

# **EUROPEAN COMMITTEE**

Tuesday 15 January 2002  
(*Afternoon*)

Session 1

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## EUROPEAN COMMITTEE

### 1<sup>st</sup> Meeting 2002, Session 1

#### CONVENER

\*Irene Oldfather (Cunninghame South) (Lab)

#### DEPUTY CONVENER

\*Mr John Home Robertson (East Lothian) (Lab)

#### COMMITTEE MEMBERS

\*Sarah Boyack (Edinburgh Central) (Lab)

\*Colin Campbell (West of Scotland) (SNP)

Dennis Canavan (Falkirk West)

Helen Eadie (Dunfermline East) (Lab)

\*Mr Lloyd Quinan (West of Scotland) (SNP)

\*Nora Radcliffe (Gordon) (LD)

Ben Wallace (North-East Scotland) (Con)

\*attended

#### THE FOLLOWING ALSO ATTENDED :

Christine Boch (Scottish Parliament Directorate of Legal Services)

Bill Thomson (Scottish Parliament Directorate of Clerking and Reporting)

#### CLERK TO THE COMMITTEE

Stephen Imrie

#### ASSISTANT CLERK

David Simpson

#### LOCATION

Committee Room 3



## Scottish Parliament

### European Committee

*Tuesday 15 January 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 13:58*]

**The Convener (Irene Oldfather):** Welcome to the first meeting of the European Committee in 2002. We have received apologies from Ben Wallace and Helen Eadie. Dennis Canavan will try to be here. Stephen Imrie is away on jury service. Our numbers are a little depleted today.

### Item in Private

**The Convener:** The first item on the agenda is to agree to take item 5 in private because it deals with our work programme. Is that agreed?

**Members** *indicated agreement.*

## EC/EU Legislation (Implementation and Scrutiny)

**The Convener:** The next item is a discussion of the briefing paper—on which we have had an initial discussion in private—on the committee's role in relation to the implementation of European Community legislation and the sift and scrutiny process. The committee will recall that we received a briefing at our previous meeting. We must focus on the committee's role in the multitude of things that we have to do. It is important that we do not duplicate the functions of other committees, in particular the Subordinate Legislation Committee.

The paper is self-explanatory. The recommendations in paragraph 10 are about right. There is a temptation for us to do too much. It is important that we agree to focus on one or two areas initially. One recommendation in the paper is that we should monitor the situation in six months' time. What are members' views on those recommendations? Do members have a view? Are the recommendations about right or are they too much? Should we implement the first two recommendations and keep the third in reserve and review the situation later?

**Nora Radcliffe (Gordon) (LD):** The recommendation that we go for

"The question of late implementation and the reasons why"

is likely to be useful. We could learn lessons from what has happened. If we are going to limit our effort, that would be a good area to limit it to, because it will have useful consequences.

**Colin Campbell (West of Scotland) (SNP):** On the other hand, that may not be the top priority, because what has happened has gone. Maybe we should know what happened, but that might not be at the top of the heap.

**The Convener:** Are you suggesting that in considering the implementation of European Union legislation the function of the committee should be to focus on the use of section 57(1) of the Scotland Act 1998—the second recommendation in the paper—in lieu of the first recommendation, or are you suggesting that we should have both functions?

**Colin Campbell:** The recommendations are separated by an "or".

**The Convener:** Paragraph 11 says that we could focus on the first recommendation or on the first and second recommendations, so it may be possible to do both and, as paragraph 11 says, review the situation after about six months. I am happy to take any other views.

**Mr John Home Robertson (East Lothian) (Lab):** We obviously cannot do all the things on the shopping list, because that would be absurd. I am particularly attracted to the third recommendation in paragraph 10, which is about looking for opportunities to do things differently. I am not sure what the term “a posteriori” means in these circumstances; it is always better to take decisions before rather than after.

**The Convener:** It would have to be after.

**Mr Home Robertson:** I hope that we will be able to explore opportunities that arise. I am happy with the recommendation to run with the proposals in paragraph 10. I do not know whether it would be possible to pursue all three recommendations.

**The Convener:** Paragraph 11 suggests that we could concentrate on the first and second recommendations, because those are different from the work that is undertaken by the Subordinate Legislation Committee and other lead committees. At our previous meeting, we spoke about implementation. If members recall, when we met in private we thought that it might be useful to monitor that. The committee seems to agree generally that the recommendations in paragraph 10 are appropriate, but the question is whether we concentrate on the first and second recommendations and review the situation in six months, or whether we try to do a bit more of the third recommendation and possibly drop one of the other recommendations.

**Mr Home Robertson:** As Colin Campbell said, the second recommendation refers to things that have already happened.

**Colin Campbell:** That was the first recommendation.

**Mr Home Robertson:** I beg your pardon. The third option, in which I have expressed an interest, is that we should look for opportunities to do things in a devolved or Scottish way. People tend to think that policies that come from Brussels must be done in a particular way and are set in concrete. It would be useful if the committee facilitated fresh consideration of ways in which European policies can be tailored to suit Scottish circumstances and needs. That is how I understand the third option—it would be a new and useful thing for the committee to do.

**Mr Lloyd Quinan (West of Scotland) (SNP):** Is it not possible that the third option would lead us into long debates with the Foreign and Commonwealth Office about what we should and should not be doing, given what Peter Hain said about that when we spoke to him?

**Sarah Boyack (Edinburgh Central) (Lab):** I do not think that the issue is for the Foreign and Commonwealth Office. The option is partly about

us being up to speed and having a Scottish perspective on the key issues that are considered in Brussels and partly about the formation of European directives. We could consider to what extent directives are prescriptive and whether they must be implemented by primary legislation or in other ways. The issue is not only about Scotland having the flexibility to do things differently from how the rest of the United Kingdom does them, but about the crafting of requirements from Brussels. An interesting point was buried in what John Home Robertson said.

The briefing paper states correctly that we would have to consider those requirements by subject or sector; we could not just have the third option as a general objective. However, we should consider that option. It also leads to the first option, which is on late implementation—the third option is about trying to avoid being in that position in the future.

**The Convener:** As I said earlier, we should try to find a niche rather than covering work that is done—or could be done—by other committees. That is an argument for the first and second recommendations. Although other committees have not done what is suggested in the third recommendation, it is within their remit. On the other hand, it could be argued that our inquiries into the common fisheries policy and the euro fall under the remit of other committees.

**Mr Quinan:** If we chose the third option, the best starting point would be to consider what flexibility in the implementation of EC directives has been in-built by autonomous Parliaments throughout Europe. We should learn from them, rather than starting with a blank sheet of paper. If we choose the third option, others' experience would be considerably helpful. We should not attempt to create a new set of rules. That starting point would give us an idea of what flexibilities are allowed in the rest of the European Union.

From our common fisheries policy inquiry, we know that there was a hoo-hah in areas of Spain about our attendance at and submissions to fisheries council meetings. Those areas of Spain are not allowed to do that. In other matters, such as transport infrastructure and energy, those areas have greater flexibility from the EU. If we chose the third option—although, frankly, I do not think that we should bother—it would be sensible to learn from others' experience. Some areas have 25 or 26 years of experience.

**The Convener:** That sounds like an inquiry of its own.

**Mr Quinan:** Exactly.

**The Convener:** One point that I have considered is the expansion of our monitoring role. Examining late implementation and the reasons for that are part of holding the Scottish Executive

to account, which is within our remit. That would be a useful option to consider. I take on board what John Home Robertson and Lloyd Quinan said, but the third option would give us less of a monitoring role.

Members will recall that the issue of monitoring came up because of section 57 of the Scotland Act 1998. The committee began to look into that and unravel bits and pieces of information. We realised that no one was considering implementation of EU legislation in relation to section 57. It seemed that the committee would take a monitoring role. I appreciate what has been said about the flexibility of Community instruments. Would that be better as the subject of an inquiry?

**Mr Quinan:** Do you believe that we would be spending our time as well as we could if we extended our monitoring role, rather than attempting to have influence? I do not believe that a simple monitoring role in the final year of the session is the correct approach. We should be looking to create circumstances where we are influencing things, rather than simply monitoring them. We should be considering the Commission's forward work programme and identifying what will be a live issue next year so that we can begin work on it now. We have said many times that we must stay ahead of the game. If we accept the role of monitoring and nothing else we will constantly be chasing the horse. Do you agree?

**The Convener:** No, that is not the case. We should not be doing that. There are two separate issues. We will deal with the inquiries and work programme under agenda item 5, but this discussion is about our role in relation to scrutiny and how we want to develop it. The first stage of that process is monitoring and assessment, after which we can make recommendations as a result of what we find out. The two functions—undertaking inquiries and considering the Commission's work programme, and our scrutiny role—can run in parallel.

No other committee has the same remit in relation to scrutiny. There could be a vacuum. The committee could review that in six months' time. I am in the hands of committee members. During previous discussions, I picked up certain vibes from the committee and there was an interest in taking a more scrutinising role in relation to late implementation and section 57. That is what the clerks and I picked up from the discussions that we have had in the past six months.

Could we adopt the recommendation in paragraph 11, which is to focus on the first and second priorities and review the situation after six months? If we feel that we are making a difference and that what we are doing is relevant, we can continue and if we feel that it is not working out as

we had hoped, we can review our decision.

**Mr Quinan:** In effect, we would write a letter saying that we are really upset about late implementation and nobody would pay us any attention. I would prefer that we did not spend our time monitoring and gathering information on late implementation. Could we make a bid through the conveners liaison group to appoint a researcher to investigate that matter, rather than having committee members spend hours considering lists of cases of late implementation?

I do not think that it is the best use of my time or that of other committee members to examine lists of instruments that have been implemented late and then write a note to the headmaster saying that we do not think that that is very good. It is about the art of the possible—what we can do, rather than what we can complain about. The focus for us in the final 16 months must be the influence that we can create in Europe for the next session. It is not about what we have missed in the past two and a half years, but about what we can do to facilitate a greater and better relationship with the European Commission and Parliament.

14:15

**Sarah Boyack:** This is not an either/or situation. The elements are linked. Implementation cannot be turned on and off with the electoral cycles. One of the challenges is how to get ahead of implementation, so that we are not constantly behind. We will gain respect for holding the Executive to account and for having discussions at a European level with the Commission and European parliamentarians about how we can speed that process up. The choice is not between scrutinising now and having an impact in the future. One of the challenges is getting implementation right. The way in which Europe designs what it requires us to do and ensuring that the Executive anticipates that effectively are issues for the future.

I think it would be a useful piece of work and I take the point about the need to review the situation in six months. I think that Lloyd Quinan is concerned about us trawling through documents—

**Mr Quinan:** I have said what my concerns are. I do not need you to invent them for me.

**Sarah Boyack:** I was referring to the point that you made two minutes ago, Lloyd. You said that trawling through hundreds of documents was not worth our time. The point of having a review in six months' time is to ensure that we have a system in which we are not doing that and in which we are focused and able to pick up on key issues. I agree with the convener's recommendation that we review the situation in six months' time, but I would

like to know how we intend to carry out the scrutiny process. The principle is right, but I would like to know how it will work in practice.

**Mr Home Robertson:** As Christine Boch told us at the previous meeting, failure to implement legislation on time could cost the Scottish Parliament and our taxpayers dear. One of the reasons why there has to be a European Committee in the Parliament is to ensure that legislation is implemented in time.

**Mr Quinan:** I agree, but I do not want to spend hours and hours of my life working through these documents instead of working from a briefing that has been prepared by people who have greater expertise in that area than I have.

**Mr Home Robertson:** Welcome to Parliament.

**Mr Quinan:** John, get a grip on yourself.

**Mr Home Robertson:** That is what parliamentarians need to do, Lloyd.

**Mr Quinan:** Is that why you are an ex-minister?

**The Convener:** It is important to focus on the issue and not get personal. We have a legal adviser, Christine Boch. I had expected that she would be able to come to the committee with background papers on the development of the implementation process. I suggest that, at the next committee meeting, we consider a paper with a little more detail on the first and second options, with a view to incorporating that into the scrutiny process. Obviously, later today, we will discuss further how we undertake the wider role of the committee in terms of inquires and the aspects of the European Commission's work programme that we want to examine in the next year to 15 months. I am sure that we all agree that that is an important role for the committee to play. Do we agree to do that?

**Members indicated agreement.**

**The Convener:** The second part of the paper deals with the sift process. This is probably an appropriate point in the history of the committee to consider that aspect of our work again. I have relied on the clerks, who have given me advice about how this work was done under the previous convener and what the work load was. It would be fair to say of the current scrutiny process that the return is not there for the amount of work that the clerks are having to do. One area that has not worked well is to do with the recommendations that the committee makes to other committees, which have heavy work loads of their own.

We have to make progress on the issue of the sift. Members have before them a number of recommendations. It has been suggested that we create a database of papers that come in from the European Commission and the European

Parliament and organise it on a subject basis so that other committees and members of this committee can easily access data. We would not then spend an awful lot of time during committee meetings working through a set of recommendations on papers, 95 per cent of which probably do not have a great deal of relevance to our day-to-day work load.

I invite members' comments on the second part of the paper, on the scrutiny process. The recommendation is that we try the database idea and alert the subject committees to the way in which we intend to proceed on a trial basis over the next six months. Are we agreed?

**Members indicated agreement.**



## Remit

**The Convener:** Item 3 is consideration of the committee's external affairs remit. Members have a copy of Jim Wallace's letter. Members will remember that the Procedures Committee agreed in principle that our remit should be extended, but we have been waiting for a response from the minister.

We need to consider two things. First, does the committee want to involve itself in the Deputy First Minister's remit as outlined in the letter? That would seem to be a sensible way to proceed. Secondly, do we want to have the remit made mandatory? Do we want to ask the Parliamentary Bureau to add on the external affairs remit temporarily? That would mean that the extended remit would expire at the next election.

The Procedures Committee is willing to take our views on board. At the end of the day, it is for that committee to decide how the matter is progressed but, in doing so, it seeks the views of members of the committee and other colleagues. Should the European Committee mirror the remit as set out in the Deputy First Minister's letter?

**Mr Quinan:** Would it be possible to ask for clarification? The definition of the European Union and the European Commission seem to be clear, but what is the meaning of the line

"development and implementation of links with Europe"?

**The Convener:** We have waited a long time for the letter.

**Mr Quinan:** Exactly.

**Colin Campbell:** Might it be better not to ask what it means and simply interpret it in its broadest and most generous spirit?

**Mr Quinan:** I am not sure that we can do that, given that—

**Mr Home Robertson:** Oh, yes we can.

**Colin Campbell:** The word "Europe" is self-evident. The phrases "Scotland overseas" and the "Executive's international activities" would probably cover more than the EU.

**Mr Quinan:** The key issue, which Colin Campbell is missing, is that the letter refers to

"the development and implementation of links with Europe";

it does not say links with the EC and the EU. Is it talking about NATO? With whom will the Deputy First Minister talk? What does that sentence mean?

**The Convener:** I suggest that we push ahead on agreement to extend the committee's external relations remit. We can invite the minister to an

early meeting, at which we will explore with him the remit as outlined in the letter. Is that a reasonable solution? We could try all day to interpret—

**Mr Quinan:** That is what I am saying. I do not want to interpret it; I am not interested in that. I am sure that, when Jim sat down with his minions to write the letter, they decided on the sentence

"the development and implementation of links with Europe"

following some form of debate or exchange of views. I want to know what that exchange of views was. What do they mean by Europe outwith the European Union and the EC? I want to know which structures they mean—not what countries. That is the key issue. I am not trying to over-define the sentence. We should know what relations are going on about which we have not, up to this point, been aware.

**Mr Home Robertson:** It seems fair to assume that the relations relate to the devolved responsibilities of the Scottish Parliament. It must mean the European Union; it cannot mean NATO, as we have nothing to do with defence—

**Mr Quinan:** It is not NATO, it is—

**The Convener:** One person at a time. John has not finished his point.

**Mr Home Robertson:** As the convener said, the letter has taken a long time to come. We now have a summary of the minister's European and external affairs remit. That includes, in the final bullet point:

"co-ordination of the Executive's international activities, including the promotion of a positive image of Scotland overseas."

It seems logical that such a responsibility should exist. It is likely to continue and to remain with the minister with responsibility for European Union affairs. There is a case for adding external affairs to the committee's remit and proceeding on the basis of that definition.

**The Convener:** The alternative would be for us to send a letter back to the minister, which would hold up things again. The sensible way for us to proceed is on the basis of the definition that we have. We should try to get the extension of our remit tidied up through the Procedures Committee and then invite the minister to a meeting at which we can explore the detail of the definition and other matters.

**Sarah Boyack:** I agree. Lloyd Quinan's point about the meaning of "Europe" is interesting. Relations could be not with individual countries but with organisations, such as the Nordic Council, where there are fishing or tourism overlaps. There are interesting issues that we could explore with Jim Wallace.

**The Convener:** Is it agreed that we recommend to the Procedures Committee that our remit be extended to mirror the minister's activities in relation to external affairs and that we return to the question whether that amendment is temporary or permanent? We are a mandatory committee, rather than a subject committee, which means that there will be a European Committee after the next election. If the responsibility for external affairs is added to our remit now, should it continue to be a mandatory part of that remit after the next election or would we want the bureau to regard it as a temporary addition to our remit? That is something else that we must refer to the Procedures Committee.

**Mr Quinan:** I understand that, under the Scotland Act 1998, a vote in the House of Commons would be required to change the remit of a mandatory committee.

**The Convener:** Yes. That is a point. Perhaps the clerk can help.

**Mr Quinan:** To change the remit of a mandatory committee under the Scotland Act 1998 would require a vote in the House of Commons. That will throw up another interesting debate.

**The Convener:** We might need to take legal advice on that. I understood that we could amend standing orders to add external affairs to our remit.

**Mr Quinan:** I would caution members against that.

**The Convener:** Let us take advice from our legal adviser.

**Mr Quinan:** What we are talking about is not in any remit that is defined under the Scotland Act 1998. Responsibility for external affairs is not part of the devolution settlement.

**Christine Boch (Scottish Parliament Directorate of Legal Services):** The Scotland Act 1998 does not contain anything about mandatory committees, which are regulated by the standing orders. Although I am a legal adviser, I advise only on European Community law. The person in the legal office who prepared the options paper that the Procedures Committee requested on the extension of the European Committee's remit is not here today. She is giving evidence to the Local Government Committee.

I understood that the committee wanted to discuss that paper at another meeting and that today it wanted to focus only on the letter. I am not refusing to give legal advice but, in this instance, the legal advice has already been prepared by someone else. You are talking about the interpretation of the Parliament's standing orders, not about European Community law. Nonetheless, I am confident that the Scotland Act 1998 does not regulate the matter.

**The Convener:** You seem to be saying that your understanding is that the committee's remit could be amended by standing orders. That would be within the remit of the Parliament.

**Christine Boch:** Yes. The standing orders are made by the Parliament and can be changed by the Parliament.

**Colin Campbell:** That may make the process of change a lot swifter.

**Mr Home Robertson:** In fairness to the convener and Christine Boch, we should consult on the matter. It is mandatory that there should be a European Committee—we all know that. The question is whether we can add on this extra, peripheral function without causing problems. We should agree to that amendment subject to clarification of the matter by the lawyers.

**The Convener:** It makes sense for the committee to have one remit rather than one part of the committee's remit being mandatory and one part being temporary, at the discretion of the Parliamentary Bureau.

**Mr Quinan:** The function of the European Committee is clearly defined. However, the external affairs brief is not referred to in the Scotland Act 1998. My concern is that, if a power is added to a mandatory committee of the Parliament, there is the potential that it would suffer a judicial review. That concern was thrown at me by an advocate not two hours ago.

**The Convener:** Why do we not ask for clarification? Am I right in interpreting that the committee's view is that we would prefer external affairs to be added to the remit on a mandatory, permanent basis if that is possible?

Someone has come along who might be able to shed light on the matter.

**Bill Thomson (Scottish Parliament Directorate of Clerking and Reporting):** Mandatory committees are established under standing orders for the duration of the parliamentary session. Their remits can be changed only by the Parliament's agreeing to change standing orders. That means that the change would have to go through the Procedures Committee and a report would have to be made to the Parliament. If the change were agreed by the Parliament, the new remit would endure until the end of the session. However, it would not necessarily have any impact after the election. The remit could be changed by the Parliament after the election.

**Mr Home Robertson:** That confirms what most of us understood.

**The Convener:** That clarifies whether Parliament can amend the remit or whether the

matter is covered by the Scotland Act 1998. We can proceed on the basis that external affairs be added to the mandatory remit of the committee.

## Convener's Report

**The Convener:** I have three small items on which to report. The first is the letter to the Spanish permanent representative in Brussels on the postal services liberalisation. Members will recall that we discussed the matter. I am asking the committee to agree the content of the letter. It is similar to the letter sent to the Belgian presidency. Are we agreed?

**Members** *indicated agreement.*

**The Convener:** The second item is to ask members to note that we have secured time in the chamber to debate our report on the future governance of the EU. I mentioned that briefly to the committee in private session. The debate will be on Wednesday 27 February. Is the committee agreed that the clerk and I should make the necessary arrangements?

**Members** *indicated agreement.*

**The Convener:** The third item is about our annual trip to Brussels. The suggested dates for the trip are 25 to 26 February or 27 February to 1 March. We chose that week to coincide with the mini plenary session. Obviously, there is a problem because that is the same week that we are scheduled to debate the EU governance report in the chamber.

I asked the clerks to consider whether we could make the trip during the following week. Although there will not be a mini plenary session of the European Parliament, my understanding is that the committees and the political groups will be meeting and members of the Parliament and commissioners will be there. I also understand that a group of Scottish schoolchildren—one from each local authority area—will attend the European Parliament on those two days. It might be useful for us to meet those young people.

Everyone will have a preference and it will be difficult to take everyone's preferences into account. The clerk and I will make the arrangements. If anyone has a difficulty, we will do our best to accommodate it. I would prefer the week starting 4 March, as that would give us time for the debate on our governance report in the chamber. The other dates that are suggested would require us to rush out on a Monday and return on a Tuesday for a debate in the chamber on a Wednesday, or to leave on the Wednesday night after debating the governance report and return on a Friday, which can be a dead day in Brussels.

**Nora Radcliffe:** I have a problem with 4 March, because the other committee that I am a member of is having an away day then.

**The Convener:** That date—4 March—is a Monday. We could consider leaving on Tuesday 5 March or Wednesday 6 March, but we would have to speak to business managers about that and consider the implications.

**Mr Quinan:** The convener will know from the committee's previous visit that the Strasbourg week is sometimes better. Would that fit our timetable?

**The Convener:** I think that the Strasbourg session is in the week following the week starting 4 March. If people were minded to go then, I would not have a problem with that. The advantage of the Strasbourg week is that everyone—commissioners, MEPs and lobby groups—is in Strasbourg at the same time. It is a good opportunity to meet everyone. If committee members were interested in that, the clerks could consider the implications. I am aware that the time scale is tight and that we need to make a decision quite quickly.

**Sarah Boyack:** Are we going to Brussels and Strasbourg?

**The Convener:** It would not make sense to go to Brussels in a Strasbourg week, because most people—even officials—will be in Strasbourg for the plenary session.

**Mr Quinan:** I did not make the suggestion to cause problems, but we have discussed the issue and I know that when everyone is pinned down in Strasbourg, we can meet more people and get more done than when we scuttle from building to building in Brussels.

**The Convener:** Certainly, everyone is in the same place at the same time, which has advantages.

**Mr Home Robertson:** Is the Strasbourg week the week starting 11 March?

**The Convener:** Yes. I think that that is the March Strasbourg session, which lasts two or three days. I suggest that we consider that possibility, with a fallback position of the week starting 4 March, trying to take account of Nora Radcliffe's problem. If we cannot make the travel arrangements and so on for Strasbourg, I suggest that we consider going to Brussels on 4 March. Is that agreed?

**Members indicated agreement.**

**The Convener:** As agreed at the beginning of the meeting, we will take our final agenda item—the work programme—in private. I thank the public for attending.

14:37

*Meeting continued in private until 15:04.*

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