



OFFICIAL REPORT
AITHISG OIFIGEIL

European and External Relations Committee

Thursday 30 June 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 30 June 2016

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
2nd Meeting 2016, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Jackson Carlaw (Eastwood) (Con)
*Bruce Crawford (Stirling) (SNP)
*Ash Denham (Edinburgh Eastern) (SNP)
*Ross Greer (West Scotland) (Green)
*Rachael Hamilton (South Scotland) (Con)
*Richard Lochhead (Moray) (SNP)
*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Sionaidh Douglas-Scott (University of London)
Professor Sir David Edward (University of Edinburgh)
Dr Kirsty Hughes (Friends of Europe)
Fiona Hyslop (Cabinet Secretary for Culture, Tourism and External Affairs)
Professor Andrew Scott (University of Edinburgh)
Karen Watt (Scottish Government)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

European and External Relations Committee

Thursday 30 June 2016

[The Convener opened the meeting at 09:00]

Interests

The Convener (Joan McAlpine): Good morning. I welcome everyone to the second meeting of the European and External Relations Committee in the fifth session of the Scottish Parliament. I welcome the public and the Cabinet Secretary for Culture, Tourism and External Affairs, and I remind everyone, including members, to switch mobile phones to silent. Parliament is moving to digital working, so if members consult their equipment during evidence sessions, that is not because they are rude.

Since the committee's previous meeting, we have expanded. Our role will expand as a result of a decision by the Parliament, so we have been sent reinforcements in the shape of Ash Denham and Tavish Scott. I welcome both new members to the committee and invite them to declare any interests.

Ash Denham (Edinburgh Eastern) (SNP): I have no relevant interests to declare.

Tavish Scott (Shetland Islands) (LD): I have never been described as a reinforcement before, but I will take that as a great courtesy—thank you, convener.

I have no relevant interests either.

Decision on Taking Business in Private

09:01

The Convener: Does the committee agree to take agenda item 4 in private?

Members *indicated agreement.*

European Union Referendum (Implications for Scotland)

09:02

The Convener: Our main item of business is an evidence session on the implications of the European Union referendum for Scotland. We are delighted to have with us Fiona Hyslop, as well as Karen Watt, director of culture, tourism and external affairs in the Scottish Government. I invite the cabinet secretary to give an opening statement.

The Cabinet Secretary for Culture, Tourism and External Affairs (Fiona Hyslop): Thank you very much, convener. This is the first time that I have appeared in front of the new committee. I look forward to working with all of you across the brief, and I am delighted that the Parliament has agreed to expand the committee. It is really important that all parties are represented on it at this time. A vital piece of work will have to be carried out over the future period.

Obviously, we are meeting very soon after last week's referendum. Indeed, I was reflecting that, at this time last week, I had not yet cast my vote. A lot has happened over the past week.

The First Minister has committed to meet the committee at the earliest opportunity. Having secured the support of the majority of members in Parliament on Tuesday, she and the Scottish Government will begin to take all possible steps to explore all options to protect Scotland's relationship with and place within the EU.

It was reassuring on Tuesday to see colleagues from across the chamber committing to work together and to deliver on our common values and shared responsibility for the people whom we serve. To that end, we have been in active contact with the European member states and the EU institutions. Since the United Kingdom voted to leave the EU, I have spoken with the Slovak, French and German ambassadors, Dr Alasdair Allan, the Minister for International Development and Europe, has held a briefing with the consular corps in Edinburgh—that was on Monday 27 June—and the First Minister has set up the standing council on Europe, which includes experts with a variety of views on Scotland's constitutional future, to advise us on the options that are open to us to protect Scotland's relationship with the EU.

Members may be aware that the First Minister was in Brussels yesterday on a successful visit during which she met leading figures from the EU institutions and the European Parliament. She explained Scotland's position to leading figures

and received “a very sympathetic response”, to use her own words, from those she met and the European press.

Yesterday, I spoke with the UK Government’s Minister of State for Europe, David Lidington, and reminded him of the Prime Minister’s commitment to meaningfully involve Scotland and the other devolved Administrations not just in the negotiation but in the process that leads up to it. I will meet him next week.

With a clear democratic mandate from the Scottish voters to remain in the EU, the First Minister has outlined three priorities for the Government: to reassure those from other countries who have chosen to make Scotland their home that they are welcome in Scotland—Scotland is their home, and we value their contribution; to reassure and engage with businesses, organisations and stakeholders; and to protect Scotland’s relationship with and place in the European Union, which we are determined to do.

In Tuesday’s debate, there was concern about the prospect of a second independence referendum. I want to make it clear here today that all options will be considered to protect Scotland’s EU relationship. We will bring our recommendations to Parliament in due course.

Tuesday’s motion in Parliament called on the Government to report back to Parliament and to the committee. This is the first of many conversations that we will have. We also need to think about the appropriate mechanisms for ensuring that members are kept informed, particularly during the recess.

The First Minister has made a commitment to keep party leaders informed of progress, and I ensure that I will do the same with my counterparts and leads in other parties. We can work out the mechanism by which we do that.

More than that, the First Minister has made clear her intention that a range of committees should contribute to the process. The Parliament’s involvement will be led by this committee, but there is clearly an important impact on other committees. We should explore that further, although that is the responsibility of Parliament and not of Government.

Yesterday, the Irish President addressed the Parliament in an eloquent and magnificent speech. He reminded us:

“We must respond to demagoguery with an informed, open, respectful, tolerant and engaged discourse, and with respectful debate. We are challenged to do democracy better, rather than resile to old and divisive myths based on exclusion, and often to what is thinly veiled hate or racism.”

The sentiment that the President expressed in his address to us was very meaningful and of the moment, and I hope that it will inform the spirit and content of our discussions in Scotland and how we take them forward. I am very keen to explore with the committee how we find a mechanism, even at this very early stage, by which we together—the Government and the Parliament—can take forward Scotland’s interests.

The Convener: Thank you very much, cabinet secretary. Yesterday the spokesman for the EU, European Commission President Jean-Claude Juncker, said:

“Scotland won the right to be heard in Brussels”.

In your view, what is the significance of that statement? Does it represent a sea change in Scotland’s relationship with Europe?

Fiona Hyslop: The purpose of the First Minister’s visit was to ensure that Scotland’s position, including our experience of the referendum and the result, was heard and understood in Europe. That aim was certainly achieved. The feedback that we have had is that people recognise that Scotland voted differently from some parts of the rest of the UK. It was important that that was understood.

On our relations with Europe, we should remember that over the longer term we—not just this Government but previous Governments in Scotland—have had an active role in Europe in many fields, not least through ministers’ representation of our position in Europe. As you know, Fergus Ewing was at the EU agriculture and fisheries council on Monday, and I have regularly attended council meetings. Scotland has been an active player and has led on many issues such as climate change, so people recognise that we have a position and a role. We are a legal entity as a country, and we have an opportunity to put forward our case. Part of that involves ensuring that we are listened to, and that is certainly what happened yesterday. The President of the European Commission has said that

“Scotland won the right to be heard”

because 62 per cent of people in our country decided that they wanted to remain.

The Convener: In all that engagement with European leaders and institutions, what impression have you got of their view of the result of the UK referendum?

Fiona Hyslop: The conversations that countries have with us are confidential, so I cannot give you a blow-by-blow report; they would not expect me to. I can give you the general response, which is that everyone is in shock. I do not think that people expected this actually to happen; we have seen that in the United Kingdom. There is a clear

view across Europe that they want the UK to remain, so they are coming to terms with what they see as a result that they did not want.

As I said, it is still early days. We need to have a plan for what we want to try to achieve. How we do that, in effect, will take some time, but we have to engage early. If Scotland does not engage early, we will not be heard and we will not necessarily be expected to be part of the negotiations. That is why the twin-track approach is important, working with the United Kingdom to ensure that we are part of its thinking and deliberations and recognising that we must ensure that Scotland's different perspectives are heard.

It is quite interesting that the Prime Minister, David Cameron, recognises that Scotland should have the opportunity to engage directly.

The Convener: Have you been able to form any impression from your discussions of how other member states will approach the negotiations with the UK? For example, there has been a lot of talk about other member states being anxious to speed up the process rather than delay matters.

Fiona Hyslop: I think that it is fair to say that there is probably not one view—there will be different views in different countries for different reasons. The Council will speak on behalf of all member states on their position.

There was an immediate call for article 50 to be triggered. At one point over the past few days, the perceived wisdom was that that should have happened yesterday, but there has been a bit of movement on that, recognising that a bit of space needs to be provided to prepare for article 50 to be triggered.

We should remember that there are 27—or 28; we will need to decide which number to operate with—member states. Some people will want to move very quickly to change how the EU works. Some people will want the EU to come closer together and will move quickly to bring that about. Others will act only out of self-interest. We are politicians, and six weeks ago we faced an election. Politicians in many other countries will face elections in the next year to 18 months, and they will want their interests to be reflected. Therefore, it would be wrong to say that there is one view. There will be different views for different reasons. The whole point of the European Council of Ministers is to bring that collection of views together to identify what is in the common interest of all the member states.

We need to be mindful of the fact that there is a desire to protect the institution itself, so there is a strong sense that, in the negotiations, the UK should not be able to cherry pick or renegotiate. David Cameron spent the best part of the past 18 months trying to negotiate a package. That

process went on up until the referendum. There has been some speculation on the idea that that can now be revisited, but there is quite a hard view that member states might not be open to such cherry picking.

However, politics is politics, and self-interest will be a consideration for the institution and the member states. If there is one thing that we know about the European institutions, it is that they are pragmatic. They face many pressures. We should not look at the relationship of the UK with the institutions as just a one-way street. The institutions have their own priorities, and I think that we should be mindful of that, not just in Scotland but in the UK.

The Convener: Our predecessor committee conducted a piece of work on the implications of Brexit for Scotland and took evidence from witnesses on the amount of money that comes directly to Scotland from Europe. That funding includes farm payments of more than £800 million, structural funds of more than €900 million and university research funds of around £88 million. In its report, the committee repeatedly said that the UK Government had failed to provide clarity on whether the Scottish block grant would be adjusted after a Brexit to make up for the loss of that European funding. Have you managed to glean any additional information from the UK Government on whether we would be out of pocket? Is it making plans to readjust the block grant?

Fiona Hyslop: In a spirit of consensus, I will try to refrain from making hard political points, but there is a general understanding that there is no plan for an immediate Brexit, let alone for what might happen further down the line. Such issues will have to be considered as part of the UK's deliberations.

The Parliament must think about how it can ensure that Scotland's interests are protected. The previous system involved the other committees having a rapporteur with European interests, so, for example, I would fully expect the Rural Economy and Connectivity Committee to think about the common agricultural policy payments and how to deliver the best position for Scotland. That will have to be part and parcel of our discussions with the UK Government, but we must work with the standing council of experts to identify what the options might be and what would be in Scotland's interests in our direct discussions.

I am trying to be fairly circumspect. I would like to be able to say that there was a 650-page blueprint that told us what would happen in the event of a Brexit vote. Unfortunately, there is not, so we must deal with the situation that we face and try to make sure that Scotland's interests are represented in the parallel discussions.

09:15

Lewis Macdonald (North East Scotland) (Lab): It is helpful to have you appear so promptly under the circumstances, which we all recognise are very difficult.

I will ask you a couple of things about the twin-track approach. One of the issues that appears to be at the top of the agenda at the moment is not only when but how article 50 would be triggered. For example, Professor Mark Elliott has expressed the view that, because the referendum was purely an advisory exercise, it has no legal force and, therefore, the United Kingdom has yet to make a decision to proceed under article 50. Has the United Kingdom Government consulted you on the timing or the legal and technical requirements of deciding when to trigger article 50?

Fiona Hyslop: I notice that, among your witnesses today, you have a number of people who might be well placed to give you the background to the constitutional aspects of article 50.

I have had two discussions with UK ministers. We have an opportunity to recalibrate how the UK Government works with the Scottish Government in negotiations on the issue. Since the referendum, I have spoken to the Secretary of State for Scotland and David Lidington, who is due up to meet me next week. There is a better appetite for engagement on the issues than there has perhaps been in the past two years.

UK ministers have not told me what their plans are because I do not think that they have plans yet. That is to be resolved. Some of this is party political and concerns what can or should be done before a new Prime Minister is in place, but I have made it clear that they should think carefully about when and how they trigger article 50 and that it is important that we be involved in the negotiations or discussions and the process prior to article 50 being triggered.

I have given clear direction on what is in Scotland's interest. I have yet to have an affirmative response on that, but UK ministers know our views and I expect to continue those discussions with David Lidington next week.

Lewis Macdonald: When you describe to David Lidington what Scotland's interest is and what Scotland is looking for in the early process prior to the triggering of article 50, what fundamental points do you intend to make to him? For example, is it in Scotland's interest that article 50 be triggered as late as possible? Does the Scottish Government have a specific view on how it should be done in our interest?

Fiona Hyslop: There are different pressures. The legal competence for the negotiation is with

the UK Government, so we need to be part of the UK Government's negotiations and at the table in the discussions. That is why the process is important. I think that the UK Government understands that but I have yet to have the "Yes, that will happen," response. To be fair, it is a week after the referendum and there is turmoil. As much as we are frustrated, we have to recognise that and we need to keep the pressure up.

On the detailed content, considering our priorities and ensuring that we keep as many options open as possible is important for us. There are different options, as you will no doubt hear if you pursue questions on the matter. It is possible to have a straight article 50 process or something else depending on different aspects. The UK Government does not need to give justifications or a rationale.

At this stage, the most important thing is trying to keep our options open, both in the process and in what the result might be. That is why considering all the options is important. We will need to move fairly rapidly. A lot of thinking is going on about that, and the members of the standing council on Europe will give us a range of expertise on the detailed content. For example, Dame Anne Glover, who was previously scientific adviser to President Barroso, will give us an understanding of what the priorities might be on science.

We need to think about content as much as about process. The content discussions will not necessarily form the content of the article 50 process, because it is a legal mechanism, but that is why the talks around it and an understanding of Scotland's position are important. That is why the dialogue that we can have with others is important. I have not elaborated on these discussions but, quickly and early, our First Minister spoke to the First Minister of Wales and the Deputy First Minister of Northern Ireland. I think that she has had two conversations with the Taoiseach.

Lewis Macdonald: While recognising that it is early, I wonder whether when you meet Mr Lidington next week you will talk to him about the kind of issues that Scotland will want the negotiations after the triggering of article 50 to address.

Fiona Hyslop: We will be looking at the scope—part of this is about process and part is about scope. That is what is always done initially, and that is what we will be looking at.

Lewis Macdonald: Sure. Thanks very much.

Bruce Crawford (Stirling) (SNP): Thank you, cabinet secretary, for coming to the committee so early. It is useful to hear some of the background that you outlined earlier about trying to create new relationships, building on existing relationships

with the European Union and how best to prosecute the Scottish position. That twin-track approach is obviously important as far as Scotland is concerned.

You used interesting words about the recalibration of the arrangement with the UK. As part of the scoping exercise, one of the things that has been exercising my mind is how flexible the UK might be prepared to be in relation to Scotland's position. Have you yet had the opportunity, or will you take the opportunity with David Lidington next week or in the near future, to discuss with the UK Government whether in the negotiations post the triggering of article 50 it is prepared to find in its negotiating position an argument that Scotland can remain?

Fiona Hyslop: There is certainly good will now. What you are asking for is speculation, and one of the challenges is that we know that there will be a change of personnel within the UK Government. That makes it very difficult to anticipate what the commitments might be thereafter. The challenge to current ministers is not to say anything that would tie the hands of people who will come after them, as early as the beginning of September. That is why it is important to keep our options open.

What is essential just now is that we lock in Scotland's interest and role in the process so that it is very difficult or unreasonable for somebody coming in to change that. I hope that that will not happen.

The voice of Scotland not just minister to minister and First Minister to Prime Minister but at senior civil service level is also very important. As we know, ministerial positions may change but the civil service remains; having continuity, including at high level within the Cabinet Office, is very important. There is what I think is called the Brexit unit, and Oliver Letwin is the minister currently in charge of that. Continuity is important to make sure that we have a fairly seamless transition, whatever the ministerial team is in the UK Government after the recalibration and their internal elections.

That is why the process is very important: so that we can hit the ground running with whoever comes in. We need to establish some principles up front and get consensus. It is obviously an understatement to say that there is a bit of a vacuum across Westminster, in the Opposition as well as in the Government. A position from Scotland that is reasoned, is reasonable and has consensus will make the transition from one set of UK Government ministers to another a bit easier for us. That is why there is a big responsibility on us, collectively, to achieve that.

Bruce Crawford: I have one tiny supplementary question. Other than political impediments to the UK being prepared to negotiate for Scotland to remain and Brexit at the same time, is there any reason to prevent that from happening?

Fiona Hyslop: No, because at the end of the day if you want to involve people you can. The political will is the most important thing in terms of achieving that. We can discuss things with Europe, and it is very important for us to understand the different pressures and interests from other member states in working out our position, so that we can maximise our position within the UK discussions as well.

That is exactly why we have to be able to have a range of discussions, on the position both within the United Kingdom and internationally, because the pressures on some issues may be more important for us than for the rest of the UK.

The essential question is how to retain membership of a single market and what freedom of movement looks like, particularly on an island that has a common travel area with another island, let alone the other dimensions of the relationship with the Republic of Ireland. It is therefore essential that we are respectful not just of our own self-interests and needs but also of everybody else's.

Jackson Carlaw (Eastwood) (Con): Cabinet secretary, you used the phrase "spirit of consensus" earlier, so I will take at face value both your words and those of the First Minister when she said that she was not seeking to negotiate or position but simply to bring to the attention of as many people as possible across Europe the outcome of the result here in Scotland. I thank the Government for doing that, because it is important that it is understood.

We are at a stage not of probabilities or even of desirabilities, but of possibilities. Something that struck me yesterday when watching an interview that the First Minister gave to Bernard Ponsonby in Europe was that one of those possibilities seems to be that Scotland would remain in the United Kingdom outside of the European Union on the basis of the agreement that the United Kingdom finally strikes. Do you accept that, even if that is not a probability, it is one of the possibilities, if not one of the desirabilities from your perspective?

Fiona Hyslop: It is fair to say that the worst-case scenario is that Scotland is outside the EU with no improvement and no options, and with any options closed down. That would be a very difficult situation for Scotland to be in, because our interests in Europe are long and extensive. That is why there is a general consensus that we need to get movement. We do not know yet the degree of

movement. We are in uncharted territory and we do not know the results, but to me that would be a worst-case scenario. Generally across Scotland, we need to maximise our position.

Jackson Carlaw: If it is accepted at least as a possibility that Scotland could be in the United Kingdom outside of Europe on the basis of the agreement that is finally struck, will a parallel effort be given in the arrangements that you strike with the Secretary of State for Scotland and David Lidington or whoever it might be from the Foreign and Commonwealth Office in terms of Scotland's engagement in the discussions that take place that might lead to that outcome, and in the effort that you as a Government put into the substantiation of the other options that you have before you?

Fiona Hyslop: It is always helpful when going into discussions that you prepare for success rather than failure, and we want movement. One scenario—which may understandably have had more air time because of people's interests and which was acknowledged by David Martin MEP in similar media pieces last night—is that we may get to a position where the only way of ensuring our membership of, relations with, status in and interests in Europe is as an independent country. That may need to happen as a result of the examination of options.

From the UK's point of view, there may be a situation where it takes an extreme position that is so isolationist that it is not anywhere near even the Norwegian model. We have heard Jeremy Hunt saying that the UK should aim for a position like Norway's, which is out of Europe but with a different negotiation. That still involves a negotiation with the EU that tries to get something from it in terms of single market access and freedom of movement. That is one end of the spectrum of where we might end up, and I do not know where the UK wants to get to. It is difficult for me to predict possibilities, although I can understand why you are asking.

As part of our internal discussions with the UK, we are trying to ensure that the UK maximises its position in relation to Europe. That will be in our interests, and we must clearly identify where on the spectrum we can get to with all the options, some of which will have constitutional requirements. However, if we focus on the issues of environment and of regulation of our products for export in the single market, those are areas on which it will be useful to scope out the main interests for Scotland. If we can identify those issues, thereafter we can identify the best constitutional arrangement to allow us to do what we want, or what other types of negotiations we can undertake.

That pre-empted a lot of where we might end up, but let us think about it in those terms. We can

start to negotiate with people only when we know where they might be coming from. I have absolutely no idea—hand on heart—where the UK is coming from and what it is trying to achieve and, frankly, we might not even know that until September.

My worry is that, if the United Kingdom Government moves quickly to trigger article 50 now or when a new leader comes in and if we are not making sure that our voice is heard and that we have the chance to express our views, it will be very difficult to do that afterwards. That is my position.

Things might change. We will have to consider that and be nimble and responsive.

09:30

Jackson Carlaw: I realise that time is short so I will not seek to drill down into any of that today. However, you said that you would come back to Parliament with your conclusion in due course. Have you defined "in due course" in any sense? Is it as wide as saying you will come back at any point during the next two years and the negotiations that are taking place?

Fiona Hyslop: The First Minister has made it clear that, if an independence referendum was required, that would certainly mean we would have to come back to Parliament. We have to look at the staging posts of how the options are being assessed and what the possibilities are.

I will give an example of how I, as a cabinet secretary, have approached a similar issue. Obviously the committee will be interested in the BBC charter. I worked closely with the Education and Culture Committee and made sure that debates took place at appropriate times, so that we—the committee and the wider Parliament—had an understanding of where we had got to.

It will be important to get advice at the appropriate points so that we can see where we have got to at any one stage. When we come back after the summer recess, it will be shortly after a new Prime Minister has been put in place. It might be helpful to express the views of Scotland at that point, depending on where we are.

We should also use the parliamentary committees. One of the Parliament's strengths is the thinking, co-operating and drilling down into issues that happens collectively across committees. I know that we are going into recess, but I am absolutely convinced that yourselves and others, as well as the Government, will be working hard during that time to make sure that we maximise our position. We just have to work out the process, and I am sure that we can work with the clerks on agendas and timetables.

The Convener: I apologise for the strange noises you might be hearing, cabinet secretary. It is something to do with the windows and hydraulics. We are trying to have it fixed.

Fiona Hyslop: My understanding is that the windows are operated centrally. The security staff have given me some advice on how that might be done better—I will share it with you later.

The Convener: Before we move on to Richard Lochhead's questions, I have a quick supplementary to Jackson Carlaw's question about the relationship with the UK Government. One of the Conservative Party leadership candidates, Theresa May, has said today that, if she is successful, she intends to set up a Government department to be in charge of Brexit. What are the implications of that for the Scottish Government's involvement and potential influence in the whole process?

Fiona Hyslop: I might ask Karen Watt to come in on that because it relates to the operation of Whitehall.

I said earlier that, particularly during a time of change in personnel in Government, we need to make sure that Scotland is operating not just minister to minister and Prime Minister to First Minister but also at a senior civil service level. The UK civil service set-up means that Scotland has an opportunity to make sure that we have a key position and voice. That is important.

Karen Watt (Scottish Government): In essence, if there is a new department with a new grouping of civil servants, we will engage with it in the way that we do normally. We have already had some initial high-level contact with the UK Government about arrangements, but it is too early to say how that will play out or what role we will play in the longer term. We engage regularly and the way in which the UK Government organises itself will be one of the things that we consider, but it will not affect on-going relationships.

Richard Lochhead (Moray) (SNP): Welcome, cabinet secretary. I commend the Scottish Government for the leadership it has shown in making sure that Scotland's voice is heard.

Clearly, given the enormity of what we face, there is a monumental amount of work ahead for Parliament and the Government to ensure that our voice is heard and that Scottish interests are taken forward. First, there is all the work to explore the options for Scotland to stay in Europe. Secondly, there is the fact that the UK will have to negotiate a treaty outlining the terms of withdrawal. Thirdly, there will be the agreement and treaty with the EU about our future relationship. A lot of effort will be required for Scotland's voice to be heard to ensure

that we are part of all of the levels of negotiation that take place.

Presumably, the UK civil service will shortly be beavering away to prepare advice for its ministers. I would think that it is imperative that Scotland be part of that and that no working groups are set up in Whitehall that Scotland does not know about or is not part of. Is that something that you have given some thought to, cabinet secretary? Are you seeking a commitment from the UK Government that Scotland will be part of all the workstreams behind the scenes that will be beginning in the next few weeks and months? That is quite an important point.

Fiona Hyslop: That is important advice, given Richard Lochhead's wisdom and experience of how things work. I know that it is frustrating—people immediately want to know what the content is of any deal or negotiation—but it is really important to nail down the processes, both at ministerial level and within the civil service.

You are right that we have to ensure that our voice is heard by EU institutions and member states. We must also ensure that we are not considered, in any shape or form, as an afterthought or presented with fait accompli positions on the content of policies relating to withdrawal that do not necessarily meet Scotland's interests.

Those were wise words; thank you for that contribution.

Richard Lochhead: My second area of questioning is on the fact that the day-to-day business will continue until Scotland exits the EU. Decisions will continue to be taken in Brussels and Luxembourg at the various councils and in all the working groups that take place across Europe. This Parliament will be asked to implement any decisions. Therefore, we have the issue of how Scotland's voice is represented in such negotiations.

The way in which negotiations work in Brussels means that if there is not good will on both sides of the negotiating table, or if you are not seen as very committed to the future of the agreements that are being put in place, your voice does not count as much as it otherwise would do. The fact that the UK's position is to leave Europe leaves Scotland with an issue.

I am extremely worried about what will happen to our influence over decisions over the next two years—or however long it takes until Brexit—that will affect many of the communities and economic sectors in this country. Is there a case, therefore, for Scotland to ask for a bigger voice in such negotiations? It is much better to have a pro-European minister leading the UK delegations in EU councils than a minister who wants to leave

Europe. It would secure a much better outcome, not just for Scotland but for the whole of the UK.

There are other issues, such as the vacancy for the UK's EU commissioner, the current one having resigned. Why are we not asking for that position to be given to Scotland or Northern Ireland?

Fiona Hyslop: On the latter point, the European Commission President has appointed somebody else to take on the responsibilities. However, the country position is still open—and I hear what you are saying about that.

You are absolutely right about the day-to-day issue. We were Europeans last week, we are Europeans today, and we will be Europeans tomorrow. We are members of the European Union until such time as we are not, and our intention is to ensure that Scotland remains. That is a clear position.

A lot of our early action was about reassurance and connections with particular sectors. That happened as of Friday; our ministers across different portfolios have engaged actively with different sectors about their immediate reaction, any concerns and how we might address those concerns and help them. That work continues.

You are right about how we can maximise our position. There have been instances, which you will be aware of, when the UK has known that having a Scottish minister operating in a certain area would be of benefit to the UK's position, because the Scottish minister would get a better hearing than the UK minister. Frequently, in a lot of areas, we hear of the conflict between Scotland's position and that of the UK in Europe, but in other areas we can work in parallel and consensus. A good example of that is some of the climate change negotiations that are going on.

I agree that we can argue to ensure that Scotland is up front and centre in a lot of the on-going business. There are still two years of European councils where decisions will be taken.

On our chance of influencing, you are absolutely right—who is going to want to listen to people who want to leave? It is important that the EU hears from people who want to remain so that we can maximise our position over the next two years. We do not want to lose ground in those two years, and there is a real risk of that. Therefore, it is in our interests to be there. That is why as part of our planning—we did have a plan—Fergus Ewing was at the agriculture and fisheries council on Monday to represent our interests.

We are making sure that we have the same representation that we have always had. We always try to attend councils and lead for the UK when we can. We do not always have the opportunity that I would want us to have to lead on

UK positions, but I have done so two or three times—for example, in the initial discussions in the European culture and audiovisual council.

That is possible, practical and very pragmatic if there is a whole load of ministers who do not want to be in Brussels. If the choice is between having a UK minister who does not want to be there, a permanent representative from the UK—a civil servant—or a Scottish minister, I think that a Scottish minister would be far better placed to lead on the agreed lines and positions that we always have in such circumstances.

Our approach will be just an extension of what we try to do anyway but, as you say, it will probably be more important to have representation over the next two years than it has been over the past two years.

Tavish Scott: Cabinet secretary, could you please set out what the options are? You say that the First Minister has stated that all the options are on the table.

Fiona Hyslop: I would love to be able to tell you that I know, here and now, what all the options are. We have set up the standing council on Europe to make sure that we can take advice on the options. We know that, if the only way for Scotland to remain part of the European Union is independence, that option is on the table, but there may be other options. People have speculated about the situation of Greenland and Denmark, and others have floated the Liberal Democrats' position on federalism, although I do not know whether that could deliver what we want.

At the far extreme—I think that this is what Jackson Carlaw was alluding to—is the option of Scotland being out of Europe and in the United Kingdom. I am not trying to misrepresent that as his preference, and we may not end up there. There is a spectrum of possibilities that includes our being out of the single market, but the UK might not have that negotiation—we do not know. Just as I cannot speculate about the options at one end of the spectrum, I cannot speculate about the options at the other end because we do not know the UK Government's position.

We think that there may be options, but I cannot give you them definitively. The First Minister wants to come back to Parliament to let members know what the options may be. However, there has to be some thinking time. It is barely a week after the referendum and only a few days after we have appointed the standing council on Europe to give us advice on the range of options, and I am not going to sit here and tell you the solution that we all have to work towards. We should explore every option, but I do not know what the options are just now.

I want to make sure that we maximise our position. Whether that is about influencing the UK Government and where it is going, or about identifying what the track might be for Scotland, which might be separate or different from the UK track, we expect options to be presented to us in the advice that we get. Let us use all the talent, experience, brains, wisdom and knowledge in Scotland to get a solution that takes forward and protects Scotland's interests. However, I do not think that it is reasonable to expect me to be able to give you those options here and now—I cannot do that.

Tavish Scott: Do you think that the options will be clear by the end of August?

Fiona Hyslop: I think that they will be clearer, but I cannot give you a definitive answer. We do not have an endgame in terms of the solution that we might end up with. We know that independence may be the only way in which we can protect our interests, but we are absolutely going into this with an open mind, looking at what other options there might be. That is genuinely where the heavy lifting and shifting is going to be over the next few weeks. The earlier we can do that, the better, because as much as we want to make sure that our options are open, my worry is that, once we get into an article 50 process, they may close very quickly. That is why I think that, as well as the thinking that will be done in the standing council, a lot of work could be carried out by committees during the recess period.

I know that people want instant solutions. A lot of people are very saddened and angered by what has happened and they want an immediate way forward. What is important is that in the committee, in the Parliament and in the Government, we are determined to find options, and even though it is barely a week since the referendum, we have managed to make extensive progress with that.

09:45

Tavish Scott: I gathered last night that the First Minister has indicated that the Government plans to seek external legal advice on the options. I absolutely take your point that you cannot state them today but, self-evidently, it is difficult to know what we are talking about until the options are clear to Parliament. Am I right to say that external legal advice is being sought?

Fiona Hyslop: Once we have advice on the options, it will be appropriate to make sure that we have legal advice.

Tavish Scott: You have probably gathered—because you probably watched the same television programmes as I did last night—that there is a little interest in having that advice shared

with Parliament. Do you agree with that point of view?

Fiona Hyslop: We want to be as open and transparent as we can be. We can advise Parliament of the existence of legal advice, but we are not there yet.

Tavish Scott: I understand that.

Fiona Hyslop: We do not have the advice yet. I understand why people want to make sure that we are as open and transparent as possible, but I think that that is a matter for the First Minister.

Tavish Scott: Okay. Thank you.

The Convener: I have a supplementary question. My understanding is that, once the article 50 process is triggered, there is a period of two years and then a guillotine falls. What are the implications of that for Scotland and its options?

Fiona Hyslop: There are lots. That is why we need to make sure that we maximise the options. I think that the intention is that the UK Government will trigger the article 50 process, but it might not do so—that is also a possibility. If we have not maximised our position by the end of the two years and the guillotine falls and we are out, we could be in the extreme position that I talked about. That is the one thing that we cannot allow.

People will make a judgment, but if we have not managed to get a position that maintains Scotland's membership by the end of that two years, Scotland will be, as part of the United Kingdom, out of the European Union.

The Convener: In that case, potentially this Parliament would have to be asked to give legislative consent to the repeal of the European Communities Act 1972 or indeed the opening up of the Scotland Act 1998. Can you see any circumstances in which this Parliament would give legislative consent to being pulled out of the European Union against our will?

Fiona Hyslop: Politically, if this Parliament has expressed its view that it wants to remain, it would find that very difficult indeed. However, we are not in that scenario or situation yet.

As I said, we should approach the matter with the view that we can be successful in what we want to do. If we just plan for failure, that is what we will get. I do not want to be put into that position, and I do not think that we as a Parliament and a Government should put the Scottish people into that position.

The Convener: Thank you.

Rachael Hamilton (South Scotland) (Con): Welcome, cabinet secretary. You used the word “failure”. Do you think that we should be preparing ourselves for departure from the European Union

as well as continuing all the negotiations that you have been involved in for Scotland to remain?

Fiona Hyslop: We have just gone through a referendum that we did not want, which had a result that we did not want, and unfortunately the people who took us there did not prepare a plan for what would happen in terms of an exit. Our job is to protect Scotland's interests, and that is what we are trying to do.

We are trying to maximise our position within that, but as Richard Lochhead said, we have to be very conscious of the need to be in the best possible position in two years, whatever the scenario. I absolutely understand that, and I want to ensure that we try to get as much as we can for Scotland within that period. That is what people expect from us.

You may or may not have liked our "Scotland's Future" white paper, but at least we had a blueprint for what could and should happen, and a lot of thought and detail went into that. As a Government minister who went through our referendum, I find it very disconcerting and absolutely staggering that we are in a position in which things—even the basic stuff in the early days—have to be established now. I find that quite unbelievable. However, that is what we have to cope with and deal with, and we will try to inform the process as well as we can in Scotland's interests.

Lewis Macdonald: I have a brief supplementary question. When you meet David Lidington next week, will you ask him about the UK Government plans for preparing and publishing what the options might be in advance of any triggering of article 50?

Fiona Hyslop: Obviously, just as we think that the Scottish Government should be as transparent as it can be, we expect the UK Government to keep people informed of where it is. That is very important. On how that is done, I am sure that the convener's relations with the Scottish Affairs Committee in Westminster will be important in ensuring that there is transparency in what the UK Government does.

Ash Denham: Obviously, the issue will have effects, which will sometimes be quite severe, across other Government portfolios. It is clear that the Scottish Government has taken steps to reassure the business community about what might happen in the future. I know that you have a business summit planned for next week to engage with the business community. What feedback have you had? Has the business community spoken to you about its hopes for Scotland moving forward?

Fiona Hyslop: It is very striking that, once people acknowledged, understood and coped with the result, they quickly recognised our First

Minister's very strong leadership in acting very rapidly. People were also very receptive to and welcoming of the early approaches from the Scottish Government. People are very open-minded about what we can do, and there is willingness to put Scottish interests first and foremost.

I had a meeting with the British Hospitality Association yesterday on my tourism brief. Part of our discussion was about the importance to the tourism industry of our European Union workers and the steps that individual employers have taken to reassure their own staff about their being welcome and their contribution.

There are varying impacts across a range of portfolios. The response from civic Scotland, the third sector and the private sector is very interesting. People recognise that we all have a job to do in ensuring that we protect our workforce and our business interests, but we could also try to think about solutions. People absolutely have the capacity and willingness to help us identify what can be done. Our job is to try to harness that and bring it to bear to ensure that we can influence the discussions.

The Convener: Richard Lochhead has another supplementary question.

Richard Lochhead: My question follows on well from Ash Denham's question. I seek reassurance. In determining the timescale for deciding the options for Scotland to stay in Europe, we have to bear in mind that the Brexit negotiations could take many years, given the enormity of what has to be sorted out. In other words, I presume that there is the potential to extend the two-year deadline once article 50 has been triggered. If it turns out that, once the can of worms is open, the negotiations will last for years, there could be, in the meantime, an impact on the Scottish economy—and uncertainty for EU citizens—across a whole range of aspects of our society. I take it that the Government is taking that into account in determining the timescale for deciding on the options for Scotland.

Fiona Hyslop: Absolutely. We have to be conscious of the interests and needs of different sectors and the different aspects of what the situation means for them. Some will want to move more quickly than others. For example, our universities have moved very quickly in some of their statements and some of the decisions that they have to take—for example, on EU students coming in for the 2016 intake. I put on the record my thanks to and appreciation of all the higher education institutions that have done that. That is very important.

Different people will make different decisions at different points in their own sectoral interests.

From the business perspective, people want to know that we are open for business. We want business. We have done very well in our inward investment, and we want that to continue, but we have to ensure that we are realistic. That is why every single Scottish Government portfolio must ensure that we maximise and protect Scotland's interests.

Ross Greer (West Scotland) (Green): I have two relatively short questions. I am glad to hear of the immediate engagement with other EU member states. Does the Scottish Government plan on direct engagements with each of the other members before September, which we assume would be the earliest point at which the activation of article 50 would take place?

I was glad to hear that there is an understanding of the need for flexibility in the membership of the council of experts. Does the Government have in mind specific points in the process and specific individuals for the development of its membership? I am thinking specifically of our remaining MEPs. It is good to hear that David Martin is involved, but some of our other MEPs could make quite substantial contributions.

Fiona Hyslop: Yesterday, our First Minister met all Scotland's MEPs—bar one. You are right to say that they have talent and experience in different areas. Certainly, their role will be critical, which is precisely why the First Minister made a point of seeing them yesterday. Obviously, there has been only a short time since yesterday, so I cannot say what the mechanism for their inclusion in the council of experts might be. Alyn Smith and David Martin are among the oldest of our MEPs—in terms of their experience, not their age—but a former clerk to this committee has been elected to the European Parliament and clearly has a great deal of experience, too. We have to ensure that we are using all the talents.

On the question of who we are going to see and when, my experience suggests that it is best to secure the meetings and have them and then to report on those meetings, rather than telegraphing everything in advance. Some countries might not want that engagement to be telegraphed—that is part of the diplomacy that we are undertaking. However, meetings and appointments that were already in train, such as those that I will take part in over the next few days, will help the process, too—they were scheduled before the referendum, but they are even more important now. We regularly meet ministers and ambassadors from other countries, and that will continue to happen, although those meetings will now have a different dimension.

The experience that this Parliament, this Government and previous Governments have built up through our positive engagement with the

European Union and its institutions will stand us in good stead. Through our MEPs and people in different parties who served as ministers at different times, Scotland's voice can be heard. It is important to be engaged and to be pro-European in our outlook. That is the reputation that this Parliament has, and this committee, in previous sessions, has helped us to ensure that we can have that engagement when it is needed.

Scotland's time is now. It is time for us to work together and to draw on that goodwill and translate it into something meaningful. The seriousness of the situation is not lost on anyone.

The Convener: That ends this evidence-taking session. I thank the cabinet secretary and Mrs Watt.

09:58

Meeting suspended.

10:04

On resuming—

The Convener: I welcome our panel of witnesses to the meeting. We have Professor Sir David Edward, Professor Sionaidh Douglas-Scott, Dr Kirsty Hughes and Professor Andrew Scott. I thank you all very much for taking the time to come and speak to the committee.

I will open by noting that it is now seven days since Scotland voted overwhelmingly—by 62 per cent—to remain in the European Union. Since then, this Parliament has had an unopposed vote to welcome the vote of the Scottish people and to mandate the Scottish Government to do everything that it can to protect Scotland's relationship with the European Union. In your view, what is the best way to take that mandate forward and protect Scotland's relationship with the European Union? What are the challenges and opportunities that the Government faces? In a nutshell, what is the most effective scenario for protecting our relationship with the European Union?

Dr Kirsty Hughes (Friends of Europe): Good morning, everybody, and thank you for inviting me to join you at this extraordinary and extremely difficult time. The vote has inflicted extraordinary damage on the UK, on Europe and even on the wider world, and the EU is facing other big challenges as well as managing Brexit. Those are challenges that the UK has mostly stepped back from: the refugee crisis, the youth unemployment crisis and so forth. In the midst of this huge crisis for the UK, it is very important to keep that in mind and keep a broad view in our responses.

I think that the Scottish Government is absolutely right to do what it is already doing and explore all the options. No member state has ever left the EU, with the exception of Greenland and Algeria—they are the only examples we can give. The simplest and most obvious way to preserve the relationship with the EU would be to become an independent state, transition in and stay in the EU. That would be the most straightforward way. The political questions are, is it feasible and does the Scottish public want it?

All the other possible permutations, relationships and other ways—the reverse Greenland, for example—of keeping access to the single market will depend to some extent on what the rest of the UK does. The UK could decide—which would be, in many ways, extraordinary in the circumstances—to join the European economic area, therefore retaining full access to the single market but also the four freedoms, including free movement of labour, while having given up, like Norway, all say and vote over those regulations. If that was the option in place, would Scotland need to explore other ways of doing things? Short of the independence option, I think not.

However, if the UK decided to go for a Canadian or Ukrainian-type free trade deal or association agreement that had much less of the single market and much less free movement, Scotland could explore options about whether it could have a differentiated relationship with the EU; whether it could keep free movement when England and Wales did not; and whether it could mimic, mirror or take on European legislation. That is a complex, technical and highly political discussion and worth looking into.

At the moment, it is hard for me—I will be interested to hear what my expert colleagues on the panel have to say—to imagine how Scotland could be in the UK and still in the EU, rather than just still in the EEA or the single market. A country is meant to be a state to have a seat in the Council of Ministers, not a sub-state. At the moment, I do not see any way around that. Obviously, there is a lot more to be said, but I think that I will stop there.

Professor Sionaidh Douglas-Scott (University of London): I agree with most of what Dr Hughes said. Given the current apparent lack of strategy in Westminster and Whitehall, there will be a couple of months of uncertainty at the very least, but I will address my comments to the two possibilities of Scotland either remaining within the EU as part of the UK or, alternatively, being independent in the EU.

I agree with Dr Hughes that it is difficult to envisage how only part of a state could be in the EU. However, I think that one should distinguish between legal and political issues. Legally

speaking, there is nothing very clear in the EU treaties. We know that there are precedents for part of a state leaving—there is the Greenland scenario. I would add to that the reunification of Germany. Those examples illustrate that states can determine which parts of their territory should be members of an international organisation or a treaty. That is important.

Legally, there are precedents. Politically, it is another question, because it would be a matter of negotiating with not only the other EU states, but the UK. I would distinguish between those two things. Legally, the EU treaty is not completely clear on the issue. Even in the more general arena of international law, there are precedents for sub-state units forming treaties—treaty conclusion is not only the preserve of the sovereign state. In federal countries such as Germany, the German Länder have been able to adopt certain treaties. There are other precedents. Parts of the former Soviet Union, when they were still within the Soviet Union, became members of the United Nations—Ukraine, for example—so there are interesting possibilities.

It is one thing to cite those possibilities as precedents; it is another to say that it is possible to do a deal on that basis, because there would have to be agreement from other EU states. It is questionable right now whether such a deal could be part of an article 50 agreement, in which case we would be talking about a majority vote from other states in favour of the flexible option that Scotland was looking for, or whether we would be talking about an amendment to the treaties, which would require unanimity.

I will move on to the idea of an independent Scotland. Obviously, there are issues and it would be a choice for the people of Scotland. However, when it comes to EU membership, again there are legal precedents for saying that that is possible. Those precedents were canvassed at the time of the 2014 independence referendum and I think that a good legal case was made for Scotland's membership, but there are political difficulties. Some states in the EU are not so happy about that. Already, in the past day or so, the Spanish Prime Minister, Mariano Rajoy, has been making comments.

I would separate out the two issues and say that the legal precedents are there to be worked on. Then there is the issue of diplomatic and political relations and the discussions that have to be had. I will leave others better versed than I am to comment on that.

Professor Sir David Edward (University of Edinburgh): I largely agree with what has been said. Stage 1 is that one has to remember that one is engaged in international and intranational negotiations. It is a basic principle of any

negotiations to create good will. Steps have been taken to create good will with the other member states and the institutions of the union by the Scottish Government and particularly by the First Minister yesterday. We have to have in mind that it is also necessary in negotiations with the UK Government to maintain a position of good will, which might be difficult, depending on what emerges. However, that is stage 1.

Stage 2 is to bear it in mind that, although people talk about options, neither Scotland nor the United Kingdom can unilaterally adopt any of the so-called options—every single one of them requires the consent of others, even the so-called World Trade Organization option, which I can go into if necessary.

10:15

The third point that one has to remember is that there is a lot of talk about the fact that we should not trigger article 50 but instead have some form of negotiation in the margins. We should remember that article 50 not only sets down the broad procedure to be followed between the United Kingdom and the EU but includes a reference to article 218, which sets out the specific procedure that has to be followed by the EU side in the negotiations. As I see it, the purpose of incorporating the provisions of article 218 is to ensure that the particular prerogatives of all member states and institutions are respected in the process of negotiation. Putting it bluntly, the purpose is, for example, to protect smaller member states against a stitched-up deal between the member state that has intimated an intention to withdraw and the bigger member states on the other side. We should not forget that the Council has said that it requires service of a notice under article 50 because it has to observe a certain procedure on its side, and we should respect that.

Beyond that, I am afraid that everything is to play for, both up and down.

Professor Andrew Scott (University of Edinburgh): I can add very little to those comments. I agree with virtually everything that has been said.

There are two stages, the first of which is the political agreement that has to precede negotiations. That is agreement on what the negotiations will be about and what mandate will be handed to the negotiators, both in the EU and likely the Commission—although there is already a struggle in the EU as to who the lead negotiators will be—and of course within the UK. A set of political agreements usually precedes any decision of this type. Of course, the current situation is unprecedented, but that approach has been taken with enlargement. If we reverse the

enlargement argument, it seems to me that, taking the politics out of it, it would be important for the Government in Scotland to examine the portfolios that most impact on Scotland. For example, a number of portfolios, such as audiovisual policy or whatever, will have little impact on Scotland, but some will have a significant impact. One way to structure thinking about the issue—at the level of administration and negotiation, rather than the political level—would be to consider it as a kind of reverse enlargement.

I agree very much with what Sir David said about how crucial relationships are to the way that the EU unfolds. The Scottish Government has made fantastic strides in building those relationships at a time when, frankly, the UK Government does not seem to have a clear idea of what kind of relationship it wants.

My final point is that the EU does not really know what it wants. I do not particularly want to go into the politics of the issue, but we are seeing a struggle between the member states and the institutions as to what the negotiation mandate should be. Alyn Smith's intervention a couple of days ago provoked an extraordinary reaction that I do not think I have ever witnessed before in the European Parliament. That raised a question in my mind about whether we have a Europe of citizens or a Europe of member states. At the moment, we are at the centre of that discussion, which has been on-going or implicit since the Greek crisis and all the rest of it. A fundamental question that the EU has to ask itself, particularly vis-à-vis Scotland and the rest of the UK, is what kind of union we are negotiating with.

There are big questions as well as very granular questions. The granular questions will be shaped by the political environment. They are big questions for the EU as well as for the UK and Scotland.

The Convener: Thank you—that is very interesting. I will hand over to Lewis Macdonald.

Lewis Macdonald: I want to explore the first stage in the process. We have heard evidence from the cabinet secretary and seen some suggestions in the written submissions from today's witnesses.

I am interested in two aspects in the first instance. First, it has become clear, and Fiona Hyslop clarified this from a Government perspective, that the UK Government went into the process without actually having a plan of any kind for what would happen in the event of a vote to leave. That is very serious, because it means that we are now in a position in which so much is at stake and there is very little in place to allow the UK Government, far less anybody else, to judge what to do next.

Secondly, I have a question on the triggering of article 50 and what that would require. The referendum in law would appear to be simply an advisory process, and the decision that would trigger article 50 would have to be taken by the UK Government. Again, it is not clear whether the UK Government has thought strategically about what that process might be and when it might trigger article 50.

I am interested in hearing the views of the witnesses on all that, in particular the specific point about triggering article 50, given that the European Communities Act 1972 makes it a matter of law that we are a member of the European Community, or the European Union as it now is. Does that mean that an act of Parliament is required to be passed at Westminster before article 50 can be triggered?

Sir David Edward: Perhaps I could start. Paragraph 1 of article 50 states:

“Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.”

We do not have any, so the question is, how is a decision to be taken?

There are three views on that. The first is that the decision has been taken by the referendum, although the European Union Referendum Act 2015 does not provide that that is to constitute a decision.

The second position is that, because the decision relates to treaties and international relations, it is a matter for the royal prerogative, which can be exercised without the consent of Parliament.

The third position, which is illustrated to some extent by the question, is that precisely because the treaties go into personal and commercial relationships, and rights and obligations are thereby created for both UK nationals and the nationals of other member states, and that is a matter of statute—the will of Parliament—which stands for the time being, it could only be Parliament that authorises the United Kingdom to take the position of commencing a process that is intended to create a situation in which, in accordance with article 50, the treaties shall cease to apply.

If you ask me which view is more consistent with our constitutional requirements, I would say that, if there is parliamentary sovereignty and we continue to believe that we are a parliamentary democracy, the third course is necessary.

Professor Douglas-Scott: Yes, I agree that those are the three possible interpretations. The UK constitution is not very explicit at all on any of those aspects, and it is not helped by the fact that

we have no precedents under article 50. The EU itself has not been giving out clear messages.

With regard to seeing the result of the referendum itself as a possible trigger, I think that we are all clear that the referendum is advisory, and that if Parliament chose not to act on it, it would not have to. We can distinguish it from other referenda such as the alternative vote referendum a few years back, which contained provisions for the follow-up to the vote. Even in that case, however, Parliament, had it chosen to do so, could have reversed that decision by another act of Parliament.

What this raises is a conflict between popular sovereignty as expressed in a referendum and parliamentary sovereignty as expressed in the rights of our MPs at this stage. However, the interesting thing is the conflict between the second and third views, which is very much playing itself out in London right now, and quite a few prominent constitutional lawyers have been opting for the third view, which is that a vote in Parliament is necessary for the Government to trigger article 50. It is not sufficient for the prerogative itself to be exercised—Parliament has to have its say. I suspect, though, that that view will not win the day.

When it comes down to it, the withdrawal from the union will have to be agreed by Parliament when it repeals the European Communities Act 1972, if that is what it does. I suspect that enough people will say that Parliament will have its say then, given that there will have to be some sort of withdrawal agreement and that Parliament will have to ratify that in a European communities withdrawal act.

My problem with the third option, which I think is quite attractive, is that it constrains the use of the prerogative to have any sort of negotiations on the foreign stage. When Britain joined the European Economic Community, as it then was, was it necessary to have an act of Parliament before the then Prime Minister could go and negotiate? I do not think so. I suspect, therefore, that the third option will not win the day, but the constitution is not clear. The referendum was fought partly on the basis of taking back control and parliamentary sovereignty, and if there is a strong belief in parliamentary sovereignty, Parliament should be able to have a say. At the very least, there will be some sort of resolution or vote in Parliament, even if it is not necessary for there to be legislation authorising the Prime Minister to go and trigger article 50. I suspect that in the end a majority of people will hold sway, and that the third option will not win the day.

Lewis Macdonald: Before the other witnesses come in, I want to come back with a couple of questions on those comments.

First, correct me if I am wrong, but my understanding was that the 1972 act preceded the substantive negotiations before entry into the EEC. Secondly, if the Government chooses to act on the basis that you are right and Parliament is not required to endorse a decision to withdraw, I presume that that will still be open to legal challenge.

Professor Douglas-Scott: Absolutely, but with regard to your reference to the 1972 act, I am talking about actually triggering negotiations. The same argument could be made in that respect; you could say that the Prime Minister of the day deciding to negotiate with the EEC over Britain's membership would have had a material effect on the statutory position in the UK at that time. That would have been an act of the prerogative.

Of course there had to be a European Communities Act to give effect to Britain's membership, but I am talking about the much earlier stage of opening negotiations. I am therefore slightly troubled by an interpretation that would seem to restrict the Government's ability to negotiate at all in foreign policy matters wherever there is some conflict between the prerogative to negotiate foreign matters and an act of Parliament. Where are we going to draw the line? We might well hamstring the Government in that case.

Lewis Macdonald: But would that act of Parliament not simply enable the Government to go and negotiate?

Professor Douglas-Scott: What we are saying is that it cannot do that until it gets an act of Parliament, but the point is that we do not say that with regard to other matters. We do not say, "You can't negotiate on other matters without an act of Parliament."

Sir David Edward: With respect, I do not think that that is the point. We are talking about article 50, the procedure for which will end with the annulment of an act of Parliament. The question is whether Parliament's authority is needed for the decision to set that in motion. You can have all the negotiations possible—although the indications are that the other member states are not in a mood to engage in negotiations without an article 50 notice. Indeed, that was possible before we went in but, at the stage of our deciding to go in, we had to have an act of Parliament to give effect prospectively to the treaties as they would apply on the date of entry. It is important to distinguish between the right to negotiate and the right to trigger article 50, which is a totally unprecedented situation.

10:30

Bruce Crawford: Professor Douglas-Scott said that, at the end of the process, an act of

Parliament would be required to agree whatever had been agreed following the article 50 negotiations. If, at that stage, Parliament did not agree to that, but we had exhausted the two years, what would happen?

Professor Douglas-Scott: That is an interesting question. Some sort of act of Parliament would be required to put the withdrawal agreement into effect. However, there would also have to be a repeal of the European Communities Act 1972, which means that we are talking about doing two different things, both of which Parliament might refuse to do. If it refuses to adopt an act of Parliament to put the withdrawal agreement into effect, that agreement would not have effect domestically, at the very least—it might be able to take effect internationally, but I doubt it. However, if Parliament did not authorise the repeal of the 1972 act, we would be left in a situation in which EU law could still continue to apply in the UK, but the situation would be extremely confusing because there would be references to various European institutions that would no longer have sway over the UK. For example, certain bits of EU law on agricultural competition might require European institutions to be involved, which would not be the case if we had withdrawn.

Bruce Crawford: Effectively, then, although the UK might decide, internally, that it wants to continue with the process, the EU would still see us as being out at that stage.

Professor Douglas-Scott: It might. I would be interested to hear what Sir David has to say about that.

Sir David Edward: Paragraph 3 of article 50 says clearly:

"The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification".

It would be possible to negotiate the withdrawal agreement but delay its entry into force. A situation could arise in which the withdrawal agreement has been negotiated and Parliament says that it does not accept it, which would mean that it would not enter into force. That is one possibility, but I am not sure that, if a member state has gone through that process, it can unilaterally withdraw from the process at the point when the withdrawal agreement has been concluded, even if it has not entered into force.

Dr Hughes: I want to add something on the political side. Mr Macdonald talked about the lack of a contingency plan—in many ways, the most extraordinary part of the entire campaign is the fact that people were voting against something but not for something.

As you know, some people are already talking about whether there should be a second referendum at some point. The discussion has been confused up to this point, partly because people are talking about two different things in the same sentence, column or whatever. One thing is whether there should be a referendum on whatever the withdrawal agreement is and the other thing is whether we should do what Denmark and Ireland did and have a second referendum—however politically inconceivable that might seem today—so that we can change our minds. It seems to me that those two things are incompatible. If we vote against the withdrawal agreement in a new referendum, does that mean that the alternative option is that we are staying in after all and we do not even have the deal that David Cameron struck in February 2016? I think that that would be utterly confusing.

The discussion about second referenda will continue, but we must have clarity about the fact that two things could happen. Some people are saying that article 50 should not be triggered for a long time or perhaps ever. Politics is changing hour by hour, but unless we get into such an economic crisis that public opinion suddenly goes 60:40—that sounds a bit like England copying Scotland—I imagine that article 50 will be triggered and that that will happen by Christmas, so we will not just have a second referendum.

Another relevant point is that it is possible that there will be two sets of negotiations. One set could negotiate a basic withdrawal agreement within two years, so that the UK is not—as the committee discussed with the cabinet secretary—sitting in the Council of Ministers when it has said that it will leave and is therefore a rather unwelcome and potentially obstructive presence. That would ensure that the UK could leave within two years. If a trade or association agreement had not been agreed by then, negotiations on that could carry on over the five or 10 years that might be needed. However, the basic deal would be agreed on ending budget contributions, MEPs coming to the end of their terms and European civil servants.

If the UK was out after two years but did not have a full trading agreement, that would open up the question of the transition. What would happen? Would the UK fall back on WTO rules? Would it join the EEA temporarily? There are options within scenarios within options.

The Convener: I have to move on to Richard Lochhead.

Richard Lochhead: I thank the witnesses for coming to give evidence and for making invaluable and fascinating contributions. I am trying to paint a picture in my head of the potential options, which I referred to earlier, for Scotland to be in Europe

while the rest of the UK is not in Europe. It is self-evident that Scotland cannot be a state and a sub-state at the same time, so I will explore further what the situation might look like.

Dr Hughes made the point that going into the European Economic Area means signing up to the four freedoms and having access to the single market but not having representation in the EU institutions. Is that correct? In practical terms, how would that work in the UK if the rest of the UK did not have the four freedoms and had a separate agreement about market access? I am trying to paint a picture of what might be possible.

Professor Scott: What constitutional set-up for the UK does your question relate to?

Richard Lochhead: Part of the question is about whether such a scenario is possible.

Professor Scott: Any arrangement in which Scotland has an exceptional position, with the UK in its present structure, is difficult to conjure up, as you said. Any option would have a constitutional dimension. You asked how Scotland would be represented, and the Greenland option is somewhere in there.

A difficulty is that there would have to be a rules of origin agreement between RUK and Scotland. If Scotland had more privileged access to EU markets than the rest of the UK but it was still part of the UK, a whole bunch of arrangements would have to be set up to ensure that English goods—if I can describe them in that geographical sense—did not enter the EU via a free-trade corridor that Scotland enjoyed with the EU. We would get into a European Free Trade Association-type problem where rules of origin became important. That is just one example of how managing the situation would be difficult on a practical level.

Such a scenario would be more complex than alternatives for an internal UK constitution, if that makes sense. Why would that option be chosen? What would then be the utility of the constitutional options that were in front of people? The situation would be complex; I am not saying that it is inconceivable, but it is largely difficult to imagine.

I will comment briefly on plan B, which Mr Macdonald raised. One irony, which we should be pleased about, is that Scotland is much further down the road in thinking about a lot of these things, because of our discussion over the independence referendum. For good or bad, the issues were on the table when we discussed independence. That is not a political point, but we are perhaps further down the road with regard to the options than the UK Government is just now because we have thought long and hard about Scotland's EU future in a different setting.

Dr Hughes: I agree with what Andrew Scott says. How complex the situation is depends on what the rest of the UK is doing, if we are talking about a scenario in which Scotland stays in the European Economic Area or in the single market with all four freedoms. Andrew Scott has given the rules of origin as a very good example of the technical complexity of the situation.

Free movement gives us an example of the political complexity. At one level, it should not be problematic. Why should it be problematic if all the people of the EU 27 have the right to live and work in Scotland but not the right to live and work in England? Gloomy though things are at the moment, I do not envisage that England or the rest of the UK would say that the people of the EU 27 have to have visas and that we have to have visas to go to the rest of Europe.

Poles, French and Germans would still have the right to travel to England and to Scotland, but they would perhaps not have any legal rights to reside and work in England. That is a very political question for England—"Are we fine with the fact that lots of people might still come to Scotland to live and work here, and they can visit us? Do we need to have passport controls on the border to check who is coming in even though they do not need visas?" With the hypersensitivity and xenophobia around the immigration debate at present, England might say that they do, but I do not think—you can correct me on this—that it is a legal or technical necessity. Obviously, though, it is a highly sensitive political question.

Professor Douglas-Scott spoke earlier about whether there is any possibility of a sub-state sitting in the Council of Ministers. Again, however, we can think of another issue: what about Russia sanctions? If it was possible for a sub-state to sit in the Council of Ministers, that sub-state would be involved not only in the single market but in determining foreign policy. Is Scotland going to take a position on EU sanctions on Russia while England and Wales, which are outside, do not? We would have two sovereign states within one. All those things are worth exploring, but the situation would get very complex quite fast.

Professor Douglas-Scott: On the same question, I think that it depends on the solutions and permutations, both within the UK and in the EU relationships. Take free movement, for example. If England and Wales were to adopt some sort of Norway-plus EEA arrangement, there would be free movement of persons, and if Scotland and the rest of the UK had some other sort of differentiated relationship with the EU, that would be more workable.

On the question of Scotland's constitutional position within the UK, Greenland is part of a federacy, which means that it has a considerable

amount of self-rule—more than Scotland has now—but not a great deal of shared rule. With arrangements like that it is more possible, I think, to envisage the sort of future relationship that Scotland might have.

With regard to having a seat in the Council of Ministers and other institutions, we should remember that there have been parts of the EU in the past that have been members but not full members to the extent of having been represented in every single institution. That might not be desirable, but all I am saying at this point is that it would not foreclose any possible agreement. There are many permutations.

Lewis Macdonald: What are the examples of that last point?

Professor Douglas-Scott: West Berlin is an example. It was not part of West Germany, but it was very much part of the European Economic Community.

Sir David Edward: But that was because the EEC treaty had a special protocol as to the position of Germany. I think that that is starting at the wrong end. It does not seem to me to be possible to envisage a position in which Scotland remains part of the UK but has a separate relationship with the single market. All sorts of complications, such as customs, would arise. I would recommend that we start at the other end.

Scotland has certain devolved competences and one should start looking at what one can do within those competences. For example, the Erasmus programme—which other countries that are not members of the EU are part of—horizon 2020 and a number of other agreements are within the devolved competence of the Scottish Parliament and the Scottish Government and could be negotiated. I think that horizon 2020, Erasmus and academic co-operation are of enormous importance to Scotland, given the importance to the Scottish economy of the universities and of scientific development.

10:45

Scotland also has certain competences in relation to fishing and a number of other areas. It seems to me that one should start building from there rather than starting from another way and imagining a kind of free-floating Scotland, because we cannot ignore geography. It is fine talking about Greenland, but Scotland is not remotely like Greenland—it is connected by its navel to England. One has to start from that rather simple fact.

Tavish Scott: I strongly agree with the previous point and not just on the geography of Greenland.

I want to ask the panel members whether their presumption is that the EU member states will all agree the negotiating position. It certainly is not mine, for the very reason that Professor Andrew Scott gave at the outset. I do not even know what the EU is any more and, in two years' time, we will be even less certain. What happens if the EU states cannot agree their negotiating position with the UK?

Sir David Edward: Strictly speaking, there are various steps that have to be taken under article 218 and the Council has to give the negotiating mandate. That is why I stressed that it is not our option to say how the negotiations are going to take place and it is precisely for the reason that you mention that it will be important that all the member states and all the EU institutions are involved.

Professor Scott: Just to go back to the point about enlargement treaties and how they are constructed: they are constructed in two parts. First, the political principles, whatever those may be, are agreed—perhaps derogations from particular obligations, such as free movement of labour, as was the case in 2004 and 2006.

Then, as Sir David said, the mandate is given to the Commission or the Council—that is the struggle in Brussels just now. The EU and the other party then engage in negotiations, the same as with international trade negotiations. It goes back to the European Council for consideration and agreement and the necessary ratifications flow from that. You are correct that the EU has not got a negotiating position, but it is right to remind ourselves that we are only five days into this particular situation.

I would imagine that the EU will not want to enter negotiations in a weak position. We should look at the relationships between the EU and its closest neighbours, particularly Switzerland in the wake of its 2014 referendum that proposed a quantitative limit on inward movement of people. That drew an immediate response from the EU and triggered a guillotine clause so that six other bilaterals were taken off the table—including horizon 2020, interestingly.

I do not expect the EU to be confused about its principles. It has already categorically stated that a special cherry-picking deal is not on offer—that came from both the Commission and the European Council—so I do not expect there to be any dubiety about cherry picking. The EU would be sending an extraordinarily strange message, not only to its own members—where there are internal disputes—but to other partners who have been treated quite differently. That might trigger a very complex situation for the EU to deal with on its periphery, driven by some kind of special deal with the UK.

There are therefore very big things at stake for the EU, which is why I think that it will firm up its political principles. As I have said, though, we are only five days into something; we know that serious elections are coming in some member states—and, indeed, serious elections that have still not been resolved in others—so the domestic politics of this is important. However, we are not talking about the domestic politics of the 1960s here. This is not General de Gaulle saying no; this is far too complex for that kind of strategy. That would propel the EU into its own crisis, and heaven alone knows that it does not need any more political crises.

Professor Douglas-Scott: Article 50 requires only a majority, not unanimity. That is its advantage. If the agreement is not reached under article 50, you are thrown back on trying to get everyone in the EU to agree. With a majority for article 50, we are talking about 20 of the 27 other states—

Tavish Scott: But I am not asking about what happens at the end—I am asking about the EU's negotiating position at the beginning. Going back to Professor Scott's point, I think that with next year's elections in France and Germany, the row over immigration in Europe—never mind in Britain—and the fact that on last night's "Newsnight" the French finance minister took absolutely the opposite line to that taken by his President in Brussels earlier that day, the idea that all of this will get sorted out and we will be clear about the principles is, if I may be so bold, questionable.

Dr Hughes: I read the French minister's comments on last night's "Newsnight" in completely the opposite way. I agree with Drew Scott. We know that yesterday's European Council statement added in the sentence about no access to the single market without all four freedoms.

Tavish Scott: But they would all say that just now, wouldn't they?

Dr Hughes: Yes, but it is political judgment, is it not?

Tavish Scott: Exactly.

Dr Hughes: All I think the French minister was doing was making—in a French style—a threat. In a sense, he was talking about the reverse enlargement that Drew Scott referred to. Everything is on the table, including, in brackets, what has not been mentioned—the status of the City of London and financial services. If you do not have full services access, which is going to be one of the biggest issues and problems, there might be some other deal. I do not think that anyone is saying that if there was no full single market access, free movement would be on the table.

That is fine—Canada does not have free movement.

Yes, it is a very difficult moment and yes, general elections are coming up but, to be frank, I think that sorting out these extraordinarily difficult positions is meat and drink to the EU. One of the most amazing things that the EU has done—wrongly, in my view—has been to bring in the divided island of Cyprus instead of using its leverage in other ways. All sorts of amazing things—and I do not necessarily mean “amazing” in a positive way—happen in getting to a final position. You are right that it is going to be extremely difficult and possibly quite bloody, but I am not quite as pessimistic as you are.

Bruce Crawford: Professor Douglas-Scott suggested that the main agreement on article 50 would require only a majority. However, if at the end of the process, the EEA process, too, is part of that agreement, will every single country not be required to agree it? If we are going to have a Norway, that will require not just the main agreement but every single country involved in the EU signing up to the process.

Professor Douglas-Scott: I think that there will actually have to be two agreements: the article 50 withdrawal agreement to settle the end of the UK’s membership of the EU and a separate agreement to fix the future membership, which would require unanimity. I am really not clear—and I have seen no one who has been clear—about what exactly would be the subject matter of article 50 and, for example, the extent to which it would encompass future trade relations.

Sir David Edward: There is a problem here, because the texts of article 50 are not entirely clear. The agreement would set out

“the arrangements for ... withdrawal, taking account of the framework for its future relationship with the Union.”

Some people think that that phrase “taking account of” means that the framework will be taken into account. However, the German text seems to say that the withdrawal agreement will have taken account of the future relationship; in other words, you have to negotiate the future relationship as well and before withdrawal.

There is a problem about Norway. The talk about options is misleading, because the Norway option assumes that you first join EFTA. In order to join EFTA, you have to have the agreement of the other EFTA states, which are Norway, Iceland, Liechtenstein and Switzerland. You have to have an agreement by that means. Then, you have to agree to join the EEA, which Switzerland, although a member of EFTA, is not a member of. You have permutations not only of 27 other EU member states but of four other EFTA states. It is like playing chess with 31 other people at the same

time. It is not easy. The texts go a certain distance, but one should not be glib about the process.

The Convener: To return to Scotland’s position in this complicated process, if we fail to negotiate a position of differentiation for Scotland—you have all highlighted the difficulties in that position—and the Scottish Government has to pursue what it has described as the contingency measure of an independence referendum, what are the implications of the two-year guillotine process of article 50 on such a decision?

Dr Hughes: We know that the article 50 process might get extended, but that is absolutely not guaranteed. The timing is very tricky. As we have seen in this rather short week, there is a lot of good will towards Scotland across the EU, despite the Spanish Prime Minister’s comments, which I do not think were surprising in any way.

I think that the Barroso comments two years ago were scaremongering in the sense that, if Scotland had voted for independence then, there is no way that it would have gone to the back of the queue and then had eight years to negotiate—apart from the fact that the EFTAs took only 18 months, because they were so close to EU legislation. Look at this discussion and at all the other discussions about how extremely difficult it is going to be for the UK to withdraw. Why on earth would you go through Scotland withdrawing, only then to go through a full accession process to come back in?

What would have happened with an independence vote two years ago is that there would have had to be negotiations with Scotland over its membership. I do not think that it would have got most of the UK opt-outs, although it would have probably got the Schengen opt-out. Then there would have been ratification of the accession treaty.

I spoke to people in Brussels off the record, who were talking about Scotland being in some sort of transitional holding pen, so it would not have a seat at the Council of Ministers again until ratification of the treaties, but it would not have to go through an absurd process of being out and then in.

I go through all that now, because I think there is a timing issue here. If Scotland waits until near the end of the two years to say, “This isn’t okay. Now we’re having an independence referendum,” we might not have had time to have the negotiations with the rest of the UK on dissolving the union before the whole of the UK has left. It is obviously a very big political question and judgment as to whether and when to call such an independence referendum but, if it was only a question of logic, you would call it as soon as

possible in my view. You would call it anyway by next summer, let us say, because then, if it was successful, you would have had the dissolution talks with the UK before the UK had left. That would make it much easier for the EU to get into some of the transitional holding pen arrangements than otherwise.

The Convener: The panel members are obviously in Europe all the time. Do you feel that there has been a shift in good will towards Scotland, as Dr Hughes alluded to, from what existed in 2014?

11:00

Sir David Edward: The simple point is that the discussion in 2014 proceeded on the assumption that the United Kingdom, or RUK, would remain a full member of the EU, and the question was what would happen to Scotland on that assumption—would the EU be prepared to accept a new member state simply because it was a separating part of an existing member state? That is not the position now. The position now is that RUK is not a member of the union and the question is whether—and if so how—Scotland can remain part of the union, on the assumption that there is a yes result in an independence referendum.

I would not wholly discount the attractions of Scotland not seeking to be a member of the EU but possibly being a member of EFTA and the EEA, because that offers certain advantages, such as full access to the single market but without all the commitments that would have to be made. It seems to me that Scotland has quite a good fit with Iceland and Norway. If we are talking about options, that is another option that ought to be explored.

Professor Scott: I am not seeking to provoke apoplexy among my legal colleagues, but why could Scotland not be the successor state for the purposes of the European Union? That means that RUK would leave and Scotland would retain its seat and would inherit the successor state status of the UK. In my view, that is not impossible. Assuming that the necessary constitutional agreement had been sought in Scotland and that the Scottish people felt that independence was the best option, it could become the successor state.

Sir David Edward: I once asked a retired senior Dutch diplomat about the euro crisis, and he said, “We will find a way; we always do.” We should remember that. The lawyers can dance like angels on the point of a pin but, at the end of the day, it is politics that count. That is why I started by saying that good will is absolutely essential.

Dr Hughes: The debate that will come about successor state status will be interesting. There is a lot of good will at the moment and Nicola

Sturgeon has played things very adeptly. I know from people who I have talked to that, even last autumn, the Scottish National Party was contingency planning in a way that even the leave side, let alone the UK Government, was not. However, the EU does not want a mini UK back in the EU, if the rest of the UK is leaving. In other words, it does not want the awkward squad member in a smaller form. Therefore, if the idea of being a successor state is that we want the opt-out on the euro, the budget rebate and the opt-in deal on justice and home affairs, I do not think that that will be forthcoming. At that point, people will say that the EEA option seems to suit Scotland quite well. That is a wider debate that will have to come into the Scottish debate at some point.

Professor Douglas-Scott: I agree with what is being said, but I will add one point about procedure. I return to the point about majority. If Scotland, whether as successor state or with some other arrangement, wanted to proceed under the umbrella of article 50, it would be looking for a majority rather than unanimity, whereas if Scotland was looking for recognition as a new independent state, there might be pressure to go to article 49, which is the accession procedure, and that requires unanimity. Process is important, although I would not pass judgment on which it is likely to be.

Rachael Hamilton: Could there be a situation in which Scotland was left out in the cold if negotiations failed in any form? If Europe was not negotiating with the rest of the UK and Scotland was trying to become part of Europe, could Scotland be shut out?

Professor Scott: In a sense, we have had that conversation. It is a difficult issue. A point has been made about the different external trade competences that the Belgian regions have. The Canadian provinces, for example, have control over immigration and so on. The UK could reinvent itself as a fully federal state—one can imagine the British constitution being thrown into the air. However, I am not sure that we are anywhere close to that position. We cannot discount the possibility that Scotland could be frozen out of Europe if Scotland’s or the UK’s constitutional position is unaltered.

Richard Lochhead: I want to follow up on Rachael Hamilton’s point and talk about the big picture for Europe’s future and what it is all about. On Dr Hughes’s point about the awkward squad and our looking for opt-outs or whatever—that would obviously be far down the line, but she raised it—would it not send a really bad message on Europe’s future if it was to say no to countries that want to join?

Dr Hughes: I think that it would send a really bad message. I was not suggesting that the EU would say no—

Richard Lochhead: You were saying that it would say no to certain demands.

Dr Hughes: I was saying that, if at some point Scotland is talking directly to Brussels about being a full member state—with all these options and scenarios, who knows?—whether that is done by leaving or somehow staying in, there will have to be a discussion. The number of votes is set out by population, so that is simple, but there will be a discussion, presumably minimally about Schengen. Obviously, Ireland got the Schengen opt-out because it is in the common travel area with the UK. All that I was trying to say in making that point about the awkward squad is that, if at that point Scotland wants the budget rebate, the euro opt-out and the opt-in on justice and home affairs, it will not get that and that will make some member states think twice. I did not go as far as saying that they would therefore say no.

This is a bit tangential, but Spain will obviously be very difficult. It is not the only one that might be difficult, but it will be difficult. However, Spain is not about to leave the EU and it is not about to face Catalans demanding either to stay in the EU while Spain leaves or to look through the options for keeping some devolved competences. That does not help much but, in the end, if and when we get to that stage, it would help.

Also, smaller size helps. Twelve years ago, when Turkey was progressing in democratic terms, there was obviously still a lot of reluctance to start talks, despite the agreement, because Turkey is so big. Those issues about smaller member states and more developed member states, which Scotland would be, all play into the politics. Even in happier times, let alone in these crisis-ridden times, the EU loves to be a pole of attraction. A lot of the factors play in Scotland's favour, but there is also the factor of hard-nosed politics and how the EU will negotiate with the UK as a whole or how it would eventually negotiate with Scotland.

The Convener: I am afraid that we will have to wind up the discussion there. I thank all our witnesses for what has been a fascinating discussion. I imagine that we might be seeing you again at some point.

We now move into private session.

11:08

Meeting continued in private until 11:38.

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