



OFFICIAL REPORT
AITHISG OIFIGEIL

European and External Relations Committee

Thursday 29 September 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 29 September 2016

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
8th Meeting 2016, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

COMMITTEE MEMBERS

Jackson Carlaw (Eastwood) (Con)

*Ross Greer (West Scotland) (Green)

*Rachael Hamilton (South Scotland) (Con)

*Emma Harper (South Scotland) (SNP)

*Richard Lochhead (Moray) (SNP)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Martin (Member of the European Parliament)

His Excellency L'ubomír Rehák (Ambassador of the Slovak Republic to the United Kingdom)

Michael Russell (Minister for UK Negotiations on Scotland's Place in Europe)

Alyn Smith (Member of the European Parliament)

Frank Strang (Scottish Government)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Robert Burns Room (CR1); The David Livingstone Room (CR6)

Scottish Parliament

European and External Relations Committee

Thursday 29 September 2016

[The Convener opened the meeting at 09:00]

European Union Referendum (Implications for Scotland)

The Convener (Joan McAlpine): Good morning, and welcome to the eighth meeting of the European and External Relations Committee in session 5. I remind members and the public to turn off mobile phones. Any members who use electronic devices to access committee papers during the meeting should ensure that they are switched to silent. We have received apologies from Jackson Carlaw.

Our first item of business is an evidence session on the implications of the European Union referendum for Scotland. I welcome Mike Russell, the Minister for UK Negotiations on Scotland's Place in Europe; and Frank Strang, deputy director of external affairs with the Scottish Government. Thank you for attending. I invite Mr Russell to make some opening remarks.

The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell): Thank you for the invitation to speak to the committee.

Following the referendum, the Scottish Parliament mandated the Scottish Government to have discussions with the United Kingdom Government, other devolved Administrations, the EU institutions and member states to explore options for protecting Scotland's relationship with the EU, its place in the single market and the social, employment and economic benefits that we all draw from that. That mandate resembles much of my job description. In the role, I will focus on engagement with the UK Government and other devolved Administrations, with Fiona Hyslop leading in Europe. I will consider all options for Scotland's future place in Europe and will engage with stakeholders to understand their views in order to better inform the Scottish Government's negotiating position.

It remains the Scottish Government's view that full membership of the European Union is the best outcome for Scotland. We campaigned for that outcome, because all the evidence shows that EU membership has brought sustainable and tangible benefits to all of Scotland and the UK. It has been the best way to tackle complex challenges such as

inequality, climate change and global security together with our European partners. It has also brought peace to our continent after two world wars.

That is why I agree with the European Parliament's President, Martin Schulz, who said last Friday at the London School of Economics and Political Science:

"the best possible deal with the EU is membership of the EU."

He went on to add, however, that

"Any other arrangement necessarily entails trade-offs."

Scotland now finds itself in the position of possibly being pulled out of the EU against its democratic will and having to consider imposed trade-offs. My job is to support the First Minister in considering all options in those circumstances.

To do so, we first have to gather as much evidence as possible to choose which option best protects Scotland's interest and then measure all those options against the five tests that the First Minister has outlined. The evidence that we receive will come from policy analysis within the Scottish Government, the standing council on Europe and of course our engagement with stakeholders up and down the country. Just yesterday, Keith Brown and I met the Japanese consul general and Japanese business leaders working in Scotland.

The committee is of course playing a vital role in the process. Only six days after the vote, you took evidence from my colleague Fiona Hyslop. Since then, you have worked through the summer recess to gather views, issued a wide-ranging call for evidence and published a first report on the impact of Brexit.

The Parliament is vital to the whole process, too. It has to assess the impact of the referendum and consider options. The Scottish Government is therefore holding a series of debates to give members of Parliament the opportunity to discuss the impact on all sectors of Scottish society and on the Parliament's devolved powers, and to bring forward ideas. I urge all the parties and every member to take part in them. The First Minister has also asked me to meet the party leaders to get their input, which I hope to do shortly.

I will mention one key issue before I close. Last week's debate in Parliament on the economy highlighted the importance of membership of the single market to Scottish businesses and individuals. Scottish companies depend on the single market for trade. Seafood companies depend on common regulatory systems to ensure that their product meets the strict hygiene standards in their key markets in western Europe. Our engineering exporters can send their goods

throughout the single market without any border formalities and can source components at the keenest prices in integrated supply chains. Many of our companies, especially in the digital technologies, hospitality, food and drink and engineering sectors, depend heavily on EU labour for skills and knowledge.

Those are just a few examples of how membership of the single market is vital to Scotland's prosperity. However, the benefits of membership extend far beyond the economy. To quote Martin Schulz again, it is

"a community with a shared destiny, a model of society, not an accountants' club."

That means that, together, we share values and solidarity, as well as the economy. Leaving that community of values would have a wide-ranging impact on our society and identity, so we need to consider that carefully.

Finally, as regards my engagement with the UK Government, the committee will be aware of my first meeting, on 15 September, with the Secretary of State for Exiting the European Union. It was a cordial and detailed meeting that laid the groundwork for discussion. I am happy to explore further with the committee what structures for formal engagement we are trying to put in place. I hope to be able to confirm soon, along with the UK Government and the other devolved Administrations, how that engagement will work in practice. The letter from the First Minister that you received yesterday, convener, takes that matter a step forward.

I hope that all of that gives the committee a good overview of my new role. This is, of course, the beginning of my on-going engagement with the committee as events unfold over the coming period. I look forward to answering your questions and hearing your thoughts today and on many future occasions.

The Convener: Thank you, Mr Russell. Can you elaborate on the nature of your meeting with Mr Davis? For example, did you get any indication as to where the UK Government is on developing its position on its future relationship with the EU?

Michael Russell: The UK Government has indicated publicly that it does not intend to trigger article 50 of the Treaty on European Union this year, so we are in a period of preparation—that is how I would generously describe it. It is clear that the UK Government is doing a lot of work on sectoral analysis, as indeed are we. I made an offer to David Davis to work jointly with the UK Government on that and our permanent secretary made that offer to the UK cabinet secretary, but it has not yet been taken up. However, I hope that we can do some work together on sectoral analysis. I believe that we also have to do

geographic analysis in Scotland because throughout Scotland there will be regional and local dimensions to the impacts of Brexit.

I have to say that I did not get any firm indication of the detailed policy position. However, I think that the conversation confirmed what we are all reading and hearing, which is that there is a very strong view that freedom of movement is not acceptable to the current UK Government, which is a matter that will cause great concern in Scotland.

The Convener: In terms of the structures that you are putting in place with the UK Government, there is already the joint ministerial committee on Europe. We received a letter from the First Minister that states that a meeting of the JMC will take place in late October. We have taken a variety of evidence from expert witnesses who have talked about the JMC's possible lack of effectiveness in the past. I know that the First Minister said that she felt that there needs to be something extra in terms of the intergovernmental machinery to allow Scotland to have the full voice that the Prime Minister promised us when she came to Edinburgh in July. How do you feel about the way in which the intergovernmental machinery is being built? Is it being built?

Michael Russell: There is certainly an attempt to build it. The First Minister's letter reflects the fact that that process is on-going. It has been slower than anybody in Scotland would have wished, but it is on-going.

As Professor McEwen will have indicated to the committee, we should step back and look at the intergovernmental machinery, which is in need of much maintenance and considerable change. Since devolution took place, there has been a range of reports on the intergovernmental machinery by, for example, the House of Lords Constitution Committee; the Scottish Parliament Devolution (Further Powers) Committee; the House of Commons Public Administration and Constitutional Affairs Committee; the Institute for Government; and the University of Edinburgh centre on constitutional change. All have come to the conclusion that the intergovernmental machinery is not fit for purpose.

If the JMC structure is to be used, it has to be reformed and focused. Certainly, that is the burden of our discussions, and I raised the issue with David Davis. We have to have a structure that will work and that will allow two key issues to emerge, the first of which is how there would be agreement on issues. The JMC has never worked in that way before; it typically has a consensus meeting with an agenda that is set by the UK Government. The second issue is that there has to be oversight of what is taking place on the negotiating side. Those two words—agreement

and oversight—are important and we need to use them to describe what we seek, which is an effective structure that will work for Scotland.

In my view, it would be inconceivable for the Scottish Government not to be involved in negotiations on major items of devolved competence.

The Convener: Some of the evidence that we took last week, for example from Mr Paun, suggested that the devolved Governments will not get the kind of involvement that they had asked for and that they will be treated as consultees in the same way as a stakeholder would be treated. How can you ensure that the Scottish Government is not treated as a consultee, but is involved in agreeing the UK's negotiating position as Theresa May promised us in July?

Michael Russell: Our objective is to secure the full engagement and the full involvement that we were promised by the Prime Minister—I am sure that the Prime Minister is a woman of her word. That is what she offered, what the Scottish Government wishes to achieve and what we are going into discussions to achieve.

The Convener: I do not know whether you are aware of the evidence that we took last week from the Government of Québec's representative in London. He talked about the CETA—comprehensive economic and trade agreement—deal for which the provinces of Canada were at the negotiations table. That was not part of Canada's constitution but it was insisted upon by the EU. What does that tell you about the potential for Scotland in the upcoming negotiations?

Michael Russell: I was fortunate enough to have a meeting with Monsieur Sirros subsequent to your committee meeting and we discussed that in some detail. It is important to recognise—without diminishing that example, which is a useful one for us—that, because of federal competences, some trade issues are reserved to Canadian provinces. In order to get the comprehensive deal that the European Union was seeking, they had to involve some of the provinces or the deal would not have stuck. The federal Government could not negotiate on behalf of those provinces. We do not have exactly the same devolution situation because, technically, the United Kingdom Parliament is still sovereign in that regard.

What the example tells us is that, in a modern democracy, there should be the opportunity for that type of participation and I hope that the United Kingdom Government is taking that lesson to heart. I am sure that the EU is looking with interest to ensure that the negotiation discussions involve all those who have an interest. Look at the situation in Belgium where devolved competences allow the Belgian devolved Administrations to

make international agreements and treaties—something, incidentally, that Gordon Brown referred to in his recent contribution on the matter, expressing the view that Scotland should be in the same situation. We need to bring those issues into the discussion.

The Convener: We are up against time here, obviously. How quickly will there be an agreement with the UK Government?

Michael Russell: I get up every morning hoping that we will make progress on that and I will go on doing that until we make progress. You are absolutely right, convener, that the clock is ticking. We have to ensure that we get that agreement. It is not just us, of course—Welsh and Northern Irish ministers are part of those discussions as well and I have been having discussions on the telephone with those individuals. I will continue to do that and to meet them, too.

Stuart McMillan (Greenock and Inverclyde) (SNP): Good morning, minister. Are there any viable options available to Scotland to seek a differentiated relationship with the EU?

Michael Russell: We have to bring our tests to any option, although it is far too early to say what that option will be. The Parliament asked the Scottish Government to look at the options and they are being examined—the standing council on Europe is deeply involved in that task. I think that the committee received a note from me yesterday on the second meeting of the standing council so that you can see the work that is being done.

Let us remind ourselves of the important tests that the First Minister laid out in her speech at the Institute for Public Policy Research on 25 July. We have to ensure that our democratic interests are respected; that is, because of the Scottish result of the EU referendum, we have to ensure that our voices are heard and that our wishes are respected. There are our economic interests—safeguarding free movement of labour, access to the single market and membership of the single market. Our interest in social protection needs to be borne in mind, as does our interest in solidarity, which is the need to recognise the importance of independent nations coming together for the common good. Our interest in having influence is a particularly important test. For example, you can see that the financial sector will be concerned that, under a European Economic Area model, there might be regulation without participation, which, given the nature of the sector, it would find undesirable. Those five tests have to be brought to the table when we consider any of the options, and we are engaged in that process now.

09:15

Stuart McMillan: The EU has managed to be flexible over the years regarding some countries and territories. Let us consider the situation of the Isle of Man. It is not a member of the EU, but it is part of the EU VAT area. The Isle of Man is part of the protocol 3 relationship with the EU, which allows free trade of manufactured goods and agricultural products. The EU has the opportunity to provide that flexibility where it has an agreement with particular countries or territories. Is that example something that Scotland should consider in its discussions with the UK Government and in any external discussions?

Michael Russell: The British-Irish Council—of which the Isle of Man and the Channel Islands are members—is playing a role in considering some of these matters. At its meeting in November, the British-Irish Council will consider those issues further. Discussion is going on.

I return to the five tests. Considering the example of the Isle of Man, to my mind it would probably not pass the test of influence, it would not pass the test of social protection and it would not pass the test of democracy. However, those are issues for discussion. I think that we should be very open to discussion of a range of possible options. We should also be keen to have evidence-led policy. As I said on Tuesday in the parliamentary debate, those who are concerned, those with worries and those who come to the matter with a more positive view need to bring evidence to the table to support their view. That needs to enter into consideration.

There is a huge amount of information, and we need to have a rational approach to it. That means using the five tests, considering the basis of evidence and building an understanding of what is possible.

The Italian Prime Minister had a lengthy interview with the BBC today. One of the points that he made was that it would be unreasonable for any negotiated settlement to give a party that was leaving the EU a better deal than existing members—let alone others outside the EU. We should not underestimate that position. That is being heard right across Europe. There are people with existing deals, such as the Norwegians, who might be concerned that a new deal would disadvantage them. It is a complex process.

Stuart McMillan: You have mentioned the British-Irish Council. How are the other discussions with the devolved Administrations progressing?

Michael Russell: Discussion is taking place. There is a common interest to ensure, first, that we have a robust machinery for discussion and negotiation within these islands. We have a

common interest in securing that. In fact, there is a common interest for the UK Government in securing that. Then, each of us will bring our particular concerns to the table. There are concerns about the single market in Northern Ireland, particularly around the need for an open border. The Welsh will bring different concerns to the table. I think we will all endeavour to work constructively and well. I make it clear that we are going into this in good faith. We will do that with the devolved Administrations of the other countries, as we will do with the UK Government.

Stuart McMillan: What discussions has the Scottish Government had with the Department for International Trade on the preparations that it is undertaking on the negotiation of the UK's position in the World Trade Organization?

Michael Russell: Keith Brown has met Liam Fox, I understand, and we are endeavouring to understand the position of the department, although it is perhaps not easy to understand that position. If you read Liam Fox's speech to the WTO in Geneva, you will find it a bit confusing, but we continue to endeavour to understand the position.

Richard Lochhead made a contribution to the debate on Monday about the customs union, which should be borne in mind. That issue is not much talked about, but it is very important.

Lewis Macdonald (North East Scotland) (Lab): Following on from the debate that we had earlier this week on the rural economy as well as raising some wider questions, I have been struck by the fact that the Government's approach over the past couple of weeks has been focused on membership of the single market. That phrase has been used very specifically. As we discussed on Tuesday, membership of the single market is, contrary to what has been said by some, a substantial, real thing. Membership of the single market comprises the 28 member states of the European Union plus Norway, Iceland and Liechtenstein; it is a membership organisation with specific rules and specific exclusions.

During the debate on Tuesday, I asked you—and I would be interested in getting a fuller response today—about the Scottish Government's developing view on membership of the single market, given that it does not include, for example, agriculture, fisheries or customs, and it does not prevent Norway, for example, from entering into external trade negotiations. The Department for International Trade said that we need to work within World Trade Organization rules, which is correct, and it is perfectly possible to be a member of the single market and negotiate one's own trade rules with a third party. I would be interested to know the Government's view on the opportunities and limitations of the single market.

Michael Russell: The EEA is an organisation that comprises sovereign states, so there is an issue at the very start. It might not be insuperable, but it is an issue.

It really is too early to say where the EEA lies in the spectrum of options, because we do not know the UK Government's view on that. Your question on Tuesday was a good one, as I think I said, and it is important that we consider that type of question.

Elements in the Scottish debate, such as fishing, might find EEA membership very acceptable, except that it might not assist those people in exporting their products and might therefore be a mixed blessing for them. As you have said, EEA membership excludes fisheries—and it also excludes agriculture.

Other elements, such as the financial sector, might find EEA membership less than the optimum, because they would not participate in the regulatory structure. Some prefer the EEA and Norwegian model to the Swiss model, because it is dynamic and changes with the EU, whereas the Swiss model consists of a hundred and something treaties—I cannot remember the exact number, but no doubt Michael Keating can—all of which have to be constantly updated. That means that a huge number of officials are in the air all the time.

The approach has advantages and disadvantages. Work is being undertaken to examine it, and we are talking to experts and listening to people who know the system. We are having a wide variety of conversations and doing a great deal of reading.

During the negotiation process within these islands, the matter will need to be looked at closely. A lot will depend on the position that the UK Government takes on the single market when it starts negotiations with the EU. The article 50 negotiations deal not so much with exit as with framework. Others would need to be consulted. We would have to join the European Free Trade Association, and EFTA members would have to accept UK membership; there would then have to be a discussion with the EU about moving into EEA membership. We should also remember that EEA membership was designed to be a halfway house on the way into the EU. It has not always been that—and at times it has been a static halfway house—but it was never designed for people on their way out of the EU. That is another issue to be borne in mind.

There is a great deal to be discussed, and this committee will be an important part of that discussion, but we are a very long way from a conclusion. One of the limiting factors is that we do not know anything about the UK Government's view on the matter. I think that we can discern

from the language on free movement of labour that membership of the single market is probably not on the table—whether or not David Davis has been slapped down by Theresa May for saying so.

However—and I must stress this—membership of the single market should be on the table for us. This is about negotiation and discussion, so we must come to the table with and discuss the things that we believe to be in our best interest. There is no doubt in my mind or in the minds of my colleagues that, short of being a member of the EU, full membership of the single market is the best option. I have given some examples in that regard, but there are many other examples that we could talk about.

Lewis Macdonald: That answer was helpful. Implicit in what you said, particularly at the end, is the suggestion that the Scottish Government's view is that it is possible to be a member of the single market without being a member of the European Economic Area. I am keen to understand that. The European Economic Area was originally a product of EFTA, and, as you have said, countries such as Iceland and Norway have no active intention of turning membership of the EEA into membership of the European Union, so it is a standing arrangement. Do you think that it is possible for either the United Kingdom as a whole or a part of the United Kingdom, such as Scotland, to have a different relationship with the single market that could be described as membership, other than membership of the EEA?

Michael Russell: That appears to be the view of the UK Government in so far as one can discern it—and you will note that I keep using the word “discern”. That appears to be its view, but many people do not believe that to be possible.

I want to stress something that Stuart McMillan said. There is a flexibility in arrangements that we have seen over the years in negotiation with the EU. That might be possible—I am not pouring cold water on the suggestion. However, we are in the realms of degrees of probability, and the degree of probability in that regard is quite limited—we just do not know. It is important to say in these discussions from time to time that we are unaware at present of what the UK's position is. If, as appears to be the case—and as the Visegrad group made quite clear after the Bratislava summit—free movement is an absolute sine qua non, it is not, in my view, likely that the UK will have anything to do with that.

I notice that there has also been discussion of free movement within sectors. That would be very strange, because you would be talking about free movement for bankers, and I think that there would be some resistance, even in the Conservative Party, to that being a negotiated settlement. The Swiss are, of course, trying to

negotiate free movement on the basis of job offers, given their referendum outcome, and that has not yet been accepted.

Lewis Macdonald: You have helpfully provided a note of your meeting; it does not contain a great deal of detail, although I understand why that is the case at this juncture. Can I take it that you have not ruled out or come to a view on the variety of possible ways of maintaining membership or access to the single market?

Michael Russell: That is absolutely correct. It is early days for that, but the clock is ticking.

Rachael Hamilton (South Scotland) (Con): The Treasury has guaranteed backing for EU-funded projects signed before this year's forthcoming autumn statement, and agricultural funding that is currently provided by the EU will also continue until 2020. That has obviously given reassurance to farmers and crofters, but specifically with regard to Scotland, what can the Scottish Government do to reassure Scottish farmers in devolved areas in respect of agricultural funding, particularly pillar 1 funding?

Michael Russell: In so far as we are able, we are doing that on the basis of the financial guarantee. There has to be a financial guarantee, otherwise it cannot be done. I would be happy to give permanent reassurance by saying that we are going to stay—that would be the ultimate reassurance—but because we cannot do that, we have to give reassurance in a financial way.

What worries me is not the reassurance that is being given but the reassurance that has not been given. I will give you a concrete example of that: pillar 2 reassurance has not been given. There is, as you will know from representing South Scotland and as I know from Argyll and Bute, considerable concern throughout Scotland about the pressure on LEADER funding and the fact that if you have not got an application in and likely to be approved before the autumn statement, you are not going to get it. That money supports our rural areas, and in Scotland it is a lower amount of money than we should have had in the EU negotiations. Mr Lochhead can give you chapter and verse on that—as can I, given that together we were involved in that in 2007 when pillar 2 was being negotiated. We have an enormous pending problem in rural Scotland, where a great deal of the vital good work that is being done in rural development will not take place. I would like to be able to guarantee all those things, but we need reassurance from the Treasury in that respect. Unless we get that reassurance, it simply cannot happen.

As for stability of policy, I am happy to talk in detail to the National Farmers Union Scotland and, indeed, we plan to do so. We will talk to other

farmers and the Scottish Crofting Federation; we will have those conversations and we will, as we are doing across every sector, offer every guarantee that we can. However, we cannot do that without money, so the money guarantee has to come from the Treasury.

Rachael Hamilton: What messages will you take to the UK Government when you next meet and discuss the reassurances that you want to give to the Scottish agricultural industry?

Michael Russell: For heaven's sake, be sensible, realise the risks in this matter and do not go around whistling in the dark—which, unfortunately, has been a tendency. What we would say is, "Put the money on the table and help us make the guarantees that we want to make." That would be my message, and if you would like to take that to your colleagues in London, I would be very grateful.

Rachael Hamilton: Thank you.

Ross Greer (West Scotland) (Green): When will the Scottish Government be able to guarantee the funding status of EU students for 2017-18 and 2018-19? Concerns were raised by the sector in the Education and Skills Committee about the level of uncertainty and, given that the competency is devolved, it is a matter on which we can give assurances here.

09:30

Michael Russell: The matter is under active consideration, but I cannot say any more than that. John Swinney will be able to make the decision in the end. We were able to give a guarantee for this year and we would obviously want to see what is possible, but I cannot give you a definitive answer at this stage.

Emma Harper (South Scotland) (SNP): There has been talk of access to the free market versus membership of the European single market; indeed, Lewis Macdonald has identified that issue. However, many constituents have asked me what the difference is. Given that there are so many acronyms going about—EEA, EFTA, WTO and so on—can you define the debate a little bit for us?

Michael Russell: Yes. We have to demystify the whole business, because it is very complex and full of acronyms of one sort or another. Someone recently described it to me as like trying to play three-dimensional chess inside a Rubik's cube.

We have to say some simple things to people. The first thing to say is that Scotland voted to stay in the EU and that that was a sensible decision. Economically, we are looking at a very risky set of propositions, and it is not enough to go out and

say that everything is going to be fine, because there is no proof of that.

Secondly, we need to explain to people that if we are to continue to benefit from membership of the EU—and we should be quite honest about the fact that we have benefited from the EU—Europe will insist that there are some things that we do, and they relate to having a fair system of trade and competition. Obviously it is unfair if you can undercut people on labour costs and social protections, so there must be fairness across Europe. That is what the single market is; it takes down the barriers to competition and creates fair competition. That is why what sometimes appears to be a regulatory burden is actually about ensuring fairness.

I hope that individual MSPs are engaging with their communities, constituencies, regions and stakeholders to simplify that message—and I also hope that they are listening, too. We should be listening to those who say that we have problems as well as those who say that we have possibilities. I am very happy to hear all evidence-based cases on what we should do next.

The committee is looking at information flow, and we now have a Scottish Parliament information centre bulletin on the subject. It might well be that we find some way of providing information that MSPs can use in their regions and constituencies. I would be happy to take that point away and consider how we could provide that, if it would be helpful.

Emma Harper: Could we be heading for a hard Brexit? People are talking about the possibility. The negotiations are going to affect our ease of access to markets, so are we heading for a world trade option and, if so, how will that impact on Scotland?

Michael Russell: In so far as we understand what the world trade option is—perhaps we understand it slightly better than the Secretary of State for International Trade—it is apparent that it is immensely problematic because we will have a far larger number of people to deal with, some of whom could create difficulties about any aspect of trade. It could be a nightmare of negotiation.

It is not correct to say that we would simply passport all our existing tariffs into the new situation. Those tariffs are not simply a list of percentages; in many cases, they are based on the quantum of the European market. You would have to work out the quantum, how much you were taking away and how much one could allow. It is immensely complicated.

The discussion of hard and soft Brexit is sometimes misleading, because it implies that at one end of the spectrum, people are actively working for the softest of landings while, at the

other end, people are working for the hardest. I do not see anyone in the UK Government working for the softest of landings. It is therefore incumbent on us and others to argue the strong case for the single market, for example, because I do not hear it being articulated within the UK Government. In the UK Government, the discussion is about the degree of hardness.

Emma Harper: Thank you.

The Convener: I have a supplementary question. During our away day at the University of Strathclyde, we had a briefing from David Wilson, who was formerly with the Scottish Government and is now an academic at that university. He pointed out to the committee that informal discussions and formal ones—when, or if, we move on to them—about future trading relationships with third-party countries will be conducted without any Scottish input whatever, because trade is a reserved issue. How on earth can we protect Scotland's interests and the interests of Scottish sectors in the trade negotiations when we are nowhere near the table?

Michael Russell: Let us start from where we are. We are negotiating where the table is and what presence we have at it, so it would be wrong to say at this stage that what you describe is what will happen. However, it is a warning about what might happen. We should be very aware of that and apply the five tests to all the options. When the five tests are applied to the option of accepting a position in which we have no involvement, it fails the democratic, economic, social protection, solidarity and influence tests, so it is unacceptable to us in its entirety. We would have to make that very clear and negotiate on that basis.

The Convener: Is that something that, for example, Keith Brown would have said when he met Liam Fox?

Michael Russell: Indeed, and I am sure that it is something that I will say on many future occasions. We have to be very clear about how devolution—even devolution as it is now—changes how things are done. If Brexit had taken place before 1997, there would have been no structure in which Scotland's voice could have been heard, apart from through the existence of the Secretary of State for Scotland. There is now a formal devolved structure that has been empowered on three occasions since devolution was established. Devolution is a dynamic process and we have to be in there arguing very strongly not just that our voice be heard but that we be part of the process of negotiating this.

The Convener: Do the people with whom you are negotiating understand that? For example, I believe that the last time David Davis was in Government, it was in John Major's Government

prior to devolution. Similarly, Liam Fox was against devolution and Boris Johnson has never been seen as particularly friendly to Scotland either. Is it fair to say that you are dealing with people who perhaps, even in Conservative terms, are not quite up to speed with the devolution settlement?

Michael Russell: I think that that is fair comment. However, some members of the Parliament were against devolution, so the leopard can change its spots. In addition, I am sure that the full information weight of the civil service, which is often a formidable machine, is being brought to bear when briefing ministers to tell them about the reality of devolution. Of course, it is my job—and the job of ministers in the National Assembly for Wales and Northern Irish ministers—to make the reality of devolution very clear to UK Government ministers. Other elements are involved, too; the voice of Gibraltar needs to be heard, as does the voice of London. Substantial counterweights to the UK Government are saying similar things to the things that we are saying.

Richard Lochhead (Moray) (SNP): Good morning to Michael Russell and Frank Strang. They are two people who I worked with closely for many years, so my questions will of course be very friendly.

I will pick up on Emma Harper's theme of clearing up some of the confusion and demystifying the debate about the potential impact on Scotland of being outside the EU. At the same time, I return to Michael Russell's reference to the debate earlier this week, in which I raised the issue of the customs union. I think that Lewis Macdonald said that a country can be in the single market but not necessarily in the customs union—I see that he is nodding. The debate has largely been about the single market, but is it not the case that the real economic impact for many businesses in Scotland would come from leaving the customs union and that therefore has to be much more prominent in the debate about the potential consequences for Scotland?

Michael Russell: I agree. I pay tribute to Mr Lochhead because he knows more about and has more experience of European negotiation than anybody else in this room. His point is accurate. The absence of a customs union would be more problematic for most Scottish businesses than almost anything else. I will not say that it would be more problematic than the lack of a single market, because there are whole sectors for which the single market is absolutely vital. However, it is true that the loss of a customs union will impinge on any business or organisation.

To follow up on Emma Harper's point, we have to demystify the issue as well as we can. It is hard enough to explain why the single market is

important, but if we get into the customs union, it becomes byzantine in its complexity. However, you are right that we need to find a way to do it.

Richard Lochhead: Is it not also the case that, if Liam Fox is globetrotting and investigating whether trade agreements are possible with non-EU countries, he is ruling out being part of the customs union, because we cannot allow the EU to negotiate with third parties while having bilateral negotiations with third parties round the world? The logical conclusion is therefore that the UK Government is heading for hard Brexit and leaving the customs union.

Michael Russell: You are indeed right. The existence of Liam Fox's department tells us that the UK Government is not interested in the customs union, unless the department was set up without the full knowledge of the implications. There cannot be a Department for International Trade in an existing customs union with a set of agreed tariffs—it just cannot be done.

At the moment, we are trying to read the runes of the situation without knowing precisely what the UK Government wants to do. Those runes indicate exactly what Richard Lochhead is saying.

Richard Lochhead: It would be helpful if the Scottish Government could look at the potential impact on the tariffs and import costs that other countries put in place on exports from the UK. For example, I am told that Brazil has a 17 per cent tariff on Scotch whisky. I read that somewhere, but I do not know whether it is exactly true. We have to understand what examples of potential tariffs there are around the world and that leaving the customs union will have a heavy price for Scottish business, so that we can convey that message directly to Scottish business.

Michael Russell: I am happy to confirm that work is being done on that. There are a number of economic sub-groups of the standing council, and that features largely in their work. I had a conversation yesterday evening with a senior European official about some of those matters.

Richard Lochhead: It is one thing having transparency in the negotiations and a promise to involve devolved Administrations with recorded meetings every few weeks or months, whatever is agreed, albeit that the minutes might not be made public because the meetings will be between the devolved Administrations and the UK Government. However, the real negotiations will take place at different levels in the European Union between the UK Government and the EU. Some of those negotiations will be formal and some will be informal. The UK fishing minister, George Eustice, has just said publicly that he can foresee fishing being a good bargaining chip in the negotiations, which would have an impact on Scotland, as we

have two-thirds of the UK fishing industry. How on earth are we going to be able to stay in the loop of all the informal negotiations, technical negotiations and the negotiations at official level?

Michael Russell: You know the system well and I remember the many arguments that you had with your UK colleagues about access to lunches and other events that were taking place. I remember all that happening. We will be aware of that. I cannot guarantee that we are going to be in every room, because we cannot do that, but we are aware of the problem.

We are also aware that, once a structure is established, it often starts to get eroded round the edges by that sort of thing. As well as the formal structure within the reformed JMC structure, there has to be a strong informal structure and a strong official supporting structure. It is fair to say that the official contact has been very detailed in recent weeks and will continue to be so. We have to keep our eyes wide open to see what is taking place. We do not want to be naive.

Frank Strang (Scottish Government): There are loads of ways of achieving that, but the important point is the Prime Minister's commitment to full involvement. That needs to be extended beyond the triggering of article 50 to exactly how the negotiations will work in practice.

09:45

The Convener: I understand that, as well as the JMC, there is the JMC for officials. Will Scottish civil servants be involved in those working groups?

Frank Strang: Yes. One of the JMC principles is that there is a joint secretariat to make it work. Those official discussions are preparing the way for the ministerial discussions as part of the same thing. Therefore, we are already preparing the way for the conversation that the First Minister mentioned in her letter.

The Convener: There is a joint ministerial committee on Europe. Will there be a joint ministerial committee on Brexit?

Michael Russell: It is too early to say whether that is the special structure. The detailed discussion has been to ensure that there is an understanding that the structure will operate in a way that is favourable to agreement and oversight, whatever it is called and however it operates, and is not simply a rubber stamp.

I told David Davis a story that I am happy to tell the committee. On one occasion when I was a member of the JMCE, 21 UK ministers were present, along with the Welsh First Minister and me, so the discussion was not exactly even—Richard Lochhead will recognise that type of thing.

We need to ensure that the structure does not err in that direction.

The Convener: Will you insist on being involved in reserved and devolved matters? You mentioned devolved matters earlier. If we look at the First Minister's five tests, we see that social protection, for example, covers many reserved areas.

Michael Russell: We will apply the tests to every item that is discussed. From the evidence that the committee took last week, it is clear that, in a scenario in which more powers accrue to the Scottish Parliament as a result of the process, they would not necessarily solely be in present devolved areas. There are examples in other parts of the world where other powers exist. Although our interest would be first and foremost in protecting Scotland's interests in its current devolved competences, it will not solely be in that.

The Convener: Have you started to have that discussion? Have you warned the UK Government that that is where the process could lead?

Michael Russell: I am not sure that warning people is the best start to negotiations.

The Convener: Have you advised it, then?

Michael Russell: We have certainly made clear where our interests lie, and we will continue to do so.

Lewis Macdonald: I want to follow the line of questioning about the customs union, which goes back to the issues that I asked about earlier. I think that you told Richard Lochhead that explaining the customs union and its byzantine implications is terribly difficult. I think that there are 120 bilateral agreements on trading matters between Switzerland and the European Union.

Michael Russell: Thank you for that information, but you should not do your committee adviser out of a job.

Lewis Macdonald: I certainly would not want to do that.

In addition to Switzerland's many bilateral relationships, Norway and Iceland have additional agreements and economic pressures, as they are outwith the customs union. Some would say, for example, that the Norwegian seafood industry has largely relocated to Scotland in order to be in the customs union that is provided by the European Union. It is clear that that is an economic benefit that we would want to retain.

I go back to my earlier question about whether the single market is the sole focus of the Scottish Government's attention. You appear to imply that the customs union, as well as being more difficult to explain, might be more important in some respects.

Michael Russell: No. I would not give members a hierarchy, and I would not want to give the impression that the single market is the sole focus of attention, but I have emphasised its importance, and I should also emphasise the importance of the customs union. They are the existing fabric of our relationships. They allow us to operate in the European Union, and we present them to the world in our trading and other relationships. It is very problematic to redraw them, and I do not think that even the most enthusiastic Brexiteer would deny that. It is right that we point that out.

It is also right that we look at alternatives, as we believe that they exist, and how they present themselves to us. We can apply the five tests and understand the situation, but we are not yet in a position to draw conclusions on that.

Lewis Macdonald: You rightly criticise the UK Government for being very unclear about its objectives, but would it be fair to say that you are yet at an early stage in drawing up the Scottish Government's objectives in the discussions with UK ministers? Is that an unfair comment? I am open to either answer.

Michael Russell: We have been much clearer about what we want than the UK Government: there is no dubiety and we do not lack clarity. Certainly, developing those objectives in detail is the work of the moment and is going on.

We do not see any clarity from the UK Government. One day David Davis says that it is not likely that we will remain in the single market, but the next day he is slapped down, while Boris Johnson makes the extraordinary remark that trading relationships will be fine because we drink 300 million bottles of prosecco, and someone else, without denying the figure, denies the assertion. It is all very confusing.

We are clear: we think that the best solution would have been to remain. We are clear that the single market is extremely important to us. We have explained in detail why that is and I have given you examples today. We are absolutely clear that the absence of a customs union would be problematic.

In chamber debates I have spoken about sectoral interests, and we have talked about problems and issues in the rural economy. I am very much looking forward to getting on to higher education—an area that I know particularly well—and to the environment, which is very close to my heart. In both those areas it is important that we talk about Europe. Gail Ross contributed to the debate on Tuesday and gave some very important information about the impact on higher education research in her constituency. I can do that for my constituency, and the Scottish Government will do

that across Scotland. All those things are within our purview and we are talking about them.

If you look at horizon 2020, for example, you will see that there are countries that contribute to it by paying into the pot, so that might be an option. However, that would not take care of a wide range of issues to do with free movement of labour, which is as important for higher education as it is for any other sector in our economy. We have all those things to talk about.

We are being clear; we are developing our position and we are talking about our principles. I would love to see those principles being articulated by the UK Government. We are preparing our position on the negotiating machinery and we are urging others to move as fast as we are. We are not failing to articulate what we are doing: the First Minister has been very clear over the summer, when others have said nothing.

Lewis Macdonald: In terms of reaching conclusions on the options—you have described it as work that is ongoing—one of the issues that has been raised in the committee relates to the capacity of the UK Government to negotiate international trade, and of the Scottish Government to support the work that you have described. The convener has had this week from the head of the department of external affairs a reply setting out the staffing complement of that department and explaining that the staff who are supporting you are also supporting the First Minister, Fiona Hyslop, and Alasdair Allan—as well as working with other departments. Do you feel that you have the capacity to develop deliverable options from the complexity of issues that you have described today?

Michael Russell: I will, in a minute, ask Frank Strang to say a word or two, because he is at the sharp end of that.

It is true that the people who are working with me are also working in a wider sphere. That is very helpful. From the very beginning I have seen my job not as being about building an empire or a department, but as being about building a team that can support the negotiations that we will undertake. That team must be flexible. Many of the people whom I talk to regularly are involved in other parts of the Scottish Government's work; that is their strength, because they have expertise in that other work, on which we can draw. The smaller and more flexible team that we have been building has that capability. We are also open to bringing people in as we need them.

We are also getting a lot of help from the standing council and from organisations and individuals who want to talk. I have been involved in a series of detailed meetings with all sorts of

people who want to sit down and talk about what they can bring to the table, how they can help and what they are thinking about. Even at my constituency surgeries there are people who come along and talk about the issue. There is enormous engagement, and the resources of Scotland are being used efficiently and effectively in that.

Frank Strang: I will just add a little bit to what I said at the away-day discussion that we had in the summer. There are lots of unknowns in all this, but what we do know is that Brexit is something that Scotland needs to take very seriously. I talked before about how the directorate of the Scottish Government that I am part of is now focused entirely on external affairs, and is not including culture and other work. The team has increased: 56 people are now focusing on external affairs—by which I mean people in Scotland; that number does not include people who are overseas—and the number is increasing. There are new functions. For example, it is really important that we demystify the intelligence, so the intelligence and briefing function will, alongside the Scottish Parliament information centre, try to get the information that is needed. There is also a function to support the standing council, which can operate only if it is well supported, and there is an important project management function, because this is a big project that needs to be well co-ordinated. Those functions are growing.

The really important point is that we are working with others, as the minister said. This has to be a whole-Government effort. We are working particularly alongside our UK relations colleagues, because that is where the action is in relation to negotiations with the UK, as we said, but we have also put in place governance structures to ensure that the whole organisation is involved. There is, as you know, a Cabinet sub-committee, and a project board to ensure good governance. There is also informal engagement with all parts of Government on policy, so that we can consider how to equip directorates to do their business with stakeholders and be part of the story. It is a big team effort.

Michael Russell: There is a visible sign of that in the debates that we are having, in which the cabinet secretary leads and I sum up, and we are working with all the cabinet secretaries and ministers. Last Wednesday I did a stakeholder event on energy with Paul Wheelhouse, and I did another recent event with Fergus Ewing. I have engagements in Brussels with Fiona Hyslop in October. There is a range of events, and there is collaborative activity between ministers and across the civil service.

The Convener: You mentioned higher education. The committee made a call for evidence, to which education organisations

responded. We have also taken oral evidence from the higher education sector, which is a key sector that is affected by the situation. How will you represent the sector's interests in your negotiations with the UK Government?

Michael Russell: I will do so with vigour. It is important that the Scottish higher education sector speaks with a united voice; I think that it will do so. The sector must be clear about, and prepared to articulate, the impact that leaving the EU will have on it, as all sectors must be. It must also consider what it needs if it is to minimise the potential for damage.

When I was speaking yesterday to Japanese businesses about the issue I drew a distinction that I think is important for every sector. We can talk about the positive benefits—I am happy to hear about them, if the evidence for them exists. If we can assist people in deriving positive benefits we will do so. There is no doubt about that. However, the minimum that we can do for others is try to ensure that they are not disadvantaged. Therefore, the first objective is probably to find means by which we can do that, and it might be difficult in some areas. Only then might we be able to see whether other things can be done to assist sectors.

We are applying that matrix everywhere and will apply it to higher education. Higher education must be very clear about what it thinks will happen and what resolution it wants. I am having discussions on that with a range of people in the sector.

Rachael Hamilton: Sir Michael—I am sorry, I mean Professor Michael Keating; I have elevated his status. Professor Keating has been ably guiding us through the areas of devolved competence—or trying to do so. EU law will cease to apply in Scotland and the rest of the UK, subject to the terms of our future relationship with the EU. The Scotland Act 1998, as amended in 2012 and 2016, gives the Scottish ministers powers to make legislation in areas of devolved competence. It appears that EU legislation works for Scotland in some ways but not in others. How will you go about starting to unpick the areas of legislative competence that we currently have, in the best interests of Scotland? Might we shadow some of the EU legislation that currently works for us?

Michael Russell: Those are good questions. This is an example of real concrete differentiation; there is a different legal system in Scotland so, whatever happens, there will be a different solution. People who are looking at differentiated solutions might want to start thinking about that.

We know from the initial response from the Faculty of Advocates that it is very concerned about the capability of the Scottish institutions to

re-transpose the legislation—to take a mass of legislation and bring it back home. We could not do that with some things. We are not going to take the common agricultural policy payments system and simply say that we will carry on with it, because that would be impossible, so we will have to have a new set of rules and regulations. We can certainly assume that we would continue to have other things in place for a period of time until we got round to unpicking them.

10:00

If we were to set today the task for every member of the committee to look through the statutes and work out how we would deal with each one, we would not be finished within the two-year period following article 50 being triggered. We are therefore going to have to take as read quite a lot of information, and prioritise the changes that we bring about. That is going to be a big burden on the Scottish legal system and on the Scottish Parliament. That is one of the things that we should perhaps start to think about. Were we to get to that stage—we are not saying that we would automatically get to that stage—there might be a huge legislative burden to be dealt with by a Parliament that has 129 members. There were, at one point, two justice committees because so much legislation was going through Parliament. You ain't seen nothing yet.

So, scoping is first, then it will be about working out how it can be done and prioritising what is going to be done while acknowledging that there will be a differentiated solution. The solution that will apply south of the border will not be the one that applies here, because Scots law is different.

The Convener: Thank you. When the First Minister was before the committee a couple of weeks ago, she said that the Scottish Government is paying very close attention to the various legal challenges in relation to the triggering of article 50 and the involvement of the UK Parliament. I am not sure whether you are aware of the skeleton argument that was presented by claimants challenging the UK Government's ability to trigger article 50. It has been analysed by our adviser, Sionaidh Douglas-Scott, and that analysis is on the committee's website today. Basically, she outlines how part of the skeleton argument of the claimants is based on the devolution settlement and on the Act of Union 1707. The argument is that leaving the EU will affect Scotland's private law, which is protected by the Act of Union. Have you had the opportunity to reflect on that?

Michael Russell: Yes, and as the First Minister said, we are keeping a close eye on the legal proceedings that are taking place in London and Belfast. It is important that we understand them as they proceed. The Scottish Government is very

sympathetic to the view that leaving the EU should be a parliamentary process and that the royal prerogative should not be used. I think that that view would gain widespread support across Parliament.

However, we will obviously consider at each stage of the proceedings what our appropriate reaction is. At the moment, that is all that we can do. However, it will be a developing situation and no doubt, convener, you will want to ask me or the First Minister your question again as the cases proceed.

The Convener: Thank you. Finally, you will be aware of the advice that we were given when we took evidence in Brussels and which Conservative members of the committee have raised in debates in Parliament on several occasions. The advice relates to Scotland's ability to speak to EU institutions as the Brexit process continues. The advice, which has been repeated by several Conservative members, is that if we act in good faith in our negotiations with the UK Government and it indicates to Europe that it is happy for us to have our own discussions, they can go ahead. However, it was said that the shutters would come down—I think that was the phrase that was used—if it was seen that we did not have the UK Government's permission to speak directly to Europe.

My reflection on that, which I have raised publicly, is that surely the impetus is now on the UK Government to say "Yes, you've acted in good faith. You can go ahead and have these direct discussions with Europe about the possibilities for Scotland's differentiated relationship." Do you see any possibility of the UK Government giving that indication to Europe?

Michael Russell: I can say only that I am entering into the negotiations on behalf of the Scottish Government in good faith. I hope that the UK Government understands that, that its judgment is sound and that it can see that. In those circumstances, I cannot imagine that there will be any problem.

It is perhaps slightly exaggerating the influence of the UK Government to say that whenever it says to a shutter in Europe "Come down," it comes down. The reality is that the Scottish Government is entering into the discussions in good faith. I hope that the committee has seen today that a great deal of hard work is being done by officials, volunteers and people contributing across the board. We are going into the discussions intending to get the best deal for Scotland. I hope that that message gets to the UK Government and I certainly hope that it gets to countries across Europe and, indeed, even more widely than that.

The Convener: Thank you, Mr Russell and Mr Strang. We will have a short suspension.

10:05

Meeting suspended.

10:12

On resuming—

Scottish Parliament European Union Strategy

The Convener: Welcome back. The ambassador of the Slovak Republic has been slightly delayed, so do members agree to take item 3 ahead of item 2?

Members *indicated agreement.*

The Convener: Item 3 is consideration of the Parliament's EU strategy. In light of the EU referendum result, I wrote to the conveners of other committees to seek their views on updating the EU strategy and the role of the EU reporters. The clerks have prepared background information, which includes a list of EU reporters who have been appointed to date and the responses that have been received from conveners on their approach to the subject. Members will see that, in paragraph 8 of paper 4, the clerks have set out proposals for strengthening the EU strategy and developing the role of reporters, so we seek members' agreement on the clerks' suggestions.

Stuart McMillan: In the previous session of Parliament, I was an EU reporter for the Local Government and Regeneration Committee. I found that the importance that each committee placed on the EU reporter role determined how active the EU reporter was, as did the genuine interest that the individual who was assigned to that role had. I thought that the EU reporter role was useful and I certainly tried to use the position to help further engage the Local Government and Regeneration Committee with EU issues.

The role is important, but perhaps it has not been thought of enough—certainly in the previous session. I recommend that anyone who becomes an EU reporter for a committee should engage fully with the role, and I am happy that the role is going to be beefed up.

The Convener: The responses from various committee conveners indicate that there is an understanding across the committees that the EU reporter role needs to change and that consideration of the implications of leaving the EU should be part of that role. That is really common sense.

10:15

Lewis Macdonald: A useful exercise has been undertaken and the proposal makes good sense. It is striking that one committee has even appointed two reporters, which is a measure of the

understanding across the Parliament that the issue will be important across portfolios.

Emma Harper: I have just noticed that on page 7 of paper 4, which is annex C, Mike Rumbles is listed as the Rural Economy and Connectivity Committee reporter. Has that been approved and finalised?

The Convener: I do not know—that is a matter for that committee. The paper just sets out what the committees have told us.

Emma Harper: Okay.

The Convener: For this committee's work of co-ordinating the response across the Parliament to the process of leaving the EU, it would be useful if the reporters liaised with us to keep us fully updated. Other committees scrutinise legislation and have a burden of other work, and some of them are taking on more scrutiny than others specifically of Brexit. For example, I am pleased that the Local Government and Communities Committee is going to take evidence from local authorities, which will be useful. I look forward to seeing what that committee comes back with. I believe that the Economy, Jobs and Fair Work Committee plans to take forward a particular body of work. The opportunity to liaise with the reporters will be useful for us in keeping up to speed with what is happening across all the committees.

Stuart McMillan: I do not want to add to the burden of our workload, which seems to be increasing weekly, but it might be useful to have even one informal meeting with the EU reporters when they are all in place so that we can have a general discussion and hear the issues that they want to bring to the table. After that, we could have more formal dialogue with them regularly.

The Convener: I plan to do that as convener but, if other members wish to participate, that is fine. I know that members' time is under a great deal of pressure and I do not know whether other members want to participate. I will certainly keep up the dialogue as convener.

Do we agree on the proposals that are laid out in the paper?

Members indicated agreement.

The Convener: We will have another short suspension until the next item of business.

10:17

Meeting suspended.

10:18

On resuming—

Presidency of the Council of the European Union (Priorities)

The Convener: Our next item of business is an evidence session with the Slovakian ambassador to the UK, as Slovakia holds the six-monthly rotating presidency of the European Union. I welcome His Excellency L'ubomír Rehák—good morning.

His Excellency L'ubomír Rehák (Ambassador of the Slovak Republic to the United Kingdom): Good morning.

The Convener: Before we move to questions from members, I give the ambassador the opportunity to make opening remarks.

L'ubomír Rehák: Thank you, convener. Dear members of the Scottish Parliament, ladies and gentlemen, it is my pleasure and honour to join you to share with you priorities of the Slovak presidency of the Council of the European Union, in which we highly estimate the mission of Parliaments in keeping constant dialogue with citizens on executive power.

The role of the Parliaments in EU policy increased significantly after the Lisbon treaty was adopted. Interparliamentary co-operation is a key ingredient of an accountable European Union.

I will say a few words about my country. After 12 years of EU membership, Slovakia is honoured to lead the Union this semester. The presidency is a milestone for us. We have a really good story to tell, which began with the dream of our people to return to the free and democratic world and continued with our integration into the European family of nations, to which we are bound by our rich history, diverse cultures and common values. Indeed, the phrase "back to Europe" was one of the principal credos of the velvet revolution in Czechoslovakia in 1989. It was the voice of our European identity.

We are proud to call the EU our home, the euro our currency and the Schengen area our area. The EU provides us with security, stability and prosperity, and we are grateful for that. We have been given a lot, and we do our best to contribute to the common success of the European project.

The consequences of the United Kingdom's referendum will dominate the EU agenda in the coming months and years. EU members express their regret at the referendum's outcome, and there is a vital interest in having the UK as a close partner of the EU after separation. I express my personal appreciation of the Scottish people, who

were able to recognise the positive sides of the European Union, despite enormous anti-Europe attacks during the referendum campaign.

I understand that many members would be interested in hearing more than I can tell you. I think that you will understand that it is not for ambassadors, as civil servants, to comment on the political choices of their hosting states or to provide political guidance on behalf of their own countries.

Let me therefore just recall certain principles that were agreed at the informal meeting of the EU27 in June and which remain valid. The basic principle is that article 50 of the EU treaty provides the legal basis for the UK's withdrawal from the EU, that it is up to the UK to notify the European Council of its intention to withdraw from the EU and that there should be no negotiations prior to the UK's notification.

We understand the political message, "Brexit means Brexit," which is that the UK Government wants to proceed with implementation of the referendum result, although it will not trigger article 50 before the end of this year. That means that article 50 will not be triggered during the Slovak presidency, which explains why I cannot go much further without overstepping the mandate of the Slovak presidency of the Council.

There is no intention on the EU side to prolong the processes artificially. On the contrary, in the interest of reducing uncertainty and the potential for further economic damage, there is willingness to proceed expeditiously. British and European citizens deserve to know exactly what Brexit means for their lives, and any artificial prolongation of uncertainty will create space on both sides for further disinformation, political destabilisation, social and even xenophobic tension and economic problems.

In the meantime, the EU member states cannot stand idle. Self-reflection has become a must, not an option. The vox populi that was expressed in the British referendum has been clearly heard and reflects the worries of many Europeans and not just the British.

The informal EU27 summit in Bratislava on 16 September was a first step in that regard. The summit's aim was to diagnose the present state of the Union as it faces the withdrawal of one of its most important members and to discuss the approach to our common future beyond Brexit. In the Bratislava road map, three key areas have been defined where significant progress needs to be made urgently. The first is migration and external borders; the second is internal and external security; and the third is economic and social development and the problems of youth.

It has been agreed that Bratislava is just the beginning of the reflection process. The process will lead through Valletta, during the upcoming Maltese presidency, towards Rome, where we will celebrate the 60th anniversary of the treaties of Rome establishing European integration. That will round off the process that was launched in Bratislava and will set out the orientations for our common future together.

The Slovak presidency naturally does not have a prescription for all current European problems, but we want to be both pragmatic and realistic while leading the Union this semester. To achieve a visible contribution to on-going processes, we have set four ambitions for the presidency. The first is to make the European economy stronger; the second is to modernise and broaden the single market in areas such as energy and the digital economy; the third is to work towards a sustainable migration and asylum policy; and the fourth is to pay attention to our external environment—namely, trade deals and enlargement policy.

I will start with the European economy. We will support an environment that is favourable to investment, further economic growth and job creation. For that to happen, we will work on the deepening of the economic and monetary union and the banking union. Building the capital markets union will also be part of our focus. During our presidency, we will deal with the mid-term review of the multiannual financial framework and the budget of the Union for 2017, which must both better reflect EU priorities and capacities to help to resolve the latest challenges.

There is no doubt that the single market is a success story. The four freedoms represent an excellent example of the concrete benefits of the EU for its citizens and for national economies but, to keep up with global technological advancement, the single market needs implementation of two new pillars: the digital single market and the energy union. Free movement of data has the unique potential to remove barriers and create new opportunities for businesses and citizens. Our presidency welcomes the adoption of a digital single market package as of 25 May, and now we will work on its implementation.

The energy union can contribute to secure supplies of clean energy at affordable prices for industry and citizens. To achieve that goal, our presidency is ready to work on further enhancing diversification of resources, suppliers and transit routes and on strengthening the energy interconnectivity of member states. The energy union project is led by the Slovak member of the European Commission—Commission vice-president Maroš Šefčovič.

It is no surprise that a sustainable migration and asylum policy belongs in our top priorities, and that will remain an urgent issue not only during our presidency but in years to come. Moreover, it is not just some EU disease; it is a global problem.

Large-scale involuntary migration will be the most likely global risk for decades to come. We can help to resolve it only through joint EU-wide efforts, in co-ordination with other global stakeholders. For that purpose, the Slovak presidency promotes comprehensive and sustainable solutions that link all the relevant internal and external aspects.

We must return to a proper functioning of the Schengen area. We know that the European border and coastguards will soon become operational. We will support initiatives such as the smart borders package and effective co-operation with third countries of both origin and transit of migrants.

To speak of asylum policy alone, let us not narrow it to a single initiative such as the distribution of refugees under the Dublin regulation, which Slovakia has criticised for its unsustainability. We need a comprehensive common European asylum system reform package. The European Commission is working on that issue and we are ready to contribute to its urgent implementation. Besides that, legal migration should be an instrument to attract highly qualified experts from third countries—wherever they are needed for our growing economies—to complement the existing free movement of workers in the EU.

10:30

We want the European Union to be a strong global player and our external partners expect us to continue our high-level engagement in global affairs. We must therefore continue to pay attention to our external environment. I speak particularly of trade agreements and enlargement policy.

We believe that free trade is a significant contributor to the internal and external stability of the EU. Despite the disagreement of some EU member states, Slovakia is convinced that the transatlantic trade and investment partnership will have a positive impact on the EU's growth and employment and on the overall wellbeing of its citizens, so we stand ready to support the European Commission to reach a balanced agreement while safeguarding the high level of EU standards. Equally, we support an early approval of CETA with Canada, which we reiterated a week ago in Bratislava at the informal meeting of the foreign affairs council for trade.

During our presidency, we are ready to work on the implementation of a new European global strategy for the common foreign and security policy. At the same time, we will remain a vocal advocate of a more effective and preventive European neighbourhood policy. To the east, we wish to put a strong emphasis on stabilisation and reform processes and, to the south, we would like to focus, *inter alia*, on countries that are causing massive migration flows to Europe.

We will also try to ensure the credibility of the enlargement policy. Given our experience, we consider the enlargement policy to be one of the EU's most effective transformation tools, and it is a key instrument for stabilising our neighbourhood. We want to actively communicate that the path towards the EU requires countries to do their own homework.

Lastly, I stress that, in pursuing our presidency priorities, Slovakia will continue to be an honest and fair broker, as it should be. I am ready to hear your comments and to answer questions.

The Convener: Thank you very much, your excellency. It is very pleasing to have you, as a representative of Slovakia, in Scotland this week. I learned a lot about your country at the reception that you held in Edinburgh last night—it was extremely interesting.

A number of members would like to ask questions. I will start. What effect has the Slovakian presidency had on Slovakia's relationships with other member states in the European Union?

L'ubomír Rehák: Could you reformulate the question, please?

The Convener: What has the effect of the Slovakian presidency been on your relationships with other member states in the European Union? How have you benefited from holding the presidency?

L'ubomír Rehák: Holding the presidency is important for any member state. The rotating principle was established in order that every member state—whether big or small, and regardless of the size of its economy—could have a chance to drive the organisation for half a year. It is a principle of equality.

For Slovakia, the presidency is an excellent opportunity to focus attention on topics that are important to us, but it is also an enormously positive tool to increase the country's visibility. We are making use of all the informal meetings in Slovakia to do that. During this semester, we will have more than 200 meetings of EU formations in Bratislava and roughly 20,000 participants will come to Slovakia.

Slovakian diplomatic missions are also doing a lot to promote Slovakia abroad. That is why, when I was invited by this esteemed committee, I decided to stay for a whole working week in Scotland. I have met not only members of the Scottish Parliament, but those with executive power and people in business and universities. I am having discussions with four Scottish universities and with local authorities as well, because we need greater expertise in—to give a specific example—current developments in the United Kingdom's relationship with the European Union. Everywhere, we are promoting our small but positive and progressive country.

The Convener: Thank you very much.

Richard Lochhead: Good morning, and thank you for explaining, from the perspective of the Slovakian people, the benefits of being a member of the European family of nations.

Brexit is going to dominate a lot of your Government's thinking throughout the duration of the presidency and beyond. In the *Financial Times* a couple of weeks ago, your Prime Minister was quoted as stating that the European Union will make sure that the UK's leaving the European Union is "very painful" for the UK. Can you elaborate on that and define the kind of pain that you think will be caused to the UK by its leaving the EU?

L'ubomír Rehák: It is not up to an ambassador to comment on the Prime Minister's statements in interviews. However, I am of the opinion that what he expressed in an open and sincere way is exactly what the European leaders are worried about.

I hope that you will allow me to philosophise a little bit. In our political culture, we got accustomed to the excessive use of constructive ambiguity in our statements, and our citizens stopped understanding what their political representatives meant. Therefore, an appeal for clarity was made when the EU leaders met in Bratislava in September, which I will quote from:

"We should inject more clarity into our decisions. Use clear and honest language. Focus on citizens' expectations, with strong courage to challenge simplistic solutions of extreme or populist political forces."

That is what politicians have in mind when they try to explain what the problem is in clear words.

It would be naive to think that such a complex issue as engagement with a big member state of the European Union could be an easy exercise; it will definitely require long and tough negotiations to agree a mutually acceptable deal. The Prime Minister probably mentioned pain in order to make it better understood that it is a really complex problem that will require a lot of negotiations. Citizens must be aware that it will be a difficult

process and that the whole of Europe, not only the United Kingdom, will suffer at a certain level because of it.

Richard Lochhead: Because Scotland voted to remain in the EU, if the EU makes it difficult for countries to leave it without a great deal of pain—that is what we expect to be the case—that will understandably cause concern about the impact on Scotland. As you are aware, the Scottish Government is pursuing options to find out whether it is possible for Scotland to maintain its relationship with Europe, particularly as a member of the single market.

If the UK Government were to give Scotland the go-ahead to explore those options properly—that is, to have negotiations with member states and European institutions—would the Slovakian Government and presidency support that?

L'ubomír Rehák: In my opinion, it is too early to speculate on that question, because we are not even aware of the basic parameters of a British exit from the European Union, so we really need to wait for—[Interruption.] Is the microphone working?

We need to wait for the British Government to formulate its negotiating position, which will be considered by the circle of 27 member states and their negotiator. I cannot make any promise on behalf of one Government, because it will be a consensual act of negotiation that will bring us to this result. I therefore cannot answer your question seriously.

Richard Lochhead: Does the Slovakian presidency or Government have a view on what the timescale should be for finally getting some kind of indication or understanding of the UK Government's position on the negotiation and all its different aspects?

L'ubomír Rehák: We adopted the programme for the Slovak presidency only after the referendum. In other words, we waited for the referendum in order to declare in the presidency priorities whether the February agreement between David Cameron's Government and the EU would be implemented or whether we had to tackle the new question of a British exit from the European Union. We have expressed our readiness to start the process; the ball is now with the British Government, and we expect that things will happen once article 50 is triggered and the official negotiations start. For our part, we are ready for the negotiations.

The Convener: Thank you very much, your excellency. I must advise you that your microphone works automatically, so you do not need to worry about pressing any buttons.

Lewis Macdonald: I will start with what I hope is a more factual question, which will then lead on to a slightly more political one.

Didier Seeuws has been appointed to represent the Council of the European Union in the negotiations, Michel Barnier has been appointed to represent the Commission and Guy Verhofstadt has been appointed to represent the European Parliament. How will the presidency relate to each of those three individuals and the various parties to the negotiations?

L'ubomír Rehák: The fact that every European institution has nominated a representative shows that every institution wants to be involved in the processes. Once the British Government officially notifies the European Union of its interest in leaving the organisation and triggering article 50, the European Council will need to convene and nominate the body that will undertake the negotiations. It has not been decided which body that will be, but for such operations, the European Union has a technical organism called the European Commission, which has full expertise in having practical negotiations. Heads of state and Governments have already declared that they want to keep control of the process, so a mechanism will be found to ensure that they, too, are involved. The same is true of the European Parliament. Every process needs to be supervised, and the three people that you mentioned were nominated to do that work.

Lewis Macdonald: Just to allow me to understand the process, are you able to tell me whether Michel Barnier will lead on the negotiations or whether he will lead just on the day-to-day negotiations and then report back to the Council as well as the Commission?

10:45

L'ubomír Rehák: He will be the negotiator for, and will report to, the Commission, but it is up to the Council's decision. We need to await the British Government's formal notification and then the European Council will decide on further procedures.

Lewis Macdonald: So it is not yet settled.

L'ubomír Rehák: No, because it would be preliminary. We do not know even the parameters of a British exit from the European Union.

Lewis Macdonald: That is helpful.

One of the interesting issues is the statement made by the Visegrád four, which includes the Slovakian Government, on freedom of movement. Although you have described areas of agreement among the 27 member states, it appears from that statement and comments that have been made that some member states have stronger views on

certain aspects of the potential negotiations than others do. Therefore, it would be reasonable to assume that a public statement on freedom of movement by Slovakia and its neighbours reflects concern about the European Union's potential negotiating position on that issue. Will you comment on that? Is it a fair interpretation?

L'ubomír Rehák: All political leaders, especially Governments, express their views. We are not yet reacting to concrete parameters for a British exit, but there was a reaction to comments by British politicians who are establishing by public statement certain red lines for future negotiations regarding, for instance, freedom of movement. The statement that you mention was a reaction to those.

It is correct to mention EU citizens who live and work in the UK, who are not migrants but people who are using the four freedoms of the common space. They have moved to your country legally and for bona fide reasons, using the opportunities of the common market. The same applies to British citizens who work in the EU, naturally. Our Prime Minister expressed the wish of the Slovak Government and, in the Visegrád format, the wishes of the Czech, Polish, Hungarian and Slovak Governments that adequate attention be paid to that problem in the negotiations when they start.

In fact, article 4 of the June Council statement from after your referendum says:

"Access to the Single Market requires acceptance of all four freedoms."

Therefore, that is the generally agreed line of the European Union in that context.

Lewis Macdonald: Is it fair to say that the stress laid on that issue by the Visegrád group is simply a view of four member states and does not necessarily bind, or reflect the opinion of, the Slovakian presidency of the Council for its period of office?

L'ubomír Rehák: Yes, you are right.

The Convener: Is it your understanding that it is not possible for a state to have access to, or be a member of, the single market without also having the free movement of people?

L'ubomír Rehák: A table without one leg will be very labile. That is the problem. We should not put at a disadvantage other members of the club by giving an advantage to one of them. That is one of the results of the heads of state meetings in Bratislava. The Bratislava road map stated precisely that. I am sorry that I cannot find the exact quote at the moment.

The Convener: The Visegrád statement suggested that those four countries at least would

veto any deal that excluded free movement of people. Is it your Government's position that it would veto any deal that did not allow free movement of people?

L'ubomír Rehák: I am just trying to check the Visegrád statement to see whether it says that those countries would veto such a deal. It might not be written in that form, but that is definitely the common interest of central European countries. We and our neighbours have dozens of thousands of citizens living in the UK and we are obliged to protect the rights of our citizens.

Rachael Hamilton: Your prime minister, Robert Fico, used his speech at the European Parliament to outline the strength of the EU, saying that it is an amazing and unique project and that although the EU is not perfect, there is no alternative. I also read that one of your three principles is to restore citizens' confidence in the common European project.

Has the UK EU referendum result caused uncertainty amongst the remaining 27 member states? Are they questioning their membership of the EU?

L'ubomír Rehák: As I tried to explain in my introductory remarks, it is a big issue for the union and the result of the British referendum was a wake-up call for the whole of Europe about how people react to campaigns. We now realise that we do not pay enough attention to the underlying positive aspects of European integration. All the positives are taken for granted, especially by the younger generation. They do not think about the need for passports when they visit neighbouring countries, because they simply do not need them. From time to time we need to remind everyone of the advantages of the European Union project.

The EU is definitely not perfect, nor can it ever be, but it is the best integration project that Europe has ever had. It has guaranteed peace and stability in Europe for the last 70 years. We must underline that all the time in our public communications. Unfortunately we are witnessing that good news is not news and people want to talk only about negative experiences, rather than the positive aspects. That happens, naturally; this is a live organism and it is not perfect.

The attitude of our presidency, which was also set out in the Bratislava declaration, is that there is a need for sincere and open communication with citizens:

"We committed in Bratislava to offer to our citizens in the upcoming months a vision of an attractive EU they can trust and support. We are confident that we have the will and the capacity to achieve it."

That is the concrete message of the political leaders of the EU.

Rachael Hamilton: Immigration control was one of the main reasons why a lot of people in the UK voted to leave. Would you like to give your opinion on whether other countries are looking to reform areas of EU policy, such as immigration?

L'ubomír Rehák: We think that it is necessary to reform the immigration system, because last year developments showed that the number of not illegal but irregular migrants who came to Europe was too big to absorb, and it is starting to threaten the security of the union, its member states and individual citizens. We need to use all the instruments available to halt that process, and there are many such instruments. Some are short-perspective instruments aimed at the resolution of acute problems, such as the EU agreement with Turkey, which was unbelievable before but now the EU can agree that mechanism to stop the enormous flow from Turkey to the Schengen area through Greece. Instruments of foreign and security policy must be involved in that process. We need to make more effort in conflict countries to stop military conflicts and prevent humanitarian emigration of people from affected regions. That is very important. We also need to do something with the European asylum system, because the Geneva convention was adopted in the 1950s and does not reflect the realities of the 21st century.

Stuart McMillan: I want to pick up on two comments that you made about the EU. One was about a wake-up call and the other was that all positives are taken for granted. Do you see the UK's decision to leave the EU project as a threat to the future existence of the EU? What opportunities do you see for reform and progress and for making the EU more realistic and tangible for its members and for those who live in EU countries?

L'ubomír Rehák: The fairest answer that I can give is to quote the declaration of the heads of states of the EU 27, made in Bratislava, where they agreed:

"Although one country has decided to leave, the EU remains indispensable for the rest of us. In the aftermath of the wars and deep divisions on our continent, the EU secured peace, democracy and enabled our countries to prosper. Many countries and regions outside still only strive for such achievements. We are determined to make a success of the EU with 27 Member States, building on this joint history."

I think that that is generally the answer. There is a strong determination for the EU to continue as a bloc and not to be tempted by the idea that, because one member state is leaving, the whole club should be dissolved, because we do not have an alternative for the EU.

Stuart McMillan: One of the things about the EU that has been apparent over the years has been its flexibility in finding solutions to problems

that arise. What flexibility do you think the EU could adopt in relation to the situation for Scotland, Northern Ireland and Gibraltar, which all voted very much in favour of remaining part of the EU?

11:00

L'ubomír Rehák: I am afraid that I am not competent to answer that question. It is an internal affair of the United Kingdom, which is a member state of the union. Once there are some developments that the EU is entitled to react to, it will definitely react. Meanwhile, it is impossible to speculate on such sensitive issues.

Stuart McMillan: I expected you to say that, but I thought that I would try.

Given that Slovakia has the presidency of the EU, would it prefer article 50 to be triggered sooner or later to allow meaningful discussions to take place?

L'ubomír Rehák: I have already tried to explain that our aim is to have clarity as soon as possible, because we feel that markets are waiting and are not developing. Nothing tragic has happened after the referendum, but those in economic circles would assure you that capitals are awaiting further developments. There is no significant investment, because everybody is in waiting mode, which is detrimental for economies. Prolongation of those uncertainties is detrimental to all of us. That is why we would like to have a clear vision from our British partners of what future relationship they envisage between the United Kingdom and Europe.

Stuart McMillan: So the lack of vision and clarity is creating economic uncertainty, in terms of investment decisions.

L'ubomír Rehák: Yes, that is right.

Emma Harper: In previous meetings, we have discussed the human aspects of Brexit, such as the relationships between people and the movement of people. Are you or your Prime Minister, Robert Fico, concerned that EU workers will be treated as second-class citizens during the Brexit process?

Lubomír Rehák: As I understand it, Prime Minister Fico has expressed the view that the rights of workers could be the topic of negotiations and that could potentially harm the interests of EU workers in the UK and the interests of British workers in other EU countries. He has expressed the view that that is simply not acceptable from our point of view, because the Government must take care of citizens' rights. Those citizens have not done anything illegal—they are legally in a space. That is legally binding, so every Government of that common space must accept it.

The Convener: On that topic, as you are ambassador to the Court of St James's, have you made representations to the UK Government in relation to securing the rights of your citizens living in the UK?

L'ubomír Rehák: As ambassadors, we have had a couple of meetings with UK Government representatives, particularly after the referendum and the cases of physical and verbal attacks on people from the European Union. We understand that those were leftovers of the negative campaign in the referendum and the rise of a xenophobic movement. We were told that the British Government is following the situation closely and is not allowing any violation of human rights or the laws of this country and is not allowing any hate crimes in that regard.

The Convener: You will of course be aware that in Scotland, where we voted to remain, the Parliament, the First Minister and indeed all the political leaders have been very clear that EU citizens are very welcome in Scotland—and Slovakian citizens are very welcome in Scotland.

Ross Greer: Ambassador, to go back to Rachael Hamilton's question, there has been much mention by your Prime Minister of repairing the holes that have been made in the Schengen area and of addressing—as you have mentioned—issues around refugees and asylum seekers coming to Europe. Does the Slovakian Government distinguish between economic migrants, who are coming here for reasons of choice, and refugees who are fleeing war in Syria, Somalia, Yemen and so on?

The Slovakian Government has rejected the idea of quotas to spread the number of refugees arriving across Europe. You have yourself mentioned the deal made with Turkey. Many of the refugees who arrive cannot be pushed back to Turkey, because they have not arrived through Turkey; they have travelled, say, through Libya to Italy. What is the Slovakian Government's position regarding those refugees who cannot be pushed back through Turkey?

L'ubomír Rehák: Our Government's stance is that although it is a global issue, for us it is a European issue and it must be resolved in a European way. We have tried to attract the attention of political debate to this topic and to the fact that perhaps the majority of the people who are travelling irregularly to the European Union are not from conflict regions but are economic migrants. We have other procedures—legal instruments—to attract a workforce to Europe, and the situation is simply not acceptable.

Some legal procedures were needed to stop the massive migration. One of those was the agreement with Turkey—a big portion of refugees

came from there. Another route is through the Mediterranean. You are right, unfortunately; for now, we do not have a partner on the other side, because Libya does not have a Government. The task for common foreign and security policy instruments is to influence the situation in Libya in order to help establish a working Government and to make it possible to create hotspots on Libyan territory where people being taken by sea could be brought to start the process of gathering information about which persons are asylum seekers and which are economic migrants. Those are various parts of the process that must be tackled.

You asked about obligatory distribution. We are in favour of voluntary distribution. We do not think that obligatory distribution can be achieved in an open union without borders. If somebody wishes to go to Germany, we cannot put a chain on him and tell him that he will stay in Slovakia. Unfortunately we are not able to do that, and we have stated that. We were accused of all the sins of the world for that, but that is the fact. That is the way that the population understands the arguments and perceives the meaning of the words. We could say that we would accept the mechanism, but then 90 per cent of those who came to Slovakia would immediately leave for Germany. Why be so hypocritical? This is an attempt to establish a new form of communication with the population. Sometimes that is perceived very negatively and critically, particularly by the media.

Ross Greer: Is there a recognition of the concern that many Europeans have about Turkey? A deal has been done with Turkey to push refugees back there, but in fact many refugees, particularly Kurdish refugees, flee Turkey because of the persecution that they face from the Turkish Government, not from places further than Turkey, such as Syria, which they have fled from. Turkey itself is a nation that produces refugees because of its Government's oppression.

L'ubomír Rehák: That is not a question for the presidency. That is definitely not among the presidency's priorities.

The Convener: Very diplomatic.

Lewis Macdonald: You said earlier that one of the four ambitions for the Slovakian presidency is to deepen economic and monetary union. How do you envisage that going forward from this point?

L'ubomír Rehák: I have a little more information about the economy.

Lewis Macdonald: I am interested in monetary union in particular.

L'ubomír Rehák: If you are interested in more in-depth information about the monetary aspect of

the union we can send you full information about current developments in that sphere. We had an informal meeting of the economic and financial affairs council—ecofin—a week ago in Bratislava, and it took some steps forward in that area.

Lewis Macdonald: That would be very helpful. Two weeks ago, Jean-Claude Juncker said that it was something that he hoped would be in the white paper following this presidency. It would be very useful to understand how that looks.

The Convener: If you could get that information to the committee, we would all very much appreciate it.

Thank you, your excellency, for giving us your evidence today. I wish you well for the rest of your time in Scotland.

L'ubomír Rehák: Thank you.

11:11

Meeting continued in private until 11:29 and then suspended.

13:24

On resuming—

European Union Referendum (Implications for Scotland)

The Convener: Good afternoon and welcome back to the meeting. Our final item of business today is a further evidence session on the implications of the EU referendum for Scotland. I welcome to the meeting David Martin MEP and Alyn Smith MEP. Before going to members' questions, I will give the witnesses the opportunity to make some opening remarks. Who would like to go first?

David Martin (Member of the European Parliament): Alyn Smith has kindly volunteered me.

Alyn Smith (Member of the European Parliament): I was pouring the water.

David Martin: I will make some very brief opening remarks. First, in general terms, we are naturally focusing here on the British Government's negotiating position, but I think that we should seriously consider how we influence the other party's negotiation position as well. I am sure that the committee has already thought about that. Despite how Michel Barnier was portrayed in the British press, he is not at all anti-British or unsympathetic to the issues that we will be raising with him. I think that he would be a very good person to be in touch with. Collectively, we are trying to build contacts with him and his team. Likewise, from a Scottish perspective, Guy Verhofstadt, the Liberal leader in the European Parliament, has shown a great deal of interest in the unusual position that we find ourselves in of voting to remain in the EU while the rest of the UK voted to leave. He is very interested in how he can assist the Scottish case.

Very briefly—I will try to do it as telegraphically as possible—there are three things that we need to try to defend as a nation post Brexit. First, we have to find methods of protecting jobs; secondly, we have to find a way of protecting rights; and, thirdly, we have to look at our security.

All of that has been well rehearsed so, again, I will be brief. In relation to jobs, full access to the single market is, for me, the key issue. I do not believe that we will be able to obtain that if we do not have some movement on free movement. If we stick to the stated British position on free movement, I think that we will find on the other side of the fence no access to the single market—I mean no membership of the single market. As a passing point, since the phrase slipped out

unintentionally, we keep hearing British Government ministers talking about access to the single market, but I have no idea what they mean by that phrase. Every country in the world has access to the single market; it is membership of the single market that gives us the privileged position that we have.

Again, the committee will be well aware of all the options post Brexit. For me, the Norway option is the best one, but I cannot understand why we would want to have no say in setting the rules while still paying the bills. I cannot understand what the advantage of that would be compared to having full membership of the EU. The Swiss option has been talked about also, but for Scotland and the UK as a whole it is important to bear in mind that the Swiss do not allow the free movement of services. A UK agreement that did not give us access to the service market would not be good news.

I do most of my work in the European Parliament on the Committee on International Trade and I am the spokesman for my group on the Canada agreement. It is a good agreement for a third country, but it would not be a good agreement for the United Kingdom. In the past two or three weeks, I have heard a number of British ministers talking about an agreement such as the Canada one being a suitable option. I will not go through all the options of that agreement, but it does not give unfettered access to fishing or agriculture; it more or less gives tariff-free access for manufacturing goods, although there are exceptions even there; it does not involve financial services; and it does not give any role in setting standards. If we want to sell in the single market, we have to accept the single market standards. I therefore do not see why the Canada agreement is suddenly becoming this great option for us. It is good for Canada, because it has a different relationship with the European Union, but it would not be good for the United Kingdom.

Finally, on jobs and the WTO option, my work on the Committee on International Trade recently took me to Geneva—I have just come back—where the Secretary of State for International Trade, Liam Fox, spoke. As I told Alyn Smith before this evidence session, Liam Fox implied that, because the UK was an original and continuing member of the WTO, there would be no problem for the UK in moving from membership of the EU to full WTO status.

There might be no problem in terms of membership but, immediately after Liam Fox had spoken, the director general of the WTO pointed out that our schedules are 40 years out of date and said that it would take years to update them. On one hand, the secretary of state says that there is no problem, but on the other hand the

director general says that the WTO is in deep conversation about how to handle the issue and expects it to take years. The idea that there is a simple option whereby we sign up to the WTO and everything is fine is clearly not a good one.

I mention in passing something of which I am sure the committee is well aware. The WTO option would mean a tariff of 10 per cent on our whisky, instead of whisky having completely free access to the European market, as it currently does.

13:30

I will be much briefer on the other two issues, to leave time for discussion. I think that there is no way that the current British Government will protect the social and labour rights that we have as a result of our membership of the European Union. My view is that Scotland should push hard to make those matters a Scottish responsibility. We need to make a case for devolving those matters to the Scottish Parliament and Scottish Executive, because it is clear that the Scottish people want to defend those rights and it is also clear that, if there is no change at British Government level, those rights will not be defended.

There is an argument that even with its existing powers the Scottish Executive could sign up to the European convention on human rights and have its own version of the British Human Rights Act 1998, thus defending the human rights that we have at European level. That should be a high priority for the Scottish Government.

Finally, on security, given Scotland's devolved justice system, I do not think that there should be a major impediment to Scotland remaining part of the European arrest warrant system—again, that is a personal view; it is debatable. Alyn Smith and I are trying to see Interpol about the issue, and Government ministers have been speaking to Interpol. I do not see why the Scottish police could not be part of Interpol, even if the rest of the UK decided not to do that, so that we could defend our security in that way.

There are many other issues, but jobs, rights and security are the three key ones. Other areas to consider include how we remain part of the research programme and the Erasmus programme and how we can take advantage of agriculture and fisheries powers coming back to Scotland, bearing in mind the dangers in that regard. If we do not have full access to the single market, it could be difficult for some of our agriculture and fisheries products to compete in Europe. I will stop there.

The Convener: Thank you.

Alyn Smith: I endorse everything that David Martin said. It is worth stressing to fellow parliamentarians that, post Brexit, five out of Scotland's six representatives in the European Parliament have committed to working together as team Scotland, as we have often done in the past, to get a result for the people whom we serve. There is a great deal of cross-party joint working going on across the Parliament, and we are seeing such an approach from a number of UK MEPs. We are co-operating to try to get the best deal in whatever will be Scotland and the UK's future.

I compliment the committee on its inquiry, which is getting a lot of useful information into the public domain. A sad side effect of the dreadful EU referendum campaign was that a lot of organisations did not prepare for the eventuality of a leave vote and its implications for farming, fishing and all sorts of other industries. I was at a meeting with the Law Society of Scotland this morning, and it is clear that only now are some organisations really going through the gears on what leaving the EU actually means. The committee's work is important in that regard.

I will add a few points about what is going on over the water. Mr Barnier and Mr Verhofstadt are very alive to the Scottish question. My advice to Scotland and to the committee is that Scotland should not be silent as the process goes forward. We cannot wait until we see, fully formed, what the UK is going to present as its article 50 demand. Instead, we must take the opportunity to consider what Scotland's demands are. What do we want to keep? What do we want to remain part of? How do we want to do that?

There is good will towards Scotland at present. To paraphrase what Palmerston said—as almost everyone who has been involved in politics since Palmerston has done—countries do not have allies, they have interests. It is up to us to define our interests and ensure that we are part of the discussion. The door is open at the moment, but I suspect that it is going to start closing. There is an idea that article 50 is entirely under the control of the UK, but all that the treaty says is that the member state informs the Council, and arguably that was done verbally by Prime Minister Cameron in the summit after the meeting. In the event that the 27 states decide that article 50 has been triggered, the UK will rapidly find out that 27 is a bigger number than one and that there is a lot of other stuff happening that the member states of the European Union want to be getting on with. The idea that the UK can string this out beyond what is reasonable is unlikely. We still have to put together what a realistic article 50 approach is. The good will is not going to last forever. There is a timescale that needs to be respected.

On the plurality of interest of the UK, it will be no surprise to hear that I support that Scottish Government's and Scottish Parliament's efforts to reach out to the plurality of interests in the UK, including Gibraltar, Northern Ireland and other places. There are a lot of interests that have just been thrown up in the air and we need to find some sort of joint approach.

There is good will at UK official level, and indeed politically. All talents are needed on this. I am happy to continue the discussion with members and I thank the committee for the invitation to do so.

The Convener: Thank you.

From what you have both said, there is an understanding in the EU institutions and the European Parliament of Scotland's unique position. Do you agree with that, or is there more work to be done?

Alyn Smith: There is always work to be done and a focus on that will need to be maintained. There is a recognition that we voted to remain and that if there is an opportunity to find some sort of circumstance that will suit Scotland it should be explored. That needs to be approached issue by issue, rather than on a wider basis.

More worrying is the position of Northern Ireland, in that it directly involves another member state that will remain part of the 27, whereas we are part of the member state that will not. There is also an awareness of Gibraltar's situation. We fit in that picture. The fact that Scotland has been so vocal immediately following the Brexit vote has made us part of the picture, and we can use that to Scotland's advantage. However, we must not go silent in the process.

The Convener: How can the Parliament and the committee most effectively engage with the European Parliament and its committee system to ensure that Scotland's voice is heard?

David Martin: That is difficult to say in some ways, because the European Parliament has not yet decided the form of its approach. Eventually, we are likely to have a Brexit committee, but we are not there yet. The president has appointed a special representative, Guy Verhofstadt, leader of the Liberal group, to be Mr Brexit for the Parliament. He is the initial point of contact. However, I hope that the European Parliament will have a Brexit committee, in the way that we have committees for everything else that goes on, that will analyse the article 50 process once it starts. I guess that we do not have such a committee at present because article 50 has not been triggered.

I have one piece of advice. I am treading on eggshells here, but if defending the Scottish interest is seen as promoting independence, you

will find some hostility in the Parliament, from all the usual suspects. The Spanish and a number of other nationalities are very nervous about that. If the approach is seen to be genuinely about promoting the difference between Scotland and the rest of the UK in terms of desires and the European connection, you will find a sympathetic audience. It has to be handled very delicately.

Alyn Smith: I endorse that from my political perspective. If there is a perception—it would be entirely wrong—that we are trying to use this as a pretext to a mad dash for independence, there will be a backlash. We need to approach it on a granular level. To pluck an example out of the air, if we ask how Scotland can continue to be part of the Europol network, people will engage with that discussion. If we ask how we can remain part of horizon 2020, Erasmus, the Hague convention or whatever else, we can have a granular discussion about technical specifics, rather than a broader constitutional discussion.

Umpteen places across the EU have a different constitutional status vis-à-vis their member state and the EU. There are umpteen examples that we can point to for a wider status. As a starter for 10, it is about identifying the bits of the *acquis* that we want to remain part of and the bits of the framework that we want to continue to be active in, which will allow us to engage subject by subject and committee by committee. I suggest that that is where the discussions start, rather than going straight to the Mr Brexit, Ms Brexit or whoever they are going to be in due course. We should make the discussion more about, for example, how to keep a specific programme going, which would allow a granular level of discussion. That would be more productive for where we are now.

The Convener: It has been suggested to us that, for that to happen, we need a clear indication from the UK Government that it is comfortable with Scotland doing that. What are the chances that the UK Government will do that?

David Martin: I have no idea. It is very difficult to judge at the moment what the Government's attitude will be.

The Convener: But what if the UK Government gave that indication, even in those devolved areas?

David Martin: That would make life much easier.

The Convener: The key thing for Scotland is membership of the European single market. The First Minister has been very clear that she wishes to retain that and the evidence that the committee has taken so far suggests that sectors across Scottish society also wish to retain access to the single market. Could we argue for a differentiated relationship on that?

David Martin: Whether as part of a UK agreement or a bespoke Scottish settlement, we should argue for maximum access to the single market. There is no question but that that is where our economy would benefit most. It would be very difficult for Scotland to have a different level of access compared with the UK because goods move so freely across the UK. It would be close to impossible to identify Scotland as a separate market in that context.

There is a similar argument with regard to free movement of people, as there is an indication that the attitude to that is different in Scotland from that of people in the rest of the United Kingdom. However, it would be difficult to have free movement in Scotland with a porous border between us and the rest of the United Kingdom.

Ross Greer: I take on board what you have just said about the difficulty of a differentiated relationship. Will the UK Government's negotiating position affect the willingness of the remaining 27 member states to engage directly with Scotland's specific situation? If the UK Government is heading towards a hard Brexit and a WTO rules default situation, will that make the remaining 27 more open to looking at a differentiated relationship for Scotland?

David Martin: It is very difficult to say. One of the paradoxes is that the harder the Brexit, the more difficult it will be for Scotland to have a differentiated relationship. If it is a really hard Brexit and we are completely out of the single market, it will be very difficult for one part of the United Kingdom to be in the single market. Therefore, a hard Brexit will make the situation worse not better. The softer the Brexit, the easier it will be to have nuances in Scotland's position compared with the rest of the United Kingdom.

As with every aspect of Brexit, there are so many variations at the moment. We hear that one option for Northern Ireland is to have a porous border between the north and south of Ireland which, if I was a Northern Ireland unionist, I would be furious about. To have a hard border between the north of Ireland and the United Kingdom would not be a very satisfactory settlement if you live in Northern Ireland and regard yourself as British. However, that seems to be one of the few ways of keeping the border between north and south Ireland open.

Stuart McMillan: One of the things that the EU has managed to do over the years is be a flexible organisation when it has had to be. Where is there flexibility for Scotland's position, and any negotiating position for Scotland, in the coming six to 12 months, particularly given the elections that will take place in France and Germany?

David Martin: You asked several questions at once there. In relation to Scotland, once the heat goes out of the process—and the heat might be around for quite a while to come—I think that there will be flexibility on some of the issues that Alyn Smith and I have mentioned, such as the Erasmus programme, horizon 2020, and even Europol and keeping the European arrest warrant. The big issue is the single market, and that is where it will be difficult to get flexibility.

13:45

When it comes to the UK position—and this is corridor talk rather than any formal position that anyone has adopted—I am told that, if a British Government was prepared to compromise on the free movement of people, there could be freedom of movement in principle but people would have to have a job offer before they could come to the United Kingdom. That was floated by one of the Brexiteers—although he was shot down quite quickly by the Prime Minister—and it has also been discussed in the corridors in Brussels. It would mean that free movement of labour still existed, although people would need a job offer before they came here. Some of us would argue that that is not in the spirit of the single market as we currently have it, but it would be a pragmatic way of solving a problem that has resulted from two hard positions that do not seem to be prepared to come together. It could be one way of bringing them together.

Alyn Smith: It is one of the known unknowns at the moment. As Donald Rumsfeld said, there are things that you know you do not know and things that you do not know you do not know. The question of what the UK position is going to be is actually an opportunity for Scotland, because there is an open ear in Whitehall, certainly at official level. People are trying to formulate some sort of UK bid at the article 50 stage that would respect the constitutional issues that have been thrown up for Gibraltar, Northern Ireland and ourselves. The external territories have wider issues than the home nations do.

Scotland therefore has an opportunity to be vocal with a list that states our starting point. Politically, our starting point is that remain means remain, of course, but let us be specific about the programmes that we want to keep and about the distinction between what is clearly within devolved competence and things where there are other implications. As part of that discussion, let us be particularly vocal with the UK about the things that we want. We should do that privately where necessary, but we should be as public as we need to be. Although it is a democratic process, my point is that there is a concurrent discussion that needs to be had with Brussels and the member

state capitals, to ensure that Scotland's needs are respected in the process.

As the two negotiations coincide, I hope that we will still have that good will in the bank so that we can find a solution. With Norway and Iceland nearby, political Scotland has a clear awareness of the fact that there are other ways of skinning this, and there are ample constitutional examples that we can point to on particular issues. Some of the bigger demands include those that relate to the passporting of financial services. I can think of constitutional ways of passporting financial services for Scotland-domiciled organisations, but those might not exist for organisations south of the border. That throws into sharp relief the question of the situation in the UK jurisdiction as it stands.

Our starting point has to be what we want to keep—and we need to build a consensus in Scotland about why we need to keep those things—and then constitutional exceptions can be found in discussions with Brussels. Let us always bear in mind the fact that the member state is the member state and that there will be one representative in those discussions, but we are not without allies. We are having a good discussion, Government to Government, with the Irish in particular and with other nations, so there are people to whom we can talk about those issues rather than simply allowing the discussion to be a narrow channel between Edinburgh and London. There is a wider discussion that we should be having.

Stuart McMillan: Given the timescales for the elections in France and Germany, how do you think those events will impinge on or affect the situation in Scotland and in the UK?

David Martin: They will have a significant impact. We should throw into the pot the fact that the Dutch are also having elections, and of the three countries Holland possibly has the biggest anti-European—perhaps it is better to call it sceptical—audience, which could cause some difficulties. Even if negotiations start early next year—assuming that we believe the rumour that they could start in February—I do not think that we will see a lot of progress until October or November. I certainly do not think that we will see any weakening of the Dutch, French or German positions before then; in fact, we might well see a hardening of their positions.

The elections make the negotiations complex. Some people have even argued that we should not trigger article 50 until October next year, but I gather that the view on that is that waiting so long is politically unacceptable. I suspect that the negotiations in the first nine months will not be easy.

Alyn Smith: There is an active danger that there would be an incentive across the 27 member states: if the UK established a precedent that a country could leave the EU and somehow get a better deal, everything could start to unravel really fast. We do not need to think too hard about other European countries that have that sort of element in their politics—Hungary leaps to mind, but there are plenty of others.

Every single member state will have an interest in what happens and will want its interests to be looked after if it is approve whatever Brexit eventually turns into. The domestic reality in 27 other places will be pivotal to what the UK gets in the end. The UK cannot demand terms and get them. Article 50 is just an opening bid; it is not remotely the end of the process.

Stuart McMillan: Alyn Smith mentioned that the discussions are at the member state level, and Scotland does not have the opportunity to contribute to those discussions. How do you see Scotland having direct discussions with European countries and representatives? It is clear that five of the six MEPs are on the same page, but there is a challenge for Scotland in fully getting its message over.

Alyn Smith: It will be a challenge, but that is where the Scottish Government has already cut something of a dash. Nicola Sturgeon has been over to meet the German foreign minister and—just at the beginning of this week, I believe—Fiona Hyslop was over in Paris, meeting Harlem Désir. The channels will remain open, and the negotiations will be the negotiations, but we can talk to the people who are taking part in them.

Incidentally, we should also demand to be a formal part of the UK negotiating team. There is a very live discussion on that between Michael Russell and David Davis. If we are silent in the process, decisions will be made on our behalf in Brussels, Berlin, Paris, Ljubljana and London. Therefore, it is up to us to ensure that we are vocal about what we want. We want a place in those discussions and a seat at the table. If that is refused, it is refused—the constitution is what it is—but we certainly should not allow decisions to be made for us without making the case.

David Martin: I endorse what Alyn Smith says about the First Minister and other ministers keeping contacts open in Europe. It will not be easy. People will not negotiate at the moment, but nevertheless it is vital to have dialogue and to keep the contacts open.

As members are well aware, at the end of the process the European Parliament will have the right to say yes or no to any Brexit deal, so it is worth speaking to a wider group of MEPs and ensuring that MEPs understand the demands. I

am not predicting this, but it is not impossible that we will say no to a Brexit deal initially. We have said no to some big deals in the past. Do not assume that, just because the member states have negotiated a deal, the European Parliament will rubber stamp it. I always defend the rights of the European Parliament, but it is ludicrous that it has the right to say yes or no to such a deal, but the Parliaments of the United Kingdom do not also all have that say.

Stuart McMillan: What would happen if the European Parliament said no? What constitutional crisis would that kick up in these islands?

David Martin: A big one. The problem with the whole article 50 process is that we are in uncharted waters, to use a cliché. We do not know what would happen. One assumes that there would have to be a return to the negotiating table, but we just do not know what that would mean for the two-year period.

The two most recent examples of the European Parliament saying no to international agreements were the anti-counterfeiting trade agreement—that simply killed it—and the passenger name records agreement with America. When the European Parliament said no to that agreement, the Vice-President of America came to the Parliament and pleaded with us, and the negotiators went away and negotiated an agreement. The two cases had opposite outcomes. In one case the Parliament killed the agreement and in the other there was a delay of a few months, so it is impossible to make a prediction about Brexit.

Alyn Smith: It will depend entirely on the good will with which the negotiations start and continue. If there is good will and mutual self-interest, a deal can be struck—we are all grown-ups.

However, the omens are not good. Pronouncements from various London ministers have been slapped down—I should not use that language; I will say “contradicted”—almost immediately by the ministers’ boss, and we saw the reaction of the French and German foreign ministers, who offered to explain to Boris Johnson, in English, how the Lisbon treaty works. We are not looking good here. The extent to which the UK is throwing good will away is a problem for us, because we do not look serious or credible.

That underlines the need for Scotland to be vocal and reasonable. We will have interlocutors in the discussion who will be in the room—from a UK perspective, they will be at arm’s length from someone who will not be in the room.

Rachael Hamilton: The result of the UK referendum has led to questions for other EU member states. Given the political uncertainty in member states that have a strong populist right-

wing view, could there be a domino effect of withdrawal from the EU?

Alyn Smith: I do not see that happening. The evidence from the polls is quite the reverse. The way in which the UK had a vote, won a vote and then collapsed into chaos did not look good. A number of anti-Europe movements are watching carefully. The Front National has a close relationship with the UKIP group in the European Parliament and the parties are comparing notes; there are ingredients of the same discussion in various European countries.

That underlines our point that there is an incentive for the 27 Governments and the institutions of the EU to make the UK’s departure tough, pour encourager les autres and to make the point that we cannot leave a club and get a better deal. I do not see there being a domino effect in any particular member state, but the risk of a domino effect makes things tougher for us.

Ross Greer: You said that Scotland will have to demand a role in the negotiation process—not just by unilaterally entering into informal discussions with other member states but by being part of the team that the UK sends to the Brexit negotiations. The Scottish Government and the Scottish Parliament will make representations to the UK Government about that.

When Québec’s representative gave evidence to the committee last week, he talked about the comprehensive economic and trade agreement process, with which David Martin will be familiar. At the time of the CETA process, there was an expectation on the European side of the table that not just federal Canada but the Canadian provinces would be represented in the room. Of course, the provinces have considerably more relevant powers than the Scottish Parliament has.

How can we create an expectation among the other 27 countries that the UK should bring Scotland, Wales and Northern Ireland into the room for the negotiations, if there is currently no such expectation?

David Martin: We should try to create that expectation, but the two situations do not match. It was the European Union that insisted that the provinces were involved in the Canadian negotiations, because of past experience. A key demand from Europe in the trade negotiations was access to public procurement, the bulk of which is controlled by the provinces, and we recognised that any deal that the federal Government in Canada did to give us access to public procurement would be pointless if we did not have a guarantee from the provinces. There were a number of other devolved matters on which we needed assurances that the provinces would respect the deal. The Canadian constitutional

position is that the Canadian Government cannot give away the rights of the provinces, so to make the deal credible we insisted that the provinces were involved in the negotiations from the start.

It is unfortunate, but the constitutional position here is clear. Whether we like it or not, the UK Government has the right to negotiate the terms of Brexit. That does not mean that we should not try—do not misunderstand me on that.

14:00

Ross Greer: Absolutely, so how do we create a set of circumstances in which there is a level of expectation?

David Martin: It has to be done domestically first, but we also have to look to allies in Europe. They cannot insist, but we could get them to ask questions. Has the issue been discussed with devolved Parliaments and regions? Is the Scottish Government on board? Has the Northern Ireland Assembly had a chance to discuss the issue? There are allies in some member states who would be prepared to pose such questions. Again, as was said earlier, it is also about the First Minister speaking to leaders of other member states, to leading members of the European Parliament and to the European Commission, making them aware of the conversation and getting them engaged in it. However, we should not be unrealistic, so we must also bear in mind that, as Alyn Smith indicated and we all know, they have their own concerns about the process and that their number 1 priority will be to look after themselves.

Alyn Smith: I agree with that.

The reality is that CETA is not deliverable unless the provinces sign up. They had to be involved in a way that, bluntly, we do not.

For us, this is primarily a political discussion within the UK about the plurality of interests that we all have, and the unanimity of purpose across Scotland's political parties is a big strength in that regard. It is also about building coalitions with industry groups, farmers, fishermen or whoever and saying that Scotland has a list of demands that are distinct, legitimate and reasonable, and that we expect to be represented.

The UK constitution is what it is and we are all familiar with that, but we have people outside that process who we can deal with. However, we must not be silent in the UK context or, indeed, within the EU, because we have arms at our disposal.

The Convener: We are unpicking an interesting issue here. It is clear that the Canadian provinces do not have treaty-making powers but can have agreements. Similarly, there are issues in the UK that are clearly devolved to Scotland and

deliverable only in Scotland. I would have thought that that would have had a bearing on perceptions of the Brexit negotiating process.

David Martin: One would hope so. However, the problem is the constitutional position, which is that the UK is the member state and has not, in any sense, given Scotland, Northern Ireland or Wales international competence. From a European point of view, even if there are issues around deliverability inside the UK, all that Europe needs is the British Government to sign up for something, because the British Government is responsible for delivery.

Going back to 1997-98, as many of you will know, part of the reason why we have the constitutional settlement that we have now is because we learned the lesson of Brussels and Belgium. The Belgium Government sometimes cannot force its federal constituent parts to deliver on European policy. For example, one of the Belgian Parliaments—the Parliament of Wallonia—has said that the Belgian Government should not ratify CETA. Unless that Parliament changes its mind, the Belgian Government, even though it has a majority in its own Parliament, cannot sign up for CETA. However, we are in a different position, like it or not.

Emma Harper: My example is about how complex our connections with the EU are. Last night, Rachael Hamilton and I were at a meeting of the south of Scotland alliance, which was very keen for me to follow up on the reclassification of the NUTS 2 areas. If the south of Scotland became a designated area, an estimated €970 million, or about £840 million, could be available to it. What will be the status of the NUTS 2 negotiations on the reclassification of the south of Scotland in the light of Brexit? Is reclassification on a shoogly peg? If so, can the negotiations be salvaged?

David Martin: That is a good question. My attitude, which I think five of the six Scottish MEPs share, is that life goes on, we are part of all the systems and we should continue to argue for what we would have argued for in the past.

The level at which an area qualifies for regional funding has been contentious since that funding began. The statistics on unemployment, per capita income and so on show that NUTS 2 would be a better level than NUTS 3 for the south of Scotland. The alliance has a strong case that we will continue to fight for. It could be a pyrrhic victory: if we won the case but were then out of the European Union, the victory would make no difference. However, if you believe that we should continue to do our job and fight for what we think is in the best interests of Scotland for as long as we are an EU member, it makes a lot of sense to argue for using NUTS 2 as a base area for

regional funding for Scotland—and not just for the south of Scotland.

Alyn Smith: I echo a lot of that. I have been working with the south of Scotland alliance for the best part of a decade. If Dumfries and Galloway and the Scottish Borders were amalgamated into a NUTS 2 region, the numbers would be different.

We must also be aware of the realpolitik. Everything will stop quite soon unless something pretty dramatic changes. We will certainly fight the good fight but, to an extent, that horse has bolted.

Richard Lochhead: Thank you for giving evidence today. I have found your contributions to be quite pessimistic so far, which is in contrast to the standing ovation that Alyn Smith got from other MEPs in the European Parliament. I am finding it quite difficult to detect any sign that the MEPs are going to come to Scotland's rescue.

On the overall debate, you have not shone much light on how it would be possible for Scotland to maintain a meaningful relationship with Europe. Erasmus, horizon 2020 and Europol are all important issues for co-operation, but those are not really what the big debate is about; it is about the single market and the customs union, and you have given no indication that it is going to be possible for Scotland to maintain our relationship in those areas. MEPs are not going to have much of a role, and without the UK Government's giving a green light for all the institutions in Europe to speak to us, it is going to be very difficult to make progress. Is that what you are basically saying to us?

David Martin: Yes, it is, to be frank. I am trying to be realistic rather than pessimistic. It would be very difficult for Scotland to have a distinctive relationship with the single market. In all those areas that you have just mentioned—and which we have mentioned, too—it is possible to retain some rights and security in relation to Europe, but that would be extremely difficult with regard to jobs and employment unless the British Government negotiates a good deal on access to the single market.

As a slight aside, I have mentioned that I have just come back from a WTO meeting. Liam Fox made great play of Britain being a free-trade country and about how getting out of Europe would open up market freedoms. Following that, one of the WTO director generals told us in private—I will not quote him directly, and because there are three of them, I can hide which one of them said it—that Liam Fox does not seem to understand that the WTO is the World Trade Organization, not the world free-trade organisation. I thought that that was a nice riposte.

Alyn Smith: The big picture is freedom of movement and access to or membership of the

single market. My point about not going silent is that we should talk about the things that we can talk about. If you were to put a motion to this Parliament that Scotland wanted to remain part of the Erasmus programme, you would pretty much have cross-party unanimity that that was something that the Parliament wanted to do. That is an earnestness of intent that we can talk about with the institutions, to show them that that is one way in which we want to remain part of Europe and to start to get good will in the bank about things that we can deliver.

Likewise with Europol justice and home affairs co-operation, there are ways in which, in any likely scenario, Scotland will be able to be engaged in the way that Norway, Iceland, Switzerland or other countries are. There are many unknowns in the process in relation to the single market, but there are still things that we can talk about. Therefore, let us not go silent; instead, let us be vocal about the direction of travel that we want to establish and build some momentum towards that while we are having concurrent discussions with the UK.

The MEPs are not going to ride to our rescue any more than another member state is, but they are useful in reaching the member state capitals. Given that the European Parliament will get to sign off whatever Brexit and its terms eventually are, we need to maintain a lot of lines in the water. However, it is up to Scotland to work out what our demands and interests are and then to engage ruthlessly, member state capital by member state capital, to demonstrate why this is also in their interests and why they should help facilitate that.

Richard Lochhead: Am I right in saying that the strongest key for unlocking that would be for Theresa May at some point—preferably sooner rather than later—to say that as long as Scotland is part of the United Kingdom, she is happy, given the democratic vote in Scotland, for institutions to speak directly to Scotland about how our relationship with Europe could be maintained?

Alyn Smith: She can be as happy or as unhappy as she likes, because the institutions are not talking to the UK.

Richard Lochhead: I am talking about once the process starts.

Alyn Smith: Aye. Once a negotiation is under way we need to ca connie with the institutions. That is my point about differentiating between Brussels and the member state capitals; we can have the dialogue with the member state capitals about what our interests are, and they will be in the room as the 27 states are negotiating with the UK. We also need to have discussions with the UK about ensuring that our interests are properly represented. That process will be inelastic up to a point.

It would be helpful to have the good will or acquiescence of the UK, and there is a degree to which we need to establish as much of a joint operation as we can, but there are limits to that process. There is a mandate from the people of Scotland and the Scottish Parliament that I want to see respected. We need to talk about things that are deliverable within Scottish competence, because that means that we can do things about them. That would allow us to establish the earnestness of intent and to illustrate the wider point that we expect something different out of this process, whatever it is going to be. That will be a multilevel discussion and waiting for the say-so of the UK Government will only take us so far.

The Convener: Can you see any circumstances in which negotiations between the UK and the EU institutions would break down?

David Martin: Certainly.

Alyn Smith: It would happen almost immediately, I would imagine. Article 50 is an opening bid. We have heard a lot of people saying that we will get a lot more clarity once article 50 is triggered. I think that the moment of clarity will come when the member states say no to the article 50 bid.

Charles Grant from the Centre for European Reform has written a very helpful paper about the different sets of negotiations; after all, there is not just one. Ending the treaties is a fairly straightforward technical matter, but what comes next is what will be the guts of the issue. I hope that, when the article 50 bid is put together, it will reflect all of Scotland's interests and will include a scenario that respects what we want. It will be up to the 27 states to decide whether to acquiesce to it; then it is up to the European Parliament to decide whether it suits the interests of the wider population of the European Union; and then it is up to the European Commission to decide whether it respects the treaties. The set of interests ranged against us is much more varied than just the UK.

The Convener: What is the key issue? Is it free movement of people?

David Martin: There are the nitty-gritty issues that Alyn Smith has described, but even the formal, administrative part of article 50 could be extremely difficult. The easiest thing about it might be the leaving date, because that will also be in the agreement.

Because some programmes will run beyond the leaving date, there is a question about what happens to Britain's on-going budgetary contributions. How much will they be and who will pay? There are questions about what will happen to pension rights—I am not talking about our MEP pensions, although even that is not unimportant—because there are millions of pounds involved in

the pension rights of British employees in the Commission, the Parliament and so on. Who will pay that bill? There is a host of such issues that have to be settled as part of the leaving process. In parallel—some member states argue that it should be done subsequently, but I hope that it is not—we will also have to talk about the future relationship, which I understand will be outlined, but not necessarily detailed, in article 50 negotiations.

14:15

That is the key part. If we assume—and it cannot be firmly assured—that the British Government is lobbying for complete access to the single market, the free movement of people will be the crux issue, because a number of member states will not move on that. We do not need them all to move, but we need 21 out of 27 to agree to the Brexit deal. However, the Poles, the Hungarians, the Czechs, the Slovaks, the Slovenians and the Lithuanians, all of whom have big populations living in the UK, will want to defend their populations, so they will not give in on free movement, and if we believe the British Government, it will not give in either. Something has to give. If the British Government takes the Liam Fox position, which is to settle for the WTO, we will have a very bad deal in terms of the British economy, but getting agreement from the other member states probably will not be difficult.

The Convener: You talked about the Parliament vetoing any deal. In what circumstances would that happen? Would it be a compromise too far on free movement?

David Martin: If three out of four of the freedoms that we have talked about—the fourth being the free movement of labour—are guaranteed to Britain but one is not, I think that you would have a problem inside the Parliament. However, the nitty-gritty issues might also be some of the ones at which Parliament takes umbrage, because Parliament is one arm of the budgetary authority, and if it does not think that the budgetary settlement is suitable, it can easily reject it on that basis, too.

What happens to all the agencies? Would Britain still be part of them, or would we give them up? As an example off the top of my head, let us consider the European Chemicals Agency, which has to approve every new substance that comes on to the market. We are members of that agency, and we pay for that at the moment, but what happens after we leave? Will we have our own chemicals agency, which will cost a fortune? Will we not take part in the European Chemicals Agency but accept all the European laws? Will we pay for it and try to influence it? Trying to influence an agency from the outside could even be

controversial inside Parliament. If we multiply that by however many agencies there are now—environment, food safety, the whole lot of them—all those things have to be settled as part of our exit, and any one of them could trigger a controversy. You are all parliamentarians, so you know what happens in Parliaments. One thing can get a bit of resonance and grow legs, and then you find a movement against the agreement.

The Convener: That is interesting. Does Ross Greer have a supplementary on that point?

Ross Greer: I have a very short question, but it is on a new point. If David Martin will forgive me, I would like to go back to what he said about independence. I agree entirely with what you said, Mr Martin. Having spoken to my own party's colleagues in the Flemish Parliament at the weekend, I understand the domestic situations that other countries are taking on board. Do you agree that, at the moment, it would be irresponsible to take any option off the table because, if nothing else, they are all negotiating tools and points of leverage with the UK Government in what could become tense domestic negotiations within the UK?

David Martin: The short answer is yes. If you are pushing me harder on my own personal position, which I have thought about a lot since 23 June, I have to say, frankly, that the emotional case for independence is much stronger but that the Brexit settlement is critical. This is probably not the place to go into it, but a hard Brexit actually makes the case for independence harder—bizarrely—and a soft Brexit makes it easier. In terms of negotiating, though, any negotiator keeps every option on the table, so we should do that.

Alyn Smith: I very much echo that. As recently as two and a bit years ago, the people of Scotland were being told that we were a family of nations and that to safeguard our European status we needed to stick with the UK. Then, less than two years later, we find ourselves in a very different situation. It will not surprise you to hear that I absolutely think that independence must be on the table, because it gives an urgency to the discussions and a leverage over the UK Government. That is recognised by everyone, not least in Brussels, but it is not our first place to go to. So much is in flux. As I told the *Sunday Herald* just this week, until we can establish what we would become independent from, there are a number of dotted lines into the future where we can tease only so much out.

I am talking about our status within the European framework, which means a lot more than just single market membership or single market access. Our cross-party starting point has to be: what are Scotland's best interests? We can track back from that in our discussions with the UK

Government and with the member state capitals. Independence should absolutely be on the table, because it gives us a leverage that we would lose if we gave it up.

Richard Lochhead: I want to ask David Martin to elaborate on his comment about the relationship between a hard or soft Brexit and independence. With those issues, would it not be a question of timing?

David Martin: Maybe. I am thinking quite narrowly, but I accept that there are wider arguments for and against independence. On the narrow issue of jobs, a hard Brexit means that the UK is out of the single market and if the purpose of independence is to keep Scotland in the single market, we would face difficulties. I have been involved in the Scottish debate too long not to realise that we will start getting into difficult arguments here, but the reality is that, if Scotland were inside the European Union and the rest of the UK were outside it, we would need a hard border between Scotland and England. Roughly a quarter of a million jobs depend on our trade with the European Union and 1 million jobs depend on our trade with England. A hard border in that situation would not be good news.

If we had a soft Brexit, that border would not exist and we would have a more realistic choice between independence and remaining part of the European Union. It is one of the paradoxes but if the UK goes for the hardest possible option, it makes it very difficult for Scotland to retain its economic links with the UK as they are at the present time. In my view, that would do a lot of damage; indeed, that is what I was hinting at with regard to the emotional versus the practical problems of a situation that none of us wanted but which we now face.

Richard Lochhead: The logical conclusion of your argument is that the question of independence—if that is an option—should be settled before Brexit.

David Martin: No, I do not think that that is my argument. My argument is that, until we know the nature of Brexit, it is difficult to know our economic position. There are much wider debates to be had about independence—I am not trying to extend that argument in this committee meeting as we can do that elsewhere—but, purely on an economic basis, it will be more difficult for Scotland to become independent if the UK ends up with a hard Brexit.

The Convener: With regard to a softer Brexit or a middle Brexit, we have the example of Switzerland and Liechtenstein. They are both in EFTA, but only Liechtenstein is in the EEA. I understand that there is some flexibility regarding their border, which is not closed. Does that

illustrate your point that having a softer Brexit would make it easier to have differentiated relationships?

David Martin: Exactly. If there is a soft Brexit, there is no need for a border between Scotland and England even if one country is in the EU and the other is not. If there is a hard Brexit, my argument—my claim—is that we would need a hard border, which is where the difficulty would come.

Going back to my earlier comment about Northern Ireland, nobody wants a hard border between the north and the south but, if we were to get to that situation, the only way to avoid it—and even this would be an ad hoc relationship—would be for Northern Ireland to have a hard border with the rest of the United Kingdom. For one part of the country to have a hard border with another part seems crazy to me, but it might be the only way to keep that island together.

The Convener: As you said earlier—and as unionists in Northern Ireland have told me privately—that would be completely unacceptable to the unionist community in Northern Ireland.

David Martin: Yes, I can imagine that. I was going to say that they voted for it, but let us not go there.

The Convener: Let us go back to a point that you made earlier, Mr Martin, about social protection issues that, in many cases, are not in devolved areas. We seem to have a consensus that Scotland should be able to negotiate and push in devolved areas, but social protection and employment are not devolved. You suggested that we should look at transferring those powers to the Scottish Parliament, which is a point that was also raised by Nicola McEwen when she gave evidence to us last week. How quickly should that happen?

David Martin: As quickly as possible. We are again moving beyond the realms of this committee, but my own view is that, whatever happens post Brexit, the relationship between Scotland and England is already fractured more than it was before. There is an argument now, if not for independence, at the very least for maximum devolution of powers. We need a further movement of powers to Scotland beyond the devo max that we got after the independence referendum. That is the only way to keep the relationship workable; I know that many people do not want to keep it workable but, for those who do, maximum devolution is now the only option. Scotland has clearly indicated that it has a different set of preferences from the bulk of the people in England—not even the rest of the UK, but England. Therefore, we need to look yet again

at another constitutional settlement, and labour and employment laws will be key elements of that.

The Convener: Can you take your colleagues in the Labour Party with you on that?

David Martin: I have been walking on eggshells and desperately trying not to be party political. Actually, you might be surprised to learn that there is a growing movement within the Labour Party that recognises the need for a new relationship. Of course, not everybody agrees with that.

The Convener: At that point, we will end the evidence session. I thank both MEPs very much for giving evidence in what has been an absolutely fascinating session. Unfortunately, we have to finish because the committee cannot meet while the Parliament is sitting. I therefore close the meeting.

Meeting closed at 14:26.

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