



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 16 January 2014

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

1st 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:

Professor John Bachtler (University of Strathclyde)

Gavin Brown (Lothian) (Con) (Committee Substitute)

Professor Laura Cram (University of Edinburgh)

David Crawley

Dr Paolo Dardanelli (University of Kent)

Jóhanna Jónsdóttir (European Free Trade Association)

Marius Vahl (European Free Trade Association)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

Committee Room 4

Scottish Parliament

European and External Relations Committee

Thursday 16 January 2014

[The Convener opened the meeting at 09:00]

Independence: European Union Membership Inquiry

The Convener (Christina McKelvie): Good morning and welcome to the first meeting in 2014 of the European and External Relations Committee. I make the usual request that mobile phones be switched off. Some members use Kindles to refer to the “Scotland’s Future” document, and I am happy to allow that to continue.

We have received apologies from Jamie McGrigor, who we believe is making a recovery—we will be glad to see him back soon. In his place today is the very capable Gavin Brown. Welcome to the committee, Gavin. I also welcome to the table for the first time Dr Daniel Kenealy, who is an adviser to the committee on its inquiry into the aspects of the Scottish Government’s white paper that relate to Scotland’s membership of the European Union. Welcome, Dan. Rather than have opening statements, we will go straight to questions once I have done the formal welcomes, if that is okay.

The first item on the agenda is the committee’s inquiry into Scotland’s membership of the European Union under the Scottish Government’s proposals for an independent Scotland. We will take evidence from two panels. On the first panel, we have David Crawley, a former civil servant who has many other titles that we do not have time to go into; Professor Laura Cram, professor of European politics at the University of Edinburgh; Dr Paolo Dardanelli, senior lecturer in comparative politics at the University of Kent—welcome to Scotland, Mr Dardanelli; and Professor John Bachtler, director of the European policies research centre at the University of Strathclyde. Welcome to you all. We are delighted to have you here.

You will not be surprised to hear that we have many questions for you. I will open with a general one. Is membership of the European Union in the best interests of Scotland? Just jump in.

David Crawley: I will jump in simply because, in my submission, I made it clear that I thought that membership of the EU is in the best interests of Scotland. That is the case for a range of

economic, social and cultural reasons. I would not disagree with the view that what I have said is equally true for the United Kingdom as a whole. I would be extremely disturbed if the UK were to leave the EU, just as I would be extremely disturbed if an independent Scotland found itself unwilling or unable to join it, and I hope that that would not happen. I will start with that statement and pass on to others.

Professor Laura Cram (University of Edinburgh): I agree with the comments in the written evidence that, in the current context, membership of the EU is in Scotland’s best interests. Dr Dardanelli’s submission talks about the importance of the changing context, and some of the issues to do with public attitudes that I have been looking at are highly contingent on the changing context.

In addition, I emphasise that, regardless of the process that is involved, we are likely to see much more continuity than radical change. The EU is a long and slow machine with great adaptability. We should sound that note of caution in any discussions on EU membership.

Dr Paolo Dardanelli (University of Kent): As I indicated in my written submission, broadly speaking, I agree with my colleagues. I emphasise the dynamic nature of the subject that we are considering—there are many uncertainties that might change the picture significantly.

I add that there is a tension between the desire to be at the heart of Europe that is expressed in the Government’s white paper and the path that has been set for Scotland to follow what the UK has done in terms of semi-detached membership. There is a tension there that will have to be resolved one way or another.

Professor John Bachtler (University of Strathclyde): I do not really have anything to add—I agree with what the previous speakers have said. In particular, as Paolo Dardanelli said in his written submission, there are possible alternatives to membership, but they are all “sub-optimal”.

The Convener: Our second panel today is from the European Free Trade Association, so we will have some interesting information to come.

I am happy for the committee to proceed with questions.

Hanzala Malik (Glasgow) (Lab): David Crawley is keen to jump in, which is encouraging. However, there is no guarantee of membership, David, unless you can cite some evidence that there is, before we start jumping into things.

David Crawley: Forgive me—I was only wanting to start the ball rolling.

No, there is no guarantee that what we might wish can actually happen. It is important and essential in all of the debate to recognise that what would be created following a yes vote in the referendum would be, in European terms, an unprecedented situation, namely a part of a member state seceding and wishing to become a full member state of the EU. I do not think that such a conclusion would surprise anybody around the EU. In broad terms, the institutions of the EU—the European Commission, the European Parliament and, for the most part, the Council—would want Scotland to be a full member of the European Union.

It is impossible to guarantee either that that outcome would happen or, even more particularly, that it would happen within any specific timescale. For me, the timescale is in many respects of greater concern than the final outcome.

Hanzala Malik: That is interesting. As a Scot, I obviously want us to be part of the European Union, whether as a British or a Scottish member. Those are exactly the concerns that I have: first, the fact that we are not guaranteed a seat at the top table, as many of us put it; and, secondly, the timescale that would be involved, and the implications of that.

Erring on the side of caution, even if we were to have a yes vote and we applied for European Union membership, how big a part of Europe would we be, considering our 5 million population and the fact that we are on the very edge of the European Union? How does that place us economically? How strong would we be? What are the implications around the renegotiation of entry? To achieve that, might we have to give more concessions than some other members have done historically?

David Crawley: Others might wish to comment on the comparative position. I do not think that being a small member state is, in itself, always necessarily a bad thing. It depends on what the small member state wants, whether it can ally itself with other people and how it deals with the whole European concept.

In the written note that I have provided, I have given some suggestions as to how small states have characteristically done quite well for themselves—

Hanzala Malik: You are talking about history; we are in new territory.

David Crawley: Absolutely. It is now a European Union of 27—probably soon 28—member states, so it will never be easy. It will require a significant investment of resources. If you were to ask me whether, in terms of achieving European objectives within Europe, I would rather be a citizen of a large member state, I would have

to say yes, probably. As far as voting weights and major influence are concerned, we need only consider what Germany can achieve and the role that it has taken to see the difference in scale of influence. However, it would not necessarily be difficult for an independent Scotland to survive with a degree of prosperity in a larger Europe, as long as it can ally its interests with those of others and put a lot of effort into the whole process. Others will have more to add on that.

Professor Bachtler: I will go back to the first part of Hanzala Malik's question. It might be helpful to recall the process for an applicant country to become a member state, because it involves a number of stages. The first is the European Commission judging whether the applicant fulfils some basic criteria, such as having institutions to uphold the rule of law, a democratic society, a functioning market economy, and a guarantee of human rights. At that point, the country has the formal status of an applicant. It is difficult to see Scotland not being accorded that status.

The problems are likely to arise in the next part of the process, which becomes quasi-political and quasi-administrative. The Council decides to open negotiations and the European Commission undertakes a screening process across the 30 to 35 chapters of the *acquis*. Each of those has to be agreed by the Council and signed off, if you like, and then they proceed to an accession treaty. That is assuming that there is not the short cut that the independence white paper says could be an alternative.

It is almost inconceivable that Scotland would not be accorded the status of an applicant state. The question is under what terms Scotland would eventually become a member state and how long it would take. We can perhaps talk more about the timetable, but I just wanted to address the first part of your question.

Hanzala Malik: You will appreciate that, regardless of what Scotland's position is, it is taken for granted that Scotland will qualify to become a member of the European Union. That worries me slightly, because it takes only one EU state to say that it does not want Scotland to be a member and that would rule us out. That is a concern because, in the absence of the European Union considering membership before the referendum, we do not know what will happen.

Is there a possibility of reducing the timetable? Although the Scottish Government is under the impression that the timetable can cover a very short period of time, that does not look likely at present. What is your opinion of the timescale? That is important for us. For example, if there was a yes vote, how long would it be before we became members of the European Union? What

damage would be done by the length of time that that takes, and how would the timescale impact on our resources, on taxes and on other issues?

David Crawley: It is right to say that there is a significant amount of concern about the timetable. The fact is that there is no precedent and no clear formulation within the treaties that provides for the situation. If Scotland is to proceed in a way that is different from that which applies to normal accession states, something new will have to be invented and agreed. All that makes for a significant initial difficulty. If Scotland was to proceed on the basis of the current accession articles, it is clear that the timescale would be significantly longer than the 18 months between the referendum and March 2016.

In either event, there is a complex set of processes to be gone through, and it seems highly unlikely that they will start on 19 September 2014. That is partly because at that stage the negotiator on Scotland's behalf will be the UK Government, and that will remain the case until Scotland actually becomes independent. That is an issue in itself, particularly given the complication of the 2015 general election.

09:15

There are other issues. One of the first things that has to happen is that, whatever the legal basis is decided to be in the end, the Commission will have to do the detailed analysis to which John Bachtler has just referred. Whatever the basis, the Commission will have to produce a detailed and lengthy assessment that will have to go to the Council before really serious discussions can start. It is not realistic to expect that to go before the Council much before mid-2015. I do not know that, but I think that that timescale is likely.

I have had quite a lot of experience of the pace at which the Commission moves on such things. Of course, if this were a Europe-wide crisis, it might be another matter, but we must recognise that Scotland will be the interceding party, so it will be difficult to ramp up the accelerator. If I wanted to ramp up the accelerator, I would try to get the first European Council meeting of heads of state after the referendum to agree a complex and probably extensive declaration that would in a sense reach a view on what the legal basis was and set out a process and a timescale within which to deal with it. I do not know whether that could conceivably be done in the 18-month period—I still doubt that—but that would be the way to try to accelerate matters as far as one possibly could.

Given the way that the Council works, it does not seem likely to me that one would get a resolution of the basic legal issues within the

September to December timeframe that I am thinking about. I come back to the point that I referred to in my paper: it is interesting that people have looked at the range of different legal bases—I know that you will hear more about that next week—but, at the end of the day, to get the Commission and the Council to move, those legal bases must be agreed by the Council's and the Commission's legal services. Without their advice, it is hard to see how the issue will move forward.

The other timetable issue to bear in mind is that there will be involvement by the European Parliament. I cannot say exactly how, when and where that involvement will take place, but it will take time.

When I look at the series of iterations that are liable to take place, I must say that I find an 18-month timetable unrealistic.

The Convener: We should hear from the rest of the panel but, Mr Crawley, you said that the Commission and all the key players would need to invent something new, which would have to be agreed. Is the European Union not synonymous with inventing something new to meet certain circumstances, and is it not generally agreed that it can do that very quickly?

The other point about the timescale is that the whole process of the last big enlargement took 13 months. You said that the timescale of 18 months is unrealistic but, for those other countries, which had to go through all the chapters, it took 13 months.

David Crawley: I take that point. It is perfectly true that the European Union can invent things if it really has to, but in general it takes quite a long time for it to invent things. We are discussing the position of one potential member state, which is a different matter from that of the several member states that joined the EU fairly soon after the fall of the Berlin wall and all of that.

As I said in my submission, it would help Scotland a lot in this and other things if it could move forward on a large European tide. That kind of major political event can move things along more quickly. However, we have seen in the period of the eurozone crisis, which began in 2008 and which continues, that decisions to deal with the crisis have not been taken quickly. Where decisions are difficult, there is often a preference to avoid them for as long as possible.

If there is complete unanimity on what should be done, of course the process would become a little easier. We have a fair amount of evidence to suggest that complete unanimity will be a struggle. We have heard Spain's position. Whether that will change, I do not know, but we know that it is a big item to be dealt with and it will take time.

That is also true of the areas where Scotland may or may not want certain derogations from the standard framework of the European treaties. I do not take a particular view on whether Scotland should want those. Nevertheless, if Scotland wants to take on United Kingdom derogations—if it wants to take on, as it were, a share of the UK rebate or to develop special protections for Scottish fisheries—those are significant issues that will require time to negotiate and will discourage some of our European partners from wanting to hasten the whole thing along.

The Convener: I want to hear from the other panel members but I will make a quick comment first. I remember the UK opposing East Germany coming in to Europe—in the end, that was resolved very quickly.

Professor Bachtler: In an addendum to what David Crawley said, as far as I am aware, the shortest period between a country applying for membership and becoming a member state was three years, for Finland, which was able to piggyback on Austria and Sweden's negotiations. Many of the so-called new member states that joined in 2004 had to wait much longer—14 years in the case of Cyprus and Malta. That was mostly because of lack of political agreement about when and how and on what terms the membership should take place. That is just a caveat to what David said.

The Convener: An additional caveat is that that would be the situation if we were an applicant new member state, whereas the proposal is that we would not be—we would be negotiating from within. Laura, I would like to hear from you and Dr Dardanelli on all the topics that have been raised so that we can get a fair analysis.

Professor Cram: The timescale is very important. However, one of the points that I want to make is about the notion of continuity. There is a general preference for continuity within the EU machine—we have seen that historically when there are transitions, although it is worth distinguishing between the process and the end point. Although we are talking about a potentially lengthy period of time until all the loose ends are tied up and final agreement on a membership package is reached, the notion that somehow Scotland would be out in the cold and floating in that interim period—even if it were to come entirely as an applicant state—would be considered fairly unusual in the EU context.

The general approach has been to agree transition arrangements with various states in various environments, whether within or outside the EU. Even for countries without a history of EU membership, lengthy transition periods have been agreed on rather than countries being either members or not members, just like that. That

notion that there would be a process in place, whatever way they were likely to do it, is quite important.

David Crawley made the points—particularly in his paper—that generally, there is likely to be support for some kind of membership arrangement with Scotland and that, generally, there has been a perception—often probably more in comparison with the rest of the UK than a real perception—that Scotland is relatively friendly towards the EU. Of course, in certain current circumstances, there may also be member states that see that as an advantage in the negotiation process.

As regards this process, it is also worth noting that, historically, the moment of accession has been one of the most powerful moments for applicant states. Frequently, applicant states lament that post-application—once they are members—they never again have quite the same influence as they did at the negotiation point. We have a very clear understanding that there is no guarantee of getting every position that you want and that the negotiation process is complex and challenging. However, it is also a moment—if you are in the position of being an applicant state—when, uniquely, new member states have managed to gain things that they would not have been able to do in other negotiating circumstances. That is worth taking into account when we seek to understand the process.

Dr Dardanelli: I totally agree with what David Crawley said. The fundamental issue seems to be that there is no legal framework for the process so we are in entirely uncharted waters—we have to imagine things as we go along. I also agree that nothing is likely to be done quickly, so my views on that issue are very much on the same lines.

I emphasise that, of course, the accession of an independent Scotland would be politically controversial in a number of countries, including Spain, Romania and others. Scotland would find itself in a very different situation from the new member states that have joined, because the issue was whether those states were fit for membership and what adjustment they would have to go through. Those are obviously not issues for Scotland. The situation raises a very different set of issues that are of a sensitive political nature rather than on the practical side of things, so Scotland would find itself in a very different situation from the new member states.

On the timetable, we need to think about whether the process would be one of accession or, as has been said, a reframing of membership. I find the scenario of a reframing of membership not unreasonable, because it would be very problematic to, in a sense, expel Scotland upon independence. I do not find the course that the Government has charted to be an unreasonable

one, but it would be entirely based on political negotiations and on the agreement of the other member states.

On whether small countries can prosper in the EU, I would definitely say yes. I do not think that there is any reason to worry about that. There are many examples, such as Denmark, Finland and Ireland, so there is absolutely no reason why a small country cannot do well in the EU. If anything, small countries punch above their weight in the EU because they are overrepresented in the institutions and they are treated almost as equals to the large member states, which was not the case in traditional international relations. Although Germany, France and some other countries have greater weight, the small countries certainly do well.

This perhaps goes beyond what the committee is considering today, but the question is whether Scotland would be in a better position as an independent member of the EU or as part of the UK. I guess that that depends on how closely aligned the interests of Scotland are with those of the UK. If there is a close alignment, being part of the UK's greater weight would be better, but if such alignment is not there, the UK will not be in a position to defend the interests of Scotland and Scotland would definitely be better off defending its own interests. That is the question and it brings us back to the point that I made previously. The UK has charted a particular type of membership and it depends whether Scotland wants to follow in the footsteps of the UK or change course, but changing course implies taking quite difficult decisions, for example on membership of the single currency, the Schengen agreement and so on.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will pick up on the point that has been raised and take it a little further. For the benefit of the public, who are watching the debate and trying to understand what we are all saying, can you provide clarity on your opinions? On 19 September, the day after Scotland votes yes for independence, is Scotland in the European Union or are we out? Can you simply answer that across the panel? What is the position? Are we in or out on 19 September?

David Crawley: Scotland is in on 19 September. There is no question about that. Scotland is in because—

Willie Coffey: Sorry to interrupt, but can I quickly get an “in or out” response? I do not want to turn this into a quiz show, but can panel members quickly answer that question? I want to follow up on it. Are we in or out?

Professor Cram: In.

Professor Bachtler: In.

Dr Dardanelli: As has already been said, on 19 September Scotland is still in. However, once the transition phase to independence takes place, no one knows. It is not clear whether you will find yourself outside or not.

Willie Coffey: We are in.

David Crawley: Can I—

Willie Coffey: Haud on. Can I just get this question answered, please? Are we in or out on 19 September?

Professor Bachtler: My understanding is that, as long as Scotland is part of the United Kingdom, it is in.

Willie Coffey: The day after the referendum we are in. At what point in the process do those of you who feel that we would have to negotiate from outside think that we would be expelled from the European Union? What is the basis for that position?

David Crawley: The issue is that on 31 March or 1 April 2016, whenever Scotland declares its independence and that independence is recognised and legally based, Scotland as a state—I emphasise as a state—will not be a signatory to the European treaties.

In that formal, treaty sense, Scotland will not be a member of the European Union. It may well regard itself and may well be regarded as being in the European Union but, in a formal sense, it will not be a member because it will not, at that stage, be a signatory to the European treaties. Its path at that point will be that, as an independent state recognised in the United Nations or whatever, it will be perfectly entitled to seek membership of the European Union.

09:30

Willie Coffey: Okay, but is there anything in the treaties that specifically states that 5 million citizens shall leave the European Union if they vote for independence? Is there anything that says that anywhere?

Dr Dardanelli: No.

Willie Coffey: Is there, Mr Crawley?

David Crawley: Others will correct me if they feel that I am wrong but, to respond to the inference of your question, it is simply that the European Union is an organisation based on international treaty law and the treaties founding the European Union have conceded significant elements of sovereignty but, at the end of the day, they are treaties signed by state members and, at the point at which Scotland becomes independent, it will not be one of the state members that has signed them.

Willie Coffey: You have said that, but is there anything in the treaties that clearly shows that 5 million citizens who have been members of the European Union for 40 years shall automatically no longer be members? Is there anything?

David Crawley: No, there is not. That is a substantial part of the problem that is faced.

Willie Coffey: Could I hear what the views of the other witnesses are?

Professor Cram: I have to agree with that statement. In a unique situation, we have to negotiate unique circumstances. The notion of being expelled is, historically, a very unusual way to imagine the European Union working but, indeed, we would not be a signatory state. I totally agree on the formal processes.

From the discussions on the matter, we know that, for every lawyer that we can find, we have another tale of how we will negotiate membership. The formal legal position is that we will not be a state that is signatory to those treaties, but the other part of the European Union is the informal structure that rumbles on and the range of other arrangements that mean that the reality that people live under is likely to be no different from one day to the next while the process rumbles on and negotiations are made.

Dr Dardanelli: As I said before, there is no legal basis for either option—being expelled or remaining—so it needs to be entirely made up. As the Government suggested, it is entirely possible to use article 48 of the Treaty on European Union, but that would be entirely based on political negotiations. I imagine that, if the reframing of membership rather than accession were the way that was chosen, the negotiations would have to take place in the period between September 2014 and spring 2016 so that, on becoming independent, we would also be part of the European Union. However, there cannot be any guarantees on that. It is entirely dependent on the political will of the member states to agree to it.

Willie Coffey: Professor Bachtler?

Professor Bachtler: I think that it has all been said.

Willie Coffey: I am sorry that I keep going from David Crawley's end of the table to yours.

Gavin Brown (Lothian) (Con): Mr Crawley, in paragraph 14 of your written evidence, you say about the route to membership:

"Even assuming a reasonably fair wind the timetable suggested by the Scottish Government seems unrealistic."

Assuming that we do not have several member states doing everything that they can to prevent Scotland from joining or, on the other side, a collapse-of-the-Berlin-wall moment that simply

catapults Scotland into the EU, and assuming that we get in—I share your view on that—what, based on your knowledge and experience, would be a realistic timetable in the ordinary run of things?

David Crawley: I find it very difficult to come up with a realistic timetable, partly because of everything that everyone has said about this being an unprecedented and unusual situation. The processes that take place if there is a major treaty change, from initial consideration to final result, have characteristically taken several years. That was true of Maastricht, Amsterdam and some of the other treaties that have changed the character of the EU over the years.

If this were to remain a one-issue issue, which involved treaty change of some kind in some place, one could certainly conceive of the process taking place over a significantly shorter timescale. However, that is difficult. In my experience, one-issue treaty changes are quite unusual and hard to achieve, and there is the problem of potential opposition.

If I had to guess—in a sense I am unwilling to guess, because I think that it could be held against us—I would say that my strongest guess is that it will take longer than 18 months and that two to three years is much more realistic. So much depends on whether you can manage to get some real political steam behind the process, by which I mean not noise and lots of stuff in the press but getting the UK Government to put its absolute hardest energy behind all this. In that case, I can see a possibility that you could work towards a European Council statement that gave the whole thing a serious political drive. I would still be jolly surprised if it could be done in the timescale that has been set out, but it might not take more than six months or so longer—that is about the best that I can do.

Gavin Brown: I am interested in other panellists' views on that. Let us assume that the central scenario plays out. David Crawley, you said in paragraph 15 of your submission:

"I would expect that attention will need to turn sooner rather than later to interim arrangements needed to maintain Scotland's legal relationship with the EU until final decisions are taken."

Will you and the other panellists expand on that? How would that work in practice? What complexities are involved and how tricky could the process become?

David Crawley: The complexities are quite significant, given that the same situation has not arisen before. However, as Laura Cram said in relation to a number of points, the EU is generally quite good at a certain political adaptability, so it might well find ways of dealing with the situation.

A suggestion that I read yesterday is that Scotland might be allowed some kind of status that in effect meant that all the legal provisions of the EU continued to apply, although it was not a member of Council or a formal signatory. In other words, it would be a bit like being a member of the European Economic Area for a period. I think that that is the kind of thing that people would have to be working towards.

Gavin Brown: I wonder whether the other panellists want to comment on either of the two issues about which I asked.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I have a supplementary question, which arises from the lines of questioning that Willie Coffey and Gavin Brown pursued. At the notional point that we would come to some time in March or April 2016, would we have members of the European Parliament?

David Crawley: That is a fascinating question. I do not think that any of us knows the answer. At the point when Scotland ceases to become part of the United Kingdom, the rest of the UK's population share of the EU will drop, and it follows that the rest of the UK would have a smaller number of MEPs. I imagine that there would be an issue about whether Scotland's MEPs should still attend the Parliament. That would require tricky negotiation within the UK and between the UK and the rest of the EU. You have come up with an interesting example of one of the questions that the rest of the UK would face and would have to seek to agree at EU level—as a result of a change in its population, if nothing else.

Dr Dardanelli: It would require a change in the treaty anyway, in a sense.

Patricia Ferguson: But at that point we would not be a formal signatory to the treaty, so that could potentially complicate matters.

David Crawley: No. Assuming that there was no formal treaty at that stage, as far as the rest of the UK is concerned—I am constructing this as I go—the existing treaties would continue to apply, and it would still have the same number of members of the European Parliament until the treaty changed. I presume that whether Scotland's members could still legitimately attend the European Parliament on some basis or another would need to be agreed between the new Scottish Government and the UK Government but, as I said, that is a little bit of a construction on a premise.

Patricia Ferguson: Okay. Thank you very much.

Clare Adamson (Central Scotland) (SNP): Good morning, panel. There has been a bit of discussion about the diverging interests of the UK

and Scotland. The convener mentioned fisheries being expendable in the past, and the recent common agricultural policy payment suggests that there is perhaps quite of a bit of divergence.

We have not talked about the possible in/out UK referendum on membership of the EU, which is the elephant in the room. Do the panellists have any evidence on, and what is their opinion of, the attitude of the Scottish people to the European Union? Do the Scottish people have a more pro-European attitude than people in the rest of the UK?

Professor Cram: Members have very useful figures in the Scottish Parliament information centre paper from the latest poll on Scotland and the UK. It is key to talk about this in the context of the likelihood of the referendum shifting and perhaps concentrating responses.

If we contextualise the figures, it is probably safer to say that Scotland is perhaps less anti-EU than England is. However, to contextualise them with European figures, the figure for the citizens in the whole of the UK who feel that they are citizens of the European Union remains at 42 per cent, and that figure and the figure for Greece, given its current circumstances, are the lowest among EU states. That is worth contextualising. In the UK context, there is evidence that the Scots electorate is slightly more pro-EU, but in the EU context, the notion that Scotland is particularly Europhile should not be overstressed.

Considering the matter in context is interesting, as it changes. The figures on page 12 of the SPICe paper are quite interesting in that respect. In the same poll, 53 per cent of Scots said that they would vote to stay in the EU in a referendum, but 61 per cent said that an independent Scotland should be part of the EU. The context of whether people are in an independent Scotland or in the UK makes a difference to their responses. Therefore, on whether we can say that Scots are pro-EU, a lot depends on the context and on what happens when push comes to shove.

In Greece, for example, where there are the fastest-rising rates of people who say that the EU is, instrumentally, a bad thing, and the lowest rates of people who say that they feel like an EU citizen, people still continually vote to stay in the EU and accept the packages. The public opinion polls say that around 75 per cent of people want to stay in the EU or have the euro.

We have to measure things carefully and assume that a change in the UK's position in the referendum or the reality of coming to a vote might change the data. We should neither overestimate on the basis of the figures nor underestimate the attachment that might exist if not being part of the EU is seen to be a threat in real life.

David Crawley: I agree that the issue is fundamental. There will be, to say the least, a massive problem for an independent Scotland if, in 2017, the rest of the UK has a referendum and its outcome is a rest-of-the-UK decision to leave the EU. I find the implications of that problem quite difficult to understand, but it is fairly clear that many of the arrangements that would be comfortable within the British isles will be rather difficult to achieve if the rest of the UK is out of the EU and Scotland is in it. I do not mean to say that it would necessarily be wrong for Scotland to be in the EU at that stage, but a very serious analysis of the situation would be needed.

09:45

The Convener: Mr Crawley, are you suggesting that if the UK votes to leave the EU, that would potentially create a problem in Scotland? I do not understand why it would be a problem for Scotland. Would it be a problem because of the EU trade agreements? Are you suggesting that the UK would not only be out of Europe but be out of the European Economic Area as well?

David Crawley: The answer to that question is, "Who knows?" but the UK will, at least in certain respects, be a third country, and it will not be a member of the EU. That certainly raises significant questions about customs, travel, immigration, trade, transport and a lot of other things. I am not saying that those issues could not be resolved—we can look at Switzerland, for example—but they create a significant set of problems. Given that Scotland's trading relationships with the rest of the UK are very significant, the situation could be difficult from an economic point of view.

The Convener: I will do a wee bit more research on that, but this is the first time that I have heard anybody suggest that the UK would take itself out of the European Economic Area as far as trade is concerned. I find that quite astonishing.

David Crawley: I am not suggesting that that will happen; I am saying that a UK decision to leave the EU will create a very significant series of uncertainties that will have to be resolved. Paolo Dardanelli touched on that point in his evidence.

Roderick Campbell (North East Fife) (SNP): Following on from the previous thread, my understanding is that, if the Conservative Party is re-elected on a platform of negotiating, it will put the outcome of those negotiations to a referendum in 2017, which is obviously after 31 March 2016.

I really want to know—although I appreciate that it is a matter of speculation—what impact negotiations for Scotland's entry into the EU would have if, at the same time, there were parallel negotiations with the UK Government on the terms

that it wanted to put to a referendum in 2017. Would there be pros and cons in having parallel negotiations going on?

Dr Dardanelli: As we suggested earlier, the negotiations might not be parallel. If Scotland and the UK succeed in reframing membership rather than Scotland going for accession, that would already have taken place by spring 2016. It would then be for the rest of the UK to decide in 2017 whether to stay in or not. If that was not the case, and the process was one of accession, the two processes would overlap. In that case, there will simply be two different processes going on at the same time, and I cannot see too many links in that regard.

Professor Bachtler: There is one additional scenario. The UK Government is conducting a balance of competences review at present, and one of the more likely scenarios is that the UK will seek to renegotiate some parts of its treaty obligations. Although some commentators have said that it is unlikely that other member states would be willing to agree to a pick-and-mix approach to member state obligations, it is possible that the number of opt-outs, derogations or special arrangements for the UK might increase, which may in some cases have implications for Scotland's position in negotiating for membership.

David Crawley: It is likely to be something of a kaleidoscope, I am afraid. One would have to hope that, as Paolo Dardanelli says, whatever negotiations were required in the end for Scotland to become a full member, they would take place at least before a UK referendum took place. Meanwhile, negotiations would take place on the kind of changes that the UK wants.

I do not think that one should underestimate the extent to which the EU as a whole would want to shift a bit to keep the UK in as long as what the UK wants is consistent with what a reasonable number of other member states want. I also think that we should not underestimate the likelihood that, when push comes to shove, the position of the UK electorate would be rather different to what it looks like in the polls at the moment. Those are all risks that will have to be taken if we come to the situation.

Patricia Ferguson: As you know, the Scottish Government has suggested that article 48 would be its preferred route in. A lot of what I hear in Europe is that other member states and people who are involved in Europe think that article 49 still applies. What is the likely balance of opinion about which of those scenarios will be most favoured in Europe?

David Crawley: I would have to say at the moment that the favoured one is article 49. That

seems to me to be the most likely position. I know that there are other arguments, and it will be very interesting for the committee to hear David Edward on this subject next week—one can only have the highest possible respect for his views—but there would still have to be a movement in European legal opinion to back that approach.

Dr Dardanelli: This is a political issue more than a legal issue, and political positions across Europe are very different, so we cannot identify a prevailing position. Perhaps we can, but what is not in the prevailing position will still be very significant in countries such as Spain, Romania, or even Belgium, which might take a firm position as opposed to, say, Denmark, Sweden, or Ireland. It is difficult to predict how that will play out.

Patricia Ferguson: Again, the Scottish Government's position would be that it would wish to retain Schengen opt-outs on free travel and the rebate. How much of a barrier would those be to negotiations with Scotland?

David Crawley: I do not think that anyone would be in the slightest bit surprised or particularly concerned if the Scottish Government wished to retain the Schengen opt-outs because that is consistent with Ireland's current position. From what I know of the kind of positions that the Scottish Government might take, which I have gained from reading the white paper and the subsequent paper, I would have said that the most difficult areas are going to be fisheries and the rebate. The Scottish Government would also seek some kind of amendment to the position on justice and home affairs so that it could, at least for the time being, continue with the position that it has held as part of the UK, and which it has been quite a full participant in forming. Equally, the Scottish Government might well want to adjust its position on justice and home affairs issues.

The difficult areas will be fisheries and the rebate. Of course the UK Government might well seek other opt-outs in its negotiations but, as things stand, that is the view that I would take.

Professor Bachtler: It is difficult to see a scenario where other member states would agree to a replication of the rebate because the UK is constantly isolated in almost every batch of negotiations. More reasonable would be for Scotland to benefit from what are called generalised correction mechanisms, which Austria, the Netherlands and Germany benefit from but which do not have a permanent status. They have to be renegotiated every seven years. That is perhaps the most likely scenario.

Patricia Ferguson: Finally, I noticed that in your paper, Dr Crawley—I mean Mr Crawley; there are too many doctors and professors here to leave you out—you suggest that in order to be a

full participating member of the EU, Scotland would have to resource up and consider carefully what that would mean. Do panel members have any thoughts, even if they are only preliminary thoughts, about what that would look like in practice?

David Crawley: I slightly nervously recall an exchange on this the last time I appeared before this committee, so I hope that Mr Malik in particular will forgive me for restating something that we said then.

My point is that if you are going to deal in depth and in detail in the European Union, take on the full responsibilities of a member state and carry out all the work that is necessary in respect of diplomacy and regular engagement with working groups in Brussels, then, looking at what member states of all sizes have achieved, I think that it is clear that, to be an effective member of the kind that I know Scotland would want to be, Scotland will need a significant extension and development of expertise in a range of areas, particularly in areas where it does not currently have domestic devolved competence. You would even need to develop expertise in some domestic areas where the centre of expertise is, to a certain extent, piggybacked on the expertise that is available to the UK Government. I cannot put any figures on that, but that will be an important area of development.

It is challenging to attract expertise of the kind that has status and carries weight within Commission working groups and so on. I am not saying that it is not doable, but it is something that will have to be recognised, as will the need for a significant extension of the kind of representation at a civil servant and political level that we have in Brussels.

As you know, I was head of Scotland's representative office in Brussels from 2005 to 2006, during the UK presidency. It has been extremely useful and very valuable that it has been there within the diplomatic framework in Brussels, but it would not cut it as a national representation—absolutely not. You would need to have a significant increase in staff in Brussels. You also need to bear in mind the need to carry out a fair amount of diplomatic work around the European Union. Quite a big chunk of extra resource would be required, and that is apart from whoever you might require here in Scotland to back that kind of work.

The Convener: A couple of members have supplementary questions on that.

Clare Adamson: We have talked a lot about unprecedented situations and the uniqueness of where we find ourselves. However, in relation to how other EU states might view Scottish

independence, does the Edinburgh agreement not put us in a completely unique position in that we have the agreement of the UK Government that it will facilitate and abide by the democratic will of the Scottish people? In effect, in the negotiation period to independence, does the Edinburgh agreement not put an onus on the UK Government to do everything that it can to negotiate the position of Scotland in Europe?

David Crawley: I am tempted to say that that is a question that only the ministers of the UK Government can conceivably answer. The truth is that that is a very important agreement, which is governing relations up to and including the referendum. It will certainly significantly influence the attitude that is taken after the referendum in the event of a yes vote. What that actually means in terms of determining the UK's precise positions and the time that it will take to do it is quite another matter.

Beyond the referendum, inevitably the UK Government will have two faces. It will have a face that it is necessarily and democratically required to maintain in the interests of the population of the rest of the United Kingdom, as well as the face that is, as it were, trying to carry through the spirit of that agreement. How that will play out in terms of UK politics throughout 2014, 2015 and 2016 is one of the great unknowns of this whole process, especially given the fact of a UK election in mid-2015.

10:00

Professor Cram: That would be a standard political scientist's position—how life is breathed into the document of the agreement is where the devil lies.

Clare Adamson: My understanding, based on the more detailed document about Scotland's position in Europe, is that if article 48 is used, having continuity of effect in Europe on matters such as the rebate would not be designed to be the permanent position for Scotland. It would allow continuity on entry, but the position would be negotiated again in the next round of negotiations. Have I understood that wrongly?

David Crawley: That is what the Scottish Government has concluded would be the case—and it is perfectly entitled to conclude that. That will remain an issue for negotiation, and I do not think that it can be guaranteed or assumed.

Roderick Campbell: I will go back a bit to the Schengen agreement. We heard from Professor Keating on 5 December that remaining outside Schengen and in the single travel area would be a lot easier to negotiate than getting into Schengen. Does anybody on the panel disagree with that?

David Crawley: I do not disagree. In order to get into Schengen, a country has to meet certain conditions anyway. It might be that, in general, it would be assumed that an accession state would join Schengen in due course, but only once a series of conditions were met, which could take a very long time in the case of some new member states. If Scotland wants common travel arrangements within the UK, it has no option but to keep out of Schengen.

Roderick Campbell: In relation to articles 48 and 49, you said in your written submission that you are

“not convinced that the actual basis should make all that much difference.”

Could you expand on that?

David Crawley: I am sometimes given to slightly blunt statements; that is probably one of them, which is not to say that I am disagreeing with myself. Given the points that some of us here this morning have made about a broad sense of good will, ways may be found. As I said at the beginning, however, that is not entirely the point.

The point is that, whether you choose article 48 or article 49, it is a new situation for which you will have to get legal support, as well as Council support, Parliament support and so on. In the end, the substance of the process—which will involve, to start with, serious analysis by the Commission of the state of the legal framework in Scotland and a range of other issues, plus approval, debate and discussion with the Council and the Commission—will have to involve the same sort of rough path, even if it is on a different legal basis.

Roderick Campbell: In essence, we are saying that it is an unprecedented situation. In the end, it is probably more of a political matter than a legal matter, because the law does not provide certainty.

David Crawley: I will qualify that; I know that that point was also made by Paolo Dardanelli. That is true, but nobody should forget that the law and the legal basis within EU discussions and negotiations are absolutely key. Unless a satisfactory legal basis can be found for virtually any action, it is very difficult to undertake it.

In the UK, we are much more inclined to brush around the basic principles of law a bit. We must remember that, within the EU, the law that stems from the treaties as a whole is critical. I agree that the political element is also vital. It should influence how the law goes and how it is interpreted but, in the end, the law is critical.

Roderick Campbell: We might explore that further next week with the lawyers.

Professor Bachtler: David Crawley began by referring to the fact that Scotland's EU membership situation would not just create uncertainty for Scotland but would, as a precedent, have implications for other regions that are in similar situations—parts of existing member states that want to become independent member states in the European Union. Those issues would be important for the European institutions—the European Commission, the Parliament and the Council—both legally and politically.

Roderick Campbell: What particular challenges do small states in the European Union face?

David Crawley: The first challenge that comes to mind is that, for any decision that involves qualified majority voting—as the vast majority of European decisions now do—the small state has a pretty modest supply of votes to deploy and cannot move forward easily without significant alliances. It therefore needs almost to think about its compromises in advance and it needs to be very careful about that. For me, that is key. Also, a small state must have a clear set of strategies for working within the EU. That is probably the case for states of all sizes.

Professor Cram: The small states that are most effective have a clear idea of where they fit in—within which set of small states they belong and which set of strategies they want to pursue. That is very important. Paolo Dardanelli might want to say more on that.

Dr Dardanelli: I agree. Alliances and coalitions are very important. I emphasise that I do not think that small states are necessarily at a disadvantage. Within a European Union of 28 states, even the large member states cannot act by themselves. At the moment, there is a lot of emphasis on how Germany dictates, but that is in a new situation that is outside the normal framework within which the EU operates. Even a country such as Germany or France still needs to make alliances, coalitions and so on. Being pivotal—being able to change a coalition from being a losing one to being a winning one—is what a country wants to be, but to be pivotal it needs to be at the heart of things rather than to be somewhat detached.

Gavin Brown: I take on board David Crawley's point that, regardless of the route, much of the process may be similar. Based on panellists' knowledge and experience of the legal and political situation, which route seems likely to be taken in a central scenario? Would it be the ordinary revision procedure of article 48 or the accession procedure of article 49? Mr Crawley said that he feels on balance that article 49 is the more likely route. Do the other panellists have views on that?

David Crawley: I will clarify what I mean. I was answering a question about where the balance of opinion lies now on what the route should be. I think that it would be probably be done through article 49, given what Barroso and others have said and the idea that Spain is not going to cut Scotland any slack in the process. What is more likely? If you push me, I would have to say that it is probably article 49, but it depends on the initial negotiations on the legal basis of the process. David Edward's views on the matter will be interesting. That is a bit of a get-out, but there you go.

Gavin Brown: Do other panellists take the contrary view?

Professor Cram: I think that the lawyers will come up with a compromise. We may have an article 49 process that, in practice, looks more like an article 48 process. That is the reality of how much will be negotiated.

Dr Dardanelli: It seems that a bit of a game is being played. A number of nationalist parties across Europe want to use the argument that their countries can be directly independent member states of the European Union in order to shift the politics of independence within their states. The European institutions do not want trouble, as far as that is possible, so the line of warning people that if they leave the member state they will be outside the EU is played out precisely for that reason. I am not entirely sure that that is the view that would prevail if the situation were to present itself. As I mentioned, article 48 seems, on balance, to be more realistic.

As I understand it, from a purely legal position of traditional international law, Scotland would be an independent state and the rest of the UK would be the successor state and would inherit all the membership obligations, so Scotland would find itself outside the EU. However, the EU is a new legal framework with its own particular rules and political values. Perhaps I am sitting on the fence, but I think that on balance it is probably article 48 that would apply.

Professor Bachtler: From what I have heard, I agree with David Crawley that article 49 is more likely to be used, but with transition arrangements that would tide Scotland over until the requirements of article 49 had been fulfilled.

The Convener: I have always found that Europe looks at things from a pragmatic point of view. Although we are talking about the rights of Scottish citizens within the EU, we must also be mindful of the rights of EU citizens in Scotland and what their status would be. I would find it extraordinary if they were to find themselves with no rights in an independent Scotland. On that

point, the pragmatism of Europe is probably a key element of how things will go.

David Crawley: That is where, at some stage in the process, the emphasis will have to turn to constructive interim arrangements of one sort or another, which is what we have all hinted at.

Professor Bachtler: You mentioned the innovativeness of the European Union, convener; I think that that would apply. The political factors mean that there is quite a lot of scope for mischief making, and a number of member states have an interest in not making it a smooth or easy process, which could prolong certain aspects of the negotiations. However, there would have to be a bridge—some interim arrangements—for the reasons to which you have alluded.

Hanzala Malik: The panel today has opened my thinking a lot more. David Crawley in particular has hit the nail on the head with his observation that there is risk in a lot of areas that we will have to face. The notion that we, as citizens of the European Union, would be thrown out of the European Union is alien to me; a country is either a member of the European Union or it is not. In the absence of an agreement between Scotland and the European Union, we would definitely be out, and it would be our choice, rather than the European Union's choice.

That said, what is now added to my concerns is that there is a strong possibility that some European Union members would wish to take advantage of our re-entry in respect of trade—especially our Spanish friends in relation to fisheries. Historically, we have had all sorts of seesawing between our fishery rights and their fishery rights, and that is something that we need to be careful about, so it concerns me.

Despite all the risks, the dangers for our industry and the fact that negotiation might take longer than we expect, is there any hope of an early agreement of some sort to protect the status quo, or will there be mischief making and people trying to take advantage of us?

10:15

David Crawley: I suspect that there is consensus on the panel—other witnesses will disagree with me if it is not the case—that a set of interim arrangements ought to be agreed at some stage, which one hopes would protect rights. We do not know that that will happen—there are no guarantees and there are risks—but that is what we hope.

Professor Cram: In fact, it is very rare for a country to be simply either an EU member or not an EU member, because there are numerous relationships between EU member states, non-

member states, nearly-member states, wannabe-member states and the EU. In practice, there are many different ways of ensuring rights and relationships with the EU. It would be surprising if it were in the interests of anyone immediately to throw everything up and not to seek some kind of working relationship in the interim.

Hanzala Malik: That is helpful.

The Convener: Willie Coffey will ask the final question. I am sorry, but please could you make it quick?

Willie Coffey: Mr Crawley talked about the need to ramp up expertise in the event that Scotland becomes independent. That assumes that the expertise lies at the moment in the UK and is exercised on Scotland's behalf. Do you think that that expertise has been good for Scotland's membership of the EU as part of the UK? I am thinking, in particular, of the common agricultural policy reforms, following the negotiations on which it is clear that Scotland got one of the worst deals that we have ever seen. Has that expertise been properly deployed in Scotland's best interests over the recent past?

David Crawley: It would be quite difficult for me to say that the expertise had not been properly deployed because I have been involved in fisheries negotiations, UK-level negotiations and CAP negotiations. I was involved in agriculture discussions between 2000 and 2003, and my involvement in fisheries negotiations goes back to the period 1977 to 1981. I am happy to say that I am not in a position to comment on how well arrangements have gone since 2006, when I left the civil service.

In general, I think that there was an extremely good understanding and exchange of expertise between Whitehall experts and Scottish experts, although I am looking at things below the political level. Of course there have been issues over the years under the different constitutional relationships that have existed, but in general experts have worked together very well. In some areas—I do not exclude agriculture and fisheries—they have worked extremely well. That does not mean to say that the political outcomes have been exactly what both parties have wanted.

My view on agricultural negotiations generally is that, as a united kingdom, the UK has, in effect, achieved more than might otherwise have been the case. For a number of years, the UK Treasury has sought to reduce the costs of the CAP. Given that the UK is a major net contributor, that is hardly a surprise. Scotland—partly because of the length of rope that it has been allowed in Brussels since 1997, and certainly in relation to the 2002-03 CAP negotiations—has been able to deliver a rather better deal, working with the UK and in a

number of informal alliances with other member states, than might otherwise have been the case. However, it is possible to look at the issue in a number of ways; I quite understand why you would.

UK expertise across the board has been absolutely vital to Scotland's position in a range of areas. There is no question but that Scotland would have to build up a lot of expertise by buying it in or whatever, were it to become independent.

Willie Coffey: What about the specific point about Scotland's current allocation under CAP, whereby we are getting the lowest rate per hectare in the whole EU? Is that a good deal?

David Crawley: I cannot really answer that. I have looked a little at that deal and the issues are historical. You would need to have CAP experts from both sides to give you a decent answer.

Willie Coffey: For a public representative like me to hear someone saying that expertise is deployed to the best effect on our behalf does not square with the fact that we got the worst deal possible.

The Convener: I thank members of the panel very much for coming along. You will know that the inquiry will continue for the next few months. We really appreciate your giving us evidence.

10:20

Meeting suspended.

10:26

On resuming—

The Convener: We move on to our second panel for our inquiry on Scotland's place in Europe. I am delighted to welcome from the European Free Trade Association Marius Vahl, senior officer to the standing and joint committees and the European Economic Area council, and Jóhanna Jónsdóttir, officer, in the services, capital, persons and programmes division. I hope that you managed to hear some of the evidence from the previous panel. We are keen to hear your evidence. I believe that each of you has a brief statement to put your organisation in context for the committee.

Marius Vahl (European Free Trade Association): We thought that we would say a few words to introduce ourselves—to say a little about where we are from and what we do at EFTA.

Jóhanna Jónsdóttir and I are both officers—we are basically civil servants—in EFTA's secretariat in Brussels. The secretariat assists the three EEA-EFTA states—one of EFTA's members,

Switzerland, is not party to the Agreement on the European Economic Area—in the day-to-day management of the EEA agreement, whereby those three countries are part of the single market of the European Union.

Jóhanna Jónsdóttir is Icelandic and I am Norwegian. We are here to represent not Iceland or Norway but all our member states and EFTA. We are of course civil servants, so we are not as free to speak as former civil servants or academics are and there are limits to the answers that we can give. Members will have to be clever in asking their questions and will have to read between the lines afterwards.

We will say a little about our roles. As the convener mentioned, I am the secretary to the EFTA standing committee, the EEA joint committee and the EEA council. I will explain what they are.

The joint committee involves senior officials from the three EEA-EFTA states and the EU. It is the main decision-making body in the EEA. Main decisions mean decisions to incorporate new EU single-market legislation into or make it part of the agreement—that takes place in the joint committee.

The EFTA standing committee is the organ to co-ordinate the position of the three EEA-EFTA states in the joint committee. Its meetings take place just before those of the joint committee. The three EEA-EFTA states speak with one voice in the joint committee meeting. That involves the EU on one side and the three states on the other, so they must co-ordinate their position.

Finally, I am also co-secretary, with my counterpart on the EU side, to the EEA council, which has the overarching political meetings at the ministerial level. It meets a bit less frequently—twice a year, whereas the joint committee meets almost monthly.

That is what I do. I have been at EFTA for only two weeks, but I did the same job before I spent a year working for the European Commission. Before that, I worked at a think tank in Brussels, where I worked on the EU neighbourhood policy, including relations with the EFTA states.

I will let Jóhanna Jónsdóttir introduce herself.

10:30

Jóhanna Jónsdóttir (European Free Trade Association): As the convener mentioned, I am an officer in the services, capital, persons and programmes division of EFTA, which is one of our two substance divisions. The other one is the goods division, which has a slightly shorter name than ours.

The EEA agreement allows the EEA-EFTA states to participate in the internal market, which includes the four freedoms as well as various horizontal areas. I have three working groups. One is on the free movement of persons, employment and social policy; another is on health and safety at work and labour law; and the third is on gender equality and anti-discrimination. Each of the working groups is made up of civil servants from the EEA-EFTA states, and Switzerland is usually an observer. Even though it is not part of the EEA, it is of course a member of EFTA.

The groups meet about twice a year in Brussels, where we discuss various issues on the EU's agenda—mainly proposals and things that will be turned into legislation that will then be incorporated into the EEA agreement. We invite people from the Commission to attend our meetings to discuss those things with us, we often invite people from the secretariat of the relevant committee of the European Parliament, and we often invite councillors from the country that holds the EU presidency. In addition to the meetings, we have regular email exchanges and so on about EU legislation and initiatives that are coming up.

In the working groups, experts from the EEA-EFTA states closely follow new proposals that are in the pipeline and will later be adopted by the EU institutions. Another thing that our experts in the working groups often do is attend meetings of expert groups and comitology committees in the Commission, to which we have access through the EEA agreement, but of course there is no formal access to the Council or the Parliament. The informal exchanges at our working group meetings are one way that we use to find out what is happening and also to get our positions across.

Once an act is adopted by the EU, the experts in the working groups are in charge of scrutinising it and saying whether they agree that it is relevant to the EEA, whether the EEA-EFTA states need any technical or other adaptations, and whether they have so-called constitutional requirements. Once the act is incorporated into the EEA agreement, the national Parliaments will also have to take a formal decision on the entry into force of the act.

That is basically what my role at the EFTA secretariat involves. As Marius Vahl said, a decision is taken later in the joint committee about whether to incorporate an act into the EEA agreement. I am involved at the expert level, and then there is that diplomatic level.

The Convener: Thank you; that puts things in context for us.

You mentioned a few areas where you definitely have some input, and there are some areas where you have none. My first question is about the

acquis. Which parts of that and what proportion of it are covered by what you do, and which areas are not covered by it?

Marius Vahl: Jóhanna Jónsdóttir can start.

Jóhanna Jónsdóttir: If I understand correctly, the question is about how far the EEA agreement covers the entire EU acquis.

The Convener: Yes.

Jóhanna Jónsdóttir: It is quite difficult to measure the entire proportion, as Marius Vahl and I were discussing just this morning.

The EFTA secretariat undertook a counting project a couple of years ago and concluded—if I remember correctly—that there are approximately 5,000 acts in force in the EEA and 15,000 in the EU acquis, which leads one to conclude that those in force in the EEA constitute approximately one third of the entire EU acquis. However, as Marius and I discussed, that can be quite misleading because one act—the services directive, for example—is not equivalent to a technical regulation on a standard. The numbers are therefore difficult to assess.

Another way to draw conclusions about the proportion of the EU acquis that the EEA agreement covers is to look at Iceland's recent accession negotiations with the EU. Just over 30 chapters in total were being negotiated, and the EU estimated that about one third of those—I am not sure of the exact numbers—were fully covered by the EEA agreement and had been fully applied in Iceland. Another third had been partly applied, and the remaining third had not been applied at all. There are other agreements, such as Schengen, which are not covered by the EEA, but the EEA is by far the most extensive agreement.

That would lead one to draw the conclusion that approximately one half to two thirds of EU legislation is in force in the EEA. The most substantial areas that are not covered are the common agricultural policy, the common fisheries policy and the monetary union.

Marius Vahl: The question has been discussed quite a lot in Norway. The Government commissioned an independent review of Norway's relationship with the EU—which did not focus only on the EEA—and it published its 900-page report about two years ago. The review concluded that Norway had incorporated approximately three quarters of all EU legislation in its national laws, rules and standards.

Norway has about 70-odd agreements with the European Union; the EEA is just one of them. It is by far the most important, but Norway is also involved in Schengen, the Dublin regulation and foreign policy co-operation and has separate

agreements on issues such as trade and agriculture.

Jóhanna Jónsdóttir and I agree—we are really talking about apples and oranges, or peas and watermelons, perhaps. It is very difficult to compare the technical standards, which are changed on an almost weekly basis, to something like the directive on the free movement of persons, which has an impact on all citizens—more than half a billion people—or, as Jóhanna Jónsdóttir mentioned, the services directive. We would be cautious in drawing strong conclusions on that basis; it is an indicator, but more interpretation is needed.

The Convener: I open the session to questions from colleagues.

Clare Adamson: Good morning. I know that you heard some of our deliberations in the previous evidence session. One thing that came out of that session was the divergence in the priorities of the UK Government and of Scotland. One such area is migration, as it is evident from Scotland's demographics that we need to build our population. Can you explain in more detail what membership of the EEA means in terms of the free movement of workers?

Jóhanna Jónsdóttir: Yes—that is one of the areas that I deal with. I receive queries on that point quite regularly from members of the British public who ask whether the UK would still have to apply the EU *acquis* on free movement of persons if it was to leave the EU, join EFTA and become a member of the EEA.

The answer is that EFTA states apply the EU *acquis* on free movement of persons, most significantly through directive 2004/38/EC, on the right of citizens of the union and their family members to move and reside anywhere in the union, and regulation 492/2011, on the right of free movement of workers. Those two acts are both in force in the EEA, although Liechtenstein has certain sectoral adaptations due to its extremely small size and geographical position.

Roderick Campbell: Could you comment on any difficulties arising from the inability of EFTA states to engage with the European Parliament or Council directly, or is that not such a big deal in practice?

Marius Vahl: It is generally recognised that that is the biggest challenge of being in the EEA: you get the economic and social benefits of being part of the single market, but you do not have a political voice. There are lots of little mechanisms and systems in place to allow for some participation and consultation, but the bottom line is that our member states do not have any MEPs, have no vote in the Council and do not participate in its deliberations. Being in those meetings is a

continuous process, and a lot of things happen outside as well, but you act more like a lobbyist and that is how you deal with it.

People try to participate. They participate, for instance, in informal Council meetings. Norway now has appointed people to be national experts who can work in the administration of the European Parliament. Norwegian ministers and deputy ministers, and some Icelandic ministers, are in Brussels almost continuously, trying to have meetings with the commissioners or in the Parliament. It is a major drawback, and everyone recognises that quite clearly.

Jóhanna Jónsdóttir: I do not have much to add to that. There are, of course, informal channels, and at our working group meetings we invite members from the Irish presidency and so on.

We also have a mechanism called EEA-EFTA comments. As I mentioned, we have formal access to the Commission, committees and expert groups when new proposals are being drawn up. Once the proposal is out there, we do not have any formal access to the Council and the Parliament, as Marius Vahl said, so one way that the EEA-EFTA states get their views across is to submit EEA-EFTA comments to the EU.

As the name suggests, we write down the EEA-EFTA states' position and send it to the country that holds the presidency and usually to the rapporteur in the European Parliament on the relevant proposal and to a few other people who are interested and who we think might listen. Of course, it is entirely up to them whether they take our views into account.

Gavin Brown: Mr Campbell asked a good question and I would like to follow up on it. You mentioned that the main balance of attempting to wield influence is informal, and you referred to lobbying. You also touched on one or two of the more formal mechanisms. Can you expand on that and describe the main formal, structured mechanisms for wielding influence? Are there other specific structured mechanisms that you have not mentioned, or have you told us about all of them already?

Marius Vahl: First, there are the formal meetings of the EEA joint committee and the EEA council, which is the political arena and which can be used. In practice, however, it does not really function like that because our counterpart is the European External Action Service, which is not really involved in the development of the various rules and regulations of the single market. That is one formal channel.

Another channel is one of several in the EEA agreement, which provides for a lot of consultation mechanisms, mainly at the technical level, so there is participation in the Commission working

groups developing legislation. Icelandic, Liechtenstein and Norwegian representatives would also be there and can contribute their expertise, although they do not have a vote.

Very often, those working groups work on a consensual basis when they are developing legislation, but if it comes to a vote there are no red lines as far as the three EEA-EFTA states are concerned. The same goes for the committees that develop the various programmes, such as the research programmes and the annual work programme. Those are the main formal channels.

10:45

We also have informal arrangements whereby our ministers are invited to attend informal Council meetings. During each presidency, we usually have one or two of each of the various configurations, and our ministers are allowed to participate and speak in those, although, of course, our ministers do not adopt decisions.

There are then the bilateral meetings, which are probably the most important ones. I do not have a figure for the number of times that our ministers have meetings with their EU counterparts, either in one of the 28 member states or in Brussels, but it is frequent. We have several ministers in Brussels every week and they regularly travel round Europe to all the capitals, whether that is London, Paris or Berlin.

We also have an arrangement of national experts. Similarly to British and French civil servants, our civil servants are seconded to work for a short period in the EU institutions, primarily in the Commission. That is what I did last year. They work just as if they are a fonctionnaire of the institution. However, although they work for the EU institutions and not for their member country, everybody knows that they are used as a channel of information. Norway has about 50 of them. They are civil servants at desk officer level, so their impact in shaping legislation is quite limited.

Did I cover everything?

Jóhanna Jónsdóttir: I think so, in terms of the formal channels.

One informal channel I might mention is the Nordic co-operation. Iceland and Norway belong to the Nordic Council, which includes Sweden, Finland and Denmark, which are members of the EU. That is one informal way that the EEA-EFTA states use to try to put across their views or get information.

Gavin Brown: Thank you.

Patricia Ferguson: I wanted to ask whether any other countries are negotiating membership of EFTA, but I was trying to think how many

countries are left in Europe that are not already members of EFTA, full members of the EU or accession countries. Are any negotiations going on?

Marius Vahl: No. Our latest new member was Liechtenstein, in 1991. That was special because it had a customs union and a monetary union with Switzerland, so it was almost part of EFTA already. There has been no change in our membership since 1995, when three of our members left to join the European Union. There have been informal discussions with some of the very small states in Europe, such as Andorra, Monaco and San Marino, on whether EFTA could be an option, and there have also been discussions on the EU side. However, those countries had a review over the past few years and they have concluded that the EEA is not really an option, mainly because EFTA is not particularly looking for new members as such. As an organisation, EFTA is open to any state that wants to join, but we do not have any applications and we have not had any processes for some time.

Patricia Ferguson: You mentioned small states. It is sometimes suggested that being an EEA-EFTA country is best suited to smaller states. What is your view on that? Is that the case, or is it the democratic deficit issue that would persuade most countries to become involved? Sorry—that question might be too political.

Marius Vahl: We can remind ourselves that EFTA was established by the United Kingdom—that was the key country behind it. Of course, one thing is EFTA, and the other thing is being part of the EEA. EFTA does other things as well. We have three main tasks. The EEA is one of them, our internal relations are another—free trade among our member states is a very small task because we have had free trade for more than 30 years—and the third is that the EFTA countries negotiate trade agreements together with countries across the globe. By doing that, they become more interesting partners and they get a bit more weight in trade negotiations. They have agreements with about 35 countries, and they continue to negotiate a lot.

Whether big or small countries are best suited to the EEA is, as you say, a political matter. We have had bigger countries. In the first year of the EEA, we had some slightly bigger countries, as Sweden, Austria and Finland were also on the EFTA side in the EEA. I do not think that we could really say that it is for small countries or big countries. It is just by accident of history that it has ended up with the four countries that it has now.

Willie Coffey: How does public policy develop in the four EFTA states? For example, the European Union's multi-annual financial framework, which affects the budget every so

often, has clear impacts on countries such as Scotland. The committee has previously looked at the development and harmonisation of information technology infrastructure across Europe. When you see such policies making improvements or being cut, how does that impact on the EFTA countries and their attitude to things such as IT infrastructure in their countries? Do you follow what happens in the European Union or do you operate independently and disregard it? How does it affect you?

Jóhanna Jónsdóttir: The EEA-EFTA states follow such policies.

Willie Coffey: What about broadband as an example? The European Union may invest more or less money in broadband technology across countries, for cities and rural populations. Do the EFTA countries follow that development process and try to be part of it or do they retain their own approach?

Marius Vahl: You talked more generally about public policy and big European projects. Broadband is one of those projects, and we can imagine lots of others. They will often be directly relevant or have what we call EEA relevance. They are usually paid for through EU programmes or they somehow involve European rules and regulations that will then be directly applicable to us as well through the EEA agreement. We are often part of such projects more or less as member states are. That is a bit of a peculiar position for us.

From a UK perspective, an EU matter is an EU matter, so it is quite clear whether a state is involved. However, we always have to assess whether a policy is part of the EEA agreement, in which case we would be part of the project, or whether it falls outside the agreement. In that case, the question for the decision makers is whether it is something that they would like to be a part of. If the answer is yes, they might conclude separate arrangements. That is how the policy-making process is when it comes to European affairs in our countries. You will quite often see such a policy inside the EEA because it is part of the EEA agreement or we have concluded a separate agreement. For example, Norway now has—I do not remember the precise number—about 75 agreements with the European Union that cover basically every area of public policy.

In general, all our countries are keen on participating in European integration as such. However, the populations of Iceland and Norway are against membership—that is just the way that it is. As I said, in general, we want to be part of the European integration process. It then becomes—this is the case for the question that you raised—the technical issue of precisely how something will be located in our institutional and contractual

arrangements. Does it fall within the EEA or do we need to conclude something separately? As a general rule, the countries always say that they want to participate.

Jóhanna Jónsdóttir: Part of the reason why the EEA agreement works, particularly without any representation in the decision-making institutions, is that most of the legislation and policies that come out of the EU, which then need to be adopted in the EEA-EFTA states, are considered by those states to be either beneficial or benign.

Willie Coffey: It seems that the four member states of EFTA think that their interests are better served outside the European Union, but there is clearly a high level of integration and co-operation and they feel that that is the best balance for them. Gavin Brown spoke about political influence and lobbying, but that balance seems to suit the four members: Iceland, Liechtenstein, Norway and—Switzerland, is it?

Marius Vahl: Yes, but Switzerland is not in the EEA. It has a separate arrangement.

Willie Coffey: Yes. Thank you. That is interesting.

Marius Vahl: The populations are against EU membership, but if we ask those in our national Parliaments and our political parties, the position is quite different—most of them are in favour of membership. With the seven parties in the Norwegian Parliament, if we were to count the MPs, there would still be a majority in favour of membership, whereas opinion polls in Norway currently show 70 per cent against. It has always been like that, since before I was born.

Jóhanna Jónsdóttir: It is not quite the same situation in Iceland.

Willie Coffey: What is the position there?

Jóhanna Jónsdóttir: In Iceland, there is a clear majority in the Parliament against EU membership.

Willie Coffey: And among the public as well?

Jóhanna Jónsdóttir: It depends what question is asked. We heard about that this morning in relation to the opinion polls. The previous Government, which came to power at the height of the economic crisis, was in favour of EU membership and it decided to launch an application, but that has been frozen by the new Government that came to power in the spring of 2013. Now, there is a clear majority opposing EU membership. If we ask the population whether they would like to continue the accession negotiations, we get a majority in favour. If we ask whether they would like to join the EU, usually we do not get a majority in favour. It varies.

The Convener: Does EFTA make any financial contribution to the EU?

Marius Vahl: Yes, through the EEA agreement, but not as part of the EEA. The three EEA-EFTA states make a contribution through the EEA financial mechanism, which is for five years at a time. It has been growing quite significantly. There is a peculiarity in the current five-year period, which ends in a few months, because Norway contributes via two mechanisms—one is the EEA financial mechanism and the other is the Norway mechanism. In effect, Norway pays more per capita than Liechtenstein and Iceland do. Switzerland also makes its own contributions under a separate agreement with the European Union.

I have been trying to remember the figures. If we look at the net annual contribution in per capita terms, which is the most interesting figure, we see that, in the Swiss case, it is roughly €25 per inhabitant per year. In the case of Iceland and Liechtenstein, it is about €40, and in the case of Norway it is about €70. The figures for the biggest net contributors among the EU member states are slightly higher than that, being about €100. I am not sure whether I have the latest figure for the UK, but I think that it is comparable to Norway's contribution, or it might be slightly less than that. However, those are voluntary contributions that are not mandated by the agreement as such.

11:00

Clare Adamson: You mentioned the European External Action Service. I want to understand how its priorities affect you, as members of EFTA. I am thinking specifically of an area on which the committee has taken evidence, which is human trafficking across Europe. What influence, if any, does that have on you as members of EFTA?

Jóhanna Jónsdóttir: That is not part of the EEA agreement, so it is not something that we officially deal with at EFTA. As far as the issue relates to the Schengen area, however, the EFTA states have a Schengen association agreement with the EU, and they would therefore participate in actions as far as they relate to the border-free Schengen zone.

Marius Vahl: The Schengen and Dublin agreements and so on are bilateral agreements with each of the EFTA states, so it is not really anything to do with EFTA. Iceland has a bilateral agreement with the European Union, as do Norway and Liechtenstein. They are all included in the Schengen and Dublin agreements by now, so matters would be handled in that context.

Roderick Campbell: I appreciate that Jóhanna Jónsdóttir might find this question difficult to answer, but can you share with us any general

lessons from Iceland's discussions about joining the European Union? Can anything be learned from the discussions that have taken place about the process?

Jóhanna Jónsdóttir: As Marius Vahl said, we are not here as representatives of Iceland or Norway.

Roderick Campbell: I appreciate that.

Jóhanna Jónsdóttir: However, I guess that I can tell you a little bit about what happened in Iceland. As you will know, the entire banking sector collapsed in the autumn of 2008. In the wake of that, the Government that was in power collapsed and a new Government took over. It was quite an extreme period in Iceland's history. In addition to the collapse of the banking sector, the currency was substantially devalued. I think that the Icelandic króna is the smallest independent currency in the world, so it can easily be devalued. In that crisis, it was therefore substantially devalued.

At that time, there was a substantial movement in favour of joining the EU and particularly the eurozone. The Government that came to power launched an application process and began accession talks. I think that it closed quite a number of the chapters before a new Government was elected that opposed EU membership. At the same time as the financial crisis impacted on a lot of EU member states, the Icelandic economy sort of stabilised. As the economy recovered in Iceland, the public debate there moved a little away from discussing EU membership because of the economic situation within the EU and some of its member states.

There are many traditional reasons why Iceland would be Eurosceptic. There are practical reasons, such as the common fisheries policy, and there are more historical reasons, such as the fact that Iceland's geographical location means that it is quite isolated from the rest of Europe and it has traditionally had quite close ties with the United States. There are therefore various reasons why particular sectors of the Icelandic population are quite Eurosceptic. As I understand it, Iceland is still formally considered to be a candidate country, but the current Government is not in favour of EU membership and it has frozen the negotiation process.

Roderick Campbell: Thank you.

The Convener: Marius, I was very impressed by your command of the figures for your contributions to the EU—

Marius Vahl: I just checked them. [*Laughter.*]

The Convener: What are the benefits, financial or otherwise, of being an EFTA-associated country?

Marius Vahl: That is a very good but difficult question. This discussion is being had not only in the UK but everywhere else. If you ask economists, economic operators, employees and employers organisations about the benefits of being part of a single market, they will agree that it is beneficial but that it is extremely difficult to put a number on it. How does one make such an assessment? An independent review in Norway tried to examine what 20 years of participation in the single market had contributed to the country's economy. That economy has done extremely well over that time, but on the big question of how much of that can be attributed to the single market, the review could not give a numerical answer because, analytically, it is extremely difficult to make such an assessment. However, the review made it clear that being part of the single market had been a big benefit.

The closest thing to a serious analysis of the issue was carried out by the European Commission on the 10th anniversary of the single market, and that piece of work is getting a bit old. The Commission tried to assess the extent to which the single market had contributed to gross domestic product growth in Europe, and I think that it came to the figure of 2 per cent. However, as I said, that work was carried out quite some time ago.

It is just too difficult to make that kind of assessment for all sectors of the economy and to assess the alternative—in other words, what would have happened if a country had not been part of the single market. How do you assess the impact of thousands of pieces of legislation on half a billion consumers or a hundred million companies? That is a very difficult task, and I have not seen a good analysis of the subject. However, the official independent review that I mentioned concluded that the single market was very beneficial and important to the Norwegian economy, which, like Iceland and Liechtenstein, is very export oriented. They are all very small, open economies in a world and a continent that are becoming increasingly integrated.

There is not much debate about whether being integrated with Europe is beneficial. It is beneficial, but the question then is precisely how beneficial it is and how it is balanced against other public policy goals. However, even opponents of EU and EEA membership recognise that you need something.

The Convener: I am sorry for making that last question so difficult.

The committee has to move on with its other deliberations, so I thank our witnesses for coming along and giving us an insight into the work of the EEA and EFTA. We will take your evidence into

account in our inquiry, which will continue for a number of weeks.

Marius Vahl: Thank you very much for your invitation. We will let you know how to reach us if you have any more questions.

The Convener: Thank you very much.

Transposition of European Union Directives

11:09

The Convener: We move quickly on to item 2, which is a report from the Scottish Government on the transposition of EU directives. The paper that has been circulated to members contains a quite detailed table. The committee keeps a wee eye on the directives that are being transposed and how they are going.

As colleagues have no comments or questions, is the committee happy to note the report for future reference?

Members *indicated agreement.*

The Convener: We will look forward to the next update.

As agreed, we move into private for agenda item 3.

11:09

Meeting continued in private until 11:23.

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