guidelines and decide on any updating required. This exercise takes place for the first time in the context of the Integrated Guidelines, and on the basis of the National Action Programmes to be drawn up by all Member States. The work will concentrate on the main pillars of economic and fiscal policy in Europe: Ensuring stability-oriented public finances, improving their sustainability and quality, and speeding up economic and structural reforms. A final text of any proposed revisions to the Broad Economic Policy Guidelines will be prepared by the ECOFIN Council and presented to the Spring European Council together with the Key Issues Paper.

**ENLARGING THE EURO AREA**

The Commission and the ECB have announced that they will forward convergence reports on Member States with a derogation in June 2006. Certain Member States have already declared their interest in adopting the Euro by 2007. The two Presidencies will ensure a thorough examination as early as possible on the basis of the relevant criteria, including stable macroeconomic developments and a high degree of sustainable convergence.

**REVIEWING TRANSITIONAL MEASURES**

The Council will examine a report by the Commission on the application of national measures by Member States regulating access to the labour markets by Hungarian, Latvian, Polish, Slovak, Czech, Estonian, Slovenian and Lithuanian nationals as stated in the Annexes V, VI, VIII, IX, X XII, XIII and XIV of the Act of Accession to the European Union 2003.
PROVIDING ADEQUATE EU BUDGETARY MEANS

With respect to the EU budget for 2007, the two Presidencies will implement the new financial framework and the budgetary guidelines set by the Council. Furthermore, during the preparation of the 2007 budget efforts will be made to make best use of all relevant information on the implementation of the 2006 budget and on compliance with the budgetary principles of the new financial regulation. The results of evaluations and the Activity Statement process shall be taken into account in improving the EU budgetary process. The conciliation meeting procedure with the European Parliament will be developed further. Finally, control and fight against fraud will be an important aspect of the work of the Council in order to further improve financial management.

TENS TRANSPORT AND ENERGY FINANCING

The Council is expected to adopt the regulation determining the rules for the granting of Community financial aid in the field of the trans-European transport networks and energy. This proposal is intended to provide a more efficient management of the Community financial aid, as well as act as a catalyst for the completion of the trans-European infrastructures network. It will stimulate trade and bolster the single market, reinforce cohesion and contribute to sustainable development. This regulation should enter into force by the beginning of 2007. It could be adopted before July 2006.

EIB LENDING MANDATE

The Council will adopt a renewed Council Decision granting a Community guarantee to the European Investment Bank against losses under loans for projects outside the Community (Central and Eastern Europe, Mediterranean countries, Latin America and Asia and the Republic of South Africa). The Commission is expected to transmit its proposal in the first half of 2006. This renewed mandate will fix the amounts of the guarantees to be allocated to the different geographical areas of operation of the EIB. It could also include new geographical areas to be covered in view of the enlargement and the new neighbourhood policy. This regulation should be adopted by the end of 2006 in order to enter into force at the beginning of 2007.
STATISTICS

In the area of statistics, the two Presidencies will pursue work on the basis of initiatives which are either currently under negotiation or are awaited, covering among others the use of price statistics for purchasing power parities, statistical classification of economic activities in the EU, structural business statistics and transmission of national accounts data. The two Presidencies also consider as priorities the implementation of European Statistics Code of Practice as well as the reduction of administrative and regulatory burden on national statistical authorities.

5. STRENGTHENING COMPETITIVENESS

The two Presidencies will seek to contribute to create conditions conducive to economic growth and employment creation. For this purpose, the Presidencies will pursue the work on better regulation, policies on the internal market, innovation, enterprise, research, education and training, all of which have been recognised as vital elements of the re-launched Lisbon Strategy. The Competitiveness Council will enhance the European Union's drive for growth and jobs by effectively contributing to a successful delivery of the Lisbon Strategy.

The Council will focus on its legal responsibilities for its core areas, on its horizontal role concerning regulations with important effects on competitiveness as well as on the relevant micro-economic and structural policy issues of the re-launched Lisbon Strategy. It therefore intends to prepare a key issues paper relating to its main priorities.

BETTER REGULATION

The two Presidencies will, in close cooperation with the Commission and the European Parliament, take forward the Regulatory Reform Agenda, as envisaged i.a. by the Joint Statement on Regulatory Reform.
The Presidencies will promote the **horizontal use of impact assessments** in the legislative process and will support the Commission's efforts to further refine its impact assessment process by strengthening the competitiveness dimension while remaining committed to the objectives to promote environmental sustainability and social cohesion. In this context, they will follow closely the **external evaluation of the Commission's impact assessment system** which will be launched in early 2006.

The Presidencies, furthermore, welcome the Commission's commitment to integrate a common method for measuring administrative burdens into the revised guidelines on impact assessment.

The Presidencies will, in close cooperation with the Commission, advance the review of existing European legislation by actively taking forward the **simplification agenda**. In this context, the Presidencies will also endeavour to improve working methods for simplification proposals. The Presidencies will – on the basis of work started during the UK Presidency – strive to achieve agreement on the reform of the comitology system with a view to ensuring a more appropriate involvement of the European Parliament.

**INNOVATION AND ENTERPRISE**

Both Presidencies will work towards reaching a final decision on the **Framework Programme for Competitiveness and Innovation (CIP) (2007-2013)** before the end of 2006. This Programme, which aims at stimulating greater investment in innovation, in particular at the level of SMEs, is closely linked to other policy areas (energy, information technologies, research and environment).

In the area of **Innovation and Enterprise**, the Council will give due consideration to the following initiatives likely to be launched or progressed during 2006:

- Communication on the regulatory framework for the automotive industry (CARS 21);
- new aspects of SME policy for growth and jobs;
- a new communication on industrial policy;
- the Research and Innovation Action Plan.
The Competitiveness Council will discuss the implementation of the European Charter for Small Enterprises, recognising the important role that small enterprises have in generating growth and jobs. Discussions will take place in the light of the information provided by the Member States in their National Reform Programmes, following streamlining of the reporting system.

Under the relaunched Lisbon Strategy the Commission intends to integrate the Competitiveness Report, the Innovation Scoreboard and the Enterprise Policy Scoreboard into a single Competitiveness Package. This is likely to provide an overall assessment during the second half of 2006 of how the Strategy is operating and will serve as a basis for the preparatory discussions leading to input into the 2007 Spring Council.

The Presidencies will discuss growth and employment aspects of tourism. New information and communication technologies as well as tourism and culture will be the key issues.

In the field of public procurement, the Council will start work on the proposal for a new Public Procurement Remedies Directive, expected in 2006. The aim of the revision is to guarantee effective and timely review procedures relating to public procurement in the Member States. Work may also begin on a Commission communication concerning public-private partnerships and defence procurement.

Concerning Competition and State Aid, the Council will take forward or start work on the proposal for a revision of Council Regulation (EEC) No 4056/86, applying the EC competition rules to maritime transport.

Whilst matters on State aid are only to a limited extent the subject of Council deliberations, the Commission's Action Plan on State aid contains two points relevant to the Council: Amendment of 994/98, Enabling Regulation for Block Exceptions (2005/6) and amendment of 659/99, Procedural Regulation (2002/8). High priority will be given to settling these issues rapidly and in line with the timetable set out in the Commission's Action Plan on State aid, guided by the principles of reducing the administrative burden in State aid control and allowing the Commission to concentrate on cases with real distortion of competition.
Both Presidencies recognise the important role that space policy can play in Europe in terms of industrial and innovation policy. Work on the further development and implementation of an overall European space policy based on the EC/ESA Framework Agreement will be actively taken forward. Further meetings of the "Space Council" in 2006 will ensure continued progress, taking due account of the space research activities proposed under the 7th Framework Programme and of the implementation of Galileo and GMES.

**RESEARCH**

The Presidencies will make every effort, in close liaison with the European Parliament, to ensure a timely launch of the 7th Framework Programme for Research and Development. To avoid any gap between the present Framework Programme which expires at the end of 2006 and the new programme, all decisions, covering both the Framework Programme itself, and the accompanying implementing decisions (specific programmes, rules for participation, the Joint Research Centre and activities envisaged under Articles 169 and 171 of the EC Treaty) must be taken well before the end of 2006.

Both Presidencies will continue to monitor and encourage the implementation of the 3% Action Plan. This process will follow up the Council's discussions on this subject.

With regard to the International Thermonuclear Experimental Reactor (ITER) to be built in Cadarache, France, the Commission is expected to submit, at the beginning of 2006, its proposals relating to the conclusion of an international agreement between the participating parties and the creation of a European legal entity. The Presidencies will seek swift adoption of these proposals.
EDUCATION

The Joint Interim Report on Education and Training 2010 will be finalised in the first half of 2006. In this context, the Presidencies will aim at enhancing the strategic objectives of the process: the quality, efficiency and effectiveness of education, as well as access to education. They will also promote an integrated approach to education and training cooperation, including efficient working methods.

The Council will work towards the final adoption of the Integrated Action Programme in the Field of Lifelong Learning (2007-2013), with a view to a timely start of the programme at the beginning of 2007.

The Presidencies will enhance European cooperation in the field of vocational education and training. The Council is expected to adopt conclusions on vocational education and training during the second half of 2006. The Finnish Presidency intends to organise a follow-up conference in December 2006.

The two Presidencies will seek final adoption of the European Quality Charter for Mobility and the Recommendation of the Council and the European Parliament on key competences for lifelong learning. They will work on the European Indicator of Language Competence and the European Qualifications Framework.

Depending on Commission preparations, a possible item on the Council agenda will be a recommendation on the quality of teacher training.

INTELLECTUAL PROPERTY RIGHTS

The Presidencies will explore possibilites to make progress towards finding a solution on the Community Patent in order to achieve a cost-effective, user-friendly and efficient patent system in the EU.
The Presidencies will work towards finding a compromise solution on the proposal to amend the **Design Directive** for component parts of complex products.

Work will be continued on the basis of the recommendation from the Commission on the collective management of copyrights. The Council expects a report from the Commission on the EC legal framework in the field of copyright and related rights.

The Council will seek to adopt a decision on the **accession of the EC to the WIPO Geneva Act** on the International Registration of Designs and an amendment to the Designs Regulation.

### 6. DEVELOPING A GENUINE INTERNAL MARKET

**SERVICES**

Given the importance of opening up the internal market for services, the two Presidencies, in close cooperation with the Commission and the European Parliament, are committed to completing the negotiations on the **Directive on Services**. In this process, the Presidencies will take due account of the concerns expressed by the European Parliament and Member States, while trying to keep the scope of the Directive as wide as possible.

Furthermore, the Commission is expected to present a proposal to extend the scope of the Directive 98/34/EC (establishing a procedure for the notification of draft technical regulations) to services. The Presidencies will endeavour to take forward this proposal.

**FREE MOVEMENT OF GOODS**

The Commission is expected to come forward with a proposal for a decision consolidating and strengthening new approach directives, policies and principles and with a proposal for a regulation on free movement of goods in non-harmonised areas. The two Presidencies will work towards further improving the internal market for goods.
**FINANCIAL SERVICES**

As regards financial markets, the two Presidencies will devote particular attention to the **implementation of the Financial Services Action Plan (FSAP)** and to measures related to the post-FSAP strategy. Against this background work will focus on the **new legal framework for payment systems** in the internal market (implementing also the special recommendation VI of the FATF) and on improving market access of firms to **clearing and settlement**, as well as on **cross-border merges** on the banking sector (amendment of the Banking Directive 2000/12/EC). In addition, attention will be paid to further improving supervision of cross-border institutions, improving stability and crisis management arrangements and in particular to the review of Directive 94/19/EC on **deposit guarantee schemes**. Assessments will be made on the progress made in the convergence of supervisory practices.

The effort to **fight against the financing of terrorism** and money laundering will continue. Key issues in this respect are the regulation implementing special recommendation VII of the FATF on wire-transfers.

**TAXATION**

Against the general objective of a more cost-efficient and transparent regulatory framework, EU tax rules need to be partly reconsidered and further developed. In addition, measures are necessary to remove obstacles for cross-border activities and distortions in competition between Member States. With regard to indirect taxes, the two Presidencies will therefore continue initiatives on **simplifying and modernising the VAT system** as well as the excise duties (e.g. alcohol beverages). With respect to direct taxes, work on a common consolidated tax base for companies is expected to be continued at technical and political level. The Presidencies will also support a decision on the Fiscalis 2013 Programme, which is necessary for a coherent development of tax systems in the internal market.
COMPANY LAW

In general, the Presidencies will support the Commission's initiatives on strengthening the credibility and comparability of annual and consolidated accounts. The two Presidencies are committed to completing the work on the directives on Statutory Audit and Accounting.

Work towards the adoption of the proposal concerning the transfer of company's seat (14th company law directive) and work on the proposal for a Directive on shareholders' rights will be carried forward. The Commission's initiatives concerning the future study on an alternative capital maintenance system will be supported.

TECHNICAL HARMONISATION

Concerning the proposal on the financing of European standardisation, political agreement on a common position or, possibly, final adoption of the act will be sought for in 2006. The Presidencies will work towards final agreement with the European Parliament on the Type-approval (Recast) Directive. This is the last outstanding proposal in this area, other than routine Article 133 Committee Council Decisions (UN/ECE regulations).

FERTILIZERS

The Council will aim to make progress on the proposal for a regulation relating to cadmium in fertilizers which is expected from the Commission in 2006. The regulation establishes maximum limits for the cadmium content of phosphate fertilizers and establishes a number of classes of fertilizers of defined cadmium content. It will be the first time when the allowed amount of heavy metals in inorganic fertilizers is regulated in the EU.
**FOODSTUFFS**

The Council will aim to reach an agreement with the European Parliament on the Regulation on the addition of vitamins and minerals and the Regulation on nutritional and health claims. It will also start work on proposals which are expected concerning food improvement agents (food additives, flavours and enzymes).

**CONSUMERS**

The Presidencies will seek to reach an agreement on the Decision establishing a programme of Community action in the field of health and consumer protection (2007-2013). Due to the cross-cutting nature of consumer protection policy, specific emphasis shall be placed on consumer-relevant developments in other policy areas in order to mainstream consumer interests. They will continue to deal with the proposed amended Directive on Consumer Credit with a view to finding a solution that will ensure a high level of consumer protection and maintain the necessary flexibility for Member States. Commission initiatives aiming at strengthening consumer safety and at reviewing the Consumer Protection Acquis will be supported.

**CUSTOMS**

In this area, the two Presidencies will take forward work on two proposals:

The proposal for the modernisation of the Customs Code. The proposal, which entails a major and general overhaul of the Customs Code originally adopted in 1992, addresses issues concerning the requirements of an electronic environment for customs and trade, the simplification of customs rules, and the changing nature of the tasks performed by the customs authorities.

The proposal for a Council Decision on e-customs. The implementation of an electronic and paperless environment for customs being a pre-requisite of the modernised Customs Code, this Decision will identify the actors, the necessary measures and the deadlines for their implementation in order to ensure a Community-wide application of e-customs as soon as possible.
The Presidencies will take forward work on a decision on the Customs 2013 Programme, which is necessary for a coherent development of the Customs Union. The promotion of international cooperation in the field of customs will be continued, as this is a vital issue in relation to international trade and cross-border activities.

7. INFORMATION SOCIETY, ENERGY, TRANSPORT, CHEMICAL POLICY

INFORMATION SOCIETY AND ELECTRONIC COMMUNICATIONS

Efforts will be intensified to ensure that the Information and Communication Technologies play a key role in the context of the revised Lisbon strategy. In this respect the two Presidencies will work to ascertain the successful start of the "i2010 – a European information society for growth and employment" initiative and to facilitate its effective implementation.

Particular attention will be devoted to enhancing security and interoperability of electronic communications and services, in order to strengthen the internal market and European citizenship. To this end the Presidencies will work to strengthen network and information security by considering a Communication expected to be submitted by the Commission, and by taking into account international coordination and follow-up activities concerning Spam. Furthermore, the Presidencies will contribute to the promotion of seamless services and communications by paying special attention to the Commission's communication on sustainability and infrastructure.

Discussions on the review of the legislative framework for electronic communications will start in 2006. Possible legislative proposals are expected from the Commission before the end of 2006.

In addition, the Presidencies are prepared and expecting to work on the following issues:

- A Commission Communication on e-Government;
- A Commission proposal on the revision of the Postal Services Directive to be submitted by the end of 2006;
- Follow-up of the Commission Communication on a European Radio Spectrum Policy agenda expected before the end of 2006;
– The eventual co-ordination and follow-up activities resulting from the outcome of the World Summit on Information Society held in November 2005, with special attention to the issue of Internet Governance given the expiry of the MoU between ICANN and the US-administration in September 2006.

**ENERGY**

In 2006 work will continue on different aspects, such as internal energy market, security of supply, sustainability of energy production and consumption, international dimension and nuclear issues. The Commission Green Paper on a secure, competitive and sustainable energy policy for Europe will provide a basis for extensive discussion on future energy policy.

**Internal energy market**

Consideration will be given to further measures on the liberalisation of the electricity and gas markets on the basis of an assessment of their operation, including looking at competition aspects.

**Security of supply**

Work on the Decision on TEN-Energy will possibly be finalised in early 2006. Work to enhance security of supply will be taken forward on the basis of the Communication assessing the implementation of the 2000 Green Paper on Energy Policy. The EU-Russia and EU-OPEC dialogues (see International dimension below) will also contribute to the security of supply.

**Sustainability of energy production and consumption**

Action will proceed along two lines: improving energy efficiency and promoting renewable energy:

– The Directive on **end-use energy efficiency** and **energy services** will be finalised in early 2006. More generally, work on an Action Plan on Energy Efficiency should proceed on the basis of the consultation launched by the Green paper, to be completed by March 2006, then initiating its assessment and preparation of the Action Plan.
A strategy for addressing the medium and long term time frame for **renewable energy** beyond 2010 should be developed on the basis of two Communications (financing of renewables, biomass Action Plan), taking into account progress towards 2010 targets on energy efficiency and in climate change negotiations.

**International dimension**

- The conclusion of the **EU-South East Europe Agreement** establishing an energy community could be achieved during the first semester, following signature (on 25 October 2005).
- Building on the EU-Russia Energy Permanent Partnership Council of 3 October 2005 the **EU-Russia Energy Dialogue** should be further re-invigorated by making progress on the implementation of the energy-related actions listed under the Common Economic Space.
- Particular attention will be paid to the review and update of the energy and nuclear safety chapters of the **Northern Dimension** with a view to adopting its new political document by the end of 2006.
- Continuation of the **EU-OPEC dialogue**, including at Ministerial level, following the 1st meeting in June 2005.

It should also be noted that "Energy for Sustainable Development" will be one of the themes of the UN Commission on Sustainable Development in 2006 and 2007; this should be the occasion for the EU to follow-up on its commitments towards the Millennium Development Goals (MDGs) and as contained in the Johannesburg Plan of Implementation (JPoI).
Atomic questions

The Presidencies attach great importance to a high level of nuclear safety and to appropriate nuclear safeguards. To this end, they will seek to

− give practical effect to the conclusions on nuclear safety and the safe management of radioactive waste and spent fuel adopted by the Council on 28 June 2004. This work should be completed, leading to a final report on the consultation process initiated by these conclusions by the end of 2006. A Directive on safe shipment of radioactive waste should be adopted in the first semester;

− find a satisfactory resolution of issues affecting the definition of a new approach for nuclear safeguards, clarifying the respective roles of Euratom, Member States and the IAEA.

TRANSPORT

Land transport

Road safety will remain high on the political agenda of the Union in 2006. Possible Commission initiatives and/or legislative proposals concerning safety on the European Transport Network ("Infrastructure Directive"), dead angle mirror and daytime running light will be handled. The Council will continue work on the Driving Licence Directive. The Commission is likely to forward a proposal on cross-border enforcement of road safety legislation.

The Presidencies will continue work on the Third Railway Package, taking due account of the European Parliament's view. The evaluations on the implementation of the Directives 2001/12/EC, 2001/13/EC and 2001/14/EC (1st Railway Package) will also be considered.
The Commission has adopted a proposal for revision of the Regulation on Public Service Obligations, and depending on the state of the play the Presidencies will examine possibilities to work on the proposal.

The modernisation of technical regulations in inland navigation is seen as an important step to increase the safety and competitiveness of this sector. The Commission's Communication on inland navigation will be followed up. Depending on the state of play, the work on the Directive amending Directive 82/714/EC laying down technical requirements for inland waterway vessels will continue and work may start on a proposal for a framework Directive on the carriage of dangerous goods in inland waterways either on its own, or as a part of the Framework Directive on carriage of dangerous goods on road, rail and inland waterways.

Aviation

External relations in aviation remain a priority topic in the air transport sector. The Presidencies will continue the work on the related dossiers EU-USA, EU-third countries and Member States - third countries. At the same time, the Presidencies will support the Commission's negotiations with third countries on the basis of the horizontal mandate. Any new request from the Commission for mandates to negotiate with third countries will be examined with due attention.

The Commission Communication on the strengthening of passenger rights within the European Union will be examined.

The Council will also take forward and possibly finalise the work on the amended proposal concerning the harmonisation of technical requirements and administrative procedures in the field of civil aviation (EU-OPS).

Other initiatives or proposals likely to be addressed in 2006 are the extension of the Mandate of EASA (European Aviation Safety Agency), SESAR (Single European Sky Implementation Programme), as well as revisions of airport capacity, CRS (Computer Reservation System), third liberalisation package, ground handling and aviation security.
Maritime Transport

The Presidencies will examine what progress can be made on the expected **Third Maritime Safety Package**, which will address issues such as Port State control, Flag State initiative, a Community vessel traffic monitoring and information system and legal instruments on liability and compensation. The Presidencies will also explore the possibility of working on the revised proposal on **market access to port services**, taking account of the European Parliament's view.

During the second half of 2006, particular attention will be paid to the issue of Short Sea Shipping, in conjunction with the Commission progress report on the Programme for the Promotion of Short Sea Shipping.

Depending on progress, the Council will continue or finalise work on the regulation on multiannual financing of the EMSA (European Maritime Safety Agency).

**Horizontal Issues**

Efficient logistics is vital for the competitiveness of Europe and for economically and ecologically sustainable development. There is a need to speed up the establishment of strong Community transport and logistics markets – a logistics cluster. Consequently, during the second half of 2006 great importance will be attached to a forthcoming **Communication from the Commission on logistics**, including an inventory of the present situation and first-stage action plan, and addressing issues such as liability of stakeholders, training, bottlenecks of the networks, security measures in ports and terminals and electronic sealing of containers.

The Council will start discussions on the mid-term review of the White Paper "European Transport Policy 2010" during the first half of 2006.

Depending on progress, the Council will continue or finalise work on the **Marco Polo II** initiative. The Commission may come forward in the course of 2006 with an initiative on **intermodal security**.
The Presidencies will continue to work on different aspects relating to the European Satellite Radio Navigation System GALILEO, paying particular attention to security, safety and financial issues as well as services, the international cooperation and the negotiation of the concession contract relating to GALILEO. Consequently, the Presidencies will make every effort to reach final agreement on the proposed regulation on deployment and operation.

CHEMICAL POLICY

The Council is fully committed to reaching a final agreement on the REACH package in close cooperation with the European Parliament.

The Commission is expected to give three proposals on restrictions for marketing and use of certain dangerous substances and preparations. The Council aims at achieving agreement on these proposals.

The Commission is expected to adopt in mid 2006 a proposal for a Regulation concerning classification and labelling of hazardous substances and mixtures, implementing Globally Harmonized System of Classification and Labelling of Chemicals. This proposal is closely linked to the REACH Regulation and should therefore be adopted in 2006 so that it could enter into force at the same time with the REACH Regulation.

Recognising the global dimension of a successful EU chemicals' policy, the EU will take a lead in seeking a comprehensive conclusion of SAICM (Strategic Approach to Chemicals Management) during the International Conference on Chemicals Management and will prepare carefully for the Conference of the Parties on Persistent Organic Pollutants (POP) in spring 2006 and of the Rotterdam Convention on Prior Informed Consent (PIC) to be held in autumn 2006.
8. EMPLOYMENT, LABOUR LAW, SOCIAL POLICY, HEALTH AND GENDER EQUALITY

EMPLOYMENT

Following the mid-term review of the Lisbon strategy in 2005, work will initially concentrate on the finalisation of the 2005 Joint Employment Report to be submitted to the 2006 Spring European Council. As usual, the EPSCO Council will prepare a Key Messages Paper to the European Council on employment and social issues. Given that the new Employment Guidelines as a part of the integrated guidelines have been adopted for the period 2005-2008, any updating in 2006 should be strictly limited.

LABOUR LAW, HEALTH AND SAFETY AT WORK

In the area of working conditions, the Presidencies will seek final adoption of the Directive amending Directive 2003/88/EC on Working Time in order to solve the problems created by the SIMAP and Jaeger judgments, and may also take up the Temporary Agency Work Directive. The Presidencies will also take up the future of labour law on the basis of the green paper of the European Commission.

In the area of health and safety at work, the Presidencies will work on the proposal for a Directive amending the reporting requirements laid down in Directive 89/391/EEC. They will also start work on the expected proposal amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens and mutagens at work. A Communication is expected from the Commission late in 2006 on a new Community Strategy on health and safety at work.
SOCIAL POLICY

On social security issues, the Council will examine the draft implementing regulation regarding Regulation (EC) No 883/04 on the coordination of social security systems, together with the proposal regarding Annex XI of the parent Regulation. The Presidencies will also work, against the background of the European Year of Mobility for Workers, 2006, on the proposal for a Directive on the portability of supplementary pensions.

In the area of social protection, the Presidencies will pursue work on the key question of the sustainability of the European Social Model and, in the context of the streamlining of the three dimensions of social inclusion, pensions and health and long-term care, the Council will adopt early in 2006 the first common objectives for social protection. It will be submitted to the Spring European Council for endorsement in the spring 2006, and implementation will start in the autumn. The Presidencies will seek to finalise the decision establishing a Community programme for employment and social solidarity (PROGRESS). Due attention will be given to the forthcoming Communication on social services of general interest. The Council will also address the social challenges of globalisation.

In the context of the Commission's Green Paper and the forthcoming communication on demographic challenge and intergenerational solidarity, the Presidencies will attach special importance to families, family policy and reconciliation of work and family life as well as gender equality. The Presidencies will also highlight attractiveness and quality of working life as essential means to reach the objectives of the Lisbon strategy and to raise the employment rate. In this context, due attention will be paid to a systematic approach and action.

Healthy ageing is another challenge in view of major demographic changes which are underway throughout Europe. Living longer is a societal achievement. In this context, it has to be assured that social and health services are prepared to meet the needs of the growing number of elderly citizens and make healthy ageing possible.
HEALTH

Focus will be put on the Decision establishing a Programme of Community action in the field of Health and Consumer Protection (2007-2013). The Presidencies will also pay due attention to work carried out in the relevant Commission and Council Groups with regard to developments in health care. The integration of health into all policies will be highlighted at Council level.

The Council will continue or start work on legislative proposals such as the Regulations on medicinal products for paediatric use, the revision of legislation on medical devices, and on advanced therapies.

At the international level, in the field of combating tobacco consumption, the first Conference of the parties to the WHO Framework Convention on Tobacco Control will start negotiations on protocols to the Convention in February 2006. Due attention will be devoted to other WHO activities such as the entry into force of the new International Health Regulations, Children's Environmental Health (the Budapest process) and the European Strategy on Non-Communicable Diseases.

In the field of communicable diseases work will focus on HIV/AIDS both inside and outside the Community, also in relation to drug abuse, and on pandemic preparedness.

Other issues which will be addressed are the Communication on nutrition and physical activity, the Alcohol Strategy Communication, mental health, adult-onset diabetes, women's health.

GENDER EQUALITY AND NON-DISCRIMINATION

As far as equality and non-discrimination are concerned, the Presidencies will seek the final adoption of the Recast-directive and the Regulation establishing a European Institute for Gender Equality. The Presidencies will also pursue the annual review of progress made in the context of the Beijing Platform for Action and build up health as well as poverty indicators. According to current practice the Presidencies will mainstream gender issues into Council agendas.
YOUTH, CULTURE AND AUDIOVISUAL

Youth

The Presidencies will make every effort to reach final agreement on the "Youth in Action" programme (2007-2013) by the end of 2006. The Presidencies will work on the European Youth Policy. The objectives and measures will be based on the Commission Communication on European policies concerning youth presented in June 2005. The monitoring of the implementation of the European Youth Pact will be integrated into the reporting mechanisms of the Lisbon Strategy. Other items on the Council Agenda will include youth participation and information, youth research and recognition of non-formal and informal learning within the European youth field.

Culture

The common objective of the Presidencies is to ensure that the co-decision procedure on the proposal for a decision establishing the Culture Programme (2007-2013) will be completed by the end of 2006.

The Presidencies will also seek final adoption of the Decision establishing a Community action for the "European Capital of Culture" and the Decision concerning the launching of the year 2008 as a European Year of Intercultural Dialogue as well as the Decision concerning the Citizens for Europe Programme (2007-2013).

The Presidencies will ensure a continuous and sustained implementation of the Work Plan for Culture 2005-2006. The particular focus in 2006 will be the contribution of creativity and cultural industries to European growth and cohesion (a policy document to be presented for the European Council) as well as the mobility of works of art and art collections and exhibitions (the preparation of an Action Plan on European collection mobility).
Audiovisual

In this area, the two Presidencies aim to reach final agreement on the proposal for the Media programme (2007-2013). They will engage in starting and speeding up the negotiations for a revised "Television without Frontiers" Directive and aim at reaching agreement on the proposal as soon as possible.

9. ENVIRONMENT

General

Work will focus on climate change, biodiversity, air quality and waste, both at the internal and international levels. Efforts will continue on integrating environmental considerations into other Community policies and in taking up cross cutting issues, such as sustainable production and consumption.

6th Community Environment Action Programme

The 6th Community Environment Action Programme (decided by the Parliament and the Council in 2002 for a period of ten years) foresees a mid-term review of its implementation in the fourth year of its operation (2006). However, since the examination of the thematic strategies (as the backbone of the 6th EAP) is starting later than initially expected, the timeframe for the mid-term review will have to be adjusted accordingly. Both Presidencies are committed to taking this review forward as far as possible.

In the first half of 2006, all seven thematic strategies to be submitted by the Commission in the framework of the 6th Community Environment Action Programme will be with the Council: air quality, waste prevention and recycling, sustainable use of natural resources, marine environment, urban environment, soil protection and the sustainable use of pesticides. Several of these strategies will be accompanied by legislative proposals. For strategies which are not accompanied by legislative proposals, the Council will use appropriate means to focus and advance the political discussion.
Of the seven thematic strategies priority will be given to **air, waste, natural resources, urban and marine environment**. The Council will take forward relevant legislative proposals as far as possible in the co-decision procedure with the European Parliament.

**Air quality / atmosphere**

In the field of air quality, the Council will aim to improve the consistency and effectiveness of the regulatory framework on the basis of the Commission proposal for a Directive on ambient air quality and cleaner air for Europe. Amending legislation in order to promote more ambitious emission standards for motor vehicles and heavy vehicles (EURO V and EURO VI) will also be taken forward as well as the review of the directive of fuel quality.

The EU will strive to maintain the positive momentum of international cooperation in protecting the ozone layer during the 18th COP to the Montreal Protocol in autumn 2006.

**Waste**

Concerning waste, the main objective is to clarify and consolidate Community legislation in order to improve implementation.

The EU will strive to maintain the positive momentum of international cooperation in waste management during the 8th Conference of the Parties to the Basel Convention in autumn 2006.

**Water**

Once adopted, new Commission proposals on flood risk management and priority substances (water quality) will be taken forward.

To underline its global commitment on water issues, the EU will take a proactive role in the 4th World Water Forum in spring 2006.
ONGOING LEGISLATIVE WORK

The Council intends to conclude work on the financial instrument for the environment (LIFE Plus Regulation), the Directive on an Infrastructure for Spatial Information in Europe (INSPIRE) and the Groundwater Directive. Work will be finalised on the Regulation of certain fluorinated greenhouse gases, the Batteries Directive and the Regulation of the Århus Convention.

CLIMATE CHANGE

Climate change will remain a high priority on the Council's agenda. Work will include the review of the Emission Trading Directive and the new phase of the European Climate Change Programme (ECCP), which will contribute to the achievement of the Kyoto commitments by the Community and the Member States. Depending on the Commission timetable for a legislative proposal on Aviation Emissions the Council will start the discussion on this dossier. On the international level, the emphasis will be on starting a process aimed at a global agreement on the development of a global climate regime after 2012, in line with the decisions taken by the Conference of the Parties (COP 11) of the UNFCCC (United Nations Framework Convention on Climate Change) and the COP/MOP 1 of the Kyoto Protocol in Montreal. Key tasks in this respect will be the preparation of and the participation in the meetings held in conjunction with the Conference of the Parties (COP 12) of the UNFCCC (United Nations Framework Convention on Climate Change) and the COP/MOP 2 of the Kyoto Protocol and their subsidiary bodies. Climate change will also continue to be a regular part of the EU’s agenda in its transatlantic dialogue and other contacts (including summits) with third countries.
BIODIVERSITY

Both Presidencies are committed to following up the Communication on Biodiversity. The aim is to promote the EU target of halting the decline of biodiversity by 2010.

In addition, preparatory work is necessary for the 8th Conference of the Parties (COP8) to the Convention on Biological Diversity (CBD) and the 3rd Meeting of the Parties to the Cartagena Protocol on Biosafety (MOP3) (Brazil, spring 2006). To enhance further the EU’s leading role in its commitment on a global scale, we will work to secure the EU’s priorities at COP8 and MOP3, which will address crucial issues for the successful implementation of both treaties and the global achievement of the 2010 biodiversity target.

ENVIRONMENTAL TECHNOLOGIES

The two Presidencies, in close cooperation with the European Commission, will seek to make progress on the implementation of the Environmental Technologies Action Plan (ETAP), which will also be the subject of the Environment Ministers' informal meeting during the first half of 2006. In addition, the two Presidencies will follow up ongoing work on linking environmental technologies with public procurement, including the discussion of performance targets.

GLOBAL ENVIRONMENTAL GOVERNANCE

The Council will continue to be committed to improved environmental governance at the global level, in order to follow up the decision taken at European Council level in June 2005 and the outcome of the September 2005 Millennium Review Summit. At the 9th Special Session of the UNEP Governing Council in February 2006 the EU will take the lead in promoting environmental issues on global level and any follow-up required by the September 2005 Millennium Review Summit will provide opportunities to pursue EU efforts in this field.
10. SUSTAINABLE DEVELOPMENT

Sustainable development is a fundamental objective under the Treaties aimed at ensuring that meeting the needs of the present generation will not compromise those of future generations. It is an overarching concept guiding all Union policies, actions and strategies and requires economic, environmental and social policies to be designed and implemented in a mutually reinforcing way. It requires trends that threaten the future quality of life to be curbed if not reversed.

On the basis of the Declaration on Guiding Principles for Sustainable Development adopted by the European Council in June 2005 and the Commission's communication, the European Council will adopt a renewed, ambitious and comprehensive strategy in June 2006 comprising targets, indicators and an effective monitoring procedure which should integrate the internal and external dimensions and be based on a positive long-term vision. This renewed strategy should bring together the Community's sustainable development priorities and objectives in a clear, coherent strategy that can be communicated simply and effectively to citizens.

Being aware of the wide range of interests the decision by the European Council on the renewed strategy will be based on the preparatory work of the concerned Council formations. The opinions expressed by the European Parliament, the Economic and Social Committee and the Committee of the Regions will also be taken into account in an appropriate way.

Both Presidencies will continue efforts to take proper account of sustainability considerations in all internal and external Community policies, and take up cross cutting issues, such as sustainable production and consumption. Outreach and information sharing will be assisted by the Green Diplomacy Network.

As a contribution to an environmentally sustainable development in the Alpine Region, Austria will, during its Presidency, carry forward proposals for the ratification of protocols to the Alpine Convention in the areas of transport and agriculture.

At the global level, the Council will prepare actively the next sessions of the United Nations Commission on Sustainable Development (UNCSD) in spring 2006 and in 2007 which will focus on the strategic themes of energy for sustainable development, climate change, air pollution/atmosphere and industrial development. The EU will take a leadership role in taking forward this important agenda.
11. COMMON AGRICULTURAL POLICY/FISHERIES

An innovative, competitive and sustainable European Model of Agriculture

The consolidation of the newly reformed CAP is a priority of the two Presidencies. It is important to give a signal of stability and reliability to the European farming community while at the same time recognising the need to start reflecting on the challenges facing the CAP in the last years of the decade.

A further very important priority for both Presidencies will be the contribution of the European Model of Agriculture to the Lisbon strategy. The reformed CAP contributes to delivering jobs and growth because it is more competitive and market oriented; it supports innovation, promotes environmental protection and creates new employment opportunities and stability in the rural areas of Europe.

The simplification of the CAP is also a matter of great importance to the Council. The Commission's report on Simplification and Better Regulation of the CAP was presented to the Council in autumn 2005. Possible legal proposals will be dealt with by the Council during 2006.

In particular the Council will finalise the reform of the sugar market organisation. In addition, the Council will decide on proposals that are expected from the Commission for important reforms of the market organisations of fruit and vegetables and, possibly, wine and bananas. In co-decision with the European Parliament, the Council will seek to conclude work on Commission proposals to amend current legislation on spirit drinks. The Council will also decide on Commission proposals for adjustments to the arrangements for the flax and hemp sectors. The proposals on promotion of agricultural products will be dealt with by the Council before the end of 2006. WTO aspects relevant for Agriculture will be followed by the Council by way of dialogue and transparent participation with stakeholders.

Taking into account the particular sensitivity of GMOs the Council will seek progress on the question of coexistence between organic, conventional and GMO agricultural production. A Commission's report is expected to be presented on this question.
On the basis of the Commission's Action Plan on biomass and the expected Communication on biofuels, the Council will take stock of the role renewable energy sources play within the CAP and will review the energy crop support arrangements during 2006.

**Promoting food safety, animal welfare, animal health, plant protection and animal nutrition**

The Presidencies will put a strong emphasis on the **prevention of animal diseases**, by seeking to make progress on the review of the BSE policy and Community measures for the control of Avian Influenza and diseases of aquaculture animals. Furthermore, the Council will reflect on European strategies on animal welfare and animal health.

The Council will enhance a smooth functioning of the **European Food Safety Authority (EFSA)**. This includes the question of financing, the EFSA's Management Board and the forthcoming report setting out the results of the independent external evaluation of EFSA.

On the basis of two closely related proposals from the Commission, the Council will play an active role in revising legislation concerning the placing of plant protection products on the market and also on the establishment of a thematic strategy on the **sustainable use of pesticides** up to 2012. In doing so, an appropriate balance must be found between consumer safety, environmental protection and the needs of the industries concerned.

Work on the proposed revision of **organic farming legislation** will also continue in line with the European Action Plan on Organic Food and Farming, with the aim of introducing principles for this sector, simplifying existing provisions and improving the circulation of organic produce.

Other issues to be dealt with are the proposed amendments to the **Regulation on geographical indications** in the light of the conclusions of the WTO Panel on GIs.

The Council will continue its work concerning the **relationships between EU and third countries**, especially the negotiations on a veterinary agreement between the EU and Russia and the functioning of the veterinary agreement between the EU and the US.
On the international level, the Council will continue to participate in the work of the Codex Alimentarius by coordinating the EC position on proposed global food safety standards. The Council will also continue to participate actively in other international fora, coordinating the EC position for meetings of the Interim Commission for Phytosanitary Measures (ICPM) and the International Union for the Protection of New Varieties of Plants (UPOV).

Forestry issues

The Council will continue its work on sustainable forest management, by moving forward with the implementation of the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan and by striving for an international instrument to protect the world's forests within the multilateral framework of the United Nations Forum on Forests.

The Council will also reconsider the scope of the current Forest Focus Regulation, which will be included in the new Life+ Regulation, and it will examine the EU Forest Action Plan that the Commission is expected to present by mid-2006 and it underlines the social, economic and ecological importance of forestry and the need to improve co-ordination, communication and co-operation in all policy areas with relevance to the forest sector.

Fisheries sector

The Council will make every effort to finalise work on the new European Fisheries Fund as well as on the Community financial measures for the implementation of the Common Fisheries Policy and in the area of the Law of the Sea. Against this background, the Council will focus on implementing the new policy framework aimed at bringing about a greater sustainability in the fisheries sector, by finalising or making progress on a series of proposals concerning conservation measures (recovery plans and management plans), increased control, enforcement and inspection (inter alia remote sensing) and third country fisheries partnership agreements. The Council is looking forward to receiving the Commission's Green Paper on a future EU Maritime Policy.

The Council will also fix the TACs and quotas for 2007, taking into account economic, social, environmental and sustainability considerations.
12. AREA OF FREEDOM, SECURITY AND JUSTICE

The Hague Action Plan will provide the framework for the two Presidencies. A key priority in 2006 will be the mid-term review of the Hague Programme, taking into account the Commission's first annual implementation report. It presents an opportunity to evaluate the progress and coherence of the Programme and the Action Plan as a whole, and if necessary to adjust priorities.

Of particular importance will be the establishment of a system for objective and impartial evaluation of the implementation of EU measures aimed at establishing a European Area of Freedom, Security and Justice. This work will be based on a Communication and a proposal by the Commission.

Strengthening freedom

In 2006 work will continue under this part of the Action Plan on promoting the right of all EU citizens to move and reside freely in the territory of the Member States. This calls for a focus on the associated question of further developing policy on asylum, migration and border controls. The Council will continue to work on the Framework Programme "Solidarity and Management of Migration Flows" under the new Financial Perspectives.

In the field of asylum, work will continue on the second phase of the development of a common European asylum system with the aim of establishing a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection. This work will be based on legislative proposals put forward by the Commission, and will take account of the evaluation of the first-phase legal instruments.

Work will continue on the Union's policy on legal migration, with particular attention being devoted to the follow-up to the Green Paper on an EU approach to managing economic migration. The Council will pursue discussions on the Plan on Legal Migration. It will also address the issue of integrating third country nationals legally resident in the territory of the Member States.
Addressing illegal immigration and trafficking in human beings will be a priority for the Council. Concrete work on these matters will be based on the Action Plan on human trafficking and on the plan developed and adopted by the Council and the Commission in 2005 in accordance with the Hague Programme. In 2006 the Council will consider a proposal from the Commission for a Directive establishing minimum standards on return. It will also aim to strengthen and improve the action of the Union in the area of the readmission of third country nationals who are illegally resident.

The two Presidencies will place particular emphasis on the issue of border control. The Council will continue and intensify its work in the development of the integrated management of external borders and strengthened co-operation with transit countries, in particular to give political guidance and support the work of the newly-established European Border Agency (Frontex). Development of operational cooperation between Member States will continue within the framework of the European Borders Agency, as well as between Member States and third countries. Following the adoption of the Schengen Borders Code, the Council will work on the creation of a practical handbook to assist border guards in their duties.

During 2006 the Council will continue its work on the new Schengen Information System (SIS II) in order to finalise the relevant legal instruments as well as the work on the technical platform of the SIS II and other technical aspects related to the establishment of SIS II. The two Presidencies will commence the evaluation of the implementation of the Schengen acquis not related to SIS II in the new Member States in order to prepare for the planned adoption of the Council decision on the lifting of controls at the internal borders with and between the new Member States.

On visa policy, work will focus on the revision of the Common Consular Instructions, and on the use of new technologies, especially the technical implementation of the VIS and the introduction of biometric identifiers. The Community may start negotiations with further third countries on visa facilitation agreements, if deemed appropriate.
Strengthening security and improving preparedness

The two Presidencies will promote the sharing of information among law enforcement and judicial authorities. This work will be based on a Commission Proposal on adequate safeguards and effective legal remedies for the transfer of personal data in the context of police and judicial cooperation in criminal matters, as well as on a Proposal on the establishment of a principle of availability of relevant law enforcement information.

The continuing development of Operational co-operation between the law-enforcement authorities of the Member States, particularly at the internal borders of the Member States, will be a high priority. Emphasis will be placed on the elaboration of an intelligence-led law enforcement model.

In strengthening a coherent overall approach to combat terrorism, emphasis shall be placed on the implementation of existing decisions and strategies and the effective utilisation of existing structures. Consideration will be given to the future development of Europol and enhancing the relationship between Europol and Eurojust.

While continuing work on the prevention and fight against organised crime, the two Presidencies will also aim to strengthen the prevention and control of crime in general. An important element in this will be the establishment of a network of anti-corruption authorities in order to improve the cooperation in the fight against corruption. A debate on the future development of CEPOL will be launched on the basis of the results of the second evaluation. A decision should be taken during 2006 at the latest on the strengthening and professionalisation of the European Union Crime Prevention Network, including its establishment as a legal personality. The Council will examine the anticipated Commission communication on an action plan on EU crime statistics.

The implementation of the multi-annual Action Plan for Customs Cooperation (3rd pillar) will be continued. In taking the decision whether to adopt a new action plan by the end of 2006, the review of the implementation of The Hague Programme shall be taken into account.
Work will continue on the protection of critical infrastructure and on the implementation of the Integrated **EU emergency and crisis coordination arrangements** for crises with cross-border effects within the EU (EU-ICMA) in order to meet the deadline of July 2006. The two Presidencies will also ensure the follow-up to the Commission's final assessment expected by the end of 2005 on civil protection assets and capabilities available in case of a major terrorist attack. The development of the EU's ability to respond to **disasters of different origin** will continue, including through the development of an EU Rapid Reaction Capability. The Council will in particular aim to reach agreement on a Community Mechanism and a Regulation on a Rapid Response Instrument.

Work will also continue on the **Tsunami Action Plan** which focuses on areas where the EU can provide added value for European citizens in the event of major crises: enhanced consular cooperation, disaster relief coordination including the coordination of military capacities that can be used for disaster relief, as well as humanitarian aid. Efforts will include the necessary coordination structures and mechanisms in Brussels as well as enhanced cooperation between Member States.

**Consular protection**

In the light of recent emergency situations due to terrorist attacks and severe natural disasters in third countries, the two Presidencies will continue work on improving cooperation in the consular and visa field in order to ensure the best possible consular protection of EU-citizens in third countries.

**Strengthening justice**

An essential element to judicial cooperation in both civil and criminal law is the **principle of mutual recognition**. A key element of the work on strengthening the Area of Justice is to create a "European judicial culture" based on diversity of the legal systems of the Member States and unity through European law. To this end, the two Presidencies will support work on the **networking of judges and judicial authorities**.
During 2006, the Council will work towards concluding the initiative for a Framework Decision on the application of the principle of mutual recognition to the enforcement of sentences, the proposal for a Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, and the proposal for a decision on a computerised system of exchange of information on criminal convictions.

The two Presidencies will attach particular importance to the strengthening the efficiency of justice and effective access to justice in civil matters. It is intended that the proposal on conflicts of laws regarding non-contractual obligations (Rome II), the draft regulation on the European payment order and the draft directive on alternative dispute resolution (ADR) shall be finalised and adopted during 2006. Furthermore, work will continue on the draft regulation on conflict of laws regarding contractual obligations (Rome I) and the draft regulation on small claims.

**Drugs**

The Council will continue work on implementing the EU Action Plan on Drugs 2005-2008 which was adopted by the Council in June 2005.

**External dimension**

Particular emphasis will be placed on implementing the Strategy on all external aspects of the Union policy on freedom security and justice, based on the measures developed in the Hague Programme. The two Presidencies have identified the following issues as matters of particular priority in 2006: the European Neighbourhood Policy, the Western Balkans, the implementation of the EU/Russia Common Space of Freedom, Security and Justice, further development of the Enhanced Security Dialogue (ESD) with the United States in combating terrorism and the continuation of implementation of the EU-US Declaration on Combating Terrorism.

As agreed in the European Council in December 2005, the Council will take forward the actions included in the Commission's communication on the "Global approach to migration: Priority actions focussing on Africa and the Mediterranean".
13. ENLARGEMENT

Bulgaria/Romania

Monitoring of the commitments undertaken in the accession negotiations will continue with the objective of both countries acceding to the Union in January 2007. Preparations for accession within the framework of the Europe agreements, as well as targeted pre-accession assistance, will continue.

Croatia/Turkey

Following the start of accession negotiations and depending on results in the screening procedure, the first negotiating chapters will be opened in accordance with the agreed negotiating framework. Each candidate country will be treated individually on its own merits.

The Council will examine a Commission proposal for a revised Accession partnership.

Former Yugoslav Republic of Macedonia

Following the granting of candidate status in December 2005 to the former Yugoslav Republic of Macedonia, further progress of compliance with the Copenhagen political criteria and effective implementation of the Stabilisation and Association Agreement by the country will be closely followed.
14. EXTERNAL RELATIONS

Building up the European Union's capabilities for external action and strengthening its international position

Making the Union's practices and decision-making procedures more efficient

The two Presidencies will promote the strengthening the Union's external action by focusing on the consistency and efficiency of the Union's activities and decision-making procedures. Coordination in third countries and in international organisations will be strengthened.

Contributing to International Security

The objective of peace and international security will be pursued through the development of the Common Foreign and Security Policy (CFSP), including the European Security and Defence Policy (ESDP).

The work will be guided by the European Security Strategy (ESS) and the strategies based on it to address terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime. The Union's policy instruments will be used in a coherent and integrated manner.

The Presidencies will work closely with the Secretary General/High Representative and the European Commission in order to ensure an adequate follow-up to the deliberations at the Heads of State or Government Informal Summit in Hampton Court on the Union's role in the world.

Since security and prosperity depend on an effective multilateral system based on international law and in particular on the United Nations Charter, the EU will continue its active participation in multilateral fora, especially the United Nations, and will promote multilateral solutions to common problems. Emphasis will be put on the follow-up to the UN Summit of September 2005.
**ESDP**

The EU's ability to act in conflict prevention, crisis management and post-conflict stabilisation as well as capacity building will be further strengthened. One particular aim is to further improve the coherence and complementary functioning of military and civilian means, including rapid reaction instruments.

In the area of **military crisis management**, particular attention will continue to be paid to the running of the EUFOR operation Althea in Bosnia and Herzegovina. The six-monthly reviews of the operation in 2006 will need to take account of both the wider EU presence in Bosnia and Herzegovina and the expected evolution of the international community's involvement. EU support to the African Union mission in Darfur will continue. Depending on decisions by the African Union on the future of this mission, the Council will need to decide in 2006 on the nature of future EU involvement.

In the area of **civilian crisis management**, the Union will continue the ongoing civilian missions. The Council will need to decide on transition and follow-up for those civilian operations which will come to an end. Work will continue on the development of new areas of civilian ESDP.

The two Presidencies will put particular emphasis on further enhancing the military as well as civilian **capabilities** which Member States put at the disposal of the EU's crisis management in the framework of ESDP. The implementation of the headline goals 2010 (military) and 2008 (civilian) will be advanced.

In the field of **military capabilities**, particular attention will be devoted to the preparation of the Force and Progress Catalogue and the building up of the rapid reaction capability. Efforts will continue in particular to prepare for the full operational capability of the Battle Groups as of 1 January 2007, and work will be pursued on further improving rapid reaction capabilities. Particular priority will also be given to ensuring the full operability of the European Defence Agency (EDA) in all its areas, including defence material cooperation and the role of EDA within the comprehensive capability development process.
Work on the improvement of civilian capabilities will continue, and an effective follow-up process will be launched to ensure that capability requirements can be met and maintained. The framework for Civilian Response Teams implementation will be further developed. The CRT concept will be further developed and implemented with a view to initial readiness by the end of 2006. Work on qualitative aspects of civilian crisis management capabilities as well as the dialogue with NGOs will be continued.

The Presidencies will aim at further enhancing EU Civil Military Co-ordination (CMCO), in particular by ensuring the most effective use of the civilian/military cell for ongoing and future crisis management operations. Conceptual frameworks may have to be adapted to be aligned with the work carried out by the cell.

The EU will plan and conduct a Crisis Management Exercise (CME 06) in the second half of 2006. Combining civilian and military assets, this exercise will concentrate on testing crisis management procedures in rapid response operations, particularly involving the use of Battle Groups. In the first half of 2006 an Exercise Study on a military evacuation scenario will take place.

Aiming at increased coherence between the military and civilian elements in preparing for ESDP operations, particular importance will be attached to the development and implementation of ESDP Training.

The implementation of the conflict prevention programme will be continued with the aim of applying a comprehensive approach to conflict prevention and management as well as to post conflict stabilisation and reconstruction.

To ensure effective EU crisis management, cooperation with international organisations, in particular the UN, NATO, OSCE, Council of Europe and the African Union and other regional organisations, will be further developed. Work will continue in order to improve the functioning of the EU-NATO strategic partnership in crisis management. Implementation of the EU-UN Joint Declaration on cooperation in crisis management will also remain a priority. The EU will explore possibilities to further enhance transatlantic co-operation in crisis management.
Implementation of the Action Plan for ESDP support to Peace and Security in Africa will be promoted in line with the EU strategy on Africa.

Work could start on negotiations of an EU-OSCE Joint Declaration on common fields of cooperation.

**Terrorism**

The two Presidencies place a high priority on the implementation of the EU Counter-Terrorism Strategy. Work will continue on implementing the Strategy on the Fight against Terrorist Financing and on the comprehensive strategy against radicalisation and recruitment into terrorism. The Council will also pursue the objective of integrating the fight against terrorism into EU External Policy, in particular through efforts to deepen international consensus and co-operation at the UN and other international fora, such as NATO, OSCE and the Council of Europe, through political dialogue and targeted action towards priority third countries, as well as through the inclusion of effective counter-terrorism clauses in agreements with third countries, and ensuring implementation of existing commitments. The work to implement the conceptual framework on the ESDP dimension of the fight against terrorism will continue, in particular with a view to identifying recommendations on interoperability between military and civilian assets.

**Non-proliferation and Disarmament**

The Council will continue to implement the EU strategy against the Proliferation of Weapons of Mass Destruction on the basis of priorities endorsed by the European Council in December 2004. Efforts to enhance the role of the EU in contributing to the progress in disarmament and arms control in multilateral fora will continue. In the field of nuclear non-proliferation and disarmament, the Council will be guided, inter alia, by its Common Position in relation to the Review Conference on the Non-Proliferation Treaty in 2005.

The Joint Actions in support of the IAEA and the OPCW will be reviewed and possibly expanded. The Council may consider similar initiatives to strengthen other elements of the multilateral non-proliferation system, inter alia in the biological field.

The Council is expected to adopt actions in order to contribute to disarmament and non-proliferation initiatives in the context of the G8 Global Partnership and of the Action Plans of the Neighbourhood Policy. It will continue to work for the inclusion of a "non-proliferation clause" in new and existing agreements in line with its policy of reinforcing this aspect in the framework of the EU's external relations. The EU will continue its work in order to strengthen international export control regimes.

The Union will work on the basis of a new strategy in order to combat the illicit accumulation and trafficking of SALW and their ammunition.

**Strengthening multilateral cooperation and development policy**

In general, the two Presidencies will aim to enhance the coherence of external relations both in the EU’s internal decision-making and in the EU’s action in different international organizations (UN, Bretton Woods, WTO, OECD), in the fields of security and development and trade and development as well as economic issues. They will seek to promote multilateral structures and mechanisms, and to work for increased coherence and complementarity between the policies of the Community and the Member States. They will also enhance the partnership for development with the ACP countries through advancing the negotiations of the Economic Partnership Agreements.
The two Presidencies will work to ensure effective **follow-up to the UN World Summit** of September 2005, including the discussion on how to further UN Reform, in particular in the economic and social sector.

Emphasis will be placed on the implementation of the EU commitments in the context of the outcome of the Millennium Declaration Review, with particular attention to Africa. The Presidencies will also ensure follow up to the Monterrey commitments on aid volume and aid effectiveness, including actions agreed in the Paris High Level Forum and the EU Ad hoc Working Group on Harmonisation. Work will also continue on the implementation of the EU Development Policy Statement 2005.

Building on the basis of the Helsinki Process, emphasis will be placed on promoting dialogue between governments, civil society organisations and the corporate sector on global governance, as well as including the social dimension of globalization in the Union's external policies in the light of the recommendations of the World Commission on the Social Dimension of Globalization.

Preparations will take place in 2006 for the UNCTAD XI Implementation Conference, UNGA Special Session on HIV/AIDS, LDC III Implementation Conference and for the UN high-level meeting on Immigration and Development.

**Trade Policy**

The two Presidencies will continue to work towards a **successful conclusion to the Doha Development Agenda**. The Union will further pursue its aims to achieve an ambitious and balanced outcome in all areas of the negotiations, notably better market access in goods and services, stronger WTO rules to strengthen a rules-based and more predictable world trading system, poverty reduction through a better integration of developing countries into the trading system and measures to promote sustainable development. The Union will continue to engage constructively with other WTO members to achieve these objectives and to contribute to the better management of globalization.
EU-Russia; Northern Dimension; European Neighbourhood Policy; Middle East

Russia

Work will continue in 2006 on the implementation of the road maps of the common spaces. This will include development of implementation and monitoring mechanisms, implementation of the 1st Common Space taking into account future Russian membership of the WTO and further consideration of the free trade perspective, strengthening environmental cooperation by organizing a Permanent Partnership Council (PPC), and implementation of the visa facilitation and readmission agreements.

The Presidencies are committed to continuing the EU/Russia dialogue on human rights in the form of biannual consultations.

Decisions will be required on future contractual arrangements within the context of the Partnership and Cooperation Agreement (PCA).

The Presidencies will aim at ensuring adequate funding for the EU-Russia cooperation from appropriate financing instruments, including the European Neighbourhood and Partnership Instrument (ENPI), and creating well-functioning administrative procedures for cross-border cooperation.

The Northern Dimension

The two Presidencies will aim at negotiating a successor to the current Northern Dimension Action Plan which expires at the end of 2006. This will need to be negotiated and agreed in conjunction with Russia and other ND partner countries who are involved in the process.


European Neighbourhood Policy

The two Presidencies will aim to ensure the development of the European Neighbourhood Policy (ENP), including its financing, as a tool in support of regional stability and the EU Security Strategy. In 2006 the Council will be required to carry out a mid-term review of the ENP Action Plans for the first group of neighbourhood countries.

The EU will continue to support reform in Ukraine to align itself to EU norms and standards, with a focus on the EU-Ukraine Summit in the second half of 2006. The EU will pay close attention to the parliamentary elections in March. Discussions on enhanced contractual relations between EU and Ukraine may take place after the review of Ukraine's action plan in 2006. Efforts will be made to complete visa facilitation and readmission negotiations with Ukraine early in 2006. The EU will continue to support Ukrainian accession to the WTO, and will look to begin talks on an FTA once Ukraine is a member.

The Union may also consider reviewing the existing PCA with Moldova with the aim of adapting it to the developing relationship between the Union and Moldova. It will continue its engagement in the resolution of the Transnistria conflict, in particular through the work of the EU Special Representative.

The Union will work with Armenia, Azerbaijan and Georgia to begin implementation of the ENP Action Plans. The Council may consider a troika mission to the Southern Caucasus to add momentum to this process. It may also look at enhancing the role of the EU Special representative in the Southern Caucasus, aiming eventually at his permanent presence in the region. Efforts should continue to ensure the support of the EU in helping to solve regional conflicts in the Southern Caucasus and to enhance border controls in Georgia.

The Council should be ready to consider adjusting the EU's policy towards Belarus depending on the conduct and outcome of the presidential elections in 2006.

As regards the Mediterranean Area, the Council will be called to adopt the action plans for Egypt and Lebanon in 2006.
Within the framework of the Barcelona Process, the VIII Euro-Mediterranean Conference of Foreign Ministers will take place in Finland in the second half of 2006. The two Presidencies will work to ensure a successful outcome to this Conference.

The Council will ensure the implementation of the association agreement with Algeria and continue the dialogue with Syria. The Council may also consider including Libya in some activities of the Euromed-Partnership, depending on Libya's attitude towards the Barcelona Process.

The Union will continue to pursue the objectives of the Strategic Partnership for the Mediterranean and the Middle East, primarily through existing structures and arrangements and present regular reviews.

The Union will extend the mandate of the SR for Central Asia and will try to continue the regional dialogue with Central Asia.

Middle East

The Union will continue its efforts to help resolve the Middle East crisis, in particular through its participation in the quartet. It will continue to press for full implementation of the road-map.

The Council will continue to follow closely developments in Iran, in particularly in relation to Iran's nuclear programme, and its cooperation with the IAEA.

In the Gulf region, the Council attaches importance to concluding the negotiations on a Free Trade Agreement with the Gulf Cooperation Council in good time before the 16th Joint Council and ministerial meeting due to take place during the first half of 2006.

The Union will continue to work to strengthen its relationship with the government and people of Iraq with the aim of achieving the goal of security and stability, including through continuing political dialogue, and work on a possible contractual relationship.
Western Balkans

The Stabilization and Association Process (SAP) will remain the basic framework for the development of the EU's relations with the Western Balkans through to their future accession. In 2006, the Council will continue to follow closely political developments in each of the Western Balkan Countries in order to ensure continuing stabilisation in the region and full cooperation with ICTY by all countries concerned. Work will also focus both on the implementation of existing SA Agreements and the preparation of new Agreements.

The implementation and development of the Thessaloniki agenda will continue with specific regard to each country's progress, and, with particular attention to combating organized crime and corruption, promoting economic development, regional free-trade, energy and visa facilitation issues. Work will also continue on enhancing regional and cross-border cooperation with a view to strengthening the regional ownership in the regional initiatives such as the Stability Pact.

In light of the negotiations on the future status, the implementation of Kosovo's "Standards" will have to be closely monitored. The negotiation process is conducted under the authority of the United Nations Special Envoy in close consultation with the EU representative. In the course of this process, the EU has to define its heightened role following the status determination. Priority areas in which the EU could take over additional functions include policing and the rule of law.

Transatlantic relations

USA

Over the past EU-Presidencies the EU-US partnership has been subject to a substantial consolidation and enhancement, further utilizing the wide potential of creating a strategic and effective cooperation. It will be a key issue for the Austrian and Finnish Presidencies to pursue and intensify these efforts in order to further operationalise this partnership. The Union aims at a robust, action oriented, visible and timely EU-US cooperation.
The Union will ensure follow up of the June 2005 EU-US Summit declarations and continue to deepen the strategic dialogue with the US in a forward looking manner. It will especially focus on key issues of the bilateral and international agenda such as the implementation of the Economic Initiative, climate change, promoting democracy and stability, conflict resolution and good governance in – amongst others – Eastern and South Eastern Europe, the Middle East Peace Process, Weapons of Mass Destruction and counter terrorism. The EU-US Summit which is due to take place during the first half of 2006 will be an opportunity to bring forward this important agenda.

Canada

The **EU-Canada Summits** will provide an opportunity to continue and deepen the already excellent EU-Canada cooperation in important issues such as effective multilateralism and follow up of the UN Summit, the realization of the Millennium Development Goals, environmental and northern issues, including the arctic environment, climate change, international governance and cooperation with Africa. An important objective in 2006 will be striving to conclude the Canada-EU Trade and Investment Enhancement Agreement (TIEA).

Asia

The 7th ASEM Finance Ministers' Meeting in Austria in April 2006 and the 6th **ASEM summit** in Finland in the second half of 2006 should help reinforce political, economic, environmental and cultural cooperation within the framework of the Euro-Asian partnership.

A major objective of the Union will be to implement and strengthen its partnerships with China, India and Japan. Further action will be taken to advance the wide-ranging agenda for co-operation with China, including preparations towards a new EU-China framework agreement. The strategic partnership with India will be implemented on the basis of the EU-India political declaration and action plan adopted in 2005. The EU-Japan summit will be the main opportunity to promote the Union's relations with Japan across a range of areas.
The Union will also continue to offer its support to Asian countries dealing with political, economic and humanitarian challenges. In this respect, continued co-operation and dialogue with and within multilateral bodies such as ASEM, ASEAN, ARF and SAARC will be a particular priority.

**Latin America and the Caribbean**

The Union will continue to strengthen and deepen its strategic partnership with this region. The EU-LAC-summit will take place in Vienna in May 2006. It is foreseen that **a number of multilateral political and social issues, questions of development as well as bi-regional cooperation** will be focus of the Summit discussions.

Every effort will be made to take forward, and possibly conclude, negotiations between the EU and MERCOSUR on an Association Agreement. The Council is also expected to decide whether to open negotiations with the Andean Community and Central America on Association Agreements.

During 2006 the Union will continue negotiations with the Caribbean Members of the ACP-countries on Economic Partnership Agreements, with a view to ensuring their early and successful conclusion.

**Africa**

The two Presidencies will cooperate closely with the African Union and regional organisations to ensure a better structured and deepened EU/African dialogue, taking into account the wish to have an EU/AU summit as soon as possible. Special attention will be given to effective crisis management in Africa, assisted by the EU. They will work towards strengthening the Africa Peace Facility with substantial, long-term, flexible, sustainable funding and will also promote the implementation of the Action Plan for ESDP Support to Peace and Security in Africa. The Presidencies will work towards the implementation of the EU Africa Strategy, adopted by the European Council in December 2005, and will monitor the implementation of the EU commitments in the context of the Millennium Declaration Review, as well as take forward the UK Presidency initiatives on Africa.
The Presidencies will monitor the implementation of the EU commitments in the context of the Millennium Declaration Review, as well as take forward the UK Presidency initiatives on Africa.

The Union will continue its negotiations with the African Members of the ACP-countries on Economic Partnership Agreements.

15. HUMAN RIGHTS

The Union will continue and reinforce its efforts to protect and promote human rights and fundamental freedoms. The two Presidencies will in particular work to improve the coherence and consistency of the EU's human rights policy in its internal matters as well as in external affairs.

Mainstreaming human rights

A high priority will be attached to mainstreaming human rights into the EU's external policy. Particular attention will be paid to the EU's human rights dialogues and consultations with China, Iran and Russia as well as to the implementation of EU guidelines in the field of human rights (on human rights defenders, death penalty, torture and children and armed conflict). The EU will promote human rights through multilateral fora, whereby a main focus will be the implementation of the decisions by the High Plenary Meeting of the General Assembly on the establishment of a Human Rights Council to replace the Commission on Human Rights.

EU Fundamental Rights Agency

The Council is expected to conclude negotiations on the Commission proposal for extending the mandate of the existing European Monitoring Centre on Racism and Xenophobia in Vienna into a European Fundamental Rights Agency. The Agency, which will play a major role in enhancing the coherence and consistency of the EU human rights policy, should become operational on 1 January 2007.
Data Protection

A Commission Communication concerning the evaluation of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (data protection directive) will be discussed.
### HAGUE WORK PROGRAMME 2005 - 2006
#### CIVIL JUDICIAL CO-OPERATION

<table>
<thead>
<tr>
<th>Subject</th>
<th>Devolved/Reserved</th>
<th>SEJD Lead</th>
<th>Priority</th>
<th>Current Position</th>
<th>Anticipated Completion</th>
<th>Means of Implementation</th>
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<tbody>
<tr>
<td><strong>Green Paper on wills and successions</strong></td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>This is a very complex area which has already been the subject of unsuccessful attempts at worldwide regulation. An EU solution would be difficult to arrive at but would add value. SE has consulted with external stakeholders and is currently feeding SE perspective into UK Government response due for submission in early 2006.</td>
<td>Proposal not expected until 2006/7.</td>
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<tr>
<td>Green Paper on conflict of laws and jurisdiction on divorce matters (Rome III)</td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>SE took views from key stakeholders and worked closely with DCA colleagues to ensure its views were accommodated in the UK Government response which was submitted to Commission on 14 November 2005. Commission held an expert’s meeting in Brussels on 6 December, which Executive official attended.</td>
<td>Proposal not expected until 2006/7.</td>
<td></td>
</tr>
<tr>
<td>Proposal to establish an EU Fundamental Rights Agency</td>
<td>Reserved</td>
<td>Civil Law Division</td>
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This paper discusses the possibility of common European rules regulating which country’s law would apply to an international divorce. It also discusses rationalisation of the EU’s jurisdictional rules, and the possibility of transferring cases between Member State courts.

The Agency’s main function should be to gather information and advice on good practice. It would replace, but have a wider focus than the existing European Monitoring Centre on Racism and Xenophobia.
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<tbody>
<tr>
<td>Proposal on small claims</td>
<td>Devolved</td>
<td>Civil Justice</td>
<td></td>
<td>The Working Group is considering a revised text dated 20 December 2005. A further opinion on the legal basis of the regulation is awaited from the Council Secretariat Legal Service. Discussion on issue of cross border is continuing but currently looking to use the Payment Order definition. The EP is expected to vote on its draft report on this dossier at the April Plenary session.</td>
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<tr>
<td>Adoption of Rome II proposal on conflicts of laws regarding non-contractual obligations</td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>The Austrian Presidency is seeking broad agreement on some elements of this dossier at the February Council, and will try to obtain a common Council position on the whole dossier in April. There will then be a period of negotiation with the European Parliament under the Finnish Presidency, resulting from the co-decision procedure.</td>
<td>Late 2006.</td>
<td>Implementation date likely to be late 2007/2008 approx. Will require amendments to the Private International Law (Miscellaneous Provisions) Act 1995, probably to be done by SSI under the European Communities Act 1972.</td>
</tr>
<tr>
<td>Adoption of the Payment Order Regulation</td>
<td>Devolved</td>
<td>Civil Justice</td>
<td></td>
<td>The JHA Council on 1 and 2 December 2005 noted that there was general agreement on the text of the draft regulation subject to the EP’s opinion. The EP gave its opinion on 13 December agreeing with the Council but proposed a number of amendments to the draft regulation including a definition of “Cross Border”. On 8 February the Commission submitted an amended proposal to take account of these amendments and proposed a definition of cross border that differed from the</td>
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<tr>
<td>Adoption of Directive on Alternative Dispute Resolution - Mediation</td>
<td>Devolved</td>
<td>Civil Justice</td>
<td></td>
<td>Scope of the proposed Directive on Mediation considered by the EU Civil Law Committee throughout 2005. Agreement still to be reached regarding its application to internal as well as cross-border disputes. The Committee on Legal Affairs met on 31 January 2006 to discuss the Directive. The Rapporteur Angela McCarthy stated that whilst most members were in favour of mediation, the majority remained unconvinced that the framework being proposed by the Commission was the</td>
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<tr>
<td>Green paper on property consequences of matrimonial relations and partnerships.</td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>correct one. The responses to the Parliament’s consultation on the Directive were being evaluated and the Rapporteur intended to establish an informal hearing (perhaps in April). This was intended to enable MEPs to hear arguments for and against and select those parts of the Directive which could be most useful and where progress could be made.</td>
<td>Proposal expected probably 2007.</td>
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<tr>
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<tr>
<td>Green Paper on minimum standards for some aspects of procedural law.</td>
<td>Devolved</td>
<td></td>
<td>N/A</td>
<td></td>
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<tr>
<td>Evaluation of the possibility of the suppression of exequatur and legislative proposals as appropriate.</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>N/A</td>
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</table>

The Commission would in the long term like to see all civil law decisions from any MS being automatically recognised and enforced in all other MS. The evaluation will look at the progress already made and the prospects for achieving that ultimate goal.
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<tbody>
<tr>
<td>Establishment of a specific Programme on Judicial Co-operation in civil and commercial matters.</td>
<td>Devolved</td>
<td>Private International Law</td>
<td></td>
<td>A first reading has been completed by the General Questions Working Group and a revised text was prepared by the outgoing UK and incoming Austrian Presidencies. A further set of revisions is under preparation following the most recent discussions in working group.</td>
<td>Agreement will be required by end 2006</td>
<td>For the Commission.</td>
</tr>
<tr>
<td>Proposal on conflicts of laws regarding contractual obligations (Rome I).</td>
<td>Devolved</td>
<td>Private International Law</td>
<td>Commission proposal for a Regulation issued 15 December 2005</td>
<td>Completion probably late 2007/2008. There will probably be only one working group meeting under the Austrian</td>
<td>Implementation date maybe late 2008/2009 May require amendments to the Contracts (Applicable Law) Act 1990 (by SSI under the European</td>
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The Finns are likely to prioritise finishing Rome II. Progress with Rome I may depend on how long that takes.

Communities Act 1972).
## HAGUE WORK PROGRAMME 2005 - 2006

**CRIMINAL JUDICIAL CO-OPERATION AND POLICING**

<table>
<thead>
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<th>Subject</th>
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<tbody>
<tr>
<td><strong>PURSUING THE IMPLEMENTATION OF THE MUTUAL RECOGNITION PRINCIPLE</strong></td>
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</tr>
<tr>
<td>Council Decision on Exchange of Information on Criminal Records</td>
<td>Devolved</td>
<td>Elizabeth Sadler and James Laing, Police Division</td>
<td>High</td>
<td>Published 13/10/2004, COM(2004) 664 final. Working group negotiations are now complete.</td>
<td>Formally adopted 21 November 2005 (CD 2005/876/JHA)</td>
<td>Implementation will have to take place within 6 months of adoption. Key issue is that of central authorities.</td>
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</tbody>
</table>

Prepared by Scottish Executive Justice Department
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<thead>
<tr>
<th>Subject</th>
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<th>Anticipated Completion</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Framework Decision on Mutual Recognition of confiscation orders</td>
<td>Devolved</td>
<td>Alison Douglas, Criminal Justice Division.</td>
<td>Moderate</td>
<td>Published in November 2000. Working group negotiations are now complete.</td>
<td>Awaiting formal adoption.</td>
<td></td>
</tr>
<tr>
<td>Framework Decision on the European Evidence Warrant</td>
<td>Devolved</td>
<td>Danny Jamieson, Criminal Procedure Division.</td>
<td>High</td>
<td>Published 14/11/2003, COM(2003) 688 final. Working group negotiations commenced July 2004 and are ongoing.</td>
<td>No general approach has yet been achieved. It is hoped that this will happen during the Austrian Presidency, with formal adoption at some point in 2006.</td>
<td>Implementation would be required some 2 years after adoption, therefore, probably at some point in 2008.</td>
</tr>
<tr>
<td>Communication on mutual recognition of decisions in criminal matters and reinforcement of mutual trust between Member States</td>
<td>Devolved</td>
<td>Danny Jamieson, Criminal Procedure Division.</td>
<td>Moderate</td>
<td>Published 19/5/2005, COM (2005) 195 final.</td>
<td>No implementation needed as this is a discussion paper.</td>
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<td>Subject</td>
<td>Devolved/Reserved</td>
<td>SEJD Lead</td>
<td>Priority</td>
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<td>White Paper on the exchanges of information on convictions and the effect of such convictions in the EU</td>
<td>Devolved</td>
<td>Danny Jamieson, James Laing, Elizabeth Sadler, Criminal Procedure Division</td>
<td>High</td>
<td>Published 25/1/2005 COM (2005) 10 final.</td>
<td>No implementation needed as such – but new proposals will emerge from the White Paper which will require attention in due course</td>
<td></td>
</tr>
<tr>
<td>Proposal on the transmission to and keeping by the Member State of nationality of information on criminal convictions</td>
<td>Devolved</td>
<td>Elizabeth Sadler and James Laing, Police Division</td>
<td>Moderate</td>
<td>Published as a draft FD by the Commission on 12/1/2006 as COM(2005)690 final/2.</td>
<td>Depends on details of proposal and the extent to which working group negotiations required. Possibly 2006/7</td>
<td>Depends on introduction and progress in the working group and on final adoption. Unlikely to be before 2008/9.</td>
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<tr>
<td>Subject</td>
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<td>Communication on the creation of an index on non EU nationals convicted in a EU Member State</td>
<td>Devolved</td>
<td>Elizabeth Sadler, James Laing (Danny Jamieson), Police Division</td>
<td>Moderate</td>
<td>Not yet published – possibly at some point in 2006.</td>
<td>Depends on the details of the proposal and the extent to which working group negotiations required. Possibly 2006/7.</td>
<td>Depends on the nature of the proposal and the extent to which national implementing measures, if any, are required. Unlikely to be before 2008/9.</td>
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<td>Subject</td>
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<tr>
<td>Communication on disqualification</td>
<td>Devolved</td>
<td>Danny Jamieson, Criminal Procedure Division</td>
<td>Moderate</td>
<td>Not yet published. Possibly before the end of 2005.</td>
<td></td>
<td>None required at this stage – expected to be a summary of anticipated difficulties and possible ways ahead. But may lead to future proposals.</td>
</tr>
<tr>
<td>Report on the implementation of the Framework Decision on the European arrest warrant and the surrender procedure between Member States</td>
<td>Reserved</td>
<td>Lorna Harris, Crown Office</td>
<td>Low</td>
<td>Published May 2005</td>
<td></td>
<td>None required for the UK. UK implemented the FD in January 2004.</td>
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<td>Subject</td>
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<td>Framework Decision on attacks against information systems.</td>
<td>Devolved elements</td>
<td>Hugh Dignon, CJD</td>
<td>High</td>
<td>Adopted as FD 2005/222/JHA on 24 February 2005. However, the Commission are now calling into question the legal base.</td>
<td></td>
<td>Planned inclusion in HO justice Bill to be introduced in 2006, with devolved element to be subject to Sewel procedure.</td>
</tr>
<tr>
<td>Framework Decision on Minimum Standards in Criminal Proceedings</td>
<td>Devolved</td>
<td>Fergus McNeil, Criminal Procedure Division</td>
<td>High</td>
<td>Published in 2004, document COM (2004) 328 final, 2004/0113 (CNS)</td>
<td>First appeared in the working group in September 2004. Variable progress since, with the initial plan of arriving at a general approach by end 2005 not met.</td>
<td>Depends on future progress in the working group. If a general approach and adoption is achieved before end 2006, then the back stop for implementation would be before end 2008.</td>
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<td>Framework Decision and Directive on intellectual property offences</td>
<td>Thought to be mainly reserved.</td>
<td>Greg Allen, ETLLD</td>
<td>Medium</td>
<td>Published as combined package COM (2005) 276 final, on 12/7/05. However, the Commission is now challenging the legal base and will probably table a replacement draft Directive.</td>
<td>Entered the working group in October 2005.</td>
<td>Depends on progress in the working group and complications of negotiating a Directive and FD at the same time under different legal bases. However, this may change as a result of Commission’s challenge.</td>
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<tr>
<td>Green Paper on presumption of innocence</td>
<td>Devolved</td>
<td></td>
<td>Medium/Low</td>
<td>Advertised publication date was 2005. (However, UK has expressed doubts over EU competency in light of failure to agree constitution.)</td>
<td>Deadline for responses will be set by the Commission on publication.</td>
<td>No implementation as such but the GP may lead to further proposals.</td>
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<td>Second Report on the implementation of the framework decision on the standing of victims in criminal proceedings</td>
<td>Devolved</td>
<td>Bill Moore, Victims and Witnesses Unit</td>
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<td>Third Report on the Framework Decision on the standing of victims in criminal proceedings</td>
<td>Devolved</td>
<td>Bill Moore, Victims and Witnesses Unit</td>
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<tr>
<td>Green Paper on taking and handling of evidence</td>
<td>Devolved</td>
<td></td>
<td>Medium/ Low</td>
<td>Advertised publication date is 2006. (However, UK has expressed doubts over EU competency in light of failure to agree constitution.)</td>
<td>Deadline for responses will be set by the Commission on publication</td>
<td>No implementation as such but the GP may lead to further proposals.</td>
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<tr>
<td>Green Paper on default in absentia judgements</td>
<td>Devolved</td>
<td></td>
<td>Medium/ Low</td>
<td>Advertised publication date is 2006.</td>
<td>Deadline for responses will be set by the Commission on publication</td>
<td>No implementation as such but the GP may lead to further proposals.</td>
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<td><strong>POLICE</strong></td>
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<td>FRAMEWORK PROGRAMME “SECURITY AND SAFEGUARDING LIBERTIES” UNDER THE NEW FINANCIAL PERSPECTIVES</td>
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<td>Proposal on the retention of data processed in connection with the provision of public electronic communication services for the detection, investigation and prosecution of criminal offences.</td>
<td>Reserved</td>
<td>EU JHA Team and Police and Community Safety Group</td>
<td>High – part of the EU’s Counter-Terrorism agenda</td>
<td>This will now be taken forward as a Directive and was discussed at the final Council of the UK Presidency on 1-2 December 2005. First reading at European Parliament expected by end of 2005.</td>
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<tr>
<td>Draft Framework Decision on the establishment of a principle of availability of law enforcement relevant information. The draft FD sets out how law enforcement agencies with equivalent competencies should have access to databases held in other Member States.</td>
<td>Devolved</td>
<td>Police and Community Safety Group and EU JHA Team</td>
<td>High – part of the EU’s Counter-Terrorism agenda</td>
<td>Commission adopted Framework Decision in October 2005. Will be discussed in Multi-Disciplinary Working Group.</td>
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<td>Subject</td>
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<tr>
<td>Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters provided for by Title IV of the TEU. This draft FD aims to improve police and judicial co-operation in criminal matters, in particular regarding the presenting and combating of terrorism, between Member States of the EU and at the strict observance of key conditions in the area of data protection. It is closely related to the Principle of Availability in police and judicial co-operation, which will govern information exchanges in the EU. This FD will establish European Law in the area of data protection in judicial and police matters for the first time. Although it is based on the Data Protection Directive, the Data Protection Act 1998 will have to be reviewed to ensure it is compliant.</td>
<td>Reserved</td>
<td>EU JHA Team and Police and Community Safety Group</td>
<td>High.</td>
<td>Commission proposal adopted on 4 October 2005. Yet to be discussed in Working Group will be taken forward by the Austrian Presidency.</td>
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<tr>
<td>Proposal concerning a common EU approach to the use of passengers data for border and aviation security and other law enforcement purposes</td>
<td>Reserved</td>
<td>None – Home Office and Department of Transport lead</td>
<td></td>
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**Justice 1 Committee**

**Petition PE841, by Curran family**

Note by the Clerk

**Background**

1. Petition PE841 calls for the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless drivers.

2. Since it was lodged on 21 April 2005, the Public Petitions Committee (PPC) has considered the petition on a number of occasions. During its investigation, the PPC received correspondence from the Minister for Justice, the Lord Advocate, the Scottish Law Commission and the Royal Society for the Prevention of Accidents. At its meeting on 21 December 2005, the PPC agreed to refer the petition to the Justice 1 Committee.

**Current practice under the 1976 Act**

3. In Scotland, under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, a Fatal Accident Inquiry (FAI) may be held to determine the cause of a fatality. An FAI must be held if a death occurred in the course of employment or whilst the deceased was in custody. In addition, the Lord Advocate may instruct that a discretionary FAI be held where the circumstances of the death give rise to issues of public safety or serious public concern, or where there is suspicion that a system or procedure contributed to the death.¹

4. The purpose of an FAI is to ascertain the circumstances surrounding a death including the cause of death, whether any reasonable precautions could have been taken to avoid the death and if any defects in any system of working contributed to the death.²

**Consideration of PE841 by the Public Petitions Committee**

Correspondence from Minister for Justice – Annexe A

5. In a letter of 14 July 2005, the Minister for Justice stated that, in her view, “the flexibility of the current law, which allows a Fatal Accident Inquiry (FAI) to be held where the circumstances warrant it, is very valuable and I do not consider that any change is required”.

6. The Minister also made reference to a Department for Transport report, Dangerous Driving and the Law, which refers to the situation in England and Wales, where a coroner’s inquest is held following every death on the road.³

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¹ Section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.
² Section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.
³ Department for Transport, Dangerous Driving and the Law (No. 26), 7 February 2002, see: http://www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/page/dft_rdsafety_504603.hcsp
That report states that a coroner’s inquest is not designed to apportion criminal liability and that, if criminal proceedings have taken place, the finding of the inquest as to the cause of death must not be inconsistent with the outcome of the relevant criminal proceedings. The report indicates that the expectations of the bereaved were not always met by such an inquest – some relatives who felt that the proper conviction had not taken place in court, held out great hopes that the truth of the case would emerge at the inquest. The Minister states that she cannot see a case for following an English model which has caused such difficulties.

7. The Minister reiterated this view in a subsequent letter of 3 November 2005 and noted that it is important that the system of FAIs retains its primary public interest focus and is not seen as a means for providing justice in the sense of legal redress. The Minister continued, as an FAI is a fact-finding process in which the sheriff has no power to apportion blame, the expansion of the category of cases where an FAI is mandatory would not change that situation and that the proper mechanism for justice in the sense of legal redress would be for a civil action for damages against the person who caused the death.

8. In both letters, the Minister also expressed the view that the system of FAIs is consistent with ECHR and the Executive considers that it is within the margin of appreciation for States not to have to hold a public inquiry in the case of each and every road death.

Correspondence from Lord Advocate – Annexe B

9. In a letter of 14 July 2005, the Lord Advocate echoed the view stated in the Minister for Justice’s letter of the same date and said that he is not persuaded that a case for changing the system of FAIs has been made out.

10. Given that the purpose of an FAI is to acknowledge and address serious issues of general public concern, the Lord Advocate stated that an FAI may be instructed where there are concerns that the road layout or signage on the road contributed to a fatality. However, he said that where the accident resulted from a driver’s lapse of attention it is difficult to see what wider lessons may be learned from an FAI.

11. In a further letter of 4 November 2005, the Lord Advocate refers to his office’s liaison with bereaved families, which has reflected that different families have different expectations and some do not want the circumstances of a death aired in a court. As such, the Lord Advocate argues, the introduction of mandatory inquiries would not, by definition, allow for the same recognition to be given to the needs and wishes of bereaved relatives.

Correspondence from Curran family – Annexe C

12. Upon receiving initial correspondence from the Minister for Justice and the Lord Advocate (as above), the PPC asked the petitioners to respond with their views. One of the primary concerns of the petitioners appears to be that where a fatality occurs as a result of a road traffic accident the law should reflect recognition of this fact.
13. The purpose of an FAI is not to recognise a person’s death or a family’s loss in any way, but to determine the circumstances of the death. It is, therefore, unclear how making FAIs mandatory would address this particular concern of the petitioners.

**UK Road Safety Bill**

14. The UK Government is currently considering the Road Safety Bill, which, amongst other provisions, introduces a new offence of death by careless or inconsiderate driving, with a maximum penalty of up to five years imprisonment. Road traffic law is a reserved matter and so the Bill will apply to Scotland as well as England and Wales.\(^4\)

15. Both the Minister and the Lord Advocate suggested in their letters that this new offence of causing death by careless or inconsiderate driving, is likely to go some way towards addressing the concerns outlined in the petition. If the Bill is passed, the new offence will allow the apportioning of blame where appropriate and the recognition of the victim and of the family’s loss in a way that FAIs cannot.

16. The Bill passed its third reading in the House of Lords on 10 January 2006 and is expected to be considered in the House of Commons in due course.

**Recommendation**

17. In light of the detailed investigation conducted by the Public Petitions Committee it appears that the purpose of FAIs – to ascertain the circumstances surrounding a death and not to apportion blame or to recognise the victim in legal terms – would not necessarily satisfy the concerns of the petitioners. It does, in fact, appear that the Road Safety Bill and its new offence of careless or inconsiderate driving would appear to be a much more appropriate means to providing for what is sought by the petitioners.

18. Also, the view put forward by the Minister for Justice and the Lord Advocate in correspondence, that the flexibility allowed by the current law, which provides for an FAI to be held where the circumstances warrant it is desirable. This argument is particularly compelling when compared to the system of coroner’s inquests in England and Wales.

19. On this basis, it is recommended that the Committee close its consideration of the petition and that no further action is taken.

20. The Committee is invited to consider its position on the matter.

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\(^4\) Clause 20 of the Road safety Bill [HL] as brought forward from the House of Lords on 11 January 2006 [Bill 113].
Dear Michael,

Thank you for your letter of 24 May in which you sought comments on issues raised in Petition PE 841, submitted by the Curran family, which calls for the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless drivers.

May I take this opportunity to join your Committee in expressing my sympathies to the Curran family for the loss of Gillian. I can readily understand the distress and pain felt by the family of someone who has been killed in a fatal accident of any kind.

As Pat Curran explained to your Committee on 11 May, the purpose of a Fatal Accident Inquiry is not to apportion blame, under either the criminal or civil law, but rather to determine where and when the death took place, the cause of the death, reasonable precautions whereby the death might have been avoided, the defects, if any, in any system of working which contributed to the death or any accident resulting in the death and any other relevant facts relevant to the circumstances of the death. While I fully understand the desire of some bereaved families to have public recognition of the death of their loved one, I am not persuaded that a change in the law such as the Curran family proposes is appropriate, or that it would always be helpful to families in coming to terms with their loss.

All cases of deaths in road accidents are investigated by the police and reported to the Procurator Fiscal. In some cases criminal proceedings will be appropriate. Whether there are criminal proceedings or not, there may be circumstances which warrant the instruction of an FAI, but in many cases the police investigation will be sufficient to ascertain all the circumstances and causes of the incident and the death. Often, any precautions which might have been taken to prevent the incident happening will be particular to the individuals involved, and will not raise any broader issues of public concern which might benefit from being examined in a public inquiry.
In England and Wales there is a coroner's inquest following every death on the road. A recent Department of Transport report ("Dangerous Driving and the law (No 26)", paragraph 4.7) has, however, found that the process often gave little comfort to families and can give rise to expectations which cannot be fulfilled. I cannot see a case for following an English model which has caused those difficulties.

In my view the flexibility of the current law, which allows an FAI to be held where the circumstances warrant it, is very valuable and I do not consider that any change is required.

In relation to the European Convention on Human Rights, the Executive is satisfied that the Road Traffic Act, the Fatal Accident Inquiry regime, and the criminal law more generally, set out an adequate provision, within the meaning of ECHR jurisprudence, for the investigation of deaths in road accidents, and criminal prosecution, where appropriate, in relation to such deaths. In particular, we do not consider that there is any breach of the requirement under Article 13 for an effective remedy in respect of violation of rights under the Convention.

I hope this is helpful.

Bev L I n s e r

CATHY JAMIESON
Dear Michael

Thank you for your letter of 22 September in which you sought further comments on issues raised in Petition PE 841, submitted by the Curran family, which calls for the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless drivers.

Recognition of the victim

You commented that the Committee did not feel that my last letter adequately addressed a key aspect of the petition, namely the recognition of the victim in the case of road traffic accidents. Before responding to this point in the context of fatal accident inquiries, I would draw the Committee’s attention to a recent development which I feel has particular relevance to this petition.

Although the petition requests a change in the law governing fatal accident inquiries, I think it is clear from what the Curran family said when they appeared before the Committee in May that much of their concern was about the criminal law relating to road traffic offences. Mr Pat Curran in his opening remarks to the Committee very movingly described the family’s feelings and their view that a criminal prosecution for careless driving, in a case where there is a fatality such his daughter’s, does not provide adequate public recognition of the person’s death and the family’s loss. It seems to me that it is concern about the criminal law rather than the system of fatal accident inquiries that lies at the heart of the petition.

The Committee will therefore be interested to learn, if it is not already aware, that the UK Government has recently announced its intention to lay amendments to the Road Safety Bill, currently being considered by the Westminster Parliament, aimed precisely at addressing similar concerns. I understand that the measures proposed would introduce a new offence of causing death
by careless driving in Scotland, England and Wales, with a penalty of up to five years imprisonment. Scottish Ministers have welcomed the proposals, and I hope that the Committee will feel that they go a considerable way towards meeting the real concerns of the petitioners.

Turning to the question of recognition of the victim in the context of fatal accident inquiries, the Committee will recall that in my letter of 14 July I explained that the purpose of a fatal accident inquiry is to determine where and when the death took place, the cause of death, reasonable precautions whereby the death might have been avoided, the defects, if any, in any system of working which contributed to the death or any accident resulting in the death and any other relevant facts relevant to the circumstances of the death.

An FAI is of course an investigation into the circumstances of the death of an individual or individuals, and in that sense I can understand that the bereaved family may see it as a public recognition of the death of their loved one. I can also understand that in the absence of a criminal prosecution, or in a case where the family feel that the offence charged does not adequately recognise their loss, the family may look to another mechanism, such as a fatal accident inquiry, to fulfil that purpose. However, while in some circumstances the holding of an FAI may help to provide the recognition that the family seek, that is not its primary purpose.

The primary purpose of an FAI is a public interest one – that of investigating in the public interest whether there are steps which could have been taken to prevent the death and whether there are lessons to be learned for the future. As the Committee is aware, the legislation currently provides for mandatory FAIs for deaths at work or where the person was in custody. The rationale for this is again the clear public interest in examining in a public forum any circumstances where someone has died while in the care or under the control of someone else, namely the person’s employer or the State, and identifying changes in practice or procedure that would prevent similar deaths in the future. While there may be situations where the circumstances of a road death are such as to give rise to issues of public concern that merit being investigated at an FAI, these will be in the minority, and it is of course already open to the Lord Advocate to instruct an FAI in such cases.

In my view it is important that the system of FAIs retains this primary public interest focus. To amend the law to provide for a mandatory FAI in the case of every road death caused by careless driving would run the risk of introducing uncertainty about the purpose of the inquiry and raising expectations which would not be fulfilled. Mr Campbell Martin MSP, at the Committee’s meeting on 8 September, commented that families “need an FAI to get justice”. An FAI is a fact-finding process in which the sheriff has no power to apportion blame, under either the civil or criminal law. The expansion of the category of cases where an FAI is mandatory would not change that situation and so would not provide justice in the sense of legal redress. The proper mechanism for justice in that sense would be a civil action for damages against the person who caused the death.

European Convention on Human Rights

You also invited me to expand on my view that there is no breach of the requirement under Article 13 of the European Convention on Human Rights for an effective remedy in respect of a violation of rights under the Convention.

In my previous response to you I indicated that the Executive was satisfied that the Road Traffic Acts, the Fatal Accident Inquiry regime, and the criminal law more generally, set out an adequate provision, within the meaning of ECHR jurisprudence, for the investigation of deaths in road accidents, and criminal prosecution, where appropriate, in relation to such deaths. I confirmed that the Executive did not consider that there was any breach of the requirement under Article 13 for an
effective remedy in respect of violation of rights under the Convention. You have asked what evidence I have for reaching that conclusion.

The conclusion was based on a legal analysis of the provisions of the Convention and the relevant case law. The claim that a failure to hold a mandatory FAI in the case of road deaths breaches the Convention seems to be based on a reading of Article 2\(^1\) (obligation of State to protect life by law) together with Article 13\(^2\) (right to remedy). The jurisprudence in this area is extremely complex, but it is generally agreed that Article 2 places on States a duty to make adequate provision in their law for the protection of human life. At the very least this requires that there must be criminal sanctions for endangering and taking life, but it is otherwise left broadly to a State’s discretion how this obligation is implemented. We do of course have criminal sanctions for the endangering and taking life and the FAI system provides a mechanism for holding public inquiries where the circumstances of a particular death may give rise public concern. The Executive considers that it is within the margin of appreciation for States not to have to hold a public inquiry in the case of each and every road death.

The reference which was made at the Committee’s meeting on 11 May 2005 to the case of Kurt v. Turkey was misleading. This is because that case deals with a separate duty on States, which also arises from Article 2. This is a duty to hold thorough and effective investigations capable of leading to the identification and punishment of those responsible wherever an individual dies in suspicious circumstances and there is some suggestion of agents of the State having been involved. In the circumstances we are discussing there is absolutely no suggestion of an agent of the State having been involved and accordingly this duty, and ECHR jurisprudence relating to it, do not apply in the present context.

We consider that as a general principle the framework of the Road Traffic Acts, the Fatal Accident Inquiry regime and criminal law also fulfils the ‘effectiveness’ requirement of Article 13 i.e. we have a police force which will investigate deaths and, if appropriate, will report to the Procurator Fiscal who will consider whether a prosecution or fatal accident inquiry is merited. Article 13 also requires that individuals have some way of challenging an alleged breach of their ECHR rights, and the Human Rights Act 1998 (section 7) provides this. Judicial review proceedings would also be option.

I hope this explanation is helpful.

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\(^1\) Article 2(1) states: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

\(^2\) Article 13 states: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”
Michael McMahon MSP  
Convener  
Public Petitions Committee  
The Scottish Parliament  
EDINBURGH EH99 1SP

Dear Michael,

Thank you for your letter of 24th May in which you sought my comments on the issues raised by Petition PE 841, which was submitted by the Curran family and which calls for the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless drivers.

First, I would like to take this opportunity to join your Committee in extending my condolences to the Curran family for their loss. My staff have already had contact with Mr and Mrs Curran about their concerns regarding information provided to them in the course of the investigation and during the criminal proceedings that followed. The family has also met with the Procurator Fiscal at Hamilton to discuss their concerns.

Secondly I believe that it is important to recognise and understand the role of the Procurator Fiscal in Scotland. Unlike England and Wales and many other Commonwealth and Common Law countries the Procurator Fiscal is not just a prosecutor but is responsible for the investigation of sudden deaths, whether these deaths arise from criminal conduct or not. Moreover the Procurator Fiscal, unlike prosecutors in many other jurisdictions, directs the police in the conduct of investigations and have an investigative function of their own. Our equivalent of the Coroner’s role is that performed by the Procurator Fiscal acting independently as they are obliged to do, in the public interest.

Accordingly comparisons with the situation in England and Wales are I think unhelpful. I note, however, Cathy Jamieson’s comments regarding the Department of Transport’s report that the process in England and Wales in such situations often gave families little comfort.

I should note too that in Scotland, even where FAI’s have been held, many families still feel aggrieved that the process has in some way “let them down.”

INVESTOR IN PEOPLE  
The Scottish Executive
Thirdly, I agree that communication between the Procurator Fiscal and the next of kin is vital. It is important that next of kin understand the process, are given information about how the process will work in their case and when stages can expect to be reached. It is also important that they are given an explanation following the investigation of how the death occurred, so far as that is ascertainable. Finally their views will be sought as to whether or not there should be an FAI. Such views are important but are not decisive factors in determining whether or not it is in the public interest to hold an FAI where one is discretionary and not mandatory.

I acknowledge that COPFS has not always been as good at communication with next of kin as it should have been but that this a changing fast. The introduction of VIA is just one part of these changes.

With these preliminary remarks I now turn to some of the specifics raised in your letter.

**Guidance and Training for Staff on Communicating with Next-of-Kin**

We are always keen to ensure that guidelines are adequately implemented by Procurators Fiscal and supported with appropriate training. The guidelines that deal with the investigation of deaths have recently been extensively reviewed and a revised version is in preparation to be implemented later this year. Similarly, the guidelines that deal with victims, bereaved relatives and witnesses more generally is currently under revision to ensure that all prosecutors continue to respond sensitively to the needs of victims and witnesses. The revised guidelines build on existing guidance and highlight what is currently considered best practice in communicating with bereaved relatives and victims, setting out explicitly the role and responsibilities of relevant staff, including our specialist Victim Information and Advice (VIA) staff. An enhanced training programme for relevant staff on death investigations has been developed which places emphasis on effective communication with next-of-kin.

As I indicated, best practice strongly underlines the need to communicate with bereaved families at every stage in the process, particularly at the time that decisions are being taken as to whether there should be proceedings and, if so, the nature of and forum for any proceedings. However, there are circumstances where that is not appropriate, for example, where the relative is a suspect in relation to the death.

In this case the Procurator Fiscal accepted, in her meeting with Mr and Mrs Curran, that communication was not what it should have been. She recognised that the family ought to have been informed of the outcome of the investigation at an earlier stage. She acknowledged that her staff should have met the family to discuss the circumstances of the case. While this would not have affected the decision taken in relation to the charge, it would have assisted the family in understanding the reasons for that decision. The Procurator Fiscal has taken action to ensure that the appropriate lessons are learned from the case.
The Role of the Victim Information and Advice Service

You ask whether the Victim Information and Advice Service (VIA) provided by COPFS has any remit in cases such as the petitioner's where the victim is not recognised by the legal proceedings. I presume you are referring to the role that our VIA services play in those cases where a person is prosecuted for a contravention of section 3 of the Road Traffic Act arising from an incident in which a person has died. In such cases the court cannot take into account the consequences in determining culpability or sentence.

In any case where a death results from a road traffic incident, the Procurator Fiscal makes initial contact. VIA staff will also write to the bereaved relatives at the outset of the investigation, enclosing appropriate information leaflets and will continue to communicate regularly with relatives, even where there have been no developments. In addition to written and telephone communication, VIA staff may meet with families, either along with the Procurator Fiscal or alone.

The Number of FAIs

In your letter you sought information on the number of discretionary FAIs held following fatal road accidents in 2002. I regret that it is not possible from the information we hold to provide such a breakdown. I can advise, however, that in 2004-05, there were 77 FAI's of which 54 were mandatory and 23 discretionary. Nine of the mandatory and 1 of the discretionary FAI's held in the course of that year related to road traffic accidents.

The Recognition of Victims

You have sought my views on the general issues raised by the petition and more particularly on the recognition of victims in such cases. I think it important to recognise that “careless driving” does not accurately reflect the full range of those circumstances that might fall within a contravention of section 3 of the Road Traffic Act. That offence is more correctly described as “driving without due care and attention and without reasonable consideration for other road users”. As you know, road traffic law is a reserved matter and it would not be appropriate for me to comment. However you may also be aware that the Department for Transport has been engaged in a consultation exercise on the review of road traffic offences involving bad driving. That consultation paper set out a range of proposals, including the creation of a new offence of causing death by careless driving, with a maximum penalty of five years’ imprisonment and a requirement for courts to take serious injuries into account when sentencing. The consultation closed on 6 May 2005 and I understand that colleagues in Westminster are now considering the way forward in light of comments received.
The Extension of the Mandatory FAI Categories

It might be helpful for me to explain what the current system is designed to achieve. The purpose of an FAI is to inquire into and for the Sheriff to make finding as to:

- where and when the death and any accident resulting in the death took place;
- the cause or causes of such death and any accident resulting in the death;
- the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided;
- the defects, if any, in any system of working which contributed to the death or any accident resulting in the death; and
- any other facts which are relevant to the circumstances of the death.

The scope and purpose of FAIs are properly limited given that one of their key functions is to acknowledge and address serious issues of general public concern that arise from a death. Steps can then be taken to prevent any recurrence, drawing on the recommendations of the Sheriff presiding over the FAI. In many cases, however, the investigation of a death by the Procurator Fiscal will be sufficient in itself to ascertain all the circumstances surrounding the death. Where the precautions that might have been taken to prevent the incident happening are confined to a particular, isolated set of circumstances and do not raise any wider issues of public concern, an FAI is unlikely to be either necessary or desirable.

So, for example, an FAI may be instructed where there are concerns that the road layout or signage on the road contributed to the accident causing the death. The Sheriff may then make recommendations which may then be acted upon to prevent further accidents. However, where the accident has resulted from a driver’s lapse of attention it is difficult to see what wider lessons may be learned from an FAI.

Although Mrs Curran was correct in saying that a mandatory FAI follows where a person dies in the course of their employment, there is an exception to this general rule. Section 1(2) of the 1976 Act provides that, where criminal proceedings have been concluded against any person in respect of the death or any accident from which the death resulted, and the Lord Advocate is satisfied that the circumstances of the death have been sufficiently established in the course of such proceedings, he may waive the requirement for a mandatory fatal accident enquiry. It would, in fact, be unusual to hold an FAI in such a case where evidence has been led. Indeed, in many cases, it might serve only to add to the distress experienced by a family.
Accordingly, like my colleague, Cathy Jamieson I believe that the flexibility of the present law which provides for an FAI to be held where the circumstances warrant it is important and I am not persuaded that a case for change has been made out.

I hope this is helpful.

Yours sincerely,

[Signature]

COLIN BOYD
The Right Honourable Colin Boyd QC
LORD ADVOCATE'S CHAMBERS
25 CHAMBERS STREET
EDINBURGH EH1 1LA

Telephone: 0131-226 2626
Fax (GP3): 0131-226 6910

Michael McMahon MSP
Convener
Public Petitions Committee
Scottish Parliament
EDINBURGH EH99 1SP

4th November 2005

Dear Michael,

Thank you for your letter of 22nd September in which you seek further comments on the aspect of “recognition” as raised by Petition PE841, which was submitted by the Curran family. This Petition calls for the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death caused by careless driving. I would be grateful if you would consider this response alongside my letter to the Committee of 14th July. I have been asked to provide further comments on the proposition that a mandatory FAI in these circumstances will bring “recognition and dignity” to the bereaved and their families, in as much as it would highlight that the death of the deceased was connected in some way to driving.

My comments are outlined below and are in two parts. These relate to the underlying purpose of the FAI system and my support for this and the possible consequences of introducing mandatory FAIs for deaths which occur in circumstances in which the driving involved has been careless in terms of Section 3 of the Road Traffic Act 1988.

The purpose of the FAI system

In my letter of 14th July I set out what the current system of FAIs is designed to achieve. In the context of road traffic deaths it is designed to acknowledge and address serious issues of general public concern. For example, an FAI may be held in a case where a death has been caused by driving without due care and attention and without reasonable consideration for other road users and where there was some aspect of road layout or signage that contributed to the death. The purpose of the FAI is not of recognising the circumstances of the death but to ascertain the circumstances and cause of death and to consider if there are any steps which could be taken to prevent a similar fatality occurring at the same location or in similar circumstances.
A Fatal Accident Inquiry is a public hearing where deaths that occur in circumstances of general public concern are investigated in the public interest with a view to improving public safety and allaying public concern. Under the current system where there is a death resulting from driving that contravened Section 3 of the Road Traffic Act 1988 and there are circumstances which raise a general public concern, then a discretionary FAI will be held.

The Crown must act, and must been seen to act, in the public interest. As you will be aware the public interest does not always coincide with the interests or wishes of a victim or a victim's family. At present, it is not considered to be in the public interest to hold a mandatory FAI on every occasion that a death has resulted from driving that has contravened Section 3 of the Road Traffic Act. I do understand the concerns of the Curran family and the Scottish Campaign for Irresponsible Drivers but I am not convinced that it is in the public interest to hold mandatory inquiries in all these cases. The outcome of such FAIs, in many cases, would most likely be to simply set out the facts of the death in formal terms – the date, the place and the likely cause. Against this background I do not think that it can be said with certainty that the introduction of mandatory inquiries, which would be very short formal hearings and which would not seek to apportion blame or guilt, would provide real solace and satisfaction for bereaved families.

**Potential consequences of introducing mandatory FAIs for deaths arising in cases of careless driving**

While the introduction of mandatory inquiries may be welcomed by some bereaved relatives our liaison with bereaved families has taught us that relatives and families all have different needs and expectations. We know that some bereaved relatives do not want the circumstances of the death aired in a court and that in many cases families do not want a Fatal Accident Inquiry to take place. The introduction of mandatory inquiries would not, by definition, allow for the same recognition to be given to the needs and wishes of bereaved relatives during a difficult and sensitive time.

The introduction of mandatory FAIs for every death resulting from a contravention of Section 3 of the Road Traffic Act may lead to an unrealistic expectation on the part of bereaved families that there will be some apportioning of blame to the driver of the vehicle, and that the FAI could instruct some form of punitive measure against the driver. As I have said above FAIs do not fulfill this function, nor do Sheriffs currently have such a power available to them in the context of a inquiry.
As I indicated in my letter on 14th July, there were a total of 77 FAIs held in the year 2004 to 2005. I have established that the COPFS has received 195 charges from the police in the last 3 years that concern contraventions of Section 3 of the Road Traffic Act and that include reference to a death being caused. It is not possible to break this down further but it does seem likely that a change to mandatory FAIs for these cases would significantly increase the number of FAIs.

It is also relevant to note that the UK Road Safety Bill is likely to introduce a new offence of causing death by careless driving in Scotland, England and Wales, with a penalty of up to five years imprisonment.

In conclusion while I do understand the concerns of the Curran family I do not think, for the reasons outlined above and those set out in my letter of 14 July 2005, that the introduction of mandatory Fatal Accident Inquiries in these circumstances is necessary in the public interest nor that it would necessarily be helpful to bereaved relatives and families.

I hope that this response is of assistance to the Committee.

Yours sincerely,

COLIN BOYD
Dear Dr Johnstone,

**PE841 – Calling on the Scottish Parliament to urge the Scottish Executive to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for a mandatory inquiry in the case of a road death that is caused by careless drivers.**

Supported by; 11,339 signatures, Linda Fabiani MSP, Donald Gorrie MSP, Alex Neil MSP, Elaine Smith MSP, Tom Clarke MP and SCIID.

We would like to thank you for inviting us to comment on the responses the Public Petitions Committee has received from the Lord Advocate and the Minister for Justice regarding the above petition. **This is the first time our comments have been sought by anyone in authority following the road death of our innocent daughter and the subsequent “criminal” proceedings. This opportunity to express our views means a great deal to us.**

We must emphasise that when innocent victims are killed as the direct result of drivers’ “careless” driving, the innocent victims can only be referred to as injured in the charge read out in court. **For the death is of NO CONSEQUENCE in this charge and can play no part in the sentencing.** This lack of respect for a deceased loved one and indeed the remaining family is one of the core reasons why we are petitioning Parliament for mandatory FAI’s following “careless” driving proceedings.
1. **Response from the Minister for Justice**

1.1 The Minister states that she fully understands the desire of bereaved families to have public recognition of the death of their (innocent) loved one; yet she is not persuaded that a change in the law such as the Curran family propose is appropriate or that it would always be helpful to families in coming to terms with their loss. Given that the Minister understands the need for families to have their innocent loved one recognised; can she then advise on an alternative remedy for families, bereaved by Careless drivers? and by what mechanism can such families now seek to attain the recognition in law of their loved one?

1.2 This deep desire for recognition manifests itself time after time especially from parents whose offspring has been killed by a “careless” driver. Parents constantly express the view that they have invested a huge part of their lives and love in the rearing of their family only to be told that their offspring is of no consequence in law when they are killed by “careless” drivers. How “helpful” is this in coming to terms with their loss? Of course the first option for families bereaved by culpable drivers would be to have the death and the standard of driving as part of the charge, with a range of penalties available to the court to reflect culpability, but that is not an option for the Scottish Parliament to consider. The Home Office in their consultation on *The Review of Road Traffic offences involving Bad Driving* indeed proposed a new offence of *Causing death by careless driving* but it may take many years, for this proposal, to become enshrined in law even if accepted by the Government of the day to go through the legislative process.

We implore the Scottish Parliament to use the devolved powers they have to grant the petitioner's request, for mandatory FAIs, to give recognition in law to innocent victims killed by “careless” drivers.

1.3 The Minister omits in her response to state that a discretionary Fatal Accident Inquiry will be granted if there is sufficient “public interest”. Michael Matheson MSP, Dennis Canavan MSP, Eric Joyce MP, SCID and others will testify to their part in helping to attain a FAI following “no court proceedings” after the road death of Kathleen Fitzpatrick aged 14 from Bonnybridge.
1.4 The Minister and the Lord Advocate also omit to state that a family’s views on an FAI are not proactively sought by procurators fiscal, in spite of Crown Office guidelines to the contrary.

1.5 The Minister quotes from the DTLR report *Dangerous Driving and the Law* published January 2003. This was a 2½ year research project carried out by the Transport Research Laboratory. What this report stated was; “Dissatisfaction with a system which defines a relatively small number of behaviours as Dangerous whilst leaving everything else as Careless, regardless of whether it was minor or serious”. It is because of this “loophole” in the Road Traffic Act that families face an aggravated grief. Law abiding citizens find themselves with no confidence in our Criminal Justice System which they looked to for support. We ask the Committee to recognise the anomalies in the law and use their powers to correct this by granting a mandatory FAI following the lesser charge of “careless” driving.

1.6 On issues of Human Rights, there has been in recent years, a number of defence agents who have challenged road traffic offences in Scottish Courts, eg Margaret Brown v. P.F. Dunfermline, visibility of speed cameras and the challenge in Linlithgow Sheriff Court, July 2003 to the charge of ‘driving whilst disqualified’ as contravening Article 6 – Right to a fair trial. However, as families bereaved by ‘careless’ drivers have no legal status in a criminal court they are unable to pursue a challenge to “careless driving”. We too like Linda Fabiani MSP and Campbell Martin MSP would ask the Minister to expand on her reasoning and present the evidence she has to the Committee to substantiate her statement that “we do not consider that there is any breach of the requirements under article 13 for an effective remedy in respect of violation of rights under the Convention.” Where and when has this been tested?

2. **Lord Advocate’s Response**

2.1 Firstly it was made clear by the petitioners that, yes, lack of communication, by the fiscal office at Hamilton, was a problem but importantly even if that communication was of the highest standard they would still be petitioning the Parliament today. The petition is about recognition of their innocent daughter; in law. However, as the Lord Advocate has at some length given assurances to the Committee that “the procurator fiscal (at Hamilton) has taken action to ensure that appropriate lessons are learned from the case” we must draw the Committee’s attention to the following:
In August of this year, some 20 months after the death of Gillian, SCID accompanied Mr & Mrs Donald Campbell of Larkhall to a meeting with the fiscal at Hamilton PF office. This meeting was almost 6 months down the line when the lesser charge of “careless” driving would have become time barred. The proceedings into the death of their son William is now ongoing but sufficient to say the reason for the meeting was about the lack of communication about the progress of the case. The fiscal apologised for the lack of communication and agreed to keep the family informed. Indeed the PF is now in weekly contact with the family. The question must however be asked, what would have happened to this family had they not been in contact with SCID?

Importantly, the experiences of the Curran and Campbell families are not isolated cases. All the assurances, guidelines and the fine words the Lord Advocate has stated in his response to the Committee look good on paper; but the reality is somewhat different.

2.2 The Lord Advocate has explained to the Committee, procurators fiscal have a unique role in the investigation and where appropriate the prosecution following a road death. Fiscals not only have to deal with very heavy varied workloads but have to direct the police in their investigation and have an investigative function of their own. The Crown Office and Procurator Fiscal Service Inquiry carried out by Justice 2 Committee Report February 2003 highlighted many concerns about the service, not least, the work load and lack of time to prepare serious cases. The Convener, Pauline McNeil MSP stated to the Chamber on 13th February 2003 “The committee's view is that the prosecutor's role is a special one because in the marking of cases determining crime, decisions are constantly being made in an instant. For example, a decision can be taken in an instant as to whether a particular offender is to be charged with careless driving or with dangerous driving. I know that that matters to people.” In spite of the steps which have been taken to improve the service – Please understand Committee members, 2 years on from that Inquiry it is still “mattering” to people as is evident from the content of PE841.

2.3 It is disingenuous of the Lord Advocate to suggest that even in those cases where a discretionary FAI has been granted families feel “let down”. What evidence does he have to suggest this? Can the Lord Advocate provide the Committee with;

- the number of discretionary FAIs in the last decade which have been held following a “careless” driving charge?
- how many families have felt “let down” and how many families felt satisfied?
As the administration now stands, it is a rare occurrence for an FAI to be granted if there are any criminal proceedings. It is an even rarer occurrence following proceedings of “careless” driving. We believe the only one in recent years was the FAI in to the road death of Steven Dekker in 1999.

It is now the legal position that animals in Scotland have more “Rights” than innocent victims killed by “careless” drivers. On the 6th October 2005 new powers were announced to protect Scotland’s pets. Under the Animal Health and Welfare (Scotland) Bill - owners who fail to care for their pets could face 6 months in jail and fines of up to £5,000. The minister in charge of animal welfare, Ross Finnie said "owners have a duty of care".

Compare this with what is happening to innocent victims going about their lawful daily business when killed by “careless” drivers; their death is of no significance, there is no “duty of care" - only a very minor driving offence. The maximum penalty available to the court for a “careless” driving offence (Section 3 of the Road Traffic Act) is £2500 fine 3 -9 penalty points and merely a discretionary disqualification. Many drivers drive away from court!

This lack of recognition and respect for a deceased loved one and the remaining family, in a “careless” driving charge is one of the core reasons why we are petitioning Parliament for mandatory FAI’s following this charge. The Scottish Executive has committed itself to a Strategy for Victims – to put victims at the heart of the Criminal Justice System. We would ask the Committee to put this into action by forwarding the petition forthwith to a Justice Committee for scrutiny.

Yours sincerely,

Patrick Curran
Sandra Curran
Nicola Curran
Pat Curran
Sandra Curran
Nicola Curran

Margaret Dekker
(SCID Researcher/secretary)