SUBMISSION FROM DR ALEX WRIGHT, POLITICS DEPARTMENT, UNIVERSITY OF DUNDEE

At present Ministers from the Scottish Government can only attend meetings at the Council of Ministers with the consent of their UK colleague. To the best of my knowledge the occasions when they have actually been prevented from attending when the Council is dealing with matters which fall within the ambit of the Scottish Parliament have been extremely rare. If I recall correctly one such occasion related to the CFP (though not it should be stated to the Council itself)¹ and it attracted publicity as a result in sections of the Scottish media. There have also been a few occasions to my knowledge where Ministers from the Scottish Parliament have played a leading role at the Council (e.g. Education) but I also believe the issues that were before the relevant Council were of a relatively low political order (unlike environmental regulations for example). Prior to the 2007 Scottish election it was reported in the media that an internal survey by an official at the (then) Scottish Executive had identified a number of flaws over Scotland’s representation in the EU.

Whilst the survey did emphasise the value for Scotland of being part of the UK, when it came to the promotion of its affairs in the EU, it did raise some serious issues. For example, it claimed Scottish Ministers might not even be seated in the chamber where the meeting took place but in a side room.² However Jack McConnell, who was First Minister at the time, stated that the survey was incomplete and the concerns raised were not overly serious.³ I also believe that one of McConnell’s ministerial colleagues who attended meetings of the Council in Brussels denied being relegated to a side room. Even so the issue of ministerial attendance remains contentious potentially.

¹ ‘The Scottish Secretary for Rural Affairs and the Environment has accused the UK Government of “rubbing salt into the wound” after refusing to let him attend a European meeting. Richard Lochhead said informal talks in Spain, which are normally attended by a House of Lords representative, had been expanded to take in more important issues concerning fishing. The new agenda takes in aspects of the meeting he had been due to attend in Luxembourg but was cancelled because of the air travel chaos after the volcanic eruption in Iceland. [...] Mr Lochhead said the fisheries policy has failed the industry and repeated calls to return key decision-making to Scotland.’ (The Herald 03/05/10 p. 10)

² ‘The report which has been leaked to The Herald, cites examples of ministers being frozen out of council meetings and humiliated by having to sit in another room where they can only listen to discussions. Information is shared by Edinburgh but without reciprocation from Whitehall and officials in Edinburgh are only told about vital meetings in London when it is too late to arrange travel and attend. The executive’s access to the powerful group of commissioners in Brussels is largely controlled by the Foreign Office, on condition Scotland argues the UK line. In drawing up regulations on spirit drinks, where Edinburgh was pushing the interests of the Scotch whisky industry, the report says that the UK government insisted on arguing the opposite case. The head of the executive’s Brussels’ office recommends in his report to the First Minister and Scottish cabinet that he should move to lobby the commission directly instead of being “constrained” by having to go through Whitehall.’ (The Herald, 22/01/07 Douglas Fraser p.1-2)

³ ‘McConnell claimed the report had been a “very early draft” although the document itself describes itself as a “mature draft”. In Glasgow he said: “In commissioning that report I was determined that we learn from the first eight years of devolution, in order to improve even further the impact that we have in Europe through devolution and the UK government. I think in Scotland we have the best of both worlds - the power that comes with being part of a large member state of the European Union, through the UK, and we also through devolution have a chance to express our own voice and to communicate directly with the European Union. That is something they are getting better at, we are getting better at - but it is something all of us can continue to improve. This report in its final form later this year will give us a chance to do that.”’ (The Herald, 23/01/07, Tom Gordon, p.6)
The proposal for a statutory footing for Scottish Ministers Attendance at the Council of Ministers

As Scottish Ministers attend the Council where necessary it could be argued that placing their right to attend on a statutory footing is little more than symbolic. Even so, it would reflect the status of the Scottish Parliament in relation to European matters at a time when the devolution arrangements for Scotland are maturing. In addition it would appear that for the most part intergovernmental relations between the UK and Scottish administrations have been generally conducted in a cordial manner as aspired to in the Memorandum of Understanding and confidentiality has been respected by both sides. It is also notable that this has been the case even though markedly different parties have been in office at both levels of government. Thus it could be argued that to-date successive Scottish administrations have respected the ground rules with regard to its relations with the UK government where EU matters are concerned and that would continue if it had the right to automatic attendance.

The Scottish Government has also highlighted the practicalities of attendance by Scottish ministers insofar as they might wish to speak at the Council. Given, that meetings of the Council are usually confidential I am uncertain what impact that might have. But somewhat speculatively, it could be argued in line with the Scottish Government's position that during a process of negotiation at a session of the Council an issue might arise which would be potentially of considerable relevance to Scotland and it might be of benefit if a Scottish Minister was there and able to promote her or his position. The example that comes to mind is the allocation of EU funding (e.g. low population density in rural areas).

One reason why there could be a statutory base for attendance at the Council relates to the issue of accountability despite the lack of transparency over the work of the Council of Ministers. At present, the Scottish Parliament has potentially limited influence over the Scottish Government's relations with the EU, primarily because it (the Scottish Government) is one step removed from the Council (its interests are formally promoted and defended by the UK Government). If the Scottish Government had the right legally to attend the Council and if necessary to address the Council then at the very least the Scottish Parliament could require Ministers to account for their activities in the Council. By way of example I cite Ministers at the former Scottish Office prior to devolution who used to attend the EU Fisheries Council (especially each December when the Total Allowable Catch was decided upon). Upon their return they had to explain themselves to MPs at Westminster (especially those from Scotland) and the outcome could also attract publicity in the media. In addition, Ministers might have to outline to Holyrood what actions they proposed to take in the Council prior to their attendance if the matter at hand was of considerable significance to Scotland. I do not claim that the above is a panacea but any such development would I think be more than just symbolic.

The material below is not strictly relevant to the Scottish Government's proposal for direct representation but its inclusion here is intended to demonstrate how from an historical perspective Scottish officials believed that they should have a close involvement in EU matters.
Prior to the UK’s accession to the EU (or then the EEC), officials at the former Scottish Office weighed up what the impact of membership would be for Scotland and how best it might be represented. For example minutes between officials in the 1960s clearly demonstrated that they thought Scotland should be directly involved in European matters when the UK joined the EEC. One individual focused on the Scottish Office’s future role after Britain had joined:

“I think that the Scottish Departments will have to consider at some stage what part they are to play in these operations if we come into the Community.”

There was the awareness that civil servants from national governments participated in the EU’s working groups and that Scottish Departments risked being excluded:

“The natural tendency will be for the various English Departments to take over this country’s responsibilities in the fields that may be assigned to it.”

It was therefore suggested that the Scottish Office could play a leading role in the administration of EEC affairs within the UK:

“I think we ought to consider whether the Scottish Departments should be given responsibilities in particular fields and not merely exist as appendages to their English counterparts.”

When these issues were discussed in 1967, it appeared that a proportion of the administrative functions stemming from Britain’s membership might be decentralised to Scotland. The Scottish Office would then get its fair share of administrative work after Britain joined the Community, as the official noted:

“In the new situation which will arise after we enter the Community I suggest that the Scottish Departments ought to look at the possibilities here. Apart from the possible decentralising advantages of having certain blocks of work done from Edinburgh rather than London there might be thought to be political advantages in demonstrating that Scotland was fully involved in the practical workings of the Community.”

What followed was particularly significant. It was not simply that the departmental heads apparently responded with enthusiasm - which they did. It was more the fact that some of them took the idea of decentralisation a good deal further. One commented that if the Scottish Office was merely consulted by the ministries in London that would be insufficient:

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4 Scottish Office 1967, File SOE 3/507, Minute from Mr Hogarth dated May 12 1967. To Mr Elliott-Binns, Dr Smith, Mr Whitworth, Mr Fearn, Mr Hume.
5 Scottish Office 1967, File SOE 3/507, Minute from Mr Hogarth dated May 12 1967. To Mr Elliott-Binns, Dr Smith, Mr Whitworth, Mr Fearn, Mr Hume.
6 Scottish Office 1967, File SOE 3/507, Minute from Mr Hogarth dated May 12 1967. To Mr Elliott-Binns, Dr Smith, Mr Whitworth, Mr Fearn, Mr Hume.
7 Scottish Office 1967, File SOE 3/507, Minute from Mr Hogarth dated May 12 1967. To Mr Elliott-Binns, Dr Smith, Mr Whitworth, Mr Fearn, Mr Hume.
“I would hope that even if there is a considerable staffing problem we shall be allowed to take a full part in formulating British policy and will be seen to have a part in it. I doubt if it will be sufficient to receive papers and comment on them or even to agree policy with the Ministry’s representatives at meetings in London.”

Another replied by suggesting that the Scottish Office should act as the lead department in certain policy fields.

“For my part, I entirely agree with your view of the part that we ought to play on the work arising out of Community directives. It would be far better to take the lead for the UK in a small group of subjects than to tag behind the Ministry of Health in everything.”

Even when it appeared that the Government might create a brand new department to oversee entry into the EEC, Scottish officials suggested that it should be a joint initiative between the Scottish Office and the English (UK/ ‘Lead’) departments:

“There is, however, one other possibility which might affect the pattern of Scottish participation in this effort. Consideration is apparently being given to the possibility of establishing a new Department which could take over from the existing Departments’ responsibility for all administrative work connected with the entry into Europe and the legislative consequences. ...One alternative possibility - though I did not discuss it with Mr Roffey - would be for the English and Scottish Departments each to establish a kind of joint Division, stationed either north or south of the Border as might be most convenient, to deal with their own particular problems.”

It is therefore worth re-emphasizing that even before the UK acceded to the EU, Scottish officials were calling for a direct involvement. As is evident today the issue of Scottish representation in the EU/EEC has not gone away even though 44 years have passed by since such matters were first raised.

Dr Alex Wright, Politics Department
University of Dundee
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8 Scottish Office 1967, File SOE 3/507, Minute from Dr J. Smith dated May 17 1967. To Mr Hogarth, Mr Elliott-Binns, Mr Whitworth, Mr Fearn, Mr Hume.
9 Scottish Office 1967, File SOE 3/507, Minute from Mr R.E.C. Johnson to Mr Hogarth dated May 18 1967. Copies to Mr Elliott-Binns, Dr Smith, Mr Fearn, Mr Whitworth Mr Hume.
10 Scottish Office 1967, File SOE 3/507, Minute from Mr Hogarth dated June 8 1967 to C.M.O., Mr Elliott-Binns, Dr Smith, Mr Fearn, Mr Whitworth, Mr Hume.