

# **EUROPEAN COMMITTEE**

Tuesday 4 December 2001  
(*Afternoon*)

Session 1

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## EUROPEAN COMMITTEE

15<sup>th</sup> Meeting 2001, Session 1

### CONVENER

\*Irene Oldfather (Cunninghame South) (Lab)

### DEPUTY CONVENER

\*Mr John Home Robertson (East Lothian) (Lab)

### COMMITTEE MEMBERS

\*Sarah Boyack (Edinburgh Central) (Lab)

\*Colin Campbell (West of Scotland) (SNP)

\*Dennis Canavan (Falkirk West)

\*Helen Eadie (Dunfermline East) (Lab)

\*Mr Lloyd Quinan (West of Scotland) (SNP)

\*Nora Radcliffe (Gordon) (LD)

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

\*attended

### THE FOLLOWING ALSO ATTENDED:

Christine Boch (Scottish Parliament Directorate of Legal Services)

### WITNESSES

Mr Jim Wallace (Deputy First Minister and Minister for Justice)

### CLERK TO THE COMMITTEE

Stephen Imrie

### ASSISTANT CLERK

David Simpson

### LOCATION

Committee Room 2



## Scottish Parliament

### European Committee

*Tuesday 4 December 2001*

*(Afternoon)*

[THE DEPUTY CONVENER *opened the meeting at 12:30*]

### Convener

**The Deputy Convener (Mr John Home Robertson):** Good morning, colleagues. I have received no apologies, so I assume that Ben Wallace is on his way. Welcome to the 15<sup>th</sup> meeting in 2001 of the European Committee. It might be appropriate to convey our congratulations to Hugh Henry, who has departed the committee to join the Executive. It is my pleasure to welcome Sarah Boyack, who is joining the committee.

**Dennis Canavan (Falkirk West):** Hear, hear.

**The Deputy Convener:** I am sure that she will enjoy herself.

On the decision of the Parliamentary Bureau, the convenership of the European Committee has been allocated to the Labour party. I understand—and am delighted—that Irene Oldfather has been nominated by the Labour party to take the chair. Are we agreed that Irene Oldfather be chosen as convener?

**Dennis Canavan:** I have nothing against Irene, as she well knows, but could we have some clarification of how she emerged as the Labour party's nominee? Was it a democratic decision of the Labour group or was it the diktat of the First Minister? I would hate to think that the Executive would try to control the convenership of the European Committee or of any parliamentary committee. It would be helpful if we knew how Irene's name emerged.

**The Deputy Convener:** I do not think that it would be appropriate to go into the details. There were consultations among the Labour members and we are all happy to nominate Irene. I hope sincerely that all members of the committee will be happy to work with her as convener.

**Colin Campbell (West of Scotland) (SNP):** Naturally, we are happy with Irene as a human being, but we might question the method of her selection by the Labour party.

**The Deputy Convener:** You have made that point.

**Dennis Canavan:** I have a simple point of clarification: is Irene Oldfather the nominee of the committee's Labour group or is she the First Minister's nominee?

**The Deputy Convener:** She is the nominee of the Labour party. There was widespread consultation, not only among the European Committee's Labour group, but further afield.

**Dennis Canavan:** Do you mean the Labour party in London as well?

**The Deputy Convener:** No, I mean members of the Scottish Parliament. Your paranoia is getting on top of you.

**Dennis Canavan:** You said the Labour party.

**Nora Radcliffe (Gordon) (LD):** I welcome Irene's nomination. She has the background and the skills to do the job and is an excellent choice for convener.

*Irene Oldfather was chosen as convener.*

**The Deputy Convener:** I am happy to move over. Good luck to Irene in the chair.

**The Convener (Irene Oldfather):** I am delighted to accept the convenership and I thank colleagues for their support. The European Committee has done a great deal of good work in the past two and a half years; we have worked together in a positive and constructive fashion and I hope that we can continue that work. Members will know that I have had a great interest in European matters over a long period—at least 10 years—so I am delighted to accept the nomination.

There are opportunities and challenges ahead for the European Committee. Early in the new year, perhaps at our first or second meeting in January, I hope that we can meet in private session to discuss how we want to take the committee forward over the year and a half that remains to 2003. That would allow us to move forward in a positive and constructive way.

**Mr Lloyd Quinan (West of Scotland) (SNP):** I congratulate Irene Oldfather on her elevation. However, a pressing matter results from the reshuffle—the handing of the Europe and external affairs brief to the Deputy First Minister and Minister for Justice. Given that the European Committee carries out scrutiny in one area of that brief, we should have been consulted. Have we been given a proper definition of the external affairs brief? We have been requesting that information for some time. We should deal with the issue today.

**The Convener:** We have to accept that it is not normal practice for committees to be consulted on Cabinet appointments or on changes in portfolios. I understand from the clerk that we have not

received the definition of the external affairs remit that we requested. The committee will want to pursue that point, but not today, as the Deputy First Minister is with us for only 30 minutes. If we want to finish our governance inquiry, which is our priority for this year, I propose—

**Mr Quinan:** On that point—

**The Convener:** If I could just finish—

**Mr Quinan:** If the minister has just been given the brief, and there is no definition of the brief, how can we question him today and expect him to add any great weight to what, at this stage, is a good report?

**The Convener:** The fact of the matter is that the subject of the report that we are discussing is European Union governance, which is in the minister's brief. A great deal of time has been put into the inquiry. The Laeken summit is to take place on 14 and 15 December. If we want our report to be considered in those discussions, we should spend the full 30 minutes trying to get to the bottom of the issues that are involved in our inquiry. I hope that committee members find that suggestion acceptable. I assure the committee that, in January, we will return to the point about the remit. I know that committee members seek answers on that point. We intend to pursue the matter.

**Ben Wallace (North-East Scotland) (Con):** I agree with the convener. The Deputy First Minister is before the committee to talk about our EU governance inquiry. However, we should seek an assurance from him that we will receive an answer by a certain date. Over the past three months, we have tried three times to get from the Executive a simple definition of the remit. Surely there is no harm in saying, "We are not going to question you on that subject today, but can you give us a date on which you will return with, or forward, exact details of your remit?"

**The Convener:** It might be difficult for the minister to give us a date. I am happy to say to the minister, in my preliminary remarks, that we are looking for a speedy response. I am also happy to say that we hope that he can make that response early in the new year.

**Ben Wallace:** With respect, it is not unreasonable to expect a date. The minister is in the job. He should know what his job is and its parameters. The job is new and he has just been handed his brief, but he should understand what he is doing. The Executive has, on three occasions, signally failed to answer that question and it is time that it did so. It is time that we said that we would like the response by a certain date.

**The Convener:** I agree with members that we need to have the definition of the brief. We have

been seeking it for some time and it is now a matter of urgency. I am happy to write to the Deputy First Minister, on behalf of the committee, asking for the definition of the brief as a matter of urgency. A copy of that letter will be sent to the First Minister, who continues to have a Europe and external affairs remit.

## Interests

**The Convener:** John Home Robertson has welcomed Sarah Boyack to the committee and I now do so formally. We are pleased to have her on the committee, as she brings a lot of valuable experience of the environment and transport, which will be very useful to us. I invite her to declare any relevant interests.

**Sarah Boyack (Edinburgh Central) (Lab):** I have no interests to declare.

## Item in Private

**The Convener:** I suggest that we take item 8 in private. We intend to complete our inquiry today. As members are aware, our next meeting is not for another two weeks, which is after the deadline for the Laeken summit. I assume that committee members will want our report to be agreed by then. Do we agree to take item 8 in private and to finalise the report today?

**Members** *indicated agreement.*

## EU Governance and the Future of Europe

**The Convener:** That brings us to our main item of business. We are delighted to welcome to our meeting Jim Wallace, the Deputy First Minister and Minister for Justice. This is the first time that we have received him at one of our meetings but I am sure that, given his remit, it will not be the last. I understand that, because of Cabinet commitments, the minister can join us for only 30 minutes today. Is that correct, Mr Wallace?

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** There is a Cabinet meeting this afternoon. However, if we get to 35 minutes I will not run out the door.

**The Convener:** I note that these are exceptional circumstances, but I hope that, once things return to some sort of normality, longer discussions between the committee and the Deputy First Minister and Minister for Justice will be the norm. I hope that the minister concurs with that view.

Mr Wallace, we have briefly discussed your external affairs remit and will write to you about that. I would appreciate it if you could assure us that you will reply to us speedily on that outstanding issue.

**Mr Jim Wallace** *indicated agreement.*

**The Convener:** I understand that you would like to make some opening remarks. After you have done so, the floor will be open to questions from members.

**Mr Jim Wallace:** I congratulate Irene Oldfather on her elevation to the convenership of this committee. I look forward to having a constructive working relationship with her and all members of the committee.

As Deputy First Minister and Minister for Justice, I have always had an interest in European Union matters, but because of the reallocation of responsibilities within the Cabinet I will now have more to do in that area. I hope that my relationship with the committee will be characterised by a spirit of openness, co-operation and partnership and that our overriding objective will be to further Scotland's interests in Europe. I am sure that the officials sitting next to me heard the convener's request that the committee's letter about external affairs be responded to as speedily as possible.

I appreciate that today's question-and-answer session relates to the committee's inquiry into governance and the future of the European Union and I will outline the Executive's position on those issues. However, I would be more than happy to appear before the committee again early in the

new year to talk about other aspects of the Executive's position on EU matters. We will then, I hope, have a better opportunity to explore those issues in depth.

The Executives believes that, when we deal with major EU issues that impact on devolved responsibilities, our aim should be to help to build a reputation for Scotland as a significant contributor to EU thinking and, in so doing, to raise Scotland's profile in Europe. Improving governance was identified as a personal goal by President Prodi when he took office and the future of Europe debate emerged from the Nice summit in December last year. Although the two issues have different origins, the aim in both cases is to tackle a recognised weakness in the European Union—an increasing disconnection between the institutions of the Union and the citizens of Europe. That issue strikes at the heart of democracy and is therefore of considerable importance to Scots and to our fellow citizens throughout the European Union and, for that matter, in the accession states.

The Executive takes the view that it should play a full part in the debates on improving governance and the future of Europe. To that end, we have given oral evidence in Brussels at a Commission hearing on governance. With the Convention of Scottish Local Authorities, we produced a joint submission on governance as a contribution to the Commission's consultations.

I believe that we have led the future of Europe debate in Scotland. We have done so through a panel discussion in February that involved Commissioner Kinnock and through speeches by Jack McConnell at the Jean Monnet European centre of excellence conference in September, during Scotland week in October and at a discussion organised by the Belgian ambassador in London, also in October.

We participated in the Flanders group, whose discussions culminated in the political declaration of 28 May, and more recently in the resolution from the Liège conference, which was based on the May declaration. All that is in addition to the on-going dialogue between the Executive and the UK Government about the issues, in accordance with the arrangements laid down in the concordats. As a consequence of those activities, a number of documents are available setting out the detail of the Executive's position. Those documents have been provided to the committee.

12:45

On governance, we favour wider consultation at an early stage with Administrations such as the Scottish Executive, less European Union regulation where measures could be better taken

at the Scottish level and greater flexibility in implementation. We were pleased to note that a number of our proposals have been adopted in the Commission's white paper, which was issued in July. The governance debate is now further forward, which is not surprising because, as President Prodi has said, governance deals with changes that the Commission can implement without altering the treaty.

As members know, respondents have until March next year to comment on the Commission's proposals. The Executive has been in dialogue with the United Kingdom Government about issues raised by the white paper. We are considering the points that we would wish to make and the best means of getting Scottish views across. In developing our thinking on those matters, we hope to continue the joint working with COSLA that characterised our earlier submission on the subject.

We are at a significant stage in the future of Europe debate, although it is important that we recognise that we are still at a very early stage. The Executive's position is based on five principles: pro-Europe, because of the significance of the European Union to Scotland's prosperity and the positive force that it brings for progress; pro-United Kingdom, because we recognise the fundamental importance of the member state in the European Union and appreciate that being part of the UK gives us power and influence that we could never have as a small country; pro-reform, because we recognise the need to adjust the decision-making process to re-engage individual decisions; pro-regional government involvement, because we believe that the greater involvement of legislative regions can make a major contribution to the task of re-engaging ordinary people; and pro-debate, because we believe that we have a better chance of meeting citizens' needs if citizens are involved in the thinking that goes into devising the necessary reforms.

At the Liège conference, the collective view on how constitutional regions could assist in dealing with the democratic deficit was put in the form of a resolution to the Belgian Prime Minister, Guy Verhofstadt, as a contribution to the thinking on Laeken. We must now await the outcome of the Laeken summit to discover how the debate will be developed further in the build-up to the intergovernmental conference in 2004.

We must recognise that there is strong agreement that detailed solutions would be premature; the consensus at this stage is that we need to concentrate on the questions to be asked and the issues to be explored. We fully support that approach, which is consistent with our stance as supporters of open debate. It follows that our policy position will also develop as the debate



progresses in the build-up to the IGC in 2004; as a consequence, we may not yet have taken a position on certain issues.

I hope that this short summary has given members a solid outline of the Executive's position on the issues and that the papers that I have described provide the detail. I will try to answer your questions.

**The Convener:** Thank you. We are short of time so I open up the meeting to questions. I ask that members keep their questions brief and to the point.

**Colin Campbell:** I will read this very quickly then. I welcome the minister's commitment to openness, co-operation and partnership. Will he do something to ensure that the answers we get from ministers to parliamentary questions are written in that spirit, as currently they are difficult and obtuse and tell people nothing? Can the details of the timing, agenda and basic substance of joint ministerial committee meetings be given to this committee so that we can scrutinise effectively the work of the Executive without prejudicing UK negotiating lines? Can the committee have better pre-Council and post-Council feedback? Lastly, are you going to the Council of Ministers on 6 and 7 December, where justice is a critical issue? If not, have you met your UK counterpart yet?

**Mr Jim Wallace:** I will certainly do my utmost to ensure that PQs are as informative as possible. That is something that I have tried to do in the justice department—not always with success, I admit. PQs are not a game; they exist to inform.

I have not been involved in the timing of JMCs on Europe. My experience is that some other JMCs are called at relatively short notice, although in principle I can think of no reason why the committee should not be advised of their taking place.

I will consider what individual ministers can do in the way of written pre-Council and post-Council reports to the committee. I suspect that we would not necessarily want a ministerial appearance before the committee after every Council. Without detracting from the work of this committee, I also suspect that issues may arise from meetings of the various Councils that the subject or departmental committees will wish to pursue.

I will not be attending the Council on 6 and 7 December. I was, however, present at the justice and home affairs council that was held on 15 November. Much of the work that was done there has been taken forward to the Council of Ministers on 6 and 7 December. It goes without saying that, when I was at the Council, I had extensive discussions with David Blunkett about the important issues, particularly those where we have devolved responsibility, but also reserved areas

where Scotland may be affected.

**Dennis Canavan:** You said that you would like less European Union regulation in cases where decisions would be more appropriately taken at local level. I entirely agree—that relates to the principle of subsidiarity. Could you give us some examples? Would you say that the water framework directive is a typical example of European Union regulation in an area where, frankly, Scotland could claim to be better regulating or legislating for itself instead of following initiatives from Europe? Those initiatives are seen as bureaucratic and unnecessarily interventionist and are having a detrimental effect on the Scotch whisky industry, for example, which is a major part of the Scottish economy. I have never heard any consumer, in Scotland or anywhere else in the world, complaining about lack of purity in water used by Scottish distilleries. Would that be an example of an unnecessary regulation by Europe? If so, could you give us your views? If not, could you think of other examples?

**Mr Jim Wallace:** I reaffirm what Mr Canavan said at the outset. I believe that the Scottish Executive should take decisions when that is the most appropriate level for decision making. Although I think that the word "subsidiarity" is ugly, the principle that underlies it is important. In our submission to the Commission's white paper on governance, we said that the Commission should re-examine the forms of its lawmaking and consider making short, strategic laws that clearly set out their objectives and leave considerable and genuine scope for flexibility in implementation. That means having a framework, rather than being over-prescriptive.

An example is given in the document that we produced jointly with COSLA. The Executive welcomed the initiative by the Commission to work with member states on the implementation of the water framework directive. A common strategy on implementation was developed as a result of that. A series of projects was considered with regard to individual aspects of the directive.

I do not think that anyone would want to criticise or take exception to the overall objective of high water quality and a clean environment. I make the general point that, the more that objectives can be set out within frameworks, leaving it to the member state or regional—national, in our case—Parliament within the member state to flesh out the detail, the better. It is often possible to take greater account of local circumstances by doing that.

**Mr Quinan:** Let us return to the upcoming IGC and the constitutional convention that is being prepared. First, do you agree with your colleague, Menzies Campbell, that we must go a bit further than simplifying the current treaties and that we

need to transform what is a bit of a mish-mash into a coherent constitution? Secondly, do you agree that the charter of fundamental rights should be legally binding and justiciable? Thirdly, and more important, do you believe that the suggestion that regional legislatures, including the Scottish Parliament, should have access to the European Court of Justice, would allow them to guarantee redress against a member state in a situation in which the principles of subsidiarity are formalised in the constitution? Would you support those three concepts?

**Mr Jim Wallace:** We are looking for considerable simplification, which, by definition, will involve some redrafting. I am not sure about a reformulation. We could split hairs about whether that would amount to a formal constitution, which may not lead to simplification. However, simplification is an important objective if we are to connect the ordinary citizens with the work of the European Union, which is an overarching objective. What was your second question?

**Mr Quinan:** Whether the charter of fundamental rights should be legally binding and justiciable.

**Mr Jim Wallace:** When the charter was being considered before the Nice summit last year, we gave considerable thought to the position that we would adopt on that issue. At the time, we did not support the idea that it should be fully justiciable and legally binding for the good reason that we had just incorporated the European convention on human rights into our domestic law. I am a strong supporter of the ECHR's being brought in as part and parcel of our domestic law, but equally, as the Minister for Justice, I recognise the implications of that, the considerable amount of training that has been required and some of the more difficult decisions that judges have arrived at. Now other public authorities, not just the Executive, are having to come to terms with the matter.

I did not think that it would be in the interests of the citizens or of good governance to incorporate yet another European obligation into our law, especially if there happened to be divergences or discrepancies between the two and the courts had to decide which one to give preference to. That is why we decided that, for the foreseeable future, it would not be good government to support incorporation of the charter. We regard the charter as an important political statement rather than as something that should be codified in the treaties.

Your third question concerned the European Court of Justice. You will know what was said in the Liège statement on the issue. However, our view is that, in the context of trying to spot where subsidiarity rules have been breached, the political approach is more likely to be effective than the legal approach. We have proposed the creation of a subsidiarity watchdog, on the premise that

prevention is better than cure. It is far better to spot where the problems are going to arise—where subsidiarity rules may be breached—than to take one's place in a long queue to get matters justiciable before the European Court of Justice. There will be debate on the issue. In a debate in the chamber in June, Nicol Stephen indicated:

“the Executive supports having all those issues on the agenda for debate”.—[*Official Report*, 21 June 2001; c 1801.]

**Mr Quinan:** On the withdrawal of autonomous regional powers—I am thinking about the future governance of the EU in the broadest sense—should not regional legislatures have access to the European Court of Justice in circumstances in which the member state claws back powers that it has granted? That situation has occurred.

13:00

**Mr Jim Wallace:** That is a matter for the member states and I would not have thought that there is much likelihood that the member states would agree to surrender those powers to the European Court of Justice. Within the UK, the devolved competences are matters that we have negotiated and which, in Scotland, have been subject to a referendum.

**Mr Quinan:** We can appeal only to the Judicial Committee of the Privy Council, which is an unelected structure whose members we barely know. Surely, not just for our own benefit but for the good governance of the EU, it would be preferable if regional legislatures had access to an independent authority such as the European Court of Justice.

**Mr Jim Wallace:** I am not sure that the democratic qualifications of the European Court of Justice are any better than those of the Judicial Committee of the Privy Council.

**Mr Quinan:** Well, its members are not appointed by the British, for a start.

**Mr Jim Wallace:** The position was part of the settlement that Scotland overwhelmingly supported in a referendum. It was part and parcel of the white paper that we voted on in the devolution referendum.

I think that we are dealing with a hypothetical situation as I cannot imagine that any member state would be willing to give up—I do not mean “surrender”—to the European Court of Justice jurisdiction over a matter that is very much part of the internal constitutional debate within member states.

**Ben Wallace:** Lloyd Quinan has asked half the questions that I was going to ask.

On the structure of the decision-making process

in the EU, you said that you did not want to talk much about the position because that might create a barrier to consensus. However, when the Prime Minister spoke in Warsaw and when Peter Hain came to Scotland, they made it clear that they continued to be in favour of a second chamber. Is it the view of the Scottish Executive that that would be a good way to progress?

**Mr Jim Wallace:** We identified the second chamber as being one of the bodies—a modified Committee of the Regions was another—that could act as a subsidiarity watchdog. I would not claim that we are absolutely wedded to the principle of a second chamber, but we suggested that it might be one of the possible mechanisms that would enable a close watch to be kept on the Commission, particularly with regard to subsidiarity.

**The Convener:** Has the Scottish Executive's proposal found much support in Europe?

**Mr Jim Wallace:** I was not immediately involved in any of the bilaterals that took place. I am checking to see whether the proposal was referred to in the Flanders declaration, but I cannot see an immediate reference to it. Perhaps I can clarify that for the committee.

**The Convener:** If you could come back to us on that issue, that would be absolutely fine.

**Ben Wallace:** We are getting to the stage at which Governments of the member states are putting forward their ideas on the preferred option for the governance of Europe. The Prime Minister, Mr Blair, has made it clear that his preferred option is a second chamber. Does the Scottish Executive have a preferred option or will any of the four options that are on offer do?

**Mr Jim Wallace:** Having an objective is more important than being tied to a particular delivery mechanism. My objective is that we should have a political mechanism to safeguard the principle of subsidiarity. In that context, we recommended that there should be a second chamber, which is one way of doing that. A second chamber would have representatives from national Parliaments and from regional Parliaments with legislative competence.

That consideration is secondary. It is more important that we have a body that has teeth and that can carry out the important function of safeguarding the subsidiarity principle. That is why I said in my opening remarks that open debate is very much part of the process. It would be wrong for us to get tied to a particular option if it proved not to be gathering momentum. We should not get so tied to a particular option that we take our eye off the ball and forget our objective—the objective is the most important thing. We have an opportunity for debate so that we can try to find

the best means of securing that objective.

**Mr John Home Robertson (East Lothian) (Lab):** In October, the general affairs council agreed that such matters should be taken forward by a convention of MEPs, national parliamentarians and representatives of national Governments. Different people have said different things in different places about who should take part in that convention. Clearly, there is a strong case for regions with legislative competence such as Scotland being directly represented in such a body. What is the Executive's view on that?

**Mr Jim Wallace:** The Liège resolution referred to that matter. If you bear with me, I will quote the relevant part.

**Mr Home Robertson:** I was afraid that you might. Not in Flemish, I hope.

**Mr Jim Wallace:** The Liège resolution, to which we were party, states:

"with regard to the Convention the Regions with legislative power expect the Heads of State and Government to involve them as well. They believe they can bring a real added value by their knowledge of the diversity in social, economic and cultural fields, which represents the richness of Europe, its force and the foundation of its cohesion. Considering that all possible means should be applied to reinforce the democratic legitimacy of the European Union, the Convention should reflect the views of all politically elected actors that can contribute to this."

**Mr Home Robertson:** Will the convention only reflect our views or will MSPs be members of it?

**Mr Jim Wallace:** Whether we are members is ultimately not our decision. I have given the position that has been indicated. It is important that the debate on the future of Europe is inclusive and wide ranging.

**The Convener:** At one point, the Liège resolution makes a request for "direct representation". Perhaps you could agree to clarify that at a later stage.

**Mr Home Robertson:** It would be better still if the minister could clarify that now.

**Ben Wallace:** It is important that the committee examines options and suggestions for the way forward for everything connected to European governance. It is not satisfactory for us to sit here and spend 35 minutes talking about warm aims with which we probably all agree. We should push for stronger replies, or straighter answers, on what we want. We have found that an offer from the Executive of clarification at a later date does not always work.

**The Convener:** Mr Wallace has been trying to clarify—

**Mr Jim Wallace:** I may not have used the words "direct representation", but it is clear that that is what I implied.

**The Convener:** So you agree on that point?

**Mr Jim Wallace:** Yes. We are a signatory to the Liège resolution, but whether we get direct representation will be determined at Laeken. Even if direct representation is not achieved, there are ways in which the regions that have legislative powers can contribute their views. A seat at the table is the most direct way of doing so, but not having a seat at the table does not mean that your views are excluded.

**Sarah Boyack:** I will follow up on the general area that Ben Wallace opened up of better consultation with and more involvement of citizens in the European Union. I was struck by the minister's opening comments on the weakness of governance, not just in Europe but throughout the world. Citizens are not connected to their representative organisations. The debate is not just about whether a second chamber would be a good idea.

In his answer to Ben Wallace, the minister referred to the need to explore other issues, such as better communication and information at an early stage. What specific proposals does the Executive wish to pursue? How can we make the European Parliament and the European Commission more accessible now, rather than having to wait for the debate on a second chamber?

**Mr Jim Wallace:** My answer to Ben Wallace on the second chamber was in the context of the subsidiarity watchdog, and I suggested that a reformed Committee of the Regions might be another way of encouraging accessibility.

Ms Boyack has opened up the slightly wider issue of what might be done to connect with the citizen. The Commission's principle of not legislating to the  $n^{\text{th}}$  degree is far more likely to make citizens feel that they are part and parcel of the decisions that affect them. Perhaps I can clarify the point that I raised with Mr Canavan. If broad frameworks are worked out, it might be left to the Scottish Parliament, for example, to provide the detail.

One of the strengths of the Parliament has been the accessibility of its committees to the public. One of the issues that we raised in our submission on governance was the importance of flexibility in implementation, and we suggested that such flexibility should be extended to legislatures such as the Scottish Parliament. If we were allowed that flexibility, we would be far more likely to ensure that, in delivering implementation through the Parliament's processes, we took local circumstances into account and took advantage of

the experience of ordinary citizens. It would be wrong for the European Union to be prescriptive about other legislatures' processes. Obviously, the more that implementation is pushed down to the level of the Scottish Parliament, the more inclusive we can be.

**The Convener:** Before I bring in Sarah Boyack again, I would like to ask you about your views on transparency, which are well known. How do you feel about the Council of Ministers, which is probably the only legislature in the world that meets behind closed doors? Citizens will obviously not feel connected to government if legislative decisions are made behind closed doors.

**Mr Jim Wallace:** We should look into ways of providing greater transparency than that provided by the Council of Ministers. I am not saying that every moment of deliberation should be open, but more could be done. To be frank, I am not sure that much is said in the Council of Ministers, which I have attended, that could not be said outside.

**The Convener:** A difficulty is that the views of journalists from different countries differ from those of their ministers about what happens in Council of Ministers meetings. It is always difficult to find out what the truth is.

**Mr Jim Wallace:** There are opportunities for greater transparency.

**Sarah Boyack:** I have a brief follow-up question on frameworks. Have we discerned any support from other member states for the strategic approach, in which we define key principles rather than defining the letter of the law in everything?

**Mr Jim Wallace:** The white paper from the European Commission reflected that thread, which we included in our submission, and the opportunity for greater flexibility. We have until March 2002 to respond to the white paper. You will find that, in the white paper, the Commission says:

"There should be more flexibility in the means provided for implementing legislation and programmes with a strong territorial impact, provided the level playing field at the heart of the internal market can be maintained."

The answer to your question is yes. The approach struck a chord with the Commission.

13:15

**Helen Eadie (Dunfermline East) (Lab):** I will pick up on your point about the transparency of the Council of Ministers. I commend the way in which the Swedish presidency has opened up the working groups, committees and meetings that the national civil servants attend in preparation for Council of Ministers meetings. Committee members have been impressed by that. We have noted that almost 90 per cent of the legislation is pre-cooked before the elected representatives

make their final decisions. The process of opening up has enabled more people to be much more aware of what is going on.

I hope—and I hope that other committee members will agree—that in any meetings that you have, you will encourage other presidencies to adopt a similar approach, so that many more of us can be much more aware of decisions before they are taken. We often find that, in European Union affairs, we are told of decisions after the event, when it is too late for us to comment. We would like as much prior warning of such decisions as we can possibly get.

**Mr Jim Wallace:** I bow to your greater knowledge of what the Swedish presidency did. I am sympathetic to the point that underlies your comment.

**The Convener:** We have finished just about on time—in 35 minutes. We appreciate your coming along today. We have not had time for some questions. They are still outstanding.

**Mr Jim Wallace:** If you want to take another five minutes, I am happy to stay.

**The Convener:** Right. Does Ben Wallace want to ask something?

**Mr Jim Wallace:** It is probably a big mistake on my part to stay.

**Ben Wallace:** I will expand on Lloyd Quinan's point about direct access to the European Court of Justice. Many of us acknowledge, as you said, that there are different devolved systems throughout Europe. That makes difficult a blanket agreement that would enable regions or Länder to have direct access to the European Court of Justice.

What is your opinion on the suggestion that, on devolved matters, devolved Administrations should have direct access to the European Court of Justice? In other words, the suggestion is that how much access institutions have to the court and in what circumstances they have that access would depend on the nature of the institutions. For example, if an EU directive on elements of fishing policy or smoking policy came into force, the Scottish Parliament or the Scottish Executive could have access to the European Court of Justice on those issues.

**Mr Jim Wallace:** The answer remains the same as the one I gave earlier. The political route has been far more effective in dealing with such areas than the litigious route has been. Ultimately, the member state is the signatory party. If orders were to be made by the court, they would be made against the member state. In the kind of circumstances that you suggest, debates—over tobacco advertising, for example—are more likely to be brought to a successful and satisfactory

conclusion through political dialogue than through a case that might take a considerable length of time to find its way through the court.

**Dennis Canavan:** My question concerns a small point about terminology that is nonetheless important. You said that the Scottish Executive is pro-regional Government involvement. Can we search the vocabulary for a better word than “regional”?

Scotland is not a region and the people of Scotland make up a nation. For example, the Scottish Executive can be described correctly as a devolved Administration and the Parliament can be described as a national legislature, but one that is devolved within a member state of the European Union. The term “region” is confusing, bearing in mind the fact that it is sometimes used to refer to parts of Scotland. For example, although Strathclyde region no longer exists as a local government entity, many people still refer to that part of Scotland as a region. Similarly, there is the nomenclature of the Committee of the Regions. Will you press your ministerial colleagues in Europe to look for better and more consistent terminology?

**Mr Jim Wallace:** I was conscious when I used the term earlier that it is not as felicitous as it might be, for the reason that Dennis Canavan gave—we consider ourselves to be a nation. One problem is that we came somewhat late to the table. The other regions, which include some Länder with populations of around 17 million, call themselves constitutional regions. We are stuck with the term. I would be happy if someone came up with a better word for that and for subsidiarity. Dennis is right to raise the matter, but the term “region” is better than the term “sub-national”, which grates on all our ears. If anyone has an inspired thought, I would table it willingly.

**Mr Home Robertson:** I suggest that if we must think up new vocabulary, the place that the words “additionality” and “subsidiarity” came from is the last place to go.

**The Convener:** Before I bring in Lloyd Quinan, I want to ask the minister about simplification of the treaties, which everyone signs up to but which seems to be more difficult to achieve. I remember simplification being an objective at the two IGCs before the most recent one. The treaties are enormously complicated. How can we put them into a form that allows ordinary citizens to connect and understand what the European Union is about?

**Mr Jim Wallace:** I cannot claim to have an inspired answer to that, although if I find one, I will pass it on. The objective of simplification is important, but I understand how difficult it is. I would like our Parliament's legislation to be in

much simpler English. Every time I plead for that, I am given five good reasons why it cannot be done—for instance, rights might be abrogated or exceptions might not be accommodated. However, that should not diminish a genuine attempt to simplify because, at times, one needs only to look at the treaties to glaze over.

**Mr Quinan:** What role do you see the committee and the Executive having in the bid for the 2008 European championships, which would be positive in engaging—

**The Convener:** That is outwith our remit.

**Mr Jim Wallace:** I do not want to get into a territorial battle with whichever committee looks after that subject.

**The Convener:** The discussion this afternoon has been useful and interesting and we are grateful that you came along. We look forward to a productive relationship between the committee and the Deputy First Minister in future. We will have a short adjournment.

13:23

*Meeting adjourned.*

13:29

*On resuming—*

## **Convener's Report**

**The Convener:** The next item on today's agenda is for me to update the committee on a particular development. Members will remember that the Public Petitions Committee formally referred to us, for interest only, two petitions on the less favoured area scheme. The petitions also went to the Rural Development Committee, which has since written to us asking for our advice on the situation. The clerks have prepared a letter, which members have in their briefing papers. The letter has an appendix that outlines the options that are available to the committee. It is probably right that the committee takes the decision on which option it wants to pursue, but in the letter we ask the Rural Development Committee to come back to us and update us on the situation. Is that agreed, colleagues?

**Members** *indicated agreement.*

## Scrutiny

13:30

**The Convener:** The next item on the agenda is the scrutiny of EC and EU documents. Before I go into the recommendations, I ask Christine Boch whether there is anything that she particularly wants to bring to our attention.

**Christine Boch (Scottish Parliament Directorate of Legal Services):** There is nothing that I want to bring to the attention of the committee that is not already set out in my notes.

**The Convener:** Let us move on then.

**Christine Boch:** I am happy to clarify any points that are unclear to members.

**The Convener:** Okay. We move to the recommendations in the relevant paper. The recommendation is that the documents on page 1 receive priority scrutiny. The documents are:

SP 2499 (EC Ref No COM(2001) 433)  
 SP 2576 (EC Ref No COM(2001) 512)  
 SP 2577 (EC Ref No COM(2001) 511)  
 SP 2598 (EC Ref No COM(2001) 438)  
 SP 2599 (EC Ref No COM(2001) 414)  
 SP 2606 (EC Ref No SEC(2001) 1398)

Is that agreed?

**Members indicated agreement.**

**The Convener:** There are no documents on page 2 for routine scrutiny.

The recommendation is that the documents on page 3 be deferred pending receipt of further information. The documents are:

SP 2400 (EC Ref No 10372/01 COM(2001) 259 final)  
 SP 2496 (EC Ref No COM(2001) 425)  
 SP 2523 (EC Ref No COM(2001) 182)  
 SP 2546 (EC Ref No COM(2001) 483)  
 SP 2575 (EC Ref No COM(2001) 506)  
 SP 2591 (EC Ref No COM(2001) 508)  
 SP 2594 (EC Ref No COM(2001) 505)  
 SP 2621 (EC Ref No COM(2001) 522 final/2)  
 SP 2629 (EC Ref No COM(2001) 549)  
 SP 2654 (EC Ref No 12445/01)  
 SP 2679 (EC Ref No 12712/01)  
 SP 2467 (EC Ref No 10536/01 COR1 ENFOPOL 71)  
 SP 2468 (EC Ref No 11088/01 ENFOPOL 82)

Is that agreed?

**Members indicated agreement.**

**The Convener:** The recommendation is that the committee takes no further action on the document on page 4 and copies it to another committee for interest. The document is:

SP 2458 (EC Ref No 11161/01 COM(2001) 410 final)

Is that agreed?

**Members indicated agreement.**

**The Convener:** The recommendation is that we take no further action on the documents on pages 5 to 9. The documents are:

SP 2624 (EC Ref No COM(2001) 525)  
 SP 2625 (EC Ref No 11944/01)  
 SP 2626 (EC Ref No COM(2001) 532)  
 SP 2627 (EC Ref No COM(2001) 553)  
 SP 2628 (EC Ref No 14879/00)  
 SP 2630 (EC Ref No COM(2001) 349)  
 SP 2631 (EC Ref No COM(2001) 542)  
 SP 2632 (EC Ref No COM(2001) 540)  
 SP 2633 (EC Ref No COM(2001) 509)  
 SP 2635 (EC Ref No SEC(2001) 1467)  
 SP 2638 (EC Ref No COM(2001) 533)  
 SP 2639 (EC Ref No COM(2001) 546)  
 SP 2640 (EC Ref No SEC(2001) 1449 final)  
 SP 2641 (EC Ref No 11685/3/01)  
 SP 2642 (EC Ref No 11282/01)  
 SP 2643 (EC Ref No SEC(2001) 1008 final)  
 SP 2644 (EC Ref No SEC(2001) 1474 final)  
 SP 2645 (EC Ref No SEC(2001) 716 final/2)  
 SP 2646 (EC Ref No 12457/01)  
 SP 2647 (EC Ref No 12459/01)  
 SP 2648 (EC Ref No COM(2001) 555)  
 SP 2649 (EC Ref No COM(2001) 535)  
 SP 2650 (EC Ref No COM(2001) 538)  
 SP 2651 (EC Ref No COM(2001) 544)  
 SP 2652 (EC Ref No COM(2001) 570)  
 SP 2653 (EC Ref No COM(2001) 534)  
 SP 2656 (EC Ref No COM(2001) 504)  
 SP 2657 (EC Ref No COM(2001) 496)  
 SP 2658 (EC Ref No COM(2001) 609)  
 SP 2659 (EC Ref No SEC(2001) 1621)  
 SP 2660 (EC Ref No SEC(2001) 1576)  
 SP 2661 (EC Ref No COM(2001) 577)  
 SP 2662 (EC Ref No 12647/01)  
 SP 2663 (EC Ref No SEC(2001) 1426 final)  
 SP 2664 (EC Ref No 12496/01)  
 SP 2665 (EC Ref No 11685/4/01)

SP 2666 (EC Ref No 12491/01)  
SP 2667 (Draft General Budget)  
SP 2668 (EC Ref No 12767/01)  
SP 2669 (EC Ref No 12175/01)  
SP 2680 (EC Ref No SEC(2001) 1579)  
SP 2681 (EC Ref No COM(2001) 557)  
SP 2682 (EC Ref No 10536/1/01)  
SP 2683 (EC Ref No 12400/01 400)  
SP 2684 (EC Ref No COM(2001) 582)  
SP 2685 (EC Ref No SEC(2001) 1702)  
SP 2686 (EC Ref No COM(2001) 569)  
SP 2687 (EC Ref No 13359/01)  
SP 2688 (EC Ref No COM(2001) 612)  
SP 2689 (EC Ref No 9014/01)  
SP 2690 (EC Ref No 8802/01)  
SP 2691 (EC Ref No COM(2001) 605)  
SP 2502 (EC Ref No COM(2001) 493)  
SP 2534 (EC Ref No COM(2001) 450)  
SP 2507 (EC Ref No COM(2001) 366)  
SP 2579 (EC Ref No COM(2001) 415)  
SP 2473 (EC Ref No 11199/01 WTO 82)

Is that agreed?

**Members indicated agreement.**

## **EC/EU Legislation (Implementation)**

**The Convener:** The next item concerns the details of the Executive's plans for the implementation of EC/EU legislation in Scotland. Members will recall that we recently agreed that the Executive should provide us with a regular update on its plans for the implementation of EC/EU regulations in devolved areas, including the use of section 57 of the Scotland Act 1998. The Executive has now given us a paper on the matter, which shows the details. I am not proposing that we have a detailed discussion today, but that we consider at a future meeting how we should deal with the report. Does the committee agree that we put the matter on the agenda for another meeting?

**Members indicated agreement.**

**The Convener:** The final item is to be taken in private, so we now end our public session.

13:33

*Meeting continued in private until 15:07.*



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