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Pàrlamaid na h-Alba

Official Report

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 20 February 2014

Session 4

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
5th Meeting 2014, Session 4

CONVENER

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

DEPUTY CONVENER

Hanzala Malik (Glasgow) (Lab)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)
*Jamie McGrigor (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Neil Bibby (West Scotland) (Lab) (Committee Substitute)
Jim Currie
Dr Fabian Zuleeg (European Policy Centre)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

Committee Room 1

Scottish Parliament

European and External Relations Committee

Thursday 20 February 2014

[The Convener *opened the meeting at 09:01*]

Decision on Taking Business in Private

The Convener (Christina McKelvie): Good morning and welcome to the fifth meeting in 2014 of the European and External Relations Committee. I make the usual request for mobile phones and electronic devices to be switched off.

I welcome Dr Daniel Kenealy, who is the committee's adviser for our inquiry into the aspects of the Scottish Government's white paper "Scotland's Future: Your Guide to an Independent Scotland" that relate to the European Union. Our colleague Hanzala Malik has tendered his apologies for not attending today's meeting.

Item 1 is a decision on whether to take item 5, which is correspondence on the inquiry, in private. Do members agree to take item 5 in private?

Members *indicated agreement.*

Independence: European Union Membership Inquiry

The Convener: Item 2, which is the main item on today's agenda, concerns the Scottish Government's proposals for an independent Scotland with regard to membership of the European Union. We have two separate witnesses today, the second of whom will give evidence via videolink.

First, I welcome Jim Currie, who is a former director general of the European Commission. We thank you for coming from Brussels to give evidence to the committee today; it is much appreciated. I believe that you have a short opening statement.

Jim Currie: Thank you. I have read quite a lot of the evidence that the committee has received and heard the discussion and debate that have taken place. The subject is absolutely fascinating, and is very important for the future of a Scotland that might become independent. Indeed, the European Union is a very important issue for the United Kingdom in general.

First, I should say that I am speaking not on anyone else's behalf but simply my own, so the views that you will hear are purely personal, based on my experience as a councillor at UKRep—the United Kingdom representation to the European Union—back in the 1980s and my various jobs, such as chef de cabinet and director general, in the European Commission machine. Those jobs have brought me into contact with the European Parliament as a negotiator in the Council of the European Union and so on.

I will use my experience to give the committee what I hope is straightforward and fairly honest advice, based on how I view things, which is not necessarily the same as how anyone else views them. I know that some of the committee's debates have been pretty theological at times, but in general they have been deeply interesting, and I thank you for inviting me.

The Convener: Thank you—we look forward to hearing your evidence over the next hour or so.

One of the main questions that we have asked all our guests at the committee is how Scotland has benefited from being a member of the EU for the past 40 years, and whether it is in Scotland's best interests to continue to be a member.

Jim Currie: To answer your second question first, it is absolutely in Scotland's interests to continue to be a member of the European Union. We live in a very interconnected world, in which one's interests, whether they relate to trade, environmental standards or anything else, really depend on being part of something bigger,

particularly if one is a small country on the edge of Europe. It is no secret—and no surprise—that Norway has sought a relationship with the European Union, as has Switzerland, although that relationship is under threat of some damage at present. European Union membership seems to be not only necessary but a very useful part of what happens to be a very interconnected and globalised world.

For Scotland, there are benefits from being in the internal market from a trading point of view, with lower tariffs, the lack of boundaries and free movement for students and other people. Other benefits include—after long and difficult negotiations—the creation of a liberalised air transport service; we all benefit from the Ryanairs and EasyJets of this world, whether we are going on holiday or travelling on business.

From many points of view, EU membership has been and continues to be in Scotland's interests. You will notice that I have not even mentioned money yet. I was director of the European regional development fund in the mid-to-late 1980s when we set up various programmes under the fund that massively benefited the transportation and road systems and so on, not only in what was then the greater Strathclyde area but elsewhere. When I travel down to Argyll to see my wife's relatives, as I do two or three times a year, or when I am going to see my mother in Kilmarnock, it is very evident to me that Scotland has benefited quite substantially from EU structural funds.

The Convener: The committee has taken a real interest in the regional development fund and the structural funds. If you managed to tune into the debate that we had the other day about this Parliament's priorities, you will know that funding is a hot topic that was debated in detail.

Jamie McGrigor (Highlands and Islands) (Con): I have a quick supplementary on that subject. I agree with Mr Currie that Scotland is far better off in Europe; I am convinced of that. When we initially had objective 1 status—for the Highlands and Islands, for example—there was a very large number of structural projects. However, now that the cake has got bigger but the number of slices is much larger, is Scotland still getting the benefits that she got before?

Jim Currie: Scotland is not getting the same proportion of the funds as she got before. In those days, there were genuine concerns about improving Scotland's development prospects—that was very much part of the game for objective 1. Now, with the entry into the EU of much poorer and less-developed countries, which do not have the transportation or road networks and therefore the necessary infrastructure for a modern trading nation, it is logical—and, I think, right—that those countries should benefit and continue to benefit.

Of course, that ties in with the issue of immigration. If those countries are developing in their own right and moving forward to become member states of the Union with higher productivity and higher added value, they will retain much more of their own population. We have seen that happening in Poland: as Poland has increased its gross domestic product and so on, with the help of structural funds and transfer payments from the EU, the Poles have begun to go home because, perfectly naturally, that is where a lot of them want to be.

Relatively, one might say that we have lost out, but there are still relative opportunities. Those may be less visible and tangible than they were in the past, but they exist.

The Convener: Before I move on, I welcome Neil Bibby to the meeting as a substitute for Hanzala Malik—we are delighted to have you here. I also welcome to our public gallery a delegation from the western Balkans that is led by my friend from Montenegro, Alexander Damjanovic. I say "dobro jutro" to all our guests in the public gallery.

Willie Coffey has the first question.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Mr Currie. My question is a supplementary to the convener's opening question on the benefits to Scotland of membership of the European Union. Can I ask you the question in reverse? What are the benefits to the European Union of Scotland's membership?

Jim Currie: Having worked close to the centre of the European Union, I think that one of the great things about it is its diversity. I have always been rather amused by some of the debates on Europe in the London press about loss of identity and so on. I have not met a single Spaniard who has lost his identity. The great thing about the EU is that diversity is welcomed. I think that the Scots have a natural affinity with Europe and people on the European mainland—that is also true of Geordies, by the way. I do not think that it is necessarily true of people in the south-east of England or the home counties. Frankly, I think that there is a degree of fear about Europe there, which I just do not understand.

I think that Scots bond naturally with people because they tend to come across as being themselves. That is also true of people in various regions of England, as I said, and of the Welsh and the Irish. I think that Scotland and the Scots are appreciated within the EU. For example, a lot of people say that learning languages comes more naturally to Scots people than it does to English people. I think that it is a mentality thing; I do not think that it is necessarily about abilities. People in Scotland take an interest—and have always had

to do so—in what is happening in France, Italy and so on.

Scots students—I hope—have benefited massively from the Erasmus programme, which costs relatively little money but has huge benefits in opening up young minds not only to opportunities for jobs, but to opportunities in terms of broadening their horizons. I think that Scotland has come across very well and is appreciated in Europe.

Willie Coffey: What about hard-and-fast resources? What do you think we can bring to the table that our European Union partners would benefit from?

Jim Currie: The issue of resources is going to be a big part of the discussion if Scotland gains independence. There are lots of ways in which diplomacy has been downsized. New technology allows for that. For example, we can communicate very well with people in the United States, Canada, Australia or China through videolinks and so on. Diplomacy is not necessarily about the size of embassies. However, there is no doubt that the EU is a very labour-intensive operation. People have to be there because it is about people negotiating with one another and talking to one another. There will be definite resource costs to be borne if Scotland goes it alone. I hope that, if Scotland becomes independent, it will engage fully, and doing that inevitably means an outlay of resources.

Willie Coffey: I was thinking more about hard-and-fast resources such as access to fishing grounds, oil and gas, and energy.

Jim Currie: Again, that is about negotiation and defending your interests. Membership of the EU involves a loss of sovereignty, to a degree. In the modern world, it is impossible to have absolute sovereignty—that is simply not possible. People enter into trade agreements. The Chinese want to be part of the World Trade Organization. To an extent, they are binding themselves through supranational, multinational and international rules. Loss of sovereignty is, to some extent, inevitable.

09:15

The EU is actually protecting its resources. Resources might be shared, through access to fishing grounds and so on, but through negotiations, there is a way of sharing. That is important and I see no difficulty with it.

For example, there will inevitably be EU rules about the environment, and the marine environment is part of the international Convention for the Protection of the Marine Environment of the North-East Atlantic—the OSPAR treaty. You have to be prepared to engage in order to protect and enhance what you have.

Clare Adamson (Central Scotland) (SNP): I have a supplementary question about engagement in Europe. Can you enlighten us about some of the models that small European nations have used in the EU? I notice that Ireland has been opening embassies—the most recent was in Kosovo—and it has said that it is interested in having a presence in every European capital. Are there models of small nations that share resources and co-operate with one another across Europe?

Jim Currie: Ireland is a reasonably good example because it is slightly smaller than Scotland but is in a comparable situation. It has leveraged itself very well in terms of its reputation as an open and deeply committed member of the EU. It does not give the same impression that one sometimes gets from the London press that the UK is slightly semi-detached in terms of its willingness to engage. Ireland is a very good example of how an independent Scotland should operate. It shares resources in countries where it does not need full-blown ambassadorial or diplomatic representation, and it chooses its targets very carefully.

In the EU, you need to be conscious not just of what your representation abroad might be doing in Brussels but of what your representation in Paris, Madrid, Bratislava or wherever is doing to support what is happening in Brussels, where there will be Council of Ministers negotiations among the member states. However, you should recognise that it is quite important to have representation in the capitals of the EU countries.

Roderick Campbell (North East Fife) (SNP): Is there any reason why Scotland or any other small state could not play a full and constructive role as a member state?

Jim Currie: The current member states try very hard to play a full and constructive role, and I would hope that an independent Scotland would commit itself to doing exactly the same thing. There is no reason why it should not.

The nature of the game is negotiation on a wide range of topics, ranging from foreign policy, defence, the environment and nuclear safety through to my own subject, which is customs and taxation. Because of that wide range, a state knows that it is inevitable that it will not get its own way in all circumstances and that it will have to build alliances on whatever the topic is. It might be one in which the state has a desperately keen interest, such as fishing and fisheries policy, or it might be one in which the interest is much less. Nevertheless, the state has a say at the table and

it is always in its interest to engage fully and constructively.

There is no reason why smaller member states cannot act in that way. They might feel that they are being outmanoeuvred and pushed out by member states with a bigger voting capacity, but they must box clever, as they say, and use their position to manoeuvre to their best advantage. That often means working upstream with the European Commission, when it has a proposal for a new directive, regulation or initiative to put on the table.

It is essential to work through MEPs and upstream through the delegation, as UKRep does at the moment on the UK's behalf. It is also essential to influence the Commission's thinking and to ensure that the business community and the non-governmental organisation community or whatever in Scotland are engaged as part of putting across Scotland's message and its interest in the Brussels machine.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): You mentioned that the relationship in Europe is all about negotiation, which we all accept. How realistic is the Scottish Government's view that it would negotiate the same opt-outs as the UK enjoys?

Jim Currie: How one becomes an EU member, if Scotland chooses independence in the referendum, is a big and interesting issue. One must start from the position that Scotland is already territorially part of the EU and that Scottish people are already EU citizens. That makes a difference to how the discussion will be coloured.

I am not saying that it will be easy to become a member under article 48 or 49 of the Treaty on European Union, but that is a kind of legal issue. It is clear that an independent Scotland would have a right to be a member of the EU. It would be difficult for a number of member states or a single member state to try to block Scotland's entry—or, should I say, its membership—for evermore. I do not see that happening and I do not think that it would be in anybody's interests.

However, to come to your question, negotiation about the terms of an independent Scotland's membership would not simply involve a seamless move into the EU. Tough negotiations would revolve around a number of things and specifically the opt-outs that the UK has—the Schengen opt-out, the budget abatement and the opt-out from justice and security measures. I think that there will be tough negotiations around these things. Other member states will have the right to challenge the position and ensure that the conditions under which Scotland would become a full member state of the EU are fully negotiated.

By the way, I do not necessarily think that the rest of the UK would be totally protected from that negotiation. There is a sense in which, on one hand, Scotland's right to membership is clear. The conditions under which membership is gained would be up for negotiation and those negotiations would be tough and perhaps even lengthy.

Patricia Ferguson: Earlier, you mentioned your hope and belief that Scotland would want to be a good member of the European Union, that we would be very involved and that we would want to co-operate and do what we can. In that spirit, and thinking ahead to what the negotiations might look like, do you think that it is sensible to make something like entry to the euro a red-line issue on which we will not give in? Do you think that it is sensible to declare that now, when negotiation has not even begun?

Jim Currie: Well, I think that it is inevitable.

First, let me take your point about being a good member of the EU. I do not think that being a good member is necessarily about bending the knee to everybody in negotiations and thinking, "I don't care what happens in this process." It involves being committed. That means being committed around the table. It means defending your interests. It means, in the first instance, explaining your interests, so that people understand what is in Scotland's interests on a particular issue, and negotiating from there. Of course, it means negotiating in good faith and in a committed, open and honest way.

Could you repeat the second part of your question?

Patricia Ferguson: I fully accept what you have just said by way of explanation. That makes absolute sense. However, what I was asking was, is it sensible to—

Jim Currie: To make the euro a red-line issue?

Patricia Ferguson: Yes, especially at this distance from any possible negotiations.

Jim Currie: It is perfectly legitimate for the Scottish Government to say what it wants and what the conditions are under which it wants to move forward in the discussion, and to explain to Brussels and others what it thinks is possible and what it would like as an outcome. However, it is equally legitimate for others to say, "Look, when you take membership as a new member state, you effectively have to sign up to a certain number of things, and those acquired duties and responsibilities include belonging to the euro."

Most derogations and opt-outs from the norm in the EU are time limited. To that extent, it is perfectly reasonable for Scotland to say that it is disruptive to assume that we would want to go into the euro overnight and that that is not going to

happen. On the other hand, there is the question of making entry to the euro too much of a red-line issue. I think that it will come up in the negotiation as an issue and that there will be pressure from some people for it to be recognised, but I honestly think that, in the negotiation, it would be for Scotland to explain the need for stability and continuity of currency, which is quite important and needs time if nothing else.

09:30

Neil Bibby (West Scotland) (Lab): I was interested to hear you say that the terms of membership would be up for grabs. Do you think that the Scottish Government is wrong to assert that all the opt-outs will be guaranteed and will stay the same?

Jim Currie: I do not think that you can assert before any treaty negotiation on the terms of new membership what would happen automatically. I think that the negotiation will be tough. Negotiations would be going on with the rest of the UK, on the one hand, about how Scotland could extract itself from the union and establish its independence and under what conditions it would do so. Parallel to those negotiations, the UK would, it is hoped, be helping to continue a negotiation between Scotland and the EU, facilitating that negotiation as it moved forward.

Among the opt-outs, the abatement is very unpopular with an awful lot of member states, for obvious reasons. Would it be automatic that nobody would challenge it? I do not think so—I think that there would be challenge to it. I would expect there to be. However, in a sense, that would draw the rest of the UK and Scotland together in their relationship with Brussels in arguing for continuity on the abatement and for a simple arithmetical exercise to be done that shows that Scotland continues to get benefit from one part of the abatement while the rest of the UK gets benefit from the rest.

It becomes quite complicated, and there is no doubt that there will not necessarily be a smooth and clear path.

Neil Bibby: You would very much expect a challenge to Scotland's UK-negotiated rebate.

Jim Currie: The issue of all the opt-outs would be at the centre of any discussion in negotiating Scotland's membership of the EU as a full-blown member state. I think that that would happen.

Willie Coffey: I have a supplementary question on that point. Should there be a desire to think about and negotiate Scotland's share of the rebate for Scotland, would there be a similar desire to think about and negotiate the UK's share of the rebate? Is it reasonable to assume that all the attention would focus on Scotland and not on the remainder of the UK?

Jim Currie: I think that Scotland's interest and the rest of the UK's interest would come together in trying to protect the rebate in the negotiation. If one thinks, post referendum, that the UK would be the member state that would be trying to facilitate a negotiation on Scotland's behalf but with Scottish representation present, there would be a mutual interest in negotiating that part and arguing for continuity. However, it would not surprise me—indeed, I expect this—if the opportunity were taken by others to challenge the rebate.

Roderick Campbell: I have a supplementary question following on from Mr Coffey's point on the rebate. I think that one of the papers put out by the UK Government suggests that, if Scotland were a new member state, not only would the UK preserve its rebate but Scotland would be required to contribute towards the UK rebate. What do you think of that proposition?

Jim Currie: I do not have any comments to make on that, to be honest. A lot of this is hypothetical. We know that a negotiation would be necessary. I do not think that that negotiation would ultimately be blocked by another member state—including Spain, by the way, if I read correctly what the Spanish foreign minister has said in recent weeks—but I expect that there would be challenges.

Clare Adamson: My question follows on from Patricia Ferguson's question about the red-line issues. Even if the situation arose in negotiations in which membership of the euro was deemed to be necessary and Scotland's membership depended on that, can you envisage any situation in which membership of the exchange rate mechanism would be mandatory for Scotland?

Jim Currie: Again, that is the sort of issue that would have to be talked through. The ERM is the antechamber to the euro and, therefore, the issue would certainly come up. It will be very important to Scotland to be able to sort out which currency area it belongs to and to what extent belonging to one or the other gives more protection, gives more continuity and reduces unnecessary costs, including transaction costs.

Clare Adamson: However, membership of the ERM is voluntary for other member states at the moment. Is that correct?

Jim Currie: Yes, for other member states, it is voluntary. However, it is almost a natural staging post before taking on the full obligations of the single currency.

On the one hand, Scotland has strong arguments to say that its territory and people are in the EU currently under certain conditions and

that those conditions should continue. It is perfectly reasonable for Scotland to argue that, but it is also perfectly reasonable for others to say, "Wait just now. There is a change, which necessarily gives us the opportunity to challenge, and we may want to challenge."

Clare Adamson: The white paper sets out the principle of continuity of effect—continuity of the current situation—but also gives flexibility for the Scottish Government to negotiate on areas such as justice. Does the white paper not set out the Scottish Government's intent but also provide negotiation flexibility?

Jim Currie: Yes. It is perfectly legitimate for the Government to set out its intent, set out its position and be as clear as it possibly can be as to the conditions under which it would expect Scotland to become a fully fledged member state of the European Union, and one would expect it to do that. From that point of view there is no surprise. However, I would expect it to be challenged in certain respects. I do not think that others would see the necessity for everything to change overnight, in terms of the opt-outs that the UK currently has—not at all. Time would be needed.

I saw yesterday in the press in London that the latest thing being challenged by UK Government back benchers is the arrest warrant issue. Would Scotland necessarily want to challenge that? Would it necessarily want to continue to have the kind of opt-outs that it has in relation to justice and security? Some of the things that the UK has opted out of seem pretty sensible and have been negotiated pretty well unanimously in the interests of protecting EU citizens. I imagine that in that area there would be flexibility in the negotiations.

Jamie McGrigor: I have a supplementary to Neil Bibby's question. If Scotland did not get the rebate, how much worse off would she be?

Secondly, will Scotland be a net contributor to the EU if she is an independent member?

Jim Currie: I do not know. I have not done the calculations as to whether Scotland without the rebate would become a net contributor. Again, it would depend to some extent on the negotiated settlement.

As to the question of whether Scotland would lose the abatement and whether it would be subjected to the same conditions as those that the rest of the UK would have or have its rebate put on a kind of time-limited basis, again I do not see that the negotiations would necessarily demand that things change overnight. The question is about what kind of derogation Scotland would have and how much time the UK and Scotland would have to deal with the rebate situation. Is it a permanent thing? I do not think that a lot of people in the EU Council of Ministers would necessarily regard it as a permanent feature of UK membership. Again, those things are up for negotiation.

Jamie McGrigor: Do you not think that it is important that Scottish voters should know the answers to those questions before they have to vote in a referendum?

Jim Currie: I think that Scottish voters will have to vote in the referendum without knowing what the outcome of the negotiations would be. They will have to make a judgment on the basis of the Scottish Government's position and their judgment as to whether the Scottish Government's position is tenable and defensible. This committee's report will help give the Scottish people some clarification as to where their best interests might lie.

There is not going to be a clear answer. As I said, there will be a lot of sympathy around the negotiating table about the conditions under which Scotland would gain membership. I do not think that abatement will be cut off at source, but again it will be a question of how much time would be allowed to run these things in.

Jamie McGrigor: Is it the case that, as stated in the treaties, under European law a country that withdraws from the EU and reapplies as a new sovereign state has to apply under article 49?

09:45

Jim Currie: As I understand it, Scotland would not be withdrawing from the EU. The UK Government has accepted that the UK situation can change constitutionally, which is rather different from the Spanish situation. Everybody has accepted that, under the Scottish constitution—that is, the treaty of union—Scotland has the right to opt out and seek its independence within the current UK set-up. The Spaniards would challenge Catalonia's right to do the same under the Spanish constitution, but the Spanish Government recognises—at least, that is my reading of what the Spanish foreign minister has said—that, under the UK constitutional arrangements, the exercise that we are going through is perfectly legitimate and has been accepted by the UK Government. That therefore puts the decision in the hands of the Scottish people, and the thing will move forward from there.

Jamie McGrigor: I have one last point. Unlike Sweden, which is eligible to join the ERM but chooses not to, would an independent Scotland be eligible to join the ERM and so able to fulfil the Maastricht treaty obligations that are required for membership of the EU?

Jim Currie: I think that Scotland would not have much problem with fulfilling the terms of membership of the EU, in that, as a member of the

UK, it has already accepted most of the acquis, which is the body of law in the EU, with certain opt-outs from which it benefits as part of the UK. Therefore, I do not think that its potential membership of the EU can be challenged on grounds of its not belonging to the ERM or otherwise.

Roderick Campbell: For the benefit of my colleague Mr McGrigor, I refer to page 66 of "Scotland in the European Union", which was published by the Scottish Government. On the rebate point, it states:

"It is therefore estimated that an independent Scotland would be a net contributor to the EU Budget, like countries of similar size such as Finland and Denmark. Government Expenditure and Revenue Scotland (GERS) estimates that Scotland made a notional net contribution to the EU budget in 2011-12—contributing approximately £697m before the rebate and £402m after the rebate, when an illustrative geographical share of North Sea GDP is included. Under the current fiscal framework Scotland does not contribute directly to the EU, therefore its contribution can only be estimated."

I just want to put it on the record that the Scottish Government has made its position clear on that point, Mr McGrigor.

Jamie McGrigor: I did not ask the Scottish Government; I asked the witness.

Roderick Campbell: No, but you suggested that somehow or other—

Jamie McGrigor: No—in no way was I suggesting anything.

Roderick Campbell: Okay. I have put that on the record, anyway.

The Convener: Can we move on with the questions, please?

Roderick Campbell: I want to touch a bit more on the 35 chapters of the acquis. How many outstanding issues would the Commission need to consider in relation to Scotland as a new member state, given its 40-year history in the European Union? How big would that task be?

Jim Currie: The task of doing the checks on Scotland's commitments to date would not be great or too burdensome because—patently, as a member of the UK—Scotland respects the vast majority of current European law.

The questions that come up are related to what precisely the arrangements would be for Scotland in dissociating itself from the rest of the UK. What would Brussels be negotiating with? What are the terms under which Scotland would become a member state? That will involve a period of negotiation between Edinburgh and Whitehall, and there is some uncertainty about that; it is not entirely clear what the deal would end up being like.

In addition, there are questions relating to the opt-outs, as we have been discussing. There is quite a lot to think about, and there is a lot to negotiate.

We are talking only about the negotiation here, however. In addition to the negotiation, there will be a period of ratification involving 28 member states and their Governments and/or Parliaments, which will have to be part of the timetable.

Roderick Campbell: Ratification can take place simultaneously across the 28 states—it is not a question of one waiting for the other.

Jim Currie: That is right, but they will all want their say, and that will take time.

Roderick Campbell: I appreciate that you are not a lawyer, but my reading of the treaties is that the Commission's role is one of consultation, whether in relation to article 48 or to article 49.

Mr Barroso is not a private citizen at the present time; he is a representative of the Commission. Irrespective of his view, was he wise to express an opinion that might be considered to be interference in the domestic politics of a member state? Does he have the locus to do so?

Jim Currie: I will leave aside the question of his locus in doing so. He was unwise to express the opinion that he expressed with regard to the apparent virtual impossibility of an independent Scotland becoming a member of the EU—I think that that was extremely unwise and I do not think that he was correct. Furthermore, I do not think that his opinion is shared either among all the member states or even within the Commission.

I am not sure whether Mr Barroso was speaking qua the European Commission or qua the current and outgoing President of the Commission, but the statement that he made was unwise. I also think that it was inaccurate, in so far as he said that it was virtually "impossible" for Scotland to negotiate entry or re-entry.

Clare Adamson: Mr McGrigor mentioned the certainty that the Scottish people deserve going into the referendum. Given the stated aim of the UK Government to renegotiate, do you agree that there is no definite future in either scenario as regards where we are with Europe?

Jim Currie: There is no certainty as to where we would be with the UK, in the first instance, given the on-going debate on Scotland being an active member of a currency union based on sterling. That is one uncertainty. That in turn, has an impact in relation to a debate about belonging to the eurozone. There are uncertainties. One might think that that would be unfortunate, but it is to be expected. One does not get clarity before one sorts out the problems. It is basically a question of what Scotland wants for its own future.

Clare Adamson: In that case, I am looking forward to the choice between two futures.

I do not know whether Mr Currie saw Mr Barroso's interview with Andrew Marr. Much has been made of his comment about Scotland, but it was really an interview of two halves, and the first half was about the EU negotiations in the UK context. At that time, Mr Barroso said:

"I think if there is goodwill, if there is intelligence on all the sides, it is possible".

He went on to say that financial stability

"is also in the interests of Britain and indeed in the interests of the world."

He added:

"But at the same time we have to deepen the Euro area, we should keep the integrity of the single market … so that ... British citizens ... or British companies ... have ... access to the internal market, it represents ... £90 billion per year."

There was lots of positive language about "goodwill" and common sense in that negotiation. Is there any reason why those things would apply to the UK but not to Scotland's negotiations?

Jim Currie: No. I do not doubt that there will be good will in negotiations on Scotland. People have the right to defend their interests as they see them, but there are two situations. In the pre-referendum situation, we would expect the kind of debate that people are having at the moment. Post referendum, if the Scottish people pronounce themselves to be in favour of independence and therefore in favour of membership of the EU as a full and independent member state, the situation will change. The relationships between other member states and the ways in which they view the situation will change, as will—I hope and believe—the attitude of the rest of the UK in relation to how it deals with Scotland in both the negotiations for separation and the negotiations for Scotland's becoming a member of the EU.

Clare Adamson: You mentioned that you have read the evidence that the committee has taken and the discussions that we have been having. At the weekend, Mr Barroso said of the internal market, which is worth £90 billion to the British economy, that it is

"extremely important not to put that at risk."

We have discussed what would happen and what the risks would be if there was a hole in the European Union because Scotland somehow found itself outside it. I estimate from some quick calculations—this is not a figure that I can back up other than from my own research—that Scotland could be responsible for as much as £10 billion of that £90 billion. Given that, is it not, in relation to the stability of the European Union, extremely important not to put that at risk?

Jim Currie: It is important not to put that at risk in relation to stability and, furthermore, it is important that there is not a hole in the internal market. That is why it is important for things to move forward timeously and in parallel so that there is a commitment both to Scotland and to the remaining members of the EU—and also to the UK-wide business community, because we must consider the conditions under which Scotland will trade with the UK, let alone with the EU. All that is extremely important.

Clare Adamson: Convener, in the light of the evidence that we have heard this morning, I wonder whether it would be worth the committee's while to write to Mr Barroso to ask for clarification on the context in which he made his statements about Scotland's membership.

The Convener: We can maybe consider that later. I note that we invited the European Council to give evidence to the committee, but it declined. Committee members will have a chat about it, but maybe the way forward would be to write to the Commission rather than to Mr Barroso.

We have limited time left and four members still want to ask questions. If they still want in, they should let me know; it would be really helpful if they are quick. Patricia Ferguson will be first, then Neil Bibby, Jamie McGrigor and Willie Coffey.

10:00

Patricia Ferguson: You seem to be quite settled about the route of entry into the EU, but do you not think that that would have to be the first thing to be negotiated before we could go any further? After all, there is no clear-cut and no single method of entry that will meet our particular circumstances were we to become independent, and there are certainly voices that dispute whether the Scottish Government's preferred route would be preferred by Europe.

Jim Currie: First of all, you are absolutely right that there is no clear route of entry. We are not talking about a situation that is foreseen in the treaty or one which anyone would have wanted to predict; indeed, I imagine that one of the reasons why it is not in the treaty is because people do not want to think about it and because putting it in the treaty would be quite disruptive and destabilising. In short, there is a very good political reason why it is not in the treaty but, as Patricia Ferguson is absolutely right to point out, the result is that there is no clear route of entry.

One of the questions that I keep asking myself is this: does it matter that much? This is going to have to be worked out in a pragmatic way, bearing in mind that we will be dealing with a territory that is currently part of a full member state, and with people who have, as EU citizens, rights that would

be very difficult to take away—not that anyone would want to. A pragmatic approach would be taken in the talks without anyone necessarily saying, "Right. The Scottish Government has its view, and it's only natural that its view is that there is a relatively easy route and a seamless way of conducting this process." I suspect that others—the legal services of the Commission, say—might take the view that it is not quite as easy as that and that some other route will have to be followed. I do not know whether that would be the case, but it would be interesting to find out.

The bottom line for me is that a pragmatic approach would be taken to the matter, and that it would inevitably involve rather tough negotiations. There will not be any easy slide into the future. The principles exist and everyone would recognise that Scotland has the right to become a full-blown member state, but it would all be about the conditions.

Patricia Ferguson: Yes—except that there will undoubtedly be people in Europe who will argue that the route of entry is prescribed. If the people of Scotland vote for independence, they will in effect be voting for a new sovereign state that is not currently a signatory to any of the treaties. It might have a special case to argue with regard to the history of its people and their association with Europe, but the fact is that for a new sovereign state to gain access to Europe there is a prescribed route and there is no reason why Scotland should not have to follow it but instead follow a route of the Scottish Government's choosing. Moreover, the decision will undoubtedly be made by politicians who have their own interests to follow.

Jim Currie: The prescribed route that you are talking about would relate to a member state that has had no association with the EU—

Patricia Ferguson: I am sorry to interrupt you, Mr Currie, but I do not think that the treaty actually says that.

Jim Currie: I am not saying that the treaty says that; I am simply stating a fact.

Patricia Ferguson: My point is that there is no such qualification in the treaty, which makes it quite clear that a sovereign state that wants to apply to be a member of the EU—which is what Scotland would be at that point—has to enter through a particular route.

Jim Currie: That is right, but Germany's expansion to embrace East Germany was a situation in which the EU had to be pragmatic. The politics of the situation were what was important, and a way was found. That provides some kind of parallel with the situation that we are discussing.

Even if it were a negotiation ab initio, there are certain things that we already know about Scotland that we do not know about a new member state such as Kosovo—which was an unfortunate example that was used by President Barroso—which is to say that Scotland has already been applying the highest principles of democracy, human rights and so on. All that can be taken for granted. That alone leads to a position in which, even if the new sovereign member state rules were applied, we would be moving down the road in a very different way from the way in which a new member state such as Serbia would.

Patricia Ferguson: That is part of the problem. You either have a rule that applies or you do not. The German example is, of course, different, because that involved a country coming together, expanding and becoming bigger.

Jim Currie: The politics of what you are saying seems to imply that because the treaty does not foresee the situation, Scotland would be stymied, which I just do not see happening. The politics of the situation makes that extremely unlikely. One way or another, despite the fact that the current treaties do not take account of the situation that we are discussing, a way has to be found to begin and conclude a negotiation.

Patricia Ferguson: I am not suggesting for a minute that the process would be "stymied"; I am saying that I think that the political reality is that there is a process that should be followed. You are correct to say that Scottish citizens have enjoyed certain rights and responsibilities as members of the EU for 40 years, and I am sure that that will be taken into account—of course it must be—but that does not mean that you do not use that route or that process. It might be a slightly accelerated process, or might be made slightly easier because some of the required information is a given, but that is a different argument. However, there is a prescribed route for a new member state that wishes to become a member, and that will have to apply to Scotland.

Jim Currie: I feel that the conditions under which Scotland currently practises its membership would inevitably be taken into account in the equation. They have to be.

Patricia Ferguson: I accept that.

Neil Bibby: On opt-outs, the Schengen agreement was mentioned earlier. In recent months, the Scottish Government has said that it would have a significantly different immigration policy from the rest of the UK if Scotland became independent. In your experience, how is proposing a vastly different immigration policy compatible with being accepted into the common travel area with the rest of the UK?

Jim Currie: Again, it does not surprise me that the Scottish Government should set out what it would like in terms of immigration policy. We know that immigration is a very sore subject even within the principles of the EU. In due course, the Scottish Government would have pragmatically to take account of the conditions, and it would have to apply conditions that would be as undisruptive as possible. It would have to take account of the Irish situation and the rights that Ireland has as a member of the common area. In its relationship with England, it would be desirable to keep borders open.

The Scottish Government is going to have to take a pragmatic approach and those issues will be part of the discussion between the Scottish Government in Edinburgh and the rest of the UK Government in Whitehall before they even get to EU level. That is where one will have to consider what will be a practical and desirable resolution of the issue.

The negotiations could then get to the point of discussing under what conditions would the UK apply to, and eventually join, Schengen.

Neil Bibby: Do you envisage a situation in which the Scottish Government would have to roll back on some of its comments about immigration policy?

Jim Currie: For practical reasons, yes, but presumably while sticking to its principles and saying what it would like and what it will be aiming for.

Jamie McGrigor: You stressed at the start that your remarks are personal and I thank you for that. Do you agree that Senhor Barroso, who has been President of the European Commission for two terms, and Prime Minister of Portugal, is a man of considerable consequence and that, when he remarked on national television that Scottish independence could be "difficult, if not impossible", those were not personal remarks? Those remarks must have been discussed at great length and informed by many different opinions. His predecessor, Signor Prodi, said more or less the same thing.

Do you agree that there must be a reason for those people saying those things? Are not they trying to prevent people from sleepwalking into a crisis?

Jim Currie: They are expressing an opinion that might or might not be based on an opinion of the legal services of the European Commission.

In expressing that opinion in the way that Senhor Barroso did—saying that something was virtually impossible—he needed to say whether it would be virtually impossible because the treaty does not allow it to happen. We all agree that that is unlikely, because an independent Scotland would be able to apply and would be involved in a negotiation to belong to the EU.

Was he saying that it would be virtually impossible because he thinks that member states would not swallow it and would seek to block it? It is very unclear indeed to me why he used the words "virtually impossible". Those were unfortunate words to use, because I do not think that virtual impossibility comes into it. The basic question is whether terms can be negotiated that would enable an independent Scotland and its citizens to be fully fledged members of the EU. I do not think that that is virtually impossible.

I think that, as you say, Senhor Barroso was repeating what Signor Prodi had said previously. Senhor Barroso was holding out a warning that there will not necessarily be an easy negotiation and a clear path through to membership on the conditions that have been stated.

10:15

Willie Coffey: You mentioned East Germany, which joined West Germany to become Germany and became an EU member almost within three months. East Germany's background was that it was a Communist state in which European treaties and the acquis communautaire did not apply. We are being asked to believe, according to Mr Barroso, that it is virtually impossible for Scotland—an EU member for 40 years that fully complies with the acquis communautaire—to become a member. How can joining the EU be virtually impossible for Scotland, which has been a member for so long, while it was entirely possible and very quick for East Germany?

Jim Currie: As I said, the words that President Barroso used were unfortunate. It is unclear why he used them. [*Interruption*.] Pardon?

Jamie McGrigor: I just asked you why you thought he had used them.

Jim Currie: Exactly.

On the question whether becoming a member is virtually impossible, I think that the negotiation will be difficult, as I said. It will not be a matter of the doors being opened and Scotland sailing through. The negotiations will not be easy, but they will be done in good faith and with a view to creating conditions that suit not just Scotland but the rest of the EU for Scotland eventually to become a member. I do not think that Scotland will be barred from membership in any sense, if that is what President Barroso was implying.

Willie Coffey: President Barroso's officials must be scuttling around trying to undo the diplomatic damage that he has caused, particularly in relation to his comments about Kosovo. I invite you to give

your opinion on the fact that his comments are entirely opposed by the expansionist agenda in Europe. He seems to be trying to shut the door on Scotland and our colleagues from Bosnia, Montenegro and Albania, whose representatives are sitting behind you in the public gallery.

Jim Currie: I am sure that that was not President Barroso's intention.

Willie Coffey: That is how his comments are being interpreted.

The Convener: With that silence, we will finish the evidence session. I thank Jim Currie very much. We have explored many avenues and we appreciate the time that you have given the committee. The session has been invaluable.

Jim Currie: Thank you and good luck with your deliberations and reporting.

The Convener: I will suspend the meeting to allow us to set up for the videoconference. I ask members to take the time to welcome our guests from the western Balkans, who are in the public gallery.

10:18

Meeting suspended.

10:24

On resuming—

The Convener: Good morning and welcome back to the European and External Relations Committee. I welcome our second witness, Dr Fabian Zuleeg, chief executive of the European Policy Centre, who is here by videolink. Our apologies, Fabian, as I know that because our earlier session ran over a wee bit you have been sitting waiting. We will get straight into this session with your opening statement.

Dr Fabian Zuleeg (European Policy Centre): Thank you. I will make a short statement, and then I will be very happy to take questions on any of its elements.

First, I will say a couple of words about the value of EU membership for an independent Scotland. In the long run, I think that the value of being part of the European Union is very high. Membership affords a degree of integration with policy developments, enforces connectivity and, of course, has significant economic value. Being part of the single market is one of the major benefits of European Union membership.

Of course, some countries are outside the European Union but are still inside the single market, such as Norway. There is a political price to pay for that, however: a country such as Norway must accept the body of law that the European Union has produced without having a political say in the design of the laws. The political power from being inside the European Union is very important, particularly for a small member state. That does not necessarily mean that membership must be immediate—there could be a transition period—but I could not envisage an independent Scotland not being a permanent member of the European Union.

In that light, I will say something about the comments by European Commission President Barroso. It is very difficult to see Scotland not being a member eventually, if it desires to be. There might be questions about timing and the process of accession, because I think that there are a number of issues around that. However, on the final outcome, given that Scotland is already fulfilling the vast majority of the laws that would be required, it would fulfil in most instances the conditions of membership. I do not see how an independent Scotland could be blocked indefinitely from coming into the European Union.

Although I am not a lawyer but an economist, my view is that the process of accession is ultimately a political process. There is a legal element to it, but the political process is far more important. The legal process for an independent Scotland would depend to a high degree on the kind of settlement that would be found between London and Edinburgh. It is very difficult for me to see other countries in the European Union explicitly going against a settlement that was found at the member state level.

It is clear that countries that have significant separatist movements would feel uneasy about Scotland being an EU member, but I do not think that that is a ground on which to veto a membership application from a country that fulfils the conditions. There would have to be other reasons to veto it. For me, one of the crucial political questions is the extent to which an independent Scotland would want to have UK-type exceptions. Would it accept the obligations of membership as they are, or would it insist on having some of the special conditions that the UK has at the moment? I will be happy to come back to what that would mean in terms of currency, Schengen and budget.

The other point that I want to make at the outset about the potential for an independent Scotland to be an EU member state is that we should also take into account the significant probability that there will be a UK referendum on EU membership that might return a no to EU membership. When we look at the question of an independent Scotland in the EU, we have to look at the question of the role of the UK in the EU and whether the UK will likely continue to be a member

state in the longer term. For me, the two referenda are linked when it comes to EU issues.

10:30

If the UK were to leave at a later point, it would have a significant impact on the Scottish-EU relationship as well, given access to the single market and issues around currency, Schengen and the financial support that an independent Scotland would receive from the European Union.

There are a number of issues, and we must clearly interlink the two referenda, because that is a part of the discussion that is being neglected at the moment. I wanted to throw in those thoughts, and I would be happy to return to any of the points in response to members' questions.

The Convener: Thank you. I think that you will find that all those arguments will be scrutinised in detail this morning.

One of the aspirations in the Scottish Government's white paper is for Scotland to be a full and constructive, in-good-faith member of the European Union. Do you foresee any challenge or obstacle to that? What is your perception about Scotland being a full and constructive member?

Dr Zuleeg: I do not see how, in the longer term, an independent Scotland could not be a full and constructive member. There is, of course, the question of political will and there is the problem of exceptions. The European Union has gone through the biggest crisis in its existence and it has many difficulties accommodating the different points of view of 28 members. If we get too many exceptions—or, to put it even more pointedly, too much cherry picking—then it becomes difficult to accommodate those differences within the European Union. In principle, however, I do not see why an independent Scotland could not be a full and constructive member.

Roderick Campbell: I will start with a short question on Schengen. The committee heard evidence on 5 December 2013 from Professor Keating that

"Remaining outside Schengen and in the single travel area"—

the common travel area that we have at the moment between the UK and the Republic of Ireland—

"would be a lot easier to negotiate than getting into Schengen."—[*Official Report*, *European and External Relations Committee*, 5 December 2013; c 1573.]

What is your view on Schengen? Who has an interest in making life difficult for an independent Scotland on the Schengen issue?

Dr Zuleeg: My view on Schengen is that, in the end, it comes back to the point that I made about the process being political rather than legal. I do not see why anyone would try to impose a land border within the British isles; it would not be in the interests of any of the parties. A solution would be found that could then be annexed to the accession treaty.

Roderick Campbell: Presumably, an independent Republic of Ireland might also have something to say on the issue.

Dr Zuleeg: Absolutely. The crucial point is that, if there is a yes vote, there will be negotiations between London and Edinburgh, and if an agreement is found between London and Edinburgh it is difficult to imagine that other EU member states would deliberately vote against that agreement.

Jamie McGrigor: I will ask about currency and whether an independent Scotland would be compelled to join the eurozone. Could you say something about Sweden's relationship with the euro and whether you think that that semi-detached relationship might be available for Scotland?

Dr Zuleeg: It is clear that, in the current framework of the European Union, no country can be forced into the eurozone. It is difficult to see how it would be in the interests of the eurozone or the member states to drag a reluctant country into it—I find that difficult to envisage. Although there is an obligation to accept that there is a commitment eventually to join economic and monetary union, in practical terms, a country can stay outside—that is the reality. Sweden has shown that for a long time, so there is no timeframe attached. By not joining the exchange rate mechanism, which is one of the preconditions for euro membership, a country can in effect choose to stay outside the euro indefinitely.

Jamie McGrigor: I accept what you say, but the reason why Sweden can do that is that it contends that, since joining the ERM is voluntary, it cannot be compelled to join the ERM and therefore it does not need to join the euro. That position is at present tolerated by the European Central Bank, although it has been made clear that such an option will not be permitted for new EU members. If Scotland is a new EU member, how could she be in the same position as Sweden?

Dr Zuleeg: There is a big difference between having an explicit opt-out and having an implicit opt-out, which Sweden is practising. A new member is unlikely to get an explicit opt-out, such as the kind of arrangement that exists for Denmark or the UK, in which it says in law that a country has the choice of joining or not. However, the reality is that there is nothing in the legal framework of the European Union that could force a country to join the exchange rate mechanism so,

although there might be pressure on a country to eventually join the exchange rate mechanism, that condition cannot be enforced by law.

In the end, the logic of the euro says clearly that a country has to fulfil the conditions for euro membership. That is not just a one-way street. Even countries that want to join the euro might not fulfil the conditions for it. We have seen repeatedly in recent years countries having to queue up until they have fulfilled the conditions. So, in the end, there is the possibility of staying outside, as Sweden has done. There might be political pressure on a country that chooses to do that, but there is no legal mechanism that can force a country into the exchange rate mechanism and thus into the euro.

Jamie McGrigor: The reason why people do not want to join the euro is that the eurozone currency union has undergone a good deal of trouble of late, which has led to calls for ever-closer political and fiscal union. What are your thoughts on monetary unions in the absence of political union and where do you see the eurozone in five years' time?

Dr Zuleeg: Clearly, the monetary union has gone through the biggest crisis since it was set up, and it came close to the brink at times. What has changed significantly is that it is now clear that there is a strong political will behind monetary union and much more integration. A lot has already happened—we should not underestimate how much has already been put in place in recent years. In my view, in five years' time, the euro will still be there and functioning and, to an extent, there will be a strengthening of the process. Further integration steps are already in the pipeline, such as the banking union and the discussion on the fiscal capacity at European Union level to help countries that are struggling with structural adjustment. Overall, we will move to more integration. Exactly how much integration is needed to make a sustainable economic and monetary union is still a matter of debate, but very few people now question that the euro will still exist in five years' time.

Jamie McGrigor: Will you comment on the rationale or reasons for President Barroso's recent intervention on an independent Scotland's membership of the EU? Has Mr Barroso commented in such terms regarding the membership of any other applicant country?

Dr Zuleeg: I find it difficult to talk about the rationale. President Barroso did not state why he was making that intervention. I find it a bit surprising, because to suggest not only that becoming a member might be a difficult process—I agree that there could be pitfalls—but that it might be nearly impossible in the long run is something that I do not see. I think that there are issues about timing and process, but in the end it is very difficult to imagine a country that fulfils the conditions of membership and wants to be part of the EU being kept outside it indefinitely. I do not see that happening.

Jamie McGrigor: Do you know whether President Barroso has commented in such terms regarding the membership of any other applicant country?

Dr Zuleeg: I am not aware of any comments of that nature that he has made before, but I might not have a complete overview.

Roderick Campbell: I have supplementary questions on a couple of points, beginning with the point that Jamie McGrigor just made. Do you think that President Barroso was unwise to make those comments?

Dr Zuleeg: I would not want to judge whether the comments were unwise. The suggestion that there are potential parallels between the situation of Kosovo and that of Scotland perhaps did not help the debate. In my view, the comments could simply have been about the process and the timing, and I am a bit uncomfortable that they made a relatively political point.

Roderick Campbell: I will turn back to the issue of the euro. Under article 140 of the Treaty on the Functioning of the European Union, there are four economic tests for a country to join the euro. Can you clarify where we are now with the test that the applicant country's ratio of annual deficit to GDP must be less than 3 per cent and the test that the ratio of gross debt to GDP must be less than 60 per cent? How are those being applied at the current time?

Dr Zuleeg: There have always been provisions in the tests to take into account exceptional circumstances. For example, for the debt to GDP ratio, there has always been a provision that says that exceptions can be made if the ratio is moving in the right direction. If that was otherwise, some countries that are part of the monetary union would not have become part of it. For example, Belgium has a significantly higher debt to GDP ratio than 60 per cent, and Italy, of course, also has a higher debt to GDP ratio. There has therefore always been a degree of flexibility built into the tests.

However, it is also true to say that, given the problems that we have seen in the eurozone, there is also a pressure on the Commission, which assesses whether a country fulfils the tests, to be fairly strict to ensure that a country really is ready to join the euro, so that we do not get the longer-term problems from the very painful adjustment process that would have to follow after the country joined.

Roderick Campbell: So I am right in saying that it is not simply a question of whether a country has been a member of the exchange rate mechanism and that there are other factors to bear in mind.

Dr Zuleeg: Absolutely. The exchange rate mechanism is only one part of the overall test. However, if a country is not part of the exchange rate mechanism, clearly it cannot fulfil that test. So far, no country has come in having fulfilled the tests but not having been part of the exchange rate mechanism, and I cannot see that happening in the future.

10:45

Neil Bibby: Good morning, Dr Zuleeg. We have discussed the negotiation of membership quite a lot this morning. Your submission states:

"The European Parliament and the Commission ... are unlikely to be predisposed to opt-outs and special treatment".

Mr Currie said in the previous evidence session that he expected that other EU states would challenge an independent Scotland's share of the negotiated United Kingdom rebate. Do you envisage a situation in which there is a challenge to Scotland's share of the UK rebate, should it become independent? If Scotland leaves the UK, is there a chance that Scotland could lose its share of the United Kingdom rebate following negotiations?

Dr Zuleeg: A very practical consideration is whether we would really reopen budget negotiations at the European level in the event of a split between Scotland and the UK. For those who have been involved in the budget negotiations, it is very difficult to see that any country would have an interest in reopening the negotiations, because they are very painful and the agreement of all member states is required. Opening one part of the budget could easily lead to a much wider discussion about every part.

My view is that in the end a solution would be found at the London-Edinburgh level that includes an agreement about EU finances. That would be a transitional arrangement, which would be accepted in other countries. However, it is clear that it would be a transitional arrangement, which would last until the end of the current financial programming period in 2020, and there would be no right to continue to have a rebate indefinitely. I cannot see that being granted to another country.

That said, when it comes to 2020 there will be a renegotiation of the whole budget, so it will not be only that part of it that is under pressure. There will clearly also be intensive pressure on the UK about its rebate, so there will be a much wider discussion, and I presume that, if independence and EU membership goes ahead, Scotland will be one of the member states around the table at that point.

Willie Coffey: Good morning, Dr Zuleeg. I will pick up on the point that Neil Bibby raised about the possibility of a renegotiation of Scotland's share of the UK rebate. I think that you said that it would not be in our interests for that to happen, because it could open up a wider attempt to renegotiate the rebate for the UK. Can you expand on that a little? If there was to be a discussion about Scotland's share of the rebate, would our colleagues in the European Union also wish to discuss with the UK its share of the European rebate and other factors?

Dr Zuleeg: The process of negotiating the EU multi-annual budget is very difficult. If we reopen that whole negotiation, a very large number of things would be on the table; we would not be talking about only a single issue. Of course, the UK rebate is one of the issues that is always discussed when the EU budget is discussed, but a number of other issues are difficult for other countries. My point is that none of the member states has an interest in prematurely reopening that discussion. It was very difficult to come to an agreement, so I do not think that anyone would want to reopen the discussion.

The most likely outcome is that there would be an agreement between London and Edinburgh, however that is arranged. I cannot see that the EU would try to torpedo such an arrangement.

Willie Coffey: From what you are saying, it would appear to be in the interests of both Scotland and the United Kingdom to maintain the existing arrangement in terms of what we call continuity of effect.

Dr Zuleeg: The UK would certainly not want to have a negotiation about the rebate at this stage. The key difference is that I do not think that whatever agreement is found would be a permanent agreement. I think that it would last until the next big negotiation around the budget, which will be in the run-up to the next programming period—from 2020 onwards.

Willie Coffey: I will switch the line of questioning to talk briefly about the role that smaller states can play within the EU.

At a previous meeting that I had the privilege of attending, the Irish European minister described Ireland's participation in Europe as very positive because of the association that Ireland can establish with other small European states within Europe. What role would you see, therefore, for Scotland within the EU and how might it develop its relationships with other member states in the EU?

Dr Zuleeg: Generally, the effectiveness of the engagement of any country in the EU, whether large or small, depends on the degree of political willingness. The EU is a body in which there are a lot of different countries and institutions and shifting alliances and connections. The countries that engage—the countries that are willing to work with others—can have a big impact.

Of course, everything at the European level in the end has to involve some form of compromise. However, it enables smaller countries—through working with certain allies and with the institutions—to have quite a big impact on the overall framework. Ireland is a very good example of that. Ireland has positively engaged with the EU and has reaped the benefits from that increase in connectivity to other political centres in Europe.

Willie Coffey: I will touch on Mr Barroso's comments again. Do you think that his comments were in support of, or contrary to, the belief in the EU that we should be expanding and bringing in new members from wherever they may wish to come? He tried to suggest that the door is closed for a country such as Scotland and that it would be virtually impossible for us to join the EU. Do you think his comments were wise?

Dr Zuleeg: There is a debate within the EU on enlargement. The key issue is to do with how we judge whether candidate countries are ready to become members of the EU. There is a strong suggestion from some quarters that it can be detrimental both to the European Union and to a country if a country joins before it is ready to join—before it has the necessary administrative mechanisms in place, for example.

However, I do not see how that really applies to the Scottish situation, given that Scotland clearly has a functioning state and a body of law that includes the European laws. In that context, those concerns would not apply to Scotland.

Patricia Ferguson: Dr Zuleeg, in your opening comments, you mentioned that the EU was likely to be concerned if Scotland were to seek to be an exception in negotiations over particular issues. If you were giving advice to the Scottish Government about the areas where it should not seek exceptionalism, what would those areas be?

Dr Zuleeg: One key point is how a country approaches EU policy and how it engages with it, regardless of the topic. It is a question of how constructive a country is seen to be in taking part in what is happening in the EU and in supporting the general ideas that are behind the EU.

Of course there is a realisation across the EU that certain issues are very difficult for individual countries for a variety of reasons, such as economic or political interests. Those sorts of things can be excepted; indeed, going back to my comments about Schengen, I think that, say, a special situation around a particular border can be excepted.

The difficulties come when a country seeks exceptionalism in a variety of areas rather than in a single isolated case and, in essence, tries to renegotiate large parts of the membership deal. If what began as a way of dealing with a genuine and justified concern about a certain issue turns into something that looks like cherry picking, that is unlikely to be seen as a positive thing by others.

Patricia Ferguson: Perhaps I can push you a little further and ask you to tell us whether there are any areas where you would advise Scotland not to cherry pick.

Dr Zuleeg: It is very difficult to see how any country either inside or outwith the EU would be able to renegotiate some of the fundamental tenets of EU law such as the free movement provisions of the single market. The position might be less clear in other areas, but when it comes to such fundamentals I do not think that there is any point in trying to push for renegotiation.

Patricia Ferguson: In general terms, one should not try to unpick what is already there.

Dr Zuleeg: Yes, because if a country started to unpick things in a much more general way, other countries would start to raise concerns about why the ability to have a widespread renegotiation of particular issues was available to one accession country or member state and not to others.

Clare Adamson: Good morning, Dr Zuleeg. I want to ask some questions about Scotland's future as an independent nation and the alternative situation in which the UK, including Scotland, would renegotiate its terms of membership within the EU, about which we have no detail at the moment. There are two futures for Scotland. Both contain uncertainties, although we have pretty clear evidence about some likely outcomes.

Much has been made of Mr Barroso's comments, but I note that in his interview with Andrew Marr on Sunday morning—I do not know whether you were able to see it—he used the word "our" in the quote that I am about to read out. I therefore presume that he is talking for the Commission, but perhaps we can seek clarification from the Commission on that matter.

In that interview, when he was talking about the UK position and his wish for further integration in Europe, Mr Barroso said:

"I don't see a fundamental contradiction between deepening the Euro area—that is certainly desirable—and having some flexibility for the European Union provided the general framework is kept as it is. For instance, we have already now countries that are in the Euro, countries who

are not in Euro. We have the Schengen where Britain is not a member and we have, for instance, some opt-outs for justice and home affairs. So it is possible, if there is wisdom on all sides and if it's a constructive discussion, to come to some arrangement. But I repeat it's not our"—

by which he means the Commission's—

"competence. It's for the member states now to decide."

The picture that Mr Barroso paints is one of increasing flexibility within a strengthening union, and he still sees a future for Europe in which, with "wisdom", "constructive" discussions and "flexibility", certain arrangements can be made. Do you agree with that vision for the future and, if so, how would an independent Scotland fit into such a Europe?

11:00

Dr Zuleeg: It is clearly the case that the European Union has had a multispeed or differential integration approach, which means that, on certain issues, some countries have gone ahead while other countries have been more reluctant. We are continuing to see that in a number of areas. For example, with regard to the proposed financial transaction tax, it is something that only a minority of EU countries are going ahead with rather than something that the whole EU or even the whole eurozone has to apply.

There are some problems around that approach, which Barroso's comments hint at. It is true that there are some areas where things like that can be negotiated, but, even with regard to the financial transaction tax, we can see some of the limitations of that approach.

Clearly, there is an issue at the moment around how far the financial transaction tax will impact on the coherence of the single market and whether it is possible to go ahead in some areas without affecting the basic tenets of the European Union. The free movement provisions of the single market are in the basic treaties and cannot be changed. That is one of the areas in which we have to think very carefully about whether there can be differential integration in areas in which there are overlaps between the capital markets and the financial markets within the context of the single market. That can challenge differential integration.

I also think that there is a wider issue about the kind of the negotiation that it is possible to have. It is true that, with regard to new initiatives, there can be a discussion and we can have an agreement whereby certain countries will not participate in aspects of them. However, a renegotiation implies reopening a lot of the discussions that have happened in the past. That is far more difficult, because then we are suddenly in a situation in which we have 28 different interests that have to be taken into account. Clearly, that can lead to a situation in which there are 28 positions with regard to the direction in which the existing body of law should be changed. As I said, that means that the process is much more difficult.

To reiterate what I said in my previous answer, there are certain things that are just not negotiable. The basic tenets that are enshrined in the treaties of the European Union can never be renegotiated, which means that the scope for differential negotiation in those areas is zero.

Clare Adamson: Mr Barroso's approach to the UK negotiations and their difficulty was different from his very definite position on Scotland's negotiations. Do you see those two positions as being contradictory in any way?

Dr Zuleeg: You have to take into account the fact that, whatever negotiations take place, they will be difficult, because they touch on a number of difficult issues. If they concern some of the fundamental issues around free movement, for example, I see them as being pretty intractable. However, the fact that such negotiations are difficult does not mean that no solution can be found. The European Union has proven to be very good at finding solutions even in difficult areas in which a lot of national interests are colliding.

I reiterate the fact that, in the Scottish context, it is important to bear in mind that the background to any negotiation that an independent Scotland would have with the European Union is the settlement between London and Edinburgh. It would be difficult to see how Brussels or any EU state would explicitly go against an agreed settlement that embodies the will of the two key parties in the process.

Clare Adamson: How important to the whole process is the Edinburgh agreement?

Dr Zuleeg: That is part of the comment that I just made. Fundamentally, we are talking about an agreed process whereby, if there is a yes vote, there will be an amicable divorce that is agreed by both sides. The UK Government has committed to honour the outcome of the referendum, whatever that is.

The situation is very different from, for example, a unilateral declaration of independence. For me, that is one of the key reasons why the comparison with Kosovo is difficult to recognise. The situation with regard to Kosovo is very different—it did not agree with Serbia on the process of separation, whereas, with Scotland, we are talking about a settled legal process.

The Convener: We have a few more minutes for some more questions.

Willie Coffey: I would again like to touch on what Barroso said in relation to Kosovo in his

intervention. What reaction to that, if any, has there been in Europe? It seems to have upset quite a number of people, especially our friends in the Balkan countries who see themselves as candidates for joining the EU. It appears that his comments have put some distance between them and their becoming members of the EU.

Dr Zuleeg: There have been some reactions from the Balkan region. We have an accession process in which a number of official candidate countries are in the process of becoming members of the EU. We have seen that countries such as Slovenia and—more recently—Croatia can become members of the EU, although there have been a number of difficult issues to do with civil war and nationalist movements. Even in those cases, I do not think that, in the long run, the countries that I am referring to will be prevented from becoming members of the EU, if they fulfil the conditions for becoming members.

The key issue that I have with the Barroso comments is that membership of the EU depends on whether a country fulfils the conditions for membership. If a country does not fulfil those conditions, it will be difficult for it to join the EU, but I cannot see a country that wants to be part of the EU and which fulfils the conditions for membership being denied entry.

Patricia Ferguson: Would you be prepared to hazard an educated guess on how long the negotiation process on an independent Scotland's joining the EU might take?

Dr Zuleeg: I would not be prepared to guess because, as I have emphasised, the difficulty is that the key negotiation is the one between London and Edinburgh. Whatever happens at Europe level will be secondary to that negotiation. I would not want to hazard a guess on how long that will take.

Neil Bibby: You said earlier that Scotland would be very unlikely to gain any additional exceptional opt-outs or special treatment. At present, under EU law it is not possible for EU member states to charge students from other EU countries tuition fees, but in its white paper the Scottish Government proposes to charge English, Welsh and Northern Irish students tuition fees, should Scotland become independent. What do you think about that? Could the Scottish Government argue for an exception, when such as exception was not granted to Belgium when it wanted to take a similar approach with French students? Is there anything that leads you to believe that Scotland would be able to derogate from EU law in such a way?

Dr Zuleeg: As long as England was still a part of the EU, I would find it difficult to see how a country could have a mechanism to single out one part of the EU from other parts. The provision for equal treatment is fairly clear. I am not a lawyer, so I cannot give a legal assessment of the question, but the spirit of the EU is clearly about non-discrimination against EU citizens. My reading of the situation is that if you treat an EU citizen from one country in a particular way, you have to treat every EU citizen in the same way. That does not mean that a way could not be found to prevent a negative impact on, for example, the higher education system, but that mechanism would, in my view, have to be based on equal treatment of EU citizens.

Clare Adamson: If Scotland becomes independent, it will share a border with England, which has the highest tuition fees in Europe. The Scottish Government's position is that that will put pressure on higher education places in Scotland, even if only a small increase in the percentage of applications comes from England. That has been a problem in other nations in Europe. I am thinking particularly of the situation with medical students. Is it not therefore reasonable for the Scottish Government to apply for derogation in the extraordinary circumstances in which it finds itself?

Dr Zuleeg: An argument could be made for putting restrictions on the system. That exists in some health systems, for example. However, the difficulty is not to do with restriction but with the fundamental tenet of European law that all EU citizens have to be treated equally. You could not, therefore, make a distinction between an Irish student who was applying to a Scottish university and an English or French student. That is the crux of the matter. It is one of the areas that is non-negotiable because we are talking about the mobility of EU citizens across the Union. Court cases have shown repeatedly that particular groups of EU citizens cannot be discriminated against.

Clare Adamson: Thank you for your help. It will, of course, cause problems for England too if it finds that it does not have students who are willing to pay the £9,000 per year tuition fees. We will watch that one with interest.

Jamie McGrigor: On the exceptions that we talked about earlier, Scotland has a very important fishing industry. For many years since the start of the EU, it has depended to a certain extent on derogations to protect Scottish quotas. In the event of Scotland's becoming independent and becoming a new member of the EU, would Scotland have to go back to the original acquis communautaire, which requires equal access to a common resource, or would the derogations that are now in place be maintained?

Dr Zuleeg: I am not a specialist on fisheries, so my comments will not relate specifically to fisheries.

It is difficult to say that there would be a reopening of negotiations because we are not talking about a settlement between Scotland and the EU; we are talking about an EU-wide agreement. Whenever you want to reopen such an agreement, there is pressure on renegotiation from all sides.

11:15

Of course, given the on-going negotiations in a number of policy areas—including fisheries—there would be pressure on an independent Scotland, as a member state, to go along with the reforms that are happening in the fisheries sector. That would be a settled process in which Scotland, if it was a member by then, would be involved, as every other member state would be.

Jamie McGrigor: I have one last question. One argument is that an amendment to article 48 is all that would be required for Scotland to become a member. Which article takes precedence in European law: article 48 or article 49?

Dr Zuleeg: I am not a lawyer, so I cannot tell you which article takes precedence. On such questions, the key determining factor is the political arrangement that has been made and the agreement that exists between the member states. The legal considerations are, to some extent, secondary.

Willie Coffey: You have spoken about exceptionalism and cherry picking. We know that the UK Government is already thinking about more cherry picking with regard to renegotiating its treaty with the European Union, and about holding a referendum if the Conservative Party is re-elected. What is the view in Europe of the United Kingdom's being the awkward member of the European Union, in that it continues to want to cherry pick more and more?

Dr Zuleeg: There is a general concern, and people are worried about what is happening with the EU-UK relationship. There is a clear wish among a vast majority of people in the EU to keep the UK in the European Union rather than to see it leave, which means that there is a certain amount of willingness to accommodate some of the demands.

However, the difficulty comes when those demands get into areas that concern fundamental principles of the European Union. I think that there would be a willingness to renegotiate certain issues, but on fundamental issues such as the free movement of people I do not see that there can be any renegotiation, because that would mean not just altering the relationship between the EU and the UK but a discussion on changing the European Union fundamentally. I do not see that happening.

The Convener: That concludes our evidence from you today, Dr Zuleeg, for which we thank you very much. You have always been very flexible in supporting the committee along the way on many aspects, and we appreciate that. We hope that we will see you back in Scotland again soon.

Dr Zuleeg: Thank you very much.

"Brussels Bulletin"

11:18

The Convener: Item 3 is the latest "Brussels Bulletin", which members have in their papers. Are there any comments, questions or clarifications? Members will see that the bulletin is getting lighter and lighter, as Brussels is currently winding down in the run-up to elections.

Willie Coffey: My attention was drawn to the item on seasonal workers on page 5 of the bulletin, which is relevant to our discussion with Dr Zuleeg. Members will see from the comments in the item that the UK will not be bound by that measure, which would protect the rights of seasonal workers in the United Kingdom with regard to issues such as the minimum wage, pay, dismissal, working hours, holidays and health. That is yet another example of the UK cherry picking and refusing to comply with the broad wishes of the European Union. That is a worry, particularly for seasonal workers, who are among the poorest and most vulnerable people in the EU.

Patricia Ferguson: Given that the measure is part of the existing settlement, it might be one of the opt-outs that the Scottish Government may want to discuss.

Willie Coffey: Every time we get such a document, it is just an endless catalogue of the various exclusions that the UK wants to apply. I have no idea what the Labour Party's view on the matter is, but the UK has again exempted itself from a measure that I would have thought would get broad support.

Patricia Ferguson: As has Ireland.

Roderick Campbell: I note with interest that there will be a new European Commission President from 1 November 2014, but it seems that not much will be happening until the European Parliament elections are under way and then over. Those elections, and the resulting balance of various parties across the European Union, might well influence the type of President that we get. That will be relevant to the discussions that we have had this morning.

The Convener: Thinking back to our previous discussions on the committee's work programme, I think that Roderick Campbell suggested that we look at the free movement of workers at a later date.

Roderick Campbell: Yes.

Jamie McGrigor: I was interested to read the item on high-technology employment, which notes that although there has been a large rise in the level of high-technology employment in the EU, there is a different trend in the UK—towards low-technology employment. The item does not appear to give any reasons for that. Is there any way we could find out?

The Convener: We can ask Scotland Europa whether it has a more detailed analysis.

Clare Adamson: On the back of the committee's earlier discussion about tuition fees, I was interested to see the item called "Skills mismatches" in the bulletin, which states that,

"A ... study ... by the World Economic Forum, incorporating contributions from the European Centre for the Development of Vocational Training ... has addressed the issue of skills mismatches and shortages in the EU."

The issue of securing the type of skilled workforce that is required for the economy in each member state will be of continuing interest and prominence, and the study is quite interesting.

The Convener: There are no other comments, so do members agree to bring the bulletin to the attention of other committees?

Members *indicated agreement.*

The Convener: Thank you.

11:22

Meeting continued in private until 11:40.

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