

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 23 January 2007

Session 2

£5.00

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

2nd Meeting 2007, Session 2

CONVENER

*Linda Fabiani (Central Scotland) (SNP)

DEPUTY CONVENER

*Irene Oldfather (Cunninghame South) (Lab)

COMMITTEE MEMBERS

Dennis Canavan (Falkirk West) (Ind)

*Bruce Crawford (Mid Scotland and Fife) (SNP)

*Phil Gallie (South of Scotland) (Con)

Mr Charlie Gordon (Glasgow Cathcart) (Lab)

*John Home Robertson (East Lothian) (Lab)

Gordon Jackson (Glasgow Govan) (Lab)

*Mr Jim Wallace (Orkney) (LD)

COMMITTEE SUBSTITUTES

Derek Brownlee (South of Scotland) (Con)

Marilyn Livingstone (Kirkcaldy) (Lab)

Richard Lochhead (Moray) (SNP)

Nora Radcliffe (Gordon) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

◇Elspeth Attwells MEP (Scottish Liberal Democrats)

Graham Bell (Edinburgh Chamber of Commerce)

Amanda Harvie (Scottish Financial Enterprise)

Norrie McLean (Scottish Food and Drink Federation)

Alyn Smith MEP (Scottish National Party)

◇Catherine Stihler MEP (Labour Party)

◇by videolink

CLERK TO THE COMMITTEE

Jim Johnston

ASSISTANT CLERK

Emma Berry

Alun Davidson

LOCATION

Committee Room 1

Scottish Parliament

European and External Relations Committee

Tuesday 23 January 2007

[THE CONVENER *opened the meeting at 14:03*]

Decision on Taking Business in Private

The Convener (Linda Fabiani): Good afternoon and welcome to the second meeting in 2007 of the European and External Relations Committee. I have received apologies from Gordon Jackson, Charlie Gordon and Dennis Canavan.

Agenda item 1 is our decision on taking business in private. I seek the committee's agreement to take in private item 3, which is discussion of a draft report of our inquiry into the European Commission's strategy for growth and jobs. Are members agreed to take the item in private?

Members *indicated agreement.*

Transposition and Implementation of European Directives Inquiry

14:03

The Convener: Agenda item 2 is our inquiry into the transposition and implementation of European directives in Scotland. This is the second evidence session in our inquiry, for which I welcome three members of the European Parliament. Alyn Smith is at the table with us and we are videoconferencing with Elspeth Attwooll and Catherine Stihler. As we are taking evidence via videoconference, I ask that all members speak slowly and clearly. Please be polite to each other and avoid interruptions—John Home Robertson is giving me a startled look as though to say, “As if,”—as that would cause technical difficulties with the link.

I ask members of the committee to introduce themselves. I am the convener.

Irene Oldfather (Cunninghame South) (Lab): I am the deputy convener.

John Home Robertson (East Lothian) (Lab): I am John Home Robertson.

Mr Jim Wallace (Orkney) (LD): I am Jim Wallace.

Bruce Crawford (Mid Scotland and Fife) (SNP): I am Bruce Crawford.

The Convener: I invite each of the members of the European Parliament to make a brief opening statement, which will be followed by questions from committee members. A couple of minutes' statement would be appropriate.

Elspeth Attwooll MEP (Scottish Liberal Democrats): Thank you, Linda.

I congratulate Jim Wallace on his report and thank him for it. I also thank Professor Alan Page for the analysis that accompanied the report. On reading it, it seemed to me that the issues are largely about how far the European and External Relations Committee should move from procedural sorting to a more substantive input in the context of limited resources.

It is helpful that the report makes the distinction between influence in advance and implementation. I would like to expand on those a little bit. When we talk about influence in advance, we should deal separately with the consultation stage and the input that there might be into the Commission's impact assessments. We should also look at the progress of the proposal through the legislative stages once it has come from the Commission.

On implementation, too, we need to think about two different types of gold plating. In one, the legislation is implemented more strictly than is required by the directive itself. In the second, there is a kind of add-on to the directive—legislation that is not required by the directive but which concerns an analogous subject and provides an opportunity for civil servants and politicians to expand it somewhat. In that context, I argue that, with the implementation of all European legislation, we need a concordance that would enable us to tell, by looking at a piece of legislation, what parts of it are add-ons and whether there is any aspect in which the legislation goes further than the directive might require.

We need to think separately about European Union regulations as such, which are binding as they stand, and directives on which there is some room for leeway in their implementation. In my view, there has been a tendency for the United Kingdom to transpose directives as if they were regulations. That is part of the history of having a different legislative and interpretive style in the UK from that which prevails on the continent, which is basically the way in which Europe legislates. Perhaps we can come back to that and I can clarify what I mean in discussion.

It would be helpful to talk about how we can ensure that the different structures are in place—in both the advanced stages and the implementation stages—to enable us all to work together, liaise as much as possible and do the best job for Scotland that we can, which is what we all want.

The Convener: Thank you, Elspeth. Before we hear from Catherine Stihler, I confirm that Phil Gallie has now joined the meeting.

Catherine Stihler MEP (Labour Party): Thank you for allowing us to be part of your discussions—*[Interruption.]*

The Convener: I suspend the meeting while we try to sort out the technical difficulties.

14:09

Meeting suspended.

14:10

On resuming—

The Convener: Welcome back. Catherine, you were cut off in your prime, so would you like to start again at the beginning?

Catherine Stihler: I will be as brief as possible, because I know that your time is limited.

The brief that we were given said that you are examining how the committee can engage with issues, what stage would allow for the most

effective engagement with MEPs, and how MEPs can assist you in articulating the committee's views.

First, the most important point is to consider the Commission's work programme and choose your issues carefully—and the earlier the better. Your maritime event at the beginning of December was an excellent initiative that allowed the Scottish Parliament and MEPs to work together in having an opinion and allowed you to make a submission to the Commission during its consultation. At other meetings on maritime policy since then, I have spoken about the event as an example, and other countries would like to follow it. That is one example of Scotland leading the way.

Secondly, the earlier that you get involved in the process, the better. However, that does not necessarily involve just the committees that the Scottish MEPs sit on, because we work within political groups. For example, the European Parliament's Committee on Environment, Public Health and Food Safety is dealing with an alcohol issue. I work closely with the environment spokesperson of the European parliamentary Labour Party, Linda McAvan, so that the Scottish perspective, which has been sought in relation to whisky, is heard. We work within our political groups, which is something always to consider.

On the committee's part, there is engagement in visiting the institutions regularly, building up relationships and ultimately having an influence. We have Scotland House with Scotland Europa and the Scottish Executive—a model that is now replicated by other regional governments—and that network needs to be utilised. The Scottish Parliament has utilised it in the past, and we have to ensure that you are visible at all times. Ian Duncan does an excellent job on your behalf by ensuring that you are aware of what we are doing. The success of the maritime event was due in part to your committee clerks and Ian Duncan approaching us at an early stage, getting the dates in our diaries and ensuring our involvement.

Being proactive is important. With Romania and Bulgaria joining the European Union, I met the Bulgarian commissioner just last night. She was talking about examples of best practice for structural funds, and Scotland is one place in which the partnership approach has been used. We could build on that, and perhaps your committee could invite either the Romanian or Bulgarian commissioner to Scotland to look at the best practice that we have to show.

I will leave it at that, as I have spoken for two minutes and you were trying to keep our comments brief. I thank you for the opportunity to share some of my views on how you can influence. Seven MEPs are here to work with you. Please utilise us: we are here to help.

The Convener: Thank you, Catherine. I will now pass to Alyn Smith.

Alyn Smith MEP (Scottish National Party): Thanks Linda—or Madam President, as we would say in our Parliament.

The Convener: I rather like that.

14:15

Alyn Smith: Do not get delusions, though.

I echo the comments of all colleagues, in that I am delighted to be here and work with you. Jim Wallace's report has identified a crucial issue, and it is fitting that the MEPs are involved as you put it together. I should point out that the report, as yet, does not mention MEPs or the European Parliament. I hope that we will be able to work on that matter, because we can take forward the mechanisms in a number of constructive ways that will help us to raise our game in Europe.

There is no doubt that, as things stand, Scotland is missing a trick. In Brussels, we are well liked and well represented, and the seven MEPs more or less rub along okay. Given that many of the issues that we deal with in the European Parliament are technical, we find it easy to put our politics to one side and work together on a Scottish view.

The problem is that we very rarely get a Scottish view. Indeed, *The Herald* printed a leaked paper on this very issue from the Executive's top man on European affairs. Although the infrastructure in Brussels is effective and efficient, it very often lacks domestic political leadership from Edinburgh. There are structural difficulties in dealing with Whitehall departments, but then we cannot expect them to do our job for us. It is up to us to formulate and express a view, and then take it directly to European institutions as appropriate and as necessary. There are distinctive Scottish interests to represent on issues such as fisheries, funding, educational standards, transfer of qualifications and so on but, even though the apparatus is in place, those interests are simply not being articulated in the Brussels framework.

As I said, there are issues with the Whitehall departments; however, I will not focus on them, because this is a Parliament-to-Parliament issue. We have more than enough work to take forward ourselves.

I want to put on the table three ideas that I suspect we in Brussels would be willing to take forward. First, we could establish a formal joint committee of MSPs and MEPs to discuss European scrutiny of European legislation. Having more official contact and, indeed, more regular contact among ourselves will allow us to raise our game when it comes to scrutinising legislation.

That leads me to my second suggestion. Through us, Ian Duncan or the Executive office in Brussels, the committee should have a more structured involvement in making a direct input into the production of European Parliament reports. Along with the European Commission and the MEPs, a number of European dossiers in various European Parliament committees would welcome a well-structured input from the Scottish Parliament's European and External Relations Committee. Of course, the trouble is that if you do not put the view together, you cannot articulate it and we cannot take it forward. We would like to see a lot more of that kind of approach, and I assure members that there are seven willing advocates in Brussels who will bang your drum for you.

Thirdly, a joint chamber debate involving MSPs and MEPs might afford more strategic involvement. I realise that there are only seven of us and 129 of you, but we have a useful perspective on this issue. Moreover, we could give the Westminster MPs something to do and involve them in the debate. After all, the House of Commons European Scrutiny Committee has an input on such matters. In any case, we need to take account of the fact that Scotland is governed by three layers of government and that, frankly, the three Parliaments do not talk to each other as much as they should. A joint annual debate involving all relevant members would allow those points to be made and allow Executive policy to be scrutinised properly.

To end on a less consensual note, I think it is a *sair fecht* that a story in *The Herald* on a leaked internal report blew the gaff on the kid-on that everything is hunky-dory. We have a number of things going for us in Brussels and are doing some things quite well. The committee's maritime policy event was first class—let us see more like it. The Scottish Parliament has a role in asserting itself over the Executive and formulating a Scottish view that I assure members the seven MEPs will be very happy to take forward.

The Convener: I thank the three witnesses for their remarks. As Jim Wallace was the reporter on our inquiry, I invite him to ask the opening questions.

Mr Wallace: Thank you, Madam President. First, I thank not only the three witnesses who are before us but all seven MEPs for batting together for Scotland. We are trying to find ways of improving the situation and ensuring that we are all involved.

I want to pick up on Elspeth Attwooll's point about the stages of the legislative process under discussion. As I tried to show in my report, there are three different stages: the stage that leads up to European legislation; the transposition stage;

and the implementation and enforcement stage. Elspeth Attwooll made a further distinction by pointing out that, at the pre-legislative stage, consultation and impact assessments are done before the European legislative process can begin.

Could the three MEPs give us some guidance or assistance on when, within the respective legislative phases, the best opportunity arises to put over a specific Scottish viewpoint? Alyn Smith made some positive suggestions on how we might do this, and the others may wish to elaborate: how can MSPs and MEPs liaise better to achieve an improved Scottish input?

The Convener: As we have Alyn Smith here, with Elspeth Attwooll and Catherine Stihler speaking to us from Brussels, I ask the witnesses to indicate to me who wishes to speak first.

Elspeth Attwooll: Would you like to go first?

Catherine Stihler: No, on you go.

The Convener: Now, don't argue. Elspeth Attwooll may start.

Elspeth Attwooll: The short answer to Jim Wallace's question is as early as possible at both stages. The Commission usually indicates on its website when it is going through a consultation. An eye needs to be kept on the website all the time to see what is coming up that could be particularly important for Scotland and might require a different input. The time limit for the consultation should be checked, because it can be quite short. Given limited resources, I know that it is difficult to keep one's eye on the website continually.

On Commission proposals for legislation, it is important to get in while the matter is being discussed in committee. Although the outcome of committee discussions does not set reports in stone, it is much easier to amend proposals during the committee stage than it is to do so at the plenary stage.

Once Commission proposals have been brought out—as Catherine Stihler said, we can see what is coming from the Commission work plan—MEPs are the most important conduit for you. Even if we are not directly involved in the proposals concerned, we have access to the rapporteurs and shadow rapporteurs. Any MEP can lodge an amendment in a committee, even if he or she is not a member. There is always that route.

Catherine Stihler: Alyn Smith seems to be speaking for himself on some of the issues around yesterday's article in *The Herald*. We should be honest about it: the report in question was a draft report, which had not been accepted by ministers. It was based on a survey among a tiny number of civil servants and it does not accurately reflect Scotland's influence in and engagement with EU

policy making. I am afraid that Alyn Smith left me with no option but to make that point.

To respond to Jim Wallace's substantive point, and following on from what Elspeth Attwooll said, I would say that the earlier you influence things, the better. The more notice we have that there is an issue, the better able we are to effect some change. The issue of bathing waters is an example. When I was on the Committee on Environment, Public Health and Food Safety, it was because of the early intervention by the Scottish Executive and MSPs that we managed, at first reading, second reading and the conclusion, to ensure that the special nature of Scotland's bathing waters was recognised. The earlier, the better. It is also a matter of being aware of what is going on at European level.

We are speaking to the Scottish Parliament's European and External Relations Committee now, but we must recognise that a number of issues cut across the work of all Scottish parliamentary committees. We need to find a way to mainstream European issues in some respect. That does not mean marginalising your committee; rather, it means finding a way to ensure that the perception is not one of Europe, out there, doing things to people in Scotland. Everyone should be engaged. Alyn Smith's idea of a debate involving MEPs and MSPs is a valid one.

The problem with going down a formal route is that it would raise issues of voting rights, of how the arrangements would work and of what would happen. If we consider, for example, the nature of the European members information and liaison exchange—the EMILE network—that gives us an opportunity to exchange ideas and views in an informal way. I would have some sensitivity about formalising the current arrangement.

Alyn Smith: It is about horses for courses. With some proposals, we can fairly safely maintain a tangential awareness, because they will not necessarily go far. We need political intelligence about which proposals are the real ones that the Commission will progress, so we need to know which commissioners are attached to proposals and whether they are likely to push them. With the recent energy green paper, there was battle royal within the Commission, between the competition directorate-general and the external trade directorate-general, about the priorities for the unbundling of electricity companies. That issue is of massive relevance to Scottish energy companies and we were able to facilitate their awareness of the issues.

We should consider the apparatus in Brussels. We have the seven MEPs, some of whom are networked into their domestic parties and the Scottish Parliament, and who are a useful conduit. We have the Executive's office in Brussels, which

is good at producing documents that analyse the Commission's work programme, although we need a further forward look than we already have. Work has started on that—the Executive has started producing what it calls the 22 technical fiches, which are on particular priority areas for the Executive. I am willing to spend more time briefing the Parliament about what is going on in my committees in the European Parliament. The MEPs for Scotland cover several committees, so we could provide generalised political awareness raising on certain issues. The best mechanism to deliver that would be a quarterly or perhaps bi-monthly meeting between the committee and MEPs to discuss what issues are coming up. That would not necessarily identify how to tackle the issues, but it would make you aware that something is in the pipeline.

There is also Ian Duncan in the Parliament's office in Brussels, who is crucial to your briefings, although he is one man trying to keep an eye on the entire output of the European Union and I can vouch for the fact that that is difficult. The MEPs should therefore all pull together and focus on our committees—that is perhaps the most logical approach—to create a more structured way of feeding into the European and External Relations Committee and the wider Scottish Parliament as appropriate.

One danger is that European matters are viewed as foreign politics. The committee deals with EU matters not because they are foreign politics, but because they are Scottish politics in a different place. Scotland has three levels of government that do not quite fit together. We are missing a trick because, by the time that proposals in Brussels get to Scotland, they can be obligations that do not fit Scottish reality. More structured communication between MEPs and MSPs would help to identify ways in which we can progress. There is certainly willingness on our part to do that. We must ensure that the Executive is involved at official level, too.

Mr Wallace: Those answers were helpful and almost anticipated my follow-on question, which was about how we can make quality judgments on what should be followed up among the plethora of information. The three MEPs have given us useful guidance on that.

It is important that we engage other stakeholders in Scotland, such as the business community and the environmental lobby. How in your work as MEPs do you do that at the pre-legislative stage? My impression, having visited Denmark as part of the inquiry, is that it has a much better co-operative approach. From your experience of dealing with stakeholders in European legislation, how useful would it be for

the Scottish Parliament to be much more high profile and have greater involvement?

Catherine Stihler: That is a good point. To give an example, with the registration, evaluation and authorisation of chemicals directive, we were lobbied heavily by environmental groups at the first reading but, by the time it got to the second reading and the final vote, we must have done something right, because the lobby was not as great as it had been. When stakeholders have a direct interest, they tend to know when to get involved—they are canny. We had many letters and many constituents contacted us on the issue, which made us aware of the issues and meant that we influenced the process, too. It could be useful if MEPs, MSPs and stakeholders came together, although we would have to ensure that we did not leave anyone out. That is a sensitive issue that must be got right.

14:30

MEPs are lobbied when it matters and we often know when something is coming up because of what is in our postbags. If we are not on the relevant committee, we talk to our colleagues who are on it, so we have some influence. Alyn Smith, Elspeth Attwooll and I are on the European Parliament Committee on Regional Development so we were heavily involved in—and lobbied on—the structural fund issue and the package for 2007-2013. We brought our committee to Scotland to look at the partnership approach.

If you are going to involve stakeholders, you have to ensure that you get the balance right and that people's viewpoints are taken on board so that they are not left disappointed.

Alyn Smith: I will give an example of how we reach out to stakeholders in Scotland. The biggest difficulty is with the extent to which people in Scotland are aware of what we deal with and the fact that they can influence it.

Since I was elected in 2004, we have been pretty active in going out and identifying the stakeholders who are relevant to the committees that I am on and the issues that I am interested in. One of those is the proposed European institute of technology. Policy makers in Brussels are aware that spending on research and development in Europe is lower than such spending in America, so the initial proposal was to create an institute that was modelled on the Massachusetts Institute of Technology in Boston. I liked that idea and said, "Let's locate a bit of it in Scotland."

We put the proposal to university vice-principals and Universities Scotland. It is not difficult to draw up a list of people who will be interested in a proposal. It is then a question of doing a mailing and seeing what they think. The answer that came

back loud and clear from the Scottish academic community was, "This is not a good idea. We do not like it at all. It will divert funding from the funding streams that we like." I took those points on board and we arranged for various university vice-principals to come over to Brussels for a meeting at Scotland House with Commissioner Ján Figel'. The senior Scottish delegation told him in no uncertain terms, "You're going down the wrong route. You should change your approach." The subsequent proposal reflected all the points that they made. Most of the academics went away saying, "That was pretty useful. We engaged in the process at the right time and altered the proposals."

Of course, we were not alone in that. The Danes and the Irish were involved as well, but it was the first time that commissioners had seen a delegation of that sort from Scotland, and one that had such a unified hymn sheet. It is easy enough to make such influence happen if one has the right issue and stakeholders who are willing to engage. Again, it comes down to MEPs and how we operate. In my experience, sitting in Brussels and waiting to be lobbied does not generate much lobbying except from nutters, fruitcakes and corporate lobbyists, who give partisan views from the different poles of the equation.

Most people are out there living their lives and they do not necessarily think about EU legislation until it hits them. It is up to us to identify proposals and—in conjunction with you, the Scottish media and others—to get them to stakeholders in Scotland. The Executive regularly holds consultations and it has lists of people who are interested in agriculture, fisheries, civil justice reform or whatever. Given that those lists already exist, it would not take much effort to beef them up and send the intelligence that we create out to the stakeholders. That could happen via an individual MEP's office, jointly between a few of us, or jointly between us and you as bodies, depending on the issue and its importance. It is not difficult to see how we could do that.

Elsbeth Attwooll: I disagree slightly with Alyn Smith. A large number of organisations in Scotland are very clued up on the development of legislation, although it is the case that, at the consultative stage, they tend to go to the Commission rather than parliamentarians. It is only when the Commission has made its proposals that organisations lobby us.

Alyn Smith is right to suggest that involvement is patchy and that some stakeholders do not have input. On the other hand, stakeholders are often aware of things that are developing before we are. We cover a wide range of areas whereas they specialise in one, so they can pick up on things more quickly.

It is worth developing such liaison with stakeholders, partly to supplement their knowledge on matters on which they are not clued up and also to learn from them on matters on which they are. We could all do more of that. It had not occurred to me until now that we MEPs are perhaps not as involved as we might be in the advance consultation stage unless it happens that stakeholders come to us at that juncture and say that they need our input. It varies considerably. For example, stakeholders are much more prone to get MEPs on the European Parliament Committee on Legal Affairs and Internal Market involved at the consultation stage in a way that they are perhaps not for the subject areas of a number of other committees.

Irene Oldfather: A lot of good ideas are being proposed to the committee today. As a member of the Committee of the Regions, I recognise what Elspeth Attwooll and Catherine Stihler have said about the importance of opinions, amendment to them and how we could work more closely together on that. Catherine Stihler mentioned the political dimension. She, David Martin MEP and I work closely on a number of subjects to table amendments to opinions, but we might be able to apply the wider team Scotland approach to some matters.

I am not sure whether members of the European Parliament are aware of the fact that the committee took a keen interest in the globalisation adjustment fund. I drafted the opinion on that and included many of the comments from committee members in it so that we could ensure that the draft report from the Committee of the Regions reflected the Scottish position. I was very disappointed in Alyn Smith's response to that, but I hope that we can learn lessons and work together across political parties on such matters. Alyn has been dismissive of the Committee of the Regions in the past, but I consider it to be one of the stakeholders that we in Scotland would work with and consult to form the team Scotland approach. Do other witnesses agree? Is there merit in contributing Scottish amendments to European Parliament and Committee of the Regions reports and ensuring that we reflect a Scottish position rather than leaving it to the political parties, as Catherine Stihler, David Martin and I do at the moment?

Alyn Smith raised the leaked report. Catherine Stihler set the record straight, but it is important to say that Alyn did not mention what I understand to be the report's conclusion that there is no more effective a position for Scotland than having one of the most influential member states representing Scotland's interests within all three of the EU institutions. As we have heard Alyn's side of the argument, it is important to put on the record that

comment, which I understand is contained in the report.

The Convener: It is quite apposite that it is Alyn Smith's turn to answer first.

Alyn Smith: Thank you indeed, convener. I apologise to Irene Oldfather if she is disappointed with my being dismissive of the Committee of the Regions. That is regrettable, but I assure her that I will be dismissive of it into the future as well until it starts to do something useful.

Irene Oldfather: I take exception to that comment. I would have thought that reflecting the committee's position on the globalisation adjustment fund was something useful. The fund affects redundant workers in Scotland.

Alyn Smith: We will have to agree to disagree on that. I assure you that, in Brussels, there are institutions to which we pay attention and there are institutions that we pat on the head and say "That's nice" to. I acknowledge that the Committee of the Regions is a useful forum for local government, but it is not overly useful as a mechanism for getting views into the real decision-making process. Others will disagree on that, but we will just have to leave that to one side.

Irene Oldfather: You have never attended a Committee of the Regions meeting.

The Convener: We have to leave that issue to one side as there is obviously a disparity of views. I ask you to move on.

Alyn Smith: On pan-institution working, it is horses for courses. We must be careful to make points in the institution where they will be of most use, which is the European Parliament. It is no other institution in Brussels apart from the Commission and the Council. In the Council, we are represented by Whitehall ministers by and large. There is an issue with how the Scottish Executive ministers appear, and we will not resolve it in this meeting. We should work in the different institutions, but that brings us back to the need for communication between MSPs and MEPs far enough into the process to ensure that we can get views across at the relevant point in the relevant way.

I did not raise the issue of the Committee of the Regions, and we should put it to one side. I do not believe that the committee is useful. I refer members to my opening remarks: the Committee of the Regions is part of the kid-on that we have had in the debate in Scotland.

The Convener: You are always determined to have the last word, Mr Smith.

Irene Oldfather: I am sure that I will be able to respond on the issue.

The Convener: I am sure that you will.

Elsbeth Attwooll: I do not want to get involved in a substantive sense in the argument about the Committee of the Regions, but the European Parliament—especially the Regional Development Committee—is aware that it does not work as closely as it might with the Committee of the Regions. One problem is that the Committee of the Regions normally has its plenary sessions when we are in Strasbourg. There are good logistical reasons for that, but it is unfortunate in a political sense. However, we are taking various steps to ensure that we take much greater account of the reports that the committee produces; I hope that progress will continue to be made in that area. In my view, every avenue is worth pursuing, so we should carry on in that direction.

I have slightly lost track of the original question, because I was diverted to the subject of the Committee of the Regions. Could you remind me of the question?

Irene Oldfather: I asked about how we could work together to have input into opinions. You indicated that the drafting of opinions by the European Parliament is one way of influencing the Commission agenda. How can we work together to ensure that there is an early Scottish view on proposals?

Elsbeth Attwooll: It has been suggested that we get together on a regular basis. Unless we met by videoconference, it would be difficult for us to meet even bimonthly, because normally we are here from Monday to Thursday. There would be a lot of merit in our having a joint meeting when the Commission publishes its work programme—not to take decisions, but to go over the issues to identify what is really important.

Another idea, if MEPs and the committee were able to work on a cross-party basis, would be for us to identify people on both sides who had interests in particular areas. That would allow us to know to which person on the committee we should go if we came across a proposal about which we thought the committee should be informed. Equally, it would allow the committee to know with which areas we are involved. I know that that can be done through the clerks, but the process tends to become a bit abstract and depersonalised. I know that Ian Duncan does a good job and that he can help to point all of us in the right direction, but it might also be helpful for us to develop more direct personal links.

Catherine Stihler: I support Elsbeth Attwooll's suggestion that we have a debate on the Commission's work programme, so that you can see what is coming up and we can see what you are interested in. If the priorities that you identify fall within the remit of committees of which we are members, we can ensure that we invest resources

in considering that legislation and work with you on it.

Before we came to this videoconference, we had a meeting with Philip Rycroft, who is head of the Scottish Executive Enterprise, Transport and Lifelong Learning Department. Such connections are very important. This morning Elspeth Attwooll and I were at a meeting of the Regional Development Committee. Although the votes at that meeting were not of great relevance to Scotland—they related to the wine sector—debates on cohesion, housing and other issues in which the European and External Relations Committee might be interested are currently under way. It might be useful for you to have an advance copy of documents that we are considering.

I understand that in Denmark a debate is held on the Commission's work programme; Jim Wallace, who has visited Denmark, can correct me if I am wrong. I know that the Danish European Affairs Committee meets regularly—on Fridays, I think—before ministers go to Council meetings to negotiate positions.

If we look at how other Parliaments work, your committee could have an annual debate involving MEPs. Issues such as speaking rights and so on might have to be dealt with, of course, but I think that that would be a useful event and would enable MEPs to feel part of the negotiations that your committee has when it is prioritising issues.

14:45

The Convener: I reassure everyone that that sort of consultation is already under way. We are already consulting MEPs on the Commission's work programme. People are welcome to make any sort of input at any time in that regard.

Irene Oldfather: I would like to add another point of information.

The Convener: Very quickly; time is moving on.

Irene Oldfather: It is important to put on record the fact that we have a joint committee that involves the European committees of the National Assembly for Wales, the House of Commons and so on. The point that was raised by Alyn Smith is also in hand.

Catherine Stihler: Next week, a delegation of MPs and people from the House of Lords is coming to the European Parliament. That sort of mutual co-operation, but involving all parts of the United Kingdom, is something that we might want to consider doing on a regular basis. Obviously, Alyn Smith will have a different perspective from me with regard to that. However, I think that that would be important. Michael Connarty, a Scottish MP, is chair of the European Scrutiny Committee—he took over from Jimmy Hood—and

is someone with whom we should be working. It might have been appropriate for him to be part of the discussion today, so that he could talk about the work that he does. This subject is big, and we need to think about how we can involve MPs and the House of Lords.

The Convener: Before I turn to Bruce Crawford, Phil Gallie has something to say on this point.

Phil Gallie (South of Scotland) (Con): We seem to ignore the fact that we have EMILE meetings that bring together MSPs, MEPs and MPs. I have to say that the MEPs have a better record of attendance than many of the MSPs and certainly the MPs. However, it provides a forum and I wonder whether we are using it to the full.

The Convener: Could I ask for quick comments on that point?

Catherine Stihler: I think that the next EMILE meeting is next Thursday at 6.30 and I will be attending. Phil Gallie has a point. I have found those meetings useful, although perhaps others who have attended have not. I appreciate the informal nature of the meetings.

Elspeth Attwooll: I would not want to supersede the EMILE meetings, because they are extremely useful. However, they perform a slightly different purpose from joint meetings, which disseminate information much more widely among MSPs and MPs other than those who are actively involved in the European aspect of affairs and allow people to meet on a relatively informal basis in order to exchange information and have a really good talk about where things are going from the European point of view. As has been stressed many times, European issues are not foreign affairs; they are domestic affairs in relation to which some decisions are made outwith domestic territory.

The Convener: It is worth saying that, at the most recent EMILE meeting, it was put on record that the meetings could be more effective. We have submitted a report on that, which will be dealt with at the next EMILE meeting.

Bruce Crawford: I thank the MEPs for the spirit in which they are contributing to our discussion. We have heard some positive ideas about how things could be developed in the future. However, I would like to take a slightly different tack and have a chat about policy formulation and differential implementation, which was covered quite extensively in Jim Wallace's report.

I could easily get drawn into a debate about constitutional niceties and why I think, unlike Irene Oldfather, that we should be at the top table in Europe instead of being shut out. However, today, I want to have a discussion about how we can make the current settlement—although I do not

like it—work better. In that regard, I do not think that we can airbrush out or ignore the comments that were made by Mr Michael Aron, who is the director of the Executive's EU office. He is a real person expressing real views when he says that Whitehall's actions, intentionally or not,

"can have a disastrous impact on Executive policy"

and that

"there have also been occasions where Whitehall departments have deliberately excluded the Executive from policy formulation".

Irene Oldfather: On a point of order, convener.

The Convener: There is no such thing as a point of order in a committee meeting. However, I am willing to let Irene Oldfather say a quick piece.

Irene Oldfather: Thank you. I think that this situation is a bit unfair because members of the committee have not seen or read the report that Bruce Crawford is quoting. Further, I would say that it is not directly pertinent to Jim Wallace's report—

Bruce Crawford: Let me demonstrate why it is.

Irene Oldfather: Can we do so without referring to the report?

The Convener: As convener, I have read the report that Bruce Crawford is quoting from. There is nothing in it that was not reflected by the views of members of this committee and the evidence that was taken last week, which can be seen in the *Official Report* of that meeting and in Jim Wallace's report. I think that the report that Bruce Crawford is quoting from is relevant. Everyone will have the chance to respond.

Irene Oldfather: If the report is relevant, may we all have copies of it before it is discussed in the committee? I have not seen it.

The Convener: I think that most people probably have, because it is freely available.

Irene Oldfather: That is not the case.

Bruce Crawford: The report was well trailed in *The Herald* yesterday. If it helps, I am quite happy not to refer to the report again. However, I want to refer to the fact that, as part of the process of setting this Parliament up, we brought into being memorandums of understanding that were supposed to deal with this type of matter. Those memorandums of understanding said that arrangements would have to be based on mutual respect. In the chamber of the Scottish Parliament in 1999, Donald Dewar said:

"The concordats are about delivering on our promises to the people of Scotland. They are about different Administrations recognising their responsibilities."—[*Official Report*, 7 October 1999; Vol 2, c 1104.]

It is in that particular regard that I raise the report that I was quoting from, which I think we cannot possibly ignore. Further, Jim Wallace's report reflects concerns of a similar nature to those that are expressed in Mr Aron's report, although it does not have perhaps the same intention. It says that Professor Page says that there may be occasions when distinctive Scottish interests have not been taken into account. It goes on to talk about the freedom that the Scottish Executive has to go its own way and tailor Scottish solutions to Scottish problems. If the concordats are patently not working, according to the report that has already come out, are there other ways—

Irene Oldfather: I am sorry, convener, but Mr Crawford is saying that that report has come out. However, that report has not been published.

The Convener: Mrs Oldfather, you quoted a line from the report earlier in order to have a go at Alyn Smith. Everybody is talking about the report.

Irene Oldfather: I have not seen the report.

The Convener: Well, you quoted a line from it.

Irene Oldfather: I do not have a copy of it.

The Convener: It is valid for discussion.

Irene Oldfather: I do not believe that it is valid for discussion.

The Convener: Mr Crawford is in the middle of asking a question. I ask him to continue.

Irene Oldfather: Mr Crawford has said that this report has come out. However, it has not been published.

The Convener: It is a report that many people have read and are quoting from.

Irene Oldfather: Other members of the committee have indicated that they have not seen the report.

The Convener: Can I stop this discussion here? We are in the middle of taking evidence on a report that has been prepared by Mr Wallace for this committee. If members feel that something else is relevant to the discussion, they are able to say so. Mr Crawford, please carry on with your question.

Bruce Crawford: Paragraph 74 on page 14 of Jim Wallace's report, which is published and of which we all have a copy, says:

"One of the main issues to emerge from the reporter's inquiry is 'differential implementation', i.e. the freedom the Scottish Executive has to go its own way and to 'tailor Scottish solutions to Scottish problems'."

Page 15 of Jim Wallace's report outlines some problems. It says that the Department for Environment, Food and Rural Affairs is opposed to such ways of operating. It talks about the room for

differential implementation and a different Scottish perspective and says that Scottish interests have not always been taken into account.

With regard to the argument that is laid out quite concisely in the report—and they are not necessarily all Jim Wallace's own views—I would like to know whether the MEPs before us think that there is an opportunity for Scotland to go its own way more constructively in future to ensure that the particularly Scottish dimension and perspective is championed more successfully. I would like to hear how the MEPs think that might be made to happen.

The Convener: Catherine, you had your hand up earlier. Would you like to start?

Catherine Stihler: I am a bit surprised by the direction this discussion is taking. Again, I have no option but to say something contrary to what Bruce Crawford and Alyn Smith have said. My experience of devolution is that it has increased influence and engagement with Europe, both directly—between Scotland and the EU—and through UK departments. We should acknowledge that there is considerable direct contact between ministers and commissioners. In the past year alone, the First Minister has met three commissioners. There have been meetings between the Secretary of State for Scotland—who, we must remember, was formerly the Minister for Europe—and member states, and between officials and the European Commission. Scotland's leading role in negotiations on fishing is well established, and many people look to how we work within a large member state and the influence that brings to bear.

The SNP will say that Scotland would have a stronger voice in Europe if it was separated from the UK. Let us be honest: first, a separate Scotland would not automatically be a member of the EU and could end up with no voice at all. Secondly—

The Convener: May I interrupt you, Catherine?

Catherine Stihler: Scotland is already part of one of the big four member states. I have tabled a question—

The Convener: Catherine, may I interrupt you?

Catherine Stihler: May I just finish?

The Convener: No, I would prefer it if you did not.

Catherine Stihler: I feel that this is an important point to make. Thank you for letting me finish.

The Convener: We had a spat in the committee, and Mr Crawford agreed to relate his questions to Mr Wallace's report, which is what we are here to discuss. I move to Alyn Smith.

Alyn Smith: Thank you. I shall also not refer to the report that some members are claiming, with complete, incredible, breathtaking naivety, that they have not seen, despite having quoted from it. A report was issued, which was of great relevance to the committee's deliberations. It is a draft report, which has been sitting with the Executive for six months—

The Convener: Mr Smith, as I asked Ms Stihler, please stick to Mr Crawford's question, which relates to Jim Wallace's report.

Alyn Smith: Certainly. The question was whether there is a role for Brussels—[*Interruption.*]

The Convener: Sorry, I missed that.

Elsbeth Attwooll: I wanted to warn you that we have only a few minutes left before we go offline.

The Convener: I think we are able to run on, if that suits everyone. Alyn, please continue.

Alyn Smith: Bruce Crawford made a key point about direct representation from the Scottish institutions to the European institutions. As the Scotland Act 1998 was going through the House of Commons, it was clear that there is absolutely nothing that precludes direct Scottish representations to the European Commission as appropriate.

We read quotations such as:

"It hasn't been uncommon for Whitehall to dismiss views of the executive when formulating the UK line"

and that the Executive is kept "out of the loop" on EU issues of importance to Scotland's interests. We should bear in mind which conduits we are using. As the committee heard in the previous evidence sessions, there is nothing that precludes direct Scottish representation. We need to get on and formulate the Scottish line in order to do that.

The Convener: Thank you, Mr Smith. Elspeth Attwooll?

Elsbeth Attwooll: I apologise. We do have longer. Unfortunately, I have to leave at 4.15 pm to see one of the commissioners.

The Convener: I wish to clarify that that is 3.15 pm here.

Elsbeth Attwooll: The whole point about directives is that they give leeway for different implementation in different areas. Where we have a structural problem is that it is not always clear in advance exactly what the Commission will require. A directive is composed of articles and recitals. The recitals are supposedly there to inform member states how they are supposed to interpret the articles. There is a tendency in the UK to pick up just the articles and turn them into the local regulations, without looking at how much leeway there is.

15:00

The problem is that not enough guidance is given in advance, so different interpretations are adopted in different member states. For example, as one of only two member states that decided that tallow was a waste rather than a product, the United Kingdom created enormous difficulties for its farmers. The different interpretations of waste in the waste incineration directive have also been highlighted by Professor Alan Page, who has drawn attention to the way in which small waste oil burners are treated under the directive. Those sorts of issues need to be sorted out.

We must find some method of communicating with the Commission so that, if we want to do something slightly differently from how it is done elsewhere in the EU—whether that be England or France, the Netherlands, Denmark or whatever—we have some way of checking in advance to ensure that our measures will meet the requirements of the directive. We also need some way of checking that we do not go overboard by transposing the directive in a way that is stricter than necessary.

For MEPs, it is very difficult when people say, “I am required to do this in Scotland, but I see those blighters in France and Greece doing something different and not obeying the rules.” It is difficult to explain to people, “They are obeying the rules; it is just that the rules are slightly different.” Therefore, I can see why the Commission sometimes pushes for a reasonably uniform implementation of directives. However, the whole point of issuing a directive rather than a regulation is that complete uniformity is not needed. The essential issue is to find out where that balance lies.

The Convener: Thank you very much. I am happy to let the evidence session run until 3.15—that is 4.15 your time—as two committee members still wish to ask questions.

Irene Oldfather: Convener, I have a question.

The Convener: I will let Mr Gallie ask his question first, as I know that he has been waiting for a long time.

Phil Gallie: It is not in my nature to throw oil on troubled waters when we are discussing European issues, but in this instance I will try to step above the party bickering that we have heard.

I want to go back to the issue of Scotland's interests and the interests of Scotland's businesses in particular. When I asked the Scottish Executive how it helps Scottish industry to benefit from EU expansion, the answer that I got back last week was that the Scottish Council for Development and Industry plays a key role in that. What involvement do MEPs have with the SCDI? In their view, how important is the SCDI's role?

The Convener: Although this will put us out of sync, I will ask Elspeth Attwooll to respond first as she needs to get away.

Elspeth Attwooll: The SCDI visits the European Parliament. We are also kept informed of the events that it holds, although those often take place when we are in Parliament. Similarly, the Confederation of British Industry and the Federation of Small Businesses have meetings with us perhaps once or twice a year. The great difficulty for us is that we are normally in the European Parliament from Monday to Thursday so we need to fit all such events into a Friday unless those groups can send delegations to the European Parliament. We have a fairly close liaison with such interests, although we perhaps do not meet them as frequently as we would like. All the business interests at various levels, including the chambers of commerce, are in contact with us. Such contact tends to become more extensive when the European Parliament is dealing with an issue that they think will affect them directly, but we are in reasonably regular contact with them. We also have quite a lot of meetings with representatives of trade unions, so the input is not just one-sided. We are an incredibly open Parliament and we welcome representations. I know that that is true of the Scottish Parliament as well.

Catherine Stihler: I have no more to add to what Elspeth Attwooll described. We have regular contact with the business community. For example, sometimes the European parliamentary Labour party will have contact with the CBI, which has an office in Brussels, or we might have contact with FSB Scotland, which was in touch with us about six months ago on an issue of port security. I managed to speak to the Dutch rapporteur, who reassured FSB Scotland that its fears were unfounded and that there was a timetable for her report.

Such connections are really important for reassuring people. People have fears about a certain piece of legislation and when they get in touch they find that those fears are often unfounded. Sadly we live in a country whose press is very sceptical about European legislation, so it is vital to have a dialogue with people so that we can set the record straight on some issues.

Alyn Smith: To echo the point, the SCDI is a good organisation. Allan Wilson's team does a good job of making SCDI members aware of opportunities and doors that they can walk through. I would like a lot more of that in Scotland. I would like the Executive to play a much more active role in working with the SCDI—perhaps funding it—by doing trade missions and providing access to information about what is available. That

does exist, but people are often not made aware of it.

On networking with MEPs, I have just sketched out a list of the five Scottish organisations from whom I hear most often: the SCDI; Scotland Europa, which is a membership organisation based in Brussels and is very good; the Convention of Scottish Local Authorities; Universities Scotland; and the Scotch Whisky Association. Those organisations have a clear strategic interest in what is going on in Brussels and they have taken the time, energy and money to invest in the personnel to ensure that they can interact with us in Europe. However, several organisations are notable by their absence. Scottish organisations in the wider political community, as well as the two Parliaments, need to consider what is coming through if they are to influence European legislation.

There is plenty ability around. I hear from several other business organisations and the line is almost always the same, "We really should do a lot more with you guys but we just don't have the time, energy or inclination." If we politicians make them aware that there are plenty opportunities for them to influence the process of proposals for legislation on things that will affect them one way or the other, that will encourage them to upskill their operations here. There is everything to play for.

The Convener: I see that Catherine Stihler has a point to make. She may do so before I ask Phil Gallie for his point, as long as what she has to say is quick. I am very aware of the time.

Catherine Stihler: To add to what Alyn Smith said, just before we came to this videoconference, we had a meeting with the Scotch Whisky Association on the directive on alcohol that it is concerned about.

Phil Gallie: I am slightly disappointed to hear that there is not more contact, but I welcome the comments that have been made and the recognition given.

Alyn Smith referred earlier to three levels of Government in Scotland, but of course another major level of Government is the local authorities; they implement much that is European law. What level of contact do the MEPs have with local authorities? You mentioned COSLA, which I would expect, but do you ensure that you have regular contact so that you can drive local authorities' interests?

Alyn Smith: I certainly do that within the party. I have regular contact with nationalist councillors in various councils, particularly those that we hold. There is then the more generalised dialogue that I suspect all MEPs have with COSLA as an institution.

COSLA recently took the regrettable decision to leave Scotland House in Brussels and set up its office in the Council of European Municipalities and Regions building elsewhere in Brussels. That weakens the Scottish brand's efforts. It will diminish COSLA's influence and I hope that the decision will be revisited in due course.

Within the SNP, there is plenty information going to local authorities. Then there is discussion with COSLA. If we are talking about contact with individual councils, there are 57 Scottish local authorities, and only one of me.

The Convener: There are 32 local authorities. Would either of you in Brussels like to add to that?

Elsbeth Attwooll: Local councils are very good at maintaining contact. They keep us informed, put pressure on us and regularly invite us to events back in Scotland. Although the contact with the business community is quite good, the contact with the councils is better still.

Catherine Stihler: We have had some successful videolinks with COSLA, and the Highlands and Islands Partnership Programme has also used videolinks effectively. That is one way in which we can touch base with a host of people whom it would otherwise take months to visit physically. Our links with local government have been effective, in particular when we were making a case on some aspects of the structural fund reform package. I hope that after the elections in May we will continue to have that strong dialogue with COSLA.

Elsbeth Attwooll: I have to apologise, as I must go. We have been trying to get a meeting with the Commission for months, and the last thing that I want to do is miss it now. I hope that the committee will excuse me.

I hope that we will be able to resume the discussion, because we still have a lot to talk about, particularly on implementation. Thank you for inviting us to give evidence, and I hope that we will be able to continue the debate, either by videolink or in some other fashion in the near future.

The Convener: I thank Elspeth for her time. I would close the meeting now, but Irene Oldfather wants to ask a quick question that Catherine and Alyn can perhaps answer.

Irene Oldfather: The MEPs should be able to respond to the question quite quickly.

In discussing the legislation, gold plating and Jim Wallace's report, it occurs to me that we have always talked about the objective of simpler legislation and more framework legislation in an enlarged Europe. As has been reflected in today's discussions, I have always viewed that as a good objective. However, is there a danger that, with

more framework legislation, we in the UK will put in place higher standards and will therefore not be on a level playing field with our competitors in other parts of Europe? Is more framework legislation a good thing?

The Convener: Jim Wallace would like quickly to add to that—Irene has obviously jogged something in him.

Mr Wallace: The Commission proposes that there should be a reduction of 25 per cent in the administrative burden on business by 2012 at both a European and Scottish level. Do the two MEPs have any views on how that will be received and what implications that has?

The Convener: Catherine is writing, so I will go to Alyn first.

Alyn Smith: We welcome the better regulation agenda. In particular, we have already seen some steps towards the codification of existing directives, in which three, four, five or six directives are rolled into one. That presents an opportunity for simplification and means that business organisations deal with a smaller quantity of legislation without necessarily affecting the strictures that they are under.

We then get into the question of how that transposes into domestic law, be that via this Parliament or Westminster. To my mind, that is where we have differential implementation across the EU. Again, it is a question of how things are translated at the national level. EU legislation is broad, and there is always scope for interpretation. It has to be broad, because it covers an area from the Algarve to the Arctic circle—conditions are very different. In the UK civil service tradition, we see a tendency to interpret what the legislation says literally. I trained as a lawyer on the continent, so I have some familiarity with the civil law, and in other jurisdictions there is more reference to the spirit rather than the letter of the legislation. That leads to a more purposive interpretation that is in the interests of their domestic businesses and organisations.

We have seen plenty instances of the UK tradition of late, particularly in Scotland. There is the question of the interaction of sections 57 and 58 of the Scotland Act 1998 in the Scottish Executive's capacity to interpret EU legislation, on which you will hear more from us in due course. However, there is a preponderance in the UK set up to implement legislation more literally than in the continental set up.

That is a domestic matter rather than a European matter. We have a different mindset when it comes to interacting with EU legislation. The European Parliament and the Scottish Parliament's European and External Relations Committee should say what the legislation says

and what it is designed to achieve. If legislation can be implemented in three different ways, we should go for the way that is most useful to, for example, Scottish ferries, boats or livestock hauliers. There is plenty scope for interpretation that we in Scotland simply do not use.

15:15

Catherine Stihler: We have talked a lot about Scottish differences in the past hour, but much more unites than divides us. There is a common agenda. We need to get it across in the United Kingdom that we are united by REACH, recycling and renewables targets.

I whole-heartedly accept the better regulation agenda and the reduction of burdens on business. We should not regulate for the sake of regulating. Sunset clauses should be included in some regulations and there should be reviews. European Parliament committees should consider how directives are being implemented in member states. I have suggested to Ian Duncan and to the clerk of the European and External Relations Committee, Jim Johnston, that they should speak to Arlene McCarthy, who is chair of the European Parliament's Committee on Internal Market and Consumer Protection. That committee is considering legislation, but it will consider implementation in more depth. It is important that we take responsibility for European Parliament regulations and consider how they are being implemented in member states. I hope that the committee will contact Arlene McCarthy if it has not already done so.

The Convener: I thank Alyn Smith, Elspeth Attwooll and Catherine Stihler for their real or virtual attendance. I think that we would all agree that the session has been interesting and useful. Some issues that have been raised reflect conclusions that we have already reached and what other witnesses have told us.

I suspend the meeting for a few minutes to allow a changeover of witnesses and for things that obviously need to be cleared up to be cleared up.

15:17

Meeting suspended.

15:28

On resuming—

The Convener: I welcome to the table our second panel. Amanda Harvie is chief executive of Scottish Financial Enterprise; Graham Bell is press and policy manager for Edinburgh Chamber of Commerce; and Norrie McLean is chairman of the Scottish Food and Drink Federation. Norrie

McLean has a coffee by his right hand, which is appropriate.

We shall move straight to questions. Any witness who wishes to respond to a question should motion to me to let me know. Please do not think that you must respond to every question, although you are welcome to do so if you wish to.

Jim Wallace may ask the first question, as he undertook the inquiry.

Mr Wallace: I thank the three witnesses for coming to the meeting.

As I have said, there is a period in which European legislation is implemented, prior to which Scotland can influence the legislation as it evolves. The third phase is the enforcement phase. Perhaps we can consider each phase.

What has been the witnesses' experience from their backgrounds and the interests that they represent of engagement at a pre-legislative stage with European institutions, the Scottish Executive and—if it is relevant, as it may well be to the financial services sector—the United Kingdom Government?

15:30

Amanda Harvie (Scottish Financial Enterprise): I am happy to kick off. Good afternoon, ladies and gentlemen. It is a pleasure to be here and I thank you for inviting me to give evidence. Before I answer the question, I point out that Alyn Smith, our MEP, had a glaring omission in his list of organisations that engage with the Commission. I am pleased to confirm that Scottish Financial Enterprise, as the industry body that represents the interests of Scotland's international financial services industry, is heavily engaged with the Commission. In answering Jim Wallace's question, I will illustrate some successes that we are achieving that are positive for Scotland.

As the member will appreciate, much of the legislation that impacts on the financial services industry that operates from Scotland and thus on Scotland's competitiveness as a financial services centre is driven from Brussels and is implemented through Westminster and the Financial Services Authority, which regulates the financial services industry throughout the UK.

A step change has occurred in how Brussels approaches financial services regulation. I am sure that members are aware that, in 1999, the Commission launched the first phase of the financial services action plan to create a single market for financial services throughout Europe. Up to 2005, that resulted in 42 separate directives that had an impact on our financial services industry. That was a huge swathe of regulation. Our industry is probably the industry that has been

most affected by regulatory change from Brussels. However, a step change is occurring. We welcome the Commission's approach to the better regulation agenda, which has been spearheaded not least by Commissioner Charlie McCreevy, who is the European Commissioner for the Internal Market and Services.

As a result of that step change, the engagement that the industry and we as an industry body in Scotland have with the Commission is improving significantly. Far more dialogue takes place early, which we welcome, because in principle we would like a principles-based approach to regulation—we support the better regulation agenda in that respect. The more dialogue we have up front, the better it is for the quality of regulatory output and how it is applied.

Significant improvements are being made. The Commission is open to dialogue. On 20 November 2006, we were pleased to welcome to Edinburgh Commissioner Charlie McCreevy, who gave a keynote speech on the Commission's white paper on the framework for investment funds, which had been launched just four days before. It was important for Scotland that he chose to do that from Edinburgh, which is a significant investment management centre in Europe. We had high-quality dialogue with him. He listened to additional concerns that were not reflected in the white paper and agreed to consider them.

We are engaged at all levels. We have had members of expert groups in Brussels and that relationship continues. I see a step change in how the Commission and its officials engage with us. That has been mirrored at UK level. We welcome the support that the UK Government is giving the better regulation agenda and the leadership approach that has been taken. We engage closely with the Treasury and the Financial Services Authority.

Norrie McLean (Scottish Food and Drink Federation): Thank you for inviting the SFDF to give evidence. We agree with much that has been said in the report and today. I will address and reinforce some of what has been said about impact assessment. Part of that was in *The Herald* yesterday, so I will not address that for that reason.

When non-devolved issues can have a greater impact on Scotland than on the UK as a whole, that may increase the burden and the cost of legislation significantly. For example, the regulatory impact of the animal by-products regulation varies not only throughout the EU but throughout the United Kingdom. An assessment in one region might have identified a relatively low-cost solution, but the geographical diversity of the fishing industry in Scotland means that the legislation has had a devastating impact on cost

and has created many other problems, almost to the point of closing some businesses.

The regulation is now under review in Brussels, which suggests how seriously flawed it is, but when it is reissued—if that is the correct terminology for such a thing—how can we be assured that the impact of that piece of non-devolved legislation will be assessed in Scotland, where 70 per cent of the relevant industry exists? I am afraid that I have not heard anything today or read anything in the publication to reassure me that that assessment will take place.

I think that that answers your question, in a way. There is something flawed somewhere in our contact. I agree with a lot of what has been said today, but I do not feel reassured that there is an adequate process in place that joins the various Parliaments, from the European Parliament and MEPs to the Scottish Parliament and MSPs. Today's debate has demonstrated that it is perhaps unlikely that a joined-up process will be in place. I would like, therefore, to turn the question around. What processes do you believe are in place—which you are asking us about—to ensure that the directive will be properly risk assessed?

Mr Wallace: That is the purpose of our inquiry. We started from a similar position of scepticism.

Before Mr Bell speaks, I would like to question Mr McLean further on this. I do not know whether you were in post when the original directive was introduced. I—and, I am sure the committee—would be interested to know whether there was any engagement with your organisation that might have flagged up in advance some of the difficulties that you have talked about, which members have probably heard about from companies in their constituencies. Or did you just suddenly find that the directive had been implemented and carried the full force of law, so that your business members had to implement it? Now that we are at the stage of a review, as you say, we would find it useful to identify what consultation you have been engaged in. Have you talked to the Scottish ministers or Executive officials about the matter? Have your links been entirely with DEFRA? Or do you make direct representations to the Commission in Brussels?

Norrie McLean: All of those. The Scottish Food and Drink Federation is a member of a European body that has made representations, and we have made representations from local authority level up to Brussels level.

When the directive was introduced, the really damaging part went unnoticed. Within the animal by-products legislation, shellfish waste was considered to be an animal by-product, with the links to BSE and all the other things that would suggest that a certain level of risk was attached to

the disposal of such waste. That was not in fact the case, but because a link had been established, the directive was drafted as it was. I believe that that is why the directive is being reconsidered: there should not have been a catch-all definition of animal waste.

The amount of consultation that took place before the directive was introduced was virtually nil. I was in post at the time and saw the full consequences of the directive. Most of the dialogue was instigated by organisations such as ours, which wanted to understand how the directive would be implemented and why things were being linked as they were. Nobody could give us an answer, and eventually—after two or three years—the matter has returned to Brussels to get an answer to the question why those linkages were made.

Graham Bell (Edinburgh Chamber of Commerce): I will make a couple of remarks to put things in context. I perform policy work for Edinburgh Chamber of Commerce and I am a member of the board of Scottish Chambers of Commerce. I also work for Scottish Chambers of Commerce and I am here to represent all of Scotland.

Scottish Chambers of Commerce has 9,500 members—businesses from the smallest to the largest—which puts it in a special position as regards being able to speak for the Scottish business community. No other representative organisation has the same range of membership.

Your question is pertinent. The answer to it will differ according to what end of the scale the business in question is at, which will determine its ability to comment on issues.

I represented Scottish Chambers of Commerce at the Davidson review, which was a welcome opportunity to communicate with the Westminster Parliament, just as this is a welcome opportunity to communicate with the Scottish Parliament.

Scottish Chambers of Commerce operates within layers of an onion: there are local chambers of commerce, Scottish Chambers of Commerce, British Chambers of Commerce and European connections. I suppose that the vast majority of our involvement with regulation to date has been through British Chambers of Commerce, which is better connected to Europe than we are. That is down to resources. If Mr Smith is able to send us some money, I will be on the next plane to Brussels to talk to all the European organisations, too.

British Chambers of Commerce has a burdens barometer, which any of you can check out on its website. It is useful because it lists all legislation since 1998. It has calculated the cost of each piece of legislation to businesses in Britain, which

stands at £50 billion and will probably go up to £60 billion when the anniversary is reached this year. That is a huge sum of money, so there is clearly an issue with legislation. Scottish Chambers of Commerce is not anti legislation. We believe that regulation is a good thing, but that it needs to serve essential commercial and social purposes with a light touch. I hope that further questions will allow us to go into detail about that.

The committee flagged up the point that perhaps we need to do more work on communicating. Perhaps this creates the gateway for us to do that with the Scottish Executive.

Within the business community that chambers of commerce serve, there are large organisations, such as Royal Bank of Scotland, that do not need our help to communicate their message because they have the people and resources to do it themselves, but further down the scale are people who are less capable of doing it. The former BP chemical complex at Grangemouth is now owned by Ineos, which employs 16 people full-time to ensure compliance with regulation. You might say that it is resourced to deal with the issue. It has cogent evidence about the effects of gold plating.

Remember that 98 per cent of businesses in Scotland are small and medium-sized enterprises and that 95 per cent have five or fewer employees. People in a five-person business really do not have the spare time and energy to engage with such processes. Although they might moan to fellow business people or to me about the burden of legislation, they are not likely to make representations to their MEP, MSP or MP or to lobby significantly on their own behalf—although the odd enthusiast, to whom Alyn Smith referred, will do so.

The real challenge is for people such as you to engage effectively with small businesses, which suffer the greatest burden. Somebody with an extensive company secretarial department, public relations people, consultants for this, that and the other and who can call in top-end lawyers to explain things to them do not have a problem with the mountain of legislation that they have to deal with. I printed off the Executive website the 11 pieces of legislation on air quality since 2000 that any company has to comply with. That is a stupendous task for a small company, but it is not such an issue for big companies. That is the yawning black hole. People in the middle come to us, but people at the top end can act on their own behalf.

Mr Wallace: I suppose that it goes without saying that you are all generally supportive of the agenda to cut the European and Scottish administrative burden on businesses by 25 per cent by 2012. How confident are you that that will be achieved?

The Convener: I ask the panellists to give quick answers because many members have questions.

Graham Bell: The chancellor has announced such an agenda five budget speeches in succession. Now that better regulation is an EU initiative, one hopes that it will be acted on.

The Convener: That was quick. Thank you very much.

15:45

Amanda Harvie: I will be similarly quick, but first I point out that it would be extremely dangerous for the committee or the Parliament as a whole to assume that only small businesses are impacted on by the swathe of regulation from Brussels. We all have an interest in the better regulation agenda and it is vital that Government and industry have a joined-up approach if we are to keep on top of it. Scotland will lose out significantly if, for example, the regulatory framework for financial services is not competitive. A global industry does business around the world from here. Large and small companies are affected.

I will now answer the question quickly. There is no room for complacency. We cannot assume that the target will be met. Government, industry and regulators must all be vigilant and work together at Scotland, UK member state and EU level.

Norrie McLean: I simply reiterate that comment; I have nothing more to add.

The Convener: The panel is a pleasure to work with.

Phil Gallie: Graham Bell made the point that I wanted to emphasise, which is about the impact of regulation on small businesses in particular.

In the light of the EU's target of reducing the administrative burden by 25 per cent, I invite each of the witnesses to give their priorities for cutting back on regulation.

Graham Bell: I did not mean to imply that not all businesses are affected by regulation. I was simply saying, in response to Mr Wallace, that small businesses find it harder to communicate the extent to which they are affected than do bigger businesses.

Gold plating has been mentioned in previous reports by the European and External Relations Committee. Elspeth Attwooll mentioned that it comes in two forms, but we identify four ways in which there is excessive implementation of EU legislation. Gold plating has come to mean that when a regulation says that A and B must be done, we do A, B and C when it is enacted here. In other words, we add to what was proposed in the European legislation.

The next form of gold plating is double banking, which occurs when legislation is already in place in the UK. When new EU legislation comes out, suddenly there are two sets of legislation that have to be complied with because the original regulations are not necessarily cast asunder. Indeed, sometimes the existing UK legislation is stricter than the new EU legislation.

A process that occurs frequently here is that of regulatory creep. Guidance is issued and individual enforcement agents on the ground start to make a stricter interpretation of legislation than is made generally.

The final form of excessive implementation is to do with smarter approaches. I am sure that the committee does not have time to do work on the subject, but perhaps there are people within your supporting team who do. It is clear that when the new accession states enact EU legislation, they apply a much lighter touch than we do. For example, they might issue a 20-page document when we issue a 200-page document. If the committee has any doubt about the veracity of what I am saying, I have information with me about a specific piece of legislation, which is 700 pages long and comes with 200 pages of guidance notes.

Phil Gallie: Can you be specific?

Graham Bell: Yes, I am referring to the regulations that came from the air quality framework directive, which in the UK are known as the air quality strategy regulations. I have a print-out that lists the relevant regulations, of which I will give the committee a copy. All 900 pages of the legislation had to be reprinted recently, because a single paragraph had changed.

It is self-evidently the case that if a document that is 700 pages long requires 200 pages of explanation, it must be very poorly written. The first thing that legislators should do is talk in plain English. I know that that does not pay lawyers—I apologise to all the lawyers who are present. Putting legislation in plain English makes it accessible to ordinary people so that they can implement it. Legislators should keep it simple and talk in plain language.

Secondly, if a new EU regulation is to be enacted when regulations are already in place in the UK, the UK regulations should be rescinded and replaced with the new regulation. I believe that, in the Netherlands, it is the law that every time a new regulation is introduced, an old one must be abolished—new regulations cannot be introduced unless room is made for them. That makes sense.

We must consider how agents on the ground deliver legislation. Last week you took evidence from NFU Scotland, which is up to speed on the

effects of the issue, but I have a couple of examples from personal experience that I am happy to share with you.

Amanda Harvie: I will not go into detail on general regulation that impacts throughout the business community, apart from stating the principle that anything that is damaging to business interests generally impacts negatively on the financial services industry and Scotland's ability to compete for investment.

As I mentioned earlier, 42 separate directives have just been introduced as part of the financial services action plan. We are now into the new phase of delivery in the EU for financial services, for the period 2005 to 2010, but the industry wants effective implementation throughout the EU of all regulation that has already been agreed. That is done and dusted and we should make progress, but some member states are being tardy in their implementation of it, which is not in Scotland's interests.

We would also like prioritisation of delivery of the positive measures that were articulated in November in the white paper on investment management in the EU, as that would be advantageous to the industry. Scotland has an important role in that. I mentioned that we are taking a co-ordinated approach, but there is no doubt—it is evident to me from our dealings in Brussels—that there is significant warmth in the Commission toward hearing from other centres of excellence in financial services in the UK, not just from the City of London. We can play that part to our significant advantage, which is why the industry values the work that we are doing collectively. Let us not underestimate the importance of insisting on stronger engagement, which can be driven from Scotland, between Government, the Commission and industry. We would like more effective implementation of what has been agreed.

Phil Gallie: On the point about the implementation of directives, we have found on other matters a reluctance throughout Europe to commit to directives. Would, by any chance, the several nations to which you referred include France, Belgium, Italy and Germany?

Amanda Harvie: I have no intention of embarrassing any of our colleagues in Europe by citing particular member states that have been tardy.

Phil Gallie: With the greatest respect, you made the comment and referred to other countries. It is in the interests of the countries that implement directives properly to name those that do not.

Amanda Harvie: I am not ducking the question. Mercifully for us all, the information is readily available and is published on the Commission's

website. It is clear which countries are ahead of the game and which are tardy in implementing measures. We discussed the matter with the Commissioner for the Internal Market and Services when he visited us in November. We do not wish to have speedy implementation for the sake of speed, if that is to the detriment of effective implementation, but there is no doubt that we can up the pace of delivery. We all have a role in pointing out that it is in no one's interest if regulations that are thought to be positive are not implemented effectively. The UK has a reasonable track record.

The Convener: Consider yourself beaten, Mr Gallie.

Phil Gallie: No, I do not—I got an answer and I will ask the clerk for the information that Amanda Harvie mentioned. While I am speaking, I make that request officially, through you, convener.

Amanda Harvie: The financial services sector is keen to see more effective implementation, monitoring and evaluation. That is a key part of the better regulation agenda, which we also want to be supported more effectively.

The Convener: I apologise to Norrie McLean, who will come in at the tail end of the discussion. The other two witnesses talk so much they have probably covered everything you wanted to say. I guarantee that you will be asked to respond first to the next question, whatever it may be. Do you have anything to add?

Norrie McLean: Thank you—your apologies are accepted. I will give two specific examples, as Phil Gallie asked for that. The first is a non-devolved issue that affects Scotland to a much greater degree than it affects the rest of the UK. It is, of course, fishing again. All aspects of the fishing industry, from catching to processing to exporting, are now so overregulated that the overall target of a 25 per cent reduction in the administrative burden could be met just by sorting out some of the regulation in that industry. That would also identify gold plating and help to level out the playing field, to use the hackneyed expression. We strongly believe that compliance with much of the regulation is much greater in Scotland and the UK as a whole than it is in some other EU member states that, like your previous commentator, I will not embarrass by naming.

My second example, which covers most members of the Scottish Food and Drink Federation, is the legislation on waste. It would be possible to reduce the amount of regulation on waste by identifying the issues that are not appropriate to a specific piece of legislation. Too much in the waste legislation is overarching and all-encompassing, and an examination could take some of it out.

Bruce Crawford: Thank you for your evidence so far, which has been helpful.

We would all like more effective implementation. I would like to hear about the different organisations' experiences of the transposition of EU obligations into Scottish law—I guess that those experiences will all be different. Do EU obligations adequately take into account distinctive Scottish circumstances? Is there more scope for differential implementation and for finding Scottish solutions to Scottish problems, as Jim Wallace's paper suggests? Would that be more helpful and how could we implement such an approach more effectively?

Norrie McLean: The answer is that more involvement could help. I will strike a more positive note. In his research for the inquiry, Professor Page refers to the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005 (SSI 2005/438). There were many flaws in those regulations and the implementation in Scotland was disproportionate because the industry is different from that in the rest of the UK and, indeed, the rest of the EU. However, DEFRA and the Scottish Executive Environment and Rural Affairs Department took road shows round all parts of the industry. That dialogue went on for about two years before the implementation of the relevant Council regulations and caused the implementation to be delayed, during which time most parts of the industry had an opportunity to get themselves prepared better for it. The flaws in the regulations were discussed and dealt with. A lot that was in them was not right, but the dialogue and the presentations by DEFRA and SEERAD helped the situation massively. I do not know whether that work came out of a recognition that the legislation was a mess, but I commend them for it anyway.

Graham Bell: It is a good question, which touches on a number of points that have been made. Experience depends on geographical location and sector, because differences in enforcement occur between different areas. Those differences are down to the quality or understanding of the enforcement agency or officer rather than to the appropriateness of enforcing the legislation differently in a particular area. There are definitely some circumstances in which Scottish organisations show a lack of understanding of Scottish situations in the way in which they interpret regulations. I will give you some examples shortly.

Earlier, somebody made the point that we have an extremely strong feeling that UK implementation follows the letter of the law, whereas the intention is really that the spirit of EU legislation should be enacted. However, because

it is a feeling, it is hard to prove that factually. Mr Gallie mentioned France earlier. We all know the story about the French, on being told that 80 per cent of their cheese was no longer fit for market, saying with a Gallic shrug, "Well, forget it, chaps. We're going to carry on."

16:00

We do not do that, because we have a cultural history of toeing the line. We tend to believe that, if legislation exists, it is meant. We have a mindset such that we continually try to regulate and enforce to the letter of the law. I believe that the majority of members of the EU are better than us at interpreting the spirit of the law. There are instances in which other countries deliberately or in other ways—perhaps through administrative difficulties—delay enacting legislation. However, there are also instances in which we in the UK are behind other countries in enacting EU legislation, so it is not a one-way street.

I will give some examples. The air quality legislation in the UK pre-dates EU regulation, although the UK's air quality experts contributed to the formulation of the EU legislation, so we had an equal part in making it. The EU derogation limit for exceeding sulphur dioxide emissions is set at a 24-hour period. In other words, if a company exceeds the level for 24 hours, it is a bad boy and it gets a spanking, a fine, or whatever the process is. It has broken the law. The UK limit is 15 minutes. A company in the UK is allowed to exceed the limit more times in a year without being penalised, but if the monitors show that there is a bad-air-quality situation, it is a lot easier to deal with it in an hour than it is within 15 minutes. Under EU legislation, a company could have innumerable 50-minute incidents, but if a company in the UK did that, it would be penalised.

We can apply that to the Grangemouth refinery. Is the air quality a problem because of Grangemouth or because of Longannet power station? A business can be penalised even though it is not solely responsible for the problem. That places an administrative and perhaps financial burden on business.

When the regulation on particulate matter was enacted in Scotland, we ended up with a particulate matter limit of 18 mg/m^3 . I think that the regulation is called the PM₁₀<50 regulation. The matter was covered by Scottish statutory instrument 2000/97, which was amended by SSI 2002/297. Never mind about the chemistry and biology of the limit. The point is that the limit in England is 22 mg/m^3 . There is a difference. That is our right. We have a devolved Administration and there might be sound health reasons why we believe that the limit should be lower. However, that creates a commercial disadvantage. The

effect is that Grangemouth has to use higher-grade crude oil than is used in France, for example, and Grangemouth needs plant to the value of \$151 million, the running cost of which is £40 million per annum more than the running cost of an equivalent plant in France. From the business point of view, that is not a level playing field. Scottish businesses are at a disadvantage compared both with England and with our continental competitors.

I will give a simpler example of a small business. I have a number of clients who are young men who have come out of the Scottish Agricultural College with agricultural degrees and are creating employment by creating diversification on farms, especially in East Lothian. One of them is in the business of composting biological waste. He takes botanical waste from Edinburgh, Midlothian, East Lothian and now the Borders and composts it on a large scale on the farm. The residue, which we know as compost, is ploughed into the land. To do that, he had to get an EU derogation because the activity is technically regarded by the local representatives as landfill. The whole point of the process is to prevent landfill. It turns a benign process into something useful, but he still has to truckle up and get regulatory approval.

In another small example, cheese is being made on a farm, creating an income for a young man. Without that new business, he would not have that income, but he is not allowed to put the whey down the drain. If that is the case, why do we not make it a criminal offence to wash milk bottles? It amounts to the same thing.

The Convener: Your points about landfill are especially interesting. We heard some evidence on the issue last week as well.

Graham Bell: There is also evidence of people being accused because dry-stane dyking is regarded as landfill and requires a derogation.

The Convener: I am stuck for words.

Graham Bell: It is a particularly Scottish case; they do not understand us.

Amanda Harvie: Bruce Crawford's question related to how Scotland could bring advantages to business and the economy by finding ways of delivering regulation within the EU framework more effectively. Under the current arrangements, financial services will remain regulated by the Financial Services Authority. The industry regards it as positive to have a gold-standard regulator and a regulatory regime.

Much of what affects us will be reserved to Westminster, but it will be vital that the Scottish Executive and Scottish Parliament understand certain principles when considering this agenda in future. We should maintain at least a level playing

field with the rest of the UK, which is an important market for us, and we should be best in class in Europe, with a focus on ensuring that Scotland has the most globally competitive business environment possible.

Much of the committee's discussion has focused on the implementation of EU regulation in the UK and Scotland. We must not forget that Scotland's markets are globally focused, as is its future. Industries that drive the economy, such as financial services, will be key to that. Those industries do business around the world.

We constantly discuss with the Commission the danger that Europe is introverted and parochial. We have to benchmark against competing nations, not just in established locations around the world but in emerging markets such as China and India. Those markets pose a threat to Scotland and other member states and regions in Europe. Our mindset has to be global.

I would like the Scottish Executive and Scottish Parliament to show leadership in championing the better regulation agenda and in taking a principles-based approach to regulation. As you know, the better regulation executive part of the Cabinet Office has a stated set of principles. Scotland should aim to be best in class and should be transparent in its approach.

Another point concerns how the Scottish Executive and Scottish Parliament will utilise flexibility. We have to ensure that the powers that we do have—to deliver initiatives that are advantageous to business and the economy—are used as effectively and efficiently as possible. There are two particular examples that the Scottish Executive should be commended for, because they are having a positive impact on business and on Scotland's global competitiveness, not least as a financial services location. The first is the fresh talent initiative which, as you know, means that international students graduating from a Scottish university or college of further education can stay in Scotland for up to two years. The initiative creates strong opportunities. We would want to ensure that we retain the flexibility in Scotland to make progress with such initiatives.

The second example is the route development fund. That fund has been positive in creating direct global air links between Scotland and key financial services markets around the world. The most recently announced such route was Edinburgh to Zurich, which will open in May.

Those initiatives are important and we should use the powers that we have as effectively and efficiently as possible, to make the business environment in Scotland as competitive as possible, against global benchmarks.

John Home Robertson: A lot of this is awfully depressing, eight years on from the establishment of the Parliament. The committee was set up to ensure that regulation would be subject to appropriate scrutiny and that we got things right. It is very worrying to find that things are getting through the system.

Part of the reason for that has emerged during the evidence sessions this afternoon—it is the different approach to the implementation of regulation and legislation, although regulation is where we have more flexibility. The intriguing question of the letter of the law and the spirit of the law has arisen.

I hope that everybody on the committee and the witnesses accept that there are good reasons for regulation. Although businesses and individuals might not like it, society might require it for perfectly good reasons. The difficulty is the gold plating, or in some cases, tartan plating, which means that we get regulation worse in Scotland than they do in the rest of the UK, never mind the rest of the European Union. We have understood the problem for a long time, but now we want solutions.

Can you cite any examples from a devolved Administration elsewhere in the European Union—Catalonia or Bavaria, for example—that has handled a waste regulation or whatever it might be in a different way from how we have done it here? Can we follow other examples to ensure that we adopt better procedures in Scotland and do it better too? That goes to anyone who wants to answer.

Norrie McLean: Without—

The Convener: You just jumped in there, Norrie, but on you go.

Norrie McLean: Sorry. Without wanting to sound facetious or like a dog in a tartan manger, the only example that I have harks back to fisheries. The difference between us and other countries is that many regulations about total allowable catch, days at sea and so on are totally ignored by some member states.

John Home Robertson: As a former fisheries minister, I can tell you that it is not unheard of for our own fishermen to ignore them too.

Norrie McLean: I accept that.

Phil Gallie: Is it fair to say that some countries appoint a far smaller number of officials to supervise fishing regulation than does the UK?

Norrie McLean: That is accurate.

John Home Robertson: We are looking for solutions; we do not want to harp on about problems. Could we in Scotland adopt a model of approaching regulation that works better?

Amanda Harvie: The flexibility for Scotland to implement specific measures that relate directly to the financial services industry is limited for the reasons that I mentioned earlier. Many of the measures are reserved to Westminster and regulated by the FSA.

I will give you a beacon of hope and strike a positive note. The future lies in approaching regulation better and identifying areas in which Scotland has the opportunity to advantage businesses operating from here. We have established in Scotland a welcome model that brings Government, the industry and trade unions together—Jim Wallace was involved directly in pioneering that model. It is very good news for financial services and the Scottish economy.

We have the strategy for the financial services industry in Scotland that is being delivered jointly by a partnership that involves the Scottish Executive, Scottish Enterprise, Scottish Development International, Scottish Financial Enterprise and trade unions. The quality of dialogue that is being achieved and the work that is being done behind the scenes and up front certainly represent a step ahead of any other type of initiative that we are aware of in other parts of the European Union. That model must continue and must be delivered even more effectively in the future. It transcends party politics, future settlement changes or otherwise for Scotland and the outcome of the next parliamentary elections. It is being developed much more effectively at UK level as well as in Europe.

Let us do it better and not have regulation for the sake of it. Scotland must adopt a principles-based approach and identify where regulation is not appropriate—I know that the committee focuses on that. Let us not forget that many such agendas take a long time, unfortunately.

John Home Robertson: Such an approach has worked in the financial services sector.

Amanda Harvie: The approach ensures that the initiatives that are being delivered are of a high quality and that the policies that are being developed are effective.

John Home Robertson: In relation to environmental regulation, we have heard the term “regulatory creep”. If there is regulatory creep in—dare I say it?—the Scottish Environment Protection Agency, which is a bit overenthusiastic and zealous, the model that you spoke about might ensure that there is better control over such regulators.

16:15

Amanda Harvie: There should be up-front discussion rather than regulating and then having

to undo difficult policies that are causing problems. Lest I sound complacent—which we certainly are not—about the nature of the regulatory environment for financial services, I point out that many of the industry’s concerns have been articulated in Scottish Financial Enterprise’s submission to the Davidson review, which has been circulated to committee members. Many issues concern us, but the quality of dialogue between Government, regulators and the industry continues to improve, which is positive. Once again, Scotland should be a champion for that approach. It is a champion for financial services—let us ensure that that continues.

The Convener: Before Graham Bell answers, Bruce Crawford wants Norrie McLean to clarify something.

Bruce Crawford: Phil Gallie asked about the number of regulators that we have in Scotland compared with the number in other places. There seemed to be an immediate acceptance that we have more regulators here than exist elsewhere. If that is true, I would rather that we based that assertion on evidence than on an assumption. Do we have any evidence that more regulators operate in Scotland than operate in other European countries? If that is true, we must do something about it.

Norrie McLean: Much of the evidence is anecdotal, as the industry has not done an awful lot of work to gather hard-and-fast evidence, because, as I said in answer to an earlier question, we recognise the need for regulation, laws, rules and controls. It is that recognition that makes us comply—in some cases, more than our EU partners do.

One of the reasons why we have not collected hard evidence is that, when we ask the question, “What can you do about it?”, more often than not the answer from people all the way up to ministerial level is, “Don’t expect us to sort out all the other European member states’ legislation. It’s hard enough just to sort out the UK legislation.” That has been said to me. There does not seem much point in the industry collecting hard-and-fast evidence if Government tells us that it can do nothing about implementation in other countries in any case.

The Convener: Phil Gallie informs me that he has a helpful comment to make, so I am putting Graham Bell on hold again.

Phil Gallie: I well recall agricultural figures relating to the way in which the Irish counted their beef and moved it around. That was one area in which Irish officialdom was seen not to compare with the UK’s. I also seem to recall landings in Spanish ports being undermeasured in the past. Those are positive, not anecdotal, comments.

Bruce Crawford: You are being quite cute. That was not part of the question that you asked. You asked about the number of regulators, which is different.

Phil Gallie: I was basically talking about policing in the fishing industry.

Norrie McLean: I am sure that we could gather hard-and-fast evidence for Mr Crawford if it would prove worth while.

The Convener: Graham, can you remember what the original question was, which you were supposed to address?

Graham Bell: Yes.

The Convener: Good for you. Please do so.

Graham Bell: If you do not mind, I will make a further point about regulators before I answer the question.

The primary problem with regulators is not so much the number of them—there may be more or fewer in other countries; I could not say, and I do not want to be funded to find out, as I could not imagine anything more depressing—but how they work. I cite the example of environmental health officers. I worked with a company that was trying to produce preserves—an added-value product made from waste from fruit farming. It was an example of turning waste into something useful in order to make some money. We approached the environmental health officers to find out the labelling regulations and they said, “It’s not our job to tell you what the answer is; it’s only our job to give you a hard time if you get it wrong and there’s a complaint.” To me, that is totally wrong, but it is often the attitude of our enforcers that they are there to enforce, not to help people to avoid enforcement.

The Convener: You had to get that out of your system, didn’t you?

Graham Bell: I did indeed.

The Convener: I thought so. Please carry on.

Graham Bell: I could tell you the date; it was eight years ago. It has been burning in me since then.

Three things can be done. First, did the NFUS share with the committee last week its scale of intervention for EU legislation? The scale, which is included in the notes that I have left for members, is a logical way to enact EU legislation. The NFUS has stated that we should:

“1. Define how relevant is the issue for Scotland

2. Ask the relevant industry where there may be existing problems”

and ask

“3. Does it need to be addressed across the board or are there different needs in different geographical centres?”

A solution in the Western Isles could be different from a solution in the Borders, for example. The NFUS has stated that we should:

“4. Target legislation to the answers gained

5. Make Cost/Benefit Analysis

6. Attach this justification to income streams before going ahead with regulation”.

Amanda Harvie: Furthermore, people should not regulate unless doing so is absolutely necessary. There should be a presumption against rather than for regulation.

Graham Bell: Exactly. Members may not concur with the NFUS’s list of priorities, but a scale of intervention involving five or six steps would be helpful in eliminating unnecessary legislation.

Secondly, we should consider what other countries do. Sweden, Denmark, the Netherlands and Germany are well ahead of us in enacting environmental controls in many areas, particularly at the consumer level, because instead of regarding issues as problems, they regard them as potential solutions. Pollution is simply an expression of where something is in the system—it is not an absolute. Gypsum, which is what plasterboard is made from, will be precipitated if coal-fired power stations such as Longannet and Cockenzie have to fit electrostatic flue scrubbers. Instead of Sweden getting acid rain, we will get plasterboard. The problem will therefore become a solution.

In Sweden, bottles are compulsorily reused. People there do not go in for cullet and all the energy costs that are involved in remaking glass unless they have to. Once upon a time, we reused bottles here—the odd company, such as Barrs, still does—and there is no reason why we cannot do so again. People would find ways to make such a process work if legislation made it essential. That is one example. We should turn problems into solutions before we prevent people from doing things or penalise them for doing something.

Finally, I return to what Amanda Harvie and Jim Wallace said about not needing polarities. We should not take polarised positions if we want to devise solutions, because if we take polarised positions we will end up with legislation that satisfies one party but not another.

Jim Wallace talked about bringing together the community and the different parties that are involved to reach agreements on common solutions. Chambers of commerce are continually engaged in such a process. Last week, I went to a meeting with representatives of Friends of the Earth, SEPA, the chambers of commerce, Spokes—the Lothian cycling campaign—and other people who are interested in the environment. Everyone was happy to sit around a table and to

agree on common interests and approaches, and everyone was keen to learn from one another.

I am going on to dangerous ground, as the point that I want to make is political. One thing that proportional representation in the Parliament has brought us has been much greater willingness to engage in consensual politics and to move away from confrontation. I hope that that approach will still be taken after the coming elections. Edinburgh Chamber of Commerce does not support any political party, but I call on all members to engage in the process and to support us as we engage in it with people in the community so that parties will be satisfied before the legislative process begins.

The Convener: We consider ourselves told, consensually.

I want to finish the session by asking a question that has struck me as we have taken evidence from the witnesses. Last week, members questioned witnesses thoroughly. The witnesses felt that it had been a pleasure to speak to the committee, and they would have liked the committee to become more active with stakeholders. I picked up something else then that I have picked up from the panel. You do not seem to have had the same kind of engagement with the Executive.

John Home Robertson asked you to give us solutions to some of the problems. Has the Executive asked you the same question? For example, Amanda Harvie spoke about going directly to the Commission and dealing very well with it and going directly to the UK Government, but she did not mention the Executive. Is the role of the Executive within Europe adequate in relation to the matters that are dealt with in Jim Wallace's report? Do you feel that, as stakeholders, you get in early enough with the Executive in respect of matters that affect Scotland?

Norrie McLean: I will kick off on that one, given that I appear to be the most negative.

I mentioned to Jim Wallace over tea earlier that the Scottish Food and Drink Federation is a devolved division of the Food and Drink Federation, which is based in London. The FDF is, by a long shot, the biggest representative body—it is the representative body—for the food and drink manufacturing industry. It views our dialogue and relationship with the Scottish Executive with great envy. It has great admiration for the discussion that takes place and the involvement that goes on between yourselves and the SFDF. It would like to see the same with the UK Parliament.

The Convener: You referred to the relationship with the Executive and then you used the word "yourselves", speaking to us as the European and External Relations Committee. Can you clarify that?

Norrie McLean: I meant the Scottish Executive. I was including some of you in the Executive, as it were. Jim Wallace has been particularly helpful on a number of occasions.

The Convener: He is not in the Executive, which is why I am trying to tease out what you mean.

John Home Robertson: He is an escapee.

Norrie McLean: Forgive me for being confused about the structure. As a result of today's debate—or bickering, as someone said—I got a bit confused about the structures and where the lines of communication and so on lay.

The Convener: Okay. Thank you.

Graham Bell: For the avoidance of doubt, I was congratulating you in my last statement, not criticising you.

The Convener: I certainly took it that way. Did everyone else?

Graham Bell: Our relations with the Executive are variable depending on the subject and the individual. For example, we have recently had excellent co-operation from the chief planner, who has made himself available for meetings and has been very supportive of the work that we are trying to do in building accords across the Community.

I am not aware that we have had a huge amount of inquiry from people in the Scottish Executive's EU office. Edinburgh Chamber of Commerce is itself a European information point, and we have a person who is dedicated to providing the business public with information about European processes, so perhaps they think that we should know what we are talking about in the first place. On the other hand, we have not spent time knocking on the door and asking to be heard, and there is nothing to suggest that if we did that we would not be heard. In general, we find that if we get the right person there is not a problem in engaging.

Amanda Harvie: I stressed the quality of engagement that now exists between the Government in Scotland and the industry as a result of the strategy for the financial services industry in Scotland, the Financial Services Advisory Board and the financial services implementation group that exists to drive the strategy forward. As an industry body, we have regular—daily or weekly—contact with ministers and senior Scottish Executive officials. We are encouraged by the way in which we are all working positively to engage, not only within Scotland but outwith Scotland. I am confident that should we require direct intervention in the future from the Scottish Executive on matters that concern us in Europe, we would be able to achieve that.

16:30

However, as an industry body, we do not rely solely on the Scottish Executive to be our voice in Brussels. The regulatory agenda in Brussels is so important to us that it is crucial that we engage with those that directly influence it: the Government in Westminster, the Financial Services Authority and those involved in Brussels. When I am in Brussels on Thursday and Friday of this week, I will meet MEPs—including John Purvis—and officials from the Scottish Executive, the European Commission and the UK's representation to take forward the agendas that are important to us. As I mentioned, it is important to maintain the quality of engagement that we have achieved in bringing together Government and industry in Scotland, but we also need to recognise that that is an effective collaborative voice outwith Scotland as well.

We should not underestimate the respect that exists across Europe for Scotland as a centre of international financial services expertise. We have had a financial services industry here for over 300 years. One in 10 people in Scotland work in financial services. We are servicing businesses around the world. That is an important advantage that Scotland has gained and can build on in developing its credibility in the future.

If there are concerns about the quality of influence that Scotland has in Europe, let us not simply discuss the issues but go forth and use our strengths to exert the influence that will be advantageous to Scotland. I think that we have a strong voice that we can build on further. However, neither industry nor Government can do that alone. Together in partnership we can achieve much more.

Graham Bell: Let me offer a little parable. I do not know whether anyone else was there, but I remember being at Netherdale for the first and last time that Jonah Lomu—a great New Zealand rugby player and possibly the greatest rugby player ever—played against the South of Scotland. At half time, the score was something like 95-0. After the break, the South of Scotland lads—who were at that time a force to be reckoned with—came out and fought back. Although they did not win the match, it became clear that they had lost it before they went on the pitch because, late on in the game, they showed that they had the capability to hold the New Zealanders. We must avoid doing something similar in our response to European legislation. Let us not lose the game before we get on the pitch. Whatever the constitutional circumstances, Scotland has a right to stand up for what its businesses and people need. We do not ever have to give in to legislation that puts us at a disadvantage with European competitors.

The Convener: That is a positive note on which to end. I thank Amanda Harvie, Graham Bell and Norrie McLean for coming along to give us the benefit of the knowledge that they obviously have.

That concludes the public part of the meeting, so I now ask members of the public to leave the room.

16:32

Meeting continued in private until 17:22.

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