EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 13 November 2007

Session 3

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

7th Meeting 2007, Session 3

CONVENER

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

DEPUTY CONVENER

*Alex Neil (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Ted Brocklebank (Mid Scotland and Fife) (Con)
*Alasdair Morgan (South of Scotland) (SNP)
*Irene Oldfather (Cunninghame South) (Lab)
*John Park (Mid Scotland and Fife) (Lab)
*Gil Paterson (West of Scotland) (SNP)
*Iain Smith (North East Fife) (LD)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)
Keith Brown (Ochil) (SNP)
Jackson Carlaw (West of Scotland) (Con)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

◊Arlene McCarthy MEP (Labour Party)
◊Jonathon Stoodley (European Commission Secretariat-General)

◊ by videolink

CLERK TO THE COMMITTEE

Dr Jim Johnston

ASSISTANT CLERKS

Emma Berry
Lucy Scharbert

LOCATION

Committee Room 1

Scottish Parliament

European and External Relations Committee

Tuesday 13 November 2007

[THE CONVENER *opened the meeting at 10:03*]

European Union Directives Transposition Inquiry

The Convener (Malcolm Chisholm): I welcome everyone to the seventh meeting of the European and External Relations Committee in the third session of the Scottish Parliament. First, we will take evidence from Arlene McCarthy MEP, and then from Jonathon Stoodley from the European Commission, as part of the committee's inquiry into transposition of EU directives.

Arlene McCarthy will give evidence to the committee from Strasbourg via videolink. She has kindly agreed to slot this session into her work in Strasbourg, so we have only until 10:25 to take evidence from her. Given the time limit, I want to keep the session tightly chaired. All members should speak slowly and clearly, and avoid interruptions.

I thank Arlene for joining us this morning. She will start with an opening statement, which will be helpful for us, and then members of the committee will have a few questions for her.

Arlene McCarthy MEP (Labour Party): I am pleased to take time out of my agenda to assist the committee in its evidence gathering. I am delighted that the committee's members are making so much effort in prioritising transposition and the better regulation agenda, which my committee—the Internal Market and Consumer Protection Committee—has now pushed up the political agenda.

If the European Union is to meet its targets on creating jobs and growth, we have to consider better regulation, so the member states of the Commission have agreed to set a target to reduce the administrative burdens of EU legislation. There is an ambitious target to cut unnecessary regulation by 25 per cent.

We in the European Parliament have a role to play in ensuring that laws are easy to implement and enforce and—given my committee's role in consumer protection—in enhancing consumer confidence in the internal market. That is why we want to examine the real impact of legislation, how transposition is working and why member states fail on those matters, as well as to examine the critical issue of enforcement.

We have already done some work in that area and we have adopted a number of reports, including a report on transposition and implementation of public procurement legislation because that has, in many circles, been identified as a failing in the internal market. It was the first detailed piece of work that my committee undertook on transposition and implementation, and it has now become a regular feature of our work. We are following that up by examining legislation that has not been implemented and the reasons why, and we are looking at why transposition has been so slow. We currently want to examine, for example, the Unfair Commercial Practices Directive, which is important legislation, particularly for consumers.

We have come to the key conclusion—which is important for the Commission's engagement—that we need to work closely with stakeholders. That must include the member states but must also include, for example, the devolved administrations such as the Scottish Executive—and, in Germany, the länder. As members will know, the länder have a strong record in influencing EU legislation and are often active in raising issues with us in the Internal Market and Consumer Protection Committee. The member states will, of course, still say that it is their prerogative to co-ordinate such efforts, but we believe strongly that we need input from those who are, like this committee, at the coal face—at the forefront of implementing legislation—and who therefore know best whether the legislation is working and what problems we need to deal with in relation to scrutiny and oversight. I reassure members that we want to see more stakeholder input. I welcome the Scottish Parliament's engagement. I am open to questions from the committee.

The Convener: John Park will shortly ask about the better regulation agenda. By way of introduction, how realistic is the target of cutting the administrative burden by 25 per cent by 2012?

Arlene McCarthy: The Commission would say clearly that it believes that it can reach that objective. It is our objective to assist it in that, because the complaint that we hear most regularly from member states is about the amount of gold plating of legislation; member states, businesses and industry find it difficult to implement legislation because they view the legislation as unclear. We are now in some areas—the Commission representative will be able to enlighten you further on this—moving towards streamlining and simplifying EU legislation, which will help in cutting the regulatory burden by 25 per cent. It is an ambitious target, but it is better to be ambitious than to set a low target. It is the right target to have set.

The Convener: Alasdair Morgan will come in briefly, followed by John Park.

Alasdair Morgan (South of Scotland) (SNP): On the figure of 25 per cent, how on earth do you accurately measure the impact of regulation? Is there a danger that any prophecy will be self-fulfilling because one just measures in the way that best suits the objective that one is trying to achieve?

Arlene McCarthy: That has to be reflected in the Commission's major work programme. We will examine its annual work programme to find out to what extent it is serious about simplification and about removing legislation that is no longer necessary. It is not for us in the European Parliament to set those objectives—it is for the Commission to follow that up. We will only want to scrutinise and to find out whether the Commission, with the member states, is able to meet its objective.

John Park (Mid Scotland and Fife) (Lab): There has been a debate in Scotland about red tape and regulation for the past two or three years. "Regulation" and "red tape" have become dirty words—they are pejorative terms and are used in a negative way. In terms of engaging with Europe, it has become clear to me that early intervention at EU level, and being able to get people round the table at the right time, are important.

My question is therefore about stakeholder engagement. Is there anything the United Kingdom Government and the Scottish Government could learn from other member states about getting stakeholders round the table as early as possible in order to understand the implications of regulation and how they might be able to influence and shape that regulation?

Arlene McCarthy: I deliberately do not use the term "red tape", to which John Park referred, because we are talking about better regulation and about ensuring good-quality and effective legislation that does not stifle innovation and does not lead to unnecessary burdens and costs. I would particularly like to focus our attention on the small and medium-sized enterprises, public authorities and voluntary groups that are doubly disadvantaged by overregulation.

I do not use the term "red tape" because that pejorative term suggests that we are considering deregulation: we are not talking about deregulation or about making a choice between economic and social standards. We must have regulation to make markets work efficiently. A good example of that is the recent legislation that we passed on charges for mobile phone users across Europe. It was not a prerogative for us to make that legislation; several times over a period of two years we offered the industry opportunities to self-regulate, but it did not take them so a regulation was made. However, we have been mindful of the better regulation agenda; that legislation will last for only three years, and we believe that when it lapses the market will take over and there will be better competition and better prices.

On consultation, if we consider our priorities for better regulation and drafting of regulation, we see that clear drafting of laws is fundamental. Problems often arise because what is meant in legislation becomes ambiguous, particularly when it is drafted in different languages. It is important that stakeholders—not just business, industry and consumers, but regional governments such as the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly—have their say. There must also be high-quality impact assessments. We have argued that those assessments have to be carried out prior to and after legislation is introduced. How will it be understood whether objectives are right if it is not possible ex post to evaluate whether the legislation worked?

Effective and comprehensive stakeholder consultation is fundamental to the better regulation agenda, so I was somewhat surprised to learn that only nine of the 27 member states actively engage in seeking the views of stakeholders, whether online or through consultations or seminars. Nine out of 27 is a poor record, but I am proud to say that the UK is one of the member states that hold consultations to ensure that it is informed about issues that could arise from legislation. I can only encourage the committee to do that in its work, although reports that I have heard suggest that the Scottish Government has a good, experienced operation in public procurement. You should continue that operation as a way of having your say on the better regulation agenda.

Iain Smith (North East Fife) (LD): You mentioned gold-plating, and that is one of the issues that comes up time and again when we consider implementation of European Union regulations. The Legal Affairs Committee of the European Parliament made specific reference to that in its report, "Better Regulation in the European Union", which stated that it deplores

"Member States' practice of 'gold plating'"

and calls

"upon the Commission to investigate what further measures might be taken to prevent it".

If you consider that gold-plating in transposition of EU regulation is essentially a problem for member states, what further measures could the Commission take to improve its guidance on transposition to prevent unnecessary gold-plating by national or, as is the case in Scotland, sub-national Parliaments?

10:15

Arlene McCarthy: That can be a problem because, unfortunately, some member states take the easy option. If they want to amend their own national legislation, they use the opportunity that is afforded under EU law to load in extra requirements. That deals with their problem, because they argue that they would have to implement the directive in any case and that there is no reason why they should not also update the law to take account of some national problems.

Our argument is set out in the report that I prepared on the internal market and better regulation. We had a number of reports, including one that went to the Legal Affairs Committee, and I produced a report on behalf of the Internal Market and Consumer Protection Committee, which dealt specifically with the internal market alone. UK practice could be used as an example of best practice. The better regulation unit has said that if member states intend to add requirements—we would discourage that—their doing so must be justified. Member states should be asked why they need to do that, and the legislation must be separated out to show clearly what the national requirements and the specifically EU requirements are.

I advocate that as a minimum approach, so that we can clearly identify where gold-plating has happened, whether it is justifiable and whether it takes account of issues in a member state that could be taken care of by the EU directive without resorting to introducing new national legislation. From my perspective, the cases in which that would be justifiable would be few and far between. The issue for us is that we do not want unnecessary burdens, so if new national legislation is introduced it must be clear why, whether it is legitimate and who did it. That is now our practice in the UK, and other member states would be advised to follow suit. The Scottish Parliament could set up the same system; that would make it clear that additional legislation that is necessary in the Scottish context could be added into an EU directive, but that any such inclusion would have to be justified and it would have to be clear in the legislation that it was Scottish legislation and not EU-inspired.

Iain Smith: I would like to ask about the role of regional Governments, such as the Scottish Parliament, that have legislative responsibility for implementing certain EU legislation. From your knowledge of other regional Parliaments—you mentioned the länder in your opening statement—do you have any experience of particularly good practice in implementing transposition and of how they engage with stakeholders in that process?

Arlene McCarthy: Our experience of the länder implementation has been that there is sometimes a conflict or a contest between the federal Government and the länder in trying to ensure that the länder fulfil their responsibilities and requirements. That is not a situation that has arisen in Northern Ireland, Wales or Scotland, which is why stakeholder consultations are fundamental. The Commission will tell us that its obligation is to consult member states, and that it is then up to the member states to take the consultation further down the line, perhaps not only to Scotland, Wales and Northern Ireland but to local authorities, consumer groups and voluntary sector groups, which should be more involved in consultations. That is something that we should do, but I do not see it as a negative; it should be a positive. In some cases, there has been quite a power struggle between the länder and the federal Government, rather than a positive approach to implementation.

Gil Paterson (West of Scotland) (SNP): Scotland is in a unique position. Although we are a devolved authority, we are the only authority in Europe that has its own particular law. Should we therefore be treated somewhat differently? My worry is that Europe says that the United Kingdom has a single law, but implementation of European regulations has a different impact in Scotland. Should more care and attention be paid to Scotland? When we visited Brussels, I was conscious of the pecking order and of the fact that Scotland is very much in a lobbying situation. My comment on that is that we in Scotland actually lobby the lobbyists, which puts us at a great disadvantage. Should we be treated somewhat differently from the länder, for instance?

Arlene McCarthy: That is an important question, which reminds me immediately of the work that I did in the Committee on Legal Affairs on regulation on the European payment order procedure, which was designed to make it easier for businesses to be paid if a company in another member state was in default. The issue was how to achieve a simplified procedure for companies to get their money without having to go through the courts and the legal system. My recollection is that, in taking through that legislation, we were reminded constantly of the differences in the UK systems; for example, that the Scottish system is different from the system in Northern Ireland, which is different from the English system. The Council of Bars and Law Societies of Europe was proactive in asking us to ensure that we took those differences into account in the legislation, which we did.

My answer is, therefore, that the Scottish Parliament is obviously proactive in running issues through lobbying organisations to make us aware of the differences between and the uniqueness of the Administrations. I can only encourage members to do that more so that, for example, in

legislation that goes through the European Parliament we take account of the peculiarities of the Scottish legal system. In the example that I gave, the differences were recognised thanks to lobbying efforts by Scottish lawyers, through the Council of Bars and Law Societies of Europe.

Ted Brocklebank (Mid Scotland and Fife) (Con): I return to the Commission's action plan to cut the administrative burden for companies by 25 per cent. I understand that approximately 40 pieces of legislation and 13 priority areas have been identified that account for about 80 per cent of administrative costs. Can you give us a flavour of the kind of legislation that could be cut back?

Arlene McCarthy: That question would be better addressed to the Commission. We respond effectively to proposals that the Commission brings to us. Inevitably, the Commission will say to us that it is taking something out of the work programme because it does not think that it is necessary, and we may have a difference of opinion on that. We might argue that the Commission wants to remove something, not to further the case of better regulation, but because it cannot find political agreement on the issue among the 27 member states. It might be a question of political expediency rather than one of whether legislation is absolutely necessary.

The committee would find different views in the European Parliament. For example, at the beginning of the process, the Commission argued that it would no longer make progress with EU legislation on co-operatives and mutualities. It has always been a priority of the European Parliament, particularly the socialist group, to legislate on co-operatives and mutualities—not necessarily detailed legislation, but a framework. We would disagree with the Commission if it wanted to remove the proposal on the basis that it considers it to be no longer necessary.

The Committee on Internal Market and Consumer Protection has argued consistently that small and medium-sized enterprises frequently have difficulties with the burden of legislation and that the burden on them is often disproportionate compared to that on larger multinational companies that operate across borders. We have discussed that with Commissioner Verheugen. As a result of our intervention and, I think, because of the Commission's enlightenment on the issue, Commissioner Verheugen has said that he will introduce a small business act.

That does not mean that small businesses will be exempt from legislation—we would be concerned if some businesses had a free pass and did not have to comply with consumer protection legislation or give consumers a good standard of service. However, we are interested in how we can minimise the burdens on small and medium-sized enterprises—a small business act might be the way in which to do that. It would not be the same as the small business legislation in the United States, which in many ways argues for preferential treatment for small businesses, particularly in relation to public procurement. However, we would try to minimise the burdens for small and medium-sized enterprises so that they can operate effectively and competitively in the internal market, on a level playing field with big business, which obviously has more capacity to take on board legislative requirements.

Ted Brocklebank: If the Commission can identify 40 pieces of legislation that, it says, account for about 80 per cent of the administrative burden on businesses, it seems to me that members might at least be able to agree on the key pieces of legislation or priorities.

Arlene McCarthy: Those 40 pieces of legislation must be brought individually to the committees in the European Parliament. So far, the Commission has not put on the table the areas of the internal market and consumer protection agenda in which it intends to withdraw legislation—or not—in order to make progress. That has not been given to the Committee on Internal Market and Consumer Protection as a package of work. It would be useful if the Commission had done that, but it has not.

Ted Brocklebank: I gather that the Commission has also identified a series of fast-track actions that could be taken, which involve not major legislation, but refining of existing legislation. Are you in the same circumstance, in that you have not yet had a chance to consider the matter?

Arlene McCarthy: That has not been put on the table yet, but I am sure that the Commission will tell us that it would like a fast-track procedure. If the proposed legislation was simple and did not involve additional requirements, we would be open to that. However, I cannot give an example of my committee being asked to fast track proposed legislation, although that might not be the case for other committees.

The Convener: How are you for time, Arlene? Is your time up?

Arlene McCarthy: I need to go and vote, so maybe I should take the final question.

Alex Neil (Central Scotland) (SNP): For clarity, is the 25 per cent target for a reduction in the number of regulations that the Commission issues, or for a reduction in the number of regulations that result from decisions of the Commission? What is the baseline for the measurement of the 25 per cent cut?

Arlene McCarthy: I understand that the aim is to reduce the administrative burdens by 25 per cent.

Alex Neil: How will you measure that?

Arlene McCarthy: You will have to ask the Commission that. The Commission will have to come to the European Parliament with a proposal on how it intends to do that. We will then either agree it or not agree it. The Commission has the initiative on the matter—it is for us to approve or not approve its report.

As I said, my committee has not yet been given a list of the matters on which the Commission intends not to legislate or the areas in which it intends to decrease administrative burdens and I do not have a list of fast-track proposals that the Commission intends to ask us to take through. However, the Commission is talking about a 25 per cent cut in the burdens that result from EU legislation. It is difficult to say whether cutting one piece of legislation would contribute to achieving the 25 per cent target. It would be better to ask the Commission how it intends to achieve the objective of cutting burdens by 25 per cent.

Alex Neil: When do you anticipate the proposal will come before your committee for approval?

Arlene McCarthy: I have no idea. Our present work programme comes out of the annual work programme from last year and we have several pieces of proposed legislation on the table. The Commission has not at any time said that it intends to withdraw any of those proposals and, as I said, it has not asked for any kind of fast-track procedure.

Where the legislative process is at the stage of a white or green paper, if there is insufficient evidence from the impact assessments, the Commission might decide not to move to formal legislation. One example of that is the "Green Paper on Retail Financial Services in the Single Market". The Commission is considering whether there is sufficient evidence that legislation on that is required. If the Commission were to decide not to introduce legislation, that would clearly be a cut in administrative burdens because there would simply be no EU legislation on the matter. At present in the legislative process, the Commission has a clear instruction that it must justify why we need legislation.

The Convener: Thank you very much indeed. You obviously have a busy day, so it was kind of you to give evidence.

I suspend the meeting so that the technicians can reconnect the videolink with Brussels to allow us to take evidence from Jonathon Stoodley. We will resume in a few moments.

10:29

Meeting suspended.

10:34

On resuming—

The Convener: I thank Jonathon Stoodley for joining us. As members know, he is head of the application of Community law unit in the secretariat-general of the European Commission. We will start with an opening statement and then move to general questions.

Jonathon Stoodley (European Commission Secretariat-General): Thank you for the invitation. I am head of the unit in the secretariat-general of the European Commission that is responsible for the application of Community law. If I may, I will say a few words about the communication on the application of Community law that the Commission adopted on 5 September. I will focus some of my remarks on preventive action and transposition.

The communication is a response to the resolution in the better regulation package that the European Parliament adopted in May 2006. It sets out an important work programme for the Commission and contains suggestions and ideas about how the Commission can work with member states more effectively to ensure the correct application of Community law.

The communication covers four main areas. The first is about preventing problems from arising. It deals with the initial impact assessment in the development of new legislation; the adoption of legislation in the legislative procedure; the identification of the best ways of implementing the legislation; the transposition or implementation of the measure after its adoption; and follow-up action on enforcement.

The communication's second element concerns problem solving and dealing with inquiries from and problems encountered by citizens and businesses. That is clearly an important area where the individual on the ground needs to feel that they can find out and understand how Community law can benefit them. In that area, we propose that there should be a new method of working together and maintaining close contact with member states to clarify what is at the heart of the inquiries from citizens and businesses, and to find the quickest possible answers and solutions to the problems that they identify. We are setting up a pilot project to operate that new method of working, which should run through 2008 and which will lead to a report and conclusions with a view to the future.

The third main area in the communication concerns the prioritisation and acceleration of the Commission's work on the management of infringement proceedings against member states. The Commission is developing a new programme to identify infringements that cause the most harm and have the greatest negative impact on citizens

and businesses throughout the European Union. We will prioritise the programme's work on those infringements while continuing to work on other ones. The Commission is also undertaking a major review of its internal procedures for taking decisions on infringements, with a view to being able to move forward more quickly by taking such decisions more frequently and regularly throughout the year.

The final section of the communication is about increased dialogue and transparency on the enforcement of Community law. The Commission already produces an annual report on the application of Community law that takes a retrospective look at everything that has been done during the previous year. We are planning to introduce new elements to that annual report that will identify our priorities among all the issues on which we have to work and confirm the planning and programming of work on the priorities to come in the following year. It will also report on how we have worked on our priorities during the previous year.

The Commission will also produce more information on member states' performance on the transposition of directives, upcoming deadlines and any delays that are being experienced, as well as producing more information on all infringement proceedings that have been opened with member states.

I will concentrate now on the issue of prevention. We are already developing the impact assessment guidelines that the Commission uses when working on legislative initiatives. We plan to strengthen the references to the implementation and enforcement of Community law in the impact assessment guidelines that are used in the preparation of new legislation. When we propose a new measure, or propose an amendment to an existing measure, increased account will be taken of the design of the measure and of how easy it will be to implement and apply the measure throughout the member states. We would, of course, want the impact assessment to accompany the legislative instrument through the legislative process, and we would want the ease of implementation and application to be continually under discussion as the measure developed. We plan that the Commission will produce an implementation or transposition plan, even at the early stage when a new piece of legislation, or an amendment to legislation, is introduced. The planning of work for the implementation or transposition of a measure can be developed through the legislative process and then finalised when the measure is ultimately adopted so that the measure can be put immediately in place.

The main interest in the implementation and application of laws lies with the member states, so we very much look forward to input from them, both at the impact assessment stage and during the legislative process. That will allow us to confirm the direction that we should take in order to maximise the opportunities to ensure the correct implementation and application of laws.

The nature and content of directives vary enormously. Some directives are technical implementation measures in a well-established framework, and often they do not require a great effort in transposition because the implementation process is well-known and rather automatic. However, there are other, newer sets of rules that are put in place through directives and regulations, and they may require interpretative guidelines, other measures, or more frequent meetings with experts, in order to assist in the transposition and implementation process. How much activity takes place will largely depend on the indications that we receive from member states during the development of instruments.

As a general measure—and regardless of the precise content of the directive—we plan to contact member states immediately after the adoption of every new directive, so that we can ensure that we and the member state have nominated relevant contact points for the transposition of the new measure. We want to ensure that we have a network in place that allows us to have live contact with each member state during the transposition work. That network will ensure that questions and answers can be exchanged and published, and that dialogue can always take place at the key moments for any particular member state.

Those were the aspects of the recently adopted communication that I wanted to highlight in connection with the committee's inquiry. I am happy to discuss those aspects, or any others, in more detail.

The Convener: Thank you very much. I think that you met most of the committee members when they were in Brussels, but that was before I joined. I will introduce myself: I am Malcolm Chisholm, the new convener. I will start off the questions, but I know that many other members want to ask about particular issues.

A key issue for our inquiry is that of differential implementation—the ability of member states and devolved Governments to tailor the implementation of legislation to their own needs. Do you have a view on differential implementation at the level of devolved Governments? Is there guidance on the possibility of differentiation at that level, in relation to specific directives?

10:45

Jonathon Stoodley: It is difficult to give a general answer to that question. The scope for

differential implementation varies according to the nature of the measure. For example, if technical implementing directives identify certain specific quality standards, or if certain professional qualifications will be introduced into the annex of a directive so that those qualifications are automatically recognised, there is very little scope for differential implementation.

In measures with a wider legal content, there may be scope for differential implementation, but it would depend on the balance between, on the one hand, the required amount of harmonisation and the particular issues being harmonised and, on the other hand, the aspects for a particular member state in which some discretion in the implementation is desired. Such issues really would have to be discussed during the legislative process. Differential implementation might detract from the amount of harmonisation that is being sought, so that would have to be discussed. The language used would have to be adjusted according to the conclusions reached during such discussions.

Irene Oldfather (Cunninghame South) (Lab): There is a drive towards simplification and subsidiarity. Will the Commission be moving more towards regulations or more towards directives? What criteria does the Commission apply when determining which means to use?

Jonathon Stoodley: That is a very interesting question. It is covered in part by the communication, which indicates that the question whether a regulation or a directive is the right instrument should almost always be reflected on.

As with the previous question, I do not think that a general answer can be given. That is partly because of the different subjects that arise, partly because of the different degrees of harmonisation that are sought in different areas, and partly because of the sometimes very different approaches and attitudes of different member states as regards their preference for regulations or directives.

In areas such as harmonisation in relation to the free movement of motor vehicles and tractors, a series of directives has been adopted and consolidated over time. Those directives are very technical and there is no scope for discretion or variation. In future, those directives could take the form of regulations. That would apply also to areas such as the free movement of chemical products.

However, in other areas, the rules—especially during the early stages of harmonisation—are set down much more generally. Specific systems of regulatory control will be put in place, but discretion will be deliberately left to member states. Options may even be built into the measure, from which member states will be able to choose. In such circumstances, a directive is clearly the appropriate measure, allowing member states discretion in the implementation.

The situation can be even more complicated than that. In the field of recognition of professional qualifications, the treaty at the moment requires the adoption of directives for the purposes of harmonisation. However, within that framework, implementing measures have been adopted through Commission regulations. The general framework is set by directives, and member states are able to exercise some discretion in how they implement the general framework. However, when it comes down to the precise conditions of the application of those directives, in discussion with the member states and by unanimous agreement—without, to my recollection, any difficulty—it was agreed that regulations would be a more efficient way of performing the detailed, technical updating and adaptation.

I am afraid that it depends on the specific context. The more discussion there is in the specific context, the more likely it is that we will be able to find the most practical and acceptable ways in each context.

Irene Oldfather: I have a brief follow-up question, to try to get a ballpark figure and an idea of how the Commission is embracing this changing agenda. What percentage of legislation would be regulations rather than directives nowadays in comparison to 10 or 20 years ago?

Jonathon Stoodley: We would have to check our information. At the moment, there are around 9,000 regulations and coming up to 2,000 directives in force. However, that is a misleading picture, in a sense, as many of those regulations concern market finance in the field of the common agricultural policy. We would have to take out a lot of those specific financial measures in order to get a clearer and better picture of the general harmonisation balance between regulations and directives.

Directives are still very much the main instrument for general harmonisation, but the Commission is reviewing more actively its policy on simplifying existing legislation and producing new measures. We only start the discussion, though. The discussion then has to be taken further in the legislative process, and the measures that we propose are sometimes changed. I will check, and we may be able to provide the committee with more information on the general position in recent years.

Alasdair Morgan: In January, the Commission presented an action plan that talked about reducing the burden of regulation by 25 per cent by 2012. Although I understand how you can measure the impact of regulations qualitatively—

saying that such and such a regulation is fairly burdensome while another one is not—setting a target of 25 per cent suggests that you are able to measure quantitatively the administrative burden of regulation on firms. How close are you to getting an agreed standard for measuring the burden of regulation?

Jonathon Stoodley: I am not so well informed on that aspect of the better regulation agenda, which my colleagues are dealing with. My understanding is that the Commission has developed a methodology that is based on the methodology that was initially identified in the Netherlands. That is the methodology that is applied now. However, the work is done in close collaboration between the Commission, independent consultants and member states, which give input on the basis of their own evaluations. Indeed, the programme is designed to deal with whole areas of law sector by sector, examining the extent to which administrative cost issues from the design of the European Community instrument, the national implementing measure or separate member state regulatory measures that exist independent of and alongside European Community measures. It is a comprehensive approach that takes into account all aspects of regulation in all sectors. Even in a sector such as motor vehicle type approval, we would consider taxation requirements, reporting requirements and other kinds of regulatory requirements and administrative costs that were imposed across the whole sector.

I do not think that there is a single approach that is fully accepted at the moment by all the member states, but the information that is collected includes an identification of the methodology that is used in bringing that information together. We also expect to be able to learn from experience in developing this initiative.

Alasdair Morgan: It sounds as though it will be quite complex to get any agreed measures used throughout the member states. Given that it will take time to do that and to work up an acceptable methodology, and that only then will you really be able to start cutting regulations and seeing whether you are getting near the 25 per cent target, how realistic is 2012 as a target date for that 25 per cent reduction?

Jonathon Stoodley: The work that is being done in that area is of a high priority, and significant resources are being devoted to it here. There is a strong push for it from several member states, including the United Kingdom. It is too early to say exactly to what extent we are going to achieve all our objectives by 2012, but we may be able to build on early experience to develop the work more quickly in the later stages. All that I can say is that there is a strong commitment within the Commission to that target and to listening to input from all quarters on where we should simplify and lighten the existing legislation. We will be quite dependent on the extent to which we receive useful input from other quarters, from those who are interested in the process.

Iain Smith: My question is on the same topic. One of the concerns regarding the transposition of EU legislation is the issue of gold plating by member states or regional Governments. In working to reduce the administrative burden by 25 per cent, how will the Commission ensure that that burden is not just added back in through gold plating by the member states?

Jonathon Stoodley: In areas in which the Commission is, essentially, withdrawing regulation at the EU level, the Commission has indicated that it does not expect member states to step in and regulate where the European Community has stepped out. That is one aspect of our policy.

When a regulation or Community directive is proposed in a particular area and is to be transposed in member states, the Commission's role is, essentially, to identify whether anything that is done in addition to what the Commission proposes in any way detracts from or negates the intended impact of the Community measure. That is our central function. Therefore, any gold plating that would substantially reduce the impact or effect of a directive could be attacked by the Commission through an infringement proceeding and in discussion with the member state concerned.

11:00

The issue of additional regulatory burden that would not detract substantially from the impact of the directive but would increase costs must be addressed primarily by member states through their actions, because the better regulation programme is not defined as being operated exclusively at Community level or as being run by the Commission—it is a collaborative effort to review regulation. When new measures are proposed, it is usual to introduce provisions for a report to be made on their functioning after the first two or three years of their operation. We would expect such reports to include input on whether the administrative burdens that were imposed by and experienced under the new measures were excessive or disproportionate from one member state to another. That would provide us with useful information on the basis of which to review and to consider revising aspects of the measures.

John Park: My question relates to best practice in three areas. Do you have any good examples of impact assessments that are carried out proactively at national level, by member states? I

am also interested in two areas of stakeholder engagement. The first is proactive engagement with stakeholders at national level, by member states. Secondly, can you name a directive that the Commission has taken forward recently that can be held up as a good example of how to engage with stakeholders in a timely, considered fashion?

Jonathon Stoodley: That is a difficult question for us to answer. It is not really our function to say whether the processes within a member state are apt for the context of that member state—that is a question of subsidiarity for the member state. There are certainly examples of situations in which stakeholders have been happier with the process as it was conducted in certain member states and have developed or tried to adapt procedures so that they better reflect examples of best practice. The Commission accepts that there can be substantial diversity in the way in which processes are organised and contacts take place, according to the federal or central structure of member states and the established means of dialogue with stakeholders. The instruments that member states use and the ways in which they are used vary enormously. We are not best placed to say what is best practice, except to set out fairly basic guidelines on transparency and availability of information, so that people can respond. Beyond that, the matter is best organised through immediate dialogue that takes place closest to the stakeholders involved.

John Park: When we were in Brussels, we were told that on the overall transposition process the UK compares quite favourably with other member states. Have you given consideration to how the devolved institutions work within the UK framework? How does the situation here compare with that in other similar countries in the EU?

Jonathon Stoodley: It is important and useful for correlation tables to be used and communicated to the Commission for all transposition exercises. Those tables, which identify the link between articles of a directive and the provisions that transpose those articles into national law, are useful for the public in understanding where to look for the precise consequences of a directive's application in the local legal system. They are useful for judges in interpreting Community law and for the Commission in ensuring that all the relevant provisions of a directive have been transposed.

Correlation tables provide a structure that helps the transposition authority to ensure that it has covered the necessary aspects of a directive. They also help to identify and make clear gold plating, because they identify what is strictly necessary to transpose a directive as opposed to what may be added for reasons that are possibly entirely legitimate but which are different from the obligations in a directive.

The UK has a well-established standard practice of using correlation tables, which make a major contribution to the understanding of the law and to wide availability of and access to the law. We refer to that in our communication and we confirm that we will continue to propose an article in each directive that requires the provision of a correlation table. However, we also suggest that further interinstitutional dialogue should take place between the Council of Ministers, the European Parliament, the Commission and member states on widening that practice, so that everyone can benefit from the resulting increased transparency and clarity in the legal system.

Irene Oldfather: The general perception among citizens and businesses in the European Union is that some member states can flout Community law and have few sanctions or penalties applied to them. Is that perception borne out in fact? How many cases a year does the Commission take to the Court of Justice? Of those cases, how many does the Commission successfully pursue to financial penalties or further action?

Jonathon Stoodley: I do not have the annual figures with me, but I can send the committee clerks the latest figures and those for previous years on the number of cases that reach the Court of Justice. As the recent communication confirms, 90 per cent of complaints and infringement proceedings that the Commission initiates are resolved before they reach the court. Agreement in one form or another is reached between member states and the Commission on by far the majority of issues and problems that arise in the application of Community law.

We are pursuing with member states between 4,000 and 4,500 officially registered issues that concern the application of Community law. From year to year, that figure varies—from 3,500 to 4,500 and sometimes up to 5,000. Those issues are constantly under review. We are in dialogue with different authorities on a number of additional issues, but those are the officially registered problems and issues that we are examining with member states.

We pursue quite a big volume of issues. No member state escapes. We have a significant number of active infringement proceedings across the board. They cover different sectors and the various member states.

Our annual reports contain a lot of information that confirms that we follow things up and indeed have to pursue many different issues that present themselves in different ways in different sectors of the different member states. To go into more detail on that, we would have to pick out and examine

more closely particular situations, but we certainly intend to use all the available information to pursue those cases to a satisfactory conclusion.

It is true that very few cases result in a financial penalty or sanction on a second judgment at the European Court of Justice. However, that is because most member states attach a very high priority to the court's first ruling that they have infringed Community law. After our follow up, they usually move quickly to correct any situation that the court has confirmed is an infringement. I will send the committee figures for the number of letters of formal notice that have been issued, second-step reasoned opinions that have been sent and cases that, under article 228 of the Treaty of Amsterdam, have entered the second phase of seeking the application of financial penalties.

Gil Paterson: Given the target of a 25 per cent reduction in administrative burdens, it sounds as if it is an extremely busy time for law officers. Scotland is unique in the European Union because it is the only devolved authority with its own legal system. You might have been asked this question before—to be honest, I will be surprised if you have not—but is the Commission taking the Scottish situation on board and treating it differently from other devolved Administrations?

Jonathon Stoodley: The Commission would not treat Scotland any differently from any other part of the European Union. Instead, we would consider the minimum harmonisation measures that would be required to achieve certain results. Once the Commission has developed initial ideas about the possible scope of a new legal instrument, it would receive input from the different parts of the EU to confirm whether, with their better and closer knowledge of the circumstances that pertain in their particular area, they have identified particular needs or have established different processes that are more adapted to achieving the objective in question in their area. It is important for the Commission to feed off such indications in designing legislation and to find out whether any further discussion is necessary during the legislative process. In order to take forward that process, we are—and, indeed, should be—dependent on input from particular regions to let us know about such issues and their importance to the region.

11:15

Gil Paterson: I am not suggesting that Scotland should be treated differently from any other part of the EU when it comes to how legislation impacts; my point relates to the Commission's consultation process. Scotland has its own separate legal system and when I was in Brussels, I got the feeling from all quarters that it is very much a lobbying situation, even for Scottish law, whereas Governments do not lobby per se. We in Scotland are in a situation in which we lobby lobbyists before we reach the people who make decisions. I am talking only about law. Given that such a lot of change will take place, will the Commission look at Scotland and its particular legal system and perhaps help us by treating us—in law, that is—almost as a member state?

Jonathon Stoodley: There is the formal situation and then there are the many forms of contact and lobbying that are used outside the formal situation.

As regards the formal situation, the European Commission has a formal responsibility under the treaties to work directly with the representative authorities of the member states, as those members states are defined in the treaties. Formally, that is the course that we must pursue but, of course, it is for each member state to determine how it makes its input to the formal processes of community decision taking.

As you say, outside the formal structure a wide variety of discussions take place on a more or less structured basis. Just speaking anecdotally, I am well aware of Scotland house and the active role that it plays over here in making useful input on, and showing an active interest in, a large range of issues. Again, that process is largely directed and organised by the body that is interested in exchanging information, gaining a better understanding and communicating better. In that sense, it is something that we respond to rather than something that we initiate.

Iain Smith: I have a follow-up to that point. You rightly state that, when it comes to transposition, the Commission's formal relationship is with the member states and that it is for the member states to deal with regional Governments that have legislative competence. Do you have examples of cases in which the Commission engages informally with regional Governments? In particular, do you have examples of good or bad practice, from which we in Scotland could learn as we try to improve our transposition processes?

Jonathon Stoodley: The Committee of the Regions provides a forum for formal input but, separately from that, scope exists for making contact and exchanging information. In my experience, it depends very much on the organisation or regional authority concerned and the extent of its interest in particular areas of legislation. It must establish standing contacts with the Commission, according to its interests in different areas. To my knowledge, it is very rare for the Commission to say no to a contact being made or to an occasion to engage informally in discussion or exchange views in a particular sector.

The process depends on a particular body identifying the issues that are of concern to it, making contact with the relevant department, directorate or unit and establishing a standing relationship and an understanding of a proportionate working method, given the body's interest. Apart from the formal framework, there is not one methodology to follow. Interested bodies identify the key issues and use the normal methods of following-up, understanding when the relevant deadlines are and ensuring that views are communicated and that sufficient discussion and exchange of views take place to ensure that messages are clearly understood.

Alex Neil: In monitoring transposition, how far down the governmental chain in the member states do you go? As Iain Smith said, each member state typically has a national state Government and some form of regional government and local government. Although you monitor the member states' intentions, do you actually look at the coalface, as it were, to see how well transposition takes place?

Jonathon Stoodley: Yes. The situation varies considerably from member state to member state. At the first and least formal stage of contact with member states, when we have received information and there is an issue that we would like to look into in the context of a particular piece of sectoral legislation, more often than not, we first make contact with a contact point in a member state, who is often a national expert who regularly attends one of the Commission's expert groups. Those groups, which exist for most areas of Community law, meet a few times a year to organise the management and application of legal measures, exchange views on how well those measures are working and develop reports on their functioning and guidelines.

Those people are our regular contacts in the member states. Probably inevitably, they come from central Administrations. However, how those individuals then proceed depends on the internal system. They often have dialogue with an official from an autonomous region, who will then provide an answer, which will be channelled back to us. As discussions develop, they might become more formal, in the context of infringement proceedings, but the member state will still organise its own process. Sometimes, national ministries are accompanied by officials from foreign ministries and sometimes officials from autonomous regions participate in teams of officials in which the national authority is also represented. On some occasions, less formal contact, such as dialogue or questions and answers, can take place directly between a Commission official and an official from an autonomous region. However, the member state authorities are almost always involved, co-ordinating whenever we are in dialogue during a formal step in infringement proceedings.

Alex Neil: I have two final questions on infringement. First, in the infringement process, do you rely primarily on complaints by member states against other member states, or do you identify infringements proactively? What is the main way in which infringements come to your notice?

Secondly, if you asked anyone in this country, they would say that most other European countries infringe much more often than we do. Is it not the case that a few countries, such as France, are serial offenders in terms of infringement? What is the Commission doing about serial offenders?

Jonathon Stoodley: I can send the committee our latest statistics, which confirm that about 60 per cent of the legal proceedings are initiated not just because of non-communication of a measure to transpose a directive on time, which is a rather automatic process, but because they concern what is identified in a complaint as a problem of conformity of national law—the law in the member state—with Community law, or bad application of the law. The complaints come from citizens in business—private sector persons—or non-governmental bodies and people involved in civil society, who are interested in environmental protection, the free movement of goods, government procurement, respect for procurement rules, and so on. Thirty per cent of cases are initiated by the Commission, out of its own work and investigations of its own initiative concerning the identification of problems that arise. In large part, we respond to indications that we receive from interested parties from the private sector and civil society concerning the correct application of Community law.

The performance of individual member states varies considerably. Even when a member state has the highest volume of infringement proceedings initiated at a particular time, a large number of those legal proceedings may concern issues of rather specific content and implications. A smaller number of far more important infringement proceedings may give rise to a much more difficult situation in a different member state. The position evolves over time.

Nevertheless, we keep statistics on the current situation in different member states, and we review all our infringement proceedings regularly to ensure as much coherence and consistency as possible in the way in which we deal with member states. We have procedures for collecting together cases that concern similar issues so that, if a member state comes to be considered a serial offender in a particular area, we can efficiently run a single infringement proceeding on the main issue involved, collecting together under that

proceeding as many examples as we have and requiring the member state to correct the situation in a way that has effect for all the examples of problems that we have collected before the infringement proceeding is closed. There are methods that we use to pursue in the most efficient way areas in which the biggest volume of problems occurs.

The Convener: Thank you for your helpful remarks, which will be useful to us in our inquiry. I suspend the meeting for five minutes to enable the technicians to dismantle the video equipment.

11:29

Meeting suspended.

11:35

On resuming—

Scottish Government European Union Priorities

The Convener: The second agenda item is correspondence from the Minister for Europe, External Affairs and Culture on the Government's EU priorities. Following receipt of the correspondence, we had the debate last week, which was helpful.

On 2 October, the committee agreed certain follow-up actions on the Government's EU priorities and objectives. In particular, the committee agreed that it would be helpful to have further clarification from the minister on the process by which the EU priorities and objectives will be developed, delivered and measured. Members have the response from the minister. Do you have any comments on it or the clerk's paper that accompanies it?

Alex Neil: We should accept the clerk's recommendations.

The Convener: Is everyone content with the clerk's recommendations?

Members *indicated agreement*.

Irene Oldfather: I am content with the clerk's recommendations, but I feel that there is an awful lot of civil service speak in the letter and that it does not answer some of the questions that we asked. For example, we asked about the mechanisms by which priorities and objectives will be measured. The key paragraph in the response says:

> "With regards to measuring the progress of the EU Priorities and … Objectives, the initial step is for the relevant policy official to keep monitoring the negotiations".

It then says that when the dossier is resolved it is resolved. That does not answer our questions or address what we meant. There are other examples of the letter not answering the questions that we asked. However, we understand that a European strategy is to be published shortly, so I am content to accept the clerk's recommendations and to await that strategy.

The Convener: The bullet points in paragraph 7 of the clerk's paper flag up other points that were not addressed. Will you take up those issues when you meet officials? Is that the main substance of what you are going to discuss?

Dr Jim Johnston (Clerk): Yes. The idea is that we will take forward Irene Oldfather's points and what is mentioned in paragraph 7 in discussion with Scottish Government officials.

The Convener: Are members content with that?

Members *indicated agreement*.

European Union Budget Review

11:38

The Convener: The third agenda item is the EU budget review. On 2 October, we considered a paper on the EU priorities and objectives, and of the six political objectives the committee agreed to focus its work on the reform treaty and the budget review. The clerk's paper provides an update on the latter. Do members have any comments on it before we agree the recommendations?

Irene Oldfather: Looking at the Commission's policy document, I think that the review is interesting, and it is welcome that the clerks have brought it to the committee's attention. For the first time in many years in Europe, there is an opportunity to consider the whole budget review process rather than just have an annual budgetary review. We can examine how we can better link resources to policy objectives, which is crucial for the committee.

The clerks are proceeding in the right way by asking the Government how it will tackle the issue, but I presume that the committee will continue to analyse how we could respond to the useful consultation paper.

The Convener: Writing to the minister is intended to be the first step in that process. Members have no more comments and are happy with the recommendation.

European Commission Legislative and Work Programme

11:40

The Convener: The final agenda item is the European Commission's legislative and work programme for 2008, which was published on 23 October. Members may recall that on 4 September, the committee agreed to consult subject committees and stakeholders annually on the programme, with a view to prioritising issues that could have a significant impact on Scotland.

To assist that consultation, the Parliament's European officer has helpfully provided an initial analysis of the programme at annex A to paper EU/S3/07/7/4, which gives an overview of the issues that are detailed in the programme. The principal criterion for including an issue in that annex is that it affects devolved matters or relates to the Scottish Government's EU priorities. The full programme is attached at annex B. Do members have comments?

Alex Neil: I agree entirely with the clerk's recommendations. The second recommendation is:

"To invite a representative from the Commission to attend a future meeting of the Committee".

Once we have the feedback from the subject committees, we may need to invite more than one Commission representative. For example, I am sure that the Rural Affairs and Environment Committee will be concerned about the common fisheries policy and reform of the common agricultural policy. Responding to those concerns might involve more than one Commission official, as I doubt whether one official could handle both those matters.

Given the responses that we might receive from the Economy, Energy and Tourism Committee and other committees, we should be a bit more flexible and say that we will invite Commission representatives as appropriate to attend a meeting. We might go the other way in some cases: if an issue were of burning concern, we and a representative of the relevant subject committee might meet the Commission. What the clerk drives at is absolutely correct, but perhaps our wording should be a bit more flexible and we should leave our options open on how best to proceed and who we want to talk to after we have had discussions.

John Park: I agree with that proposal. The document on European issues for the year ahead that shows where the Commission's priorities fit in with the Parliament's committee structure is really good and useful for us. Distributing that to stakeholders might be useful, if we are considering

inviting some of them to give evidence. Many stakeholders are now set up to engage with the Parliament's committees, and a wider analysis of how committee work dovetails with European work would be useful for them.

Iain Smith: Annex A is a particularly useful document. It is perhaps the best-laid-out version of the EU's legislative programme that I have seen. It will help us and subject committees.

My response to Alex Neil is that it is important that we do not hog the Commission. Some of the issues are extremely important, such as the fisheries and maritime stuff for the Rural Affairs and Environment Committee. I suspect that other committees will want to engage directly with the Commission and with Europe on some of the issues and not just operate through us.

Alex Neil: It would be useful for us to co-ordinate the approach among committees.

Iain Smith: We have a co-ordinating role but, at the end of the day, the development of the Scottish Parliament's views on issues is the responsibility of subject committees, not this committee. Subject committees must engage directly if they want clarity on the issues.

Gil Paterson: I agree.

Irene Oldfather: Annex A to our paper and annex 1 to the Commission's paper are both helpful. Annex A identifies by subject committee some issues, but other parts of the Commission's work programme that are not mentioned in our paper are very relevant to the work of the Parliament and of some parliamentary committees. I will highlight those issues.

First, page 17 of the Commission's paper refers to a Council recommendation on health care associated infections that is relevant to the health agenda in Scotland, but it is not mentioned in our paper. I do not want the Health and Sport Committee to receive the paper but miss that recommendation. Secondly, page 27 of the Commission's document mentions a new programme to protect children who use the internet and new media, which is relevant to the Parliament's work. Thirdly, I would quite like to see the research paper on sport in education. I read the documentation a wee while ago. I cannot find the reference to it, but it does exist. The paper considers the importance of sport in the primary sector to prevent obesity and so on, and compares the situation in different member states. I am interested in seeing the paper, which is relevant to the Health and Sport Committee.

Alex Neil: Why do we not point out the relevant issues in the Commission's paper in the cover note that we send to other committees?

The Convener: We can send other committees annex A and add what Irene Oldfather has helpfully mentioned. If anybody else spots anything, I have no doubt that it can be passed on to the committees.

Members are basically happy with the recommendations. On John Park's point, the information will be made available to stakeholders. As for Alex Neil's point, the clerk's thinking was that someone from the Commission should give an overview, but a further level of questioning is possible—whether that would involve us or the subject committees could be resolved as appropriate. With those provisos, members are happy with the clerk's paper.

I thank members for their attendance.

Meeting closed at 11:46.

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