



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 7 February 2012



---

**Tuesday 7 February 2012**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>351</b>
<b>EURO ZONE DEVELOPMENTS.....</b>	<b>352</b>

---

**EUROPEAN AND EXTERNAL RELATIONS COMMITTEE**

**3<sup>rd</sup> Meeting 2012, Session 4**

**CONVENER**

\*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

**DEPUTY CONVENER**

\*Hanzala Malik (Glasgow) (Lab)

**COMMITTEE MEMBERS**

Helen Eadie (Cowdenbeath) (Lab)

\*Annabelle Ewing (Mid Scotland and Fife) (SNP)

\*Bill Kidd (Glasgow Anniesland) (SNP)

\*Jamie McGrigor (Highlands and Islands) (Con)

\*Aileen McLeod (South Scotland) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Fiona Hyslop (Cabinet Secretary for Culture and External Affairs)

**CLERK TO THE COMMITTEE**

Ian Duncan

**LOCATION**

Committee Room 2



## Scottish Parliament

### European and External Relations Committee

*Tuesday 7 February 2012*

*[The Convener opened the meeting at 14:02]*

### Decision on Taking Business in Private

**The Convener (Christina McKelvie):** Good afternoon and welcome to the third meeting in 2012 of the European and External Relations Committee. All mobile phones and any other electronic equipment should be switched off.

Agenda item 1 is a decision on taking business in private, under the usual convention. Do members agree to take items 3 and 4 in private?

**Members** *indicated agreement.*

## Euro Zone Developments

14:03

**The Convener:** Agenda item 2 is an evidence session as part of the committee's inquiry into recent developments in the euro zone, particularly in relation to the December 2011 European Council and the resultant fiscal compact. I welcome the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, who is joined by Elspeth MacDonald, deputy director in the Scottish Government's constitution and Europe division, and Graeme Roy, senior economist in the office of the chief economic adviser to the Scottish Government. I believe that the cabinet secretary has an opening statement.

**The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop):** Good afternoon, and thank you for inviting me to give evidence on this important matter. The events surrounding the December European Council are well known, so I will not rehearse the details. However, I will set out the Scottish Government's main points of concern in relation to the Prime Minister's actions in December and the response to the crisis in the euro zone. Mr Cameron embarked on a risky course of action with no discernable reward as a result. There are significant implications for the United Kingdom's standing and reputation in the European Union. His actions, which displayed a disregard for the vital interests of Scotland and the other devolved Administrations, were domestically driven and bore no relevance to what was really on the table in December.

The Prime Minister's disregard was evident in his lack of consultation with the devolved Administrations. Mr Cameron has since ignored the joint request of the First Minister and the Welsh First Minister, which was made on 21 December, to hold an urgent joint ministerial committee meeting and to explain himself. That demonstrates a lack of regard for the memorandum of understanding, which clearly states that a JMC can be held

"at the request of the UK Government or any of the devolved administrations".

Even under the current arrangement, the UK Government should have consulted us.

At the pre-December Council joint ministerial committee on Europe, the Foreign Secretary gave no indication that the UK was considering using a veto in any shape or form. The UK Government has still not adequately answered the questions of what interests were really at stake and what the Prime Minister secured through the use of the veto—or, rather, the non-veto—at the December European Council. He has provided no detailed

information on what assessment of risk to those interests was undertaken, if any, despite being asked to do so.

Most significantly, the Prime Minister's actions have hindered a confident, united and unequivocal response to the crisis in the euro zone, which is needed to solve that crisis now. At the latest European Council, the Prime Minister gave ground on the use of EU institutions by the parties to the new treaty, despite his previous insistence that the other EU states would not be allowed to use those institutions without the UK's acquiescence.

I understand that the UK Government's minister for Europe will attend the committee later this month. I raised the issues directly with him last week, when I attended the JMC Europe meeting. Your evidence session will provide an opportunity for him to shed light on what his Prime Minister sought to achieve and how he considered Scotland's interests in his actions.

In two letters following the December Council, one of which was sent jointly with the Welsh First Minister, our First Minister set out our concerns about the lack of consultation between the UK Government and the devolved Administrations. It is extremely disappointing that, despite our best efforts to engage, the Scottish Government was again sidelined in advance of the informal European Council that took place on 30 January. At that meeting, the Council discussed matters related to jobs and growth, which are of course extremely important to Scotland. The UK Government urgently needs to address the lack of consultation.

It is vital that we find a way in which to prevent that situation from arising again. When I attended the JMC Europe meeting last week, the minister for Europe made a commitment to improve communication with the Scottish Government and the other devolved Administrations in advance of European Councils, with the aim of making that communication more regular and consistent. I will seek to ensure that that happens. We are concerned that the Prime Minister's actions have had bad consequences for Scotland and our interests in the EU. The use of the veto was ineffective and has damaged relationships. It does Scotland and the UK no favours to be seen as being on the outside of the EU. Looking back, perhaps the minister for Europe will be able to say whether there is some regret about the way in which the veto was portrayed across Europe.

The lack of engagement has reinforced the need for Scotland to have a stronger legal right to direct representation in EU affairs. Of course, having our own seat at the top table in Europe as an independent nation will mean that Scotland is an equal partner that can pursue its vital national interests. The range of journalists who were

present in Edinburgh on 25 January and the discussions that I have had with the consular corps based in Scotland demonstrate the worldwide interest in Scotland's role on the international stage.

Our priority must be to promote growth and support our EU partners in finding a solution to the euro zone crisis. Exports to the EU represent 45 per cent of Scotland's international exports. As one of the world's largest trading blocs, the EU is an important barometer for the global economy. The UK Government urgently needs to work in partnership with the Scottish Government and the rest of the EU to develop a strategic and co-operative approach that addresses the crisis and leads to a return to stability and growth.

The December fisheries council was the first real test of how alliances will hold up under the shadow of the Prime Minister's veto. Despite a difficult atmosphere, the negotiating skill and effective relationships of experienced EU operators Richard Lochhead and Richard Benyon secured a victory for the UK delegation. Their hard work garnered the support that we needed from other member states to persuade the European Commission to accept our interpretation of the cod recovery plan regulations. However, it is significant that, on the days at sea issue—the one area in which the UK has a leading interest—the UK was unable to secure the necessary support. The fisheries council clearly demonstrates the way in which the EU works: disagreements exist and persist, alliances are built and rebuilt, and we work together when we agree, despite our differences elsewhere. To maintain relationships requires work, and the Scottish Government has ensured that we continue to play our part in that.

In December and again in January, I met the consular corps in Edinburgh as part of our work to fulfil the Scottish Government's commitment to maintain constructive working relationships with our key partners and play our role as a responsible and outward-looking nation. The Scottish Government has a great deal to offer and a strong interest in participating in and shaping the EU agenda on growth, jobs and youth unemployment. Effective, forward-looking engagement with the UK Government is vital, but we cannot volunteer views on agendas that we do not know about because of the UK Government's failure to inform us.

Scotland is still an attractive place for global investments, and our interest lies in advocating that. Within the EU sphere, we continue to engage positively and actively in our action plan priority areas and beyond. Ministers and officials are vitally involved in the development and reform of policies and negotiations on progress on the next seven-year financial perspective. We meet

commissioners, engage in consultations and continue to show leadership and innovation, such as in the Irish-Scottish links on energy study—ISLES—project, which was launched in November last year. Our strategy and focus is to demonstrate that the Scottish Government is capable of and willing to contribute positively to the world, and we will continue to do that.

Thank you for the opportunity to make a short statement. I am happy to expand on any of the themes during the question session.

**The Convener:** Thank you for that in-depth analysis of what has happened in the past few months.

One of my concerns, which I think other committee members share, is the impact that the Prime Minister's disregard in respect of discussing the use of the veto with the Scottish Government has had on the Scottish economy, especially our fishing and farming industries, and the key economic drivers for creating jobs. Will you go into a bit more detail on how you feel about that? You mentioned that you believe that there is a risk and that the risks of the Prime Minister's use of the veto were not properly assessed. Perhaps you could go into more detail on those key sectors and how the Scottish Government is working around things.

**Fiona Hyslop:** That relates to one of our requests to the Prime Minister. If he thought that it was so important that interests were protected, he must have done a risk assessment before making the decision. Perhaps David Lidington could be asked about that. We have asked the Prime Minister to share the risk assessment with us, but it has not been forthcoming. The important thing for us is the stability of the European and global economies, and it is clear that anything that hinders the development of a stability pact agreement across the euro zone countries would be problematic. We do not know what benefits the Prime Minister has secured.

There have been two consequences. The first issue is whether what has happened has helped or hindered economic recovery and stability in the European Union. I suspect that the jury is out on that, but I do not think that what happened was particularly helpful. Our prime interest must surely be economic stability for jobs and Scotland's economy, and I do not think that the Prime Minister's actions have helped to secure wider European economic development support.

Secondly, there are the relationship aspects. I know that the committee is familiar with the importance of strong relationships between European interests, whether they are bilateral or multilateral, in dealing with particular issues. They are particularly important for reform of the

common agricultural policy and the common fisheries policy. We need to ensure that we can exert as much influence as possible in those areas. It is obviously problematic if a bad taste has been left in people's mouths because of a souring of relationships, as that will cause difficulties in securing support or persuading people to accept our point of view. We will work to ensure that our interests are promoted, but it is not helpful that people might not want to hear our arguments because our member state has been problematic in some shape or form.

Diplomacy and constant relationship building are key, so the episode in December was not helpful, but everybody is trying to put their shoulders to the wheel to ensure that Scotland's interests are promoted. Richard Lochhead's ability to secure what he secured only a week later is probably a testament to the relationships that he has built up over a number of years, his experience and the regard in which he is held in other European Union member states, but it is interesting that the one area in which the UK has a stand-alone leading interest was the one area in which we could not persuade other countries to come with us. That is telling.

14:15

**The Convener:** You touched on how relationships are important. The other week I noticed that Ken Clarke invited our Minister for Community Safety and Legal Affairs to the informal council. Apparently that was a first for the current minister. You have already talked about how Richard Lochhead leading on one issue worked well, but the committee has brought up the issues of privilege, not right; of the one-to-one relationships between ministers here and UK ministers; and of how that could either be an impediment or we could build on those relationships in a positive way to get our seat at the table.

**Fiona Hyslop:** A very good example of that has been the relationship between Stewart Stevenson and Chris Huhne, the former Secretary of State for Energy and Climate Change. Relationships matter.

There is also a point about trust and responsiveness. I have led a UK delegation to an informal council on creative industries at which we put forward the UK position. If someone is to articulate that UK view, they have to be involved in its preparation in the first place. Roseanna Cunningham attended an informal justice meeting in Denmark recently. I think that the Danish presidency is going to be very active, so we hope to transact a lot of business over that period, and relationships will matter.

Informal councils are a good way of building up relationships; they are as important as the formal councils. The most recent informal council led to agreement between 25 out of the 27 countries on the intergovernmental treaty, so although it was called an informal council, a great deal of substantial business was transacted at that meeting. What belies the UK's understanding of the process is the fact that the Prime Minister failed to consult the devolved Administrations in December about the threatened use, and then use, of the veto, and the UK Government did not contact us about, inform us about or involve us in the subsequent meeting—the January council—despite jobs and growth and youth employment being of interest to us and their being part of our responsibility. I had to chase the Minister for Europe to remind him that the informal council was taking place and ask him whether he wanted to involve us. Of course, the JMCE meeting took place days after that informal council, so it was not just a one-off offence in December; it was repeated in January.

That said, to be fair, at the recent JMCE meeting, the Minister for Europe recognised that improvements need to be made. For example, sometimes the agendas for the meetings of the councils and other meetings that leaders attend, as well as the subject councils, change when they are being finalised in the week before the meeting. We have secured agreement that more informal contact will be made.

Interestingly, at the December joint ministerial committee on Europe, the Foreign Secretary William Hague said that there will be times when it might not be possible to give full notice of meetings, but phone calls can be made. Perhaps some consultation about whether the risk of the Prime Minister's action was worth the reward might have taken place in December, but I suspect that few people—never mind the devolved Administrations—were consulted at the time.

I am trying to give you some insight into the operation of the institutions. It is very important that the mechanisms work properly because too much is at stake for them not to work.

**The Convener:** The committee will certainly be discussing some of those points with the UK Minister for Europe when he comes before us later this month.

**Hanzala Malik (Glasgow) (Lab):** Cabinet secretary, thank you for being here this afternoon. I note your diplomatic and measured response to what happens to Scotland's interests in the UK Government.

Perhaps I am not as diplomatic as you are; I would like to see Scotland doing something unique and different. We should approach Europe to seek

proper representation. Europe is a changed place; a lot of new and different democracies exist now in Europe, but they do not have proper representation. Europe tends to take the easy way out by saying, "You have your national Governments representing your interests", when clearly, on occasion, they are not doing so. The UK Government is not engaging positively with our Government, and that is unwise and not in the best interests of the UK and/or Scotland. If it will not address the issue for us, we have a responsibility to try to do so. If the UK Government is not going to be civil in listening to our requests and demands, we could bypass it altogether and ask Europe to consider proper representation for this Parliament.

On fisheries, we have had a measure of success, but it is small in terms of days at sea, so we have lost out in that respect. The veto may have cost us that; it certainly did not help our case. That has, again, had a direct impact on our fishing industry. In this economic climate, our fishing industry is struggling and haemorrhaging because we do not have new people coming into it. We need to sustain the industry, which is a vital part of our culture, history and economics. I know that a team is going from Scotland to Iceland to discuss it. That is a welcome development, but I would like something similar to happen in Europe. We want support from the European Union which is putting all those conditions on us, but is not protecting us against others who are infiltrating our fishing areas. We need the EU to act more responsibly in protecting our fisheries.

**Fiona Hyslop:** On the first point, I will try to be diplomatic. If we want direct representation in Europe, then a "Yes" vote in an independence referendum is the most obvious way of securing that. In the meantime, there are ways in which we can have a more direct connection with Europe.

Increasingly, Europe is seeking us out in relation to our expertise in various areas. We want to position ourselves as net contributors of ideas, innovation and policy. Whether it is on climate change or, in justice, in terms of the rights of victims, we are increasingly offering such direct input.

While we remain part of the UK, we will need to work with the UK Government to secure our interests. We are embarking on discussions on the multi-annual financial framework, which we have been working on for some time. The UK Government is telling us that in the next six months there will be an acceleration of that process. We must, and do, work within our means and within our relationships. I have recently had discussions on how we will maximise the impact of horizon 2020, what that means for small and medium-sized enterprises, and how the pooled



relationship of investment and research in Scotland works effectively. We must ensure that the UK Government is also positioning itself in our interests.

Whether we like it or not, it is in our interests for those relationships to continue. As much as I want to ensure that we have direct representation through independence, we must also find other ways of maximising our clout because so many things will happen in the short term—even in the next few months. We now have more direct relationships within Europe and in Brussels.

Hanzala Malik mentioned the common fisheries policy. We expect acceleration on CFP reform. That will be discussed at the agriculture and fisheries council from March onwards, and a general approach may be adopted at the July council. It will be the first time CFP reform will be decided by co-decision, so relationships with the European Parliament and the Council will be increasingly important. This is about our relationship not only with the EU as an institution but with the European Parliament. On the point about Iceland and Norway, bilateral relationships with non-EU members are equally important in matters such as fisheries. I assure you that there are frequent bilateral meetings between ministers in different capitals, whether EU or non-EU.

If you have a particular interest, you can write to Richard Lochhead or ask to speak to him. The Danish influence will be increasingly important—not only because Denmark holds the presidency but because of its interests. We can work well with the Danes. They have shown what can happen when a small, independent state holds the presidency of the European Union.

**Hanzala Malik:** I hear what you say about representation as an independent country, but I am reluctant to wait that long. I hope that the European Council will take negotiating steps now. I am not comfortable with the way in which Scotland is treated in Europe. We are a democratically elected tier of government, and our constituents will ask us how we represent their interests. If we fail them because of any obstacle whatever, it is our duty to try to remove that obstacle. The current obstacle is that the UK Government is not co-operating with us to the level that it should be. We should therefore consider the new European Union set-up, and perhaps make approaches and suggest that the formula of representation be reconsidered.

**Fiona Hyslop:** Even within the current set-up, it is possible for devolved Administrations to speak or lead at European Council meetings. I have attended such meetings at which representatives from devolved Administrations have spoken on certain issues. The UK takes a restrictive approach compared with, for example, Germany

and the Länder or Spain. At the meeting that I attended, representatives of devolved Administrations from both those countries spoke. That is possible, but political will is required—so the issue is the extent to which the EU would be prepared to initiate it. What Hanzala Malik suggests is interesting, but things would be easier and quicker if, constitutionally, we had the powers to represent ourselves as a member state. That would be the simplest and clearest way of doing things.

**Jamie McGrigor (Highlands and Islands (Con):** I, too, thank the cabinet secretary for coming to the meeting. I notice that you are following the lead of the Scottish National Party leader, Mr Salmond, in attacking the Prime Minister over the veto. I am not really surprised about that.

On the “Today” programme on December 14, Mr Salmond said:

“We have vital fishing talks in Brussels this week—is it going to be easier or harder to obtain the support of the countries we need to fend off regulation which would be disastrous for the Scottish fishing industry? I do think it will be harder.”

When cabinet secretary Richard Lochhead returned from the fishing talks and made a statement in the Scottish Parliament, he said that he had obtained good support from France, Germany and Spain. Would you now say that support has been lost?

**Fiona Hyslop:** People who were at the fisheries talks say that progress was made in spite of the problems that were caused by the veto in December. The atmosphere caused difficulties, but the negotiating skills of Richard Lochhead and Richard Benyon saw us through. That view has been relayed to me by people who were at the fisheries council. The one area in which the UK had a principal interest—days at sea—was the area in which we really needed the support of other countries. That support was not secured. However, Richard Lochhead and Richard Benyon worked effectively in the tricky and pressured negotiations on, for example, cod recovery, and they did extremely well.

14:30

I was not at the meeting, but people who were there told me that the atmosphere at that fisheries council was not conducive to a positive outcome. However, it is important to be aware of the fact that, despite the problems of December, because the EU works in such a way that people know that they still have to work with each other, an agreement was reached. However, because of the behaviour of the Prime Minister the previous week, the skill of the negotiators had more to do with the

result than did the UK somehow having increased clout.

**Jamie McGrigor:** I am glad to hear you say that, because I am glad that some things were gained for the Scottish fishing industry, even if it was not a total victory. Nonetheless, Richard Lochhead did say that he had received support from Germany, France and Spain.

The financial sector is incredibly important for Scotland. It could be said that EU policies, or being in the euro zone, has led to what might be called the demise of the financial sectors of many European states, at the moment. Is the cabinet secretary suggesting that, in order to get support on other matters, the Prime Minister should have followed policies of appeasement, rather than standing up for the financial sector in the UK and Scotland?

**Fiona Hyslop:** I used to work in the financial services sector in Edinburgh, so I am conscious of the sector's importance to the Scottish economy. Stability in Europe is important to all aspects of Scotland's economy.

Jamie McGrigor has touched on a central point, which is the extent to which there was anything on the table that would have impacted on financial services, with regard to the original proposition at the December discussions. As the member knows, a financial transaction tax would have required unanimous support across the EU, regardless of what happened in December, so clearly that was not a risk. Regulation of financial services was not even on the table for the discussions in December, so I am not quite sure what interest was protected.

If you are saying that the Prime Minister tried at the last minute to corral the rest of the EU into supporting issues that were nothing to do with the proposition that was on the table in December, that is another matter, and might be something that you should ask the UK minister about.

I think that the financial transaction tax was a red herring, as it was not on the table and would have required unanimity anyway. I do not see how that interest has been advanced in any way. Further, financial regulation was happening separately and would require majority voting, which is the same as is currently the case.

I am not sure what point Jamie McGrigor is making. Perhaps I am missing what he is trying to put forward. What interest do you suggest the Prime Minister was defending? It might be helpful if you were to explain what you think he actually achieved.

**Jamie McGrigor:** The Prime Minister was defending the UK and Scottish financial sector, which produces an enormous amount of invisible earning for the whole of the UK and for Scotland—

**Fiona Hyslop:** I am sorry—

**Jamie McGrigor:** Let me finish, please, cabinet secretary. The Prime Minister was standing up against a proposed tax on financial sectors that would have made our financial sectors less competitive.

**Fiona Hyslop:** I gently suggest that, if you look at what was on the table in December, you will see that there was absolutely no mention whatsoever of a financial transaction tax. It was not a subject of discussion. Further, as Jamie McGrigor will be aware, matters of taxation require unanimity anyway, so there was no risk of that tax being introduced. I think that, perhaps, you have fallen for the spin that came out of the Prime Minister's office at the time. The veto was used to try to stop something that was never going to happen anyway. I do not see how that is a victory or a success.

**Jamie McGrigor:** If it is a question of spin, I will not fall for the spin of putting all the blame on the UK Prime Minister just to make an SNP point.

**Aileen McLeod (South Scotland) (SNP):** My question relates to the letter that the First Minister wrote to the UK Prime Minister in the aftermath of the European Council in December. You touched on the fact that concerns were expressed that the UK Government had not adequately consulted the devolved Governments. I know that you said that you had sought, at the recent meeting of the joint ministerial committee, to ensure that progress would be made to ensure that the UK Government will consult the Scottish Government on issues of strategic importance to Scotland, including the fiscal compact, given its importance for Scotland's trade with the euro zone countries and for our financial services sector.

One of the issues that the First Minister raised was the reinstatement of the weekly so-called Darroch-Cunliffe meetings, which involved the head of the Cabinet Office's European secretariat and the UK permanent representation to the EU in Brussels meeting civil servants from the devolved Administrations. Are you in a position to report on any progress on the reinstatement of those weekly meetings?

**Fiona Hyslop:** Aileen McLeod has made a number of points; she touched on the importance of the most recent informal Council meeting. We have an interest in whether the compact is successful. Given that 45 per cent of our exports go to the European market, the success of the compact will have an impact on the Scottish economy. The constraints of the compact, which the countries concerned feel are necessary, may well affect Scotland's ability to sell, at least in the short term, so we have an interest in the matter.

It was not helpful that, despite the fact that the First Minister and the First Minister of Wales wrote to the Prime Minister in December, it took until 28 January for a reply to be sent from William Hague; the timeframe for exerting any influence was very limited.

One of the suggestions that was made in the joint letter from the Welsh First Minister and our First Minister was that the regular official-led meetings that Aileen McLeod mentioned should be reinstated, because that would allow us to keep more up to date and to get a feel for developments on a more regular basis. Those meetings are now called the Cunliffe-Rogers meetings. Interestingly, the devolved Administrations attended them between 2000 and 2008, when they were stopped by the then UK Minister for Europe, Jim Murphy. For eight years of devolution, the devolved Administrations could attend those meetings. I do not think that meetings of officials are any substitute for ministerial contacts, but they can—particularly when they are at such a high level—allow early warnings to be given of issues that will likely require ministers to make judgments or to hold discussions.

Normally, our practice is to agree JMC minutes before I relay anything back but, as I am accountable to the European and External Relations Committee, it is not unreasonable to say that, having approached the UK Government on the matter, it is currently of the view that it will not reinstate devolved Administrations' attendance at those meetings. However, it is an issue that we will continue to raise.

**The Convener:** Hanzala Malik has a quick point to make.

**Hanzala Malik:** Ed Miliband said in the House of Commons:

"the Prime Minister has given up our seat at the table ... has exposed, not protected, British business; and ... has come back with a bad deal for Britain."—[*Official Report, House of Commons*, 12 December 2011; Vol 537, c 522.]

Those are not SNP comments, but it is fair to say that the UK Government's use of the veto has gone down quite badly and is clearly perceived to have damaged our interests. I am pretty clear that we have suffered because of that.

**Fiona Hyslop:** That is a reasonable assessment. It is interesting that, using the art of diplomacy to try to maintain relationships, the other European countries agreed to allow the UK to be an observer during the most recent development of the intergovernmental treaty, so at least there was some involvement through being in the room. There was a danger that, having used the veto in December, the UK could have been left outside completely when the intergovernmental treaty was recently being developed, as opposed

to at least being able to observe what was happening.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** Good afternoon, cabinet secretary.

The discussion has been very interesting thus far. We have looked at the potential diplomatic and practical implications of the UK Prime Minister's isolationist stance in representing his Tory-Liberal Government in London, but I would like to raise the potential legal implications of his veto.

The EUobserver of 6 January 2012 quoted the Prime Minister as saying:

"We will be very clear that, when it comes to"

the potential to use the existing EU institutions,

"you cannot use the European institutions for those things because that would be wrong. You can't have a treaty outside the European Union that starts doing what should be done within the European Union".

In his statement to the House of Commons on 31 January, he said, among other things:

"The new agreement sets out roles for the European Commission and the European Court of Justice."—[*Official Report, House of Commons*, 31 January 2012; Vol 539, c 678.]

The issue is therefore very important for the protection inter alia of the Scottish financial services sector and that of the rest of the UK, which Mr McGrigor prayed in aid of the UK veto. There is a significant danger that actions that are taken together now by the Europe of 25 in the compact could have a direct impact on the financial services sector, certainly within that geographical zone.

Has there been any significant discussion yet of the potential legal implications of the veto? We see an EU of 27 with a single market, but an EU of 25 under the compact, and potentially significant decisions could be made that could affect the single market in financial services in the current scenario.

Mr McGrigor referred to the UK Prime Minister not having adopted a policy of "appeasement". I find that language rather disturbing and would certainly not wish to be associated with such comments. That reflects the problem with the UK Government's attitude to its role as a good European neighbour.

Will the cabinet secretary comment on the potential tangible legal implications of the veto?

**Fiona Hyslop:** I am always cautious about answering questions about legal affairs from lawyers, so members should bear with me.

There is an important point. In crude terms, if in December the Prime Minister wanted to try to avoid the EU institutions being used legally to

develop a fiscal or stability compact, he singularly failed to do so, because it did not matter which route was taken—the original route that was put forward in December or the route that was eventually taken with the intergovernmental treaty. We should remind ourselves that that was the route that the French and the Germans suggested might be taken in the first place. Therefore, with the intergovernmental treaty approach, we have ended up with what the French and the Germans wanted.

The key question is whether member states can use EU institutions without the support of the UK Government. They can. Article 273 of the Treaty on the Functioning of the European Union provides that member states may give the European Court of Justice jurisdiction over treaty-related matters by

“special agreement between the parties.”

That has happened regardless of the position that the Prime Minister took in December.

I suppose the rationale is that it would seem to be a sensible way forward to use institutions under the intergovernmental treaty as a mechanism to provide economic stability in the euro zone countries, and to help the wider global economy that includes those countries that trade with the euro zone.

14:45

However, if that means—as you suggest in your question, on which you might want to expand—that the institutions can then be used in other areas, we may want to be more circumspect about supporting that, and we will need to discuss it with the Commission and the UK Government. It is clearly in our interests to do so, and we will always seek to protect and promote financial services. However, we should remember, with regard to any changes, that the financial services regulation was expected to be subject to qualified majority voting anyway. From my understanding—although my officials may want to correct me—it is not clear at this stage whether in fact the compact goes anywhere near financial services regulation.

I suspect that you are asking where it would leave us if there was such a movement at some point in the future. That is a good question. If the bolt that was shot in December was meant to help to prevent EU institutions from being involved in financial services regulation, I am not sure that that has been achieved. If I have picked you up wrongly on that and you want to come back on it, I am happy for you to do so.

**Annabelle Ewing:** Thank you for your answer, cabinet secretary. You have hit the nail on the head, in the sense that the veto is shown to be

completely without point. The UK Prime Minister did not need to exercise the veto: he has been met with the same result despite the fact that he did so.

By exercising the veto, he has caused huge problems for the UK—the member state—in its relationships with other member states, which are a key element of doing business in the EU.

To return to the legal complexities, it is correct to say that the compact as it currently stands should not have a direct impact. The problem is rather that, although the compact deals essentially with economic issues, there is a very fine line between economic issues and potential financial services regulation issues.

A potential impact—at least indirectly—on the operation of the single financial services market is not beyond doubt. I wonder whether the UK Foreign and Commonwealth Office and its permanent representative in Brussels have come up with a strategy to deal with that situation, given the importance of the financial services sector to the Scottish economy and to the UK economy as a whole.

**Fiona Hyslop:** The issue is whether, if the institutions are going to be used, it would have been better to have used them as initially proposed in the Lisbon treaty. We would have ended up where we have done anyway, but that would probably have been a good grounding. You might want to discuss that with the UK minister when you meet him.

**Bill Kidd (Glasgow Anniesland) (SNP):** I thank you for your replies to my colleagues' questions, cabinet secretary. I will go back over a couple of issues that Annabelle Ewing and Hanzala Malik raised.

On the informal European Council meeting of 31 January, the Prime Minister, David Cameron, said:

“The principle that the EU institutions should act only with the explicit authorisation of all member states remains. Let me be clear: this is a treaty outside the EU.”

He later conceded that EU institutions did have a role to play, even in this non-EU treaty, and stated:

“Clearly, there are uses for the institutions they have set out in this treaty, some of which are legal under existing EU law”.—[*Official Report, House of Commons*, 31 January 2012; Vol 539, c 678, 683.]

In Scotland, we find ourselves in a situation in which we were not represented—or rather, we were represented without willing to be so—in relation to the use of the veto. As one of the devolved Administrations, Scotland is tied to what the UK Government produced when it used the veto. Given that, has it been possible or would it still be possible for the Scottish Government, possibly in concert with the Welsh and Northern

Irish Governments, to ensure that we have a separate influence within the European Union on the decision-making process, to ensure that we are not treated in the manner that the UK has allowed, which means that we are outside the negotiations but still under the influence of any decisions?

**Fiona Hyslop:** There are a number of points in that. Some of this goes back to Hanzala Malik's point about direct communication. I reiterate that if one wants that at a political level, one needs direct representation as an independent member state. However, we have direct discussions with the European Union at a number of levels including at commissioner level, which is clearly important, for example, in relation to financial services. I know that John Swinney has previously met commissioners on financial services issues—indeed, that is on-going. Since May last year, we have had the opportunity to meet extensively with a number of commissioners on a number of areas, of which financial services is one.

Can we put forward our position directly? Yes, we can. However, as we are part of the UK, it makes sense for us to try to persuade the UK of our point of view, so that we can use that. We will continue to try to do that where possible.

On your other point about process and influence, we can analyse to death the issues to do with the process, the legality and what the strategy was. However, perhaps sometimes there is just no strategy and it is purely about the politics. Perhaps the recent situation was about appealing to the 81 Conservative MPs who wanted to have a referendum on EU membership. To come back to your point, which I think alludes to Annabelle Ewing's, the Prime Minister might have wanted to play to the domestic audience of Eurosceptics and have marched them up to the top of the hill in December, only to find by 31 January that the European institutions could still be used, so he marched them down again. That kind of situation can be about the raw politics, and it is not up to me to interpret the Prime Minister's motivations in that regard. However, we are left with a situation in which committee time is being taken up and concerns are being raised about Scotland and the UK's relationship on an on-going basis.

Some of what happens could come down to judgments at short notice for political reasons—that could be one interpretation. Regardless of that, we are still left weeks later trying to unpick what has happened and its implications. Again, such points should perhaps be directed to the UK Government rather than me, but I think that you have identified two issues, which although they were picked up by Hanzala Malik and Annabelle

Ewing, probably get to the nub of the consequences of where we are now.

**Bill Kidd:** If it is all right, convener, I emphasise the point that politics can be played by many different people. Sometimes, we might have to act at the behest of politics from Westminster, but our political point of view might be considerably different.

**Fiona Hyslop:** It can. However, even though we have our disagreements—I made our views known at last week's JMC Europe and our First Minister has done so in correspondence—we must still work together. Our prime interest is to defend and promote the interests of the people of Scotland. Yes, that means that politics can be played, but I can assure you that in the five years in which we have been in government, we have ensured that we have behaved in a responsible manner when at all possible in working with the UK to promote our interests, which is what we need to do.

That is more important than playing politics, because when dealing with relationships across the EU, we have to play the longer-term game. There can be short-term politics for domestic wins, which you will sometimes see with countries that are facing elections or when prime ministers have pressures within their own parties or otherwise. However, we all have to raise our game and work towards the common interest. That is why if there are confidential discussions prior to joint ministerial committees in advance of European councils, we will respect the confidentiality of what is given to us. Previous Scottish parliamentary committees have sometimes been frustrated by that situation. Obviously, I am accountable to this committee, as were previous ministers in my position—that is the nature of trust and relationships. The bottom line is that anything that damages trust and relationships, particularly in Europe, is not good for us. Therefore, we need to put the common interest first rather than short-term politics.

**Bill Kidd:** That is a constructive attitude.

**The Convener:** The cabinet secretary is in her final five minutes, so I ask members to indicate to me if they have any final points to make. Hanzala Malik managed to get in first.

**Hanzala Malik:** On representation and nationhood, we have good examples in the United Kingdom of how we can work and take the benefit of nationhood. For example, we have four British international football teams that represent their nations. That is just a small example of what we can do and how we can be recognised internationally. I do not see why Scotland cannot be recognised in Europe on the same basis. The reason why I keep harping on about this issue is that, since the European Union was introduced,

things have changed in Europe, but the EU has not taken that into account. That is an opportunity for us to explore.

**Fiona Hyslop:** That is an issue that the committee might want to discuss. Members could always attend the Scotland v Belgium football game later this year, which might be an opportune time to take that forward.

**The Convener:** That is not my ideal team-building exercise, but we will take that on board.

**Annabelle Ewing:** To continue on the point about the Scotland-Belgium football game, there might be a wee dram taken there. I want to ask the cabinet secretary about a revelation from the First Minister last week. The UK Foreign Secretary had suggested that when—I hope—Scotland votes yes in the 2014 referendum, the rest of the UK will not promote whisky in its international offices. However, we heard from the First Minister that, in fact, Scottish Development International is charged £3,000 to use British embassies for whisky promotion. Are we planning to try to recoup that discriminatory charge, which does not seem to apply equally to SDI's counterpart south of the border?

**Fiona Hyslop:** This was probably remiss of us, but we did not know about that secret tax on whisky in embassies across the world. Whisky is worth £3.3 billion in exports. There has been a recent expansion in the market, with a huge increase in China in particular. I have been in China twice to represent the Scottish Government and I was pleased to promote whisky. I was in China when the First Minister held one of his important meetings there. The Scotch Whisky Association has lobbied hard for a long time for a statement of origin, particularly to help in the Chinese market, but in any event there have been phenomenal increases in the market. That is nothing to do with whether whisky is served at embassies. The Indian market for Scotch whisky is also expanding.

The issue that the member mentions was one of those unintended consequences of an assault on independence that perhaps backfired. If the committee wants me to investigate, we will certainly try to ensure that the issue is resolved and that we all promote Scotch whisky as the best. I hope that British embassies want to serve it because it is the best and not just because they are paid for it.

**The Convener:** I feel the need to say slàinte at this point.

We have a final point from Jamie McGrigor.

**Jamie McGrigor:** It is an important question. The Scottish Parliament information centre tells us:

"November 2011 saw the fall of the Governments in Greece and Italy with the respective leaders replaced by unelected technocrats."

Does the cabinet secretary agree that that is harmful to democracy? If she was in charge, what would she do to prevent that from happening here?

**Fiona Hyslop:** Scotland is a democracy and we are proud of our democratic traditions. Such is democracy in Scotland that, in the elections last May, there was a substantial vote for the SNP, which was democratically elected as a majority Government. We are pleased and proud to be democratically elected to represent the Scottish people. In thinking about democracy, we might ask why a party that has only one member of the Westminster Parliament from Scotland thinks that it can dictate domestic matters and developments here. Arguments about democracy can be used in many ways.

The situation in Greece and Italy is an issue for those who are involved in the discussions in the euro zone. In Scotland, I would not be in a position to dictate what would happen in Greece and Italy, so the question is an odd one to ask. If the member is asking whether I believe in democracy, the answer is yes. If he is asking whether I think that Scotland is a democratic country, the answer is yes. The Scottish Government has achieved an extensive mandate, and despite the fact that the Conservatives have only one member of the UK Parliament in Scotland, we continue to work constructively with them. Indeed, I have worked constructively with that one member of the Conservative Party, who is a minister in the UK Government. I will continue to do so, despite the fact that he is the only Conservative MP in Scotland and we are a democratically elected Scottish Government. Those are the current constitutional arrangements, and I will abide by the democratic mandates of the Parliaments until such time as the Scottish people change them.

**Jamie McGrigor:** I thank the cabinet secretary for that answer, although I do not think that it was an answer to the question that I asked.

**The Convener:** I convey the committee's thanks to the cabinet secretary for attending. The meeting has been informative and it will inform our questions when we meet the UK minister for Europe in a few weeks.

Just so it is recorded in the *Official Report* of the meeting, I inform members that I have received apologies for absence from Helen Eadie.

We move on to agenda item 3, which we have agreed to take in private. I thank our guests in the public gallery for attending.

15:01

*Meeting continued in private until 15:27.*





Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

---

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on  
the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

For details of documents available to  
order in hard copy format, please contact:  
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

e-format first available  
ISBN 978-1-4061-8301-6

Revised e-format available  
ISBN 978-1-4061-8315-3

---

Printed in Scotland by APS Group Scotland

---