Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Y Pwyllgor Materion Ewropeaidd ac Allanol
The Committee on European and External Affairs

Dydd Mawrth, 6 Gorffennaf 2010
Tuesday, 6 July 2010

Cynnwys
Contents

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee. In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mohammed Asghar	Ceidwadwyr Cymreig (yn dirprwyo ar ran Nick Bourne)
	Welsh Conservatives (substitute for Nick Bourne)
Rhodri Morgan	Llafur (Cadeirydd y Pwyllgor)
	Labour (Committee Chair)
Rhodri Glyn Thomas	Plaid Cymru
	The Party of Wales

Eraill yn bresennol
Others in attendance

| Ken Ducatel | Pennaeth yr Uned—Strategaeth Lisbon ac i2010, Cyfarwyddiaeth Gyffredinol i'r Gymdeithas Wybodaeth a Chyfryngau, Comisiwn Ewrop |
| | Head of Unit—Lisbon Strategy and i2010, Directorate General for the Information Society and Media, European Commission |

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Keith Bush	Cyfarwyddwr, Gwasanaethau Cyfreithiol
	Director of Legal Services
Lara Date	Clerc
	Clerk
Gregg Jones	Pennaeth Swyddfa UE Cymru, Gwasanaeth Ymchwil yr Aelodau
	Head of Wales EU Office, Members' Research Service
Sarita Marshall	Dirprwy Glerc
	Deputy Clerk

Dechreuodd y cyfarfod am 9.37 a.m.
The meeting began at 9.37 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1]   **Rhodri Morgan:** Estynnaf groeso cynnes i Aelodau, swyddogion ac unrhyw un yn oriel y cyhoedd.

Rhodri Morgan: I extend a warm welcome to Members, officials and anyone in the public gallery.

[2]   Headsets are available for translation and sound amplification; translation is on channel 1 and amplification is on channel 0. Please switch off mobile phones and other electronic devices, as they can interfere with the sound equipment. In the event of an emergency, an alarm will sound and ushers will direct everyone to the nearest safe exit and assembly point.

[3]   We have received apologies from Jeff Cuthbert; we have no substitute for Jeff. Mohammad Asghar is here as a substitute for Nick Bourne. We are pleased to see you, Mohammad. We are in a strange state of limbo vis-à-vis the Liberal Democrat membership. Mike German has resigned as an Assembly Member in order to go to the House of Lords. A

motion will be tabled for Eleanor Burnham to join this committee in Mike's place, but that has not yet happened.

[4]   I now invite Members to make any relevant declaration of interest under Standing Order No. 31.6. I see that there are none. We will therefore move on to item 3 on the agenda—we will return to item 2 when Mr Ducatel comes to the video-conference set-up in Brussels.

9.38 a.m.

Cytuniad Lisbon a Phrotocol Sybsidiaredd: Ystyried y Datblygiadau
The Lisbon Treaty and Subsidiarity Protocol: Consideration of Developments

[5]   **Rhodri Morgan:** Mr Keith Bush will advise us on this issue. We also have available to us the Scottish Parliament's report on this subject. This is a consequence of the Treaty of Lisbon, and confers on the Assembly a right to be heard, and to give a view, during the eight-week window after proposals for legislation have been made in Brussels. Under the Lisbon treaty, those proposals are notified to 'national' parliaments, such as the UK Parliament—and I mean the UK Parliament, not the UK Government. Both Houses of Parliament, therefore, have an eight-week window in which to challenge that legislation as infringing the subsidiarity principle. However, if it refers to a devolved area of responsibility, we also have a right to be heard, as do the Scottish Parliament and the Northern Ireland Assembly. However, although it is not crystal clear, the devolved legislatures—and, again, I mean 'legislature', namely the Assembly, not the Assembly Government—have the right to challenge on the grounds of a second issue regarding subsidiary, if it is an area on which we have a lead responsibility. We do not have a formal protocol with either House of the UK Parliament. Both Houses are being helpful to varying degrees and wish to involve us in some way or another. We know that the eight-week window is challenging, especially during recesses—although it is very rare for Brussels to propose anything in August, it is not unusual for it to do so in late July or in September. Therefore, the eight weeks can cover a period when we are not sitting.

9.40 a.m.

[6]   We are also attempting to get some notification from the Assembly Government; the UK Government will have been notified of proposals via a separate channel, and it, in turn, will have notified the Assembly Government if it is on a matter in which there is a strong devolved interest or a devolved lead. We are trying to reach a satisfactory modus operandi for the probably quite rare occasions when there will be a devolved lead or a strong devolved interest. That is much more likely in the case of the Scottish Parliament, given that criminal justice and other aspects of law have been devolved to it that have not been devolved to Wales. It is also probably more likely in Northern Ireland, for the same reason. Nevertheless, it will happen at some stage, and we have to have a procedure ready for it when it does.

[7]   Keith, wyt ti am ddweud unrhyw beth ar hyn? | Keith, did you want to say something about this?

[8]   **Mr Bush:** Na, dim byd penodol. | **Mr Bush:** No, not specifically on this.

[9]   **Rhodri Morgan:** Okay. Let us consider some issues. There is no formal protocol, and I do not think that either House of Parliament—Lara can correct me on this—has, at present, a European committee and a chair of such a committee with whom I could discuss this matter. Is that right?

[10]   **Ms Date:** My understanding is that the chairs have not yet been appointed, although

we are following the situation closely and have asked the clerks and relevant officials to let us know of progress. I know that there has been an agreement in the House of Lords that the committee will operate in the same way, effectively, as it did previously. At the moment, we are between chairs, as it were.

[11]   **Rhodri Morgan:** Further to that, the House of Commons has a new procedure whereby the legislature has far greater control over who it puts on committees. However, as in previous days, when there has been an election in early May, you do not expect to have completed the selection of committee members until the summer recess. So, nothing will have happened or be up and running until everyone returns after the summer recess. Is the committee happy for me to make contact with the committee chairs in both Houses of Parliament, as soon as they are known to us? That would be in order to see how they interpret the voluntary, and not statutory, way of bringing us in on a devolved issue during that rather compressed eight-week window for putting up an amber or red light to say to the European institutions that something would, or could, infringe on the principle of subsidiarity, either directly or through the double subsidiarity principle, if the matter is primarily devolved. We need to have the ability to make our voices heard during the eight-week window to express our voice to the European committees in the House of Lords and the House of Commons— whoever will be running those committees, succeeding Mick Connarty and Lord Roper. Is everyone happy with that? I see that you are.

[12]   The second issue is on the Scottish committee's report, which I have not been able to read in detail, due to a malfunctioning home computer last night. So, I would be grateful, Lara, if you could quickly take us through that. Could you direct us to the relevant parts of the Scottish proposal, just in case there is anything that is markedly different from what I have just said about achieving a modus operandi?

[13]   **Ms Date:** The full report is quite lengthy, and I have circulated a summary of it. I have tried to pick out the main points in the paper, from paragraph 14 onwards. The committee has conducted an extensive inquiry into various aspects of the Lisbon treaty, and the subsidiarity protocol is just part of that. One of its key conclusions is that it would like to see improved mechanisms to ensure that the devolved position is taken into account in developing the UK negotiating line on EU proposals, and that there is as much transparency as possible in that process. The Scottish Parliament is seeking to receive information on the outcome of Joint Ministerial Committee (Europe) meetings and council deliberations, to assist it in its scrutiny in Scotland.

[14]   It has also flagged up some concerns about discrepancies between how different Whitehall departments are managing the interests of the devolved administrations, and it is taking that matter up with the Scottish Government. On how it works within the Parliament, it recognises that the protocol offers it an opportunity, potentially, to challenge on any areas where there is a crossover with devolved interests. On consultation with devolved Parliaments, it is persuaded that article 6 does not impose a legal duty on the national Parliament to consult.

[15]   **Rhodri Morgan:** So it is not challenging that?

[16]   **Ms Date:** It is not challenging it, but it is saying that it believes that the Scottish Parliament should be consulted where appropriate, that that consultation should, increasingly, become the convention and that it would be difficult to justify a situation where the Parliament was not consulted on a matter.

[17]   **Rhodri Morgan:** That is interesting. I do not know whether Keith has a view on that. We must accept that that is the Scottish view. I do not believe that we have ever thought that we were able to command the Houses of Parliament to consult this committee and its opposite

numbers in Scotland and Northern Ireland. This is simply a badly worded bit of treaty, and there is no point in going back to try to rewrite it; we must accept that it is badly worded. At first sight, the treaty seems to mandate the national member state Parliaments to consult the devolved legislatures, but, when you read it again, it is probably reasonable to say that it does not mandate them. There is a moral mandate that they should consult, but it is not mandatory in the way that it seems when you first read it. Is that roughly right, Keith?

[18]   **Mr Bush:** There are different views on the matter. The Scottish Parliament has taken a pragmatic view, and has decided that what really counts is that a working relationship should be established.

[19]   **Rhodri Glyn Thomas:** Y peth pwysig yw bod cydweithredu rhyngom ni, Senedd yr Alban a Chynulliad Gogledd Iwerddon, fel ein bod yn unedig o ran sut yr ydym yn ymwneud â hyn. Gan ei fod yn gytundeb gwirfoddol, pe bai unrhyw anghysonderau rhwng sut yr ydym yn ymateb i Dŷ'r Cyffredin a Thŷ'r Arglwyddi, a sut y mae'r Alban a Gogledd Iwerddon yn ymateb, byddai'n gwanhau ein sefyllfa ni. Mae'r awgrym ym mhapur Senedd yr Alban, felly, ynglŷn â chyfarfodydd cyd-gysylltiol rhwng Senedd yr Alban, Cynulliad Cenedlaethol Cymru a Chynulliad Gogledd Iwerddon yn un pwysig.

Rhodri Glyn Thomas: The important thing is that there is collaboration between us, the Scottish Parliament and the Northern Ireland Assembly, so that we are united in the way that we deal with this. As it is a voluntary agreement, any inconsistencies in the way that we respond to the House of Commons and the House of Lords, and the way that Scotland and Northern Ireland respond, would weaken our position. Therefore, the suggestion in the Scottish Parliament's paper of having co-ordination meetings between the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly is an important one.

[20]   **Rhodri Morgan:** Pwynt arall pwysig yw bod yr egwyddor honno o gydweithredu hefyd yn bodoli o ran ein perthynas ni â'r Llywodraeth yng Nghymru. Gallai'r Llywodraeth yng Nghymru gael rhybudd gan Lywodraeth San Steffan ynglŷn a chynnig gan un o sefydliadau Ewrop, oherwydd ei bod yn credu ei fod, efallai, yn torri ar draws egwyddor sybsidiaredd. Gallai Llywodraeth San Steffan ofyn i'r Llywodraeth yng Nghymru am ei barn. Mae'n bwysig ein bod yn cael rhyw fath o system rhybudd cynnar gan Lywodraeth Cymru os yw wedi cael rhybudd cynnar gan Lywodraeth San Steffan. Gallai Llywodraeth San Steffan ofyn am farn Llywodraeth Cymru, a holi a ddylid cynnau'r golau oren, oherwydd bod rhywbeth yn torri ar draws sybsidiaredd.

Rhodri Morgan: One further important point is that that principle of co-operation should also exist in our relationship with the Welsh Government. The Welsh Government could be forewarned by the Westminster Government regarding a proposal from an European institutions that it believed to be contrary to the principle of subsidiarity. The Westminster Government could ask the Welsh Government for its opinion. It is important that we have some sort of early warning system from the Welsh Government if it has been given an early warning by the Westminster Government. The Westminster Government could seek the opinion of the Welsh Government, and ask whether the amber light should be turned on, if something is contrary to the principle of subsidiarity.

9.50 a.m.

[21]   **Mr Bush:** Yr ydym wedi bod yn trafod rhai agweddau ar gydweithredu gyda'n cydweithwyr cyfreithiol yn yr Alban a Gogledd Iwerddon. Yn sicr, un syniad sy'n dod allan yn gyffredin yw pwysigrwydd cael perthynas agos â'r Llywodraethau gwahanol yn y gwahanol wledydd. Mae'r un peth yn

Mr Bush: We have been discussing some aspects of collaboration with our legal colleagues in Scotland and Northern Ireland. Certainly, one idea that generally comes out is the importance of having a close relationship with the different Governments in the different countries. The same is true

wir yn Ewrop, a derbyniasom wybodaeth ynghylch sut mae pethau'n gweithio yn yr Almaen, er enghraifft. Er mwyn i unrhyw Senedd fedru ymateb yn effeithiol o fewn yr amser cyfyngedig, mae'n berffaith amlwg bod angen gwybod o flaen llaw bod cwestiwn yn mynd i godi sy'n berthnasol.

throughout Europe, and we received information about how things work in Germany, for example. For any Parliament to be able to respond effectively within the restricted time frame, it is obvious that we need to know beforehand that a question is going to arise that is relevant.

[22]   **Rhodri Morgan:** Iawn. Byddwn felly yn bwrw ymlaen gyda'r bwriad o gydweithredu â Senedd yr Alban a'i Phwyllgor Ewropeaidd a Chysylltiadau Allanol, a hefyd y pwyllgor craffu yng Ngogledd Iwerddon. Byddwn hefyd yn gofyn i'r Llywodraeth yma yng Nghaerdydd ein hysbysu pan fydd wedi cael rhybudd cynnar ynghylch materion sy'n ymwneud â datganoli yr ydym yn arwain arnynt, neu'n rhannol arwain arnynt gyda'r Llywodraeth yn San Steffan.

Rhodri Morgan: Okay. We will therefore proceed with the intention of collaborating with the Scottish Parliament and its European and External Relations Committee, and also with the scrutiny committee in Northern Ireland. We will also request an early warning system from the Government here in Cardiff, when it has been forewarned of issues relating to devolution on which we are taking the lead, or jointly taking the lead with the Government in Westminster.

[23]   Are there any other points in relation to subsidiarity that you think that we should be dealing with here, Lara?

[24]   **Ms Date:** Issue 4 on the cover paper relates to whether the committee wants to take a view on whether there should be any form of ratification of an Assembly view in Plenary. That may be something that could be considered in the context of the current review of Standing Orders. That is certainly something that could be taken forward.

[25]   **Rhodri Morgan:** What would I have to do if we thought that it would be impossible for this matter to go to a full meeting of the Assembly for ratification of our view, but we would need approval from the Assembly for us to have Plenary powers to be able to take a view and transmit it back, because it is not practical in any other way, given that this eight-week window is incredibly short anyway?

[26]   **Ms Date:** We can be reassured that the Houses of Parliament committees will take account of views that are passed to them as soon as possible, including during any recess period, and certainly on an informal level, perhaps through the chair in the absence of the committee being able to meet formally. There is the issue that, if a matter was raised, whether it would be appropriate for that to then be ratified in some way by the full Assembly so that it carried the full weight of the Assembly. I am looking to Keith now for legal advice, but I think that something like that would require a change in Standing Orders.

[27]   **Mr Bush:** Ar hyn o bryd, nid yw'r Rheolau Sefydlog yn cydnabod y byddai gweithdrefn o'r fath yn bosibl. Fel y dywedodd Lara, yn fras, mae dau ddewis, sef bod y pwyllgor hwn yn cael yr awdurdod i ymateb yn uniongyrchol i'r Senedd neu fod angen i unrhyw farn ar ran y pwyllgor hwn gael ei chadarnhau gan y Cyfarfod Llawn.

Mr Bush: At present, the Standing Orders do not recognise the possibility of this particular procedure. As Lara said, broadly speaking, there are two options, namely that this committee could be given the authority to respond directly to Parliament or that any opinions expressed by this committee would need to be confirmed by Plenary.

[28]   **Rhodri Morgan:** Pe byddem yn cytuno ein bod eisiau dilyn y naill model neu'r llall y bore yma, at bwy y dylwn

Rhodri Morgan: If we were to agree that we wanted to follow one model or the other this morning, to whom should I write? Should I

ysgrifennu? A ddylwn i ysgrifennu at y Llywydd neu a fyddwch chi neu Lara, y clerc, yn ysgrifennu at Glerc y Cynulliad i ofyn iddi fwydo hyn i mewn i'r adolygiad o batrwm busnes y Cynulliad?

write to the Presiding Officer or will you or Lara, the clerk, write to the Clerk to the Assembly to ask her to feed this into the review of the business workings of the Assembly?

[29] **Mr Bush:** Awgrymaf y byddai'n briodol i ysgrifennu at y Llywydd.

Mr Bush: I suggest that it would be appropriate to write to the Presiding Officer.

[30] **Rhodri Morgan:** Pe bai pwnc llosg yn codi ar ddiwedd Gorffennaf neu yng nghanol Medi, ar adeg pan na fydd pwyllgorau'n cael eu cynnal, byddai angen i glerc a Chadeirydd y pwyllgor gael system frys fel ein bod yn gallu delio â materion brys pan nad oes cyfle i'w rhoi gerbron y pwyllgor. Bydd y mater hwnnw hefyd yn cael ei gynnwys yn y llythyr at y Llywydd. A yw pawb yn hapus â hynny?

Rhodri Morgan: If a controversial issue were to arise at the end of July or in the middle of September, at a time when no meetings are being held, the committee clerk and Chair would need to have a procedure to deal with urgent matters when there is no opportunity to put them in front of the committee. That issue will also be included in the letter to the Presiding Officer. Is everyone content with that?

[31] I see that everyone is happy with that. We will proceed, because that completes our consideration of that agenda item. I do not think that there were any other points. We look forward to knowing very shortly, before the end of the recess, and we will circulate the names of the chair and members of the two European committees, once they are appointed in the House of Lords and House of Commons.

9.55 a.m.

Agenda Ddigidol i Ewrop: Casglu Tystiolaeth drwy Fideo Gynadledda
Digital Agenda for Europe: Evidence Gathering via Video Conference

[32] **Rhodri Morgan:** On the video link, we have Ken Ducatel, head of the Lisbon Strategy and i2010 unit at the Information Society and Media Directorate-General at the European Commission. Good morning, Ken.

[33] **Mr Ducatel:** Good morning.

[34] **Rhodri Morgan:** I invite you to make some introductory remarks and then I am sure that you will be happy to take questions from committee members.

[35] **Mr Ducatel:** I assume that you have had a chance to look at our document. It was adopted by the college on 19 May, which was several weeks ago now. The aim of this document is broader than that which we have done before. It concerns the broad sweep of how the digital economy and society can contribute to Europe 2020, which is the broad political agenda of the Commission during this mandate. It is the first of the seven flagships that will be put forward by the Commission under Europe 2020. So, we are proud of the fact that we were able to leave port first. To some extent, we are cutting the route for the other flagships that will follow.

[36] So, what are we aiming to do? The digital agenda is based on the insight that the digital economy in particular has enormous potential to help us to get on the road to economic recovery, to build up a lot of services and to provide new opportunities to citizens. At the moment, the fragmented state of many of the markets across Europe—for example, we have the biggest and most developed consumer market in the world and yet, when you look at it, it is fragmented, at best, into 27 national market arenas—makes it difficult for innovative

services to be developed and for citizens to get access to the best and most competitive services in the online environment.

[37]   A good indicator of that is that there is no significant European web 2.0 firm. Rather, if such firms do take root in the first instance in their home country, their second country of development would normally be the United States because, immediately, they can transpose themselves into environments where they are confronted with just one set of legislative apparatus, rules and conditions and so forth. So, we want to create a very strong digital single market across Europe and to make it much more interesting for innovators and entrepreneurs to provide services, based on the opportunities offered by the digital economy. That will then generate a lot more potential for demand.

[38]   On the other side of things, it is important to deal with the fact that in Europe, demand is still very fragmented. People often lack the skills and the internet know-how to make the best use of the new services that are coming along. For example, one statistic that we frequently cite is that 30 per cent of Europeans to date have never used the internet. So, there will be a series of actions around making internet-based services much more accessible and more interesting, as well as steps to tackle digital literacy problems and to make the signalling and supply of ICT skills more efficient and effective.

[39]   In addition, there are a series of actions in the digital agenda that we believe will make it easier to offer exciting new services, which are very important. For example, we are working on the roll-out of open systems for smart metering—electricity and gas meters that allow consumers to monitor their use of energy in order to optimise their use of gas and electricity. This information can also be used by utilities in order to balance supply, which will allow them to develop a much more efficient way of managing the grids. That is one small example; there are many other examples that we could develop.

10.00 a.m.

[40]   On the one hand, it is about making it more interesting to develop and offer services, and, on the other, it is about working on demand and making the demand more effective. The third part of the puzzle is to work on the delivery of critical information and broadband internet infrastructures that will allow these new services to operate at the most efficient level possible and at maximum velocity. In essence, that is the way that we view it: it will create a virtuous circle of demand, which is important to get the maximum benefit out of digital economic growth and, in addition, to get those benefits out to society, in the sense of bringing benefits to European citizens, making us respond to our competitiveness challengers and making it possible to deliver new services to meet some of the big challenges relating to an ageing society and climate change.

[41]   That is the conceptual base, in brief, and you probably want to go into some of the details on the seven pillars that we have identified as important areas in which we need to take action. The seven pillars concern creating a real single market for the digital economy; creating much more inter-operable and more efficient and effective standardisation procedures; ensuring that the critical information infrastructures that we have are secure and that people can trust them; taking steps to promote fast and ultra-fast internet access; taking steps to make Europe more competitive in research and innovation; enhancing digital literacy, skills and e-inclusion; and, ensuring that ICT brings a lot of benefits to society through actions on the environment, accessibility and so on. Briefly, that is the overall structure, and I am open to any kinds of questions that you have.

[42]   **Rhodri Morgan:** There will be a couple of questions from me to start. First, on the pan-European aspect of this, I heard a programme on Radio 4 yesterday about the expertise that they had to develop in Estonia after they were subjected to a massive cyber attack—

probably undertaken by people connected to the Kremlin in some way—that disrupted their department stores and public networks that dealt with banking and so on. They developed an expertise that is now recognised worldwide in how to protect networks from cyber attack. Has that Estonian central position on how to defend your networks from cyber attack been taken over by European institutions or is that led by the North Atlantic Treaty Organization because it has such considerable military implications? Such a cyber attack could disable air-traffic control, power networks and banking networks, and, basically, lay an economy low unless you are well defended. In which way are European institutions involved in this area in which Estonia is internationally recognised as having expertise?

[43] My second question is completely different; it is about Wales. If broadband and high-speed broadband are today's equivalents of the canals and, later, the railways and the motorway networks, whereas Wales was at the forefront of the canal age and the railway age, and did not have a problem then because it was growing faster than any other part of Europe at the height of those ages, the problem now is that, unless there is public intervention to skew provision towards the areas that might otherwise be left out, Wales tends to fail the chimney pot test. We do not have any large metropolises and a UK-based figure eight network that would go up to Glasgow and Edinburgh, and back down through Manchester, Liverpool, Birmingham, Leeds and Sheffield to Bristol and London would, if it were entirely left to the market, leave Wales out—even the urbanised areas. Therefore, we need, not only a market-led solution, but state intervention, to ensure that we do not get left out. Otherwise, we will be even further left out, and we cannot rely on the market. How do the European institutions regard that necessity to intervene in the market, where a region, or small nation, is off the map in terms of the big commercial appeal of millions of chimney pots? Is that a part of the new Europe—to ensure that everywhere is included, regardless of their geography or their lack of commercial appeal?

[44] **Mr Ducatel:** On information security, there are subsidiarity issues at stake here. The European Commission can take some role in helping member states to co-ordinate their efforts to respond to cyber attacks, but the fundamental response is in the hands of the member state concerned. You can see that clearly in the work of the European Network and Information Security Agency, which is the responsibility of Vice-President Kroes. Its role is to help member states to draw together their experiences and to come together through their computer emergency response teams, which are established at a national level, in general, and to help them to co-ordinate a more effective response through that kind of co-ordination mechanism, rather than taking the powers to the European level. One of our actions this year is to make a new proposal for a more permanent basis for the European Network and Information Security Agency, which is up for review, to try to stabilise its position, and to allow it to support the emergency response infrastructure, in particular by proposing an emergency response team for the European institutions, because we ourselves are subject to frequent attacks.

[45] Therefore, the question is: what can we do as Europe, and what are we doing in the NATO context? NATO has a military emanation, and there is therefore a problem in comparing European Union and NATO membership; there is no one-to-one correspondence in terms of membership. That means that some member states would be left out of a purely NATO-led exercise, whereas some of the NATO partners are not ones that would be part of a European Union exercise. Therefore, we collaborate with NATO on this issue, but one needs to have co-ordination rather than a complete replacement one for another.

[46] There is a programme of action on such issues, which you will find in the so-called Stockholm programme, which was also adopted earlier this year. I would recommend that you look at that in more detail. Many of the things that are in the Stockholm programme, which was adopted by Vice-President Reding and Commissioner Malmström, are echoed in the more specific programme that we have put on the table. These are things such as establishing

a European cyber-crime platform, looking into whether we need to co-ordinate cyber-crime response at a European level—this is rather diffuse at present. It also includes working on things such as cyber-attack response—war game exercises, if you like—so that member states such as Estonia, for example, do not find themselves suddenly exposed and vulnerable to an attack from an unknown or unexpected source, but have a response already in place.

10.10 a.m.

[47]　If you think back to what happened in Estonia, one reason why there was a dislocation of its information infrastructure was that it was not able to call upon the resources that it needed at that moment. If we in Europe were able to say that we are ready, that we have done simulations, and that we have established the response teams and know how to co-ordinate them, we can come to the assistance of a member state that is in a weaker position very quickly. However, clearly there is also a need for all member states to engage in their own due diligence, that is, to ensure that they have taken the precautionary steps to make sure that they are not just relying on the fact that other member states have put in the appropriate schemes. So, those are many of the things that we have been putting into place through this programme. The position is that the Commission is a facilitator at a member state level and is not taking over those roles.

[48]　As regards the broadband issue, it is clear that the Commission is in favour of public intervention in those places where the market cannot reach. Last year, we adopted a set of guidelines on the rules for such public intervention. Our general view is that the sector has benefited a lot from being opened up to competition over the past 20 years, and that we should not interfere by putting state money in pre-emptively and without good reason. However, the state aid guidelines, which were adopted last year, are very advanced in the way in which they approach the issue of building and developing markets, or developing capacity where the markets cannot reach. This document makes it very clear that when, for instance, you are talking about notifications for state aid purposes, which are always a big fear for local authorities when they get involved in these kinds of activities, where there is no broadband access at all, notification is not even really necessary.

[49]　We will be taking all the material that is available on state aid notifications and the guidance that has been given by the Commission a step further in the coming months. We hope to adopt a new communication in September that is an elaboration of what is in 'A Digital Agenda for Europe'. I cannot say in detail what that is yet, because it is still open for discussion among the college of commissioners. One of our intentions is to make it clearer what local, regional and national authorities can do to stimulate market-based investment where the market is not perhaps as attractive as one would hope. We will be looking into the possibility of having new financing instruments, which will put more money, which is not available at the moment, on the table. That could be in the form of money for private investors or could involve facilitating public-private investments.

[50]　One thing that we have been looking at as part of that is the way in which local authorities can reduce their overall administration costs by aggregating their demand, for example by putting together the demand of public services such as the police, the ambulance service and the local administrations and so on. If you aggregate those into a block, very often you can do a much more powerful deal. If you put the potential gain that you have by aggregating the demand into some kind of vehicle that allows you to express a demand for the provision of broadband services, you can lever general public broadband services into the region. There are ways in which we can maybe even enhance that by putting some European money alongside it, because we know that public authorities are cash-strapped at the moment. That is a way of reducing overheads and moving forward on the broadband investment. The overall message that we are working on is 'If there is evidence that the market is not delivering on a reasonable timescale, please go ahead'.

[51]   **Rhodri Morgan:** Mohammad Asghar has the next question.

[52]   **Mohammad Asghar:** I think that part of my question has been answered. It relates to structural funding. Key Action 8 refers to mobilising structural funds and other EU funding to support the implementation of the proposed EU broadband strategy. Do you have any practical examples of how you would envisage this working in practice? Is the aim to ensure that this features as a priority for action within the new programming period or do you have specific actions in mind that you believe EU funding could support more effectively than is currently the case? Is there support for this approach from the directorates general, from DG Regional Policy, DG Agriculture and DG Employment?

[53]   **Mr Ducatel:** To be clear, we are talking about three different funding instruments. We are talking about the structural funds, so the regional development funds; the employment funds—social funds, if you like; and the rural development funds. The rural development funds are part of the common agricultural policy envelope, so it is a different instrument. What we have been doing with our colleagues in DG Regio—to address the regional funds part—is looking in detail at how the spending take-up has been on the current programming period of 2007 to 2013. We have found that, on average, around only 20 per cent of the earmarked money for the period 2007 to 2013 has been allocated. So, one of the steps that we are going to take in the autumn, with our colleagues in DG Regio, is to see how we can facilitate member states having a higher absorption rate of this money. The money is underspent generally, but there is a higher than average level of underspend on ICT.

[54]   The money allocated to the structural funds falls into two categories, roughly speaking. There is about £15 billion for this programming period, around £2.3 billion of which is for infrastructures. The rest of the ICT funding is for the development of things such as e-government services and so on. So, the vast majority of the funding is oriented towards enhancing demand, whether demand at the citizen level or at Government level—the administrations. So, clearly, there is an issue of how well member states and managing authorities have been able to articulate demand for this earmarked funding. We want to address that issue, and we think that, before we go to ask for new money in the next financial programming period, we have to solve the problem of allocating and effectively spending the money that is already on the table.

[55]   One of the reasons for the underspend is a programming problem, which will probably solve itself. That is that, due to the financial crisis over the past year or so, member states have tended to concentrate on those forms of spending that have an immediate impact on job creation and so forth. With infrastructure spend, there tends to be a longer period of time before the money is allocated because you have to do a great deal of preparatory work. So, in a sense, over these seven years of the programming period, that will tend to balance itself out. However, that is not an explanation of why we are at such a low figure; it is just part of the explanation. We also found that there is a problem of matching funds. Many regions, and particularly poorer regions across the European Union, do not have the money to put on the table in order to lever the money out of the structural funds. There are some things that we can do about that. In some of the regions, on some of these issues, there has been a very high proportion of union fund in the overall balance of the package. For example, last year, it was up to almost 90 per cent for certain regions that are economically very weak.

10.20 a.m.

[56]   There is also the issue—and this is something on which we can do some policy work to help—of the problem of capacity on the ground in knowing how to put the packages together to spend the money. That requires outreach into the member state, and sometimes down to regional level, to help to articulate the demand in the appropriate format so that

regions can overcome the bureaucratic obstacles that they face in getting their demands on the table at the managing authority level, which are then conveyed up to us at the European level. So, in the coming months, we will concentrate quite heavily on capacity enhancement and developing the ability to articulate and to overcome some of the obstacles that you face on the road to putting these projects in line. That is one set.

[57]   We have looked at the structural funds in more detail and also at the rural funds, where a one-off pocket of money was given. The European Commission proposed €1 billion for broadband infrastructure for rural areas, of which member states allocated about €350 million and the remaining €650 million went for other priorities. We could debate whether they were the right priorities, but that was their decision. That is the subsidiarity procedure that we have for this kind of funding. We are following up to see how well member states are doing at implementing the €350 million. That was a one-off €1 billion as part of the recovery package. There is no new money in the rest of the programming period for rural development, and we are discussing with our colleagues in the Directorate-General for Agriculture and Rural Development how we can find more money to persuade member states to allocate money for these kinds of innovative purposes, even in the current programming period, and how we can use the fact that we changed the legal base for the funds during last year, which allows member states to allocate some of their rural funds to these kinds of projects.

[58]   The big issue with the social funds is the money that is spent on developing information and communications technology skills. There are two strands to that. The first is basic digital literacy to help people to take part in the information society. The second is the funding relating to developing ICT skills to help people into employment and to help the local economy to work more effectively. In the next programming period, we would like to get member states to recognise digital literacy and e-skills as a priority in their programming, because that is not the case at the moment. It is near enough in soft terms, but it is not formally a part of the guidelines.

[59]   So, that is basically where we are with the different funding instruments. We are trying to—

[60]   **Rhodri Morgan:** That was a very comprehensive reply, Ken.

[61]   **Mr Ducatel:** We are trying to spend the money that we have on the table better. In addition to that, we are trying to see how we can get more targeted financing for the next programming period, from 2014.

[62]   **Rhodri Morgan:** Thanks very much, Ken. Rhodri Glyn Thomas has a question now.

[63]   **Rhodri Glyn Thomas:** One issue for Wales—and perhaps the most important issue as far as we are concerned—is how this digital agenda can be delivered in Wales. The first step is to see how the European Union and the member state jointly can deliver the digital agenda, and how that then reaches down to the sub-member state level in Wales. I want to ask you a specific question about that. You spoke about the financial packages that may be available. Have you addressed the issue of EU competition rules, particularly state aid, because that has been raised as a possible barrier to accessing some of that money?

[64]   **Mr Ducatel:** Let us first talk about implementation, because one of the big qualitative changes that we have made with this particular programme of action over previous ones means that it has a much greater orientation towards stakeholder engagement. As you know, we recently acquired a new director general, who comes from the Directorate-General for Health and Consumers, and so he has a lot of experience with stakeholder engagement. We are already undertaking many more outreach activities to member states because the intention now is not simply to work inside the Brussels machine, but to go out on to the

ground and see what is needed. The first round of this is already happening. Before and just after the summer, we will be doing a tour of capitals where we will talk to all sorts of different stakeholders, not just the usual suspects from the technicoms industry and the ICT sector, but many others, including regions, in a series of open discussions in which we present the digital agenda, but also where we listen to feedback and to ideas and inputs and so on.

[65]   We have already established a website, so people can go online and register their interest to take part in the digital agenda, and our commissioner has announced that she wants more than just digital agenda communication, as she also wants to create a movement for the digital agenda. So, the idea of the website is that you can register your interest, but more than that, you can say what you or your organisation is willing to do to address the issue of moving us forward. That is all based on the perception from our leaders and senior management that we need to do more than just sit in Brussels, write papers and propose legislation, as we need to ensure that things start to change on the ground.

[66]   At certain points, this will require us also to get involved with some regional-level actions, but clearly that has to be selective given that there are nearly 300 regions in Europe and it is not feasible for us to have an intensive dialogue with every one. However, we will clearly talk to the main regional organisations and representative bodies of the regions. In fact, last week, I gave a presentation on this to the Committee of the Regions, where a specific opinion, by Markku Markkula, is being adopted on the digital agenda. So, this is already a step in that direction.

[67]   In addition, every year, under the digital agenda, we will be running a digital assembly in Brussels, and we intend to use some of our resources to bring people from the regions in to Brussels to take part in thematic workshops with us, to address specific issues that are of concern to different stakeholders. So, you will see a substantial ramping up of our efforts, and we will clearly keep the door open as far as participation, engagement and dialogue are concerned with different regional-level actors. We are open to ideas about what can be done, and we are particularly open to pledges on what you are willing to do and what we can then showcase.

[68]   On the state aid question, as I mentioned, it is well recognised that state aid is seen by regional authorities as a particular difficulty, because it seems to be very complex to address from the perspective of the stakeholder on the ground in the region. That is why—

[69]   **Rhodri Morgan:** I think that I would use stronger language than that. I would say that most of the authorities in Wales and elsewhere would describe the state aid regulations as a 'blasted nuisance' when you are trying to ensure catch-up and not be left behind.

[70]   **Mr Ducatel:** On the broadband state aid rule, one important decision is going through at the moment, which we hope will be announced soon, and that concerns national broadband schemes. We will recommend strongly that each member state establishes a national broadband scheme that would lay out a programme or schematic, which, as long as the original proposal fell within the template that is laid out, they would not have to notify; they would get automatic clearance, because it would be notified under the national scheme. There will be some limits to this, of course, because those are the rules that we are dealing with, but such schemes exist in certain member states and, if you have a proactive approach to this—and we can certainly help to put that together—you can avoid all the pain and suffering of notification, because it will have been done at national level, creating a blanket framework that would allow you to move ahead. We are aware of the fact that it is not just a bureaucratic difficulty to fill in forms appropriately, but that it also can be prejudicial to the timing of the finance. So, that is one thing that will be coming through.

10.30 a.m.

[71]   **Rhodri Morgan:** Do you have a supplementary question on that, Rhodri Glyn?

[72]   **Rhodri Glyn Thomas:** Nac oes.   **Rhodri Glyn Thomas:** No.

[73]   **Rhodri Morgan:** That is fine. I have one last question. We have all noticed the rise in the past 20 years of large international e-business. The remarkable thing about the e-businesses of the world that have emerged is that, by and large, they are all American, and not one is European. I am thinking of Facebook, Microsoft, eBay, Amazon, Yahoo! and Google, which I suppose is the most remarkable of all. They are based in San Francisco or Seattle or, in the case of Facebook, on the east coast of America. Is there anything in the e-strategy or the digital strategy for Europe that would seek to ensure that, over the next 20 years, at least some of the big e-businesses that might be on a global scale and have world power will not be American?

[74]   **Mr Ducatel:** Yes, most of the actions in the first substantive chapter of the digital agenda are aimed at trying to deal with this precise problem. It is all about the single market. When we talk to entrepreneurs, and ask them why they go to the States to set up business, whether it is a web 2.0 business, as you have just described, or an ICT, software or a content-based business, they say that, first of all, the United States of America is a big, wealthy market, and is bigger than any single national market in Europe, so it is very attractive. Secondly, venture capital and risk capital are much easier to acquire in the States, so they go there because they can get financing. In addition, the cost of doing business from a European base is extremely high, as every time you establish yourself in a new member state, you have to deal with the registration, the licensing, the different employment laws and so on. There is an enormous list of issues that affect not just e-business and web-based businesses, but businesses in general.

[75]   The digital agenda contains steps to try to overcome some of those issues for the next generation or wave of web-based businesses, such as ensuring that our European single market tools are updated in line with where the technology has gone. This is to deal with our problem in Europe of very fragmented content management systems, in which we often have to license member state by member state to provide services, which leads to absurdities whereby people are, effectively, forced to find content through illegal means or a grey market at best, because there is no legal way for them to get access in their home market. So, if you want to get access to certain interesting content in French when you are in Poland, you cannot do it legally in many cases, because the rights holder has not bothered to license it for the Polish market. We are raising several such issues. This is important, because this is where the next generation of the web-based services industry will go, namely content. This is one of the most important areas of development.

[76]   **Mr Ducatel:** We will be doing some work on the re-use of public sector information. Take the big success of Google as an example: it is not just the search algorithms, but its ability to use information from different sources and mash it together—very often it is geographically based, as with Google Maps and Google Earth—to make extra value out of it, that makes it successful. The Government sector is full of useful information that could be levered out and provided as services to people. Very often that would be geographically based information. So, we are looking at updating access to this across Europe in order to ensure that there is a potential business gain for new services that could be mounted. An estimate was made—I do not know how much we can believe it—that this would add a market worth something like €27 billion to the information economy in the coming years.

[77]   As an example, think about access to the location of waste disposal systems. Often, it is difficult to find out where you go to get rid of certain bits of old electronic waste. Where can you go to deposit these? That information is not easily available. If the information,

which is often held in a public database, were made available to a private firm, it could provide you with a map-based tool that would give you the opening times and so on for such facilities. That is a trivial example.

[78]   Then there are issues relating to the transactional base of the single market. Why is it so difficult to do electronic invoicing across borders? Why do we have so many problems in recognising signatures from one member state to another? Why is the implementation of these rules, which are, in principle, cross-border rules, so different? For example, with public procurement, if you are a company in Wales that wants to bid for a public contract in Germany you will often find that you have to physically go to present yourself and your dossier in order to sign to authenticate that you are the person concerned. Why can we not do these things electronically?

[79]   Then there are issues relating to data protection. The implementation of data protection rules is quite different from one member state to another, and that creates a great deal of uncertainty for web-based services that are using information that could be regarded as sensitive. They are confronted with very different approaches to implementation from one member state to another. This means that they will take the risk-averse approach and move themselves to the States, where there is an easy, single system to deal with. So there is a whole set of issues there.

[80]   Then, there is a whole set of issues to do with consumer attitude. For example, if you book a hotel in Spain online and you then have a dispute with the hotel and you go to court, under which jurisdiction is the dispute to be resolved? That is not entirely clear. You could say that the Brussels I regulation means that that would be done in the consumer's land, because we have consumer protection. However, under the e-commerce directive, it would be dealt with in the country of origin of the service. We clearly need to deal with this problem. One way to do that would be to set up a common redress system, an alternative dispute resolution system that would allow people to find a solution without going to the courts. So, there are all sorts of steps here that would help the European Union to be a much more attractive place to set up such businesses and that would deal with many of the problems that have been raised by web services companies, whether they are US-based or European.

[81]   **Rhodri Morgan:** I have one final question. You will be aware that, at the moment, we are in limbo, following the cancellation by the new Westminster Government of the so-called broadband tax on landline telephones in order to help fund pushing broadband out to the hard-to-reach areas and to achieve the universal service commitment of 2 Mbps. We do not quite know how the Government's abolishing the broadband tax on landlines will achieve the 2 Mbps universal service commitment by 2012, but what is the general picture across Europe of achieving 2 Mbps or something similar as a universal commitment in each member state? How are they achieving the funding of that in hard-to-reach areas?

10.40 a.m.

[82]   **Mr Ducatel:** More than 80 per cent of subscribers across the European Union as a whole are on 2 Mbps or better. So, that is the base line, and reflects those who have subscribed. We have an overall coverage of fixed lines, or what we would call ADSL—which is a traditional telecommunications copper-based line—of 97 per cent of the European population. However, in some cases, member states are beginning to move towards 2 Mbps as a universal service obligation target—or, shall we say, universal coverage target, because the USO has only been declared in Finland so far. Other countries are going for something like 512 kBps, which is about a quarter of the speed. So, it is quite variable, and there is no systematic position on this. We are in the process of publishing our review of the positions of different member states as regards minimum targets, but these tend to be targets rather than something that is backed by a legislative mandate.

[83]   If you decide that 2 Mbps is what you promised, and is a right of the people in your member state—because this would be a member state decision rather than a European level decision—then there is the issue of how you fund it. We are working on publishing the results of our public consultation. In brief, what we see is that some member states would like to use a sectoral tax, similar to the proposal from the previous UK Government, but we are concerned that, if that is implemented badly, it could have a big distorting effect. That is because, if you look at subscribers as whole, and you include those who are not subscribing to broadband as well as those who are, then you will find that poorer people would be subsidising richer people, who would be the main beneficiaries of a sectoral tax. There are many risks of distortion and the sectoral route can lead to a regressive redistribution of income if you do it ineffectively.

[84]   There are also issues around the threshold of coverage that you want to achieve. The curve of the cost for covering each extra percentage point becomes very steep towards the end, so you get a reducing economic efficiency of coverage. We would issue a word of caution about going gung-ho towards this, although we think that good quality broadband access is becoming an important, even essential, part of partaking in society.

[85]   **Rhodri Morgan:** So, what you are saying, Ken, is that Britain is not wildly out of line in going for 2 Mbps as a universal service obligation, but that not many other member states have stated a commitment to ensure that it is delivered to 100 per cent of households.

[86]   **Mr Ducatel:** Only one member state so far has made a legal commitment to that—Finland.

[87]   **Rhodri Morgan:** I have no further questions, and the Members have no further questions, so I thank you for the very comprehensive nature of your answers and for your explanation of the strategy, Ken.

[88]   **Mr Ducatel:** Thank you very much for your time.

[89]   **Rhodri Morgan:** It was a pleasure.

[90]   My final closing remarks are that we have to note two papers—the joint paper from the MEPs on cohesion policy and the letter from the vice-chancellor of Cardiff University on European Investment Bank loans, following the plea from the EIB for us to help market its services across the public and quasi-public sector. We also have to note the minutes of the last meeting a fortnight ago. For the public record, we need to note that the committee's second report on the future of EU cohesion policy will be published on the committee's website tomorrow, and will be published jointly with the Enterprise and Learning Committee.

[91]   This is the last meeting of the summer term. Our next formal meeting will be on Tuesday 21 September, at which, courtesy of Gregg's intervention, we will have Sir Kim Darroch, the UK's representative ambassador to the European Union, who will be giving evidence via videoconference.

[92]   Diolch yn fawr am eich presenoldeb y bore yma. Mae'r cyfarfod wedi dod i ben.   Thank you for you attendance this morning. The meeting is closed.

Daeth y cyfarfod i ben am 10.45 a.m.
The meeting ended at 10.45 a.m.