



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 23 February 2010

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**EUROPEAN AND EXTERNAL RELATIONS COMMITTEE**

**3<sup>rd</sup> Meeting 2010, Session 3**

**CONVENER**

\*Irene Oldfather (Cunninghame South) (Lab)

**DEPUTY CONVENER**

Michael Matheson (Falkirk West) (SNP)

**COMMITTEE MEMBERS**

\*Rhona Brankin (Midlothian) (Lab)

\*Ted Brocklebank (Mid Scotland and Fife) (Con)

Patricia Ferguson (Glasgow Maryhill) (Lab)

\*Jamie Hepburn (Central Scotland) (SNP)

\*Jim Hume (South of Scotland) (LD)

Sandra White (Glasgow) (SNP)

**COMMITTEE SUBSTITUTES**

Jackson Carlaw (West of Scotland) (Con)

Ken Macintosh (Eastwood) (Lab)

Gil Paterson (West of Scotland) (SNP)

Iain Smith (North East Fife) (LD)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Duncan Botting (Scottish European Green Energy Centre)

Stephen Boyd (Scottish Trades Union Congress)

Vivienne Brown (Skills Development Scotland)

Paul Cackette (Scottish Government Legal Directorate)

Sir David Edward (Royal Society of Edinburgh)

Vanessa Glynn (Scottish Government Culture, External Affairs and Tourism Directorate)

Donald Henderson (Scottish Government Culture, External Affairs and Tourism Directorate)

Morag Keith (West of Scotland Colleges Partnership)

Peter Kelly (Scottish Council for Voluntary Organisations)

Donald MacInnes (Scottish Enterprise)

**CLERK TO THE COMMITTEE**

Lynn Tullis

Simon Watkins

**LOCATION**

Committee Room 6



## Scottish Parliament

### European and External Relations Committee

*Tuesday 23 February 2010*

[The Convener opened the meeting at 10:10]

### Decision on Taking Business in Private

**The Convener (Irene Oldfather):** I welcome everyone to the European and External Relations Committee's third meeting in 2010. I have received apologies from Sandra White, Patricia Ferguson and Michael Matheson.

Items 1 and 2 are to make decisions on taking business in private. Under item 1, we are asked to agree to discuss in private our European Union 2020 report and, under 2, to discuss in private the evidence that we have taken on the Treaty of Lisbon. Are members content to take those two items in private?

**Members** indicated agreement.

## Treaty of Lisbon Inquiry

10:11

**The Convener:** I welcome to the committee our first panel of witnesses, of which we have three today. We are pleased to have back with us Donald Henderson, who is deputy director Europe and head of the European Union office in Brussels; Vanessa Glynn, who is a head of unit in the Europe division; and Paul Cackette, who is from the Scottish Government legal directorate.

I thank the witnesses for coming and for their written submission, which is useful and has answered some of the questions that we intended to put to them. We have quite a few questions, but I think that Donald Henderson intends to make a few opening remarks. Is that correct?

**Donald Henderson (Scottish Government Culture, External Affairs and Tourism Directorate):** Yes. I will do so if that is possible, convener.

First, on my and my colleagues' behalf, I thank you for the opportunity to come along and talk to the committee. The Government's approach to implementation of the Lisbon treaty is probably best seen in the context of our developing experience of the EU over the 10 years of devolution and of the Brussels office's existence, and in the context of the strategic approach that was set out in the action plan that we published last September. As the committee will recall, that plan covered four areas: energy and climate change, the marine environment, justice, and research and creativity. The Lisbon treaty affects all those areas in one way or another, either by clarifying competence, by adding competence or by introducing co-decision.

Although we have been mindful of the treaty's likely introduction for some time, and although it introduces changes in how we will have to work, it does not, at one level, radically change how we engage on EU matters. Not everything changes.

In order for us to be at our most effective on a particular issue, it was always important to have good communication with the key domestic interests—local authorities, other public bodies, industry, non-governmental organisations and, of course, the Parliament. In Brussels, we have always needed to engage closely with the institutions—with the Council of the European Union, via our engagement with the United Kingdom permanent representation to the European Union, and with the European Commission, directly through everyone from the Cabinet to desk officers—and with others of like mind, whether they be member states, regions or NGOs. That will all continue under the Lisbon

treaty, albeit that it will happen in respect of a broader range of subject matter.

Perhaps the area in which the treaty brings about the biggest change to our day-to-day engagement in Brussels—whether through the Brussels office or line divisions at home—concerns the role of the European Parliament, where there is much more co-decision, including in areas that are crucial to us, such as agriculture, fisheries and justice. However, even that can be considered to be the continuation of a trend over the past 10 years.

It is probably true that, when the Brussels office was first set up 10 years ago and the Scottish Parliament was created, the European Parliament did not figure significantly in our work. It was certainly always more than merely an afterthought, but it was substantially less important to us than were the Council and the Commission. The introduction of the Lisbon treaty and the expansion of competence and co-decision mean that there now needs to be parity in our targeting. We have adjusted to that over the period since we saw that the Lisbon treaty would be implemented, so we now have in my team in Brussels a person who is dedicated to European Parliament liaison. We also had minister-led engagement with new members of the European Parliament within days of the European parliamentary elections last June. We not only engaged more effectively in Brussels with our own MEPs, but with MEPs from elsewhere in the United Kingdom and from Ireland, and with rapporteurs, conveners or vice-conveners in areas in which we have a particular interest.

10:15

On other areas of the treaty that I know we will get into today, we look to emerging experience as people build experience of what the treaty means in practice, or look to others for a lead. In the former case, I am thinking about the rights in the petition and subsidiarity arrangements. On the million-signature opportunity that the treaty allows, all of us across the 27 member states and throughout all parts of the member states must watch how that develops. I think that NGOs and pressure groups will be hugely interested in it.

On the subsidiarity arrangements—as you will know, convener—the treaty gives member states' national Parliaments an explicit right to one vote per chamber. However, within that it also says explicitly that there can be a role for legislative sub-state or regional Parliaments. There has been much discussion of that already, and we think that it is right that Executives await a lead from their legislatures in that matter and not the other way round. However, we will be very happy to work with the committee to develop the proportionate and effective system that I know we all want.

That concludes my remarks. I hope that I have not gone over my time limit. My colleagues and I are happy to help you however we can.

**The Convener:** Thank you very much. We have a number of questions on new and expanded competences, to which we will come in a minute. I agree with you that much will not change. I want to begin by exploring the present system and how it works, and the explanatory memoranda, because the committee is looking to build a robust process in that area. What sort of scrutiny does the Scottish Government undertake? Can you talk us through the current process and the relationship between you and Whitehall? What happens with explanatory memoranda, what is your involvement with them and where do they go within the system here in Scotland?

**Donald Henderson:** I will ask my colleague Vanessa Glynn to pick up on some of that.

Our engagement, where it works best, starts even before the explanatory memorandum is prepared, in that the staff in the Brussels office will be engaged with UKREP, frequently through working groups, in picking up on what the legislative proposals are. The formal UK system requires the appropriate UKREP section to deal with the line department in London in deciding first whether a document is depositable, and thereafter whether an explanatory memorandum must be prepared. As you will know, memoranda are prepared to a standard template that includes devolution relevance, so there is a trigger for the Whitehall department to contact our colleagues in Edinburgh or Glasgow. My experience is that, when the House of Commons committee that considers the memorandum sees an inadequate devolution response, clerks and members are prompted to remind the Whitehall department that it must provide an answer on that, whether it is yes, no or whatever in between.

Within the Scottish Government, we have been reviewing the explanatory memorandum system. We get explanatory memoranda into the Europe division and we hope that the line divisions—justice, agriculture, fisheries, transport and so on—will have seen them beforehand and will have spoken to their Whitehall colleagues. That contact inevitably depends on the quality of relationships between officials in those areas, which can depend on whether their business in the months and years before have required devolution contact. The quality of contact varies.

Copies of the explanatory memoranda are, I think, sent on to you by us, but I am reaching the boundaries of my detailed knowledge, so I shall pass to my esteemed colleague, Vanessa Glynn.

**Vanessa Glynn (Scottish Government Culture, External Affairs and Tourism Directorate):** I do not have an enormous amount to add to Donald Henderson's explanation, but I will fill in with some detail of which the committee might not already be aware. The Cabinet Office receives documents through the Council's document system and then, on publication, provides them to the relevant lead Whitehall department, which is required to provide an explanatory memorandum to the Westminster scrutiny committees within 10 working days: timelines are pretty short. When there will be a devolved impact, the Whitehall departments are required within that time to consult the devolved Administrations. That often happens at short notice, although where Scottish Government officials have built a good relationship on EU issues, there is often discussion ahead of the explanatory memorandum's being provided. That works well.

At the Scottish Government end, there is limited time for scrutiny of what are often voluminous documents. Often, it is possible to determine only whether there will be an impact on devolution and not a lot of scope to consider the issue in full detail. Sometimes, a memorandum is merely a trigger to flag up Scottish interest and to write that into the explanatory memorandum so that that is clear to Westminster committees and Whitehall counterparts. The final document, when it comes back through the Scottish Government and is provided to the Scottish Parliament information centre, is a mechanism to inform the Scottish Parliament that there is a Scottish interest.

On what happens next in the Scottish Government, the explanatory memorandum is a trigger for the system that is set out in the guidance that we published last year on handling EU obligations: the Scottish Government talks to Whitehall and stakeholders and considers in more detail what the effects will be. We are currently rolling that out.

**The Convener:** I am interested in the issue because the system might lend itself to a bit of development—perhaps in relation to better scrutiny and subsidiarity. Roughly how many explanatory memoranda do you receive in a month?

**Vanessa Glynn:** It is hard to give an exact number because the system is decentralised. We think that the Europe division receives the majority of draft EMs, but we know that some colleagues receive them directly. At the London end, they come from individual departments—there is no centralised system. Through our Lisbon impact assessment, we have discovered and identified that we perhaps need to audit how we track EMs across the system, and to consider how robust the

process is. All the evidence suggests that the process works well. We provide somewhere in the region of between 20 and 30 finalised EMs a week to SPICe, so it is a significant number. However, we do not know whether there are some that we do not see. That is what we would like to turn our attention to next, having spent a good amount of last year considering issues such as infractions and transposition. With Lisbon and subsidiarity, it now makes sense to focus on the explanatory memorandum aspect of our work.

**The Convener:** It would be a useful next step to have some kind of centralised co-ordination within Scotland. I understand what you are saying about the fact that there is no centralised co-operation, even at the London end, but could the House of Commons European Scrutiny Committee not provide that? I wonder whether there is a step missing from Scottish parliamentary scrutiny. Although you lodge the explanatory memoranda technically with the Parliament, technically it is SPICe that receives the documents. Do any parliamentary committees consider them?

**Vanessa Glynn:** I am sorry, but I cannot answer that. Although we want to audit the system, we have to be careful that we do not set up mechanisms that are disproportionate to the Parliament's needs and over and above what is being provided by Westminster. We want to consider what is happening and we want to think about what value-added and resource-effective improvements we can make. It would be impossible for me to say what those might be until we have undertaken the audit.

**The Convener:** Would Scottish Government officials or departments respond to all 20-30 explanatory memoranda that are flagged up as having a devolved interest?

**Vanessa Glynn:** If there is no interest, departments are also asked to register that. There may be many reasons for that: many documents apply only to other parts of the European Union and would have no impact on Scotland, and some are fully on reserved matters.

**The Convener:** I presume that the only EMs that are flagged up to you are those that will have implications for devolved Administrations.

**Vanessa Glynn:** We probably see a wider group than that because the Whitehall department is often not fully aware of where the boundaries lie. Equally, some reserved issues have an impact on devolved issues, so the line is somewhat blurred.

**The Convener:** Do those 20-30 EMs fall within particular subject areas? I imagine that the common fisheries policy and the common agricultural policy come up frequently. Is that the case?

**Vanessa Glynn:** EMs cover a range of issues. I imagine that there are quite a few on the environment and, as you said, agriculture and fisheries. There will also be quite a number to do with the internal market.

**The Convener:** A sensible next step might be to work out how the Scottish Parliament scrutinises what happens to those 20-30 EMs. My concern is that at the moment, no parliamentary committee is monitoring that. What is the timescale for the audit that you are conducting?

**Vanessa Glynn:** It will be done over the next few months, I imagine.

**The Convener:** It would be helpful if we could work in partnership with you on that.

**Vanessa Glynn:** Absolutely.

**The Convener:** We are working with SPICe to audit some of the papers that are resting there, to see whether they have any implications for the inquiry.

Do you have any other thoughts on how the Parliament could establish bilateral links with you to improve the scrutiny process, or is it too early to say? You might want to conduct your audit first.

**Vanessa Glynn:** It would be sensible to consider how the system is working now, where we need to put extra effort, what we want to get out of it and what the committee wants out of it.

**The Convener:** Thank you. Ted Brocklebank has some questions on the expanded competences.

**Ted Brocklebank (Mid Scotland and Fife) (Con):** Good morning. Donald Henderson has already been over some of this ground—certainly in the submission—but I wonder whether you will go over it again for us. What are the potential advantages and disadvantages of the extended competences that we are now facing?

10:30

**Donald Henderson:** The nature of the expanded competences varies. There are some areas that, nominally, are expanded competences but in fact are a restatement or clarification of existing practice. For instance, in tourism and sport, the Commission has been active not through spending huge amounts of money or by introducing legislation but through assisting the work of member states. The Treaty of Lisbon clarifies that the EU can play a supporting role in various areas.

The treaty also sets out new competences in certain areas of energy, not least because the challenges that now face the EU in energy and, indeed, in climate change are quite different to

those that were faced in the 1990s when the Treaty of Nice, the Treaty of Amsterdam and all the other treaties were going through.

In merely clarifying certain matters, the Lisbon treaty not only gives the Commission greater confidence about the areas in which it is able to operate, but provides member states with clearer boundaries and draws the lines over which the Commission cannot step. In past years, member states have expressed concern about what has been called competence creep, and have expressed fears that the Commission would try to occupy legislative ground by building on legislative statements and policy communications. As I said, there is now greater clarity, and in areas such as tourism and sport the Commission can play a role by assisting member states' actions instead of introducing legislation. It is certainly not an exclusive competence or area for co-decision, and I am not sure that the Commission intends to legislate in such areas anyway.

I am not sure whether you also wanted to know about co-decisions.

**Ted Brocklebank:** I was going to ask about that. You said that certain areas in agriculture and fisheries could be improved. Can you go into that in more detail and explain how the treaty will put us in a stronger position?

**Donald Henderson:** The treaty will bring challenges, opportunities and risks. Before the Lisbon treaty came into force, decisions on agriculture and fisheries were made only by the Council of Ministers and, rather than being part of the decision-making process, the Parliament itself could only try to influence what was going on. As a result, all our work was carried out with UKREP or other member states or, particularly with regard to agriculture and fisheries, alongside non-governmental groups and industry groups.

However, most aspects of agriculture and fisheries will now be subject to co-decisions, which means that we can work more directly through our six MEPs. We have always spoken to them about those matters and over the years they have received briefings from officials and ministers. Until now, however, they were unable to vote on such issues. Now their votes will count. Of course, so will everyone else's, so we need to analyse the alignments of the various national interests in the European Parliament and use our MEPs to pick up what the themes are and where the momentum lies to ensure that we not only spot opportunities to pursue any lines that are conducive to the Scottish interest, but identify emerging threats or opportunities such as a one-size-fits-all proposal that would not fit us, or a zero-sum game in which one of the choices would not be in our interest and the other would be.



**Ted Brocklebank:** Am I right in saying that the major decisions on the nuts and bolts of, say, the common fisheries policy—total allowable catches, for example, and quotas—will be retained and will not be subject to co-decisions?

**Donald Henderson:** Although there are effort restrictions, the CFP is governed in part by landing restrictions rather than by catch restrictions.

Technical conservation measures such as gear regulations are almost as fundamental as landing limits, because use of the wrong size of mesh can be wasteful or ineffective and can make fishing in some waters—the prosecution of some fisheries—no longer economically viable. That is subject to the co-decision procedure and we will need to keep a much closer eye on that. We are well represented in the European Parliament's Committee on Fisheries, of which Struan Stevenson is a vice-chair. I suggest that he and Ian Hudghton can expect and might already see a different workload and different pressures in that committee, as might be the case for Alyn Smith and George Lyon in the Committee on Agriculture and Rural Development.

Big decisions remain for the Council, but we need to be careful about the fact that big matters have transferred to co-decision. We need to ensure that they are got right, in addition to continuing to plough the Council furrow.

**Ted Brocklebank:** Another area that you say is subject to co-decision is justice. Of course, Scotland's legal system is different from that of member states'. To what extent is our legal system considered? Is it accepted and given full cognisance and full weight, as we expect?

**Donald Henderson:** As we have argued until now in the Council of Ministers, we will lobby the European Parliament and have discussions with MEPs. I ask Paul Cackette to talk about that in detail.

**Paul Cackette (Scottish Government Legal Directorate):** Ted Brocklebank is right to say that the Scottish legal system is distinct from that of England and, as one of the common-law systems in the European Union, it differs from other systems in the EU. We have worked particularly hard and effectively in justice and home affairs—which is to be renamed freedom, security and justice—to ensure that the UK's negotiating line has properly and fully reflected the Scottish legal system's differences. We will continue to do that.

We are keen to ensure, and have succeeded at achieving, wider awareness raising outwith the UK that the EU has at least 28 legal systems—arguably, it has more these days—rather than simply 27. That is part of the successful external work that has been done. We certainly seek to ensure that the Scottish legal system's differences

are reflected in the UK's negotiating position, not for their own sake, but to ensure that the Scottish position is defended and respected.

In many ways, being part of the common-law club with England, Ireland, Malta and Cyprus means a commonality of views and approaches in which we have engaged and which has been properly reflected in JHA negotiations. There is no reason to think that that will not continue when the FSJ procedures take full effect.

**Ted Brocklebank:** Are you sure that the Government has in place the appropriate mechanisms to ensure consultation on such matters and to look out for traps that might lie down the road?

**Paul Cackette:** Absolutely. Internal processes exist and much work goes into ensuring that the Scottish legal system's distinctiveness is reflected in what we do.

**The Convener:** Jim Hume had a few questions on freedom, security and justice. Do you want to follow up on anything?

**Jim Hume (South of Scotland) (LD):** All my questions have more or less been covered.

**Jamie Hepburn (Central Scotland) (SNP):** Article 2 of the protocol on subsidiarity says:

"Before proposing European legislative acts, the Commission shall consult widely"

and,

"where appropriate, take into account the regional and local dimension of the action envisaged."

When does the Government consider consultation by the European Commission to be "appropriate", as defined by that article?

**Donald Henderson:** That part of the treaty enshrines an important safeguard. Although past best practice ensured wide consultation, the protocol requires the Commission to consult widely, albeit that the requirement appears alongside wording such as "where appropriate" that allows argument about different options and extents.

Our belief is that, if the Commission is to introduce sound legislation that will fit across a continent of more than 500 million people in 27 member states and the different communities within those member states, wide and genuine consultation will always be necessary. In the main, the Commission has engaged in such consultation, but the fact that such a requirement is written into the subsidiarity protocol means that the Commission's lawyers will need to examine just a bit harder whether they are comfortable that the Commission's actions pass the clear test that is set out in the protocol.

Beyond those general statements, we will need to see what specifics emerge. Obviously, the protocol was not written with a view to there being a very clear, black-and-white, single test that can always apply to every question. Given the wording “where appropriate”, how the requirement to consult is applied to different circumstances might vary according to the circumstances themselves.

I think that I will pause at that point. Does that answer the question?

**Jamie Hepburn:** In many ways, the requirement could be quite a subjective measure. Might that not lead to problems in the long run?

**Donald Henderson:** I suspect that a degree of subjectivity is probably inevitable. Perhaps Paul Cackette can add something on that from the legal side.

**Paul Cackette:** Obviously, the requirement is a matter of subjective judgment. In our view, the concept “where appropriate” should be given a wide meaning. To echo what Vanessa Glynn said earlier, even if a proposal on the face of it dealt with an issue that is firmly within the reserved area of competence, the proposal could easily have crossovers to, or implications for the operation of, areas of devolved competence. An example that comes to mind from a number of years ago is a proposal relating to asylum and immigration, which are reserved, that also had a direct impact on the administration of the courts system in Scotland, which is devolved. That is exactly the kind of thing on which I would expect the concept “where appropriate” to be given a wide meaning, so that this Parliament is given a full opportunity to contribute to discussions that affect its interests.

**Donald Henderson:** Paul Cackette’s comments have been a helpful trigger in bringing to mind the fact that the memorandum of understanding and various concordats that we have with the UK Government—they do not always work perfectly, but they have set up a structure and an expectation about how the Administrations should work together—refer to issues that “touch on devolved matters” rather than simply to devolved matters. We expect the Commission to operate to that kind of standard, although we do not have powers to impose on it exactly the same language. As Paul Cackette said, we would expect the Commission to look not just at strict legislative competence within a domestic jurisdiction but at the impact of a proposal.

**Jamie Hepburn:** Mr Cackette has helpfully given a specific example—which I appreciate is difficult, given what we have agreed is the subjective nature of the requirement—of where wider consultation might be required. I wonder whether we might also be given a specific

example of how the Commission might apply the flip side of article 3, which states:

“In cases of exceptional urgency, the Commission shall not conduct such consultations.”

When would it be acceptable for the Commission to say that a proposal involves a matter of “exceptional urgency”?

**Donald Henderson:** We would have to be persuaded that the issue was both exceptional and urgent. It is very difficult to develop hypothetical cases that would answer that, and I might get myself into hot water if I tried. However, thank you for the opportunity.

**The Convener:** That leads us nicely to some questions that Rhona Brankin wanted to ask.

10:45

**Rhona Brankin (Midlothian) (Lab):** I will ask a couple of questions about article 6 and consultation with regional Parliaments with legislative powers, with particular regard to the term “where appropriate”. In what areas would it be appropriate to consult the Scottish Parliament? Would there be only a few exceptional cases in which there was no consultation, with the vast majority of issues being consulted on? What would those exceptions be?

**Donald Henderson:** With the caveat that it is for legislatures to determine how they work together, I would say that it is our starting expectation that it is possible for the UK Parliament and the Scottish Parliament to work together in such a way that there would be Scottish Parliament input into all issues that touch on devolved matters.

As you know, the timescales that are involved are tight, even for member state Parliaments, never mind the extra leg that is required for the Länder Parliaments in Germany, their equivalents in Spain and elsewhere and the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. There are some challenges with regard to ensuring that there is an appropriate and speedy process.

We believe that a process can be developed that can be quite broad in its coverage. What that will look like from inside the mechanism will depend on discussions between Parliaments. We all know that a degree of proportionality will be needed because of the significant volume of legislation that is coming out of Brussels. I have not spoken to anyone who thinks that it will be commonplace for challenges to develop on the ground of subsidiarity principles being breached. Challenges will more often be the result of people being for or against individual policy proposals.

It will be necessary to find a system that, in order to be proportionate, manages to narrow issues down fairly quickly to cases in which there is a real risk of subsidiarity principles being breached and then allows scrutiny to take place in national and sub-state Parliaments within the eight-week process. That could happen with a wide breadth of subject matter, not just within structural funds, agriculture or fisheries. We do not think that that will happen frequently, but the potential for it to happen exists across the totality of devolved interests.

**Rhona Brankin:** Obviously, there has been some thinking about the procedures and mechanisms that will have to be put in place. What are the key procedures and mechanisms that will be central to this?

**The Convener:** Before you answer that, I have a supplementary question. Do you think that subsidiarity would be breached only if the European Union were acting in an area in which it did not have exclusive competence?

**Paul Cackette:** That is right.

**The Convener:** Does that mean that everything that is a shared competence could not be challenged on the basis of subsidiarity?

**Donald Henderson:** No. Everything that is an exclusive competence can be ruled out; everything that is a shared competence is within bounds, as it were.

**The Convener:** Yes. We are really talking about quite a narrowing of policy areas, then.

**Donald Henderson:** There is a narrowing, but I think that most things are shared rather than exclusive.

**Vanessa Glynn:** Probably the majority of issues are shared.

**Paul Cackette:** There is an important but limited range of exclusive competences at the absolute top level: the customs union, the functioning of the internal market, monetary policy, and the common commercial policy. They are specifically narrated in the treaty as being exclusive. Everything else will be shared, and subsidiarity will apply only to the shared competences, which form the vast majority.

**Donald Henderson:** The one that is arguably of most interest to us is marine biological resources under the common fisheries policy, which is itself an interesting construction.

**The Convener:** Yes, it is very interesting. That was just an additional point to Rhona Brankin's point.

**Donald Henderson:** Some other elements will probably play in. First, one of the secrets to any

European engagement is early warning. The people who can help to develop early warning systems need to be involved at an early stage. We hope that that will include the Scottish Government, including my colleagues in Edinburgh and in the Brussels office. MEPs will sometimes pick up on issues at the same time as we do, but they will usually pick up a different sense at a different point in the legislative programme. Because the Convention of Scottish Local Authorities has to look at different aspects of implementation and represents an arguably different level of subsidiarity, it might have views that it wants to pitch in; I have not spoken directly to COSLA about that, but I suspect that it might be true. I do not think that that is an exhaustive list.

One of the secrets is to get a process that works quickly and spots early on what is likely to need greater scrutiny further down the line, perhaps in some cases even before there has been a formal legislative proposal because, as members will know, sometimes it can be picked up from the Brussels system that a legislative proposal is on its way and we might get a sense of whether it looks like a centralised measure that might breach aspects of subsidiarity.

**Rhona Brankin:** I suppose that there is also a need to prioritise, given the volume of legislative proposals.

**Donald Henderson:** Yes. I think that none of us has quite concluded our view of what we should be doing and, as the executive, the Scottish Government needs to be led by its legislature on this, but I sense that it would be a mistake to get into pettifogging territory. If there is a tiny technical breach that makes no material impact, others in the union can represent that view. We need to care about breaches that have a tangible impact on the lives of Scottish citizens.

**Rhona Brankin:** You referred to cases in which Scotland might diverge from the UK's position. What procedures and mechanisms are being put in place to facilitate conflict resolution if different approaches are taken?

**Donald Henderson:** Within the United Kingdom?

**Rhona Brankin:** Yes.

**Donald Henderson:** I stand to be corrected by Vanessa Glynn, but I cannot think of anything explicitly on that in terms of UK Government linkages as regards the Lisbon treaty. Clearly, the extension of codecision will have an impact on how an explanatory memorandum is written up and on Union competence. At the level of the MOU and the concordats, the revision that is waiting to go through is not being led by any changes being introduced by the Lisbon treaty. The good practice that is set out in the MOU is

that there should be early warning between Administrations where one is acting in an area that will have an impact on the others. That is meant to be an equal responsibility; the Scottish Government or Parliament can do things that can impact on how the UK Government operates within Scotland. There should be exchanges of papers in advance to give early warning and there should be consultation. Those practices exist already and will continue.

When there are disagreements on policy matters that end up in the European Parliament or the Council of Ministers, or on legislative proposals that are going through the European Union, the primary means to address them is through the bilateral link between line officials here in Edinburgh and Glasgow or their ministers, and officials in the relevant Whitehall department or their ministers. In theory, the joint ministerial committee on Europe can engage. In practice, it has not done so very much over the years, partly because the timescales for delivering the final UK negotiating line do not fit easily with the timetable for a meeting, which tends to have to be set up some weeks in advance to get into the diaries of ministers from the four corners of the kingdom, but it can be used if necessary. The paperwork setting up the JMC explicitly states that it can be used as a dispute resolution mechanism.

On occasions, at the softer end of it, we and UKREP can become involved. Such involvement is almost never to fix a big problem, because we both take instructions from our home authorities, as it were, but we are able to contribute to the final coming together, hopefully, on an agreed UK line that all parties feel they have had a good crack at feeding into.

**Rhona Brankin:** One of the challenges—I am thinking specifically of the annual round of protracted negotiations on the fisheries policy—is that it is often a moving feast and things move quickly. Bodies such as the JMCs are perhaps not sufficiently fleet of foot, so there have to be other mechanisms that can respond quickly.

**Donald Henderson:** Fisheries are a perfect example, because things move too quickly, particularly at the tail end of the year when we are looking towards the final quota setting and associated technical conservation regulations. The main discussions usually take place quadrilaterally between the fisheries departments—the Welsh have much less of an interest in the matter than the Department for Environment, Food and Rural Affairs, Northern Ireland and we do, but nevertheless they are there. The decision making takes place at the end of the year and discussion on the UK's line takes place in the weeks and months leading up to that. The scientific evidence is now available further ahead than it was a

number of years ago, so, even from September or October, officials in their own capitals are looking at what they believe the best line would be—both the optimum outcome and what they think would be deliverable around the Council table or, in some areas in future, through co-decision, because the two things might not be exactly the same. The further level that needs to be fed in is what they think the give and take that will almost inevitably take place to some extent in discussions in the UK will be. Over the past couple of years, we have been quite successful in ensuring that the UK's priorities have fully included Scottish priorities. I have very active fisheries colleagues who have developed their relationship with DEFRA and their level of expertise so that they have a force of argument and evidence behind the lines that are being argued.

**Rhona Brankin:** I suppose that, in many ways, the close working relationship between fisheries officials has developed over the years and, in one sense, it is probably a model for other areas.

11:00

**Donald Henderson:** Yes. Another area that demonstrates that is justice, although not all the same attributes apply and we do not have the statistics that we have in relation to fisheries, which show that the Scottish interest represents 60, 70 or 80 per cent of the UK's interest. Nevertheless, we have been active in justice. We have knowledgeable officials and there are constructive discussions between officials and ministers. Indeed, Scottish ministers and law officers have spoken on JHA matters at Council on behalf of the UK on a number of occasions. There are other examples of important areas for Scotland and we are firmly committed to those.

**The Convener:** I will give Jim Hume the last word as we are running out of time and he has not had a chance to contribute.

**Jim Hume:** My question relates to one of Rhona Brankin's points on freedom, security and justice. If and when we get a situation in which the Scottish and UK Administrations' opinions diverge and they cannot agree, what will be the mechanism to resolve the conflict? My question is perhaps more one for Paul Cackette.

**Paul Cackette:** I guess that the joint ministerial committee on Europe is the process that would be adopted in those circumstances. Official discussions and ministerial write-rounds happen in all areas, but in justice and home affairs, the determination of a UK line for negotiations involves a number of UK Administration departments, the Scottish Government and Welsh and Northern Ireland colleagues. The Scottish Government has no special status in that process,

but it is one of the interested parties in the negotiations and discussions that take place to determine the appropriate UK line. If a position arose—I am unaware of its having arisen to date—in which there was a Scotland/England type thing, I guess that the JMCE would be the answer.

**Jim Hume:** How would that be initiated? Would the Scottish Government initiate it?

**Donald Henderson:** There are a number of ways in which it could be initiated. In essence, there is no special mechanism for use in such circumstances. As Paul Cackette said, we have never needed such a mechanism for dealing with things through Council. We cannot find an example in which the UK wanted to remain part of something and Scotland wanted to opt out, or vice versa. Sometimes, different factors have given rise to the conclusion, but the conclusion has been the same each and every time in the past 10 years, since devolution. Nevertheless, if that did happen in the future, the same mechanisms would apply as in other areas. To start with, the matter would be dealt with bilaterally between the departments and ministers who were involved, but mechanisms have been set up that would allow broader discussions of the issues at play, either through correspondence or, if time allowed, through meetings. I am sure that ministers of any Administration in Scotland would regard it as an important event if we reached a situation in which there was a significant difference of view, because it would be the first time that that had happened.

**Jim Hume:** What timeline would be in place in such a situation, or is that unknown?

**Donald Henderson:** We would be driven by the timeline for the legislation in Brussels. The timelines are inevitably cruelly tight in the endgame, but some legislation takes three or four years to go through in Brussels, so at the earlier stages we have quite a lot of time to chew over what it really means.

**Paul Cackette:** It varies. In the case of FSJ, where the UK opt-ins are preserved, we have three months in which to indicate whether we are opting in to each instrument. That is the timescale within which matters would require to be resolved. It is obviously a short time period if there were significant differences and difficulties.

**Jim Hume:** That is useful. Thank you.

**The Convener:** Jamie Hepburn has a pressing but short question. We would appreciate a short answer, too, because we are running late.

**Jamie Hepburn:** I want to pick up on something that Donald Henderson said in response to Rhona Brankin. You stated that there are some challenges in establishing a process for dealing with subsidiary matters between the UK level and

the Scottish level. Will you comment on whether some of those challenges emanate from article 6 of the protocol on subsidiarity, which sets out that there should be consultation where appropriate, but directed by the member state, and which does not set out how the consultation should be carried out? Is that lack of direction in the treaty unhelpful? Does that contribute to one of the challenges?

**Donald Henderson:** That part of the treaty is what it is. The issues that I had in mind are rather more about the eight-week period within which comments must be submitted and the fact that no one thinks that it will be commonplace—although it is not quite like a needle in a haystack—for Parliaments across the EU to find subsidiarity issues arising with the Commission, not least because the Commission would quickly learn. The process will happen relatively infrequently, or perhaps rarely, and we will have a short period of time to deal with it. Those are the primary issues. However, I am entirely confident that the legislatures in the two parts of the country will develop a fruitful relationship and arrangement.

**The Convener:** Ever the optimist, Donald.

I thank the Government officials for coming. We have had a useful and helpful session and we look forward to working with you on the general scrutiny issue. We will take the last of our evidence in our inquiry in late April and we hope to publish our report by June, so we are on a fairly tight timescale. Any exchanges that we can have at officer level in the interim will be useful, particularly in relation to explanatory memoranda, on which I think we agree that there might be a little deficit, certainly in relation to parliamentary scrutiny. The House of Commons European Scrutiny Committee considers every single EM, but there does not seem to be a corresponding system in Scotland. The committee would be keen to investigate that further.

I will suspend the meeting for a few moments to allow the witnesses to change.

11:07

*Meeting suspended.*

11:09

*On resuming—*

**The Convener:** It is a pleasure to welcome Sir David Edward. We have a written submission from the Royal Society of Edinburgh, and Sir David chaired the committee that was responsible for that submission. He was listening to all that went before and I am sure that he has some opening remarks. Perhaps he would like to comment on what he has heard.

**Sir David Edward (Royal Society of Edinburgh):** I will make three or four comments. The first relates to paragraph 8 of the RSE submission. One must bear in mind that the relationship between Parliament and executive in other EU member states is not always the same as it is here. It seems to us important that the Scottish Parliament should view itself as an entity that is separate from the Scottish Executive. Obviously, Scotland is a small country; it does not have vast resources and we must make economical use of the resources that we have. Therefore, the closest possible co-operation between the Parliament, the Scottish Government, the resources in Brussels, the Scotland Office and UKREP is important. Nevertheless, although the Parliament must avoid doing double work and must use the resources that are available, it must also maintain an independent view and take an independent position.

My second comment is on what we say at the beginning of our submission about democratic accountability, to which there are two sides. The Scottish Parliament is democratically accountable for the matters that fall within its legislative competence, so it has a right to be involved in the EU legislative process. However, that carries with it a duty on the Parliament to keep itself informed and, therefore, not simply to rely on others to flag matters up.

In that context, I stress what we say in paragraph 13 about the need for effective horizon scanning, using the resources that are available, most particularly the effective horizon scanning system in the House of Lords. I stress the point that, once a project reaches a formal legislative stage, it is difficult to change the thrust of the proposal, so the horizon scanning must be well ahead of that. It is no use beginning the reaction at the start of a time limit, whether it is two months or whatever; you must know well ahead of that whether you will take an interest in a particular issue and, if so, broadly what your position will be. That is illustrated in the submission that Lord Roper from the House of Lords European Union Select Committee has made to the committee, in which he illustrates the way in which the accident of vacations means that, with particular time limits, you are simply not able to submit any observations. That stresses the need to be well ahead of time.

I will make only one other point. Paragraph 22 of our submission concerns the importance of the principle of proportionality. As the officials correctly said, subsidiarity does not apply in areas of exclusive competence, but proportionality does.

We therefore have to consider the extent to which the intrusiveness of EU legislative activity is unnecessary in the Scottish context. There are

various provisions in the treaty, but I draw attention to a protocol that is not noticed very often—it is number 26, on services of general interest. Surprisingly, that was inserted at the insistence of the Dutch. It draws attention to the essential role and wide discretion of national, regional and local authorities, and to different geographical, social or cultural situations. It deals with the limited context of services of general economic interest, but includes ferries, for example. It is important for members to have in mind that the smell of the Lisbon treaty is very much more about recognising that we do not have a one-size-fits-all system.

11:15

**The Convener:** Thank you very much. We have a daunting task ahead of us.

**Sir David Edward:** There is no doubt about that.

**The Convener:** In the past, the committee has very much echoed your thoughts on early engagement and horizon scanning. From our perspective, we are faced with a plethora of legislation, directives, white papers, green papers and so on coming at us. The issue is how we can do the horizon scanning effectively and how we can put in place processes that ensure that we exercise the independence that you mentioned. Given your wide experience in these areas, do you have any thoughts about the processes and ways in which that can be done? We talked earlier about the explanatory memoranda, for example.

**Sir David Edward:** Explanatory memoranda come at the stage of a legislative proposal.

**The Convener:** So that is a late stage.

**Sir David Edward:** Yes—it is almost too late. However, there are other methods. The EU system is extraordinarily leaky, so we have the means of finding out what is going on, which we perhaps do not have to the same extent in Whitehall. You are entirely right about the need to be selective, but I strongly recommend learning from the experience of other so-called sub-state legislative authorities. For example, the Basques have long experience of this in their own context, as do the Flemish. They have put in place methods that may or may not be suitable for Holyrood, but it is important to discuss matters with them, find out how they do things and learn from that.

**The Convener:** Thank you very much. Ted Brocklebank will ask about the extension of competences.

**Ted Brocklebank:** I do not want to go over the same ground that I went over with Donald Henderson, but I am interested in a particular point

that he made. I do not want to put words into his mouth, but he appeared to say that the advantages of the increased competences outweighed the disadvantages. I think that he also said that about co-decisions. Perhaps you would like to comment on that to start with. Do you take the view that, generally speaking, the advantages outweigh the disadvantages?

**Sir David Edward:** It is perhaps most advantageous to have a clear system for dealing with the various competences. It is desirable that, in areas where some common action is desirable—for example, tourism—there is a mechanism for taking common action. However, I repeat that the spirit of the treaty is one of subsidiarity and proportionality.

I do not fear the extended competences. It is a good thing that, for example, freedom, security and justice have been brought within the Community method. On the whole, it is a good thing that the European Parliament has an enhanced role, but I emphasise that the European Parliament is an example of a Parliament that is entirely separate from the executive. For that very reason, it is a body with which you may wish to engage. Its position is separate from both the EU executive and the Governments of the member states.

**Ted Brocklebank:** In the paper that was produced by the committee that you chaired, you used the line:

“Scotland’s interests are not always congruent with those of other parts of the country and may not be reflected in the official UK negotiating lines.”

Nowhere does that apply more than in fisheries. Two thirds of the UK’s fisheries are in Scottish waters, and there has always been a feeling that Scotland has been disadvantaged in CFP negotiations. As we have heard, fisheries are to be subject to co-decision, which in theory gives Scotland a greater opportunity to represent its interests. However, as I said to Donald Henderson, one of the flaws is that, as I understand it, the key issues, such as quotas and the total allowable catch for individual countries, will still be retained centrally and will not be part of co-decision. Is that not one of the flaws of the co-decision mechanism?

**Sir David Edward:** It is one of the difficulties with a situation in which some decisions are taken by what amounts to the executive, bearing in mind that the Council of Ministers represents the Governments of the member states. To that extent, parliamentary control over those decisions is limited. I think that we made that point in the Calman commission. It is a fundamental problem for Scotland that differentiates Scotland from almost any other region—in inverted commas—in the EU. Not only do we have the largest fishery

area in the United Kingdom but we have probably the largest fishery area in the whole of the EU, yet Scotland is not independently represented, and its interests are taken forward by a UK Government in a manner that is perhaps unsatisfactory from Scotland’s point of view. That emphasises the need for what the Calman commission called for, which was much closer involvement of the UK Government and departments in Whitehall with Scotland’s particular interests.

**Ted Brocklebank:** How do we as a Scottish Parliament make those things happen? How do we bring influence to bear on the UK Government?

**Sir David Edward:** One of the difficulties with devolution is that you do not have a formal mechanism to do that.

**The Convener:** One of the suggestions in your paper was an improved working relationship between the Scottish Parliament and the House of Lords, the House of Commons and so on, to ensure that there is parliamentary and legislative input to some of those processes. At one level, that would assist us in those areas.

**Sir David Edward:** I think so. My predecessor as professor in Edinburgh—Professor J D B Mitchell—said that Governments have as many reasons for conniving with one another as they have for opposing one another. That is true to an extent, which is why Parliaments need to be careful. The point is absolutely made—the Calman commission made it—that interparliamentary dialogue will be important.

**Rhona Brankin:** I am interested in what you say about fisheries. Donald Henderson certainly did not say that any major problem had arisen in fisheries in the past 10 years. In fact, conflict resolution at its hardest end has not been needed in fisheries. One reason for that, which we discussed, is the close working relationship between fisheries officials in Scotland and in the rest of the UK. Do you imply that that does not work? If so, what is your evidence?

**Sir David Edward:** I imply nothing—I merely take up the point that Scotland has an interest that is not necessarily shared. A much better example, which we give in our submission, is that the United Kingdom’s position on the common agricultural policy is seriously contrary to Scottish interests, in the RSE’s view.

**Rhona Brankin:** In what way, specifically?

**Sir David Edward:** Very specifically, the Treasury’s desire to abolish the common agricultural policy system is contrary to Scottish interests.

It might well be true—I am not in a position to comment in detail—that no problem has arisen in

fisheries, but a serious problem has arisen in agriculture and one cannot guarantee that the same problem will not occur in fisheries.

**The Convener:** Tensions in relation to the common agricultural policy exist throughout the European Union. There are environmentalists, people who want to move to a more sustainable agricultural subsidy and farmers who feel that the existing subsidy works in the best interests of their communities. A debate is to be had about that.

**Jim Hume:** On farming interests, we will debate the common agricultural policy review on Thursday afternoon, so tune in to find out everybody's policies.

We have had a form of devolved power over freedom, security and justice for ever. The UK has secured an opt-in system in the area, which might mean opting out—whether voluntarily or involuntarily. I return to the question of a difference between Scotland and England, which might or might not arise but could well happen at some point. If a difference arose, how would that affect Scotland? If the UK took a different view from that which suited Scotland and our legal system, what would be the implications for our legislative process?

**Sir David Edward:** As you point out, the dangerous situation, which is to an extent hypothetical, would occur when it was in Scotland's interests to opt into the European system or when the UK—that is to say, London—wanted to opt in but it would be to Scotland's advantage or protection to opt out.

I will take a hypothetical example. It is clear that the proposal for a European public prosecutor has totally different implications for England, Northern Ireland and Scotland. The proposal might be entirely consistent with the Scottish system, because we have a public prosecutor. The public prosecution system here is not the same as that in most member states, but its origin derives from the same notions about the public prosecutor's position. That is different from the English, Northern Irish and Irish position. It is conceivable that the mechanisms for the operation of the European public prosecutor would be compatible and perfectly workable with the Scottish system but not with the position in England and Northern Ireland, so Scotland might want to take a different position. That would be an impasse.

11:30

**Jim Hume:** Through what mechanisms might the Scottish Parliament scrutinise such matters?

**Sir David Edward:** I hope that the Scottish Parliament will know well ahead what proposals are in the pipeline and will have taken soundings

not just from the Crown Office and the Lord Advocate but from other interests on how the proposals would work in Scotland. We also need to ensure that those who are responsible for promoting the legislation in Brussels are aware of the Scottish position and how the proposals would fit in with the Scottish legal system.

**Jim Hume:** What would be the legal implications of the UK Government taking a diverging position on a proposal affecting the justice system? Would there be a change to Scots law, for example?

**Sir David Edward:** Let us take the proposal for a European prosecutor, which is a good example because it is well ahead in the hypothetical area. The Treaty on the Functioning of the European Union states:

"The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences".

That implies that the European prosecutor could be involved in the actual process of prosecution in Scotland. There are many ways in which that could be done that would be perfectly compatible with the Scottish legal system, but one would need to be sure that the mechanism was compatible.

I could cite other examples related to the field of judicial co-operation in civil and criminal matters, such as the taking of evidence, the value of evidence and so on.

**Jamie Hepburn:** I want to explore the issue of subsidiarity. I invited Mr Henderson to give his perspective, but he did not take up the opportunity. Do you have any observations on whether the lack of direction as to how a member state should consult a sub-state entity about an EU legislative proposal is helpful? I refer to article 6 of the protocol on the application of the principles of subsidiarity and proportionality.

**Sir David Edward:** It is inevitable that the treaty should leave it to the member states to organise the process of consultation with sub-national Parliaments, because the relationship between, for example, the German Parliament and the Parliaments of the Länder is totally different from the relationship that exists between Westminster and Holyrood. The methods of consultation in Germany will be entirely different from those that are used here.

An underlying problem is the preservation within the Scotland Act 1998 of the concept of parliamentary sovereignty, whereby Westminster at least theoretically has total competence to legislate on any matter whatsoever. The terms of the treaty do not impose any duty on Westminster to consult. However, as a matter of practice, the Sewel convention is becoming, if I may so put it,



hardened into at least pretty soft law and is getting harder. Therefore, it would be difficult for Westminster to justify a situation in which the Scottish Parliament had not been consulted on a matter on which it should have been consulted.

**Jamie Hepburn:** I am sure that we could have a very interesting conversation about whether the concept of parliamentary sovereignty extends to Scotland, but Sir David Edward will know more about such matters than I do.

Article 6 of the protocol states:

"It will be for each national Parliament ... to consult, where appropriate, regional parliaments with legislative powers".

Should that be interpreted as mandatory or permissive in relation to the responsibilities that it confers on the member state?

**Sir David Edward:** It is clear from looking at other language texts of the protocol that article 6 does not impose a legal duty on national Parliaments, or chambers of national Parliaments, to consult. Article 6 simply says that "It will be for"—in the sense that it will be the job of—each national Parliament to consult. That seems consistent with the idea of subsidiarity. It is not for the EU to define how such consultation is to be done.

**Jamie Hepburn:** In a sense, then, the power is retained at the member state level.

**Sir David Edward:** The power is at the member state level but, as happens in the UK, things can develop into conventions and conventions can harden. As I said, I think that it would be difficult for Westminster to justify a situation in which no attempt was made to consult the Scottish Parliament on a matter that clearly fell within the Scottish Parliament's legislative competence.

**The Convener:** I think that there are already procedures in place for some EMs. As Sir David Edward will know from what the submission from the House of Lords European Union Select Committee says on subsidiarity, in practice Westminster is very keen to involve the Scottish Parliament because it recognises that we should have input into the policy process on areas on which we have expertise. In practice, there is quite a lot of good will to make the system work.

**Sir David Edward:** That is absolutely right. However, one must distinguish between what is a legal obligation and what is a constitutional convention or practical necessity.

**Jamie Hepburn:** Under article 6 of the protocol, then, there is no legal obligation on the member state to consult sub-state entities. However, article 2 of the protocol requires the Commission to consult widely. Does that provision constitute an

obligation on the Commission to consult the Scottish Parliament or Scottish Government?

**Sir David Edward:** I do not think that the provision is sufficiently explicit for that. Let me take one step back. By legal obligation, we mean something that could be enforced in court. Other things being equal—there are a number of other considerations—could the Scottish Parliament raise an action, or cause an action to be raised, before the European Court of Justice on the ground that the Commission had failed to consult the Scottish Parliament? My answer is no, because the protocol does not require that. However, the fact that no consultation had taken place might be an important element in the argument that a proposal constituted a breach of the principle of subsidiarity.

**Jamie Hepburn:** If there is no such obligation on the member state or the Commission under articles 2 and 6 of the protocol, what is the merit—not of the entire principle of subsidiarity, although I am tempted to ask about that—of those two articles?

**Sir David Edward:** When I spoke at a conference in Cambridge in December, I said that—to employ an overused phrase—the elephant in the room in the debate is the status of sub-state legislative authorities.

It is a feature of the fact that we are still in a world of international treaties that the EU does not in principle descend below the level of the member state and get involved in the organisation of the member state. However, it cannot continue indefinitely to pretend that the real world does not contain sub-state Parliaments with legislative authority. In my view—this is going well beyond your question—the Committee of the Regions does not address that at all and does not substitute for it. Sooner or later, the EU system will have to face up to that. It is not doing so at the moment.

**Jamie Hepburn:** That is very useful. Thank you.

**The Convener:** We have a couple of questions on the Committee of the Regions, but first I will bring in Rhona Brankin. We are so short of time, Sir David, that I wonder whether we could write to you to get your views on any outstanding issues. Would that be possible?

**Sir David Edward:** Yes.

**The Convener:** Thank you. We have a panel of witnesses coming to speak to us about EU 2020.

**Rhona Brankin:** What would be the legal implications of a divergence of interests between the Scottish Parliament and the UK Parliament in relation to subsidiarity in an area of devolved competence? We have touched on that a bit already.

**Sir David Edward:** I do not quite understand the question.

**Rhona Brankin:** What would be the legal implications if there were a divergence of interests between the Scottish Parliament and the UK Parliament in relation to subsidiarity? We have touched on the legal basis. Donald Henderson talked about the processes and mechanisms for conflict resolution. You are saying that there is no legal basis for resolving a divergence of interests between Scotland and the UK.

**Sir David Edward:** Subsidiarity is an issue between the UK or Scotland and the EU. The question is should the EU legislate at all, or to what extent should it legislate? It is important to keep subsidiarity in context with proportionality—the two go together.

I might be wrong, but, at the moment, I do not see a situation in which a Scottish entity could effectively challenge a measure on the ground of subsidiarity because it created a problem in relation to Scotland if it did not create a problem anywhere else. The whole system for challenging on the ground of subsidiarity envisages that more than one member state will be affected.

**The Convener:** Even in the Committee of the Regions, it is about more than one region.

**Sir David Edward:** Yes. You have to get a majority there.

**The Convener:** I suppose that, in that sense, there is a greater acknowledgement of the regional perspective within Europe. There is a lot to play for. Being a member of the Committee of the Regions, I agree that it has not been as effective as it could be, but there is a lot to play for with some of these new concepts. The committee is keen to advocate and advance that.

**Sir David Edward:** I think so. Although it is not an official body of the EU, close involvement with the conference of European regions with legislative power or REGLEG is also important.

**The Convener:** That is becoming quite a prominent issue.

**Sir David Edward:** The problem with the Committee of the Regions, if one is looking at it from the point of view of legislative Assemblies, is that the fact that Malta has regions and Luxembourg has regions illustrates that we are talking about apples and oranges.

**The Convener:** I agree that it is asymmetric in that sense.

**Sir David Edward:** It is a useful body.

**The Convener:** The Committee of the Regions is valuable in producing own-initiative opinions or commenting on Commission documents and

subjecting Commission officials to interrogation in the same way that we do. That has value.

I am afraid that we have run out of time. The session has been extremely interesting—thank you very much. We have a few outstanding questions, which we can put to you in writing, if you are happy about that.

**Sir David Edward:** I cannot guarantee when I will get back to you.

**The Convener:** We thank you for taking the time to come along and we thank the Royal Society of Edinburgh for the written submission.

I suspend for a few moments to allow for a changeover of witnesses.

11:45

*Meeting suspended.*

11:48

*On resuming—*

## European Union 2020 Strategy

**The Convener:** We resume proceedings and move to item 4, which is consideration of the EU 2020 strategy. It is a pleasure to welcome to our round-table discussion Stephen Boyd from the Scottish Trades Union Congress; Duncan Botting from the Scottish European Green Energy Centre; Vivienne Brown from Skills Development Scotland; Morag Keith from the west of Scotland colleges partnership; Peter Kelly from the Scottish Council for Voluntary Organisations; and Donald MacInnes—who is a regular attendee at meetings of the committee—from Scottish Enterprise. Thank you all for coming and for your extremely interesting written evidence. I do not want to single out particular submissions, but some interesting suggestions were made, which I hope we will explore further.

Because we are running short of time and we have such a full agenda, we will move straight to questions. You do not have to respond to every question, but please indicate if you would like to make a point. I will give each of you the opportunity to put on record your overall impression of the EU 2020 consultation document and any general points that you would like to make about your organisations' interest in it.

I will pre-empt the comment that I am sure you will all make about the timescale. The committee agrees with the comment that is made in some of the written evidence. Regrettably and unfortunately, we are under the same time constraints in relation to making a useful submission to the Commission, so we had to impose a tight time constraint.

With that, I invite Stephen Boyd to kick off and give us the general impression from the STUC side of things.

**Stephen Boyd (Scottish Trades Union Congress):** We appreciate the fact that the 2020 consultation is happening. The EU faces a number of major issues, but that should not prevent consultation on the strategy for the future. We share your concerns about the timescale. We share the concerns—which were articulated very nicely in the Scotland Europa submission—about insufficient regard being given to the role of regions. In addition, insufficient regard has been given to the role of social partners—the EU has been particularly strong in that area in the past. I hope that the overlooking of that area in the consultation is not a signal that the role of social partners at EU level or member state level will be diluted in future. Furthermore, insufficient regard has been given to the key issues that face the EU

and which will largely determine economic and social policy making over the next 10 years.

**The Convener:** The theme of paying greater attention to the social agenda is common to almost all the written submissions.

**Duncan Botting (Scottish European Green Energy Centre):** I have read most of the submissions, and the underlying issues of the smarter, greener energy perspective and its delivery are missing from the general picture. The proposals before us involve a 10-year timeframe, but most of the infrastructure that we are concerned with has a life cycle of 40 to 50 years. If we are considering changing the architecture of the whole infrastructure, it is important to understand those issues.

I agree with Stephen Boyd. There is effectively a four-layered paradigm: technical, economic, environmental and cultural. Our discussions on each of those tend to be based in silos, and the joined-up activity that would enable us to have an impact on the 2020 targets does not come through in the consultation. There are lessons to be learned from that perspective.

**Vivienne Brown (Skills Development Scotland):** I want to discuss how learning and education are expressed in the 2020 Strategy. We would like them to be expressed much more in terms of connectivity between learning and work, which could be enabled through the development and use of skills. Our take is that the strategy views skills as almost temporary—they get people between jobs or take them to other learning. We would like skills to be represented as much more lifelong, important and vital in relation to social and career mobility and to be used far more effectively.

We all know about the paradox that even when people are well qualified, that does not always translate into the growth and productivity in the workplace that we would like there to be in Scotland. We would like that point to be strengthened. The development and use of skills should not be treated just as a crisis intervention. Instead, we would like skills development to be taken on as a long-term ambition. We should be far more aspirational in that regard. That is key to driving social inclusion, and learning itself, and it is also an economic development driver. That is my big message about how learning and education are expressed in the strategy and how we could do a little bit more in that regard.

**The Convener:** I am sure that Morag Keith will agree with many of those comments.

**Morag Keith (West of Scotland Colleges Partnership):** Yes. We endorse that view about education, particularly on recognising vocational education rather than having a narrow-minded focus on university education, which seems to be

the flavour of the consultation document. We should also recognise the social elements, which are a significant omission. To underpin Europe's ambitions on people's freedom of movement, we need to recognise that mass migration places significant pressures on individual member states. In the EU 2020 vision, we are ignoring that issue yet again.

**Peter Kelly (Scottish Council for Voluntary Organisations):** The SCVO shares the general feeling of disappointment in the consultation document's vision—or lack of vision. I do not want to go on about the consultation process, but, given that the evaluation of the Lisbon strategy or agenda came out after the consultation document, not a lot appears to have been learned from the various aspects of Lisbon that have not delivered—they do not seem to have found their way into the consultation document.

We have higher levels of poverty than we had at the start of the Lisbon agenda while our employment levels have increased—the STUC contribution on that point was useful. There are significant deficiencies in our progress towards reaching our targets. The lack of reference to civil society in the consultation document is a big problem. I echo Scottish Enterprise's point that among other stakeholders there is a general lack of engagement in looking at wider civil society, whether at the regional level or beyond the usual social partners. There are a lot of gaps in the document, although I know that there have been discussions since it was published. Again, we are running to catch up with a process that seems to be moving quickly. However, developments at the informal Council earlier this month might indicate that some of those concerns have been taken on board. The concerns reflected around this table have also been reflected at European level.

**The Convener:** The committee hopes to make a useful contribution through its report, in which we will raise a number of those issues.

In its submission, Scottish Enterprise suggested that there needs to be a greater focus on providing a framework for what a successful EU 2020 strategy might look like. Donald, what are your thoughts on that, from a Scottish Enterprise perspective? My second question—which may not be for Donald MacInnes; it may be for other panel members—is whether you have any comments on the Government's response to the Commission's consultation. Again, that response was made according to a short timescale, and probably suffered a little because of that. From the perspective of your various organisations, was anything in the Scottish Government's response particularly helpful or missing? However, before we come to those questions I invite Donald MacInnes to make some opening remarks.

**Donald MacInnes (Scottish Enterprise):** On what success would look like, nothing in the document says whose responsibility it is to deliver the strategy and what that means, so that needs to be strengthened. The failure of the Lisbon treaty had a lot to do with the fact that people did not know who was responsible and who had ownership. Although there were many actors, nobody took responsibility and nobody set out at the beginning a framework to measure what success would look like. If we are to embark on another 10-year strategy—as Duncan Botting said, that is a short time in which to make long-term investment in infrastructure—we need to have milestones, know who is taking responsibility and probably build in some flexibility. The strategy is being written against the backdrop of a recession almost as if that recession were going to last for 10 years, but it will not. We need to be able to be flexible as the strategy develops.

**The Convener:** We will come on to priorities and targets in a minute, but, before we do that, would anyone like to comment on the Government's response and any aspects of it that are particularly useful or missing and on which you would like the committee to reflect?

12:00

**Peter Kelly:** One interesting thing about the Scottish Government's response is its emphasis on social cohesion, which reflects some of the issues that we have already raised and which were not given nearly enough profile in the consultation document. That is useful, and it highlights the approach that we are trying to take in Scotland of joining up the various policy elements around poverty, intervention in the early years and health inequalities. The Scottish Government's response was useful but—as was probably the case for everyone else—it was done in a rush.

**The Convener:** I think that your submission mentioned moving away from strictly economic indicators, such as gross domestic product, to more sustainable indicators, such as wellbeing. That is an interesting point, which I hope the committee will reflect on. Does anyone else have any comments?

**Vivienne Brown:** I was pleased to see in the response an endorsement of employability skills and the softer skills that people need to enter into, sustain and progress in work and learning. However, in relation to the development of career management skills, we would like people to be far more empowered to make effective on-going career decisions. There is a big connection between social mobility and career mobility, so particularly through the curriculum for excellence strategy we are trying to ensure that young people

have the skills to be agile in making choices and decisions and to use career information effectively. That is also important in tackling longer-term adult and youth unemployment issues. We have used that approach a lot in ScotAction in support of people facing redundancy so that, should they face that situation again, they are equipped with the skills to handle it rather than always needing, if you like, to fall back on the agency to support them. If possible, we would like that empowerment aspect to come through a bit more.

**Duncan Botting:** On the energy perspective, the Government has somewhat underplayed its hand, because Scotland is at the forefront of pushing forward the energy agenda as far as the low-carbon economy is concerned. There is an opportunity to teach Europe how to set targets and follow them up.

**The Convener:** Ted Brocklebank will discuss priorities and targets in a little more detail.

**Ted Brocklebank:** At the recent European Council meeting, the Commission president suggested that the 2020 strategy should be based on three major themes: growth based on knowledge and innovation; an inclusive, high-employment society; and green growth. To this observer, that seems a wee bit like saying that we are in favour of good things and against bad things, but are those the right priorities? Are they the principal priorities? Does anyone have an idea of what the real priorities should be for the next decade?

**Peter Kelly:** In a sense, the strategies are set at such a high level that you could disagree with almost nothing in them. However, when we look underneath the three principal areas in, as we should now be calling it, Europe 2020—I am sure that that is a significant phrasing change, but I do not know why—we see something emerging. I do not know whether it has come out of the consultation or whether President Barroso has been thinking about it for a while, but under the area of an inclusive, high-employment society—I should say that I also represent the European anti-poverty network—there is an interesting sense of prioritising the fight against poverty in a different way than was the case with Lisbon. Things appear to be being brought together.

The language and tone of the informal Council in February was interesting. Repeated statements were made about not going back to business as usual, and there seems to be some recognition that the Lisbon strategy did not deliver all that it should have done—far from it. I therefore think that the priorities are right.

Interesting issues are also coming out about whether to set Europe-level targets that have a bit more bite in some of those areas, and whether EU

flagship policies will drive forward some of the key concerns. That might be a useful development. The problem is that it is hard to argue against some of those points.

**Ted Brocklebank:** My slight problem is that if the original Lisbon strategy did not work—and everyone agrees by common consent that it did not work—how much more difficult will it be to get the new strategy to work during the next decade, especially given the fact that we are in the deepest recession since the 1930s and we are facing all sorts of economic problems? Is there any real chance of a motherhood-and-apple-pie resolution and of the strategy being introduced?

**Peter Kelly:** The European Union remains one of the wealthiest areas on the planet, and we have scope to do things differently.

One problem with the Lisbon strategy is that the situation changed significantly during the period that it was being introduced. The 2005 streamlining process changed its focus significantly, and member states went along with that change to focus on jobs and growth, as the STUC has highlighted. That fundamentally weakened the Lisbon strategy. If there is a greater emphasis on the social dimension of Europe 2020 and more attention is paid to inequalities and to the role of civil society, we might come out with a better strategy.

The strategy can be delivered. The language being used is that we do not just want a strategy to exit the recession and the crisis; we want something quite different. However, that will depend on how well Europe engages with actors such as those who are around this table and with regional and national Governments.

**Donald MacInnes:** I agree with the point about the Lisbon strategy being all things to all men—and to all women as well, presumably. The challenge for Scotland is to drill down into some of the sub-sectors and niche markets that are important for us, and to build up from there. We are talking about a top-down perspective, but we also want to look from the bottom up. We want to work on projects and do things that align with that view so that the strategy does not preclude us from doing the things that are important for Scotland.

**Ted Brocklebank:** Are you therefore in favour of binding targets that must be met by 2020?

**Donald MacInnes:** I am generally in favour of a framework for what the targets will be, what success will look like, how the targets will be measured along the way, and what will allow us to change them if we have to. As Peter Kelly said, the previous targets were changed halfway through, and I suspect that the current ones will also be changed, as experience dictates.

**Stephen Boyd:** The key is in the comments about the high-level aspirations. My problem is that the consultation seems to postpone a lot of the fundamental debates that Europe will have to have in the future. It is okay to say warm words about an inclusive, high-employment society, and it is okay to have Government targets at the Scottish level. It is also a good thing that the Scottish Government's economic strategy contains targets for solidarity and cohesion. However, support for the Lisbon strategy collapsed latterly because people saw that the economic pillar superseded the other two pillars to a large extent, and that the deregulation of the labour markets was a major priority. It is not possible to pretend that there is no tension between that process and an inclusive, high-employment society in which we all work in decent and well-paid jobs; there is a fundamental tension there. I understand why the aspirations have to be general, given the nature of the European Union, but, to be frank, the approach just postpones the difficult debates until another day.

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

**Morag Keith:** There is an argument that the approach has to involve a bit of motherhood and apple pie, if you like, in that it almost invites us to set the challenges and recognise the weaknesses that we would like the EU to address on our behalf. However, there is another aspect. There are some things that only Europe can drive forward throughout the entire 27 member states, and it is important that we recognise them. Regardless of what happens in the general election, we will face the situation that the UK is more Eurosceptic than Scotland is, so driving forward towards the EU 2020 strategy's ambitions for Scotland will be an opportunity for us to ensure that we stay on that path rather than step back a bit or take our foot off the accelerator.

The concepts of fairness and equity have to come from Europe. It is then a matter of embedding them within individual member states. Europe's role is to drive the agenda to ensure that individual member states embrace such things.

**Duncan Botting:** The idea is that there are 27 different starting places and that a single silver bullet will fix everything, but that is not the case. Companies use stretch targets all the time to reach their ambitions. Targets are good in that sense, but to give each member state the same targets and expect them to ensure that 3 per cent of GDP is spent on research and development, or whatever, is unreasonable. We need stretch targets for each member state rather than single targets for Europe. That is the fundamental issue around the failure of much of what has gone before. People believe that the targets

fundamentally are not within their reach or are not appropriate to their economy.

**Ted Brocklebank:** I suppose that that is particularly the case against the background of three or four member states perhaps being on the verge of bankruptcy and therefore their minds are concentrated more on that than on what the next 10-year strategy will bring about.

**Duncan Botting:** Yes, although there is also an opportunity. After the previous depression—as opposed to recession—America managed to drag itself to the point of having a world leadership role. Times of depression present an opportunity to deliver huge step change if things are dealt with correctly.

**The Convener:** Jim Hume has some questions on the engagement of small businesses.

**Jim Hume:** I think that it was Scottish Enterprise that said that small and medium-sized enterprises are not getting properly involved in the strategy. Scotland is a nation with many small businesses. We should also consider Morag Keith's comment that universities and colleges can be seen as a conduit between small businesses and the strategy. How could SMEs play a bigger part in the process?

**The Convener:** That might be Donald MacInnes's area.

**Donald MacInnes:** Yes. We believe that a lot of innovation comes from SMEs and that there should be more concentration on that. Europe and member states ought to have more cognisance of the importance of SMEs. There is a lot of talk about public procurement, for instance, yet Governments and the EU always procure from the big players—they should put their money where their mouths are. They should also support SMEs to get involved in some of their large funding programmes. That is a practical way to help SMEs. The old adage is that SMEs want contracts rather than grants. That is important. The Government and the EU ought to get SMEs involved in projects that will help them to grow, flourish and internationalise. The internationalisation of small businesses is hugely important to Scottish Enterprise. The strategy should be aligned with helping us to achieve that aim.

12:15

**Jim Hume:** You probably share the view that the Scottish Government should introduce procurement laws, but could not possibly comment on it.

**Donald MacInnes:** No, I could not possibly comment. The comment about going for the safe option rather than the more important option of

supporting growing businesses applies right across the public sector.

**Jim Hume:** The west of Scotland colleges partnership submission says that the colleges and universities could make a difference.

**Morag Keith:** We have a couple of issues on SMEs. First, we would like there to be a more relaxed interpretation of innovation. That is crucial. Duncan Botting commented that there is no one-size-fits-all answer in EU 2020. In the same way, we must acknowledge that innovation means different things to different people. We need to ensure that the concepts of innovation in the EU 2020 strategy recognise that innovation need not necessarily be scientific; it could be a production innovation, for instance. We need a breadth of interpretation in the strategy.

We also propose that the EU's corporate social responsibility agenda be driven forward. It binds together the concepts of social justice—equal opportunities, social cohesion and sustainability. That is about not only ethical investments but procurement. For example, in Glasgow, significant advances have been made when social benefit clauses are used in the procurement for the Commonwealth games. That is corporate social responsibility in the EU sense.

We must try to find a way within the procurement legislation that allows us to recognise and accept the need for local employment benefit clauses and local supply of goods and services to be built into the delivery of contracts. If that flexibility within procurement can be found, it would make significant steps towards addressing the fairness issue to which we come back.

**Jim Hume:** There being so many small and medium-sized enterprises, they are major employers. Morag Keith—poor Morag, I keep focusing on her—suggested that the focus of the EU and the Scottish Government on some priorities is slightly narrow. Do other witnesses share that view?

**Stephen Boyd:** I will answer that and the previous question, if you do not mind.

When it comes to SMEs engaging in Europe, the role of the European-level business representative organisations is fundamental. It is simply not feasible for all Scottish SMEs to influence and engage at that level. I hark back to the comments that I made at the start that, if the consultation on the strategy signals a dilution of the role of the social partners at European level, that is a concern for not only trade unions but SMEs in Scotland. I am not saying that it does signal that, but we would have preferred the language in the consultation document to be far clearer in that respect.

We are reaching a real pinch point on procurement in Scotland because there are conflicting priorities for it: value for money and delivering more contracts for Scottish businesses. It is important to recognise that the two contradict each other. Value for money will become increasingly important over the coming months and years, so we must think about how we can influence that agenda to ensure the community benefits that Morag Keith described. They have been useful, not only in Glasgow but in Stirling, Dundee and Greenock. There are many excellent procurement projects in Scotland that have delivered tangible local gains. We need to embed that.

I have discussed with the committee more than once the implementation of the public sector procurement directive in 2006, which was a major missed opportunity for Scotland. The regulations were implemented on the basis of ensuring no additional business burdens. That underplayed the additional scope in the directive for employment, social and environmental objectives to be introduced into public contracts, which would have benefited local SMEs.

That brings me on to the role of Scottish and UK representative organisations for SMEs. It is perhaps a shame that no such organisations are here today, as they could answer my criticism, but it is about time that they started to focus on the issues that would make a difference to their members, instead of going on incessantly about the better regulation agenda. They are now wasting massive amounts of political capital at Scottish, UK and European levels on trying to appease employers about a non-existent problem. I have sat before the committee with SME representatives who have moaned about the burden of regulation from the EU but who could not name a regulation that has caused them a problem when asked by committee members to do so. That is myth and orthodoxy stuff. We must go past that and start to consider the issues that really make a difference to businesses.

**The Convener:** I return to the public procurement point that Morag Keith raised and which you followed up. You said that we missed the boat with the public procurement directive. Does EU 2020 offer scope for us to build in something on the effects on communities?

**Stephen Boyd:** All the procurement issues reside at the Scottish level. The European legislation already provides sufficient scope to procure intelligently and to introduce the community benefits that we have described. That has happened in Scotland and, although that has at times sailed close to the regulations here, we should not let that stop us. No other member states let that stop them—they always procure in

the best interests of their industry and their people and we should do likewise.

**The Convener:** So the scope exists—we just need to use it a bit more. Is that your message?

**Stephen Boyd:** We should not be too critical of the Scottish Government, which has produced excellent papers such as “Community Benefits in Public Procurement”, which was issued about two years ago. However, that was promoted insufficiently and a job of work has to be done to ensure that procuring authorities are aware of what can be done locally.

**Jamie Hepburn:** I have a couple of questions for Peter Kelly. The SCVO’s submission suggests that

“There is much that Scotland could have gained, and contributed, from a more active participation in the relevant processes”

of the Lisbon strategy and that civil society technical expertise could have been used. Why does the SCVO think that Scotland failed to participate in the relevant processes? How could that change with the advent of the new strategy?

**Peter Kelly:** I will take your second question first. Not much in the consultation document or in what has emerged since suggests that much thinking has been done about the governance of any new strategy. One innovation as a result of the Lisbon strategy was the open method of co-ordination for the employment strategy, social inclusion and social protection. That provided opportunities to learn from other member states about how things worked, what could be done better and what did not work as well. Such processes are limited by the resources that member states can put into them, but our sectors—civil society in general and the voluntary sector in particular—have not been able to find out nearly enough about those processes, which have had a fairly low priority in the UK and Scottish Governments. The social dimensions of the Lisbon strategy have continued to go down, rather than up, the political agenda over the relevant period. If there is an opportunity to increase that dimension within the new strategy, we should consider taking it.

One of the areas in which we have done quite a bit of work is the national reform programme. If you talk to most people in our sector and beyond—people in the trade unions and the private sector—about the national reform programme, they do not know what it is. It is fundamentally important and should be driving large parts of our economic policy, yet we have no input into it. Similarly, I mentioned the open method that has been used since 2000. There is a lot to be gained there and a lot to be learned from other member states. My knowledge is strongest

in the area of social inclusion and social protection. That method is not being used nearly enough. Stephen Boyd mentioned having a debate about the fundamentals. It needs to be a genuine debate. We need to do more to engage civil society much more widely in that kind of debate because those fundamentals influence the economic and social policies that we will adopt over the next 10 years.

**Jamie Hepburn:** Stephen Boyd talked about small and medium-sized enterprises that complain about red tape and bureaucracy without being able to give examples of such problems. In your submission, you suggest that red tape and bureaucracy are a barrier to action by civil society and should be removed. What is good for the goose is good for the gander, so I suppose we ought to ask you the same question. Can you give examples of how red tape and bureaucracy are preventing civil society from playing a full role?

**Peter Kelly:** Some SCVO members feel that they are constrained by regulations. I am not sure that those regulations necessarily have their origin in Europe but there is certainly the perception that some level of red tape is inhibiting action. While it is not clear to me that that red tape especially emanates from Europe, where it exists it is not seen as beneficial—that probably needs to be looked at. SCVO probably needs to do more to provide specific examples and identify where they come from. Is it regulation—or rather, unnecessary regulation, because I do not think that anyone is against necessary regulation—of the voluntary, community and social economy sector? We need to identify the source of any problem. Europe is a convenient target. When something goes wrong, we blame Europe. When it works, it is usually a result of our own actions.

**The Convener:** That sounds familiar.

**Ted Brocklebank:** Is that not true?

**Peter Kelly:** I think that it has become a truism. We need to be clearer on what the reality is.

**Stephen Boyd:** The STUC has engaged in the Scottish Government’s regulatory review group on the better regulation agenda. The model at Scottish level could perhaps be transferred more widely. It is very proportionate in Scotland. It is focused on specific legislation, and specific issues that are facing businesses. The whole obscure debate on business burdens and red tape is entirely unhelpful. We all spend too much time talking about it.

The voluntary sector probably suffers, as the trade unions do, from the bureaucracy associated with the funding programmes, which has certainly been a barrier to the STUC’s efforts to access funding in the past. We would welcome any



reduction in that, and I am sure that the voluntary sector would feel the same.

Civil society in Scotland is alive and well and, in European terms, compares very well to the rest of the UK. The Scottish Parliament has caused us all something of a problem in that organisations such as ours now spend a great deal of resource engaging with this place. It is quite right that we should do so—we have worked hard for the Parliament and we want it to work—but we have suffered in going beyond that at UK and European level. Working with each other was something that we did very successfully before the Parliament was established but, despite that being important, we now struggle to find the time to do it.

12:30

**Morag Keith:** I have specific examples of where the red tape stops us. In the structural funds programmes, the administrative burden that has now been passed on to applicants is such that about 25 per cent of costs can be administrative costs for ensuring that there is an audit trail. The Commission has brought in simplifications, but we have been unwilling to adopt them here. We can learn lessons from very good projects that have been operated by community planning partnerships and others. It is time that we rolled out such good practice so that we do not have lots of projects bound up in red tape. Audit Scotland now has responsibility for most of the players in the structural funds programmes and is also responsible for auditing the structural funds programmes, so there could be better co-ordination of Audit Scotland checks on public bodies so that it does not duplicate its checks under the different responsibilities.

**The Convener:** That is a valid point about balancing the administration side, while ensuring that there is a proper and necessary audit that will satisfy the Commission and ensure that you get money next time round.

**Rhona Brankin:** I want to look at some of the evidence from the colleges. From your sector's point of view, Morag, can you give us examples of how the EU 2020 strategy can address some of the Lisbon strategy's failures?

**Morag Keith:** From an education perspective, it is important to recognise that we have a role across many other programmes, not just structural funds. For EU 2020, we would like an umbrella policy that takes in all the different programmes that fall within the EU's remit. Many individual funding programmes have similar themes, such as innovation, energy, sustainability and lifelong skills. We would like in Scotland to harness the potential across all those initiatives by managing them together, rather than in silos. So much that

goes on is about individual departments or about policy falling within an individual area rather than about taking advantage of a cross-sectoral perspective in each and every programme.

The lifelong learning programme at EU level is worth £7 billion. Within UK member states it is worth £500 million, although obviously budgets will be reduced. If there were a deprivation direction within that, Scotland would get between 8 and 10 per cent of that amount of money, whereas we get something like 4 per cent—we are hugely underperforming. The EU lifelong learning programme is managed at UK level, but we suggest that, as such matters are devolved responsibilities in Scotland, education could have a broad perspective across all the different initiatives, rather than having to report within Scotland for structural funds programmes and at UK level for the lifelong learning programme or any of the other initiatives. That situation means that we are running all over the place, rather than using and sharing the valuable expertise that exists in all those areas in Scotland.

**The Convener:** Your submission, in which you suggested that there should be a move away from the geographic aspect, was incredibly interesting. Scotland has sometimes been disadvantaged because we are a maritime country; even the UK is a maritime member state. We do not have the cross-border links that other member states have. I can therefore envisage very strong arguments that would work in Scotland's favour to broaden some principles beyond the geographic or transnational perspective. For example, there are the Interreg programmes, and we work with Northern Ireland and Ireland and so on. I can see real advantages in developing some of your arguments about having thematic as opposed to geographic areas. That is an interesting point, which I hope the committee will consider further. Did you have any specific examples in mind? I note that your submission was made by Dugald Craig. Thank you very much for the submission—it is very good and has lots of interesting ideas. If you have any examples to share, that would be relevant to the committee.

You made another interesting point regarding third-party agents and the recruitment of doctors and dentists and so on. You said that there could be ways of promoting education programmes and throughput via the universities and colleges rather than by recruiting people in areas of skills shortage through third-party agents. I thought that that offered quite a lot of scope for development, too. Do you wish to comment on that?

**Duncan Botting:** One of the many hats that I wear is that I am a member of the shadow board for the national skills academy for power, which is one of three national skills academies that are now

up and running. The key is that the whole power community has come together for the first time, from supply and generation right the way through transmission and distribution to end users. On the ability to leverage funding from Europe, the burden of administration has rightly been identified as the usual reason why people do not go for the funding, especially in universities. Full economic costing and so on is a barrier to that. There is a raft of areas where, if groups come together, the administrative burdens could be reduced—there could be socialisation across the sector. There is a number of ideas around that, which might be worth pursuing.

**Rhona Brankin:** It would be useful if we could have some explanation about the policy areas in which you feel that better and more coherent collaboration between the EU and member states would be helpful. You could perhaps let the committee have that information.

**Morag Keith:** We can certainly follow up on that.

**Rhona Brankin:** That is fine.

You touched on the narrow definition of innovation as being purely about scientific and technological research, the need to broaden the definition and the fact that it overlooks more pragmatic examples of inventiveness and knowledge transfer. Some examples of that would be useful. I do not know whether you want to say anything about that now or whether you want to provide us with that information later.

**Morag Keith:** We would probably be better to follow that up with Scotland's Colleges. The colleges have only recently moved in to develop further their knowledge transfer. The university agenda on knowledge transfer is much more scientific and research oriented, while college interaction and knowledge transfer is much more about productivity levels. We would like that to be recognised as a contributory element. It is not just about the high-end stuff, but about work across the board.

**The Convener:** Thanks very much. I will let Stephen Boyd in on that point and then ask everyone to make any final comments. We are short of time again.

**Stephen Boyd:** The narrow definition of innovation is a longstanding issue for the STUC. Many successful Scottish businesses have managed to keep jobs—the type of middle to low-income manufacturing jobs that we have been told should be going to low-cost countries—in Scotland because they have radically improved their productivity by overhauling the way they work and changing how jobs are designed and how the workplace is organised. That is fundamental to pushing the innovation agenda.

In the late 1990s, Europe did an awful lot of work on that agenda and produced stacks of reports about the changing European workplace and so on, but it never associated funds with that work to try to support the type of workplace change that we think is necessary. A number of other member states have their own interventions; for example, Ireland tries to support workplace innovation through the National Centre for Partnership and Performance. Unfortunately, although we invest a lot in the stock of skills in Scotland, we are still in the early days of trying to ensure that those skills are utilised effectively in the workplace. That type of intervention at member-state level should be supported from some central EU fund.

**The Convener:** Is there sufficient scope in EU 2020, or should we do more to highlight issues about manufacturing and industrial policies?

**Stephen Boyd:** The strategy is welcome in that it uses the words “industrial policy”, which have all of a sudden become popular again after three decades in which one could not utter them. The idea was that the Government should not try to intervene to support industry in that way. However, the strategy does not go nearly far enough.

Other member states understand instinctively, more than we do, that the kind of emerging technologies with which Duncan Botting is working closely need to be supported and nurtured in their early stages and that an industrial policy is needed to support such development. In Scotland, we are moving some way towards that, but we have to recognise that a lot of the powers associated with an effective industrial policy remain at UK level. Over the past few months—since Mr Mandelson's tenure began at the Department for Business, Innovation and Skills—the whole language of the Government's support for industry has changed. That is welcome, but again, we need to see the funds being applied to make it work.

**The Convener:** So we need a bit more joined-up working between Scotland, the UK and Europe.

**Stephen Boyd:** First and foremost, we need to recognise that industrial policy is important and that it matters; we need to hear ministers talk far more regularly about manufacturing. Underneath that, we need to start working towards a low-carbon industrial policy for Scotland that recognises not only the levers in Scotland, but the key levers that remain at UK level.

**The Convener:** Thank you. I will take any final comments from round the table.

**Duncan Botting:** First, I offer an apology on behalf of the Scottish European Green Energy Centre. We are a new organisation that has just come into being, and we have been extremely successful in securing large funding from Europe.

We have not responded to the consultation because we are limited by resource and we are new starts. I hope that we will resolve that situation on 1 March.

One of the key aspects of the document is that it offers a great opportunity, especially for Scotland, to utilise things that have not been mentioned yet in EU 2020, such as the strategic energy technology plan for Europe. Many of the areas that were identified in the plan for offshore wind and marine power, carbon capture and storage are huge opportunities for Scotland to move forward. It joins up numerous dots because the skills sets that are required for development and deployment of those technologies are in exactly the areas about which we have been talking. There is also an opportunity to funnel funds through innovation to wealth creation, which is normally the bit that is missing. We are usually pretty good at innovation, but the trick is getting from innovation to wealth creation. SEGEC's focus is on trying to provide that facilitation to deliver wealth creation. I welcome working with Donald MacInnes's group to achieve leverage out of Europe.

The cultural delivery capability of much of what I am talking about is the aspect that is usually missing. The social acceptance of many of the technologies and transmission lines that we are talking about is the one thing that is normally overlooked in innovation development and delivery. I would welcome the committee's urgent activity to try to boost the connectivity and joined-upness of many of those areas.

12:45

**The Convener:** Thank you. Does Vivienne Brown have any last points?

**Vivienne Brown:** Yes, just one, which is about balance more than anything. The document about vision and the use of structural funds is very much to do with jobs creation and using skills development in that respect. However, it would be good to see some balance in there to recognise issues of underemployment as well and the effects that it can have on people's life chances. If we were looking at having some sort of framework with priorities or targets, it would be good to see the kind of balance that improves job opportunities but at the same time recognises the skills utilisation of people who are already in the workforce.

**The Convener:** Morag, are you happy that we have covered a lot of your areas?

**Morag Keith:** Yes.

**Peter Kelly:** I hope that the committee will emphasise in its report the social dimension that we have all been talking about today and pick up

on Jamie Hepburn's question to me about what processes could be improved. We have to ensure that whatever the successors to the social open method of co-ordination and the other processes, they are much better linked in to regional and national parliamentary processes. One of the key reasons why they have disappeared into civil service bureaucracy is that they have relatively little profile either here or at Westminster. We need to ensure that this Parliament has a role in on-going monitoring.

**Donald MacInnes:** It is significant that the thrust of the discussion has been about large projects and how we deliver them. That ought to be the way forward. I know that the consultation period was short, but the sooner we get from talking to acting the better. There are some great big projects on the go, such as those that Duncan Botting and others mentioned. The sooner that we get on with that the better.

**The Convener:** I thank you all very much. The session has been interesting. On behalf of the committee, I assure you that we are keen to take forward many of the ideas that you have suggested. We also acknowledge and will highlight many of the problems around the lack of consultation and engagement. We will look carefully at the evidence that you have submitted.

**"Brussels Bulletin"**

12:48

*Meeting continued in private until 13:06.*

12:47

**The Convener:** We do not have Ian Duncan with us, but perhaps members want to raise points from the bulletin. There is quite a bit on EU 2020 and some issues on Lisbon, but we have discussed those matters fully today. If members do not wish to comment, we will agree to note the bulletin and forward it to the relevant subject committees.

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