

# **EUROPEAN COMMITTEE**

Tuesday 14 September 1999  
(*Afternoon*)

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## EUROPEAN COMMITTEE

### 4th Meeting

#### CONVENER

\*Hugh Henry (Paisley South) (Lab)

#### COMMITTEE MEMBERS:

Dennis Canavan (Falkirk West)

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

Dr Winnie Ewing (Highlands and Islands) (SNP)

\*Dr Sylvia Jackson (Stirling) (Lab)

\*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)

\*Ms Margo MacDonald (Lothians) (SNP)

\*Maureen Macmillan (Highlands and Islands) (Lab)

\*David Mundell (South of Scotland) (Con)

\*Ms Irene Oldfather (Cunninghame South) (Lab)

Tavish Scott (Shetland) (LD)

\*Ben Wallace (North-East Scotland) (Con)

\*Allan Wilson (Cunninghame North) (Lab)

\*attended

#### PRESENTATION:

Dermot Scott (European Parliament)

Elizabeth Holt (European Commission)

#### COMMITTEE CLERK:

Stephen Imrie

#### SENIOR ASSISTANT CLERK:

Eugene Windsor

#### ASSISTANT CLERK:

David Simpson



## Scottish Parliament

### European Committee

*Tuesday 14 September 1999*

*(Afternoon)*

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

**The Convener (Hugh Henry):** Good afternoon, ladies and gentlemen. I have apologies from Tavish Scott.

### Treaty of Amsterdam

**The Convener:** The first item on our agenda is a discussion on the treaty of Amsterdam and its implications for Scotland. I welcome Dermot Scott from the European Parliament and Elizabeth Holt from the European Commission to the committee. Before I ask them to take us through the presentation on the treaty of Amsterdam—that is after Mr Wilson has stopped giving us a tune on his mobile phone.

**Allan Wilson (Cunninghame North) (Lab):** Sorry.

**The Convener:** I should say that they are here in an informal capacity. They are not here to answer questions about the new Commission or anything else that might be going on.

**Dermot Scott (European Parliament):** Convener, ladies and gentlemen, thank you for your invitation. Liz Holt and I are delighted to respond to your invitation for an informal briefing on the Amsterdam treaty. I tried to think of something amusing to say about the Amsterdam treaty but have not yet found it. The treaty is a bit like the book of Deuteronomy: we all know that it is there; very few people have read it from end to end; some bits of it are probably controversial nowadays; and few people are expert on it.

Committee members have already received a lengthy document on the Amsterdam treaty prepared by Sue Morris of the Scottish Parliament Information Centre. We will not be revisiting the treaty at such length, but will instead give a useful overview of its contents. Several committee members—such as yourself, convener—have experience and are knowledgeable in this area. Liz Holt and I will split the presentation between us: I will set the scene and Liz will outline the treaty's content.

In the mid-1980s, Europe was gripped by economic stagnation; the US and Japan were creating jobs while Europe was losing them. Since the oil crises of 1973 and 1979, Europe had been

retreating into protectionism. Although tariff barriers had been removed, non-tariff barriers were being erected.

There were strategic uncertainties at the highest level of the European Union due to various geopolitical factors, such as the rapid changeover of American presidents and their points of view on international politics; the invasion of Afghanistan; the crisis in Iran; the twin-track NATO deployment in Europe and the reaction of various European countries to that; and the star wars initiative.

Such uncertainties led to the completion of the single market and the removal of non-tariff barriers that were now separating the European market into national markets. It was hoped that such measures would allow Europe to compete effectively with the large US and Japanese markets. However, 300 trade barriers that were covered by 300 directives had first to be removed. It was necessary to introduce voting to get the directives through the Council of Ministers, because the organisation had been stuck for years on the need for unanimity. A system called qualified majority voting is used to achieve agreement in the council on issues on which there is no unanimity and means that such issues can be agreed if there is a majority of about 71 per cent.

However, qualified majority voting also means that the national Parliament's influence over each member state's minister in the Council of Ministers is reduced. The national Parliament has no real sanction, because, although the minister might have argued the Government's point of view in the council deliberations, he may have been outvoted. More voting means more democratic control at a European level through the European Parliament, which is what happened in the Single European Act of 1985. Because of strategic uncertainties, there was a small advance in the area of European political co-operation. Such co-operation had been going on informally since 1970, but it was now formalised within the treaty framework under the heading of common foreign and security policy.

That situation lasted from 1985 to 1992, when the Maastricht treaty on European union was agreed. The treaty followed up the single act's largely successful idea of creating a single market by 1992 by suggesting the creation of a single currency. The proposal was well prepared by a committee of top-level central bankers which was chaired by Mr Delors and which reported in 1988 or 1989. Although the parameters for a single currency were laid down in the Maastricht treaty, the idea had been well researched in the Werner report in the early 1970s, through the snake mechanism and other attempts to co-ordinate the European monetary system and in the Delors

report.

However, while they were considering setting up an intergovernmental conference to bring about the single market, a political event upset the apple cart—the collapse of the Soviet Union. In May 1990, it was decided that there would not be one intergovernmental conference to reform the treaties to allow for the single currency, there would be two, with the other dealing with political co-operation and how to react to the collapse of the Soviet Union. The result was the introduction of economic and monetary union in the Maastricht treaty and advances in the common foreign and security policy. Those are the two pillars of the Maastricht treaty. I will come to the third one soon. The first pillar is the old treaties that go back to the 1950s and the second pillar is the structure that deals with common foreign and security policy.

Within the first pillar, we get more qualified majority voting, because the Single European Act was seen to have been a success and the powers that were given to the European Parliament were also seen to have been successful. They had not caused, as some people had expected, a great delay in the legislative process. Therefore, in 1992 the Parliament was rewarded with co-decision, the equal right with the council to take decisions on a limited number of areas—15 areas were agreed in the Maastricht treaty. That changed the balance between the council and Parliament. The council knows that the Parliament may vote something down, so it behaves differently in the bargaining process. A lot of interesting work has been produced on that matter.

The third pillar established by the Maastricht treaty is co-operation—which had again been going on informally—on matters such as visas, police and judicial co-operation and immigration. Co-operation in those matters is pillar 3. The difference is that in pillar 1 the community method is used: only the Commission can make a proposal and the council and the Parliament have defined powers in making the legislation. In pillars 2 and 3, it is more or less purely inter-governmental. The Commission may be associated with the work of common foreign and security policy and justice and home affairs, and the European Parliament may be consulted, but it does not have the role that it does in pillar 1. That is an important distinction to remember.

The important point about Maastricht is that they came to agreement at 3 o'clock in the morning on 16 December 1992, when they were dead tired and they signed on the bottom line. They could not agree on some issues. They could not agree on extending qualified majority voting further on the extent to which the European Parliament should be given co-decision rights or on how far to go on reforming common foreign and security policy.

They knew that events were dynamic in central and eastern Europe, so they would need to come back and review this in a few years time. They knew that the Western European Union treaty was expiring in 1998. There was disagreement on whether new areas, such as tourism, should be brought into the treaty. Therefore, they said, "We will sign now and come back in 1996 to consider those matters again."

**Elizabeth Holt (European Commission):** Now we get to the Amsterdam treaty, five years on from Maastricht, when the member states revised the Treaty on European Union. They tried to progress on the existing treaty by revising it. The trick of understanding the Amsterdam treaty is not to try to understand everything about it, because it is a huge, sprawling, complex—almost organic—symbol of how Europe is developing. Certain key areas represent the important parts of the treaty. Dermot and I will go through the four main areas today.

14:15

What is the scope of the Amsterdam treaty? Central to the treaty is the idea that the European Union should have the interests of the people of Europe at heart. The difficulties experienced by certain member states, particularly Denmark, but also France, the United Kingdom and others, in ratifying the Maastricht treaty—the delays and the evident reluctance to move too fast—quickly concentrated the minds of Europe's political leaders on a single conclusion: that the European Union must be made more accountable and relevant to ordinary people than it had been hitherto.

The Amsterdam treaty is, therefore, very much about the people of Europe and their most immediate concerns: their jobs, their way of life and their rights as individual citizens. We will show how the Amsterdam treaty puts the fight against unemployment at the top of the European agenda, how it seeks to extend the rights of individuals in the member states, and how it reinforces—clarifies absolutely—the principle that European Union decisions should always be made at the lowest appropriate level, so that things are done that make the actions of the European Union more open, more accessible and better understood.

The second major issue dealt with by the Amsterdam treaty is the building of a safer and more just EU, in which, as is right in a union, there are no internal frontiers. Dermot will handle that issue. He will talk about how the Amsterdam treaty is intended to make the European Union a place in which its citizens can move around more freely than ever before, but at the same time a place that is secure and where the power of law and order is assured, despite the openness and freedom.

The treaty brings significant parts of the so-called third pillar, which Dermot has already mentioned—justice and home affairs—under the Community umbrella. The importance of that should not be underestimated. It is clear that for European Union citizens the things that count are security, effective Community action and networking and co-operation among Europe's police forces.

In the early years of the Common Market, the right to live and work in other European Union member states was limited to those in paid employment, but since 1993 any European who wants to can exercise that right: students, the self-employed, tourists, pensioners, and so on. In practice, however, it is true that we have not yet achieved full freedom of movement for people. That is partly because member states are reluctant to give up passport checks at their borders until they can be sure that there are common standards on immigration and asylum seekers and that effective controls on international criminals are in place at the external borders of the European Union. The EU island nations—Ireland and the UK—are particularly sensitive about that.

The third big issue in the treaty of Amsterdam is the idea of a stronger Europe in the world. We will briefly examine the way in which the Amsterdam treaty attempts to carve out a stronger, but appropriate, world role for the European Union by moving towards an effective and coherent external policy. As Dermot has already suggested, foreign policy is one of the most delicate areas for the European Union and one in which activity is essentially intergovernmental.

Kosovo, the Union's most public post-Maastricht foray into foreign policy, was widely considered to have been a failure. In spite of the good work done since, it was difficult to shake off the feeling that the European Union's foreign policy provision did not fit Europe's circumstances at the end of the 20<sup>th</sup> century. A careful balance has to be struck between the development of common EU action on security and defence and respect for national traditions of neutrality.

The fourth area that we want to talk about today is a wider European Union—the idea of enlarging the European Union to include new members. However, it must remain a Europe that works and can function. The sort of structures that were put in place were ideal for a group of six member states, but not, arguably, for 15, and certainly not for 20 or more. We want to talk about how the treaty has addressed the way in which the European Union is moving towards taking in new member states while embarking on the reform of its own institutions to keep them effective and democratic.

I have elected to talk about social policy as that

is my main background in the Commission. For 18 years, I have been an official working in the Directorate-General V, Employment, Industrial Relations and Social Affairs, in Brussels. I have worked as a desk officer and as an individual official on a wide range of social policies, so it is appropriate that I talk about them. Arguably, employment and social affairs are the best thing about the treaty of Amsterdam. They are the area in which there was greatest progress in the negotiations, and that is perhaps the part of the treaty of which many people in Brussels are most proud. They feel that they did well in the treaty of Amsterdam.

Employment is obviously a central issue in anyone's thinking, and the treaty of Amsterdam introduced a new employment chapter that has put employment and job creation at the heart of the process of European integration. It is perhaps the single most positive outcome of the treaty and has been steadily built on since 1997, when the treaty was agreed between the member states. European leaders have recognised that stability and growth policies—the economic progress made by the European Union—had to be matched by a stronger commitment to employment at a European level.

The treaty made employment a matter of common European concern. In other words, solving European labour market problems would not be done by individual European Union member states, but by member states co-operating to address those problems—at the European and the national level—in a co-ordinated way. That important provision has been the mechanism that has, since 1997, seen the development of what is called the European employment strategy. It came into effect immediately, at the explicit wish of member state governments. In other words, the Commission did not have to wait until the ratification of the treaty in all the member states to begin working on the strategy. Member states agreed that we could begin to pull it together straight away.

The strategy has proved extremely effective; it is already producing results. It is based on common commitments and targets, not unlike those that have been so successful in European monetary union. We hope that, when applied to the job market, those common commitments and targets will lead to better employment performance, greater emphasis on employability, the building of a stronger spirit of entrepreneurship in European economies, much greater adaptability for both workers and firms in the labour market, and a considerable emphasis on equal opportunities between men and women.

An enormous amount has been achieved since 1997. The European employment strategy is now

in its third year, and has been publicly endorsed by the G7 summit in its scrutiny of the direction of the European economy. A few days ago, the Commission officially proposed its new guidelines for member state employment policy for 2000. For the first time under the new employment strategy, it has proposed to the Council of Ministers ways in which individual member states can improve their labour market performance. Peer review is an important part of the employment strategy.

The treaty of Amsterdam also gave the European Union something very important in terms of wider social policy: a single legal framework for agreeing social policy. In other words, Amsterdam integrated what is known as the social chapter into the body of the Treaty on European Union and ended the UK opt-out.

I was working in Brussels on social policy during the 1990s and it was not easy to deal with the European Union, with 14 member states implementing some European social policies and 15 member states implementing certain others. There was a fragmented approach to social policy, which did not make a lot of sense. Although member states all have their own approach, they also have an enormous amount in common in how they deal with social policy. The achievement of the treaty of Amsterdam is therefore important; European social policy making is now done by all the 15 member states, and that can only be a good thing.

One result of that change, and it is something that is considered especially important in the Commission, has been to bring the so-called social partners—the employers and trade unions—on board as major players in social policy making at European level.

The treaty contains a provision on people's fundamental rights and an article on anti-discrimination. Article 13 of the Amsterdam treaty gives the European Union the capacity to lead the fight in member states against any form of discrimination, defined in broad terms, whether on the basis of sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

The treaty emphasises gender equality and the achievement of real equality between women and men—something for which a great deal of work has been done at European level for many years, but where final success still eludes us. Article 2 of the treaty of Amsterdam now makes equality of opportunity between men and women one of the main objectives of the European Union.

**Dermot Scott:** The second area for discussion is freedom, justice and security—the third pillar of the Maastricht treaty. There are two contrary tendencies in this area. There is a desire to improve freedom of movement for the citizens of

Europe—as a personal right and as a means of assisting in the breakdown of barriers to trade, industry and economic development; there is also an unwillingness to let that happen if it will lead to more cross-border crime. Internationalising crime flies in the face of the logic of such treaties.

All member states except Britain, Ireland and Denmark agreed to the freedom of movement across borders provided for by the Schengen agreement—Schengen is the name of the village in Luxembourg where the agreement took place. The agreement was made outside the Treaty on European Union. The Amsterdam treaty brings it in so that it is now incorporated in the treaty.

To allow for the fact that Britain has a different view, however, one must allow for flexibility. How does one do that? In the treaty of Amsterdam, the circle has been squared by setting out precise instructions about how certain countries may go ahead, under what conditions they may do so and whether other member states can stop them.

Because the detail has been laid out in the Amsterdam treaty, there is permission to invoke the Schengen agreement for some, but not all, countries. There are detailed provisions that allow Ireland, in particular, to rejoin if it wishes.

Denmark is in a curious half-in, half-out situation. It complies with the agreement, but under title 6 of the treaty of Maastricht rather than under title 3 of the treaty of Amsterdam. As usual, it is a very complex procedure.

14:30

Visa policy, residence permits and asylum procedures are now included in the text of the European Community treaty. They have been brought into the treaty structure and in five years' time a decision can be made to move to majority voting on them.

There are also rules for civil-judicial co-operation as part of that title. That should mean that visa policy, residence permits and asylum procedures are now subject to Community rule, and possibly, in five years, to majority voting. Rules on civil-judicial co-operation are not yet subject to Community rules.

As is elaborated in the treaty, decisions made to improve the European police office for better information exchange are the counterpoint to the freedom of movement. In other words, if there is to be freedom of movement, the police in different countries must have freedom to enjoy effective exchange of information. Europol is not yet a federal bureau of investigation for the European Union. It is a mechanism whereby national police forces co-operate. It is an information exchange.

In criminal matters, police remain inter-



governmental. The fights against terrorism, organised crime, crimes against children, drugs, fraud and corruption also remain inter-governmental. Governments co-operate in those areas, although those areas are not communitised.

**Elizabeth Holt:** The treaty has been used to bring greater effectiveness and coherence to the European Union's external policy. The strategy that lies behind the treaty of Amsterdam is two-pronged. The treaty extends the scope of the EU's common commercial policy to promote its worldwide economic interests. The second part of the strategy is a reform of the EU approach to a common foreign and security policy.

From the outset, the EC has always defended the commercial interests of member states. However, international trade in the 1990s is very different from what it was in the 1960s, when it involved mainly agriculture and manufacturing. Invisibles now account for most of the wealth of the EU, which is why the Amsterdam treaty has extended the competence of the common commercial policy to the key areas of intellectual property and services.

That there should be such an extension of the common commercial policy is underlined by the fact that 92 per cent of the union's gross domestic product comes from trade between member states. External trade makes up only a relatively small proportion of Europe's wealth. Europe has become a single economic entity.

We still have a few things to cover, and I would like to look briefly at foreign policy. Progress has been necessarily limited. The need for caution and to take incremental steps is obvious. We are, in effect, moving towards a common foreign policy and strategy, but we are still far from it. The Amsterdam treaty amounts to a set of innovative principles, but not a great deal more.

The common foreign and security policy is grounded in the principle of territorial integrity of member states. Great care has been taken to ensure that it is in explicit conformity with the principles of the United Nations charter. However, it expects member states to increase the amount of co-operation and to develop, where possible, new forms of political solidarity.

The union is now empowered to carry out humanitarian aid and peacekeeping tasks, which are known as Petersburg tasks. One very positive move is that even the union's traditionally neutral member states—Austria, Finland, Sweden and Ireland—have agreed to contribute to humanitarian and peacekeeping missions. It is felt that their neutral status is not in any way threatened or questioned, which is obviously very important.

The treaty has also brought in some innovative decision-making methods, allowing for the working out of common strategies, general guidelines, joint actions and common positions to be decided by the European Council. I think that you can feel the caution that underlines this whole area of policy, but those methods can be put into effect by a qualified majority of the Council, to ensure the flexibility that is essential to any foreign policy operation. Also worth noting is the constructive abstention clause, which allows one or more member state to abstain on certain decisions without preventing the other member states from acting. The most important decisions, however, are put to the Council for a unanimous vote.

The new approach has been given further prominence by the creation of a high representative for common, foreign and security policy. The French initials for that are PESC: Mr PESC is a lot easier than Mr CFSP. When people are talking in French, they often refer to the new high representative as Mr PESC, but that is a bit too close to Mr Pesky in my estimation. You will all be aware that the representative is Javier Solana, the former secretary general of NATO. That really puts a face and a name on developing European Union foreign policy.

A policy planning and early warning unit has also been established, to help the union's member states identify and anticipate crises. That is important if we consider the events of the past few years.

There are certain basic things that must be emphasised. No European defence or military policy has been adopted as part of the Amsterdam treaty. There is no provision for a European army and no provision for European military service. We are nowhere near any of that, because of the treaty. What the treaty does is take the European Union towards the progressive creation of a common defence policy that covers humanitarian and rescue tasks, peacekeeping and the use of combat forces in crisis management, while leaving NATO as the major player in European defence.

**Dermot Scott:** Finally, there are institutional questions. In brief, they are: improved access for the citizen, which underlies the whole strategy of the Amsterdam treaty in its efforts—after the bad experience of Maastricht, and for other reasons—to make things more citizen-friendly; fundamental rights, which are written into the treaty for the first time; access to documents, which is now a legal right, also written in for the first time; and other things such as the rights of consumers to health and safety.

The power of the European Parliament is slightly increased over that of the Commission in so far as it now has the right to vote in the president of the Commission—as happened with Mr Prodi—in

addition to its right to vote for the investiture of the whole Commission, which is scheduled for tomorrow.

The number of areas in which the European Parliament has co-decision rights has increased from 15 to 38, so we not only have agreement to the principle of the issue, which was important, but it has been greatly expanded. Such an increase would normally go hand in hand with an increase in the application of qualified majority voting in the Council but curiously, for reasons to do with the German Government, Mr Kohl was not able to countenance that at the last moment, so it did not go through.

There was a failure to face up to the institutional dynamics of the necessities of enlargement, which have in effect been postponed for another day. There was no agreement on reforming the voting strengths on the Council of Ministers to reflect the fact that, in the event of a considerable enlargement of the union, the large countries could be outvoted by a large number of small countries, which would have a much smaller population.

The decisions on the size of the Commission were sketched out but not decided and it was clear that a further intergovernmental conference was required. That has now been agreed and the conference will open next year. Those, in brief, are the institutional questions that are raised by the treaty of Amsterdam.

I have put up a slide on impact. Members will be pleased to know that it is the penultimate slide; the last one shows three or four subjects for the next intergovernmental conference. Liz has discussed the increased rights for the citizen and the great strides that are being made on the employment package. The European Parliament welcomed both those areas but was very disappointed by the progress on the common foreign and security policy, particularly in view of the situation that is evolving in Europe and elsewhere. It was also disappointed that the preparation for enlargement had been postponed and will have to be returned to next year.

I will move on to the last slide. An intergovernmental conference will open next year; it will probably be declared open at the Helsinki summit in December. The Finns are very keen on it. The conference will have to face institutional challenges. We wonder whether it will generalise qualified majority voting or extend it somewhat in view of the fact that we may have enlargement. It will consider whether there is any movement on the great questions of security and defence. Given the present crisis in Europe, the conference will also consider whether we need a refinement of the way in which the union deals with the third-pillar issues—population movement, immigration,

refugees and visas—and whether more such issues will move into the decision-making structure of the main treaty.

**The Convener:** Thank you very much for that comprehensive overview of a major and significant treaty. You covered many different aspects and, although it is difficult to cover everything in such a short time, you have given us a good grasp. Does anyone have questions and comments?

**Ms Irene Oldfather (Cunninghame South) (Lab):** I echo the convener's welcome for that comprehensive presentation.

There are major challenges ahead for Europe, first in relation to the common foreign and security policy, which will have to be addressed, and, secondly, on the structural and institutional questions that will arise as a result of enlargement. Considering enlargement as an opportunity as well as a threat will also be a challenge. As well as the changes in structural funding that will be required as a result of enlargement, there are 100 million consumers out there and there is much work that we could do to try to gear Scotland up to grasp that market as an opportunity.

We have had the opening up and liberalisation of markets, but social change has been a bit slower. We still have some way to go on that front. That is disappointing and I hope that there will be some movement on it during the next few years.

**Allan Wilson:** In the presentation, you talked about the dichotomy at the heart of the treaty: promoting greater freedom of movement while responding to a popular demand to combat crime internationally. You mentioned the Schengen agreement and the fact that a pan-European police force modelled on the Federal Bureau of Investigation had not been agreed on. It was not clear to me whether that could subsequently—perhaps five years down the line—be subject to a qualified majority vote, as will visa policy, residence permits and asylum procedures. Will the subject be revisited?

14:45

**Dermot Scott:** I am sure that it will be revisited next year in the light of the experience with Europol. However, it is early days for Europol, which is just getting going. The treaty of Amsterdam allows for a certain amount of executive work by Europol officers, but Europol is not a free-standing police service. It is mainly a co-operative venture. Policemen and women are assigned from national police forces to co-operate and share information in The Hague. I would be happy to look at the definitions in the treaty afterwards, but I do not want to do that now.

**Ms Margo MacDonald (Lothians) (SNP):** I am

interested in the underlying philosophy of enlargement and the possible stand-off between enlargement and deeper democratisation of the institutions of the EU. Liz and Dermot touched on big countries' rights. Coming from a small country, which I hope in the not too distant future will have the same legal and political rights as others around the European table, I am not altogether thrilled with anything that will protect the rights of the big countries. I am much more concerned about the smaller and peripheral countries.

My theory is that unless the national differences in an enlarged EU are recognised, the smaller and peripheral countries are unlikely to co-operate in the sort of social development that Irene wants. There is a great danger that the arrogance of the big states will cause the EU to implode. I would be interested to hear your comments on that.

**Elizabeth Holt:** There are differences of opinion among large and small member states about the sort of union that we should have. That is partly driven by an economic rationale, but also by several other things. The lack of agreement last time showed just how powerful small member states are in holding up the larger ones. There is much greater equality than there appears to be from the outside.

It is in everyone's interests for enlargement to succeed. I say that with the caveat that it is essential that enlargement is not used to dilute the democratic achievement of the European Union and the conditions that prevail in member states.

Any new country will be required to come up to the European Union's level, rather than the European Union making concessions. One of the reasons enlargement is taking such a long time is that it takes member states time to prepare. Behind the current process of negotiations is a huge and elaborate process of development—not just political, but economic and social. I have never found the small countries in the European Union shy about protecting their interests and I do not expect it to be any different next year.

**Dermot Scott:** I have worked in a small member state for the past 20 years and I have watched Ireland approach the negotiations for the Single European Act, the Maastricht treaty and the Amsterdam treaty. The bottom line for the Irish Government has always been to hold on to the Commissioner. If there is a marginal variation in the strengths of voting in the Council, Ireland may have reservations about it, but it is not the bottom line.

During the reflection group and the intergovernmental conference, the perceived threat was the body of opinion among member states that 20 Commissioners is too many, there is the risk of going to 25 or 30, so why not go back to

a smaller number such as 10 or five? In other words, there was a move to break the link between a member state and a Commissioner and to choose 10 people from throughout Europe on their merit. The small member states were suspicious of that and wanted to hold on to their Commissioners. That was the principal issue.

**Ms MacDonald:** What about the trade-off on qualified majority voting? That can often mean a big difference to a small state.

**Dermot Scott:** Ireland's view was that qualified majority voting was in general beneficial except in certain areas where it had objections. Everyone had objections to certain areas so we ended up not going with it at all. Everyone is in favour of extended qualified majority voting in all the areas that do not matter to them.

**Ms MacDonald:** I want it for the areas that matter.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** I am interested in the fact that 92 per cent of the European Community's gross domestic product comes from within its own boundaries and the difficulties that that may lead to in the longer term. It might isolate the European Community from the vagrancies of world market fluctuations and create more stability. Does helping the Russians and Brazilians to restructure their economies really assist the Community? Obviously conflicts can arise from the impact of various trade wars with the US—for example the banana wars that happened over cashmere and which were discussed through the World Trade Organisation—and those may begin to grow. I worry that not being able to expand and enlarge further will create greater difficulties for our influence, not just the EC's influence but Scotland's influence, in other parts of the world economy. Maybe that is a bit rambling but I think I know what I mean.

**Elizabeth Holt:** The fact that the European economy is as self-sufficient as it is is not anything other than a strength. We are considering 92 per cent of an extraordinarily rich block. It means that the European Union is not dependent on other parts of the world for the success of its society and economy. It is not a zero-sum gain. Only 8 per cent of the European economy is trade with the rest of the world, but that may change. What we have is really the creation of a single European economy. We do not yet have a single currency—we are moving towards that—but the European economy is undoubtedly a strength not a weakness.

**Bruce Crawford:** I agree that it is an internal strength; it might help us in terms of how we operate within the European Community. I wonder about the impact that it has on other world players

outwith the European Community. In the longer term, barriers might build up between Europe and the rest of the world and lead to trade barriers that can spin off into other types of conflicts.

**Elizabeth Holt:** People would not want to erect too many of those barriers. I do not link the tremendous self-sufficiency of the European economy with barriers to the rest of the world.

**Dermot Scott:** The next World Trade Organisation round will decrease barriers. There will be intense pressure on Europe to decrease even its agriculture barriers. The trend is entirely in the direction of decreasing barriers.

If Europe is a strong and integrated player it will be better able to help to regulate, and create balance in, the world economy. It has been the big countries such as the United States that have been able to rescue Mexico and Brazil; if the EU becomes a player of that sort, it may be able to help to regulate the world economy in such a way. That should not be confused with the idea of the EU being fortress Europe, as that idea is dead in the brains of most of the people who make the decisions.

**Ben Wallace (North-East Scotland) (Con):** Thank you very much for the presentation. You talked about the rights of EU citizens. What about the rights of citizens in areas that are not covered by EU treaty, such as defence? You talked about the equality of men and women in the EU, but I know of a number of cases in which women are in court on defence matters because their rights do not seem to be protected as defence is not under EU judicial control. Are there moves towards overlapping, even though defence does not come into that realm?

**Dermot Scott:** Defence matters have always been left out of EU treaties. If those people have a case in the courts, it will be based on the European convention on human rights and on the Council of Europe rather than on anything to do with the European Community legal system.

**Ben Wallace:** So, effectively, the rights of EU citizens apply only within the bounds of the EU treaties?

**Dermot Scott:** Yes, except that the Amsterdam treaty brings the European convention on human rights into the text of a treaty for the first time.

**Ben Wallace:** Why does the EU feel that it needs to develop a common defence policy?

**Dermot Scott:** The EU does not yet say that. The treaty says that it may progressively lead to the development of a common defence policy. There are various stages: we now have a common foreign and security policy, which may lead in time to a common defence policy, which may lead to a common defence. The treaty leaves doors open.

The neutrals have opposed movement because they do not want to be drawn into a mutual defence guarantee, and the NATO enthusiasts have opposed movement because they do not want NATO watered down or rivalled by anything European. Those two tendencies have been sufficient to brake the process. It will be interesting to see at next year's inter-governmental conference whether both sides have moderated their convictions, as there is movement in the neutral countries.

**The Convener:** I will draw that part of the discussion to a close, as I am aware of the time.

You talked about decision making being brought closer to the average citizen and about decisions being made at the lowest possible level. In the papers that accompany your presentation you talk about a safer, more just European Union, about employment, and about the rights of the citizen. Given our relationship with Europe—as members of the European Committee of a Scottish Parliament that is still part of the UK—what are the most significant implications of the Amsterdam treaty for this Parliament and for the work of this committee over the next couple of years?

**Elizabeth Holt:** The most obvious implication is in the area of structural policy and funds and in the implementation of the new package. For all the fine words that can be said about employment and job creation and so on, jobs are created at local level. An important role for the committee will be to participate in the success of those programmes.

15:00

**Dermot Scott:** It occurs to me that the major significance of the Amsterdam treaty is not for the people of Scotland, but for the people of Europe. Europe is now more citizen-friendly. The European Union is increasingly concerned with issues such as unemployment; it is giving citizens more rights and is involved in difficult matters such as immigration, refugees and visas. The EU is concerned that it has failed to do things properly in Kosovo and would like to do things better. It is considering how to move forward in those areas.

It would be of great benefit if the committee and the Parliament could communicate all that to the people of Scotland. The Amsterdam treaty will be of assistance in achieving a European Union that is more up to date and more user-friendly than before. Although the treaty is not specific to Scotland, it can be used in the Scottish environment.

**The Convener:** Does anyone else want to comment on that?

**Dr Sylvia Jackson (Stirling) (Lab):** I want to follow on from Elizabeth Holt's comments. I refer

to the section on creating jobs in the yellow leaflet, "10 Points about the Treaty on European Union", which talks about building on best practice for job creation and about pilot projects. Is that initiative still in the pipeline, or has it started? Which monitoring procedures will be involved?

**Elizabeth Holt:** Essentially, the yellow leaflet talks about the new provisions on employment laid down by the treaty of Amsterdam. As I suggested, in only two years, an enormous amount has been done in that area. In terms of exchanging best practice, each year, member states have submitted national action plans that have been scrutinised by the Commission, which reports to the European Council. All the member states have been able to examine the labour market policies of the others and to say where they are right or wrong. There has been substantial development from a low-key beginning. Although it began as a pilot project, it is now part of a mainstream European activity in support of employment.

**Dr Jackson:** I wondered whether there had been research in order to identify good models. Which key issues arose from that?

**Elizabeth Holt:** I do not think that there is one model that everyone should follow.

**Dr Jackson:** No, I just want to know where we can find out more about that, to get an overall picture.

**Elizabeth Holt:** I can give you a lot more information on the development of employment policy, but we are talking about large documents. I should be happy to talk to you about European employment, bilaterally.

**The Convener:** We are running out of time. Cathy has not yet asked a question and I want to draw the matter to a close.

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** I am interested in equal opportunities and improving social rights. Will you outline the positive action opportunities to redress some of the gender imbalances, particularly in employment?

**Elizabeth Holt:** Year on year, the member states agree certain priorities for their labour market policies. One of the four priorities on which they agree is equal opportunities for men and women. In the past, that influenced matters such as European social fund regulations, but it is now an absolute priority for labour market policy. When, at each December European Council, the direction and performance of the European employment strategy is assessed, specific attention is paid to the pay gap between men and women and to whether women are moving into the kind of jobs from which they were previously excluded. That has a great deal to do with the

labour market, but is also connected with other areas of women's rights such as sexual harassment.

Equality of opportunity for men and women was written into the Treaty of Rome, right at the beginning. It has always been a principle of the European Community. For a while member states did not do very much to realise it, but that has changed. The issue has now moved to the forefront of European Union activity, if only because it has now been recognised that equality between men and women is not simply a matter of social justice, but makes 100 per cent economic and business sense. Equality is necessary for a successful European economy. That is why it is now an important issue.

**The Convener:** Thank you. That was interesting and helpful. Dermot and Liz are both based in Edinburgh, and I am sure that they will be more than happy to meet members of the committee—or, indeed, other members of the Parliament—formally or informally. If members want to follow up anything from this presentation, they should see Dermot and Liz at the end of the meeting and arrange something.

## European Documentation (Scrutiny)

**The Convener:** The next item on our agenda is the scrutiny of documents. A recommendation note has been circulated. I will go through the recommendations one by one, and if anyone wishes to change a recommendation or has a comment to make, they should let me know.

**Bruce Crawford:** I checked the process with Stephen Imrie yesterday, and I want to ensure that everyone else is aware of this. As well as the recommendations for action, we received packs about the various Commission documents that we are to consider. I presume that the European memorandums and the Scottish European briefs, as well as the papers from the Commission, will be available before we discuss the matters in question.

**Stephen Imrie (Committee Clerk):** When a document looks to be of interest on first scrutiny, the recommendation note is deferred until we have received the explanatory memorandum from the relevant Whitehall department. The committee's policy seemed to be that it would not like to take a decision on a document until it had received both the EC document and any supporting memorandums. That is why recommendation has been deferred in some cases.

**Bruce Crawford:** I am pleased with that.

**The Convener:** For future meetings, it might be helpful, for ease of access, to include page

numbers as well as reference numbers on the sift/scrutiny recommendation note.

I begin with document 295. The recommendation is that we should await the explanatory memorandum and consider the document at our next meeting. Is that agreed?

**Members indicated agreement.**

**The Convener:** Do we agree to do the same with document 298?

**Members indicated agreement.**

**The Convener:** For document 305, the recommendation is no further action. Is that agreed?

**Members indicated agreement.**

**The Convener:** For documents 306, 307, 308 and 309, the recommendation is no further action. Is that agreed?

**Members indicated agreement.**

**The Convener:** For document 310, the recommendation is to await the memorandum and consider the document at our next meeting. Is that agreed?

**Members indicated agreement.**

**The Convener:** For documents 311, 312, 313, 314, 315 and 316, the recommendation is no further action. Is that agreed?

**Members indicated agreement.**

**The Convener:** For document 317, the recommendation is to await the memorandum and consider the document at our next meeting. Is that agreed?

**Members indicated agreement.**

**The Convener:** For document 318, on the Montreal Protocol and substances that deplete the ozone layer, the recommendation is no further action, but to send a copy to the Transport and the Environment Committee for its interest. Is that agreed?

**Members indicated agreement.**

**The Convener:** For items 319, 320, 321, 322, 323 and 324, the recommendation is no further action. Are we all agreed?

**Members indicated agreement.**

**The Convener:** Item 325 concerns fisheries management and nature conservation in the marine environment. Should we recommend that it be referred to the Rural Affairs Committee for scrutiny?

**Members indicated agreement.**

**Stephen Imrie:** The clerk to the House of

Commons European Scrutiny Committee sent me a letter saying that the first meeting at which the matter would be considered was on 27 October. There is therefore time for the regular scrutiny process to take place.

**Bruce Crawford:** Why is it that item 325 is being sent to the Rural Affairs Committee for scrutiny, but item 318—on chlorofluorocarbons and ozone depletion—is being sent to the Transport and the Environment Committee for interest only?

**The Convener:** Item 318 contains nothing that relates specifically to the remit of this committee in terms of European legislation. However, the Transport and the Environment Committee might have a wider interest because of the issue of ozone depletion.

On fisheries management, however, part of the scrutiny process is to refer the matter to the Rural Affairs Committee. That committee will comment and report back to us and we will then add our comments before it goes further.

**Stephen Imrie:** In the first case, the committee is simply making another committee aware of an issue. In the second, the committee is taking positive action in inviting another committee to scrutinise the documents.

**Bruce Crawford:** I understand.

**The Convener:** Item 326 concerns Community environmental law. Again, there will be no action, but the matter will be referred to the Transport and the Environment Committee.

On item 327, there will be no further action. Is that agreed?

**Members indicated agreement.**

## External Groups (Consultation)

**The Convener:** A document on developing a programme of consultation with external groups has been circulated. Over a number of meetings we have discussed the need to begin the process of consultation with groups throughout Scotland, to find out what their priorities are and how they want to engage in the European Union's activities in Scotland. We want to develop a longer-term work programme for the committee, to make inquiries and to appoint rapporteurs so that we can get more work done. I would like individual committee members to take on specific responsibilities, to meet representatives of different organisations and to report back to the committee. That should encourage important debate.

Do you want to add anything, Stephen?

**Stephen Imrie:** I will not say much, as I am conscious of the limited time that is available. As

the convener says, the clerks have set out a number of options for the committee, and we can help members to contact external groups to canvass opinion. We would welcome feedback on those options, so that we can develop a work programme. Having spoken to members before the meeting, I know that many people are keen to debate the wider issues as well as scrutinising legislation and holding the Executive to account.

**The Convener:** As Dermot Scott and Elizabeth Holt have made presentations, I ought to mention that we have the opportunity to work in partnership with the Commission and with the European Parliament.

15:15

**Allan Wilson:** I am pleased that the options for consultation were described as not being mutually exclusive, because there is a role for each: the mailshot, briefing sessions and so-called "meet the people" events. The mailshot is an appropriate step to take as an early part of the consultative process. I will give a plug to briefing sessions. Margo and I attended such a briefing meeting as members of the Enterprise and Lifelong Learning committee. I do not know whether Margo agrees, but I found it an illustrative exercise. Part of the process was informal; it was in camera. That allowed a full and frank exchange of views between the committee and the organisations that were briefing us. We should consider that option when we have presentations during a committee meeting. There is a case for informal briefings, to further the full and frank exchange that we all want.

**The Convener:** I would not want to encourage that as the norm, but there are times when there would be a place for that, as it would allow participating organisations to speak in a more relaxed manner.

**Ms Oldfather:** We should consider how to communicate with young people, as that is a target group that we should approach. Young people are into new technology, so we should examine more carefully whether there is a way to put questions on the internet for young people, to involve them in this exercise.

On the mailshot, why is Aberdeen University left off the academia list? A great deal of work is done on the European Union in the politics department at Aberdeen; Professor Trevor Salmon has produced work on European issues.

Although we have included the European Parliament and the European Commission in the list of general institutions because they have representative offices in Scotland, it is worth noting that—perhaps through the Convention of Scottish Local Authorities—the Committee of the

Regions is an institution with which we should communicate.

**The Convener:** The list is not exhaustive. We can certainly add universities that are not on the academia list. We have noted the addition of the COR.

**Ms MacDonald:** Perhaps I missed it, but were any details of the seminar announced, such as the location?

**The Convener:** We will come back to that.

We must consider a number of options. It will be useful to consider where the seminar fits into the process. We have had informal discussions with Liz and Dermot about others who might be able to support the process. I am keen that that complements our original discussions. We can bring ideas for the seminar to another meeting.

I would like to examine how members of the committee can be more involved in the consultation process. The process should not be about everybody coming to us or our going to everybody. If we can agree a range of issues and identify interested organisations, we should divide up responsibilities and create a system of rapporteurs, so that one member of the committee can take the lead on an issue, carry out the investigation and come back with a report, for the committee to amend, reject or accept.

**Ms MacDonald:** Can we choose the people we meet?

To link with Irene's comments on younger people, if we are going for an educative process as well as an information exchange, perhaps we should think in terms of the educational structures that are in place already. We could approach the Scottish Parent Teacher Council first, to say that we would like to discuss education in the European structures and policy-making processes. We should try to build that up rather than go to well-trodden establishment organisations.

**The Convener:** We can also use the education facility in the Parliament and its links with the wider community, both with formal organisations and informally. I am aware that a range of organisations has not been included, and we need to firm that up. The voluntary sector, through the Scottish Council for Voluntary Organisations, is the most obvious example, but a number of other organisations have not been included.

I would like to take it from this discussion that we agree the principle of trying to engage with organisations in whatever way we can, and that we use the options listed as part of the way in which we do that. The list is not exhaustive—if other suggestions come to mind, we can add to it. I would like to come back to an early meeting with a suggested programme of activities, so that we

can examine the issues that the committee should address. Then we can start to divide up the work load and start the process of appointing rapporteurs.

**Cathy Jamieson:** I was beginning to get a bit anxious about that point, as I could immediately think of many organisations that we could all say we wished to meet, but what would be the rationale behind meeting them? With all due respect, a number of other organisations and institutions could undertake some of the educational work around European issues better than the Parliament and have more time to do that work. We need to be clear about what we want from the process, how that will inform the work of the committee and how we can feed that back into our work. I welcome the suggestion of focusing on the issues.

**Ms MacDonald:** We should start with the process that Allan was talking about—that is where I would be happiest to start. It would help us to decide whom we should see if we were to begin with informal and genuine briefings.

**The Convener:** I suggest that we consider holding one or more informal briefings. I will ask the clerk to identify the most relevant issue and to make appropriate arrangements. My second suggestion is that members should feed back their ideas through the clerk on the general options for consultation, as well as their suggestions—perhaps as a list, but not an exhaustive one—of issues that the committee should consider. That would allow us to decide our priorities collectively. Once we have had an informal discussion, we can start to divide the priorities and allocate the work accordingly.

**David Mundell (South of Scotland) (Con):** We must undertake an information-gathering exercise to identify who is doing what. Until I saw the list, I did not know that all councils in Scotland have European officers, and I am not aware of the extent of the work that each council is doing in that area. Given the work that we are to do on funding, we should find out about the activity and involvement of councils in particular and about how we can work with them.

**The Convener:** It would be difficult for us to try to engage individually with the 32 councils, as they all have a different perspective and different needs. Local government has a well-organised structure through COSLA, of which some of the members of the committee have had direct experience. COSLA has a number of European officers, a members network and an officers network, which, frankly, is probably as influential on European issues as any body in Scotland. I certainly want COSLA to be involved in the informal briefing, because—and you are right, David—we have a lot to learn from it. However, I

would approach councils that way, rather than individually.

**Allan Wilson:** Does not the same apply to academia? It would be difficult for us to engage with individual institutions. We should engage with the Committee of Scottish Higher Education Principals as a representative of all higher education institutions, as opposed to adding to the list of eight institutions that we already have.

**Ms Oldfather:** That brings us back to the question of issues. It depends on what we want to do and where we are coming from. I know that some universities have done proactive work on Europe. Perhaps they are the universities that we should contact, but it depends on what we are looking to gain from the process. We should capitalise on the expertise that we have in Scotland.

**The Convener:** I return to the points that Margo and Allan raised. We need an early and thorough discussion, with some brainstorming, to consider the issues that we should address.

**Dr Sylvia Jackson:** The distinction between the what, in terms of the issues, and the who, in terms of who has the expertise in the area that we might want to draw on, is a good starting point. The yellow document from the Commission on the Amsterdam treaty is quite a concise statement and provides many important starting points, for example, the gender issues that Cathy raised, job creation and so on. We should study the document between now and the next meeting and tell Stephen what we feel are the critical issues.

**The Convener:** We will take that paper as a starting point, ask for members' views on the process and the issues, and organise an early briefing session.

**Bruce Crawford:** If we are using the yellow document as a starting point, some of the issues that were raised in the presentation become important. I have never set eyes on the national plan for the creation of jobs that was mentioned in the presentation. If we are to start from the perspective of the presentation, we need some scene setting so that I can understand where the heck we are going.

**The Convener:** We know what we are doing, then.

## Subordinate Legislation

**The Convener:** We will move on to the consideration of the subordinate legislation.

**Stephen Imrie:** If the committee agrees, it might be useful if I spent a couple of minutes running through the procedure for Scottish statutory instruments and how it impacts on the committee,



because I appreciate that it is fairly new for most members; it certainly was new for the clerks. We have gone up a learning curve with regard to how the committee might deal with SSIs. If I go over the process, it will help the discussion.

Rule 6.8.1 of the standing orders states that the European Committee must consider and report on

“(b) the implementation of European Communities legislation”.

In practice, that means that the committee must consider and report on Scottish statutory instruments. The procedures of the Parliament have been elaborated during the past few weeks. In most cases, the European Committee will not be nominated as the lead committee for SSIs because the objective of parliamentary procedure is to scrutinise the policy content, which is a subject committee function, or the legal content, which falls within the remit of the Subordinate Legislation Committee.

Your task is broadly to consider whether a particular SSI is the appropriate method for the Scottish Executive to employ to implement EC legislation in a given area. In practice, the European Committee will report its views to the nominated lead committee, which is decided by the Parliament on a motion of the Parliamentary Bureau.

The timetable for that process, in particular for the end date, is set by the SSI in question. The end point is the date by which the Parliament as a whole must either approve or annul the SSI. Usually, the end date is 40 days after the document has been received formally by the Parliament, but it can be shorter than that. Our committee has to work to a tighter time scale—before the fixed end point—because we report to lead committees; lead committees then report to the whole Parliament.

15:30

It is my considered opinion—it is only an opinion of the clerk and it is up to the committee to attach whatever weight it judges appropriate to it—that this committee may not have a substantial amount to say about any particular SSI. Procedures in the Parliament are such that the subject matter is dealt with by the lead committee and the legal matter is dealt with by the Subordinate Legislation Committee. We have a particular role.

However, if this committee, in looking through SSIs, wishes to object, because it thinks that an SSI is the wrong way for the Executive to implement EC legislation in Scotland, the procedure would be for an individual member of this committee to lodge a motion in the chamber office objecting to the SSI. That would then be addressed to the lead committee. The member of

the European Committee who lodged the motion would have to attend the lead committee and speak to the motion. The decision would be taken by the lead committee.

The best procedure for us would be to come to agreement on all the SSIs, whether committee members wish to object or not. If we object, a member should be nominated to lodge a motion and attend the lead committee.

I would like to stress the fact that no committee of the Parliament can amend SSIs—they involve yes-or-no questions. The Parliament either approves or annuls SSIs. We have six of them, I think, on our current agenda, and the consideration of subordinate legislation will be a regular function of the European Committee. We can expect to see similar volumes at every meeting. We are mandated by the standing orders to consider them, and the committee must determine the detail to which it wishes to do that and report on them. We are required to put each SSI on to our agenda formally, consider it and report on it to the nominated lead committee.

**The Convener:** I wish to clarify some things, Stephen. If a member of this or any other committee wishes to object to an SSI, can that member attend the lead committee and lodge a motion to object to it?

**Stephen Imrie:** Yes, that is the procedure: it has to be an individual member. We as a committee could come to a view and you, convener, could nominate a member.

**The Convener:** What strikes me as being slightly absurd is that, if any member, representing this committee, can lodge a motion, attend the lead committee and object, why bother bringing the matter to this committee in the first place?

Am I right in saying that this committee could not object? The relevant briefing paper mentions “affirmative or negative procedure”, but, from what I took you to say, Stephen, it is not for this committee to make a decision, other than to send someone along to the lead committee to object.

**Ms MacDonald:** Is it possible to amend the standing orders so that the European Committee could give its view if it was so minded? There will probably be very few occasions when that would apply, but our view would be required to be heard—only our view, which cannot be bound.

I also thought, “Why bother?” because we have no more standing.

**Ben Wallace:** My understanding is that our role as the European Committee is to have a view on whether the SSI is the right way of implementing the EU directive. That being so, are we not doing things back to front? We should get the final product. For example, on the Environmental

Impact Assessment (Forestry) (Scotland) Regulations 1999, we are not the forestry experts; we should get the report back from the Rural Affairs Committee and the Subordinate Legislation Committee and read about what they think about it from the legal and rural affairs standpoints. We could then see from the overview—because we have the directive—whether the report is correct.

At the moment, we get the SSI and the directive that spawned that SSI—I was hoping that we would get them together—but we are not experts on either. If it was the other way round, that would give the committee more purpose, and we could come to a proper conclusion about whether the SSI was the right way of implementing the directive. As the convener and Ms MacDonald have said, what is the point? We do not know about forestry, so we just say, “Off we go to rural affairs.”

**Maureen Macmillan (Highlands and Islands) (Lab):** I am getting totally confused. Have we got the directive?

**Ben Wallace:** No. The SSI is submitted today.

**Stephen Imrie:** I want to answer a couple of questions. We do not have the initial EC directive, but, if the committee wishes, I can attach the parent directive to the SSI.

**Ms MacDonald:** We would like the forestry committee to get that.

**Stephen Imrie:** An issue that was raised in another subject committee is the nature of the supporting explanatory documentation that committees receive on any SSI. It was felt that the Scottish Executive could supply a very short overview of the contents of the SSI to allow committee members to understand the legislation.

We are tied to chapter 10 of the standing orders, which says that any member can lodge a motion. However, what might work is for a committee member—the convener or otherwise—to object on behalf of the committee. The committee might want to raise the matter with the Procedures Committee.

**The Convener:** Even if a member objects, the power still lies with the lead committee. I can see the point of bringing the matter before the committee if we had some influence—where if we said no, that would be the end of it. However, I cannot see the point of a committee member objecting after our scrutiny when the final decision rests with the lead committee.

**Maureen Macmillan:** I am not exactly sure what I am supposed to scrutinise in an SSI.

**Ben Wallace:** Our specific role is to decide whether an SSI is the right way of implementing a directive. Decisions about the subject matter rest

with the lead committee. The only way in which we can decide on the directive is through examining information from forestry and legal bods.

**Bruce Crawford:** Can Stephen tell us a bit more about Ben's idea? I think that he has hit the nail on the head about the whole process.

My Machiavellian mind makes me think that someone could create merry hell with this. Is a member entitled to object on a matter without the committee's authority? All of us could then lodge objections to SSIs, which would make it difficult for the process to work. If that is so, perhaps some of the procedures need to be re-examined.

Where does it say that we cannot amend the SSIs or consider different wording if two committees decide that the wording is not right? It seems daft to throw the baby out with the bath water, when perhaps a small adjustment could secure the Parliament's unanimity. The whole matter seems a little arcane.

**Stephen Imrie:** May I advise you, Bruce, on your first point about any member attending the lead committee to object? Any member of this Parliament can take part—but not vote—in any committee meeting. I understand—although I will clarify this—that the taking of motions in the lead committee will follow the model of the Parliament. The Presiding Officer—and please correct me if I am wrong—can decide which motions to take. The parallel to that in the lead committee would be that the convener would decide which, if any, motions objecting to a particular SSI to take. There may not be a huge number of members objecting to an SSI; if there were, it would be for the convener to decide which motions to take.

The motions would be motions to annul, so they would all be very similar if not identical; they would involve the committee calling on the Parliament not to approve a particular SSI. I do not have at my fingertips the legalese that says that we cannot amend SSIs but only approve or annul them. If you wish, Bruce, I will come back to you and the committee on that. In my briefing before this meeting from the legal office and the Subordinate Legislation Committee, it was made clear to me that it was a yes-no issue, not an amendment issue.

**Bruce Crawford:** It would be useful if you could come back to us on that. I am interested only in simplicity.

**Allan Wilson:** I can see why it is a yes-no issue, because effectively the statutory instruments are already in force by the time they come to this committee. It is presumably meant as a constraint on the powers of the Executive that an individual committee with expertise in a particular field can annul a statutory instrument. It seems unlikely that that would happen in anything but the most

extreme circumstances. I am with the convener: I think that a lot of this scrutiny would be counterproductive in terms of our time, given all the other things that we have to do.

**The Convener:** What is the difference between our work and the work of the Subordinate Legislation Committee? I know that there is a European dimension to this, but is it not something that the Subordinate Legislation Committee could look at as well?

**David Mundell:** I have the pleasure of being on the Subordinate Legislation Committee.

**The Convener:** Do you not look at SSIs?

**David Mundell:** Yes, we look at SSIs, but only to determine whether they are technically valid; we do not comment on whether they are good or bad. This morning we referred one to this committee.

**Members:** Thanks.

**David Mundell:** It was two years late in being implemented and the Executive felt that it had to be implemented immediately, without the proper 21 days' notice to the Parliament. The Subordinate Legislation Committee felt that that was inappropriate: given that the SSI was already so late, the requirement for 21 days' notice should not have been waived.

**Cathy Jamieson:** I would like to sort out the practicalities of this. We had a similar discussion in the Transport and the Environment Committee, which may have been what Stephen was diplomatically referring to. This is the second time that this thick document in front of me has crossed my desk; last time I got to page 62, but I did not even attempt it again before this meeting. At the transport committee we suggested that, before a document went to the Subordinate Legislation Committee and then probably to two other committees, the Executive should be able to put information on one side of A4 paper, indicating what the document was about, what the impact would be and what the key issues were. All of us are going round in circles, and I do not think that that is an especially good use of our time.

**Ms MacDonald:** That is a very sensible suggestion.

**Cathy Jamieson:** It is far too sensible—that is the problem.

**The Convener:** Is that what the transport committee is asking for?

15:45

**Cathy Jamieson:** We have asked the Executive for that and I suggest that we do the same here.

**The Convener:** I think that we can endorse that. In the meantime, I wonder whether there is

another avenue for looking at the process. I am still unclear about the point of some of this. How could we go about asking why it needs to be dealt with in this way?

**Stephen Imrie:** The easiest thing would be for me to speak to the legal office, to get a deeper understanding of our interpretation of standing orders. I would report back in a written paper about what the legal office is saying our committee's role has to be in this respect.

**The Convener:** Why not ask it not only for a written paper but for someone speak to that at the next meeting?

**David Mundell:** One of the things that we discussed today at the Subordinate Legislation Committee was the fact that, because SSIs are the only things on our exciting agenda, people have looked at them more than they might have in another committee. Therefore, if there are issues, they should be flagged up in the reference to the other committee, even if they were not the issues that we were supposed to be examining. One of the issues that is being flagged up is that someone in the Executive has formed the view that directives should be implemented in Scotland and England on the same day.

**The Convener:** Someone in your party does not seem to like you—they put you on to two committees that have got to look at SSIs.

**David Mundell:** Amazingly, I asked to be on this committee, and my penance for achieving that was to serve on the Subordinate Legislation Committee.

**The Convener:** You will be an expert by the time this finishes.

The difficulty is this: while we struggle to understand the process, what do we do about the statutory instruments that are before us? None of the general headings look as though they are of such significance that we would want to impede the legal process.

**Ben Wallace:** I have gone through all of them except No 1, which I am afraid I could not get through. A lot of them, such as the one on spreadable fats, are technical. They say things such as margarine has to be over 80 per cent fat, otherwise it is not margarine. I could find no objection to that, but there has been little consultation on forestry. I have made efforts to find out people's views because the SSIs deal with impact assessment. The forestry SSI, 1999/43, and the town and country planning SSI, 1999/1 should be delayed.

**The Convener:** Allan has made the point that they are already in force. What would be the implication of doing some of the things that have been suggested?

**Ben Wallace:** The forestry one is not in force.

**The Convener:** There is still time to look at the spreadable fats SSI.

**Ms MacDonald:** We have plenty of time for the fats one, if I remember.

**Stephen Imrie:** I understand that all these SSIs are negative instruments, in the sense that they will come into or remain in force unless the Parliament chooses to annul them.

**Ms MacDonald:** They will come into force unless we say no. Let us just say yes.

**Stephen Imrie:** I have to use the language that I have been told to use by the legal office.

**Ms MacDonald:** Annul.

**The Convener:** Could we ask the lead committee to check? Who would it get back to?

**Stephen Imrie:** The lead committee would report to Parliament, not to our committee.

**The Convener:** It is a Byzantine system.

**Cathy Jamieson:** I had a note today to say that the forestry SSI would be discussed in the Transport and the Environment Committee, which is the lead committee. I was quite happy with getting the spreadable fats one out of the way.

**Ben Wallace:** Are we not in the wrong part of the chain? We should come back to it.

**The Convener:** Clearly, we need a paper and someone to speak to. We need a review of the process, which seems absurd. In the meantime, I would not want the committee to prejudice the Plant Health (Amendment) (Scotland) Order 1999. What should we do with the SSIs? If we do nothing, what effect will that have? Will anybody notice?

**Ms MacDonald:** That was my basic question. What if we say that we are annulling the lot of them and going for a cup of tea? What would happen?

**Allan Wilson:** Could not we note them?

**Ms MacDonald:** What would happen?

**Stephen Imrie:** It is not my place to comment on what would happen. If the Parliament chose to annul an SSI, in certain cases, the Executive would want to review the Parliament's difficulty with the SSI and consider whether to redraft it and send it back to the Parliament for reconsideration. Annulling an SSI would mean that that order would not become part of statute law.

**The Convener:** The report will go to the Transport and the Environment Committee, which I hope will pick up any issues of concern. The other SSIs do not seem to be controversial and I

suggest that we agree them as part of our process on the understanding that, for any future scrutiny and consideration, we want someone to explain to us exactly how that process works. Frankly, doing it this way demeans the whole process. Perhaps I am missing something, but I cannot see the point of it.

**Bruce Crawford:** It is probably taking the easy way out to say that we will just approve the SSIs, and I am worried about our role in the process. Something in one of those SSIs might prove to be horrendous. I do not want to be Pontius Pilate.

**The Convener:** Stephen advises me that all we are being asked to do is to comment on the SSIs.

**Allan Wilson:** Even if one of us were to find something in an SSI to which we objected, we could lodge a motion objecting to it with the lead committee that was considering it. Any one of us could do that individually, or we could do it collectively as a committee.

**Bruce Crawford:** Let us just annul them anyway. That will test the system, and I bet that the procedures will be right the next time.

**The Convener:** We nominate Bruce to go to the lead committee with an appropriate motion in the six cases.

**Bruce Crawford:** You are on.

**The Convener:** Stephen is panicking because that will be on the record. We were being facetious. I am in your hands. What does the committee want to do with the SSIs, given that we have been asked merely to comment on them?

**Ms Oldfather:** We should let them go through the due process on the basis that the lead committee will consider the matter, particularly in relation to forestry. I do not think that we will hold them up to make any meaningful comment today.

**Maureen Macmillan:** Can we just note them?

**The Convener:** We will do whatever is required. We will have another discussion on the process, which is unacceptable.

**Bruce Crawford:** Does that mean that, for the record, I must state that I was only joking earlier?

**The Convener:** If you turn up at six committee meetings to lodge a motion, we will know that you were not. The matter must be referred to the conveners liaison group. From comments that were made earlier, it is clear that ours is not the only committee that is struggling to understand the relevance of some of the procedures. The conveners need to examine that.

## Conveners Group

**The Convener:** The conveners group is asking for a change in the standing orders, so that the group has some locus in the eyes of the Parliament. We have also discussed such things as the timing of meetings, and whether they should clash with meetings of the Parliament. There is a problem in trying to cope with the amount of business that is beginning to develop, and we will have to comment on that.

Other than the items that have been raised, which I will take back, is there anything else that members of the committee feel should be referred to the conveners group?

**Bruce Crawford:** I have a question about the conveners group finding itself a place in the standing orders, and its future relationship with the Parliamentary Bureau. How will that work? I can see potential conflict.

**The Convener:** There is a suggestion that someone would attend the Parliamentary Bureau meetings on behalf of the conveners group, although not necessarily with voting rights. One option is that it would be a Deputy Presiding Officer. The suggestion is not that the group would be formally incorporated into the Bureau. You are right that that would create other difficulties.

The problem at the moment is that the standing orders do not allow for the existence of a conveners group. We all felt that if the Parliament and its committees were to have their due weight in relation to the Executive, that should be reflected in the standing orders. All the committees were anxious to maintain their independence and that of the Parliament from the Executive. We are also aware that procedural issues, such as the timing of meetings, should be discussed in a different forum. That is where things stand. If there is anything else, feel free to raise it.

## Further Briefing

**The Convener:** Allan has already suggested an informal briefing. That should be our priority, but in the meantime is there anything else that members wish to have prepared?

**Allan Wilson:** I received a letter from Stephen Imrie—presumably as did the other members—saying that a paper on the financing of objective 2 regions was to follow. I have not received that paper.

**Stephen Imrie:** The Executive informed me that it would try to get that paper to us by this meeting, but that it would require ministerial clearance because, in its opinion, it contained a number of important issues. I had not received the paper by the time of this meeting, but as soon as I do I will

circulate it to all committee members.

**The Convener:** Before I close the meeting, I would like to point out that there will be some problems with the timing of our meetings over the next few weeks because of some of the deadlines that we have to meet. At the moment, I am not sure what will be happening during October. Stephen, could you identify some of the potential problems for us?

**Stephen Imrie:** I can advise the committee that earlier in the week I was approached by the Scottish Executive development department to discuss two consultation documents that will be sent to the committee. The first is the document that the committee has already seen—the draft special programme for the Highlands and Islands. That will become a full programme which contains all the financial and priority elements that we thought were missing from the first draft. It will come to the committee for further consultation.

The second document, which will be received on an identical time scale, is the Scottish operational programme for objective 3 expenditure under the new programme round for European structural funds. Broadly, that will cover employment, the labour market, social inclusion and equal opportunities.

I am advised by the Executive that neither of those documents will be cleared by the minister before Monday 4 October. According to European structural fund regulations, the member state must report by 1 November. That means that we have between 4 October and 1 November to ensure that members' views are heard in time to get them incorporated in the documents and over to Brussels. We do not have a committee meeting scheduled until what would be the October recess—I think that 12 October is the date.

16:00

**Dr Sylvia Jackson:** Is it not 5 October?

**Stephen Imrie:** We do not have a meeting on 5 October, because we follow a fortnightly pattern. The next meeting will be on 28 October.

**The Convener:** I have discussed with Stephen the possibility of having an early meeting, but by the time the documents are cleared by the minister, members will have only one or two days in which to consider detailed and important documents. That is our dilemma. Either we go for an early meeting, which will not give us sufficient time to absorb and scrutinise the documents, or we return during the recess, which might be inconvenient. The other possibility is to meet on that Friday.

We need time to consider the documents if we are to do them justice.

**Ms Oldfather:** When is the earliest that members could expect to receive the documents?

**Stephen Imrie:** The earliest I expect to receive the documents is 4 October. The final document on the special programme would be completed on the evening of the previous Friday and given to the minister over the weekend. Assuming that the minister signed it off on Monday, we would receive the document late on Monday afternoon.

**Ms Oldfather:** Would it be possible to schedule an extra meeting that week, perhaps on Thursday lunchtime, or at 5 pm?

**The Convener:** We have to assume that the minister will sign off the documents on the Monday, so that members will have at least two to three days to consider them. If we hold a meeting on the Thursday, we are constrained by parliamentary business. I do not know what members' business or other business is scheduled—that is a matter for the Parliamentary Bureau. We might be able to hold a meeting at 5 pm, but it might need to be at 5.30 pm or even at 6 pm, depending on other business. Friday is a possibility, but we shall come up against other problems thereafter.

Would members prefer to meet at the end of that week or later?

**Ms Oldfather:** I would prefer the end of the week. Many members of the committee live in the west—would it be possible for us to meet in Glasgow on that occasion?

**The Convener:** That would require permission and is not for us to decide.

Is it agreed that I try to arrange a meeting for the end of the week? It depends on the day that the minister signs off the documents. I am not happy to hold a meeting when members have had only a couple of days to examine the documents.

**Bruce Crawford:** The alternative is to meet on the Tuesday of the next week.

**Maureen Macmillan:** The problem is that that is Scotland's week in Europe. I hope to be in Brussels in Scotland House.

**The Convener:** Yes, several things are already arranged for that week.

**Allan Wilson:** I would rule out the week after if there is to be a constraint because of the late arrival of the documents.

**The Convener:** Will the committee allow me to take soundings from the minister about when we are likely to receive the documents, so that we can schedule a meeting at an appropriate time?

**Members:** Yes.

**The Convener:** We already have the objective 3 document. Would members like that to be circulated now?

**Members:** Yes.

**The Convener:** Thank you for attending today's meeting.

*Meeting closed at 16:04.*

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