EU HOME AFFAIRS SUB-COMMITTEE

Brexit: future UK-EU security and police cooperation inquiry

Oral and Written Evidence

Crown Office and Procurator Fiscal Service – Written Evidence (FSP0003)

Introduction

As the sole prosecuting authority in Scotland, the Crown Office and Procurator Fiscal Service (COPFS) is pleased to provide information from the Scottish prosecution perspective of existing police and security cooperation between EU and the UK and a view from an operational perspective of the key areas of co-operation that should be sought as part of the UK's negotiations to leave the EU.

COPFS has noted with interest the evidence already provided to the Committee by the Director of Public Prosecutions for England and Wales and it will not surprise the Committee that COPFS and CPS have similar views on the importance and value of many current EU Justice and Home Affairs instruments and institutions to law enforcement, criminal investigation and criminal justice in the UK.

The Lord Advocate during an interview given during a visit to the European Parliament last week has reiterated that as a member of the EU, the UK has benefited greatly from EU criminal justice legal mechanisms and institutions such as the European Arrest Warrant and he emphasised that as head of Scotland's prosecution service, he views a robust institutional framework for mutual legal co-operation across Europe as essential in addressing transnational criminality.

Previous Submissions

COPFS and the Lord Advocate at that time provided written and oral evidence to the House of Lords Committee enquiring into the UK Government's European Opt-in Decision in 2013. At that time, evidence focussed on two main measures which form part of the day to day business for COPFS, namely, the European Arrest Warrant (EAW) and the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

European Arrest Warrant (EAW)

As we said then, the European Arrest Warrant is undoubtedly the success story of EU JHA measures. It is efficient and effective; prosecutors throughout Europe are familiar with its operation; and leaving the system would be fraught with an element of uncertainty, especially while the EAW continues to be operated by our European colleagues as the standard method of conducting surrenders within the EU.

Inevitably due to relative size of population, Scotland deals with fewer EAWs than England and Wales. In the last five years, there have been 541 cases in Scottish courts in which proceedings were taken after an arrest on a European Arrest Warrant and 367 individuals have been extradited from Scotland through this procedure. The majority of those surrendered from Scotland are non UK nationals. We have for the same period, issued 45 European Arrest Warrants - often for extremely serious crimes and as was spoken to by the DPP, there is

clear evidence that EAWs allow suspects to be surrendered far more speedily than traditional extradition processes. This benefits the public purse but more importantly is an important element in delivering justice and upholding the rights of both victims of crime and accused persons.

COPFS echoes the DPP's comments regarding the interrelationship of the EAW system and the relatively new innovation for the UK of the Schengen Information System – SIS II. SIS II's requirement that all EAWs are flagged to law enforcement databases across the EU within hours of issue, is an important tool, not only from the requesting state's point of view in having an accused or convicted person returned to them to face justice, but also because it reduces the likelihood of significant and possibly dangerous criminals slipping through the fingers of law enforcement.

Disproportionate use of the EAW and the undesirability of UK nationals being prosecuted in other states for crimes for which a UK criminal justice system has jurisdiction have been cited as weakness in the EAW system. Disproportionate use of the EAW is not viewed as a significant problem in Scotland by COPFS and now it is of course further guarded against by the amendments to the Extradition Act 2003, introducing a forum bar and lately, a proportionality test. In practical terms COPFS has not found the proportionality test as impacting much on the casework passing through our extradition team. The forum bar has not been introduced in Scotland.

COPFS considers that to leave the EAW and fall back on pre-existing arrangements would be both retrograde and uncertain. We consider that data supports our conclusions that the EAW is demonstrably more efficient to all parties than extradition under the 1957 Convention and we share the concerns expressed by the CPS that some EU states have repealed their domestic legislation implementing that convention. We recognise that non-EU states have negotiated very similar arrangements as the EAW with the EU but we see formidable obstacles to a similar arrangement being in place for the UK by 2019/20. We also understand that a necessary condition of these arrangements is that the non-EU states submit to the jurisdiction of the CJEU to adjudicate upon their operation

<u>European Criminal Records Information System (ECRIS)</u>

As we have commented before, while it has been difficult to assess the impact of the Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, nonetheless they play a significant part in informing the decision-making of the Prosecutor in day to day business and this is especially so when considering the appropriate forum for a particular case to be prosecuted. (There is no right to elect for trial before jury in Scotland). Being in the receipt of criminal history data at the point of considering the case is essential to ensure that the case is properly prosecuted in the public interest. As the DPP has said, when it is available – as it often will be with major long running investigations – such information can also inform risk assessments around bail.

While the EAW and sharing of previous convictions are probably the most impactful instruments on day to day prosecutions in Scotland, there are other EU

JHA institutions and instruments that underpin mutual co-operation in criminal justice matters.

Europol and Eurojust

Europol of course is an institution that primarily serves law enforcement but the role that COPFS has in directing criminal investigations especially in instances of serious and organised crime has benefitted greatly from the coordination and information sharing that Europol provides. The Lord Advocate welcomes the UK Government's decision to re-join the new Europol regulation.

As a prosecution service, COPFS has a more direct relationship with Eurojust and we endorse the remarks made by the DPP in her evidence both as regards the assistance Eurojust can provide in multinational investigations but also its role in convening problem solving or operationally thematic seminars. The value of being able to meet face to face with full translation support at a convenient central point should not be underestimated. Scotland's casework with Eurojust is inevitably much less than England and Wales but we have seen liaison and the use of Joint Investigation Teams increase especially since the formation of a single Scottish police force and we anticipate that will continue to be the case.

Accordingly COPFS considers that a continuing relationship with Eurojust is very important. Full membership would need to be considered in conjunction with the emerging EU legislation establsihing the European Public Prosecutor's Office (EPPO) and a complementary new Regulation for Eurojust as that could propose a role for Eurojust that makes full membership inconsistent with the role of the domestic prosecutor especially in Scotland with regard to the independence of the Lord Advocate as protected by the Scotland Act 1998. However establishment of at least a liaison magistrate's desk is in COPFS' view essential.

European Judicial Network

One area where COPFS' position is distinct from CPS is in relation to the European Judicial Network which lawyers in our International Cooperation Unit use on a daily basis and find to be an extremely useful network for low level problem solving and for removing barriers to ongoing extradition and MLA processes. Main advantages are the speed of response within the network and the constant reinforcement of bonds of cooperation through very regular contact. Statistics show that COPFS uses the network considerably more than CPS in real terms – in excess of 400 last year. We have heard suggestions that access to the EJN can be maintained without full membership via the Commonwealth Network of Contact Persons but we remain to be persuaded of this as that Network has only recently been resurrected and the level of mutual cooperation and confidence between the 2 networks is wholly untested.

A general concern that might be posited from UK no longer being at the decision making table of institutions such as Eurojust and so involved in the framing of EU justice legislation is that new instruments are likely over time to reflect the civilian systems of mainland Europe so that even if UK participation in a particular arrangement is legally or politically possible, there may be an absence of "fit" with the UK's adversarial systems. This could be exacerbated by the loss of confidence building networks such as the EJN.

European Investigation Order (EIO)

Finally, UK continues to comply with its legal obligation to transpose into domestic law the European Investigation Order Directive. The actual mechanics of this instrument are of course untested and some elements of transposition may prove challenging but COPFS' view is that the EIO offers considerable potential to speed up evidence gathering and information sharing between members and acts as an example that the EU continues to develop improvements to JHA instruments and a reminder that the UK may lose the benefit of future improvements, if involvement within JHA structures and institutions is diminished or ceases altogether.

1 December 2016

Alison Saunders, Director of Public Prosecutions, Crown Prosecution Service – Oral Evidence (QQ50-62)

Evidence Session No. 6 Heard in Public Questions 50 - 62

Wednesday 2 November 2016

11.30 am

Watch the meeting

Members present: Baroness Prashar (The Chairman); Baroness Browning; Lord Condon; Lord Jay of Ewelme; Baroness Massey of Darwen; Lord O'Neill of Clackmannan; Baroness Pinnock; Lord Soley; Lord Watts.

Examination of witness

Alison Saunders.

Q50 **The Chairman:** Good morning and thank you very much indeed for your time this morning, Alison. It is good of you to make time to be here. As you know, this is a public session and it is being televised. You will get a transcript of the report to correct. Obviously, if there is anything you wish to add or supplementary information you want to send us, please feel free to do so. Before I start, is there anything you would like to say by way of background or any statement you wish to make?

Alison Saunders: I will say, very quickly, that we work really well with our European colleagues. We have built up long-established relationships not just with Europe but more widely. We find that probably a substantial majority of our cases now have some sort of international connection. I am sure I do not need to say this, but the crime we prosecute tends to be more and more global. We bring in commodities, whether it is people, drugs or guns. Our international connections are very wide-reaching and very important to us.

The Chairman: Post-Brexit, what tools and capabilities do you currently have that you would like to retain—things that are useful for you?

Alison Saunders: There is a package of measures that we think are really important. They are not just the obvious ones such as the European arrest warrant, which is absolutely vital and of which we make a great deal of use. It starts right at the beginning; the package around the European arrest warrant works because we also have SIS II—the Schengen information

system. That helps us because, when we issue a European arrest warrant, we do not just issue it to a particular country; it can go to all 27. Certainly we have examples of cases when we did not really know exactly which European country an individual was in. The SIS II enabled us to put out a European arrest warrant, find somebody and bring them back very quickly. That package is absolutely vital.

We use Eurojust a lot. We have one of the busiest desks in Eurojust. At the moment, I think we have the most joint investigation teams. There are currently 31—so, again, that is really important. Something that may not have been mentioned before is mutual recognition for proceeds of crime. That is fairly new, but we see already that it is a very important package because not only can we ask other member states to recognise our orders and enforce them or restrain assets abroad, but we can do the same, which of course is really important for the UK economy, too.

The Chairman: Thank you. We can go into more detail on Eurojust with Lord O'Neill's question.

Q51 **Lord O'Neill of Clackmannan:** Could you be a little more specific as to what we would lose if we were not full members of Eurojust? I know it is not a binary option because there are, in fact, at least two others at the moment: a co-operation agreement or a liaison prosecutor role, as the US and Norway have. How do you see the significance of Eurojust at the moment? You hinted at it, but perhaps you could elaborate. Would you then go on to say what the alternative arrangements could be or, of the two that are currently there, which might be more attractive—or is there a third option that nobody has thought of yet?

Alison Saunders: Dealing first with how much we use it, we use it a lot. As I said, we are one of the busiest desks and we have not just one person but a number of people on the UK desk. Where it is incredibly useful is not just on an individual case, although it is really important there. It gives us the ability to do things in real time. Without Eurojust we would have to send letters of request to individual states. We can say, "We have this case. It is an issue now. Can we get together a co-ordination meeting because we know that there are links with France, Spain and Italy?" We can do that very quickly and we get all those member states there with the right people, which is again very important, and in a place where there are no national priorities. We are in a neutral space, with translation, which makes it much easier. It means that we can deal with cases in real time and decide who has what evidence, how we will work together, whether we have a JIT and who takes priority in the investigation. That is really important, because it gives us real-time flexibility and the ability to talk to a number of member states immediately rather than doing it bilaterally.

The other thing we use Eurojust a lot for is around topics. To give you an example, we had some issues around prison conditions in some of our EAWs, where we were having difficulty extraditing people to countries because of concerns around prison conditions. We raised that as a topic at Eurojust. It convened a meeting with the relevant people at Eurojust, whom we could not always get to bilaterally, and we were able to deal with that very quickly—much more quickly than we could on a bilateral basis. It

meant we were then able to extradite people to those countries. Again, it was very successful.

As I said, we are one of the biggest users of JITs. We have 31 JITs and they are absolutely vital. We do not necessarily have to be a member of Eurojust to do that, but it certainly helps.

On the follow-up question about the alternatives, I am aware that Switzerland and the US, for example, have liaison prosecutors there. They are able to engage in many instances in much the same way. As I understand it—I am not an expert on the details of their negotiations—they are not part of the Eurojust management board, nor can they be. So they cannot help or influence its strategic direction and where it may want to go. What is more important is that, as I understand it, they do not have access to the Eurojust case management system. That allows us to cross-check any cases or investigations that we have against the Eurojust database. It enables us to see what the potential conflicts or advantages might be of talking to other member states.

The other concern—the big unknown—is how long it has taken Switzerland and the United States to negotiate their positions. I certainly know, from having talked to the Swiss Attorney-General, and just by looking at the date, that they started negotiations in 2008 and put in a prosecutor only last year: 2015. That was a very long time to negotiate that. One would hope that we would be in a very different position because we are currently a member of Eurojust, whereas they never were. But obviously we think it is in everybody's interests for us to keep that mutual recognition and co-operation; it works for us and for other member states—but the same could be said of Switzerland or indeed the United States.

Lord O'Neill of Clackmannan: Would there be any financial implications for us of reducing our status? Are the membership dues paid by the US or Switzerland considerably lower than our figures? Is it done on a population basis?

Alison Saunders: I am afraid that I do not know the answer to that. I do not know what Switzerland or the US pay. There are certainly financial issues. If we were no longer a member of Eurojust, as I understand it, we could not necessarily ask for our JITs to be financed. We would have to wait for a member of Eurojust to do that. At the moment, Eurojust pays a significant contribution towards the JITs, which is very beneficial for us.

This relates to other things rather than Eurojust, but if we were doing things other than EAWs through Eurojust and we had to go back to conventions, which we used to use, that would be much longer and would take much more time and resource for us. So there may well be financial consequences.

Lord O'Neill of Clackmannan: If we were no longer on the management board, we would not be able to have a say in what the rates would be anyway.

Alison Saunders: No.

Q52 **Baroness Massey of Darwen:** You mentioned timescales. Would you like to hazard a guess, as best you can, about how long it might take to negotiate a new relationship with Eurojust? If there were an operational gap between the point at which we relinquish full membership and the point when the new relationship takes practical effect, what practical impact could that have?

Alison Saunders: In relation to timescales, I have no idea, I am afraid. We can look at Switzerland, which took a long time. Liechtenstein and Moldova took five and six years respectively to negotiate their bilateral agreements with Eurojust. All of them were in a different position from us, because they started as non-Eurojust members. Whether that will give us an advantage or not, I do not know. We just do not know how long it will take. It will depend on the negotiations.

Baroness Massey of Darwen: What are the obstacles? Why does it take so long?

Alison Saunders: I am not really sure why it took so long, particularly for Switzerland, because there was a lot of mutual interest. Eurojust wants things from Switzerland and Switzerland wants to link in with Eurojust. Some of it will be because, as I understand it, it does not just have to be ratified by the management board of Eurojust; sometimes individual members raise issues, and I think it needs to be endorsed by the Council of Europe. So there may be slight delays in doing all of that. I was not party to those negotiations so I do not really know, or understand, the details of why it took so long.

Baroness Massey of Darwen: Nobody knows what barriers there were, for example. Can we learn from that?

Alison Saunders: We will be able to learn from that, because we will be able to have more detailed discussions. I had a very general discussion with the Attorney-General in Switzerland when I met him at the International Association of Prosecutors conference earlier this year. I certainly have not done any detailed examination with him of what went wrong and what went right, but that is the sort of sensible thing that we ought to do.

In relation to the second part of your question concerning operational gaps, my sincere hope would be that we have no operational gaps and that if we leave Eurojust we will have things in place that mean there are no operational gaps. If there were, we would have to fall back on the 1959 convention for extradition and probably the 1957 convention—if I have them the right way round—for mutual legal assistance. The difficulty with that is that, certainly in relation to extradition, our current analysis is that some states may, when they implemented the EAW, have rescinded their convention. We would have to go into detailed research on whether that is still available for all member states. We would also have to make sure that we had the right domestic legislation. We may need some domestic legislation to make sure that we could do that. So it is not a straightforward picture and it needs a lot more detailed research, not just about our legislation but potentially about member states' legislation as well.

Q53 **Baroness Browning:** When Brandon Lewis, the Home Office Minister,

gave evidence to us, he flagged up that a lot of work goes on at a bilateral level through the UK Central Authority's role in administering requests for mutual legal assistance. Could you elaborate on that for us and explain to what extent those bilateral relationships and structures can substitute for Eurojust membership or other EU measures?

Alison Saunders: There are a lot of bilateral relationships, not just through UKCA, which does not actually deal with an awful lot. If we are sending letters of request to member states, we send them directly. We have direct transmission so that they do not go through UKCA. Likewise, if we are doing an extradition request, it goes through the National Crime Agency SIRENE bureau; again, it does not go through the UKCA. That is more for incoming requests, and we have less sight of them.

Bilaterally, we have liaison prosecutors in a number of European countries. The CPS has liaison prosecutors in France, Italy, Spain and in some other countries that help us. But they do not do what Eurojust does, which is to facilitate the multinational co-ordination that is so important. Likewise, they do not do the SIS II bit, where you can put extradition requests out across all 27 countries rather than just one. Although there are good bilateral relationships, they do not cover all the work we do. They can help very much around individuals. If we know we have a case that involves France, we can use those bilateral relationships, but if it involves more than France, it is much more difficult to do without the facilities that we enjoy at Eurojust.

Baroness Browning: How problematic would it be if we were to mirror some of those bilateral agreements in lieu of the arrangement we have now within the EU? I was particularly thinking of the extradition treaty we have with the USA; I am rather familiar with the Gary McKinnon case. Some of the extradition treaties that we have already signed do not seem very satisfactory. I assume you would not want just to take an example of where we have that sort of agreement and use it as a model, or would you?

Alison Saunders: Probably the answer to that question is that, with European arrest warrants, we can get people back into this country in a matter of days. One of the first, which was quite notorious, was Osman, who was one of the 21/7 failed bombers. He went away and we got him back to the UK within 51 days, whereas our non-European extraditions take significantly longer, sometimes years—rather than days, it is months and years. So one of my real concerns would be the speed.

Using the European arrest warrant also means that there is no bar to people extraditing their own nationals. Bilaterals do not do that; Poland, for example, does not. A number of European countries—22 in total, I think—have bars on extraditing their own nationals unless it is under the EAW. In the last few years, 150 people have come back who would not have come back under a bilateral. The EAW allows us not only to do it quicker but to get back foreign nationals.

Baroness Browning: Finally, what contingency planning are you doing, as regards what you will be telling the Government is the ideal model, if you cannot just lift what you have now and replace it?

Alison Saunders: We are working very closely with the Home Office and with DExEU. I have a number of prosecutors, both from a policy point of view and operationally, who are working to help with the policy and to give advice on what we think is important and the bits we would not want to lose if we can help it.

Q54 **Lord Watts:** A framework already exists for joint investigation teams, and is in place for Norway, Switzerland and Iceland. Would that system be suitable for us? If it was, what would be lost by having to move from the present situation to that system?

Alison Saunders: I said earlier that you do not necessarily have to be a member of Eurojust to have joint investigation teams. We get a lot out of joint investigation teams because they help us to make sure that we collect the right evidence. It is much quicker than doing individual letters of request because you collect it all together and it is there; it helps with issues around jurisdiction. It also helps us significantly with issues around disclosure, which we might have if we were doing it bilaterally.

We would need to look at our legislation to make sure that it very clearly allowed us to undertake JITs if we were no longer a member of Eurojust. The legislation refers to having the 2000 convention, which, as I understand it, would go. We would need to check that. There is also a bit about making sure that other parties have the same legislation that allows us to undertake JITs. As I understand it, Norway and Iceland can ask for a JIT. You can still ask for it, but the bits that would be difficult would be around the funding and making sure that we have the legislation to do it. It could be done.

Lord Watts: Would there be any loss from adopting this system compared with the one that is in place now, if you could get over those couple of problems?

Alison Saunders: I probably do not know enough about how much those countries use them. I am not aware of a great many of them. I am not sure if that is because there is something stopping them or they just do not have the cases. As I said, we are one of the biggest users of JITs.

Lord Watts: In your department or somewhere else, is somebody opening those discussions with other parties to see how the system works and what the problems are? Are people working on this as we speak?

Alison Saunders: Yes. The Home Office will lead on the JHA issues, which will include all of this. It will do the negotiations and lead on policy. We are working very closely with it and are linked to the group looking at how this should happen. These are all the questions that we would look to answer and find answers to. We would certainly not want to go into anything that will not work.

The Chairman: You have already touched on the European arrest warrant, but Lord Condon wants to ask some more detailed questions.

Q55 **Lord Condon:** As the Chairman said, you have already touched upon this, but perhaps you could rehearse for us the importance of the European arrest warrant. You touched on the limitations of the European Convention

on Extradition and so on. Could you give us more of a flavour for the importance of European arrest warrants and what seem to be the limitations of the current alternatives?

Alison Saunders: Yes. Perhaps it is easier to refer to a couple of case studies. I mentioned Osman, the 21/7 bomber, but we have had others. There was a fraud case, which was all about money laundering, fraud and false instrument offences—a person who purported to be a lawyer in high-profile criminal proceedings. Surprisingly enough, he was not a qualified lawyer and he had stolen large sums of money. In January 2011 we issued an EAW. He was arrested two weeks later in Spain, and seven days after that he was extradited to the UK. He was subsequently given a sentence of 14 years' imprisonment as well as confiscation.

In relation to the point I was making about SIS II and the link with the EAW, we had a case recently of the murder of an elderly couple. We knew that the suspect had fled. His car was found at Dover by the ferry going across to France. All our intelligence seemed to suggest that he was going to France, and possibly elsewhere. Because we put the EAW out on the SIS II database, we found out days later that he was in Luxembourg. There was no intelligence to tell us he was there. We would not even have thought to look there, but it transpired that he was in Luxembourg. Again, we were able to extradite him back to this country, where he is currently standing trial for the murder of two people. We might have missed that had we not had the availability of both the EAW and the SIS II database.

The EAW came in because we were concerned about delays. As I said before, when we looked at casework, either outside the EU or prior to the EAW, we were talking months and years rather than the days and weeks we currently have. It is much quicker and more effective. When we compare our data, it is three times faster to use an EAW and four times less expensive; and that is apart from the really important bit about getting foreign nationals back from their home countries, which we would not be able to do if we did not have the EAW.

Lord Condon: As an alternative, is there anything that could be tweaked or elaborated that would get us anywhere close to the EAW, or will it have to be something totally bespoke?

Alison Saunders: If there was a gap, we would fall back on the 1959 convention, but there are issues. We would have to make sure that our legislation was in place to enable us to do that, and that bilateral relationships were there. When some European countries adopted the EAW, their domestic legislation repealed the convention. If they are in that position, we would have to start a whole bilateral agreement with them and make sure that they had the right domestic legislation as well.

Lord Condon: It sounds a lengthy process.

Alison Saunders: I do not know how long it would take. In other countries that have something similar to the EAW—Norway and Iceland—it looks on the face of it as though it is exactly the same as the EAW but what it still has in it, which would worry us, is the nationality bar. It still allows member states to invoke the nationality agreement, which is what we get around

with the EAW. We do not have that with the EAW. That would be the concern, but Norway and Iceland on the face of it look as though they have got close to the EAW.

Lord Condon: You touched on cost implications earlier. Is there anything more that you can tell us about the cost implications of not having the EAW?

Alison Saunders: We have a single extradition unit that helps us around comparing and contrasting. That looks about four times more expensive than EAWs. EAWs are quicker; we do not have to legislate it all again because it is about mutual recognition of the orders made in a member state, or member states recognising the orders made here, as opposed to challenges through the UK courts. It is four times less expensive for us.

Lord Jay of Ewelme: I want to come in on one point relating to the nationality bar. One of the criticisms of the European arrest warrant that one often reads in the papers here is not so much about the Poles coming here but about Brits going elsewhere. I think I am right in saying that there are 20 or 30 cases a year of British citizens being extradited. How many of those, if any, would you think are what one might call unjustified, in the sense that it would not happen if it was the other way round? In the press, it is often used in a rather unfortunate way to bring the whole question of the European arrest warrant into discredit. I am trying to get some sense of the proportion of people that you would have some doubts about yourself.

Alison Saunders: I probably cannot give you a figure for that, because I do not look at all of them myself. To give you a rough figure, we extradite just over 1,000 people a year from the UK, and fewer than 5% of them are UK nationals—which probably accords with your figure.

Of course, since 2014 or 2015, we have put in safeguards because of some of the concerns that you articulated. There is now a proportionality bar. There was concern that people were being extradited for low-level offending, for which we would not seek to bring people back. There is a proportionality bar and it is exercised by the National Crime Agency. I know that it exercises that bar and refuses some extradition requests.

Likewise, there is a forum bar. Again, if it is something that has some connection to the UK we can say—the court can do this—that the forum should be in the UK and not elsewhere. There is now the ability to do a temporary transfer. That is not a full-blown extradition; it means that people can come across and talk to the suspect before they make a decision about whether to apply for extradition. There are various things, including human rights, which can cause a court possibly to stop an extradition. They were all put in place to give reassurance that we were not just extraditing people when we would not seek to do so ourselves, or where we thought it was wrong.

Lord Jay of Ewelme: Has that, in effect, reduced almost to a minimum the risk of people being extradited abroad for reasons that you would think are unjust? Has it almost become a non-problem now?

Alison Saunders: Yes. I have not been aware in the last year or two of major issues in relation to any extradition of a UK national elsewhere.

The Chairman: What about the other way? What about an EU national being extradited this way. How would that be affected?

Alison Saunders: Again, because of the EAW, we have been able to do exactly that—for example, the case I mentioned earlier. We have some cases with non-EU states where we are seeking to extradite their own nationals but are currently blocked from doing that because they refuse to extradite their nationals. We know that, in 150 cases where we have managed to get EU citizens back, if we had not have an EAW, they probably would not have come because of the nationality bar. Hopefully, that makes sense.

Q56 **Lord Soley:** I want to turn to databases and the data information that we share on things such as criminal records, Prüm, passenger names and things of that nature. You have touched on this already, but we are struggling with the issue of how many of those are really critical to your work. Is it possible to give some indication of which of those are vital and would make a big difference to the safety and security of people in this country if we did not have them? I will come to what the alternatives are after that, but could you deal first of all with listing how crucial they are?

Alison Saunders: These are very much in the policing field. I know that you have already had Dave Armond and Steve Rodhouse from the police to talk about them. They are very much investigative tools that the police exercise rather than prosecutors. As I said at the beginning, it is all part of a package. What is important is that we are able to do investigations and get information, which allows us to prosecute and either extradite or seek extradition and then deal with possible sentencing and confiscation. It is very much a package.

The bit that we have the most direct contact with is SIS II, which we use on extraditions. I gave an example of where, without that, we probably would not have been able for a long time, if at all, to find the person we were seeking to return to this country to stand trial here. Knowledge of foreign convictions is really helpful for us, not just for understanding if a person has previous convictions but in relation to bail. If we have people in this country, or who are returning to this country, knowing what convictions they may or may not have helps us to decide on the bail position. Equally, it gives us a risk assessment; the risk if our people have to go and arrest them, or what it will mean if we bring somebody to court. Those are police investigators' areas, but they overlap significantly with the prosecutorial world.

Lord Soley: Let me take the criminal records information system. There have been a number of cases over recent years when people have committed very serious crimes here, including murder, and we did not know about their previous convictions. It should trouble us, if we cannot replicate that, which brings me to the second part of my question. It seems a rather vital area, and I take it that you are saying it is.

Alison Saunders: Yes.

Lord Soley: If, as a result of coming out of the European Union, we lose that right, what do we put in its place? Is there an agreement? Would we have to have an international agreement with the European Union? Would we go into memorandums of understanding with individual states? How do you see that moving forward, again bearing in mind that we are looking at very serious cases?

Alison Saunders: Yes. We would want to maintain the capability, both for law enforcement and for prosecutors. This again will be for the Home Office to negotiate. If it can be done on an EU-wide basis, that would be the easiest and most sensible way. You would get buy-in from all 27 countries. If you cannot do that, it would have to be done on a bilateral basis. The databases are there. It is about having access to them. My law enforcement colleagues who appeared before you made the point that opting into Europol is really very important because it gives us access to all the databases without having to do any bilateral agreements.

Lord Soley: If you had a bilateral agreement, it would have to cover issues such as privacy protection rights, and presumably those of the country we were doing the deal with.

Alison Saunders: Yes, I presume so.

Lord Soley: If we go down that road—it is obviously one of the options—it would invariably make it more difficult to know if a person had very serious convictions, whatever system they had come here under.

Alison Saunders: The one thing that is clear is that having such information really does assist us and helps to protect the UK and the citizens of the UK. It means that we can bring people to justice knowing their full background and that we are able to put information before the court that might impact on their bail status. It is really important, but how we maintain it will be a matter for others to make sure that they can negotiate. What I am very clear about is the importance of it.

Lord Soley: What about the alternative of having what, in effect, would be an international agreement with the European Union? I may be wrong, but things such as the passenger names list would be relatively easy to do because it is a fairly finite system.

Alison Saunders: If we can negotiate an agreement with all member states together, that is much better than a bilateral one, where you potentially get into very differing standards. If you can do it with the European Union as a whole, it is much easier. Of course, a lot of the justice and home affairs issues, such as EAWs and mutual recognition, help not just us but other member states as well—so there is mutual benefit.

Lord Soley: Would I be right in thinking that your preference would be an overall agreement with the EU on databases and data information rather than trying to do it individually?

Alison Saunders: It makes it much easier to negotiate with a body and to have an agreement that covers all 27 rather than 27 bilateral agreements.

Q57 **Lord Jay of Ewelme:** In your introductory statement—I think I am quoting you correctly—you said that a substantial majority of cases that you deal with have international connections. I have to say that I was surprised by that. Could you say a bit more about that and tell us what percentage of the cases that you deal with have European or EU connections? I am trying to get a perspective on that.

Alison Saunders: It is more anecdotal than fact based. We just did a quick check with our serious fraud division, which most people would tend to think of as much more nationally based. In fact, it sends between 350 and 400 letters of request for evidence abroad every year. I gave an example of where we used the European arrest warrant to extradite a fraudster back to this country.

We use them in some quite surprising crimes. You might think that they are all very national, but they are not. Our organised crime division obviously deals with National Crime Agency work, and that pretty much all has an international element—drugs being brought in, people trafficking and gun smuggling. It is not just from Europe. We know that drugs come from beyond Europe, but the routes in are through Europe so we need that evidence as it comes through. People trafficking is not just a wider-world thing but specifically European countries as well, where we need evidence. Quite often, we have joint investigation teams in those cases. Obviously there is terrorism, with people moving across Europe to Syria or coming back that way. We use evidence there, particularly following some of the terrorist incidents on mainland Europe.

It is a widespread phenomenon that more of our crime is international, as it becomes more serious and more complex. Those are the specialist divisions, but if you are in an area dealing with drugs cases or people who are committing offences here and have gone back, you need information from abroad. In the murder case that I referred to earlier, we found the suspect in Luxembourg. Although the murder was committed here, it had a European element.

Lord Jay of Ewelme: Would you say that a substantial majority have a European connection as well as an international one?

Alison Saunders: Yes. When we looked, certainly the numbers of extraditions are higher for Europe than they are for the rest of the world. The same is true for a lot of our requests for legal assistance.

Q58 **Lord Jay of Ewelme:** That is very helpful; thank you. We have covered quite a lot of criminal justice instruments in the course of the discussion so far. You have talked about the ones that are the most important to you. Are there any that we have not mentioned and have not discussed that you want to draw to our attention? We cannot cover everything in the report we are writing, but we want to cover those that matter most. You mentioned, for example, mutual recognition of proceeds of crime in your introduction. That is not something I had come across before. Are there other things you want to draw to our attention so that we can incorporate them in the report?

Alison Saunders: The main one is mutual recognition for proceeds of crime. Obviously, proceeds of crime is important for us, not just for recovering the assets of the people we have convicted but when foreign criminals may have their assets based in the UK. From a UK security and UK plc point of view, we want to be able to deal with that as effectively as we can. Mutual recognition for proceeds of crime has been relatively recent, but we have already seen an increased number of requests from European countries asking us to freeze assets here. They come from countries where we have never had requests before, which is interesting. We think that the process is much simpler, much easier and much quicker.

In relation to that, currently we have 69 requests for restraint and we have £170 million frozen in the UK. They are assets that we have been asked to freeze by other European countries. It also means that we can ask other European countries to do that, and we have. Enforcement is quicker because we enforce the foreign court order and do not have to go through our own courts again. It is similar to the European arrest warrant. It is cheaper, quicker and more effective. The other slight advantage to it is that in cases where we are recovering more than £10,000 it is mandated that you split the proceeds that are recovered 50/50—so there is a slight financial incentive as well.

Lord Jay of Ewelme: We have not talked about the European investigation order, the European supervision order or prisoner transfer framework decisions. Are any of those important to you?

Alison Saunders: The European investigation order will be, depending on how it develops. It follows the EAW and mutual recognition for the proceeds of crime path, where we recognise foreign orders and they recognise our orders, so it makes it quicker and more effective, with timescales applied. That would be important.

Lord Jay of Ewelme: If we were to leave and therefore were not part of them, are there alternative mechanisms that you can envisage, or is that going to be a headache?

Alison Saunders: There are always alternative mechanisms. The reason we have EAWs and mutual recognition is that it is quicker and more effective and, therefore, particularly for prosecutors, less resource intensive. If you are a victim of one of those crimes where we are looking to get somebody back, if we can get them back within weeks or months and see the case go through court, it is much more immediate than having to wait years, when lots of things may have changed between times. We are all about making sure that justice is speedy and more immediate so that we get the right result in court.

The Chairman: We see the force behind its being speedy and justice being done, but are there any cost implications of alternative arrangements?

Alison Saunders: Yes. We know that the European arrest warrant is four times less expensive for us as prosecutors than non-European arrest warrants. If we had to go back, the 1,000 we extradite would potentially cost us significantly more to deal with. Likewise, we might potentially have

to find the money we receive from Eurojust for JITs. Likewise with the proceeds of crime, the whole issue about mutual recognition is that we do not have to test it all through our courts. If there is a challenge, it goes back to the requesting state to deal with. That means we do not have to do it and it is much cheaper and quicker.

The Chairman: Is it something that you are doing yourselves? Is the Home Office costing this?

Alison Saunders: We are working with the Home Office to make sure that we advise it on this. We have some estimated costs that we have provided to the Home Office.

Q59 **Lord Watts:** I do not know whether you can give us any figures on this: what sort of scale are we talking about in relation to the seizure of assets from crime? How much does the UK receive and how much is sent out? Are we talking large amounts of money?

Alison Saunders: I will probably have to come back to you. I can look at some figures that we have, but the figure I had for this briefing was that we have currently frozen £170 million from 69 requests. What I can do is go back and give you the figures for how much we have asked to be frozen abroad in Europe, and how much we have recovered.

Lord Watts: On the ability to seize assets from each other, is there any underpinning European legal requirement that we would have to join, subject to a court decision in Europe?

Alison Saunders: We changed the procedure with Europe quite recently. The point about mutual recognition is that it now means that we do not have to litigate it through our courts. We recognise a foreign order asking us to restrain or enforce the confiscation order. Likewise, they recognise ours. That already makes it much quicker and more effective. We think more requests are coming through because it is quicker and more effective. It is a much better system than the previous one, where we had to litigate it almost in each country.

Lord Watts: For us to achieve something very close to that would mean us ceding some sovereignty over the legal decision.

Alison Saunders: It is like the EAW, where we have protections so that we can make sure that we are not asked to send people to countries where we would not ordinarily do that ourselves. There are protections. If we have a confiscation order here and we know that the assets are in Spain, and our courts say that you can confiscate those assets and enforce it by forcing the sale of the property, it means that Spain will do that. Spain does not question our order. It is one of those issues where there is a mutual recognition, so it works both ways.

Q60 **Lord O'Neill of Clackmannan:** The role of the Lord Advocate in Scotland is very similar to yours. How do you liaise with them and what would be the consequences of exit? I would imagine that both of you would be leaving, but are you liaising with them as part of the exit preparation programme?

Alison Saunders: Yes. Not surprisingly, I have regular meetings with my Scottish counterparts and with those in Northern Ireland. We have already had some conversations and we are working with their offices to advise and inform the Home Office, which will be conducting the negotiations. We are making sure that we talk to our counterparts in Scotland and Northern Ireland.

Lord O'Neill of Clackmannan: This is an area where devolution is in a slightly different form because the legal systems pre-existed devolution and have certainly been around longer.

Alison Saunders: Yes. We have very close relationships anyway; we meet very regularly.

Q61 **Baroness Pinnock:** I have a couple of questions. I have read in various places that all this discussion about the European arrest warrant will become less significant if free movement of people is significantly curtailed. Have you any thoughts on that?

Alison Saunders: You will not have people moving, so you will not need to have the European arrest warrant?

Baroness Pinnock: Yes, basically that is the argument I read. It was not a sophisticated argument, I have to say, but I thought I would put it to you.

Alison Saunders: We know from some of the extraditions that we request anyway that, even if there are restrictions on people, they find ways around them. So you still need to have the ability to extradite or return people to this country. What is important for us is to make sure that we have an effective system that allows us to do that.

Baroness Pinnock: So it is a rubbish argument.

Alison Saunders: Yes.

Q62 **Baroness Pinnock:** Good. That has sorted that one out. The final question on behalf of the Committee is this. When Brexit occurs, what will we lose in terms of influence on forward policy-making and the areas where we can get together and make sure that things go in the right direction for us as a nation?

Alison Saunders: That will be very much an issue for other people rather than for me. What I can reassure the Committee about is that we have very good bilateral relationships with many of our European colleagues, and through Eurojust. As I said, not only did I meet the Swiss A-G when I was at the International Association of Prosecutors, but I met the President of Eurojust and we have good relationships. We have prosecutors in some of the European countries but not all; nor could we, because there would be a cost issue in putting a prosecutor in each of the 27 member states and it would be quite difficult. Where we have bilateral relationships, we have very good working relationships with our European colleagues and we will continue to make sure that that happens.

Lord Condon: In relation to the evolution of Europol, Eurojust and the European arrest warrants, all of that architecture has really been facilitated

by the overarching jurisdiction of the European Court of Justice. Some witnesses have suggested that once we sever the links with the European Court of Justice it will make it incredibly difficult for us to negotiate any sort of bespoke deals that get us back towards the status quo. Do you share that anxiety around the impact of severing links with the European Court of Justice?

Alison Saunders: That is a really interesting discussion, which I have to say I have not quite thought through. If we are not influenced by European Court of Justice decision-making, so we do not have to do what it says because we have removed ourselves from its jurisdiction, but 27 European countries are, it means that, if we were doing bilateral agreements or an agreement with Europe, we would still have to follow the standards. For example, if the European Court of Justice decided that you had to have a particular standard of justice in place before you could use information, I imagine we would still probably have to be influenced by that, because the European countries that were affected by it would not sign the agreement.

Lord Condon: We are going to have to write it into bilaterals or some generic, to give reassurance that, although they may be parallel systems of jurisdiction, they are compatible. One of my fears is that on something like Europol someone will show a red card and say, "No, you cannot play in this aspect of Europol because you are not subject to the European Court of Justice. It is being subject to its jurisdiction that gives us reassurance that Europol is under control. You want to play but you do not want to abide by the rules".

Alison Saunders: One would hope that it did not come down to that sort of argument. We are not a country that has said, "We are not abiding by human rights"; we would still have protections in place for citizens who are tried here. We have a very good record on criminal justice and the rule of law. But I can see specific issues where it may become a real issue.

The Chairman: There are no more questions from us. Thank you very much indeed for your very clear and comprehensive responses to our questions. We are very grateful to you. If, after reflection, there is anything further you wish to send us, please feel free to do so. If you can send some of the figures that you suggested, it would be very helpful.

Alison Saunders: We will certainly come back to you on the figures.

The Chairman: We are very grateful to you for your evidence.

Bill Hughes QPM CBE, Former Director-General, Serious Organised Crime Agency and Lord Timothy Kirkhope of Harrogate– Oral Evidence (QQ 19-25)

Evidence Session No. 3 Heard in Public Questions 19 - 25

Wednesday 12 October 2016

Watch the meeting

Members present: Baroness Prashar (The Chairman); Baroness Browning; Lord Condon; Lord Cormack; Baroness Janke; Lord Jay of Ewelme; Lord O'Neill of Clackmannan; Baroness Pinnock; Lord Soley; Lord Watts.

Examination of Witnesses

Lord Timothy Kirkhope of Harrogate; Bill Hughes.

Q19 **The Chairman:** Thank you for your time this morning. I am sorry that we are running a few minutes late. I welcome you, Lord Kirkhope, and congratulate you on joining the House; and I thank you, Mr Hughes, for your time this morning. This session is being webcast, so it is on public record. You will be sent a transcript of what you say for correction and if, after you have read it, there is anything you wish to add, please feel free to do so.

We will start by looking at the general issues, because we are examining aspects of UK-EU police and security co-operation. It would be very helpful if you could briefly set out for us what you regard as the main priorities that the Government should look to pursue in this area in the course of the negotiations on the UK's future relationship with the EU. In answering that, perhaps you could say how much these priorities overlap with the recent opt-in that we had on the 35 provisions, and, of course, what post-Lisbon measures and tools you think are necessary. Who would like to start?

Lord Kirkhope of Harrogate: Thank you very much for inviting me. I am something of a hybrid as we speak, because, having ended my term as a Member of the European Parliament only at midnight last Wednesday and hoping to be introduced tomorrow to this House, I am, I think for the first time in nearly 30 years, not dependent upon a Conservative Whip. As some people know, I spent much of my time actually whipping others in the Commons. This gives me the opportunity, if I were so minded, to be very mischievous this morning. However, I will not; I will restrain myself—well, we will see how we go.

First, I refer back to Protocol 36 of 2014, which you mentioned, and the time when we opted out of all the justice and home affairs provisions. In many cases, that was exactly the right thing to do, because many of them

were outdated or redundant. But within those measures there were a considerable number that were enormously important to our security. Therefore, I was particularly happy when we opted back in to the main measures that we needed to retain—the 35 measures that you referred to. While we were in that particular process, it was quite clear that the measures we opted back in to could not be compartmentalised. Yes, they were measures that stood, in a way, on their own, but they were absolutely part of a very complex network of arrangements, agreements, understandings and controls that went through the entire area. I referred to it at the time as a spider's web. You will forgive me if I just say that a spider's web is a very difficult thing to handle, but it is somewhat better if you are the spider than if you are potentially the fly.

We still have that exact situation on our hands right now. The number of matters that we have opted into has of course grown considerably since Protocol 36. Indeed, this country has one of the strongest records of opting into major police and security co-operation areas and legislation, and we have, in many instances, been the protagonists in creating pan-European provisions. An example of that was my own PNR, the EU passenger name records directive, which we got through after six and a half years of work. We were the driving force, not only because I had the honour of being the rapporteur but because the Government were fully in support of this and, working with the other Governments within the EU, considered it to be a very important tool for our security. The exchange of that PNR data is something that we really must retain. Until I left on Wednesday, I was again playing the controlling part in the European Parliament on both the new Europol regulation and also the forthcoming ECRIS—the European Criminal Records Information System, which you may well have heard about this morning already. Both were, and are, vital in terms of our internal security.

The new security union that has been established by the Commission, and supported now by the Council, is very important, because it was about to launch into a comprehensive review and to bring even closer together the pan-European co-operation and confidence measures that are necessary to exchange information. The interoperability and the interconnections between our law enforcement agencies and our intelligence services are also absolutely vital.

One also has to consider that, although the country is not a full member of Schengen, we have signed up to a considerable number of the protocols within the Schengen agreement. We are already part of the co-operative elements of Schengen, and have been for a long time.

Looking ahead, because we are part of so many of the components, in order to operate outside of these arrangements we would need to co-operate bilaterally with each individual nation. I do not think that it is very easy for us to look at a bulk purchase, as it were, because in the same way that this country has always been determined to keep ultimate control over its home affairs, its policing and its intelligence agencies, so too are other countries, many of whom have copied our rules and systems. I am very proud of that fact. Many have taken our standards for themselves but now maintain their independence in relation to them. They are prepared to co-operate to have a system that works with confidence, but that has to be under a structure

of some kind. Currently, that is the EU and, ultimately, as we know, the either much-loved or much-derided European Court of Justice. So the alternative is to have no relationship with the databases or agencies at all. We would cut ourselves off from information which, currently, can be obtained through these new developments with the click of a button.

Just to end my opening remarks, the priority, as far as I am concerned anyway, is that we really have to make sure that, one way or another, the UK and the British people are protected and provided with an equal level of security to the previous arrangements that we have entered into over many years in the European Union. I believe that that is the big challenge for our Ministers in the discussions that are now going to take place.

Bill Hughes: Thank you. The label in front of me is a little out of date, I am afraid, as the Serious Organised Crime Agency was morphed into the National Crime Agency some years ago. I retired as the director-general of the Serious Organised Crime Agency in 2010. I explained to your secretary that I am a bit of a Jurassic policeman, because I have been retired for six years. The background that I hope to bring today is that I was the director-general of the National Crime Squad and under-director-general of SOCA. My task, when I started in January 2001, was to go through the implementation of the Tampere convention of 1999, which led to the formation of Europol and the European Police Chiefs Task Force. That was my role right through to 2010. That was the time during which we put into place all these measures that now exist. If you are interested, I can tell you what it was like before; it will not take me long.

The Chairman: That would be very helpful.

Bill Hughes: It was a labyrinthine exercise. It was time-consuming and a maze of hoops and hurdles trying to get anything done with our colleagues in Europe. That was not because of difficulties or trying to be spiteful; it was simply that there was no machinery by which to do it. It was all done on the basis of who you knew and who you could ring up. That is not a solid basis for law enforcement, co-operation and intelligence sharing. It leads to all sorts of difficulties. So, to be out of Europol—which started originally as basically a unit and has now become an agency of the EU—is a vital issue. We must remain a part of it. It was crucial right from the start that we had an intelligence unit or agency that could build on and disseminate information and co-ordinate that around the whole of Europe and our member state partners.

The European Police Chiefs Task Force, with the UK and the Dutch, brought in the COSPOL project, which led to what is now called EMPACT. That is a system whereby a member state, or member states, takes the lead on specific areas that are identified by Europol in its strategic crime analysis of the major threats to Europe, and where they can all come together. You have a lead country and other countries work with them. It is a very constructive arrangement and was a huge leap forward. It is all based on the intelligence information that Europol supplies and co-ordinates for us through the national units based at Europol. We have one of the biggest national units at Europol, which consists not just of the NCA but of people from Scottish forces, HMRC, et cetera.

Although I retired six years ago, part of my background is that I have been working as a strategic adviser with RAND. We did two reviews into Europe; one was one the effects of the Lisbon treaty on Europol and its operational effectiveness and the second was on how member states deal with serious organised crime. We wanted to pool some of that together and look at the various methodologies and how they could be improved. The crux of that second review is that intelligence and information is the key. We are part of the SIENA arrangement, which is—I refer to my notes—the Secure Information Exchange Network Application, by which information flows between the member states. The last time I looked at that, the UK was using 40% of that capacity to use that information and flow it around. It is a major system for keeping law enforcement on both the continent and the UK up to date about what is happening and about who is coming into the country, and that then supports the Schengen information system. Again, it was a major coup for the UK to achieve that because, not having signed up to the Schengen acquis, there was a lot of bad feeling, with people asking why we should then have access to the SIS because it was only for those in the Schengen acquis.

So we have the precedent of accepting free movement and we were then allowed to have access to the Schengen information system. For me, that is the risk. The Schengen information system and its new development are, again, absolutely crucial to the way that we share intelligence. Otherwise, we will end up being a little island off the continent with no access to information and intelligence about who is likely to come to us and, more importantly, about what happens to our criminals when they go across to the continent. That cutting off would be a very serious and severe constraint on the way that law enforcement operates in the United Kingdom. I can take that further on other aspects if you want but I am conscious that there are other questions.

The Chairman: Thank you for that. It is useful to get a retrospective view.

Q20 **Lord Condon:** You will have a sense of some of the evidence given by David Armond and Stephen Rodhouse. Perhaps I could encourage you to give us your views on Europol and Eurojust outside of the EU. You will have heard that we have not yet signed the new regulations in relation to Europol or Eurojust, so we would probably have faced some of the challenges that are facing us anyway. Given what you heard from the previous witnesses, is there anything more that you want to add about the challenges outside full membership of Europol and Eurojust and about what might be the best compensating mechanisms to get us as close as possible to the existing relationships that we have in Europol and Eurojust?

Lord Kirkhope of Harrogate: Perhaps I may start by paying a well-deserved compliment to Rob Wainwright, who is our British director of Europol. He has done a magnificent job. In a way, that almost takes me to the point about the importance of Europol to us. I mentioned in my opening remarks that many of the British standards of policing, for instance, have been applied in Europol partly because of his leadership. But of course we have lots of other officers who are involved with the activities, as you know and as you heard in earlier evidence. We have been very well served in Europol.

A lot of the things that we have discussed in the European Parliament—legislative Acts and so on—have been matters where Europol has competence in relation to both its core activities and the information exchanges. Information is the key point in all this—getting information quickly and dealing with it quickly, and in a way that is not confused or delayed to the advantage of criminals and terrorists.

I think that there is a problem here. We are members of an organisation with 27 other member states, with the same systems, the same rules and the same standards. Much like our involvement with NATO or even the World Trade Organization, we get things done more efficiently and quicker with the same format. That has to be to the advantage of law enforcement. On security, there are modern technological challenges. We all know about the growth in cybercrime, which knows no borders. Whatever borders we create, it does not know any borders. We need speed and efficiency in dealing with the detection of crime.

What will happen when we leave? I have to say that it has taken five to seven years to negotiate any Europol co-operation agreements—for outside, third countries that is the average time it has taken. It takes even longer when we are dealing with the exchange of data—the actual specifics—where nine to 12 years is an average. Also, at the end of the day, those third-country agreements do not provide for the same level of co-operation or access, because that component of confidence cannot be fully implemented.

So we must look at Denmark, which may have already been mentioned this morning. Denmark had a referendum based on justice and home affairs and it decided to opt out completely, remaining a member of the EU but opting out completely of the justice and home affairs competences of the EU, including Europol. A short time later it is asking, "Please can we come back to the Europol arrangements?". The Commission's latest comment to Denmark is that a third-country co-operation agreement will not be on the table for it for the foreseeable future. A considerable problem is growing, politically, in Denmark, and I think I ought to mention it.

So if we are not a member of the EU or the EEA or a similar sort of grouping, I think that the only other way we can deal with this and continue to be part of or linked to Europol is possibly through Interpol, which, again, I think was mentioned briefly in other evidence.

However, I would caution against that because the arrangements between Europol and Interpol are not totally in place in a way that would allow for the fast exchange of information, as I understand it. The systems being deployed between Europol and Interpol are not co-ordinated or in any way directly compatible. But we could do something like that. In the end, speed and timing are probably more important than the outcome. My feeling is that it will be very difficult, as I said before.

Bill Hughes: The Europol regulation was mentioned when I was listening to the earlier evidence. That is now vital if we are to take this forward. Denmark is suffering because it is not part of Europol. We are part of

Europol now, and if we remain part of Europol that may allow us to have a smooth transition to whatever comes after Brexit.

Regarding the type of arrangement that exists, Europol has two types of non-EU member partners. One is strategic co-operation partners, which include Russia, Turkey and Ukraine. There is no transmission of personal data, for obvious reasons, and there are limits and constraints around that. The operational co-operation partners include the United States, Australia, Canada, Colombia, Norway, Switzerland and most countries in the western Balkans. There is also an international co-operation agreement with Interpol. The problem with Interpol, of course, is that it is a post office that deals with 190 member countries of the UN. Sharing information with all those 190 countries is not always in the best interests, so you have to be careful and circumspect.

If we sign up to the Europol regulation and remain part of Europol, that will enable us to start thinking about a smooth transition, which is crucial. If the Government do not get on with it, the time will be lost. I am amazed that it has to be done before next year and then the negotiations, whatever they are, can start.

The issue that you need to be aware of is that operational co-operation partners are part of the club but they are not in the top tier. They get certain access to information and intelligence and the ability to share that, but they are not on the management board and have no say. They can submit requests for searches. I think that earlier somebody asked David Armond whether those countries that are not part of the EU get a fast service. Well, it depends. There has to be almost unanimous agreement that the different countries can be supplied with information. It is very much more complicated and more of a rigmarole to get that type of operation working. It works well and those third-party third countries find membership of Europol very useful.

I think that David Armond also picked up the point about the "Five Eyes" that we set up under SOCA, saying that that was how the Americans, in particular, found it most expedient to have a relationship with the EU through the UK. They saw us as the partner of choice and as the honest broker in all that. This could cause a real problem with the sharing of information with our "Five Eyes" partners to and from Europe. They have a lot to do with Europe and, if we are on the outside, that could be difficult.

Lord Kirkhope of Harrogate: Can I add one more point about Europol? I do not think that we should ever feel that if we leave the EU we can remain part of Europol per se. It would be ideal, I suppose, but the big problem is that Europol is accountable in a number of ways: to the European Parliament and in some ways to others, including acceptance of the competence—in interpretation terms at least—of the ECJ. In many people's minds, one of the great advantages of getting out of the EU is that we get rid of the ECJ and its competence and control over us. However, the truth of the matter is that, even if we leave the EU, the ECJ still continues to have controls on organisations such as Europol that are very difficult to shift.

Lord Condon: I think that is the very point, Lord Kirkhope: even if we become the most favoured operational partner of Europol, it will still be very much second best because of what you and Bill have just described. Would you agree it would be very much second best?

Bill Hughes: Absolutely. It would be suboptimal. We have a fantastic working relationship that works very well. The UK is seen as a major and leading partner. That will change.

Lord Condon: The same considerations apply to Eurojust. Is there anything either of you would like to add about Eurojust in particular?

Bill Hughes: On Eurojust, another issue that came from Tampere especially was trying to deal with all the different legal systems that operate across Europe, which was another nightmare for law enforcement officers in trying to work out about warrants, arrest procedures, detention, prosecutors and all the rest of it. Eurojust, with its group of magistrates and judges from all the different countries, was able to find a good, proper and efficient legal route through all the issues that became difficult processes. Rob Wainwright, who I have kept well in touch with for a long time—he is a very good friend of mine—makes the point that we have systems that have become industrialised. They are routine. In the past, they were ad hoc, piecemeal and dependent on who knew who. That is not the right way forward.

Lord Kirkhope of Harrogate: I would just add on Eurojust that this country has been enormously successful in many of the things it has stopped happening in Europe. We should never underestimate our abilities as we have shown them. In particular we have consistently opposed the European Public Prosecutor that comes through the Eurojust process or organisation for good reason. Indeed, we have had considerable support from other countries that have come to realise this is not the way they would like to go forward. If we are not members of the EU and not subject to Eurojust in any way, we will have no power over what is put in place. We have had massive influence in an area of significant importance to us and to other countries as well.

The Chairman: Lord Kirkhope, can I pursue the question of the ECJ? Are you saying in effect that the National Crime Agency wants full membership of Europol and that is not realistic given the ECJ issue? I was not quite clear what you were saying.

Lord Kirkhope of Harrogate: Yes, we will have to deal with the question of the competence of the ECJ. We will have to anyway. Although they are not the same things at all, if you take a look at the Supreme Court in the United States, it has competence, but a lot of people think it is the ultimate court of the United States. It is, but it is restricted to interpretation of the American constitution. People often forget that. Similarly, a lot of people in this country think the ECJ is a European court that will deliberate on every single case ultimately above our own Supreme Court, which is nonsensical. It is limited in what it can interpret and decide upon based on the European treaties. That is it, but of course it also has a right relating to European agencies and organisations because of that.

Somehow, if we were not in the EU and the ECJ's competences are not removed from Europol or any other agency, we would have to find a way in which to try to absent ourselves from the ultimate determinations of the ECJ. I do not think anyone has thought enough about this. I am sure your Lordships are thinking about it because you wrote a very good paper on post-Brexit not very long ago, which raised various questions. This is an important matter that I am afraid we just cannot avoid.

Q21 **Baroness Browning:** Can I ask you about the UK's decision not to opt in to the latest Europol and Eurojust regulations? Would that mean that we would have faced some of these issues anyway, with or without Brexit? How are you reading that?

Lord Kirkhope of Harrogate: You are absolutely right, of course. We would have faced a very similar position to Denmark. The only difference here is that because we are members of the EU with an existing UK opt-out situation, we would of course, as we have done on various other things, have been able to opt in at a later date. We would not have been ruled out of opting in, as the Danes have been as a result of their decision. We could have changed our mind, and probably would have when it became obvious to us that opting in was the right course.

We have to decide finally on this by, I think, 17 May next year. In any event, we have a situation which is being hotly debated. Clearly, as you would understand, I am on the side of saying we should be opting in here as we have opted in to so many other measures. You are quite right that we would be faced with a not dissimilar situation, except that outside the EU we would not have the ability to opt in to this in future.

Baroness Browning: I am going to ask a question that the Chairman will probably disapprove of. Looking at the sensitivity and importance of these issues, do you draw any comfort from the fact that the Prime Minister has come hotfoot from the Home Office and will have a very good understanding of these matters?

Lord Kirkhope of Harrogate: That is very naughty of you.

Baroness Browning: Yes, it is a naughty question.

Lord Kirkhope of Harrogate: As I said, I am in this lovely situation at the moment. All I would say is that I and my colleagues worked very closely with the Prime Minister when she was Home Secretary. I worked extremely closely on PNR with her. She has been fantastic. Also, she has been responsible for some very sensible decisions taken from the Home Office to opt in to a whole lot of measures, some of which were controversial in the House of Commons. You know that and I know that. All I can say is that I am sure the Prime Minister will use her usual discretion and common sense on this matter and will look at the evidence, including the evidence that might come from your deliberations, before we finally close the door on that.

Lord Soley: I do not think you will get into trouble for that answer. You might even get a promotion.

Lord Kirkhope of Harrogate: It is a bit like doing next week's business as a whip in Room 14.

Bill Hughes: Can I add to that? Without making any comment about political issues at all, from my briefings with the Prime Minister when she was Home Secretary, and since then, I know she will have been briefed on matters that relate to the issues we are talking about here and the information and intelligence gained that enabled the police in this country and elsewhere to operate very effectively, particularly against terrorist crimes, drug trafficking and human trafficking. She will know the value of that information.

The Chairman: We move on to databases and data-sharing.

Q22 **Baroness Janke:** I think you may have alluded to part of this already, but as far as data-sharing platforms are concerned, and agreements to which no non-EU or non-Schengen members have access, what do you see as the prospects of the UK being able to negotiate continued access after Brexit? What would be the practical impact of leaving? You have to some extent told us about that, but perhaps you could reply and put that on record.

Bill Hughes: The point I made earlier about the Schengen information system is crucial. For us to have a smooth transition to whatever comes after Brexit, we have to be in Europol now so that we can have that smooth transition and avoid the dilemma the Danes have found themselves in. In that way, we could at least move to an operational co-operation partnership arrangement. That would be best, because it would be what those other countries have. That will give them some access to those data.

Co-operation partners—I can give chapter and verse here—can be connected to SIENA, which is the Europol secure network. It is not automatic but requires the conclusion of an additional bilateral agreement, so there will be some negotiation to do that. They can submit data and conduct searches through the Europol information system and ECRIS, when that comes into effect—but they have to ask Europol to do so on their behalf. So it is a bit of an arm's-length approach. The whole point around operational co-operation partners—and I think that the point was made earlier by my colleague here—is that if you are not in the EU, you cannot be part of Europol as such, because you are subject to everything that the strategic operational co-operation partners do, subject to oversight from the management board and the European Parliament. So there will be negotiations and agreements to sign there, to make sure. I am sure that it would be seen as sensible from the EU side—although I cannot speak for them—but they know how much information the UK contributes and how valuable that is. To go down a route of bloody-mindedness, if you will pardon the expression, would be in no one's best interests in that situation. So I hope that some sense will prevail.

Lord Kirkhope of Harrogate: I agree with that but if having access to the databases is a major part of the Brexit negotiations, we have to look beyond the UK's bilateral relationship with the EU and look at the scope and nature of third-country agreements that are in place or are being attempted to being put in place. A number of other countries are asking for access to

these databases now, particularly with the world security situation as it is. So it is a question of leveraging the collective influence of the non-EU third countries to co-operate, such as the United States and Canada, to make sure that we have equivalent levels of data protection and redress in the use of data. One of the big things that we have been pursuing in Europe is to improve the protection of citizens' information through data protection regulations and so on.

Finally, it is slightly simpler on PNR, because obviously the EU already enjoys agreements with other countries such as the United States and Canada. But it may not be possible in future to access all the data, including specifically the intra-EU data for PNR. That might be a problem. Also, the latest EU/Canada agreement has run into some obstacles; our old friend the ECJ has deliberated negatively on this. It is very difficult, but we are going to have to move away from a model of the UK/EU dealing and look to the rest of the world to bring common standards to bear and make sure that we can access data.

Baroness Browning: Can I add something on PNR, for which I know that Lord Kirkhope can take credit for having battled for a long time on this—a very difficult job. As things stand, outwith the EU, we have countrywide agreements. What is the situation with airline agreements? Is there an area of scope there? Is it not the case that you have different airlines flying in and out of different countries, which are not subject to those different countries' rules?

Lord Kirkhope of Harrogate: The situation is this, on airlines. What we had in place originally were various requirements on airlines to obtain certain information about passengers, which were requirements put in place by countries that had competence over those airlines. I cannot be quite sure how that operated, but the position was like that. We had a random set of standards and questions, and the usefulness of that information was pretty hopeless, other than to know who wanted a hot meal on a plane, or something like that. It certainly did not tell us about the activities of some nefarious people heading our way. The whole point of what we have done with PNR is that we had to make it intra rather than just coming into a particular European country. The reason for the intra nature was because most people aiming to do us harm do not fly, for the sake of argument, from Istanbul to London Heathrow; they would fly from Istanbul to Madrid and from Madrid to Stockholm, from Stockholm to Berlin and from Berlin to London. So keeping a tab on people who are of concern to us is vital, and was always vital, and is part of the proposals—and all the airlines are signed up, and are obliged to their own country's participation in the agreement, to those same standards. Incidentally, it saves the airlines money to have the same standards for all those areas.

The one difficulty was that when we finalised the EU-United States agreement there were still underlying concerns in some parts of the United States about the fact that the South American airlines that operate in and out of the United States and not so much into Europe are not subject to the same rules, partly because they are not signed up to any international PNR agreement. I think the same is true of those that are not part of the EU,

such as Russia and some other countries, which we might like to be part of the arrangement.

Q23 **Lord O'Neill of Clackmannan:** In this area we have been looking at it could be said that there is a mixture of good and bad. I would not want to characterise it as a curate's egg, but there may well be an opportunity in these Brexit negotiations to ditch one or two things that you found to be unhelpful or worthless. At the same time, there might be one or two things that you would seek to improve on, in the existing arrangements, were you to have the opportunity to do so in the negotiations. Could you identify the things that you might want to get rid of and those that you might like to add? We know that in the middle there is a substantial amount that you want to retain. What about the good bits and the bad bits?

Bill Hughes: That is really difficult. When I last gave evidence before this committee or a similar one, when we were looking at the JHA 2014 opt-out that Lord Kirkhope has referred to already, I was concerned that a lot of babies might be thrown out with the bathwater on that one. Fortunately, the ones that we went back into are good, and I would support them. Some of those that went out can be argued one way or the other; some of them were basically the classic administrative operations that fall by the wayside when things get superseded and were out of date and redundant, so there was no sense in keeping them. I cannot think of anything at the moment that would be an advantage for us from Brexit. I see lots of disadvantages, which I have already highlighted, but I cannot think of anything at the moment that I have not already referred to as something that I would want to push.

Lord Kirkhope of Harrogate: This takes me back to the spider's web. There are loads of things that we would like improved and changed. One issue is the whole point of proportionality and necessity, which seems to apply not only to areas of law enforcement and the need to obtain information about people and use it but to a whole lot of other areas as well. You can always improve things that are there, but if you start to dismantle even some of the more minor things, you run the risk of affecting others which are actually more important. The way in which our relationships have been developed seem to be more important—the question of western democracies and the United States co-operation with the EU on security. That has been quite difficult because of the incompatibility of our approaches. I would very much like to see, if you like, a change of thinking, so that there is more understanding of other people's positions. The United States is a good example, because it has its own redress for citizens, and it has extended that to European citizens, too, if their information is abused when it is used by their authorities, and so on. It has been quite difficult, because a lot of European views attack the United States and say that they are not up to our standards and that therefore we cannot share information with them or make arrangements. That is a lack of understanding of their own approach, so I would like to see an improvement in the way the EU co-operates with third countries. We do not always treat people as well as we should.

There should also be equivalence on things like fundamental rights. I know that some of us jump up in horror when we hear terms such as

"fundamental rights", but our understanding of that is that they are the basis of everything we do we in the field of justice, home affairs and intelligence. There is not a common understanding even across Europe, I am afraid to say. The European countries need to work very hard on that.

Lord Cormack: Oh dear. The thread which has run through this morning's very good but very sombre sessions has been that so much has been achieved over the past 40 years or more. I find it deeply depressing that things that have taken a long time to be mantled are going to be dismantled. I asked our previous witness whether it would help if this Committee were to say in its report that it would be sensible to see whether it is possible to save as much as possible of these structures. You said in your opening remarks that you did not think that we could remain a member of Europol, but would it be worth making a supreme effort to see whether we could get as close to that as possible? Perhaps I may say before I finish how delighted and relieved I am that you are going to join us tomorrow.

Lord Kirkhope of Harrogate: Bill probably wants to speak on this, but my view is that you are either in Europol or you are not. I am afraid it is a bit like the EU—you are either in it or you are not. Therefore, negotiations to achieve an outcome which is as near as possible to what we have had in Europol in terms of law and justice matters is enormously difficult.

Lord Cormack: Does that mean that we should not try?

Lord Kirkhope of Harrogate: I am sure, Lord Cormack, that our Ministers will try enormously hard and use all the tact and skill they have in abundance, and have had all the time we have been achieving things in Europe. I am sure that the same skills can be deployed in a slightly different direction. I am sorry if I am appearing sombre this morning.

Lord Cormack: We are all sombre.

Lord Kirkhope of Harrogate: I suppose that I am getting a bit nervous about things. It is very difficult, unless you look beyond the organisations and agencies and the powers that they have to the controlling nature of those agencies. Is it feasible or practical to think that they would be prepared to discard the accountability and the controls that they are obliged to have now—to the Commission, the ECJ and the Parliament, whatever it may be? Are they going to abandon those to do a deal with us which allows us full access and confidence within the organisations and fully to serve within them? We have Rob Wainwright there at the moment. I have a feeling that he may have a job issue when we leave the EU. Therefore, the British influence over how it works will change; indeed, the organisation might not be as attractive to us because of the nature of what it will then do. All those things you cannot avoid. I maintain that if we are outside the EU we have to accept that we have to start again with our negotiations on our relationship—completely, really.

Bill Hughes: I share your sombre concerns, because having been involved in the setting up of a lot of this and working on it, it is quite upsetting to see it in the process of being dismantled. I always like to look on the bright

side of things, although what I am now going to say sounds as though it is not on the bright side of things. Crime will continue and it is getting worse. Cybercrime is becoming a major issue; human trafficking and slavery are terrible issues. Many of them start beyond our borders but impact on the UK. They also start beyond the EU's borders, but impact on the EU. David Armond referred to the liaison officer set-up that we created around the world, which has been instrumental in helping to deal with drug trafficking and human trafficking at source—because it is no good waiting until it gets to you; you have to go out there and deal with it. Our EU partners were heavily involved in that; they saw the benefit of it as well. They came with us. We worked effectively in Afghanistan. We worked very well with the Danes, who were great partners, and with the Americans. All that is good news. I hope that there will be people in Europe who recognise that fact—this has nothing to do with politics; it is about dealing with serious organised crime and terrorism. I hope therefore that a state of affairs can be maintained whereby people start to think about the best way of dealing with that rather than trying to go down politically delineated paths that will not lead to a good solution. We need to look for a good solution and then try to work towards it.

Q24 **Lord Soley:** This is a question for Lord Kirkhope. Baroness Browning's question to you gave you a chance to get into everybody's good books in the Government. This is your last day as a Member of a legislature, so in the interests of balance I am going to give you a question which enables you to get yourself into trouble. It is essentially on the issue of transparency. If we negotiate agreements either individually with member states of the EU or, more likely in many cases, with the whole bloc, there will be real problems about transparency, which, as you know, is quite a hot political issue at the moment. Do you have any advice or views to offer on how we could do that in a transparent way? Just putting through legislation that replaces what we have lost from the EU and making it a transparent process is a serious problem.

Lord Kirkhope of Harrogate: Obviously I am grateful to a member of another political party for trying to get me into trouble—it is not for the first time—but I am not going to fall for that. Having been a Whip for so many years in the House of Commons, transparency is one of those things that I have had get used to in Europe. The lack of transparency is often the consequence of the third-country agreements that we have. They do not fall under co-decision with institutions. They are either negotiated by the Council or the European Commission. The European Parliament plays only a consent role in the final vote on them. Sometimes, negotiations do not benefit from too much transparency. Indeed, I have always maintained that it is a good idea not to set out your stall too widely when you are involved in something as critical as the negotiations that we will no doubt be involved in. However, others are watching—not just our own public but other countries and, I am afraid to say in the context of what we are discussing this morning, the criminal and terrorist fraternities. Therefore, it is very important that, whatever we do, we do not allow vacuums to be created, either actually or in people's minds.

The other problem is this. President Juncker of the Commission has made it clear on more than one occasion that there are to be no pre-negotiations

on our future position before Article 50 has been served. I am quite concerned about that. He is entitled to say it if he wishes and, of course—a view pointed out in your paper—even once Article 50 has been deployed, if we feel that the terms coming our way are unacceptable we can back up, as it were, from that situation. That is an important point which I think is lost on most people: as things stand now, it would be for the Executive here to make that decision in part of the negotiations. Transparency of democracy, accountability and redress are very important in these justice and home affairs matters, but in overall negotiations we should try to make sure that it does not get in the way of getting the right outcome.

Lord Soley: Let me press you a little further, not with the intention of getting into trouble; it is a genuine problem, I think. For the reasons you have given, international treaties make it very difficult for Parliament to have the degree of oversight that people rightly expect on areas like those that we have been discussing this morning—policing, for example. I could widen the question and say that if you look at the legislation that has come from the EU on aviation, which is incredibly wide and deep, it actually lends itself to an international treaty but it would also be incredibly helpful for Parliament to have some say in those matters. There needs to be some transparency. I am genuinely looking for a way for us to have some transparency on the way that we legislate on all these very complex but profoundly important areas that will affect the British people when we pull out of these arrangements in Europe.

Lord Kirkhope of Harrogate: The Prime Minister has gone on the record in the past few days to make it clear that whatever is negotiated will be subject to scrutiny and debate in the House of Commons. The only question mark was over voting, as I understand it. They are not looking for a further vote in relation to the actual leaving of the EU, which they claim has been decided as a result of the referendum; that has been put in place and people have their views. I think this is going to be quite an interesting area. I do not want to waste your time with this now, but my own view is that parliamentary debate has taken place and parliamentary decisions have been made in relation to a great number of the things that we have taken part in in Europe over the years. It is a matter for Parliament itself to decide what it wishes to do. That is not to answer you particularly, but it is the way I think it has to go.

Lord Soley: Mr Hughes, unless you have anything to add, I want to move on to the European Court.

Bill Hughes: Briefly, you mentioned the phrase "horse trading" in relation to engaging in negotiations. The problem with horse trading is that sometimes it is done without any practitioners being aware of what is being traded. That is why I am grateful that this committee today is looking at these issues because it gives practitioners a chance to say what is important to them and how important it would be if we lost it. Okay, we are coming here with a vested case, but we are trying to do that in the best interests.

Lord Soley: I understand that. This Committee and indeed others of this type have been profoundly important on this issue, but it is a different matter when we are trying to deal with all the past legislation of the EU,

looking to put some into UK law and drop other bits out. It is going to be an incredibly complex issue.

Can I ask you about the European Court? One of the Government's stated wishes is to restore the legal supremacy of the UK courts, which means there is the possibility of divergences between the European Court and the British courts. Do you have views about that and the problems it might present?

Bill Hughes: That could of course bring in some issues operationally. If we move in a transition route to being a co-operation partner but then other member states are operating under a different set of rules, that could present some operational problems. We would need to be very aware of what was going on there.

Lord Soley: Can you give an example? Is that difficult? I was struggling to think what the examples might be.

Bill Hughes: I can give one. When we were dealing with our German colleagues, particularly around the recovery of assets from criminals, we found that their data protection rules were very different and basically they could not do what we do. We tried very hard in my time within the whole of Europe, and I know the NCA has done so too, to look at ways in which we could recover assets from criminals. That could therefore mean a different ruling from the European Court and us going our own way, which might present really serious problems regarding not only asset recovery but the seizing and freezing of assets early on in an inquiry.

Lord Soley: Because the Germans do not use the same legislation and rights about data and the seizure of assets?

Bill Hughes: Personal information and data protection are very hot there. They can only go after money that they know is actually the proceeds of crime. If the person puts it into their account, as I understand it—I am going back in time now—it becomes fungible and you cannot show that that is the sole property.

Lord Soley: That is almost a constitutional matter in Germany, if I remember rightly. In fact we largely wrote that constitution, so in a way it has come back to bite us.

Bill Hughes: That may have been a bad example but it was the only one I can think of.

Lord Soley: No, it was quite useful. Thank you.

Lord Kirkhope of Harrogate: In other areas of law, of course, we are allowed to put in our contracts and agreements which particular law will apply. That is not going to work here, I am afraid. I once had a Nigerian case that was dependent upon interpretation through French law, which was decided in London. It was not a situation that I would ever want to get back into again. However, at least when we enter into agreements of that kind we can make the choice as to what law applies, the law of England and Wales or the law of the EU. I suspect that we have to go down that kind of

route here, otherwise—simply talking of UK court legal supremacy in anything that we may remain signed into, opt in to in future or indeed negotiate in future—we can say what we like about our legal supremacy but the EU courts will simply rule the agreement invalid as far as the other players are concerned. That is undoubtedly another area where we need to be really on the ball. I talked at the beginning, not flippantly but just as an aside, about other kinds of agreements being subject to different laws and legal systems. I am afraid it is a possibility that we may well end up with a cumbersome and tricky area like that.

Lord Soley: Am I right in thinking it could be further complicated because Scottish law is different from English and Welsh law?

Lord Kirkhope of Harrogate: Yes. If you have ever done a conveyance of a property close to Berwick-upon-Tweed, you might find that that very point comes into play; it has done so on more than one occasion.

Q25 **Lord Watts:** I think you have already dealt with this, but I just want to see if you want to say anything more. Taking a step back from the specific measures that already exist, do you have any observations or concerns about how Brexit may affect the UK's ability to promote and advance its policy agendas with European partners? Do you have any suggestions of how perhaps the USA and other countries have effectively tried to get around this problem? Do you perhaps have any practical ideas that would help?

Lord Kirkhope of Harrogate: I shall be quite careful and just make a very few remarks. It is increasingly clear that countries like the United States, Canada and so on are looked upon by some people as being the future—this is where our agreements will have to be formed in future. In most cases, if you talk to those countries, the agreements that they want in this part of the world are with the EU because of the sheer size of the marketplace and the nature of our systems, as it were, whether that is justice, home affairs or whatever. That is the tricky point. They also know that agreements are likely to stand and will be accepted because they will have the support of the ECJ but also of countries that are committed in a wider way. If we are going to ensure that the UK is attractive for bilateral agreements in future, we have to ensure that the conditions of negotiations are attractive to the parties that might be involved. We also have to ensure that even if we are not in the EU, equivalence with EU standards is part of that—for example, on data protection, information sharing and information exchange. A global standard is emerging and being signed up to, and we have to ensure that we are selling those standards ourselves. We also have to keep on with interoperability. However it is designed and safeguarded, interoperability is going to be a key matter, because we all know that the criminal fraternity and the terrorists are ahead of us in some respects now. Bill has mentioned cybercrime, which is a major area of real problems for us, so not working with others would be a serious problem.

The Chairman: That is all from us. Thank you very much, particularly for being here and for your time. Lord Kirkhope, we look forward to you joining the House. I can see you adding real value to our deliberations on this issue. We are grateful to both of you.

Rt Hon David Jones MP, Minister of State, Department for Exiting the European Union, and Rt Hon Brandon Lewis MP, Minister of State for Policing and the Fire Service, Home Office – Oral Evidence (QQ 26-37)

Evidence Session No. 4 Heard in Public Questions 26 - 37

Wednesday 12 October 2016

Watch the meeting

Members present: Baroness Prashar (The Chairman); Lord Condon; Lord Cormack; Baroness Janke; Baroness Massey of Darwen; Lord O'Neill of Clackmannan; Baroness Pinnock; and Lord Soley.

Witnesses

Rt Hon Brandon Lewis MP, Minister of State for Policing and the Fire Service, Home Office; Rt Hon David Jones MP, Minister of State, Department for Exiting the EU.

Examination of Witnesses

Rt Hon Brandon Lewis MP and Rt Hon David Jones MP.

Q26 **The Chairman:** Good morning, and a very warm welcome to the Committee this morning. Thank you for your time. This session is being broadcast. I think you are familiar with the rules of engagement: we will send you a transcript of what you said to be corrected if you so wish. If there is any other information that you want to send us after the evidence session, please feel free to do so. Before I get into questions, is there anything either of you would like to say by way of introduction?

Brandon Lewis MP: I am happy to say, first, good morning and thank you for making us feel very welcome. We have a very long track record of playing a leading role in Europe and globally to make sure we have good co-operation to protect our citizens and our democratic values. We have been some of the leading proponents over a long period of time of the development of a number of the security measures that are now in place across the European Union.

Obviously there is no immediate change to how we co-operate following the referendum, but we are at the point where we are planning what our

new relationship will look like across our departments after we leave. The Home Secretary and I have already spoken to counterparts across Europe. We have been very encouraged, even just at the end of last week, by the view of the European Council that that is essential. It is equally keen to make sure we find a way for our shared work on security to continue.

There are questions that need to be answered and some complex issues will need to be dealt with in the months and years ahead, but that will all be subject to the period of negotiation. The Home Office is working with departments across Whitehall to make sure we have a full and clear understanding of what those pressures and complications will be. Our future relationship will be agreed in the context of the wider negotiations around our exit from the European Union. It would be wrong of us to pre-empt the outcome of those negotiations, but I want to assure the Committee that co-operation on security and law enforcement remains a top priority for us, both while we remain a member of the EU, as we are now, and in the years ahead as we leave. We will work with our partners in Europe, and, indeed, globally, to ensure we have good solutions in place to ensure we continue to promote security here at home and with our partners.

David Jones MP: Unlike that of my colleague, my department has a very short track record, having been established only in July. As you aware, the Department for Exiting the European Union has been created specifically to support the Prime Minister in connection with the forthcoming negotiations for withdrawal. As you will also be aware, the timetable has now been set by an announcement that the Article 50 procedure will commence before the end of March, which effectively starts a two-year timetable.

In connection with that work, we are seeking the opinions of a large variety of—I hate using the word—stakeholders, as well as co-ordinating work with other government departments. As Mr Lewis quite rightly says, we fully understand the importance of trying to seek as much co-operation as possible with our EU colleagues, particularly on justice and home affairs. Also, the report that I have no doubt your Committee will publish will be extremely helpful to us in helping to formulate our negotiating stance.

Q27 **The Chairman:** Thank you for that. That is very helpful. I will begin by asking how you are going about formulating your objectives. I can see the track record, but how are you dividing the work between the two departments? How are you formulating the objectives of the UK's negotiation in this area?

David Jones MP: Clearly, in respect of policy, the Home Office has the lead. My department's responsibility is to engage closely with the Home Office, as we do with other government departments. Also, we are quite separately seeking the opinions of other groups and individuals who may have an interest in this matter. Any representation we receive will clearly be shared with the Home Office for its views.

The Chairman: Mr Lewis, how is your department formulating its objectives in this area?

Brandon Lewis MP: As Mr Jones has said, our two departments will work closely on this. There are issues for other departments across some of this as well. We will look at all areas—particularly around law enforcement and security co-operation, which is paramount for us in the Home Office—to ensure we have a good outline of what capabilities we get through European Union measures, and therefore set our priorities through that for future co-operation arrangements with the EU. We are also looking at that more widely because we want to be a good partner to our colleagues across Europe. In the same way, we want to be a good partner with other countries—we have security and law enforcement issues that we share with countries around the world. We want to ensure that we have strong relationships with them in the same way as we want to continue having strong relations with our European colleagues. As the Prime Minister and others have said, we are leaving the European Union but we are not leaving our position as a partner to countries across Europe. We will consider the options for what the future relationship on law enforcement and security might look like. That is the work we will do in the months and years ahead.

David Jones MP: Let me also say that my department is the government department responsible for representing the United Kingdom at the General Affairs Council, where these issues frequently arise. Therefore, I will have discussions in that context with colleagues from the other 27 EU states.

The Chairman: Before I ask my colleagues to ask questions, I am interested and pleased that you are waiting to see what we say and that that will be an input into your deliberations. It would help us if you could tell us what your timetable is in relation to this. We know the timetable for triggering Article 50, but what is the timetable for the information? When do you think the report might be most effective for timing?

David Jones MP: We wish to proceed at a pretty brisk pace because the work of my department covers the entirety of government. We would like to see our negotiating position, if not totally crystallised, at least worked up to a very high level by the time Article 50 is triggered. An early report from the Committee would be very much appreciated.

Q28 **Lord Condon:** Good morning. I would like to take your views, on behalf of the Committee, on two issues: Europol and Eurojust. To start with Europol, the witnesses we have had so far, particularly from the National Crime Agency, have more or less said—in my words, not theirs—that membership of Europol is mission-critical to what they are doing and how they carry out the whole range of their work. There is a new Europol regulation, into which the UK has not yet opted. If we do not, the door closes on us in May next year for membership of Europol. Could you give us an idea of what considerations are influencing your thoughts about whether to opt in to that Europol regulation? What is your plan B if we do not opt in when we walk out the door in May next year?

David Jones MP: I think that this is one for Mr Lewis.

Brandon Lewis MP: Thank you. As we are touching on Europol, it is worth noting that I am seeing Rob Wainwright later today, who has done some fantastic work for us with Europol. We have been a lead player in this. From

the law enforcement point of view, I appreciate the benefits and advantages of being part of Europol. We value the role of Europol in helping our law enforcement agencies to co-ordinate investigations. For cross-border crime it has been hugely helpful.

You are quite right, Lord Condon, that we are actively considering whether to opt in to the new Europol regulation. As tempting as it is to make an announcement one way or another here today, I am sure you will appreciate that we will inform Parliament of that decision first. We will do that relatively shortly. As part of the decision, we will consider the extent to which Europol supports the sharing and exchange of information, and its operational capabilities.

On the second part of your question, if we do not opt in to the new framework ahead of it coming into force next May, in the immediate term we would still legally be part of Europol through the 2009 Council decision. However, it is also true that the Commission could bring forward a proposal to eject the UK from Europol at any time if it was able to demonstrate that the old framework had become inoperable following the introduction of the new measure. If the other member states agree, the UK's co-operation arrangements with Europol would change at that point, which would have knock-on effects for our liaison with Europol and our ability to access Europol data and systems for exchanging information. That is what happens potentially if we do not opt in. Parliament will decide whether we do that shortly.

Lord Condon: Earlier, you described accurately how important we are seen to be in Europe on these issues and how important Europe is to us on these issues. Could I press you a bit more on why we have not opted in so far? What are your concerns about what is inhibiting us from buying ourselves more time by opting in, so that we remain full members of Europol until the end of Brexit? What is the downside that is inhibiting us from signing up and buying ourselves two years, perhaps, to get a softer exit?

Brandon Lewis MP: Let me be clear, I am not saying that there is a downside or an upside. I am simply saying that we have not yet made that decision; we will do so shortly. Obviously, this issue has to be organised before May next year. We will notify Parliament shortly but I am not able to go any further on that at the moment.

Lord Condon: Still on Europol but moving on beyond May next year—

Lord Cormack: May I just come in at that point? The thrust of the evidence that we received last week was that it would be, to put it mildly, unfortunate if we did not opt in. You began with a mini-panegyric on Rob Wainwright, which we would all endorse. We have had him before us and we think that he is a first-class man. He is a Brit leading Europol. Would his position not become somewhat difficult if we did not opt in in May? Can you bear that in mind?

Brandon Lewis MP: We are bearing all factors in mind. Obviously paramount are the benefits for our law enforcement and security and the issues of opting in or not opting in, in terms of making the decision. I will

be very clear; I am not trying to give any indication one way or another. We are simply not yet in a position to notify Parliament of that decision. We will do so very shortly.

Lord Condon: Perhaps I could, with your assistance, carry on with what happens with Europol. Either in May next year or at the end of the negotiations, we will come out of our current membership of Europol. The National Crime Agency and those currently engaged in this process hope that we will be able to negotiate a bespoke arrangement for the United Kingdom, which is different from and better than any other third-party arrangement that has been negotiated up to this point. There are the models of Denmark and several others. Is it on your radar or in your thinking that this is a laudable ambition, that we should be thinking about remaining as close to Europol as possible, with a very specific bespoke arrangement that is probably the best of any non-EU country? Is your thinking beginning to influence how you move forward on that?

Brandon Lewis MP: There are a couple of points. You mention Denmark; I spoke to the Danish Minister on Friday. We will be looking at what happens with Denmark with great interest. Denmark obviously has a relatively unique situation. It is different from where we are because it is a full member state that has opted out, so it has that complication. At the moment, we are a full member state and a large contributor to Europol and a great proponent of it. There will come a point where we are a non-member state, so it is slightly different from Denmark, but I will not deny that we will be watching what happens with Denmark quite closely.

There are, as you rightly say, other countries that have relationships, but there is a difference. I have been very transparent about the fact that, as the Prime Minister said, it would be inappropriate for us to give a running commentary on our negotiations and what we are looking at as we go through the negotiations with the European Union. It would hamper both our work in the Home Office and the wider work that Mr Jones and the team are doing in their department and with us and others. We have to recognise that we are coming from a different starting point to other countries, which is why I think that the Prime Minister is absolutely right in the language that she used—and which you have just used, Lord Condon—around a bespoke solution, for the country more generally and potentially in this area as well. The reason I say that is that, when we look at what other countries have negotiated and done, they have done so as countries that are not members of the EU at all and have come in as a new partner—as the United States has done with Europol—whereas, as we leave, we are a known partner and a known commodity to our partners in Europol and we have a relationship with them that has been built up through our years of being full members of Europol and the EU. We have a different starting point from which to have these negotiations, which is why I think that it is right, and very possible, for us to have a bespoke solution. What will that involve? Obviously, it is too early to start giving a running commentary, but your phraseology around a bespoke solution is spot on, for those reasons.

David Jones MP: Let me add to that particular point. More widely, as Mr Lewis says, my department is indeed working on a bespoke British

relationship with the European Union once withdrawal is complete. We frequently hear mention of a Swiss model or a Norwegian model; we believe that our position is unique. We are currently a full member of the EU that is withdrawing. This country has a great deal of strength in a large number of fields, not least in that of justice and home affairs. Certainly, we would look to achieve that bespoke model that suits this country ideally and which is able to contribute to the ongoing work of our colleagues in the European Union.

Lord Condon: I will ask for your comments on Eurojust. Some of the same considerations that we have discussed on Europol apply to Eurojust; in fact, they affect more agencies, including the Crown Prosecution Service and others, as well as policing. Is there anything that you could tell us about what is influencing your thinking on what happens when we come out of Eurojust and how we replicate as best we can the sort of arrangements and benefits that we have had from Eurojust?

Brandon Lewis MP: To give a good political answer, yes and no. Yes, in the sense that we are exploring all the options for Eurojust once we leave the EU, and no in that it is too early to speculate on what future arrangements might look like. I would stress a couple of things that are worth bearing in mind. First, under its future legal framework, Eurojust itself may establish and maintain co-operative arrangements and agreements. Currently, there are the examples of Norway, Switzerland and the United States, which have posted liaison magistrates to Eurojust and are not members of the EU. These kinds of arrangements can be put in place. There is also a second point, which is that there is also a lot of work in this area that goes on at a bilateral level. The UK Central Authority is in regular contact with prosecutors and other judicial authorities in the EU member states regarding requests for mutual legal assistance. These relationships have been developed over a number of years and they play quite an important part in the quick resolution of queries and fast provision of evidence. Eurojust has been important and useful and we are looking at where we move forward, but that is not the only thing going on in this area.

The Chairman: We will move on to the question of databases and data sharing.

Q29 **Baroness Pinnock:** In previous hearings, we have heard about the importance of data sharing across the EU, particularly the passenger name record directive, which, as you know, can tell us who is coming in and coming out; Prüm—I recall one of the memorable phrases of Lord Condon, when he said last year that it would "transform" policing; the second-generation Schengen; and the European Criminal Records Information System. We were told at a hearing last week how vital all those were for our national security and the safety of residents. What happens if they are no longer available to us?

Brandon Lewis MP: To be frank, I am not keen on getting into a negative hypothesis on what happens if we do not do something. The reality is that we have to work to get the right deal for the United Kingdom. I agree that access to EU data-sharing platforms and indeed, as you have outlined, agreements such as Prüm, ECRIS and others help our agencies to cut crime,

improve public safety and protect vulnerable people. That is why we opted into Prüm last year. But our co-operation is global as well; it is not just about our EU partners. We use other channels to exchange information; for example, Interpol is one method through which we also share information with other countries.

We exchange criminal records. The Council of Europe conventions provide the basis for co-operation and, although other systems out there are not necessarily as efficient or as comprehensive, they are there. There are models for what we can do. Equally, as I said to Lord Condon, in terms of what happens as we leave the EU, we are not coming to this as a completely fresh partner with whom the EU countries have no background and need to build a new relationship. We are a known commodity. We work with them in many of these areas—on passenger name records I would argue that we are leading the way. It is something that we can be working with our partners to develop and to make sure that we get the bespoke deal that is right for us and which covers these things. That is work that we have to do in the months ahead.

Baroness Pinnock: The evidence that we were given last week about Interpol was that membership of that body was nowhere near as effective as that of Europol, because Interpol has members such as Russia. You cannot in all honesty expect to share as much information when you have such members as you can with the closed Europol system.

Brandon Lewis MP: I would make two points on that. First, even in the Europol system there is obviously an issue about who owns data and any nation state's ability to have—this applies to Eurojust as well—control ultimately over its data, and what data at what point it is in the national security interest to be sharing. That is important. You are quite right that Interpol does not have the level of integration and level of data that Europol has, which is why it is important for us that, as we go forward, we assess what we believe is important for our law enforcement and national security as part of our negotiations with the EU about what our relationship with Europol will be.

We come from a position of having a very positive and long-standing relationship with those countries that gives us a good basis on which to have that negotiation. There is a big difference between us as we leave as a known commodity, working with our partners about what is right for our national interests—and indeed wider global interests, including for our partners around Europe—in our relationship with Europol, as opposed to if we were a country coming to the table with no track record. We are in a very different position and that is why I am much more positive about getting an outcome that is right for this country.

Baroness Pinnock: Thank you. I just wonder whether Mr Jones would like to comment on that.

David Jones MP: Mr Lewis has gone into the detail of these arrangements but, more widely, it is worth commenting that this country has a great deal to offer the ongoing European Union. We have great expertise in these areas and we must assume that they would want to continue co-operation

on areas such as this where, frankly, there is no economic downside from the point of view of the EU and where, if anything, there is every advantage to continue with, if not exactly the same arrangements, then those that would move towards the current arrangements. I hope that they would recognise that it would not be in their interest simply to put up the shutters.

The Chairman: I understand that we bring a lot to the table and that it is mutually beneficial but have you any assessment to date of the mood music that is around. Are they positive towards us? Would they be co-operative?

David Jones MP: I understand your question to be a wide one; I am sure that Mr Lewis can go into the detail. It is worth reporting that I have had a number of meetings now with European counterparts and, while the original reaction was one of shock and, in some cases, of certain disgruntlement, things have moved on since then. There is a recognition that the United Kingdom is leaving the European Union and a more hard-headed attitude is developing, which I think is helpful. I am not getting a sense of a dog in the manger attitude from my EU counterparts.

The Chairman: Mr Lewis, what is your experience in terms of this particular aspect of co-operation?

Brandon Lewis MP: As I said earlier, both the Home Secretary and I have been speaking to our counterparts. Indeed, just last week, we were both in Luxembourg talking to counterparts. There is a desire to work with us because, as I say—I keep coming back to this—we are trusted partners. On the Europol side, the reality is that we are a hugely valued partner; in fact, we are one of the biggest contributors of information to Europol. We have also led the way on PNR and we are acknowledged to have a highly developed system. In some of our systems we have significant expertise—for example, on fingerprints—and we have relationships for sharing knowledge on that. We have recently had experts from France, Germany and the Netherlands over here looking at what we do and visiting our criminal records office to see how we do these things. Our colleagues across Europe also benefit from the information that we provide through ECRIS and our use of biometrics information. We are very effective in how we use that and fingerprints and DNA more generally, and we know that member states value that.

As I say, we come from the very strong position of being a valued and positive partner who others want to work with. Our position on what the direction of travel will be and where that journey will take us is around making sure that we are not giving a running commentary about what we do as we go through, which is not in this country's interests, other than us being nothing other than positive about getting the right result for this country. The Prime Minister has been very clear. The Home Secretary is clear and I want to be clear today: we view the security and law enforcement issues and the protection of this country as absolutely paramount.

Lord Condon: Could you reassure us that, in your negotiations, there is an awareness that access to these databases is not a sort of luxurious bolt-on; it is integral to day-to-day policing up and down the country? For

example, in London, about a fifth of—or 200,000—arrests every year are of European citizens. We are talking about access to databases that, at the moment and within Prüm, may take seconds or hours and going to a situation where it could take weeks. It would be a pretty severe, abrupt shock to day-to-day policing, not just in London but up and down the country. No EU or non-Schengen member has access to these databases, so we are talking about a very significant new bespoke arrangement if we are going to continue to have an integrated approach to these issues.

Brandon Lewis MP: I am sure you appreciate that I have been quite careful about what I say. I have to be very clear. I flew out to Luxembourg to meet counterparts on Thursday last week. I spent Thursday morning with the National Police Chiefs Council, with pretty much every chief officer there. They were very forward in letting me know exactly how important some of these arrangements are and why they are important. I fully appreciate that and we understand that within the Home Office and more widely across government. We clearly have a Prime Minister who absolutely understands that and has been very clear from the beginning that the security of this country is a key, prime issue for us. Equally, there is a reason why non-EU member countries want to have a relationship with Europol. They see that, even at the level at which they have membership, as an important and beneficial link for them.

In terms of looking at that bespoke, correct deal for our country, we come from a very different position to anybody else who has done this before, which is why the off-the-shelf presumptions around looking at what any other country has done are a false representation, on two levels. One, as Mr Jones and I have both outlined, is that we bring an awful lot to the table in terms of our expertise and knowledge. Secondly, we should not underestimate the fact that we come to the table with a relationship that none of the others who have negotiated deals has had before and a known back record which is positive and on which we can base those negotiations. That is why we are in a good position to have those discussions.

Q30 **Lord Soley:** Lord Condon has said that these are very important issues for the security of the people of the United Kingdom. I know you will be aware that they cost a lot of money within the European Union itself. Have you kept an indication of what we have spent on these and how much we will have to continue to spend as we exit the European Union—in other words, the costs of it?

Brandon Lewis MP: I do not have the figures in front of me today but as we go forward we will be looking at the potential outcomes of that. Obviously, what any benefits or costs—from the cost-benefit analysis—may be will depend on exactly what kind of relationship we end up with, which I will not prejudge here this morning.

Lord Soley: If you had to reinvent some of the arrangements, it would be an expensive operation would it not?

Brandon Lewis MP: You say "reinvent", but it depends on what we do. Nobody at the moment is talking about reinventing; we would be looking to negotiate the right relationship for us. In many of those areas, if we have

an agreement as we go forward to mirror a relationship that we already have then we do not need to reinvent anything. I am not sure that there is a cost in that necessarily, but it depends exactly on how those negotiations go and what we decide we want to build a relationship on.

Lord Soley: But there are a number of options for the negotiations, are there not? If we continue to have a close involvement, that might involve payment to the European Union or some of these organisations, because we would be, at least in part, related to it and involved in it. Alternatively, we might have to set up alternative structures, which would also be expensive. I am not quite sure, from what you are saying, how much we have assessed the costs of either working out a close relationship with the European Union on these—and maybe paying part of the costs—or setting up alternative arrangements, which would be another cost.

Brandon Lewis MP: That depends on what those alternative arrangements might be. If we have an agreement on a range of areas that means that we effectively end up mirroring or continuing the relationships in certain areas that we currently have, then there is potentially no reason for any great change in cost, because that is something we are already involved with. If we were to change things, then it depends on what they would be. There are many things that you can change in terms of how you share information that do not necessarily involve a cost. As I say, I think this would be prejudging what we may or may not do.

Lord Soley: But presumably you have people in your departments who are working out what the various cost options are.

Brandon Lewis MP: Yes. There are people working on an entire package of things that we will be working on with our colleagues across Europe to negotiate as we go ahead—and of course with the team in Mr Jones's department.

Lord Soley: Have you done any work on this, Mr Jones?

David Jones MP: The only thing that I would say is that, clearly, there will be a cost but there will be significant savings from our no longer being a net contributor to the European Union. As the negotiations develop, we will be in a position to come up with a somewhat clearer picture than at the moment. Obviously, one of the starting points is that we will no longer be a net contributor to the budget of the European Union.

Lord Soley: There is a limit to how far that money can be spread out. I am aware—as I am sure you are—that the organisations that we are talking about are very expensive, are they not?

David Jones MP: Indeed. Costs will arise, but there will also be very significant savings from our no longer being a net contributor to the EU, which will of course have to be put in the balance. At this stage, we have not got into that granularity of detail that you are asking about.

Q31 **Baroness Janke:** We have been given to understand that the formal legal arrangements within the EU are quite significant, particularly in terms of

data sharing and data protection among the other 27, and that the governance of the European Court of Justice in organisations such as Europol and Eurojust is also significant. I am wondering what work you have done to look at this. If you feel that these formal legal arrangements will have to be negotiated, what do you believe are the implications for the time for working through these?

David Jones MP: We have to go back to the starting point, which the Prime Minister has made very clear. The consequence of the referendum will be our withdrawing from the European Union. That means that laws will be made at Westminster, not Brussels, and those laws will be interpreted not by the European Court of Justice but by the British courts including, ultimately, the Supreme Court here in London. Those are the mechanisms that will prevail after our withdrawal from the EU. Therefore, any new arrangements that have to be put in place or which may be put in place after we withdraw have to be the subject of bespoke adjudication arrangements. These are matters that will have to be considered as we continue our work.

The Chairman: There is a further question on that.

Lord Cormack: It strikes me that you two gentlemen will have to exercise an enormous amount of energy and ingenuity in order to try to maintain something approaching the status quo. Clearly, I wish you every success with that. Among the things from which we have benefited are those so-called tools that our present Prime Minister was very keen on when she was Home Secretary, particularly the European arrest warrant. We also have the European investigation order, the European supervision order and the European protection order. We will cease to be a party to these when we leave the European Union. What sort of compensatory mechanisms do you envisage negotiating?

David Jones MP: You are right, Lord Cormack, that it requires a considerable amount of energy; I can attest to that. You mention the status quo, but the status quo is not what we are going to get. Self-evidently, the country has voted to leave the European Union and, therefore, what we achieve will not be the status quo. However, taking that into account, there will be certain arrangements that prevail at the moment that are advantageous to this country and which we may seek, if not precisely to duplicate, at least to come up with something similar to. This is an issue that varies from department to department. At the moment, Mr Lewis's department is carrying out an assessment of what arrangements it would like to see prevail at the end of this process. The job of my department is to work with his department to see if that is something that is attainable in the course of negotiations. I have to say in all frankness—and I do not think you will be surprised at my saying it—that we are at a relatively early stage of this process but our thinking is developing. As I said earlier, we are looking to have, if not precisely crystallised, at least a highly developed position by the time we serve our Article 50 notice.

Lord Cormack: I am sure that we would agree that in an era when organised crime is such a menacing threat to us all, particularly as it extends into cybercrime, and when it is increasingly international, it really

is important that the last stage is not worse than the first. While I accept your implied rebuke about my using the phrase "status quo", your task, surely, is to try to get as near to an equivalent as we have at the moment so that we do not lose any of the advantages that we currently enjoy.

David Jones MP: Lord Cormack, I would not presume to issue a rebuke to you, as I am sure you are aware. But you are right: there are a large number of arrangements that are advantageous to this country at the moment. We fully recognise that. At this point, I will defer to Mr Lewis, because he can probably give a bit more detail about the issues that you are particularly concerned about.

Brandon Lewis MP: Thank you for that. Lord Cormack, you made a reference to cybercrime, which I think is a good example. You are quite right that cybercrime is global—it is not European, it is not British, it is global. Our relationships with Europol and under other European agreements and co-operation tools are important but they are not all that is going on. In terms of international crime and cybercrime, things go far wider than that; the EU tools are simply part of the wider landscape of international law enforcement and security co-operation. Again, I would argue that we should all be very proud of our British law enforcement agencies and the City of London Police's fantastic work on fraud and cybercrime.

We co-operate through our relationships in Interpol itself, with the Five Eyes work, through our bilateral work with individual countries, and with NATO. We are looking at all those relationships and the EU tools to consider, within the wider picture, how they are used, the operational capabilities that they support and how it might be possible to use those and other means to achieve the right outcomes. Ultimately, the key thing here is to get the right outcomes for the security of our country and, in terms of some of these crimes, the global security for everybody as well. Co-operation on extradition and on mutual legal assistance are both examples of an area where there is a Council of Europe convention, which underpins the current situation that we have for our co-operation with non-EU countries. Consideration of that approach has to be part of what we look at in the wider evaluation. We want to make sure that we keep, in that area, a very effective and efficient system of extradition with EU member states, but we have a job to do to make sure we have an efficient and effective system with other countries around the world as well.

Lord Cormack: I am sure that you would agree that we have given a degree of leadership in these areas in Europe, both in individual personalities such as Mr Wainwright and in the general negotiations, where we have helped to mould a system that, while it is not perfect—nothing ever is—it is serving Europe pretty well. Our concern is that we do not wish to slip back.

With specific reference to the tool that has perhaps occasioned most comment, the European arrest warrant, you cannot give us a running commentary of course, but what is your objective? How can we safeguard the benefits of the European arrest warrant after 2019 or 2020?

Brandon Lewis MP: You are absolutely right in the sense that the job—it comes back to your opening remarks—for me, the team in the Home Office, the Home Secretary, the Prime Minister, and Mr Jones and his team is to take on the challenge of what will be a complex set of negotiations. In the Home Office, we have a particular focus on security and law enforcement. Mr Jones and his team have the joy of matching that up with the work right across the panoply of requirements for the country from other departments as well. That falls into looking at things as we move forward. As we go through the negotiations we want to make sure that we end up with a situation that ensures the security, and confidence in that security, of this country primarily; the Prime Minister has been very clear about that.

Also, we have said all along—and the Prime Minister and Home Secretary have been very clear about this—that we see ourselves as an important partner of our friends and colleagues across Europe. We are leaving the European Union institution, but we are not turning our backs on our colleagues and friends in countries across Europe with which we have strong working relationships, both commercially and in terms of security and law enforcement. It is about looking at how we get that correct deal. Obviously the European Union will want to make sure that it has a deal that works for it. Our job is to make sure that we have the right deal for this country; I am very confident that we can do so. Matters such as the European arrest warrant and how we seek to ensure, as we go through this process, that we have the benefits of that and all the tools that Europol and others give us is what those negotiations will feed into. To go further than that would be to tempt me into a running commentary.

Lord Cormack: I wish you well and I just hope that my hopes do not exceed my expectations.

Q32 **Lord O'Neill of Clackmannan:** On the issue of the Court of Justice, we have had witnesses suggesting to us that our withdrawal from the CJEU and our ceasing to be covered by its jurisdiction may rule out certain options, such as retaining something close to full membership of Europol after Brexit. If the Government decide that they wish to remove the UK from the jurisdiction of the Court of Justice after Brexit, what constraints, if any, will that pose for the level of co-operation that we are able to sustain in this area post-Brexit?

David Jones MP: To an extent, I have answered that question already, in that the country will be withdrawing from the European Union, self-evidently. Part of that process means that the supremacy of the European Court of Justice in the United Kingdom will cease and it is our Supreme Court that will be the supreme arbiter in this jurisdiction.

Lord O'Neill of Clackmannan: You are saying that it would be the British Supreme Court? But this will be an agreement between Europe and ourselves.

David Jones MP: I was just coming to that, Lord O'Neill. Therefore, we will be entering into new bilateral arrangements—or at least we will hope to. We will be seeking to enter into new bilateral arrangements with the European Union as a whole. Bilateral arrangements between sovereign

countries and with international blocs are nothing new. For example, the United States has a high degree of co-operation with the European Union on a whole range of issues, but the United States does not submit to the jurisdiction of the European Court of Justice. Therefore, as you rightly identify, the challenge will be to put in place other arrangements on a bilateral basis that will be acceptable both to the United Kingdom and the continuing European Union. We have to be absolutely clear: the country voted to leave the EU and that includes leaving the supremacy of the European Court of Justice.

Lord O'Neill of Clackmannan: The only point that I would dispute with you is that we are not like the US in so far as wanting to have an arrangement with something that we have not been a part of. We are part of something and we are leaving it. One of the consequences of departure is going to be that we will deny ourselves rights that we currently enjoy in respect of something such as Europol. I think, with respect, that the US comparison is not particularly relevant.

David Jones MP: It is relevant to the extent that the United States is a sovereign nation and, post-Brexit, we will be a sovereign nation too. Therefore, while we would wish to continue arrangements with the European Union, as I said to Lord Cormack a moment ago, we will not be precisely duplicating all the arrangements of the institutions in which we participate at the moment. Clearly, that is impossible if we are no longer subject to the supremacy of the European Court of Justice in terms of arbitration.

Lord O'Neill of Clackmannan: One partner in the agreement into which we would be entering, namely the European Union, post-exit, will still have at the head of its legal interpreting process—if, as a layman, I can call it that—the European Court of Justice, while we will have the Supreme Court. You could have probably a very elegant arm-wrestling match between the respective learned friends.

Brandon Lewis MP: This is where Mr Jones's point is absolutely right. It is worth having a look at the fact that the United States has come to an agreement and is, obviously, not part of the EU and therefore has its own supremacy and its own Supreme Court. At the same time, we are in a different position, as Mr Jones outlined. Taking your point on board, Lord O'Neill, it is absolutely correct; it is the point I made earlier on that we are different in the sense that we are leaving. That has advantages in that we are a known commodity. We have a track record in all these areas of security, law enforcement and co-operation.

We are not a new partner looking to agree a new deal; we are a trusted partner who our partners across Europe understand and are comfortable working with, as there has been an ongoing relationship. That also gives us an advantage, in that we are in a position to have a different starting point to those negotiations. It means that it is inappropriate for us to presume one thing or another in terms of our relationship and the position or either our Supreme Court or the European Court of Justice, because the position that we are coming from is unique. This has not happened before.

The challenge that we have to rise to, both in the Home Office but more widely as a Government—as the Prime Minister has outlined—is to get the right deal for this country, which is a bespoke deal that delivers what we need while recognising that we want to work with our partners.

Lord O'Neill of Clackmannan: Would a bespoke deal along the lines of the arrangements with the United States be what you would be after, or do you want something better than that for the UK?

Brandon Lewis MP: You are tempting us there into giving a running commentary, which we will not do.

Lord O'Neill of Clackmannan: The running commentary argument is okay, but there are certain consequences that come directly as a result of Brexit.

Brandon Lewis MP: That depends on what we negotiate in the months ahead as part of how we Brexit. When people talk about what they see as a positive or negative outcome of Brexit and what impact it could have in terms of the question that you asked, they make a presumption about what we negotiate in the months ahead. I think it is too early to do that.

Q33 **Lord Condon:** Could I pursue that point? Do you accept that if we get a bespoke deal that takes us as close to the status quo as possible, it is bound to run into the challenge that we are no longer part of the CJEU? The CJEU has direct jurisdiction over Europol databases, personal information, data sharing—all of those issues. It is not a paradox but it is a fact of life. The better our relationship, the more the struggle that they will have in accepting that strong new relationship, because the CJEU has jurisdiction over all those things that we are trying to remain very close to, and we will be outside of that.

David Jones MP: Yes. Again, the use of the phrase "status quo" has got to be challenged, with respect, because we will not have the status quo.

The Chairman: But Lord Condon said "close to" the status quo.

Lord Condon: As close to the benefits, rather than the formalities.

David Jones MP: I can only reiterate the point that, post-Brexit, this country will not be subject to the supremacy of the European Court of Justice. That is absolutely clear.

Lord Condon: And we will have to live with the consequences of that, if that trumps some of our wishes to get really close to some of these agencies.

David Jones MP: Again to reiterate what Mr Lewis has said, the consequences depend on the outcome of the negotiation which, at this stage, is of course unknown to all of us.

The Chairman: I think the point being made is that if we negotiate something bespoke, and we do not have the jurisdiction of the European Court, it will limit the options. In other words, it will constrain what we can

actually negotiate. The point I wish to make is that, while I think that you are right in saying we do not want a running commentary, we are trying to explore what the options, and the implications of the various options, would be. It would be very helpful to have that, rather than a running commentary.

Lord Cormack: Periodic bulletins would be very useful.

The Chairman: Precisely.

Brandon Lewis MP: That is why we come back to something Lord Condon said, but also a point Mr Jones made in the opening minutes of this meeting. We should be wary about making presumptions. The whole point of a negotiation and the fact we are coming from an entirely unique position mean that making judgments based on our experience of what has gone before is difficult to do. We have an opportunity to work out a unique and bespoke deal. That could come to a whole range of things—the months ahead will show us—which is why it is difficult and inappropriate for me and Mr Jones to go further on that.

On your point on the running commentary and looking at the options, this is where I come back to the point Mr Jones made in the opening minutes of the meeting. The work of this Committee and the report you are producing are very useful. As Ministers who are assessing the options and carrying out these negotiations—I, the Home Secretary, Mr Jones and the Prime Minister are already talking to our counterparts across Europe and elsewhere on this—we are working on that process and therefore limited in what we can say because we are in those very early stages, as has been outlined. The discussion and views about what those options and limitations—if you see them as that—might be around the negotiations are exactly the information, thoughts and opinions you might put in your report that are very useful for us to take into account in the work we are doing. I understand the point you are making, but that is where your report is useful to us as much as us sitting here is helpful for your questions today.

The Chairman: We will endeavour to be as helpful as we possibly can.

Q34 **Baroness Massey of Darwen:** I have listened to this discourse this morning. Thank you for your responses. To me, this does not sound easy. In fact, it sounds very complicated, with some very serious problems. I wonder what you think are your greatest difficulties and how you would, if necessary, prioritise them. To me, time is one, as is Europe falling away from us and our not being able to dictate what happens there. The cost is another issue that I want to know more about. Could you tell us how you feel about your main problems here, or do you not see them as problems? "Challenges" is possibly a better word.

Brandon Lewis MP: "Challenges" is a much better word, and, to be fair, opportunities lie ahead. We have an opportunity through this to get not just a good, strong security relationship with Europe but one that informs what we do with other countries around the world as well. There are other countries that are not part of the EU. The United States has been mentioned as a good example, as are all the Five Eyes countries and others, where

there are good relationships. Our experience of what we are doing as we go through this process with the EU will inform how we do those as well.

Baroness Massey of Darwen: Will they last?

Brandon Lewis MP: Yes, I think that they can, for a couple of reasons. There are countries that are not part of the EU that we have a very long history of co-operation and working with that are great, long-standing allies of ours. Again, the United States is a good example, but as are all the Five Eyes countries—Australia, Canada, et cetera. The Home Secretary has already spoken to her counterparts in many of those places on some of these issues. There is the reality that the country made a decision on 23 June. I appreciate your secondary point and Lord Soley's point around cost, but the reality is the country made a decision about leaving the European Union. Our job is to ensure we leave the European Union in such a way that gives us the best deal for the United Kingdom.

David Jones MP: I echo that, because it is a very important aspect of the whole matter. The work this Committee is doing, and the work my and Mr Lewis's departments are doing, must be set in the context of the stark fact that this country has voted to leave the European Union. All our work must be predicated on the fact that, in two to three years' time, we will be departing. One thing that I particularly would like to see, in the context not only of this Committee's work but more generally—and I am asking this of more or less everybody I speak to—is for opportunities to be identified. Lord Cormack made the absolutely correct point that crime is increasingly international these days. In the internet era, you can commit a crime in London by pressing a button in South Korea. There are challenges to policing and to law enforcement which, in many respects, are opportunities. I would be very interested to see what the Committee has to say about the opportunities we have for developing policing and law enforcement models post Brexit.

The Chairman: That is outwith our remit, but we will see what we can do.

Q35 **Lord Soley:** You both commented that you want Britain to have a good relationship with the European Union. I concur with that. Terms such as "hard" and "soft" Brexit are not helpful. We need a new relationship with the European Union. That is very important. That brings you right up to the issue of how we influence the European Union. We will no longer have a seat at the top table, so we will no longer be able to make our policy agendas as we have in the past—directly to the top table. What thought have you given to how we influence the EU? The United States, for example, has a major programme of how it influences the European Union. We will have to work out something similar, I hope again in a positive way that is beneficial to the EU and well as the UK. What have you done along those lines?

Brandon Lewis MP: From the Home Office point of view, both the Home Secretary and the Prime Minister have been very clear about the importance of maintaining strong law-enforcement and security relations with our partners across Europe. That comes back to my earlier point, and you make a good point, Lord Soley, that we are leaving the institution of

the European Union, but we are not turning our back on our colleagues and patterns across Europe and around the world. We are in a unique position. As we outlined, we are a large contributor to the EU's security and law-enforcement tools. That gives us a unique position from which to have these conversations to build the right relationship.

It comes down to the fact there will be a new relationship. We want to make sure, as we negotiate this relationship, that it works for this country and gives us a voice. Our ability and expertise in a range of areas—Europol is a good example where we have been a lead player—show that we can play a key part. We are also committed to make sure we are working with a wider range of international partners on security issues—that comes back to opportunities. As Lord Cormack said and as Mr Jones just outlined, looking at what my police forces are dealing with around the country, the growing change and challenge of dealing with what is effectively a very easily international, global crime of cybercrime and cyberfraud, means our relationships have to change and be more global.

To date there has been agreement with our approach to seek a strong, ongoing security relationship across our international partners. We want to make sure we do that. As I have said, the Home Secretary and the Prime Minister have been very clear about that. That is very much at the forefront of what we are doing as we exit the EU.

David Jones MP: More widely, because you identified an important point, it is important that we have good relations with the European Union. It is in our interest that we see a prosperous, successful European Union, too. So far as we are concerned, we remain a very important, large economy. We are an important liberal democracy. We have an important voice in the councils of the world in organisations such as the United Nations and NATO. We see our future as very much an outgoing nation whose interest will not be confined simply to the European Union, but will be global and include maintaining excellent relations with the European Union and offering what we can. In the context of justice and home affairs, we have a great deal of expertise. As Mr Lewis rightly said, we are a known quantity so far as the European Union is concerned.

Lord Soley: I understand that and I am not unsympathetic to what you have said, but because we will no longer be at the top table when we come out of the European Union, you have either an embassy that does all the work relating to the European Union, or a collection of agreements. It will probably be a combination of both. To extend that a bit, I do not know how much thought you have given on the idea of a major embassy relationship with the European Union, which is what it will have to be, as well as individual, specific agreements that would in effect be international treaties. Additionally, I would like to know whether you have given any thought to working with other countries outside the European Union that, like us, need to influence the policy agenda but are not at the top table, whether they are countries such as Norway or Iceland, or countries further afield. There is a critical issue here of trying to influence an agenda in what, as you are indicating, we all hope will be a very powerful economic and political unit called the European Union, rather than sitting on the side-lines shouting

and waving our arms when we do not like something that is happening.

David Jones MP: I hate using the expression, but I say again that I cannot be tempted into a running commentary. What you have outlined sounds very much like a bespoke solution for the United Kingdom—one of maybe a number of options. I can certainly assure the Committee that we are looking at a whole range of options to come up with a proposal that will suit the needs of the United Kingdom and equally, one would hope, of the European Union.

Lord Soley: Are we talking to other countries outside the European Union that already have the same problems we will have in influencing the agenda? Are we discussing this with them?

David Jones MP: We are talking to a wide range of interlocutors.

Q36 **Lord Soley:** Shall I move on to the Five Eyes? I think that is as far as we will get on that answer. I will come back to it at some stage in other ways. The Five Eyes—New Zealand, Australia, the United States, Canada and ourselves—have this very powerful intelligence operation that is profoundly important for keeping people in this country, and, indeed, elsewhere in the world, secure. The other four countries have tended to see us as the people who could influence the European Union, which is a bit of an extension from what I have just raised with Mr Jones. I presume we would still seek to have that influence, and that the other four members of the Five Eyes would want us to have that influence. What thought are you giving to this?

Brandon Lewis MP: You are quite right. The Five Eyes are an important relationship in and of themselves for this country. The Home Secretary has already spoken to a number of her counterparts by phone and has quite recently met the Australian Foreign Minister and the US Attorney-General as part of the ongoing conversations. I have spoken to Australian senators in the last few weeks as well. As I explained, that is another example of how we work internationally. Yes, obviously the Five Eyes have traditionally seen us as interlocutors with the EU, but the US also has its own direct contact with the EU, as you outlined. As we negotiate with the European Union, all these things will be part of our considerations of what we do with the European Union but, as I said, to go much further than that would not only risk falling into a running commentary, but prejudge what outcome our negotiations may lead to in what we have. Our primary focus is on making sure, from a security and law-enforcement point of view, that we get the right agreement for the United Kingdom, but we are also very much aware that we work with our partners internationally and they have an interest in this, so we will be talking to them as well.

Lord Soley: I presume that we are in close and detailed talks with our four partners in the Five Eyes group?

Brandon Lewis MP: We will always have close and detailed conversations with our partners in the Five Eyes group. That comes back to the point I made earlier: this is not just about our relationship with the EU, but part of our opportunity to remember that we are a country with global and international links. Crime is global and international. It goes well beyond

European borders. Some of our co-operation with the Five Eyes countries, for global crime and cybercrime in particular, will be of growing importance over anything else.

The Chairman: We have run out of time, but do you have a few minutes for a couple more questions?

David Jones MP: We are at your disposal.

Brandon Lewis MP: Yes.

Q37 **Lord Condon:** I bring you back to the very beginning of the session, trying to get an understanding of how you are processing and developing these ideas. Could you give us an idea about where the engine room for you is on this? Do you have any full-time secondments or attachments of senior police or law-enforcement agencies in your departments working on this? Or is it very much asking for views and opinions, then crunching it in your own establishments?

Brandon Lewis MP: I am quite happy to give the Committee an outline of what we are doing in the Home Office. It is probably easiest if we write that for you. We have recently brought in a slightly altered structure, so we, in effect, have a DG looking after the European side. That will become more important as we go through these negotiations so we have a clear focus on our work with EU partners. I will let Mr Jones speak from the wider point of view of his department, but the Home Office will have a team of people focused on this work, initially as we currently work as a full member of Europol and the European Union, but that will inform work on what the Home Office's interests are as we exit.

Lord Condon: Are you contemplating secondments or attachments on a short or medium-term basis?

Brandon Lewis MP: We will always be looking at whatever we think is appropriate and required to ensure we get the right outcome.

David Jones MP: I do not really want to add to that. Clearly, this is an area in which the Home Office will take a lead, but we will liaise closely with them.

Brandon Lewis MP: I am very happy to write to the Committee to give an outline on that side of things.

The Chairman: It would be very helpful if you could describe to us the arrangements you have. Lord Cormack, a very brief question?

Lord Cormack: A brief question, yes, wishing you every possible success in all your work. I quite take the point, as we all do, on running commentaries, but we have a parliamentary duty to know what is happening and a parliamentary role to comment on it. Therefore, can you assure us that you will keep this Committee informed by reasonably regular bulletins of progress so we know roughly where you are and so that, if it seems appropriate, you can come before us again and discuss these matters? We need to have a continuing dialogue.

Brandon Lewis MP: From my point of view, I am very happy to come back and talk to the Committee again in due course. The next key stage from a parliamentary point of view, which conversations today have confirmed, is the decision the Government have to make around the next stage of the opt-in for May next year on Europol. We will make a decision on that and announce it to Parliament shortly. If the Committee wants to have a conversation again after that, I am very happy to do so, but we will ensure we inform Parliament more widely on that once the decision is made.

The Chairman: We will scrutinise the decision on Europol. Mr Jones, Mr Lewis, thank you very much indeed. We are grateful for your time this morning. As I said, we will endeavour to produce our report, but we rely on a continuing dialogue with you. Thank you very much indeed for your time this morning.

Lord Timothy Kirkhope of Harrogate and Bill Hughes QPM CBE, former Director-General, Serious Organised Crime Agency – Oral Evidence (QQ 19-25)

Transcript to be found under Bill Hughes QPM CBE, former Director-General, Serious Organised Crime Agency

Law Society of Scotland – Written Evidence (FSP0001)

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

This paper is in response to the call for written evidence from the EU Home Affairs Sub Committee for their inquiry into BREXIT and the future of EU-UK security and police co-operation.

General Comments: Stability in the law - a main priority

The need to maintain stability in the law, repeal legislation and prepare new legislation to fill in gaps arising from leaving the EU will comprise a significant part of the domestic legislation which is passed at or following withdrawal. Bearing in mind the public interest in maintaining consistent application of the law, concerning aspects of the freedom, security and justice legal framework, recognition and enforcement of citizens' rights, CJEU pending cases, immigration, residence, citizenship and the impact of the UK's exit on the devolved administrations it is clear that a wholesale repeal of the law which has emanated from the EU over the years would be problematic, difficult to implement, and unduly disruptive.

The area of freedom, security and justice covers policy areas from the management of the EU's external borders to judicial co-operation in civil and criminal matters and police co-operation this includes asylum and immigration policies and the fight against crime, terrorism, trafficking, cyber-crime, organised crime and sexual exploitation of children. The UK retained an opt in facility under the Amsterdam Treaty in 1997 and has opted into (or in the case of Schengen-related measures has not opted out of) a number of measures including the European Arrest Warrant (EAW). We would advocate that careful consideration should be given to maintaining such aspects of the area of freedom, security and justice either on a transitional basis or as part of the withdrawal agreement or as part of the future relationship with the EU. The primary objective of judicial security and police cooperation is the safety of the citizen, as a guiding principle there should be no change to the law which would prejudice the safety and security of the individual.

We propose that domestic legislation is passed to ensure a "soft landing" in terms of legal change. In principle laws with direct effect (Treaties and Regulations) will cease to apply once the withdrawal agreement is in place, the UK is no longer a member of the EU and the European Communities Act 1972 has been repealed. However it would be inappropriate to include in any new law the wholesale repeal of direct effect provisions without making some alternative arrangements. These arrangements would ensure clarity and stability in the law and prevent legal uncertainty. Similarly EU law with indirect effect (Directives) has already been transposed into domestic legislation. This has been through primary or secondary legislation either at UK level or through the Scottish Parliament. That law will continue to be part of the UK and Scots Law until and unless it is specifically repealed. Many statutory instruments deriving from EU directives have been enacted under Section 2 of the 1972 Act and so would be repealed once the Act is repealed unless explicitly retained.

In order to reassure and create stability for citizens, business and consumers we believe it is vitally important that effective transitional arrangements are in place to ensure that all necessary provisions continue to apply unless and until they are specifically repealed and that alternative domestic provisions are put in place. It is likely that much of what the UK decides to retain will depend on the outcome of the withdrawal agreement and a new relationship between the UK and the EU.

Overall the scale is immense, the timeframe short, the energy and commitment challenging to maintain. The implications for the Government and devolved administrations is significant. Participation in the UK's exit from the EU is such a wide ranging exercise that it is likely to become the dominant theme throughout this and into future parliamentary sessions. The far reaching and deep range of EU law and policy, the need for adequate scrutiny of the negotiations between the UK and the EU, the contribution to the negotiations, and the consideration of consequential changes following the withdrawal agreement and the internal arrangement to be finalised are so significant that they may occupy the Government and the Parliament to such an extent that regular policy and legislative work will not attract the resources or time necessary for effective proposal, scrutiny and legislation.

Options for change
European Union (EU) measures have been developed to deal with cross-border situations, for example where it is suspected that a criminal organisation is operating in several EU countries, or that a suspected criminal is hiding in a different EU country. In such cases, cooperation is necessary. EU law and policy in this area is intended to strengthen dialogue and facilitate action between the criminal justice authorities of EU countries. We have set out below a number of examples illustrating the need to maintain access to EU databases, information exchange systems, agencies and framework for cross-border co-operation framework: -

a. Access to agencies

As an EU Member State the UK enjoys access to all of the agencies such as Eurojust, the European Police Office (EUROPOL), the European Police College (CEPOL), the European Union Agency for Fundamental Rights (FRA) European

Network and Information security agency (ENISA). The roles played by these agencies should not be underestimated. The agencies participate in the EU wide investigation of crime and subsequent prosecution by way of data sharing measures, identifying whereabouts of a suspect and the obtaining of a European Arrest Warrant.

The UK Government should as part of the withdrawal agreement negotiations consider giving priority to maintaining access to all agencies, in addition whilst it would be desirable for the UK to retain the ability to influence the policies and operational activities of those organisations this could be a challenge following withdrawal from the EU.

The ability to share information quickly and co-ordinate operations with other law enforcement agencies through Europol is key to detecting, disrupting and detaining criminals across borders.

b. Europol

The UK Government should consider giving priority to deciding whether or not to opt in to the new European policing co-operation framework[1] in order to continue access to Europol. The new Regulation[2] repeals the existing Council decisions which set out the framework for establishment and membership of Europol. Membership of Europol would continue until such time as the Regulation were repealed, although there is provision for the Commission to review and evaluate the working practices of the agency every 5 years[3]. The UK Government must indicate by January 2017 if it is to opt-into the new Regulation. Failure to do so would mean the UK will no longer be a member Europol from 1 May 2017. This will have implications for the ability of police to share information.

c. Schengen Information System (SIS)

The SIS facilitates the real-time sharing of information and alerts between the relevant authorities in participating countries, it is in operation in all EU Member States[4] and Associated Countries[5] that are part of the Schengen Area. Special conditions exist for EU Member State[6]s that are not part of the Schengen Area, of which the UK is one. On the 13th April 2015 the UK gained access[7] to the Schengen Information System and operates it in the context of law enforcement cooperation, which allows the UK to exchange information with Schengen countries for the purposes of cooperating on law enforcement.

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[1] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA

[2] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA

[3] Article 68.

[4] EU Member States that are part of the Schengen Area are most EU Member States, except for Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom.

[5] Switzerland, Norway, Liechtenstein and Iceland

[6] **Bulgaria, Croatia, Cyprus, Ireland, Romania and United Kingdom.**

[7] https://www.gov.uk/government/news/uk-joins-international-security-alert-system

The SIS has been implemented by virtue of a Regulation[8] and a Council Decision[9]. Each state using the SIS is responsible for setting up, operating and maintaining its national system and its national Supplementary Information Request at the National Entry (SIRENE) Bureau, which in the UK is the National Crime Agency. We understand that the UK police forces have linked the Police National Computer (PNC) to the SIS. The **European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (**eu-LISA), is responsible for the operational management of the central system and the communication infrastructure. The European Commission is responsible for the general oversight and evaluation of the system and for implementing measures such as the governing entering and searching data.

The UK has full access to SIS for criminal justice and law enforcement. For example, the following specific alerts are available: alerts for persons wanted for arrest for extradition; alerts for missing persons; alerts for witnesses or for absconders or subjects of criminal judgments. Access to the SIS has resulted in access to all information on live European Arrest Warrants, and information in respect of previous convictions of individuals who have offended within the EU and out with the UK.

We understand that some non-EU member states, such as Norway, participate in the SIS. The UK Government will should give careful thought for the need for continued access to the SIS, particularly if an EAW style framework for extradition to and from EU Member States is agreed as part of the Withdrawal Agreement or the post leaving relationship between the UK and the EU.

d. The European Arrest Warrant (EAW)

The EAW is applied throughout the EU and has replaced extradition procedures within the EU's territorial jurisdiction. Judicial procedures have been designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence. Following a withdrawal from the EU it is possible that, without the trust and mutual recognition between EU Member States that underpins the European Arrest Warrant, the process for the surrender of individuals will be more expensive, complex and time consuming and would require a new treaty to underpin any alternative arrangements. Extradition proceedings would become more prolonged and, in custody cases creating significant additional cost. Costs would not only apply to the UK but also to the EU Institutions and the other EU Member States.

Lack of the EAW framework is likely to create tensions with Member States where law enforcement agencies will be hampered in assisting them. There is the possibility that an isolated incidence could create significant tensions e.g. where

[8] Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) and Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates

[9] Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

an individual is suspected of an act of terrorism elsewhere in the EU subsequently flees to the United Kingdom which results in a prolonged extradition process due to the unavailability of the EAW.

Scotland has been making use of the EAW. The Crown Office and Procurator Fiscal Service in Scotland recently published[10] figures relating to the use of the EWA showing that between 2011 and May 2016 there had been **48 extraditions to Scotland pursuant to EAWs, and 49 EWAs issued by Scotland during the same period.**

In terms of options for re-establishing some form of mutual recognition in criminal matters with countries in the EU following a UK exit, one option could be reversion to the European Convention on Extradition 1957[11] ("ECE 1957"). Such an approach is likely to result in increased burden for all agencies of the criminal justice system then having to operate on a more cumbersome extradition process resulting in a high probability of delay and the possibility of less applications being made and processed.

All existing EU member states have ratified the ECE 1957[12], although the majority of member states have negotiated a set of reservations. The main differences between the EAW and the ECE 1957 are: -

- The EAW can be described as a transaction between judicial authorities where the role of the executive is removed. By contrast, applications under the ECE 1957 would require to be made via diplomatic channels with Secretary of State approval being required at a number of points in the process for example, the final surrender decision, and consideration of bars to extradition.
- The streamlined EAW framework imposes strict time limits at each stage of the process. By contrast the ECE 1957 does not impose the same strict time limits, if an EEC 1957 approach were adopted then then it is likely that extraditions between the UK and EU members states will take longer.
- Article 6 of the ECE 1957, provided that states could refuse an extradition request for one of their own nationals. For example under ECE 1957, where a national of Germany, or another state committed a crime in Scotland and fled to that country, that country could refuse extradition on grounds of nationality, in those circumstances the Lord Advocate would lose jurisdiction to prosecute that individual in Scotland. Careful consideration will be required to ensure that UK prosecutorial authorities are able to continue to exercise their functions in respect of an alleged crime within their jurisdiction, without losing the ability to have the individual returned to UK, and without losing jurisdiction to bring prosecution in respect of the alleged offence. The EAW framework

[10] http://www.crownoffice.gov.uk/foi/responses-we-have-made-to-foi-requests/38-responses2016/1373-european-arrest-warrants-13-july-2016-r013208

[11] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117678/european-convention-extradition.pdf

[12] https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/024/signatures?p_auth=jrAnfYMx

abolished the exception to extradite own nationals based upon the concept of EU citizenship.

If the ECE 1957 model were adopted, the UK would need to amend its law. Part I of the Extradition Act 2003 designates the Category 1 territories which are all other member states of the European Union and which is the United Kingdom's implementation of the European Arrest Warrant framework decision. Part 2 of the Act is concerned with extradition to all other countries which have an extradition treaty with the United Kingdom. For example, post-withdrawal the UK could amend Part II of the Extradition Act 2003 to designate all existing EU member states as Category II jurisdictions. In addition to the UK having a treaty with each state, each of those designated Category II jurisdictions would likely require to enact their own domestic legislation to implement and recognise any reciprocal arrangements.

Pre-EAW framework, the UK and Ireland had an arrangement based upon the ECE 1957. Following the introduction of the EAW, the Republic of Ireland has repealed all pre-existing extradition arrangements with the UK prior to the adoption of the European Arrest Warrant Framework decision. The Irish Extradition Act 1965 provides for extradition between Ireland and countries other than the UK. This legislation is modelled on the 1957 Council of Europe Convention on Extradition to which Ireland is a party. Part III of the 1965 Act dealing with extradition between Ireland and the UK was repealed by the Irish European Arrest Warrant Act 2003. Accordingly, if the UK withdraws from the European Arrest Warrant Framework completely and adopted the ECE 1957 framework with EU member states, Ireland would require to amend its domestic law to give effect to the arrangements.

As an alternative to the ECE 1957 process, the UK could consider an alternative option of negotiating a series of bilateral treaty agreements with EU Member states which is likely to be a long and complex process. In addition to negotiating new extradition treaties, the UK would need amending and implementing legislation. EU member states would subject to their constitutional requirements need to make amendments to their domestic law to reciprocate any negotiated arrangements.

In 2012, the UK Government made a positive decision to opt into the EAW framework. At the time then Home Secretary May[13] outlined some of the reasons in support of the decision to opt-into the framework, for example it being a streamlined process making it easier to bring serious criminals back to the UK to face trial or serve sentences. We believe those reasons for opting into the EAW are still sound and the UK Government should give careful consideration to an approach which avoids disengagement from the European Arrest Warrant process, particularly if alternative options could have a detrimental effect on the administration of justice. There should be no change to the law which would prejudice the safety and security of the individual.

e. The European Investigation Order (EIO)

[13] https://hansard.parliament.uk/Commons/2014-04-07/debates/14040711000001/JusticeAndHomeAffairsOpt-Out

The UK Government should prioritise the implementation of the directive[14] regarding the European Investigation Order in respect of criminal matters. The UK Government opted-in to this measure and the timescale for transposition into domestic law expires on 1st May 2017. The directive allows member states to carry out investigative measures at the request of another member state on the basis of mutual recognition. These investigative measures could, for example, include interviewing witnesses, obtaining of information or evidence already in the possession of the executing authority, and (with additional safeguards) interception of telecommunications.

f. Criminal procedure

In respect of the treatment of accused persons, the EU published a 'roadmap' on procedural rights in 2009 to ensure that the basic rights of suspects and accused persons are sufficiently protected[15]. A number of measures followed with proposals to further strengthen procedural safeguards for citizens in criminal proceedings. Of those measures, the UK opted into and transposed the Directives on the Right to Interpretation and Translation in Criminal Proceedings[16] and the Right to information in Criminal Proceedings[17].

The Government undertook careful consideration and made positive decisions to opt-into both Directives. We believe that the rationale for opting into these measures remain, notwithstanding the vote to leave the European Union, therefore the Government should avoid any proposal which results in a reversal or erosion of the opt-in and, which diminishes the right of the individual

20 October 2016

[14] Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
[15] Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings
[16] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings
[17] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

Rt Hon Brandon Lewis MP, Minister of State for Policing and the Fire Service, Home Office and Rt Hon David Jones MP, Minister of state, Department for Exiting the EU – Oral Evidence (QQ19-25)

Transcript to be found under Rt Hon David Jones MP, Minister of State, Department for Exiting the EU

Helen Malcolm QC, The Bar Council, Dr Paul Swallow, Senior Lecturer, School of Law, Criminal Justice and Computing, Canterbury Christ Church University, Professor Steve Peers, Professor of Law, University of Essex and Tony Bunyan, Director, Statewatch – Or

Helen Malcolm QC, The Bar Council, Dr Paul Swallow, Senior Lecturer, School of Law, Criminal Justice and Computing, Canterbury Christ Church University, Professor Steve Peers, Professor of Law, University of Essex and Tony Bunyan, Director, Statewatch – Oral Evidence (QQ 1-10)

Evidence Session No. 1 Heard in Public Questions 1 - 10

Wednesday 14 September 2016

Watch the meeting

Members present: Baroness Prashar (Chairman); Baroness Browning; Lord Condon; Lord Cormack; Baroness Janke; Lord Jay of Ewelme; Baroness Massey of Darwen; Lord O'Neill of Clackmannan; Baroness Pinnock; Lord Ribeiro; Lord Soley; Lord Watts

Examination of Witnesses

Dr Paul Swallow, Senior Lecturer, School of Law, Criminal Justice and Computing at Canterbury Christ Church University; Professor Steve Peers, Professor of Law, University of Essex; Tony Bunyan, Director, Statewatch; Helen Malcolm QC, The Bar Council

Q1 **The Chairman**: Good morning. We are very grateful to you for your time this morning. This session is being broadcast. You will be sent a transcript of your evidence and, if you wish to change it or make any corrections, please feel free to do so. If after this session you feel you want to give us more evidence in writing, that would be welcome, too.

I will start by giving you a bit of background. As you know, we are examining what aspects of EU-UK police and security co-operation it may be desirable to continue in some form following the UK's exit from the EU. It would be very helpful if you could briefly set out for us what you see as the main priorities the Government may want to pursue in this area in the course of the negotiations on the UK's future relationship with the EU.

Tony Bunyan: Thank you for the invitation. When I saw that the questions related to things such as JITs, the European arrest warrant and other specific matters, it struck me immediately that what is being discussed under Brexit is probably a lot wider than that. For my sins, I listened to David Davis giving his report to the House of Commons. It was a very long report but at a certain point he was asked a question by Yvette Cooper about Europol and he said, "We are going to make sure that security and intelligence is covered. Indeed, at this very moment my officials are looking

at justice and home affairs to preserve as much as possible". He revealed something in that sentiment because it was the only point when he got specific. I doubt he would be allowed to do that in the future. It made me wonder whether we are going to see tailored protocols; in other words, we are not going to accept the Norway or Switzerland model but something tailored to Britain, particularly in the field of justice and home affairs and CSDP. That is an instinct I have. It is almost going back to TREVI and early Maastricht.

The second broad point I would make is that we must remember that the security and intelligence side—GCHQ, MI5 and MI6 and all of the Snowden revelations—are not covered by the treaty so those relationships will just continue. We are talking there about law enforcement agencies even though there is a crossover regarding internal security.

Helen Malcolm QC: I am here on behalf of the Bar Council, but I probably ought to preface this by saying these are my personal views. My interests are practical. As a court user, at the end of an investigation process, I want to see efficient and fair extradition maintained. I want to see the ability to obtain evidence overseas and a continuation of the ease with which currently we can use it. That is the sort of thing that Eurojust helps with; setting up a video link with a court in Germany so that I can call evidence whether I am prosecuting, defending, or indeed appearing in a judicial capacity. I want to be able efficiently to get hold of the previous convictions of EU Citizens appearing in front of me, as we can at the moment. I want to maintain what is called euro-bail, the European Supervision Order. Having been personally involved in that for so many years, I am reluctant to see it go but I also think, more importantly, it mitigates some of the problems with the European Arrest Wwarrant, so I want to see that maintained, and, at the end of the process, I want to see asset freezing and asset confiscation with the ease that we have at the moment. Personally I am less troubled by things such as prisoner transfer and the recognition of probation orders and fines throughout Europe, partly because we already have a prisoner transfer convention and partly because, as far as I am aware and have been able to discover, the probation and fines provisions are not used very widely at all, as yet at any rate. Those are my priorities.

Dr Paul Swallow: I lecture in this area now and I used to work in international police co-operation. In fact, many years ago I was a member of Lord Condon's staff developing it and working in this area. When we look at the position we had then and how bad it was, and how difficult it was to work, and the position we have now, as a general comment I would urge that we retain as much as possible, as Ms Malcolm said. A good relationship with Europol and Eurojust is perhaps the key priority as I see it; and then the European arrest warrant, recognising there are difficulties with it—when you look at the Rachid Ramda case, for example, which took 10 years—and how simple things are now with that warrant; and thirdly, but less than the other two, the way that joint investigative teams facilitate and simplify cross-border investigations.

Helen Malcolm QC, The Bar Council, Dr Paul Swallow, Senior Lecturer, School of Law, Criminal Justice and Computing, Canterbury Christ Church University, Professor Steve Peers, Professor of Law, University of Essex and Tony Bunyan, Director, Statewatch – Or

Professor Steve Peers: The first point I would make—and it is not in any of your questions but it will be practically important—is that the Article 50 agreement and the separate deal on the actual mechanics of leaving, although it will not deal with the future relationship, it has to deal with transitional issues and pending requests for European arrest warrants and exchange of data and evidence and so on. That issue is already arising. There are already some cases in the Irish courts which are trying to say, "Don't execute arrest warrants coming from the UK because it is going to Brexit and will not have the various protections that come with the European arrest warrant in future". I think it is the beginning of what we will see increasingly throughout the process, of people saying that there are transitional issues which could frustrate what they need to do. Of course, those transitional issues will have to be designed to link to our future relationship so they have to be negotiated in parallel, as Article 50 says.

In the future relationship we need to strike a balance between effective investigations and prosecutions, which the EU instruments obviously point us towards, and sometimes facilitate, and human rights and civil liberties protection, which is built into some of them but could be stronger in others—and in some cases is stronger in our law than in the legislation. The Extradition Act as amended has some protections which are perhaps hard to find in the text of the European arrest warrant on the EU side. It would be an important chance to address some of those issues of balance.

The Chairman: This Committee has looked in some detail, as you will remember because some of you gave evidence, at the 35 JHA measures that the UK opted back into in 2015. Do you think there is some repetition of arguments? Is there an overlap with the ones we opted into?

Helen Malcolm: I would say that there is an almost precise overlap. Those were the most important, for obvious operational and practical reasons, and they still are as far as I am concerned.

The Chairman: Would you all agree with that?

Professor Steve Peers: I would add that, of course, the whole exercise in 2014 was necessarily confined to pre-Lisbon measures. Since then there are several post-Lisbon measures that might be useful that we would want to consider staying part of, perhaps in some amended form. One of them—the European investigation order—has not begun operations yet but that would be quite significant because it would be the main means of getting evidence between member states and it will start applying in May 2017. At the time, the Home Secretary opted in because she felt there was a risk that we would be at the back of the queue because it has deadlines in it to transfer evidence. She was thinking of the French or Germans, or whoever, who would always answer each other's requests and leave ours sitting in the back of the drawer somewhere with the file never opened for months afterwards. That would still be a risk and it would still be useful to participate in that in some form. That legislation has more human rights protections than some of the others. I would add the European protection

order, which is about cross-border protection of victims from, primarily, domestic violence. I am assuming that we are not going to expel all the EU citizens in the country or vice versa, and so there will still be some domestic violence issues where we would want to have our protection orders recognised elsewhere and vice versa. That would be a useful thing to continue participating in.

Q2 **Lord Condon:** Dr Swallow, could I follow up your point about Europol? It has become more and more of the gatekeeper for formal police liaison in Europe. What might a new relationship look like between UK law enforcement and Europol post-Brexit? Are there any important precedents? How do you think we could create a model that could work for the UK and Europol?

Dr Paul Swallow: Europol has 14 operational and strategic relationships with other countries—Australia, Canada, New Zealand and so forth—and it has four strategic relationships with countries such as the Russian Federation and Ukraine. They seem to work extremely well. The least you could hope for is an operational and strategic relationship with them, which means they would post back liaison officers from the NCA to Europol and Europol may post liaison officers to the NCA if they deemed it important enough. I would hope we could go further than that.

Lord Condon: The mechanism for doing that would be what?

Dr Paul Swallow: It would apply to the two of them. They have to debate and agree it and then call the country to it, as they have with 14 with similar criminal justice systems to our own, mainly the ex-British Empire countries.

Lord Condon: Would there be any inhibition on databases and joint intelligence in that sort of relationship? Is it a second or third-league tier of co-operation?

Dr Paul Swallow: It is definitely a second-league tier. It is not being at the table or having an input into it. Members of the British public will not be able to apply for jobs working in it. The way it works is you have a central core of Europol and around that you have what you might term 28 little embassies, all of whom communicate with each other, and that would include the 14 operational countries such as Canada and Australia. To get that referred into the central database, and for that information to be provided, is more problematic that way. A member country would supply the information to the Europol central database, the Europol analytical work files, and it would then come back and say, "Yes, we have a hit on this. We will discuss it with the supplying countries", and the work is built up. That is more problematic with the other 14 operational countries that I discussed earlier.

Lord Condon: Are there any other views on the relationship with Europol?

Professor Steve Peers: I do not know if you will be talking to Rob Wainwright, the director of Europol, at some point, but he wrote an article during the referendum that summarised the difference between a member of Europol

and an associated or affiliate country in the way that was just described. First, a non-member of the EU cannot be a member of Europol. The people on the leave side are certain that it can, but it cannot. However, it can be an affiliate member and participate in a lot of what Europol does. The limits are that it cannot be on the management board, even absent having the director, as we have at the moment. We would have less access to databases and less involvement in joint investigation teams. We could try to argue, "Our participation has been historically so valuable; why do you want to lose it? Please let us try and overcome some of those difficulties". I do not think you can get a compromise on the management issue, because it seems logical that only member states are involved in that, but we ought to be able to make a strong case for access to information. I think you would have to amend the legislation as well, so we would have to go back to the drawing board a little on that.

One point to observe—we will come back to it in some of the other questions—is our data protection framework has to be assessed if we want to participate in Europol. It is built in if you are an EU member state, but there is a separate assessment of it if you are a non-member applying to participate. We have to make sure that our data protection law is roughly equivalent to European Union standards. This is across the board but particularly for policing in this context, otherwise there will be problems in police co-operation in general and for Europol, and indeed in the digital industry and economy in the non-policing area as well. As you may know, loads of people are already bringing litigation about the current legal framework for data processing in the UK. I know there are a load lining up—"lawyering up" as they say—to challenge the IT Bill once it becomes law, so those are all issues that have to be taken into account and cannot be ignored. The EU cannot easily negotiate that away because the case law says it is the EU charter of rights that requires high levels of data protection, plus there is the primary law of the European Union, which is in effect a written constitution. They are not going to amend it just to make it easier to co-operate with the UK. That would require treaty amendment and so on. We cannot anticipate that. We can anticipate challenges and we must be aware of that data protection issue throughout the whole of the negotiations in this area.

Lord Jay of Ewelme: I have a follow-up question to Dr Swallow. If you were a member of a law enforcement agency here, what, in practical terms, would you see as the disadvantages of having an operational and strategic relationship? Leaving aside the membership, what in practical day-to-day terms would you be losing out on, if anything, if you had an operational and strategic relationship rather than full membership?

Dr Paul Swallow: It is a massive operational intelligence resource available to us, and it has really grown to this position. Underneath Europol there is also a mass of informal police co-operation that goes on through informal police bodies such as the Cross-Channel Intelligence Community and the European Association of Airport and Seaport Police. These are police officers who meet on common interests and discuss informally among themselves.

Lord Jay of Ewelme: Would that not happen if you had the operational and strategic relationship that you described?

Dr Paul Swallow: That would still continue, in my view. Were it not for Brexit I could see in a few years that Europol would gradually absorb all these bodies into it, because it is beginning to win the trust and confidence of these operational police officers. Presently we are not obliged to provide Europol with any information, although the recent regulations put a greater requirement on us to share information with it. Europol has built up very slowly and it is really gaining trust. It has had some notable successes, particularly against the animal rights movement for example. We may have formal ready access, were we to be given an operational liaison contract with them as the other 14 countries have.

Q3 **Lord Soley**: This follows on from the exchanges a moment ago. Britain is one of the biggest users of Europol; we are heavily involved and I think most people would say it is to the benefit of the EU and the UK. Is it not in the interests of both the EU and the UK to make sure we have a structure that enables that co-operation to continue working?

Dr Paul Swallow: Yes, I feel that.

Lord Soley: If we do that, there are a number of ways in which it could be done. One is by putting some of the things we might need into British law to match the situation in Europe, and vice versa. You can also do it by an international treaty, or what would in effect be an international treaty. Do you have a view on what would be the best way forward to make sure that co-operation continues?

Dr Paul Swallow: We are, as you say, very fortunate that Mr Wainwright has done a fantastic job over his tenure. Part of the reason that we are so well respected there is the slightly different judicial system in the UK, where the police are far more independent in conducting investigations than some of their European colleagues, who at a very early stage would give the dossier, the case file, to their crown prosecution service—le parquet in France and the Staatsanwalt in Germany. Here the police would give it at a very late stage to the Crown Prosecution Service which would then take it on. They have much more experience in investigating things. That is one of the reasons we are doing it. As for the rest of your questions, I do not know.

Lord Soley: In fact, the process could be in the negotiation to decide whether or not we wanted to do it by law or by agreement in some way.

Dr Paul Swallow: Yes, indeed. I think if it were by law, that would be ideal. We would know exactly where we stood. Its being by informal agreement is much less flexible. That is the position we have had up until Europol began to concretise.

Lord Soley: Could I ask a similar question about Eurojust?

Dr Paul Swallow: It is because of this difference between the UK and European justice systems. At a certain moment it will be a UK police officer, a senior investigating officer, who will be present with a Crown Prosecution Service

lawyer; but the rest are represented by their judicial systems. It is very important we keep in with that.

Lord Soley: So the same sort of process could be applied?

Dr Paul Swallow: The same sort of process could be applied.

Lord Soley: Are there any other views on that?

Professor Steve Peers: On the point about informal agreements and data protection law, exceptions to the right to privacy must be set out and regulated in law. That points towards a formal agreement that someone could point to. It would have to be officially approved by this Parliament and on the European side as well, to set out what the details are. If you are getting into the exchange of personal data, you need something relatively formal to regulate that. Meeting and having discussions in a general sense is not a problem, but getting access to databases is going to be more legalistic.

Lord Soley: Despite everyone's views on Brexit, we have to make this work, both in the interests of the EU and the UK. Have any of you given any thought to similar situations between other countries and units, the most obvious one being Canada and the United States, where presumably there has been very close co-operation on security and strategic matters? Do you have any ideas?

Tony Bunyan: We have not touched on it yet but it is referred to in later questions about bilaterals. Knowing what has been negotiated bilaterally is very difficult because both sides treat it as restricted and confidential. Even now, the bilateral treaties which the United States had with EU member states are very hard to get hold of. We have managed to find six of them but we know there are 13, and they are really very extensive regarding co-operation. When you get to the bilateral world you are going to have a real problem with not only what has been negotiated but what has been agreed and how it has been used. The biggest problem is getting reports back on how often this bilateral is being used. To some extent the United States is bypassing Europol and going to member states under bilateral agreements.

Lord Soley: What about between Canada and the United States, which is a more similar example; have you any idea?

Tony Bunyan: Europol is not very happy.

Lord Soley: No, between Canada and the United States, the two countries. The co-operation is clearly very close.

Tony Bunyan: I do not know.

Lord Soley: I will leave it there, thank you.

Dr Paul Swallow: But at an informal level, my Lord; it is done informally. The states know it is happening and they know it has to happen, and they kind of let the cops get on with it provided they do not cause any trouble.

Lord Soley: Because it is in the interests of both to co-operate.

Dr Paul Swallow: Because it is in the interests of both.

Helen Malcolm: On the subject of Eurojust—and I will be corrected if I am wrong—I am not aware of associate members of Eurojust in the way that there are of Europol. From a practical point of view, I would be enormously keen to keep access. In the past I have been able to say in court in the course of a bail application, "I will give you 20 minutes. Go and ring the Romanian counterpart and find out whether this gentleman has previous convictions before I decide whether I am going to give him bail". That is a facility that I would be very loath to see disappear. Allied to what Professor Peers has said, there are of course—and quite rightly—enormously stringent personal penalties for breaches of data which are unauthorised. For somebody to take upon themselves the responsibility to say, "I will tell you anyway that he has previous convictions" is not feasible. I would want to see a formal agreement which provides for both penalties and enforcement. It is the twin sides.

Lord Soley: That is very helpful, thank you.

Professor Steve Peers: Eurojust has an external relations framework. It has liaison officers working with non-members and of course we should look into doing that and continuing the sort of co-operation that has just been described.

The Chairman: I think it would be very helpful if we had some other examples of the practical implications of how it would affect the way you work. If you could let us have those in writing, we would be very grateful for that.

Q4 **Baroness Massey of Darwen**: Could I ask about joint investigation teams? Should the UK look to maintain participation in some form? If so, how could we go about making new ad hoc arrangements and funding agreements? Would there be a link to the outcome of negotiations with Europol and Eurojust?

Tony Bunyan: The arrangements are a bit the same as with Europol. In other words, the UK could not be a member of all the infrastructure beneath—the liaison committee and everything else, part of the planning and writing the manuals and everything else—but it could be an associate member. In the last report they had 14 applications from non-EU member states for support, whereupon that non-EU member state will work with member states on the joint operation. One could argue it is the same tenuous relationship, compared to the current situation, as it would be with Europol.

Professor Steve Peers: I would add that it is related to Europol and Eurojust, and it has led to the EU mutual assistance convention which sets out roles on joint investigation teams and a separate framework decision on the issue which applies in the meantime. Obviously, we would seek to continue to participate in those laws, and the joint investigation teams come with it. Again, you would need something fairly formal because the exchange of

personal data is involved, which needs to be properly regulated. There is a framework already for Norway, Iceland and Switzerland. The precedent is already there and it makes sense that we can simply ask for continued participation. Non-EU countries are already involved, so it is not a particularly surprising or outrageous thing to suggest we could have.

Q5 **Baroness Janke**: You have talked about data sharing and my question is about the practical impact of losing that. I was wondering about cybersecurity, for example, and the sharing of information and data. Is it possible for the Government to negotiate continued access to databases and to information shared on cybersecurity?

Dr Paul Swallow: Europol has its European Cybercrime Centre, the EC3, which is gaining ground. Part of the new regulations would have required member states to share information systematically. That would be extremely useful because we would have access to the other information supplied by other people. Hopefully, that will be part of any negotiation we could arrange with them afterwards, but yes, it is vitally important.

Professor Steve Peers: The first point I would make is the general point about data protection: that we will not have access to these databases unless we have equivalent laws to the European Union on data protection. There is a risk of people challenging that in the courts, as they have, and the EU have that arrangement and arrangements with the United States and so on, so we have to be aware of that. There are four EU databases and there are other EU rules on cross-border exchange between police forces that are useful, but I will say a little about each of them.

The Customs Information System has stopped producing statistics, but that is probably because each year it was used a tiny number of times in the policing context and, for whatever reason, people use different frameworks. Naples II is much more frequently used by customs officers for policing that we should seek to participate in from that perspective. The Customs Information System has another part to it which is mainly used from a commercial point view, checking on, "Do these goods really come from China?" and that kind of thing, and we might still be participating in that, depending on how close a link we have with the single market, on which there is a separate debate. We are about to start participating in the Prüm decisions, so it is hard to judge how significant they are. Obviously, the Government were very keen to participate and last year they produced a detailed assessment which strongly recommended participating, so there is no reason to doubt that that would continue to be the case. Norway and Iceland have a treaty on access to Prüm, so there is a precedent there.

On the European Criminal Records Information System, the Government produced a 10-page summary on the EU and security during the referendum, which you may have seen. There is a lot of operational detail and statistics in there, and the additional amount of data we have on criminal records from other member states under ECRIS is enormous. There is no precedent of a non-EU country having access, so here we would be asking for something unprecedented. Even from the very beginning, I remember meeting police officers who were very anxious to have this data,

and clearly they have used it since. I am sure the UK would want access to that.

The Schengen Information System took a while; we have had access for a year or two. It is the extradition data, the European arrest warrant data, which is particularly useful, as well as stolen objects and cross-border surveillance in European anti-terrorism or organised crime cases. There are civil liberties concerns about some of these issues and accuracy in that database. I do not know how often it is used; I think there are some statistics saying the UK has used it fairly frequently in the brief period since we have had access, so there would be a reason for that. Again, Norway and Iceland have access, but that is linked to them being fully part of Schengen, so it will be asking for something which is not normally given since we will not be joining Schengen, of course, as a non-member. You can ask for it, but it might be difficult.

There is an advantage the other side: where they are sending us a lot of European arrest warrants, it clearly makes it easier to find people, and there is a risk that we will be the kind of Brazil of Europe if we do not have access to these European databases; it would be more attractive for criminals to come here and less easy to find them without these databases—their situation is easier without the European arrest warrant. That is the argument that we could try and use if we are asking for something unprecedented.

Baroness Janke: There is mutual self-interest in this. We were speaking with the French Ambassador a week or so ago and, clearly, in view of what has happened in France, there is a real mutual self-interest that might give an incentive to overcome the unprecedented nature of what we might be trying to do. Do you believe that is a factor that needs to be considered?

Professor Steve Peers: I assume there might be cases where someone under surveillance in France, let us say, makes a visit to the UK and back the other way and you would want to keep them under surveillance. That is the kind of argument you would want to make. The Poles want lots of people here and other countries too on the basis of the European arrest warrant. It is easier for us to process those arrest warrants if we get them through the Schengen Information System. It is not just us wanting to get people abroad; there is a greater number of European arrest warrants coming the other way. Given the link between the European arrest warrant and its operational effectiveness in the Schengen Information System, that is the argument, as well as the many others about stolen cars and stolen objects, et cetera—the sort of data that goes in the Schengen Information System. The usefulness of them having information on British criminal records, as well as the other way round, justifies access to the ECRIS system.

Baroness Browning: I want to pick up on the last comment that Baroness Janke made. The EU has, fairly recently, signed up to bilateral agreements with countries on passenger name records. Some moons ago when I was at the Home Office, I was involved with this in a small way, and there was very a noticeable reluctance on the part of countries which had not had the

experience this country has had in terrorist attacks to sign up, although they have now done so. Given that the Lisbon Treaty is, I think, 10 years ago now and a lot of these measures, the opt-ins and opt-outs on policing and security, are coming from the Lisbon Treaty, and the fact that the Secretary of State indicated he rather thought we would continue as we were but under a new agreement, when we come to renegotiate all these matters, do you think there is a lot more momentum across the European states to make this work and get round some of these very tricky legal situations you have identified this morning? Do they not now have a strong imperative to make this work across borders, whether we are a member of the EU or not?

Tony Bunyan: My view is they do, and this is one area where both sides very much want to do it. The infrastructure invested by the UK in, particularly, justice and home affairs, with UKREP in Brussels with their six to 10 specialists working as CJEU councillors examining every new measure going through and the infrastructure in British embassies throughout the EU, is enormous. It is not just a question of justice and home affairs. It is a question of the knock-on, particularly since more recently there is a lot of funding going into security-industrial research under new programmes in the Commission, which comes under the same commissioner in DG Home. This is enormous infrastructure to support research, surveillance mechanisms, drones and everything else. For the UK, it is not only terrorist and criminal law. Also, in that nexus of security where the agencies are involved as well and all the dozens of conferences they go to, there is a security-industrial complex in which the UK is also a very big player, and this is one area where it works both ways. Whether they can find a way of constructing a package as complete as indicated today, which goes further than we have even got round to discussing here today, is the big question because they would have to spell it out.

Baroness Browning: Do you sense a mood change in this since the Lisbon Treaty was drafted?

Dr Paul Swallow: The nation states had to co-operate with their neighbours and there was no mechanism for them to do it, so the police forces did just get on with it. This kind of information is often passed on an intelligence basis, but, when you need it to be passed on a judicial basis for use in prosecutions, you have to get involved in the principal agreements. In that case, I would be concerned. The Americans can certainly get hold of this information through their own networks very quickly and, were it a direct threat, they would almost certainly act upon it; but, were they to prosecute those people involved, they would need to have that same information on a judicial basis. Have I explained that clearly?

Q6 **Baroness Pinnock**: As the starting point, I am not a lawyer. I think I have heard you say several times there is a need for data protection to be of a similar standard between us and the European Union if we wish to make these agreements post-Brexit. Is there an easy way of explaining the difference and how big that difference is? Is it a big gap to close or would it be easy?

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Tony Bunyan: I am not a lawyer either, but I know the practice. The existing agreements are in concurrence with data protection in EU standards, but it has this big hole in it; it is only looking at the reports that come along on which they go ahead and have co-operation agreements based on what the law says. In other words, does the law in that country match EU law? In most cases, it does not get round to the practice in that country, which has been contentious in the EU, particularly with Russia and Israel having co-operation agreements with Europol. They said, "The law might say this, but what is the practice? What has the court said? What has civil society said?" If Britain were in this situation, we would have to have a law which is equivalent to EU law and the new General Data Protection Regulation, which is now EU law, which will require us moving into line with the 1998 Act over here and changing it in line with EU law if we were to join Europol, although there is a separate directive on the exchange of information between law enforcement agencies.

Q7 **Lord Condon**: I wonder if I can ask Professor Peers to say a little more about access to databases through Prüm. One of the reasons UK law enforcement urged the Government to opt into Prüm was that it enables formal access to fingerprints, vehicle registration numbers and DNA samples electronically within seconds, minutes or hours, as opposed to—sometimes, at the moment—weeks and months. You mentioned Norway. We will not be part of Schengen, so can you see a mechanism where we could have formal Prüm access within seconds and minutes to these databases? What would be the mechanism to allow that?

Professor Steve Peers: The treaty between the European Union and the UK, which could include other policing and criminal law issues as well, could allow for the continuation of that. Again, there would be a check on our data protection law before they went ahead and approved it, but they have just assessed our application to join Prüm as a member state and said it was fine, so, provided there are no changes or doubts about the law in practice in the way that Tony Bunyan explained, we ought to be approved as a non-member to join. Yes, Norway and Iceland are Schengen members, but in the case of Prüm there is not the direct link with Schengen as there is in the case of the Schengen Information System, where it is obviously in the title. That makes it more arguable that the fact we are not in Schengen should not count against us in access to Prüm.

Talking to police officers, they do not say that it is normally within minutes that you get something because you have to double-check with fingerprints and so on, which adds to the cost and is why we delayed our participation for a couple of years from 2014. Indeed, it does take extra resources to double-check things under Prüm, but I am sure, as you say, it will be much quicker than getting that access otherwise. There are a few fingerprints in the Schengen Information System and there will be more access soon, but that is linked to a European arrest warrant request and is not the same as finding a fingerprint at a crime scene and saying, "We think this person might be a Czech national. Let's ask the Czech police if they have this guy's fingerprints in their records". That kind of very useful thing which you will be able to do under Prüm is a good idea to maintain, but of course it works

both ways. I am sure there will be some British nationals who are suspected of crimes on the continent, or people who have a prior history in Britain whom we have data on, and it is useful for them to be able to make the request to us; plus we have a huge DNA database which I am sure is very attractive to other member states.

Helen Malcolm: Could I come back to one thing on data protection? I am not a data protection specialist, but my understanding is that our current Data Protection Act was based on the then existing European directive, which obviously was in1998. There has been a recent sea change in Europe in something called the General Regulation. There is a very strong view on data protection across Europe which involves not just EU states but the Council of Europe and, since we are making absolutely no suggestion that we should come out of the Council of Europe, I suspect we will always, practically speaking, be required to maintain the same level of protection as the EU. After all, it is not just things like fingerprints and the rest of it; it is the entire online economy, every time you buy something by credit card over the internet; so there is a real necessity for us to keep our rules at the same level. You will be aware that, after Snowden and the Safe Harbor decisions, there was a certain amount of panic about the safety of data in the US, which has given rise to new US-EU provisions, so we would have to have at least that level of provision.

Q8 **Lord Watts**: We have touched on a number of the issues I was going to raise, but I would like to give you the opportunity to say something more on them. What are the options for re-establishing some form of mutual recognition in criminal matters with countries in the EU following a UK exit? What are the precedents for bilateral treaties with the EU in this area? What are the benefits and drawbacks of falling back on relevant Council of Europe treaties? You have touched on some of that, but I wondered if you wanted to say anything else?

Dr Paul Swallow: The problem is we are going to be back to what we had before. I referred to the case of Rachid Ramda, which took 10 years from 1995 to 2005 to extradite, using the Council of Europe mutual legal assistance treaty. What we have now is far better.

Lord Watts: Is that the view of everyone?

Professor Steve Peers: Yes. If you look at the British Government paper during the referendum, which I have already mentioned, they give the statistics on the significantly greater number of European arrest warrants than there were extradition requests, and they are dealt with significantly quicker than they were before. We can go back to a Council of Europe system, of course. There is a convention there with four protocols and there will be transition literature about how we will do that, but be aware that it will mean not only transitional challenges, which we are getting already, but significantly fewer people extradited, taking significantly longer and quite possibly more expensive in each case.

With other issues, it is not quite so clear that the EU measures add a lot to co-operation under the Council of Europe anyway. In some cases though,

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if we went back to the Council of Europe measures, there are things which we and a number of other member states have not ratified, such as the recognition of judgments and fines. In some cases, such as the transfer of sentenced persons, there is quite an elaborate Council of Europe framework. The EU maybe does not add a huge amount to that. It is meant to simplify it somewhat, but on the most recent information not a lot of member states were applying the EU measure yet, so it is hard to work out exactly how much added value it has at the moment.

In the case of Eurobail, which Helen Malcolm mentioned, there is no Council of Europe fall-back at all and we would have to negotiate one from scratch, like the European Protection Order. There is a little bit in the Istanbul convention on domestic violence about that, but not a full framework for recognition of protection orders against domestic violence, which is another useful thing to have. In the case of mutual assistance, which is a very large part, as I understand it, of the day-to-day co-operation between states in getting evidence in criminal trials from other countries, the EU has not added much so far, but the European Investigation Order which applies from next May is meant to add significant value, speed things up and get access to more evidence. It may take a while until it is fully running because states usually delay their application of EU law a bit, but it has the potential at least to be significantly more than we have at the moment. There is the potential, as the Home Secretary recognises and as I mentioned before, that, because the European Investigation Order has deadlines, the requests of other countries which are not part of it will go to the back of the queue. Of course, the same thing arises as a non-member state and we may be even more likely to go to the back of the queue if we do not participate in the European Investigation Order in the future. Those are the reasons why we should continue to participate.

Lord Watts: Given what you have just said, how long do you think it would take to negotiate those new treaties? Is there any precedent?

Helen Malcolm: I am told it takes two years to negotiate one treaty. That was what I was told by somebody in the Home Office. I do not know if that is right. When I gave evidence in relation to the Opt-out before, I calculated some 234 man-years would be needed just to negotiate the 35 criminal justice provisions that we thought were essential. Of course, I may be wrong and, if you are copying an existing treaty, I assume it is much quicker.

Professor Steve Peers: Some of them have been longer. The EU-Japan negotiations were longer and the EU-US were a little shorter with the 9/11 pressure quite soon after the terrorist attacks, so it could be longer or shorter. I agree that, if we are simply going to copy things and say, "Here's this list of EU law we will continue to apply", it should be relatively straightforward. If we say, "We would like some exceptions from those EU laws, we would like to negotiate some changes", which Norway and Iceland did with extradition and the European arrest warrant and which we might want to do as well, it adds to the negotiation. We could do a transitional deal where at the end of the Article 50 period, we keep some things in force

while we are still negotiating. That may have to happen anyway with a lot of the single market issues if we want to respect that deadline and not be having elections in Britain to the European Parliament in 2019, which would be very odd. This will be one area where maybe we would want an extra year by way of continuing de facto while we negotiate any changes we might want to make. That is the crucial factor. To sign up to a list of 35 or 38 measures, fine, that should not take two years to negotiate; but to try and change them in any significant way would probably take longer than that. It may not be 10 years, but certainly four or five, and there might be difficulty and delays in ratification as well.

The Chairman: Is there some merit in looking at those 35 we want en bloc and not changing them?

Professor Steve Peers: It will definitely simplify things to say, "Here's the list of things we have been happy with"— and we reviewed them in 2014, of course, and the Government issues information here on how things are working in practice, and there have been a couple more since—"and we do not want to change them". Obviously, there might be two or three things you want to change, but the fewer and the less difficult the things you want to change, the better, and there might be some things they want to change on their side, but that will be the crucial feature. If you want to negotiate something from scratch, that will take much longer, as the Japanese did on mutual assistance for evidence. If you want to say, "We take this existing list with no change", that should not take more than two years. If you want to start renegotiating it, we start, potentially, talking about something longer, depending on how difficult the changes are.

Tony Bunyan: The strand that is hitting me here, and it hits me even with these 34 or 35 measures, is that that is the status quo at the moment, but, if there are any future changes to those 35 laws, we will not be at the table to discuss what changes are made to those. Obviously, Norway and Switzerland are at the table in the Mixed Committee in relation to Schengen, so they are sitting in on the working parties and can influence what is going on. It is that lack of influence—which has not always been to the good, I might say, for the UK and is sometimes extended against civil liberties' need, not just in taking part in something but deciding where we are going now and taking part in operations where people very much underestimate the number of operations organised by the Council in the law enforcement area. Every year, there is a whole package of measures going through, whether it is against immigration, cars, drugs or whatever; it is an enormous infrastructure. If you are not part of that decision-making, you have to go along with things in time, and it is all right now when it is recent, but in time you will not want to be part of some of these things.

Helen Malcolm: We have not investigated whether we are talking about bilaterals with each of the 27 states or a bilateral with the EU. I would be enormously in favour of the latter for reasons of simplicity, speed and being able to keep this train vaguely on the tracks. There is, for instance, the extradition treaty with Norway and Iceland. It has, so far as I am aware, only two differences from the EAW, which are two discretionary reasons for

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non-return: the political offence exception and the surrender of your own nationals. Other than that, word for word, it is the same as the EAW and the form at the end of it is worded identically to the EAW form. On the one hand, that makes life simpler. On the other hand, of course, it does not answer any of the existential and philosophical problems that people have with the EAW, if you are giving them the same thing. Again, and I tend to speak very practically: there is an enormous advantage in having one single form. If you were sitting in a small police station Bulgaria, you just send off one single form when making a request for extradition across the EU—therefore to include the UK for the time being. Assuming we are outside the EU, there will always be a practical desire to put the British one into a drawer and deal with it tomorrow because it is a bit complicated and slightly different, if you have that option.

Q9 **Lord Condon**: Does a single bilateral leave us vulnerable to the strategy of negotiation—because these are so important to us that they may well use it as a negotiating tactic to get concessions in other unrelated areas? We are assuming good will all round, but one of my fears is that, because of the importance of this area, something like a single bilateral will be tantalisingly shown to us and then brought in as part of concessions in other totally unconnected areas.

Helen Malcolm: I suspect the answer to that is political, and you are better equipped than me to answer it. That will be the case in any event, even if we are dealing with 27 different bilaterals, because all the countries will have different interests to promote as against us. On the other hand, we have a very good name at the moment in Brussels. You have, as the legislators, that card in your hand. We are known for arguing pragmatically, practically and sensibly on the whole—with some exceptions, I accept—and we have been in the forefront of negotiating things such as defence safeguards and victim protection over the last few years. I know, at least informally, that people are rather depressed at the idea of the British moving away from the negotiating table, so I can only hope you will have success in your negotiations and not too many concessions.

Lord Watts: Let us say the treaties are agreed and we accept them as they stand, and that is the easiest way to negotiate them. If there is a change to the treaties, and we will not be party to that negotiation, where does that leave the UK with everybody else after the treaties change?

Helen Malcolm: By definition, you are talking about a UK-EU treaty. An inter-EU treaty change will not necessarily mean a change in our UK-EU treaty, but of course you look at the prospect of divergence, ultimately, which will not be helpful for swift and practical enforcement.

There was one other question you asked earlier: to what extent can we fall back on existing Council of Europe treaties? We can, to an extent, certainly within the extradition field[18]. However, there are problems in Europe with

[18] Although academic and legal opinions divide even as to that (Footnote added by Helen Malcolm QC)

that. The directive that brought the European Arrest Warrant into force in 2002 explicitly says that, for EU member states, this replaces all existing extradition procedures, so they would have to overcome that, particularly for those states that automatically transpose European law into their domestic law without the intervening Act of Parliament that we have here. We still We still operate the Council of Europe Treaty on Extradition with countries such as Israel, Russia and other non-EU member states, but it is very much an open topic at the moment for us, academically and practically, as to whether other monist states—states that automatically bring a treaty law into their domestic law—are bound by the repeal provisions and, therefore, have no pre-existing or previously existing arrangements with us and would have to revive them.

Professor Steve Peers: That could easily be dealt with by a clause in the transitional arrangements in the Article 50 treaty, and a monist state would be automatically transposing that to address the issue of the point at which you start to convert pending European arrest warrants to Council of Europe extradition requests. That whole process of moving over, if it happens, ought to be a clear and simple transition; otherwise, everyone who is detained on the basis of a pending European arrest warrant will ask not to be detained in hundreds of cases around the continent, and here too, and some people will potentially be let out whom we do not want to be. That is one issue.

There is another legal issue here about whether we have a bilateral negotiation or not. It is an open question how much the EU might have exclusive external competence over some of these issues, so that we have to negotiate with the EU rather than the member states. On data protection, it probably does because it is a harmonised law and on some of the other issues, arguably, it does. The Commission certainly thinks that it does, and that is argued on the Council of Europe protocols to the terrorism convention. If necessary, it is possible that that might end up being litigated at the EU level and, of course, we cannot affect what the EU court says—and, especially, if we no longer have a judge on it, we have no effect at all. That bilateral option is potentially a factor that the Commission will certainly be against for its usual political reasons, which it legally, ultimately, might bring to the European Court, which might say, "That is right, you can't do side-deals on some of these issues". It is not either all or nothing, but on some of these issues it is possible we cannot do it bilaterally and it has to be the European Union. Certainly, on the databases of the European Union itself, there is no doubt that is the case.

The Chairman: We have covered the European arrest warrant.

Q10 **Lord O'Neill of Clackmannan**: On the question of the CJEU jurisdiction, to what extent do you anticipate that this jurisdiction could become a sticking point, given that we have been talking today about a dynamism in the process and we are not just dealing with the status quo but anticipating additional problems arising? Do you think that the dynamic is in itself a problem and, if it is, can you identify any particular areas? I am thinking Ms Malcolm could help us there.

Helen Malcolm: Again, that is almost a political question. As you are well aware, there are those who are convinced that the CJEU regulates their day from the moment they get up and brush their teeth in the morning, and there are others of us who do not see it in quite those terms. For them, I imagine it is genuinely a sticking point. Legally, there would have to be a way of policing and enforcing, I suppose, an EU-UK treaty on whatever subject. We have, after all, adopted CJEU jurisdiction willingly—more or less willingly—and legally since 2014 for a number of measures, including the 35 we have spoken of and the ones we have opted into subsequently, so it was not a sticking point in relation to those. There are practical issues with the CJEU, in particular the fact that most of the judges there have no criminal experience at all. It is only the French advocate general who has ever been into a criminal court or prosecuted a case, although our own advocate general is very experienced and did a lot of public law, some of it having distinct relevance to the criminal law, if I can put it that way, but she would not dream of describing herself as a jury advocate, nor would any of the rest of us use lèse majesté in that sense, so there is a problem of experience at the court. It is one of the things that the Bar Council would very much like to see redressed but as Professor Peers has said, if we are out of the EU, we no longer have any ability to influence who is sitting on that court.

Professor Steve Peers: There are several elements to this. The first element is the EU almost never asks non-EU countries to sign up to the EU court's jurisdiction, so that in itself should not be a problem, and I am sure we would say no if we were asked, although I do not think that will arise, but two things will arise. First of all, the EU court has jurisdiction to interpret the treaties which the EU signs with non-EU states, so the EU would be able to give interpretations of their deal with the UK. It has already given rulings on the EU Schengen association with Norway and Iceland, it has been asked to rule on the EU-US extradition treaty, and there are many cases in other areas of EU law where it has ruled on treaties with non-EU countries. Those rulings have an impact on us. They would be about the recognition of British arrest warrants sent to Ireland or wherever to get British nationals back or whoever it might be, but they would not be directly binding on us. That relates to the second point, which is the divergence point.

Tony Bunyan has already talked about one type of divergence which could exist in future, and I know we have a question later about divergence, which is the legislated divergence when the EU law gets amended, but this is a second type of divergence, of course. It is quite possible that our courts, no longer being covered or bound directly by the EU courts in the way they are under the European Communities Act, will give different rulings on the same legislation, in effect, if that is what we have agreed to apply. Even if there are slight variations in the EU version and the EU-UK version, I expect there will be provisions in common and the EU court will be ruling on the EU-UK treaty, but there will still be divergence in respect of how to interpret the particular treaty between the EU level and the UK level. You have to deal with that other type of divergence as well. To give you a practical example, although I am sure it will be resolved before Brexit, the same question that arose in our Supreme Court about Julian Assange being

released because the Swedish police issued a European arrest warrant has gone to the court of justice from a Dutch court and they have fast-tracked it, so we should have a ruling in October, unless it gets settled or withdrawn. That is the kind of thing where it would be slightly awkward, obviously. Imagine the EU court saying after Brexit, "Well, the Swedish police cannot issue European arrest warrants". What will Julian Assange say if he is still in that embassy another five years down the road? It would be odd if the same ruling does not apply to the UK if we are still applying European arrest warrants without any relevant differences from the legislation, as Norway and Iceland are.

The Chairman: We have run out of time. Thank you very much indeed. It has been very helpful. As I said earlier on, it would be very helpful if you can give us more practical examples of the differences it would make at an operational level and the arrangements that would work more effectively in the future. If, on reflection, there are other things you want to send us in writing, please feel free to do so. Thank you very much indeed for your time this morning.

Helen Ball, Deputy Assistant Commissioner, Metropolitan Police Service – Oral Evidence (QQ 38-49)

Evidence Session No. 5 Heard in Public Questions 38 - 49

Wednesday 26 October 2016

Watch the meeting
Members present: Baroness Prashar (Chairman); Baroness Browning; Lord Condon; Lord Cormack; Lord Jay of Ewelme; Baroness Massey of Darwen; Baroness Pinnock; Lord Soley; Lord Watts.

Examination of witness

Ms Helen Ball.

Q38 **The Chairman:** Good morning, and thank you for your time this morning. As you know, this session is being televised. You will get a transcript of what you say to us for correction. If, after the session, there is anything you wish to add, please feel free to do so. Perhaps you would start by telling us a little about your job and making any introductory comments.

Ms Helen Ball: Thank you very much indeed, and thank you for seeing me. I am here today as deputy to Assistant Commissioner Mark Rowley, who leads for the National Police Chiefs' Council on counterterrorism policing. Counterterrorism policing is a collaboration by police forces. It has extra government funding and is co-ordinated nationally, but in fact every chief constable retains the responsibility to deal with the threat from terrorism and extremism in their local area. Because of that national co-ordination, CT policing really can work at neighbourhood, regional, national and international level—that collaboration works very well. We also have a very strong relationship in the UK with the Security Service MI5, and that is one of the bedrocks of the UK's approach.

CT policing has been deploying police overseas for 30 years. We have always recognised the value of embedding British police officers alongside their foreign counterparts. Sometimes the relationships between police forces overseas and their own security and intelligence agencies are not as strong as those in the UK. Police-to-police relationships can make a real difference and give extra security. Our counterterrorism police liaison officers work throughout the world. Sometimes they work alongside police forces and sometimes they are part of the UK's diplomatic mission. In Europe, we have at the moment eight counterterrorism and police liaison officers, including one attached to Europol, and we are increasing that number to 11. You have seen how the threat has changed; attacks have

come closer to the UK and have happened in Europe, and we are taking the opportunity to increase the number of UK CT police liaison officers abroad. Is that okay to open with?

The Chairman: Yes. That is very helpful indeed. From your point of view, what are the priorities for counterterrorism post-Brexit? What are the essential issues for the purposes of counterterrorism?

Ms Helen Ball: The referendum came at the same time as we were seeing the threat change and come much closer to us in Europe. Our threat level has been at severe for over two years, which means that an attack is highly likely. As we saw attacks come closer to home in Europe, we were already working to increase our relationships with European police forces, to work more jointly together and share more information. That has proved extremely valuable. We would want anyway, driven by the threat, to continue that. We are all safer if we can share information widely and act on that information by making disruptions and arrests. Sometimes that information will be from people's criminal background and behaviour, not just their terrorism or extremism behaviour. We are safer if we can track people and suppress the guns or other weapons that they might use to make an attack; if we can protect vulnerable people who are manipulated by terrorists to carry out acts themselves; and if we recognise the way in which we are all interdependent.

Going forward, we want to prioritise the very swift and effective passing of information and intelligence among police forces in Europe—our ability to work together. The intelligence I am thinking of might be things such as financial intelligence, which has no border and can be very valuable, or our ability to work together to freeze and seize people's financial assets; the ability to understand who is travelling through borders and to make the most of the opportunities that a border provides; and the ability to share information and work together to suppress the weapons that people might seek to use in an attack.

The Chairman: It would be helpful if you could list for us the tools and structures that you think are necessary for you to exchange information and work in greater co-operation.

Ms Helen Ball: Yes. The way I have described it in my answer is to stress the capabilities that we need to seek to retain. Some of those are contained in certain current tools and structures; recently, when you saw my colleagues David Armond and Steve Rodhouse, they described some of them. For example, they talked about Europol, the European arrest warrant, access to the Schengen information system and access to European criminal records information, and I know they went through all of those with you. Although in CT policing our usage of much of that is less in volume, it is nevertheless very useful to have those structures and mechanisms operating. If we were no longer to have access to them, we would still seek the ability to share information and intelligence across Europe and to do the things I have described.

In CT policing, we are particularly interested in the information contained in passenger name records, which are very valuable for protecting people;

in financial information exchange, as I have described; in the ability to understand the movement of firearms and other things, such as how precursor chemicals are moving across Europe and whether they are a threat; and in sharing biometric information—fingerprints, DNA, facial recognition, vehicle information and that kind of thing. We are interested in being able to share all of that.

The Chairman: Thank you very much indeed. We can pursue some of those in detail.

Q39 **Lord Condon:** Could I ask you to elaborate particularly on data sharing? The UK currently has, or expects to have, even more formal access to all the European databases, whether that is Prüm, the PNR, Schengen II—all of those. Could you give us more of a feel for how mission-critical to counterterrorism having formal access to all those databases is and perhaps, if you can, give us some practical examples, or some of the challenges that you would face practically if you and your colleagues countering terrorism no longer had easy, formal access to all those databases?

Ms Helen Ball: It is mission-critical in protecting both the citizens of the UK and the citizens of Europe that the UK policing effort is able to access that information. I do not say that it has to be through a particular formal mechanism; that is for the negotiations to decide. However, when we consider the way that terrorists are operating—I will stick with terrorists for the time being—all the European countries have had people travel from their countries to Syria to join Daesh, or ISIL, and we face the common problem of the possibility of some of them returning to their countries. We all face the problem of our citizens being manipulated, persuaded to travel, or persuaded to carry out attacks in their country by Daesh, and we are much stronger if we can share throughout Europe information about that—the same phenomenon reaching back to one place. We are much stronger if we have an understanding of what our fellow countries are experiencing. If we know that people are travelling across Europe to reach Syria to join Daesh, being able to track them and prevent that travel is extremely important. That would be both outward and inward travel. That is why I have referenced some of the opportunities at borders and some of the ability we would have to track people's movements as they travel. Accessing that information and intelligence remains mission-critical.

Of course, the fact that MI5 has very strong relationships with security and intelligence agencies in Europe and the fact that Article 4.2 of the Lisbon treaty left national security as a reserved matter, if I can put it that way, means that there are strong security and intelligence agency relationships that we also rely on and have access to. We have strong bilateral relationships as well with police forces in Europe, which were already formed, and we have more reliance on those relationships than we do on access to the databases. Nevertheless, we would not want to lose access to that information.

Q40 **Lord Condon:** You seem more sanguine about the potential formal loss of access to the databases than, for example, David Armond and the NCA might be. Is that because you feel that the security services can be a proxy

for you to get access to all the information you need, via their contacts, rather than through the formal arrangements? We need more sense of how severe a loss access to the formal databases might be, or are you giving us encouragement that you feel that informal arrangements, new arrangements or working through the security services will fill the gap and that there will not actually be a problem?

Ms Helen Ball: The security service relationships are extremely powerful, although they are not a proxy for direct police-to-police relationships. However, they enable us to have an enormous amount of information and intelligence around terrorist travel. If I am sounding sanguine, it is because of our experience of working with European police forces as the threat has changed, and that is mirrored, I think, by the experience MI5 has had of working with security and intelligence agencies in Europe. Collectively, we recognise absolutely that we will meet that threat much better and protect many more people if we work together and find ways of sharing intelligence. What I am sanguine about, I think, is that that sense of collective effort will endure. In future, the information held in police forces, rather than security and intelligence agencies, will become more and more important. It is already a crucial part of protecting people from terrorism, and that is because many more people have left our communities and have trained, and perhaps fought, and might return. Therefore, the information we hold about them now is very powerful, probably more so than it has been before.

Lord Jay of Ewelme: Could I ask a follow-up question? Could you compare intelligence sharing, or counterterrorism intelligence sharing, and so on, within EU institutions and with countries that are outside—the situation in which we might find ourselves in a few years' time—say, Turkey and Norway? How does co-operation with them compare with the effectiveness of co-operation among the EU states?

Ms Helen Ball: We share intelligence using Europol, particularly as a means of passing such information among police forces. I speak only for policing in this answer. We also have those bilateral relationships, and some trilateral relationships, depending on the particular threat we are dealing with, and we are able to share intelligence with non-EU countries, where it is valuable, under different intelligence-sharing mechanisms. There is a police working group on terrorism, for example, which means that we can share intelligence with some other countries. It goes back to the pragmatic way in which police forces have approached their role in national security throughout Europe, and the way in which we have investigated and carried out proactive and preventive operations together and found ways to share intelligence where it is needed.

Lord Soley: That is a very helpful answer, but can I ask you this? We will almost certainly, depending a bit on negotiations, be outside some of the organisations that arrange that within the EU. Are there any lessons to be learned from elsewhere, for example, Canada and the United States, where they must have a similar problem of co-operating across the border? Are you aware of the ways they do it that we can learn from? If we have to replace some of the organisations that we work through at present, we cannot just rely on the good relations that you have described so helpfully;

we need some structures as well.

Ms Helen Ball: I did not mean to mislead—to suggest that it was simply down to good relationships, although they are critically important. There are some that have a basis in a memorandum of understanding, for example. Yes, a number of the ways in which we share intelligence with police forces in different parts of the world could be examples. I have not brought any here today as a particular example to hold up, but everyone recognises the need to be able to share intelligence across Europe. There are ways of doing it at the moment. If those fall short, there are other ways of sharing intelligence with different countries, and we will certainly find mechanisms for doing it in future.

Lord Soley: I wonder if we could have some examples sent to us. I am particularly interested in how they do it in Canada and the United States, because they must have a similar problem, must they not?

Ms Helen Ball: Yes, I am sure they do. CT policing is working with the National Crime Agency, wider policing and the Home Office. At the moment, we are looking at what our requirements are and talking to the Home Office, which will, I think, work through how to meet those requirements.

Q41 **Lord Cormack:** I find your calm and measured approach very reassuring. When you gave your opening, very helpful remarks, you referred en passant to the European arrest warrant. On a scale of 1 to 10, how important is that to you in your work?

Ms Helen Ball: In CT policing, as opposed to wider policing, at the moment we have very low usage of the European arrest warrant, and there are good reasons for that. As I look to the future, I suspect we will have greater reason to use it. If I must answer your number question, I would probably say, based on the low usage at the moment, that it would be about an 8 because it is an extremely valuable power to have, and if I look into the future, I would take it to 10. We must not be in a position where a terrorist can think, "Okay, there is a safe haven where it is going to take a very long time for me to be extradited and come to justice". If it were not to be the European arrest warrant, we would want something that meant that we could bring people to justice swiftly. The reason why it may change relates to the way people might have left our local communities and travelled, and might return or go back to a European country. We would want to bring them to justice in the UK using our extraterritorial powers, and there might be cases where we would make greater use of a European arrest warrant in future than we have so far.

Lord Cormack: Would you share my concern, indeed anxiety, that a great deal of ingenuity will have to be exercised to replicate in effectiveness what we have already?

Ms Helen Ball: I live in a world where a great deal of ingenuity is exercised all the time—

Lord Cormack: Often by the wrong people.

Ms Helen Ball: But, and I will touch wood as I say this, also very much by the right people. I think people recognise the importance of being able to achieve this, and I am quite sure ingenuity will be brought to bear to solve the problem.

Q42 **Lord Cormack:** Are there any other EU criminal justice tools—the word "tools" has been used—that you would highlight as especially helpful at the moment, and which you think would need effectively to be replicated, as would the arrest warrant? Are there other things?

Ms Helen Ball: Yes. Without naming the actual section or agreement, I have mentioned that I support the position that Steve Rodhouse and David Armond took when they saw you before. The information contained in passenger name records, combined with the powers of various agencies at our borders, is powerful in preventing the travel of people who are would-be terrorists, in spotting people who might be returning and might be a threat and, crucially, in protecting vulnerable and manipulated people. All of that is of value to us and we would seek to retain it. The ability to share information about financial movement, how money may be passing from our communities, perhaps through institutions, into terrorist hands is absolutely crucial, not just in bringing them to justice but in spotting the way that threat may be building.

Lord Condon: Could I ask how you currently access that financial information? What databases or arrangements enable you to get that sort of important financial information at the moment?

Ms Helen Ball: I am afraid I cannot give the actual sections in the agreements, but one—

Lord Condon: I mean through which sort of agencies or databases. Who do you get the information from?

Ms Helen Ball: It is often direct to police forces.

Lord Cormack: We had the two Ministers before us last week. Have you had a chance to read the record?

Ms Helen Ball: I have, yes.

Lord Cormack: I do not want to embarrass you in any way, but do you feel that the ministerial teams are taking sufficient advantage of the great experience you and your colleagues have? Do you feel that you are really involved, not necessarily directly with Ministers themselves but with their officials, in preparing the ground for negotiations that have not yet started and on which we are not allowed to have a running commentary?

Ms Helen Ball: Yes, in that within CT policing, we have already carried out a prioritisation, and a bit of analysis to look at the mechanisms we are currently using and the effect they give us. We are in the middle of that exercise. The National Crime Agency and wider policing are also doing that exercise, and we are going to come together and pool that work, which will give one view from UK law enforcement about both the mechanisms and the priorities. The Home Office will be the recipient of that and has been

involved in that piece of work. I am very confident that we are being listened to by the Home Office and that it will take our needs forward to the negotiations.

The Chairman: Is that document for the purposes of the Home Office only? It will not be made public.

Ms Helen Ball: That is my understanding, yes.

The Chairman: Could we have access to it?

Ms Helen Ball: We are doing it for the Home Office, so it is not for me to give that permission.

Lord Cormack: Presumably it will also be shared with the exit office, as I call it.

Ms Helen Ball: I do not know.

Q43 **Lord Jay of Ewelme:** Baroness Browning and I were members of the main European Union Committee that went to Belfast and Dublin last week. What struck me forcefully from our conversations there on this sort of subject was the importance, both in Belfast and in Dublin, that the different authorities put on the maintenance of the European arrest warrant and Europol for effective counterterrorism in the island of Ireland. That was reinforced yesterday when we had evidence from two former Prime Ministers, John Bruton and Bertie Ahern. From where you are sitting, do you see the same sort of importance in those two things, and perhaps other institutions, for counterterrorism in the island of Ireland?

Ms Helen Ball: I certainly agree with the view of those authorities, and I understand why they are saying it; they are very clear that PSNI and Garda Síochána need to use those mechanisms, particularly when they are looking at people moving across their common border, and I agree with their position. As to the mechanisms such as Europol for the counterterrorism part of PSNI's work, I think they agree with the way I have described it. There is a much closer link between serious organised crime and terrorism in Northern Ireland than we have yet experienced elsewhere in the UK, so the authorities there have a slightly different view, particularly on the effectiveness and importance of the European arrest warrant and Europol. They use those in greater volume than the rest of CT policing uses them.

Lord Jay of Ewelme: In a sense, you are saying that it is even more important for them than it is for you, even though you have described it as being pretty important for you.

Ms Helen Ball: Yes.

Lord Jay of Ewelme: That is very helpful; thank you.

Ms Helen Ball: It is really important for us to have those mechanisms for information sharing and access to intelligence.

Q44 **Baroness Browning:** Advance passenger records are primarily of course for people using airlines. How weak a link is entry, not just to the UK but

to the island of Ireland, through passenger ferries, which go into and out of myriad ports around the coastline? I live by the sea, so I am rather conscious of ferry traffic. It often seems to me that that is the easiest way in and out.

Ms Helen Ball: I would not want to show our hand in public, so I will not answer that question directly, if you do not mind, because there are operational implications.

Baroness Browning: That is fine. I understand why.

Ms Helen Ball: Nevertheless, making the most of whatever opportunity a border offers is incumbent on us. There are opportunities to understand both people who are travelling—whether they are threats or whether they need protecting—and commodities that are passing, be that money, guns or ammunition. The more we can make use of those opportunities, the safer we will all be.

Baroness Browning: Should we not be a bit tighter on records of people travelling by passenger ferry?

Ms Helen Ball: Again, it is not for me to say, I am afraid.

Q45 **Baroness Massey of Darwen:** I want to talk about Europol and Eurojust in more detail. You talked earlier about relationships and how important they are. What practical benefits do you see in the UK's current membership of Europol and Eurojust for counterterrorism policing, and if the UK were to seek a bespoke relationship with those agencies after leaving the EU, or when we relinquish full membership of the relevant agency, what features would that relationship need to meet your operational needs?

Ms Helen Ball: I will start with Europol. For CT policing, Europol particularly supports the movement of information and intelligence between police forces that are part of Europol. It offers financial support to joint investigations and supports them being set up. It offers us analysis and other information, and although there is not a high volume of usage, we make use of that information. It is fair to say that there is a two-way relationship; we have contributed to Europol from the UK, perhaps particularly in relation to terrorist and extremist material on the internet, where we have a very good model—a CT internet referral unit that is helping with the removal of some of that material. Europol has set up its own unit and we have worked very successfully together. We have a good two-way benefit from Europol. Many of the things we have discussed this morning, particularly European arrest warrants, do not rely on membership of Europol, so there are different things to consider. If we were not to have the same relationship, we would still want those benefits, in a relationship that meant that, across Europe, we could share information and intelligence, and be supported in setting up a joint investigation team. As I look to the future, I think we will make more use of joint investigation teams in CT policing. We would want the ability perhaps to create and be part of a joint way of working, with a joint policy or procedure across Europe. A new relationship would need those elements.

As regards Eurojust, I think the Director of Public Prosecutions will come before you and she will talk more about that. David Armond said that Eurojust was a useful mechanism, and I agree. For CT policing, our Crown Prosecution Service colleagues have a direct relationship with Eurojust rather than us having a relationship ourselves, so I would probably defer to the DPP for that answer.

The Chairman: Could I pursue the question of joint investigating teams? At the moment, they work under Europol. How feasible would it be for that to continue? They work because we are part of Europol.

Ms Helen Ball: If they were not part of Europol and they were not called joint investigation teams, we would need to find a way of replicating that ability to work together, and we would find a way to do that. It is going to be very important in the future to work really close to and alongside European police forces. Of course, the bilateral relationships we already had mean that we have been working together in precisely that way.

Lord Condon: It is not really your area, Helen, but do you accept that because Europol and the other member states' police forces and agencies are subject to the European Court, with all that that implies, if we are outside Europe, outside the European Court, and therefore outside the supervision of some things, it may make it very difficult for Europol and our existing partners to be as co-operative with you and your colleagues as they would like to be? I know it is not your area of expertise, but the fact that European Court supervision of all those activities is currently part of the architecture of police co-operation may be a considerable challenge that you and your colleagues may face. In your discussions preparing for Brexit, has that entered your minds at all?

Ms Helen Ball: It has not yet directly been a matter for discussion. If it were, I think it would be for the Home Office to consider how best to approach the changes that would be made by not having European Court oversight, but it is not something we have addressed so far.

Baroness Pinnock: If I may say so, you have given us a master class this morning in how to answer a question without stepping into the political arena, so I am not sure what I shall get from my question, but I am going to try.

Ms Helen Ball: It is kind of you to introduce it in that way. Thank you.

Q46 **Baroness Pinnock:** Do you have any observations you would like to give us about how Brexit might affect our ability as a nation to develop our own policy agenda with our European partners?

Ms Helen Ball: In your introduction, you described a master class and I really do not want you to think I am being evasive; I am genuinely not.

Baroness Pinnock: I was not suggesting that at all. I think that you were being very careful not to step over the line.

Ms Helen Ball: That is great. I was thinking about the answer I am about to give.

The Chairman: It was intended as a compliment.

Baroness Pinnock: It was indeed meant as a compliment.

Lord Cormack: We all endorse it.

Ms Helen Ball: Thank you. It is never right for policing to describe what the outcome should be. It is right for us to say what we are seeking to achieve and what the operational needs are, and for other people, politicians, to take those forward. That is absolutely our position in the whole of this conversation. If I can refer to something I said at the beginning, the referendum was very much at the same time as we were recognising how much closer the threat in Europe was coming. We then, therefore, increased our presence in Europe and our work alongside European police forces. All of that happened at the same time. Yes, there are opportunities for improvement in all our joint working and our intelligence sharing. They come, I think, from our responses to the threat, and would need to be taken even if there had not been a referendum and the result that there was. We have been very careful to focus on what we can do and need to do to mitigate the threat. We might have been asking for some changes anyway, because of that. That is the position we are taking.

Q47 **Lord Soley:** Turning to data protection, data retention and privacy, we are going to lose influence on rulemaking when we come out of the European Union. How concerned should we be about that and what do you think are the dangers that might occur from divergence of quality, with the EU having one approach to data retention, protection and privacy and us having perhaps another?

Ms Helen Ball: I am afraid that I cannot give a particularly good answer to a question on data protection and retention, as it is not my field. On biometric data, we would want to continue to be able to share it, and indeed increase our sharing, through Prüm, which I know you have reviewed in this Committee, and to be able to continue to reassure citizens that that data is being effectively handled, managed and protected. As a result of the negotiations, I hope that we would be able to have a process that reassured citizens in that way.

Lord Soley: I am thinking about it, obviously, in relation to security and counterterrorism policy, and I recognise the difficulty of the area for you. It is the rulemaking that is difficult, if they go in one direction and we go in another. I suppose what underpins that question, in a sense, is whether there are ways of avoiding that happening, or at least, if we choose to go in slightly different directions, of making sure that we have the ability to co-ordinate with the European Union. One has to think not just of the separate states of the European Union but of the European Union as an entity, as we might end up having an international agreement, in effect, with the EU.

Ms Helen Ball: I agree that it would be very important to be able to do that. As to how the rules get made, that is for someone else to do, and it is not something for me to have a view on.

Lord Soley: But you would be worried if there was a divergence.

Ms Helen Ball: I would be worried if we lost our ability to share information and intelligence and to work together. If some change meant that that was lessened in any way, I would be both worried and surprised, because people recognise the threat and they recognise the practical importance of police forces across Europe being able to work together.

Lord Soley: To stretch the question a little, if it came to a situation where the European Union was becoming a tighter organisation and Britain was outside it, you would want some clear relationship other than just the informal ones that you have built up very successfully.

Ms Helen Ball: We will always want formal relationships that underpin our ability to work together and share intelligence. I am not advocating a future full of informal relationships; we need to be able to continue to work together and share intelligence with each other, and that will become even more important, but how it is achieved is not a matter for me.

Lord Jay of Ewelme: Earlier, I think you said that among the members of the force who are operating in the EU at the moment there is one who is attached to Europol. Would you expect that to continue, and if we were outside it, would that person have the same sort of access as he or she now has? Do you have any sense of that?

Ms Helen Ball: We are certainly not making any change at the moment. We hope that the regulation is signed and that we remain in Europol, as things stand. We would not decide to change our police officer embedded in Europol until much closer to the time. If it became the case that we had to rethink that, we would, but at the moment we are getting benefit from having somebody in Europol from CT policing.

Q48 **Lord Watts:** You have already answered this, but I will ask it in a more direct way if I can. How heavily do you think that we rely on our partners and EU tools in this area at the present time, and what do you think we stand to lose, both ourselves and our partners, now that we are going to have a diminished role in Europe?

Ms Helen Ball: The way that terrorists are currently operating and the way I see them operating in the future means we have an enormous amount to lose from diminution of our ability to work with European police forces and to share intelligence with them. That is very much a two-way issue; it is interconnected, and we rely on each other to be part of a really strong operational approach to countering terrorism. Different mechanisms are more or less important in that effort. They are more or less important to officers working in counterterrorism roles and officers working in wider law enforcement. Although CT policing may not use, for example, the European arrest warrant very much, we disrupt terrorists through their criminal behaviour, and our colleagues in wider law enforcement who rely on those mechanisms are extremely valuable in helping to protect us all from the threat. The ability to work together to use some of those mechanisms will continue and, indeed, will become increasingly important in the future.

Lord Watts: Would it be true to say that all the existing tools that we and

our partners have are very much appreciated by you and your colleagues and that any diminished elements of those tools would be counterproductive and lead to problems?

Ms Helen Ball: We are all safer because we can work together across Europe and because we can share information with each other. That genuinely helps to keep the citizens of Europe safe, and that includes, of course, the UK. If that were to reduce, I would be worried, but I would also be surprised, because I am absolutely clear that police forces throughout Europe, their Governments and their security and intelligence agencies understand the threat and the way we need to work together to mitigate it.

Lord Watts: You say that Governments understand, and probably the security forces understand, but are you convinced that every Government will have the same sort of priorities that you have just listed and that they have a good grasp? Quite frankly, I think a number of us find it difficult, in our own case, to get the Home Office to understand some of the implications. Are you satisfied that civil servants and Home Office Ministers are aware, and that they are over this problem, in a way that will find a solution to it?

Ms Helen Ball: I cannot answer the question in the direct way that you have asked it. I can say that since the threat started to change, including the attacks in Europe that we have seen, we ourselves have increased our presence in Europe, and that has been very much welcomed by our counterparts in Europe. Those police forces have also increased the ways in which they look to work with us. I am positive about a cross-Europe effort to mitigate the threat from terrorists, which exists.

The Chairman: What you are really saying is that, because the threat has increased, there is willingness to work together, and that gives you confidence that, whatever happens, there will be co-operation.

Ms Helen Ball: Yes, I think that is right.

The Chairman: Are you saying that exiting Europe, and not having the same kind of access if we exit Europol, will not have an impact on that co-operation?

Ms Helen Ball: I am not saying that. I am not sure whether we will be exiting Europol. I am not sure what will happen. What I am saying is that we need to—

The Chairman: If we were to do that, what will be the implications?

Ms Helen Ball: If we were to exit Europol without replacing it with at least as good a system for information and intelligence sharing and working together as currently exists, it would be a risk I would be concerned about.

Lord Soley: I fully understand the delicate line between political policy and your position, but what we are after is whether, if we exit and that involves coming out of things like Europol, you would like some formal structure, be it a legal agreement with the European Union, a memorandum of

understanding or something that would allow you to continue to have an input into discussions about rules and policies, as well as being able to carry on the existing work you are doing. Does that make sense?

Ms Helen Ball: It makes sense, yes. I think I am saying that for the safety of all our citizens we are safer when we can share intelligence and work together—in shorthand—and, therefore, as the negotiations go forward, I know that what the Home Office is seeking to achieve is to make sure that that ability remains.

Lord Soley: A formal legal agreement or a structure of some type set up by Governments, some recognised way of doing it, is what you would be hoping for and would enable you to carry on doing the work you are doing.

Ms Helen Ball: However that is achieved.

Lord Soley: We would have to choose it, because it is a political choice, but you want some form of structure, whether it is a legal agreement, an international agreement, a memorandum of understanding between Governments, or whatever; you would like that sort of structure to give you more depth to your work.

Ms Helen Ball: I will describe it as a formal structure and go no further, because it is for others to decide what it will be. However, a formal structure gives citizens confidence that information is being properly shared, for example, and that the action taken as a result of it is the right action. For the confidence of citizens in the activities that we are undertaking, yes, I would want to see a formal structure.

Lord Cormack: You have been exemplary in the way you have given evidence to us and we are grateful for that. We are going to have to come out of Europol; that was made quite plain by Ministers last week. I deeply regret that—I speak only for myself—but would I be wrong in inferring from your answers that you believe that the safety of the peoples of Europe depends upon effective combatting of organised international crime and terrorism and that, therefore, if we do not work together, whatever the mechanism is called, we are at greater risk?

Ms Helen Ball: Yes, I think I can say that.

Lord Jay of Ewelme: Would I be right in saying that, whatever we move from Europol to, there would need to be some kind of smooth transition, and that there is a risk of having some kind of caesura in the arrangements, a risk to security, a risk to counterterrorism, if there is some sort of gap and uncertainty?

Ms Helen Ball: There is so much activity already under way that it will not stop—the activity I have described from our bilateral relationships that already existed and the activity of the security and intelligence agencies. I am absolutely sure that all of that will continue. However, I come back to what I said; as we go forward into the future, we need to retain the ability confidently to share information and intelligence, act upon it and work together.

Q49 **The Chairman:** Could I ask a different question? We have been asking about what you see as the implications if we were to opt out, but do you see any opportunities to improve on the status quo if we were to exit the EU?

Ms Helen Ball: We have been looking at the ways we work together within Europe because of the way that the threat has changed and the way we need to work together to combat it. There are opportunities from that work to make changes and improvements and, as I said, we might have suggested those anyway. This is a useful process for focusing our minds on ways in which we might improve, but I have not brought those with me today, I am afraid.

The Chairman: It has been suggested that the UK's departure could help to ensure that the Court of Justice of the European Union cannot undermine UK legislation. Do you have a view on that?

Ms Helen Ball: No, I do not.

The Chairman: That is all from us. Thank you very much indeed. It has been very helpful to hear your evidence, and we are very grateful to you for your time this morning.

Ms Helen Ball: Thank you very much.

Stephen Rodhouse, Deputy Assistant Commissioner, Metropolitan Police Service and David Armond, Deputy Director-General, National Crime Agency – Oral Evidence (QQ 11-18)

Evidence Session No. 2 Heard in Public Questions 11 - 18

Wednesday 12 October 2016

Watch the meeting
Members present: Baroness Prashar (The Chairman); Baroness Browning; Lord Condon; Lord Cormack; Baroness Janke; Lord Jay of Ewelme; Lord O'Neill of Clackmannan; Baroness Pinnock; Lord Soley; Lord Watts.

Examination of witnesses

Mr Stephen Rodhouse, Deputy Assistant Commissioner, Metropolitan Police Service, National Police Chiefs' Council; Mr David Armond, Deputy Director-General, National Crime Agency.

The Chairman: Good morning, Mr Armond and Mr Rodhouse. Welcome and thank you for your time. Just by way of background, this session is on the record and will be webcast. You will be sent a transcript of the evidence. If you wish to make any corrections, please do so. Also, if you think we need any additional information by way of clarification, please send it to us. Before we start, it would be helpful if you could introduce yourselves and tell us a little about your respective jobs, what you do and your responsibilities.

David Armond: Thank you very much for the invitation to give evidence to the Committee. Obviously this subject is very close to our hearts at the moment. We are doing quite a lot of work around preparing alternative arrangements for our international work. I am the Deputy Director-General of the National Crime Agency. We have responsibility for dealing with serious organised crime in all its facets, and importantly in relation to this we have the lead responsibility for co-ordinating our efforts against serious organised crime internationally. We have the International Crime Bureau in Manchester, which fulfils the functions of our national central bureau for Interpol work and performs the function of supervision and relationships with Europol. We also lead the multinational European liaison bureaux with a network of around 170 officers placed around the world. I used to sit on the Europol management board, so I am very familiar with the processes. I also serve on the Interpol executive committee. From an operational

perspective, I can speak with some confidence about what we get and why some of the measures are important.

The Chairman: You are also leading on Brexit.

David Armond: Yes, I am leading for law enforcement on Brexit.

Stephen Rodhouse: Good morning. My name is Stephen Rodhouse. I am a Deputy Assistant Commissioner with the Metropolitan Police. My responsibilities and portfolio in that organisation are around serious and organised crime, so it is a fairly wide portfolio. Included in that is responsibility for the Metropolitan Police international unit. More widely, I have a national policing portfolio responsibility within the National Police Chiefs' Council for foreign national offenders, a role I have held for the past two years.

Q50 **The Chairman:** Thank you very much. You will be aware that we are examining aspects of UK-EU police and security co-operation and what may be desirable following Brexit. I read with interest your description on 30 September of what you think is necessary for effective co-operation. It would be very helpful for our purposes if you could briefly set out what priorities you have identified from an operational perspective in terms of the measures and tools that you would like to have at your disposal post-Brexit. Can you set out what you regard as absolutely crucial, what you think are important, and others that it would be nice to have? It is important for us to see the spectrum.

David Armond: In the immediate aftermath of the referendum, my agency put a paper together that set out the measures which are potentially at risk as the result of Brexit, as well as some views on the relative strengths of them backed up by operational cases. That was circulated to the National Police Chiefs' Council and other law enforcement partners. As a result, it was agreed that the NCA should co-ordinate the law enforcement effort to produce documentation and responses that would assist government departments in developing a negotiating strategy for what is important. Our response incorporates not just the measures that are important to our agency per se; it is not just about serious organised crime and our other interests, it also covers counterterrorism, responsibility for the impact of crime and how these measures support the protection of our communities through local policing. Stephen, of course, is the expert on those issues. We have produced a set of documents that lay out the immediate things that need to be considered now—what immediate risks and decisions need to be taken—followed by a view on other measures and their utility. In every case that is backed up by real operational examples. This is not theoretical; it is about how we use them, the volumes in which we use them and why that is so important. There is an attempt at what may be possible going forward, but of course the negotiating strategy and the decisions are for the Government. We are merely advising operationally.

On the question of what is immediately important, I know that the Committee will be well aware of this, but the risk closest to us relates to the signing of the Europol regulation. We are the only member state that has not signed up to the new regulation. The reason for that was that there

were some concerns about some of the provisions in the new regulation as compared with the old one which have been negotiated away, but we have not yet signed it. The impact of that is that if we do not sign up to it by Christmas, we will be out of Europol on 1 May 2017. If we do sign it, that in effect will give us the period of the Article 50 negotiations to work out how we conduct our work in the European context going forward. That is the first issue for us. There have been submissions to the Home Secretary by officials in the Home Office and it is sitting with her. I am sure that there will be a decision through Cabinet in due course. That is the first thing we need to do.

If we do not do it and if we are out, the direct impact will be that we will have to take our 17-person team out of the offices in The Hague, which is a multi-agency bureau, and we will lose direct or immediate access to both the messaging exchange system known as SIENA and, more importantly, to the European information and intelligence system. We are significant contributors to that dataset; in fact we are the second largest contributor in Europe. Our advice has been that as a country we need to make some immediate decisions on that issue. I can go into more details of what I think will be the risks if we do that. They relate to the European arrest warrant and the Schengen information system, and how we access them going forward. These are probably for us the most important tools. I can give further details about the EAW later in the session.

Access to the Schengen information system, as well as the establishment of the SIRENE bureau has been an absolute game-changer for the UK. It has increased exponentially the number of European arrest warrants for subjects who are wanted in the UK—a 25% increase since it has become available. We have put many thousands of alerts on to the system and we share millions of records with the Europeans, and of course it is directly accessible by our police officers on the street. It is linked to the police national computer so that officers can stop a car with French plates and Hungarian nationals in it, undertake checks and find details of stolen property, wanted people, alerts and the like. That is important both at our borders and on the streets.

The next important thing for us is access to the European Criminal Records Information System. This is about criminal conviction data which are accessible only under the current arrangements. We will lose access to that material immediately if we are out of Europol. On our behalf ACRO makes tens of hundreds of checks. That is important not only in terms of people who have been arrested or who we have been making inquiries about but in identifying people who might be offered work with children in the UK. Again, it is a very important tool.

Finally, there are two initiatives that will go live in the very near future. One is our membership in May of the European investigation order. That will substitute mutual legal assistance and make it much easier for our country to work with European neighbours on live investigations and on developing cross-jurisdictional prosecutions. But of course the question is whether we put significant energy into that process to stand it up just to withdraw in a few months. Then I could talk about Prüm, where we have

been piloting with four countries and the results have been very promising. That, too, will have to be looked at in negotiation.

Stephen Rodhouse: This may be an obvious point but is possibly worth making at the outset. It is about the transnational nature of crime that both Dave's organisation and police forces across the country are dealing with. To articulate that, last year, there were 1.2 million arrests in the UK. Almost 200,000 of those were foreign nationals and 56% of those were from the EU. So 56% of foreign nationals arrested were from the EU. There is a system of mapping organised crime across the country, and in 42% of our known organised crime groups we have recorded at least one member as non-British.

In dealing with this threat and trying to get parity of tactics with people who may have never left the UK, information is key. Most of the measures that David outlined rely on the effective communication of information. I completely agree with everything he said: they are all critical to volume policing, but particularly the access to criminal records data from across the EU. We now have an effective system in place that can give very speedy returns when we inquire into the criminal background of somebody that we have in custody. That allows really effective decisions to be taken about the risk that they pose and the opportunity of an immigration solution to having a risky offender in the UK.

As an example, last year the requests for overseas criminal convictions data that came back into the UK revealed 178 cases of a conviction for rape abroad and 177 for murder, which allows that information to be put on the police national computer and to be at the fingertips of officers all over the country. We have seen cases in which, if that information is not available, it presents an ongoing risk to the UK.

All the measures are important, but I would prioritise the criminal exchange data as hugely significant.

The Chairman: We went through all this debate when we decided to opt back in to the 35 measures. How does this overlap with them and which post-Lisbon measures are tools that you would like to include as a priority?

David Armond: Of the 35, I think, JHA measures we opted in to in 2014, we were consulted on 33. They are not all relevant to the work that my agency does, but we supported those that were chosen. Collectively, as law enforcement, we learned lessons from that process, because when we talked about the importance of tools, some cases we made were based on the theory of how they might be used rather than the actuality. We may have said that some looked really important from a theoretical position, but we ended up with a list of measures that really are important, and that still holds good today.

For all the measures subject to JHA, we will have to work out an alternative way of doing business in that area without the specific tool. I have said it already, but for me, the most important measures are: membership of Europol or an alternative arrangement, which I can talk about; the use of the European arrest warrant, or an alternative measure; and access to the

Schengen information system. The one I have not mentioned so far, which is a post-Lisbon agreement, is our access to passenger name record data, which is incredibly important for the security of our border. We have been accessing PNR data from key partners around the world for our border security, but until this measure, some European nations were not providing us with these data—Germany being a case in point.

It is really important for our work at the border and at the National Border Targeting Centre. It gives us not only the details of the subject but addresses, bank details, telephone numbers and a whole host of other data that can be really important when we are checking against criminal records and profiling those people who might be a threat to the UK.

Lord Condon: David, could I press you on the Europol issue? Either in May, as you say, or later, when we come out of Europol, could you give us a sense of the hierarchy of the best and the worst we might face? I assume that when the UK leaves the EU, there is no possibility of retaining full membership of Europol. If we cannot do that, what options have other third countries adopted? Can you give us a best-case/worst-case scenario of what we will lose by losing full membership of Europol?

David Armond: This may sound incredibly naive, but I will say it anyway. Our starting point will be to say that we should not look at precedent; we should look at something more than that. This is the first time in history that a member state has left the Union and I think we should be aiming for access and a partnership that is different from and closer than currently exists for any other non-member state.

Lord Condon: Full membership light?

David Armond: Full membership light. I will explain what that might mean. For instance, for the first eight years of its existence, the UK probably viewed Europol as an interesting entity that had potential that had not been realised and needed serious work. We were not sure whether it would ever get up to speed. Some of the bureaucracy of structures and meetings looked to be difficult in a fast-time operational environment.

Then we got the opportunity to put a candidate up for director of Europol, and that seat, as you well know, was secured by Rob Wainwright. We put all our weight behind assisting Rob, being full partners and putting as much effort as we could into Europol. That included: establishing the largest liaison bureau for a Europol member state; having a multiagency bureau with all the disciplines represented; being neck and neck with the Germans as the nation that provides the most intelligence to the European information; and taking a lead role in the creation of processes to make Europol work. The whole EU policy cycle and the way that the serious organised crime risk assessment is conducted and operational priorities are identified is an absolute lift and shift of the UK intelligence model. It works. As we know, it has worked in this country and it has worked very well and is well supported by our European partners.

So we have been driving a lot of the decisions. We have been represented at the Europol management board and on the internal security committee,

COSI, in Brussels. We have taken the responsibility on a significant number of operational responses, meetings under a programme known as EMPACT—I probably have in my notes what that acronym stands for, but I cannot immediately recall it. We take the lead in four or five of those 13 pieces of work. We are members of all of them and co-drivers of a number of them.

Our leadership, along with that of nations such as the Netherlands and France, is important in getting things done. By being part of the process, and being at the table and influencing what is going on, we would argue that we have helped to make Europol a better machine. As for alternative arrangements, we could have an operational partnership with Europol, as a number of countries have got including the Americans, the Canadians, the Australians and even the Colombians, for instance, because of the interest in transatlantic cocaine trafficking. But we would immediately lose two things. We would still have access to the messaging system, SIENA, but we would lose our access to the Europol intelligence system. That means that all our inquiries would have to be made effectively on a law enforcement to law enforcement basis through liaison, rather than us having direct access to the system. That would be a major issue.

Lord Condon: Is that what, for example, the United States would currently do?

David Armond: The United States has a large number of representatives who are authorised to be in a relationship with Europol. They have quite a large standing office in The Hague and they can, as an operational partner, engage in joint work, if they are invited to the table and they have something to bring. But they do not have any influence in terms of what Europol does or how it does it. They are not members and cannot be heads of national units; they are not allowed in there. We might have observer status as operational partners but we would not be members. We would not be members of, or even present at, the Europol management board, and we would not be sitting at the COSI, helping to drive strategic direction. There is a lot of operational co-operation that we could continue under that agreement, but it will be suboptimal and not as good as what we currently have. Of course there is always the concern that, if we have a whole set of other instruments to replace the ones that currently exist, and our European partners continue to use EU instruments, where would we be in terms of priority when it comes to them doing our work?

Lord Condon: Have you advised the Government on how full membership, as near as damn it, might look and how that might be achieved?

David Armond: We are attempting to do this in this current arrangement and exchange of documentation. We seconded one of our people to the team in the Home Office, and we will continue to provide operational advice. But the director-general has been very clear that it is our job to provide advice and for policy units to advise on a negotiation strategy.

Q51 **Lord Condon:** Parking for the moment the big negotiation strategy at Prime Minister and EU President level, where there will be give and take around what is possible—if you have this, you can have that and so on—

and just focusing on the law enforcement community, do you sense there is a willingness, and perhaps even a hope, that the EU will retain something that looks almost like full membership of Europol? There is no glee, I suppose, from the other law enforcement agencies that we might be a lesser partner.

David Armond: From experience and interaction with European partners over a long period of time, I know that there are, of course, some sensitivities at senior levels about why the UK chose this course of action. But in a practical sense there has been no change whatever to their commitment to working in partnership on a day-to-day basis. We are in continual bilateral and multilateral discussions with our partners from an operational perspective about how this is all going to work. I would not be so arrogant as to say that Europe needs the UK, but we certainly need each other. The threats that we are talking about are serious to all of the citizens of the UK. It is in everyone's interest to negotiate the best possible set of arrangements to ensure that we continue to contribute not only to the security of the UK and the protection of our citizens but also to those of the European Union.

Lord Condon: Stephen, do you want to add anything to what David said?

Stephen Rodhouse: Thank you. I endorse what he says, because of course David speaks with more experience than I do around the strategic oversight of Europol. From an operational perspective, the points that David makes about access to information about emerging and current crime threats are just as pertinent to the 43 police forces of England and Wales, and indeed beyond, as they are to the National Crime Agency. That is because we do not have a remit-based approach to these crimes. Forces across the country deal with volume crime and serious and organised crime. Areas where the EMPACT scheme is driving business that, as David said, the UK is influential in, are really pertinent to policing across the country, whether it be around people trafficking, fraud or firearms trafficking: these are all areas where having access to information and some strategic input are really significant. The impact would be felt not just at the top end of organised crime, but across policing more widely.

Lord Soley: Mr Armond, you gave a figure, I think, of 17 staff members in The Hague agency. Can you give us an idea what percentage of the total staff or of the total number that is? I am trying to get an idea, perhaps not just on this, of how big our input is in terms of staff members, and how many would in effect be pulled out.

David Armond: I just remind everyone that there are two entities within Europol. There is Europol as a body, and the people who work there are on contracts from the European Union. That amounts to about 600 people, and there are about 50 UK citizens on EU contracts, including the director. They are not our people; they are Brits who are working in the EU. That is 50 people, many in influential positions. Around that is the facility of a liaison function, where each member state, and operational partners, can site teams who can work together on a day-to-day basis. As full members, if there is a piece of intelligence to say that a human trafficking episode that will impact on three nation states is going to happen this afternoon,

members of our liaison bureau, who are our staff, can call a meeting with interested parties and work up a plan immediately.

Lord Soley: Is that the 17 people?

David Armond: That is the 17 people. Each EU member state, plus operational partners, has offices there. We have the joint-largest set of people in that organisation. That is 17 members from a number of agencies, including the Metropolitan Police.

Q52 **Lord O'Neill of Clackmannan:** You have described two sets of relationships of a semi-detached character: the American one and then the Norway, Switzerland and Iceland one—sort of the European economic zone members. Could you describe any differences between the position of the Norwegians et al, as against the Americans?

David Armond: As members of the EEA, the Norwegians have a slightly different approach to negotiations and they have a bespoke negotiated treaty on their access to different elements, some of which are the tools we talked about, along with some others. The American focus has been an operational and intelligence arrangement, and access to data around PNR, around criminal intelligence and around finding an operational arrangement with partners to do work in Europe that impacts back on the US. They are different in nature. The US one is more of an operational arrangement. But it has been difficult for them to get co-operation in all of the member states: they have close relationships with some countries, and more difficult ones in others.

This is not really answering the question, but I would just like to make another point. One of the issues of concern for our "Five Eyes" partners, for instance, is that the lack of the UK at Europol will impact on their relationships too, because sometimes they can use us as a proxy for getting work done if we are doing joint work together.

The Commission's position in relation to Europol is that there are not bespoke deals to be done here. There are two sets of arrangements: you can either be an operational partner, as I have described, which is the kind of arrangement that the Americans and the Canadians have; or you can be a strategic partner, as with Russia and Israel, which means a slightly different thing. They are in the tent, but they are not really in the tent, and they do not get access to the intelligence that other operational partners might have access to.

I am not sure that I have entirely answered your questions, but I do not think that we can look at the arrangements for Norway, Iceland or other partners and say that would do for us. There are elements of what they have done that policymakers would be sensible to look at and there are elements of operational relationships that other countries have that would do for us, but we need more than that because we are so close to Europe and because in what we do there is so much interaction. I talked about European arrest warrants earlier but our hit rate in the UK has gone up by 25% since the Schengen Information System came to bear. Our relationships with the Europeans have been strengthened. We have the

cross-border surveillance arrangements under Article 40 where we are net users not givers. We make seven times as many requests as any other member state. We will need to look at our particular operational and intelligence-sharing requirements and arrangements in a different way to a country that is quite remote from Europe. Of course, I do not think there is any precedent for a non-Schengen, non-EU country to be a member of SIS. If we are to continue to be a member of SIS, that will be a very different deal from one that anyone else has.

Lord Cormack: There might not be a precedent. I found your evidence tremendously helpful but also extremely depressing.

David Armond: I am sorry about that.

Lord Cormack: Well, no, you have told us how things are and we are grateful to you. Your remark about precedent provokes a question. We are all, throughout the continent of Europe—which is not the same as the European Union—in the business of fighting international crime, which both of you have made quite plain respects no borders. Is there not a case for having a Europol that is open to all European countries, regardless of whether or not they are members of the European Union?

David Armond: I understand the point and that is what I was saying: do you need to be in the EU to be in this outfit called Europol? But then you start looking at where the borders are. I said in my opening remarks that I sit on the executive committee of Interpol, which is altogether a different kind of agency with a different set of capabilities that need work. The European region for Interpol includes countries such as Israel and Russia. I think we should focus our strategy on saying, "We are such an integral part of the European mechanisms and we have been on this journey together. We have built this organisation and capabilities, many of which have been based on UK systems adopted by European partners. We want to continue on that journey with you because it is important to all of us". That is the line I might, perhaps naively, take with our partners.

We still have very strong bilateral roots and arrangements. I talked about our network of overseas liaison officers. In some European countries we have significant numbers of officers deployed into stations in our embassies to run bilateral arrangements where we do lots of operational work; for instance, in Italy and Greece we upped the numbers because of the immigration crisis. We have a strong, large operational team in The Hague outwith Europol, where we work very closely with our Dutch partners, and similarly with the Spanish and Greeks. We are already making contingency plans; for instance, if we were out of Europe this year, where would it be key for us to post our officers? Also, most of our European partners have bilateral liaisons based in London. You have some members of that community in this Room listening to this evidence. They are very keen to continue to work with us because it is important to all of us.

The Chairman: Did you want to add anything?

Stephen Rodhouse: I do not think I can usefully add anything.

Q53 **Baroness Browning:** Could I ask you about Eurojust? In practical terms on a day-to-day basis, after we leave, how do you see that relationship? What would we lose? If it were replaced with a co-operation arrangement such as Norway or the United States have, how would you view that arrangement?

Stephen Rodhouse: I should preface my answer by saying that I do not have huge personal experience of working with Eurojust. I have worked with it on a number of cases and found it to be a hugely valuable facility for bringing member states together on—I will not talk about the particular jobs—high-profile investigations where facilities such as translation and the access to legal advice were hugely significant. If the proposition was that we did not have those facilities, we would lose something. I can only speculate on what that would look like in future in terms of bilateral arrangements or ad hoc arrangements on a case-by-case basis, but it would be suboptimal to the arrangement we have in place. I am afraid I do not have any insight into how other non-member states work, so I am not able to answer that.

Baroness Browning: So you are not sure how good or bad the Norway/US arrangement is.

Stephen Rodhouse: I do not have an insight into that. I would only mislead you. I apologise.

David Armond: The principal partner for Eurojust is the Crown Prosecution Service, which has been part of the discussions we have been having as a law enforcement community about what is important. It is probably better placed to answer your questions from that perspective and I am sure that at some stage the director of the CPS will be here to do so. Our main focus and our main partnership with Eurojust is about the mechanisms for working in joint investigation teams, which have been immensely important and successful. Eurojust provides a facility and the legal advice required to establish a joint investigation team and run it effectively. I can talk more about that because it will still be possible for us as a non-EU member to be part of joint investigation teams but we will not be a member of Eurojust. The CPS has a liaison officer at Eurojust. It finds that incredibly important not only in relation to the investigations we run but in talking about issues of law. There are things about concurrent jurisdictions, cross-border evidence gathering and sharing, asset freezing, extraditions, and so on. This is a mechanism for European countries to sit together with prosecutors who preside over completely different systems. They work together and come up with arrangements enabling us from an operational perspective to be more effective than we once were. In my conversations with the director of the CPS, she views membership of Eurojust as being as important to the CPS as membership of Europol is to us.

Baroness Browning: Yes, I understand that. Thank you.

Lord O'Neill of Clackmannan: We have already spoken about the operational character of the relationship with the United States. You made the point that the EEA traditions and style determine the relationship with other countries. However, at that stage you did not mention the joint

investigation teams, which involve Switzerland, Iceland and Norway. Could that be a template for a relationship, or is that not directly relevant? What is your view on that model?

David Armond: A joint investigation team is not a standing entity. It is a mechanism that exists to enable not only EU member states but other interested parties to join in an initiative in which, effectively, you negotiate the position where you do away with the need for mutual legal assistance. You are not just sharing intelligence on case-building, you are sharing evidence. In layman's terms, that is the primary difference. Currently, the UK is part of 31 joint investigation teams. It is quite a substantial piece of work. I do not know the numbers for the EEA members. They definitely will not be involved in that many investigations but that model is available to them.

Again, I am not a lawyer, but I understand that the second Additional Protocol to the Council of Europe Convention on Mutual Assistance on Criminal Matters would enable us as a third country to continue in our work in joint investigation teams. That might be slightly more complicated than it currently is, but there are examples that I could probably write to you about that involve countries from around the world working as JITs with European member states.

Lord O'Neill of Clackmannan: So essentially they are ad hoc and set up for a specific purpose and therefore you might say that they are almost informal, although obviously the relationship is formal, but they are essentially sui generis.

David Armond: They are formal once they are established, and Europe plays a big part in negotiating the mechanism to do that. They could be specifically for an investigation against an organised crime group which is committing crimes that affect seven jurisdictions. We might pull together a joint investigation team to take action and determine what the best possible outcomes are for our citizens. The best outcome might be the prosecution of one element in Spain and some arrests and prosecutions in the UK and so on, and maybe some in America. That would be how it works.

We have also established JITs for thematic reasons where we want to increase the impetus and level of work against a new crime threat. They open up avenues to share intelligence and develop fast-time actions that may be based in a jurisdiction but are reliant on co-operation from other parties to the JIT. It is a useful tool and its use across Europe is building as we speak. More and more people are seeing the benefits of it.

Q54 **Lord Jay of Ewelme:** I want to move on to the broader areas of data sharing and databases, which we have touched on to some extent. We either have or expect to have access to some pretty important databases, such as that under the passenger name records directive, Prüm decisions and the second generation SIS, all of which you have already referred to. There is also the European Criminal Records Information System. Could I put the same question as we asked in relation to Europol: which of those are critical, which are important, and which would be nice to have from the point of view of both security and law enforcement?

Perhaps a slightly broader question to put to you when you are talking about that is whether you can say something about the extent to which these databases, and indeed Europol and so on, help us in terrorism? In other words, can you separate out security and terrorism from what one might call more ordinary law enforcement?

Stephen Rodhouse: Apologies if I repeat myself, but it is quite difficult to prioritise all of those because in many cases they are what I would regard as essential for mainstream policing; that is, the ability to understand whether somebody is wanted in another country, whether they are missing, whether the vehicle they are driving is stolen and so on. Some 66 million reports are available through the SIS II system which is accessible to officers on the street. It is critical in allowing them to make decisions to safeguard the welfare of people across the country. When you take that into the custody setting where, as I talked about earlier, you have an understanding of somebody's previous convictions, that is absolutely essential. I have sat in a similar room, it may even be the same one, talking about cases where that information either was not available or was not accessed by officers. Decisions were then taken that left people at risk. You can see the significance to mainstream volume policing. It is our ambition and intention that in every case where the information is available, it is sought in order to allow decisions to be made. I apologise if I am slightly overstating the position, but I regard it as very significant that we understand the threat that is present within the country and take appropriate decisions.

For those reasons, I stress the importance of SIS II and the link it has to the European arrest warrant. Until recently, only one third of European arrest warrants were on the Police National Computer in this country because it was not clear whether the person named was likely to be in the UK. Now we have visibility of all European arrest warrants, and it is for that reason that last year we saw a 25% increase in the number of those warrants executed and people arrested. So SIS II, European arrest warrants and the ECRIS system for data exchange of convictions allow us to make sensible decisions, to monitor sex offenders and to assess whether there is a case for the removal of someone from the country. All of that is hugely significant.

David Armond: Perhaps I may make a couple of points. I think that it would be dangerous to try to separate the capabilities and relationships we need to counter terrorism as compared with other crime threats. The Prime Minister has been very clear that serious organised crime is a threat to our national security—in fact in her first National Security Council meeting the discussion was about a whole-government approach to serious organised crime—and it is clear from the threat estimate that it is, so disengaging the two is quite difficult.

It is true that there are bilateral and multilateral arrangements between our security agencies that will exist whatever happens in relation to our EU negotiations because they are so important, but separating the two is quite dangerous because we work very closely with the CT community on those areas that cross over; that is, in relation to our cyber investigations, border

security, how criminal finances work, how terrorism is funded versus how criminals move money about, how firearms get into this country and how terrorists or criminals exploit the loopholes or perhaps weaknesses in our borders as an island nation. All of those are areas where we work very closely with the CT community. I have had conversations with the seniors from the intelligence agencies who are as concerned about the loss of SIS II as we are. For them it is as important as it is for us.

It is disappointing because SIS II was ready to go in 2008. The Government of the day took a decision based on the fiscal position that it might be a major project that could wait. I was working on this project back in 2005 and I think that it has been a gamechanger. Since we have gone live there have been 6,000 hits on UK alerts across Europe, and more importantly, 6,000 hits here. It is not just about people who are wanted for crimes, the identification of stolen vehicles and plant or missing people, there is also a facility known as Article 36(3) which allows us to put on discreet alerts in relation to our CT suspects. SIS II plays an important part in tracking people under surveillance by intelligence agencies who may be seeking to cause significant harm in terms of terrorist attacks. I think that they are equally important. Steve is right: SIS II is the big one. European arrest warrants we have already spoken about.

Prüm is the one we have not spent too much time on and of course we have not seen its full effect yet. We have run a pilot with Spain, Germany, France and the Netherlands. It is not currently an automated system but it has really sped up this arrangement. The pilot has sped up our ability to share hits from our DNA datasets and fingerprint hits with those member countries. That has made us feel that we should continue with it and get the whole of Europe involved because that would be very effective. If not, we have to fall back on an arrangement which exists through Interpol that is time-consuming, bureaucratic and nowhere near as effective for protecting the public.

Lord Jay of Ewelme: Thank you. I understand the difficulties in separating law enforcement from counterterrorism, but the point you have made rather forcefully is that the organisations we have been discussing are as important for counterterrorism as they are for law enforcement.

David Armond: Absolutely.

Lord Jay of Ewelme: Thank you very much.

Q55 **Baroness Janke:** I think you have probably answered my question, which is about the precedents for non-EU members negotiating access to particular databases and data-sharing platforms and whether that would meet your needs; I think you said that probably it would not. However, you did say that as this is an unprecedented situation, you are hopeful of negotiating something, presumably based on mutual self-interest. How could that be taken forward?

David Armond: Again, I do not want to appear in any way to be ducking the question, but my job is to provide the operational case for why these tools and measures are important and to make the case, without shroud-

waving, for what is important and what we could find that is almost as effective. However, whatever measure we negotiate will be less of a solution or suboptimal compared to the arrangements we currently have. We are in the club. In terms of intelligence coming to us and co-operation, we are priorities for our European partners. Naturally, if we are not a member of the EU, we might be lower down the list than we currently are in their thinking. So that is my concern.

On each of the measures, we need to take a tool-by-tool approach and work out a negotiation strategy in relation to them. Some are based on precedents—the arrangements that Norway has on particular measures might suit us—and some might be a discussion we have never had; for instance, on how a non-Schengen, non-EU member retains access to SIS II, which is a big issue. I do not know whether that answers the question.

Baroness Janke: On the mutual self-interest angle, is there a danger that this sort of negotiation will become part of a bargain, given that EU members wish to have access to British security systems as well? Is there a danger that this will become lost as a general bargaining chip in the overall negotiations?

David Armond: Again, I am a law enforcement officer and have been for the last 40-odd years. I do not pretend to be an expert negotiator or a particularly good diplomat, but our job requires us to do both those things. In any big negotiation there will be trade-offs, but I cannot envisage a situation with our European partners in which they would be willing to sacrifice those protections, arrangements and the mutually supportive work to protect our citizens from crime and terrorism—all those opportunities—on the basis of another deal.

As I said, wearing another hat, I set up and led the international work for our precursor agency, SOCA, and for this agency. We have an international network that is respected globally, which delivers results and is much sought-after by ambassadors. UK assistance in investigations, crime and counterterrorism measures is sought after from a capacity-building perspective but also because of the quality of intelligence we can provide our partners. Quite often, ambassadors and high commissioners say to me, "Your presence here doing this work gives us an opportunity to talk about trade, education, climate change and other things that are important to the UK", and that gives us access to conversations that might not exist. In some embassies around the world the biggest UK presence is law enforcement—our people. We want to build on that capability, so our relationships with our law enforcement partners within the EU are based not only on the multi-jurisdictional work we do but our bilateral arrangements.

Lord Watts: You said that being a member of the club gives you instant access to information, databases, and so on. Once you are out of the club you said that you might be at the back of the queue. Is there any evidence that when non-club members make requests they are put at the back of the queue? Does it take longer for America or any member from outside the EU to get the same sort of information you get now? Is it slower?

David Armond: I think it can be, but it depends on the quality of the co-operation. For instance, I or my people could pick up the phone and call a partner that we do a lot of work with and say, "We need some help on this today", and they will absolutely do that, while with other countries, because of the very fact that it is the UK asking, even if it is important to them, they will find a reason not to do it. I will not name the countries here but you might guess what I am talking about. There is always a potential.

If a group is working in close co-operation, not on a daily basis but on a weekly or monthly one at an operational and strategic level, the idea that they might prioritise each other's work over other people's interests is just the natural tendency of things. I am not saying that that would be the case for every member state. It is not only a UK network overseas; there are other partners, such as "Five Eyes" partners and some European countries, which have liaison officers overseas, and in many countries we work jointly against threats in a third country such as in South America, for instance, on threats that face Europe, working together with the same team. Those arrangements will continue whether or not we are in the EU.

Baroness Pinnock: My question has been fully answered, thank you.

Q56 **Lord Soley:** My questions have been largely answered but perhaps I can just wrap them up into one question. You have indicated that Europol, the arrest warrant, SIS and passenger name records are four of the most important things; if that is not correct, please tell me. You have also both indicated that the Norway/Iceland options are very much second-best options but are better than nothing. Again, if that is not correct, perhaps you could tell me. Finally, to put them together, if there was a possibility of doing a bespoke Act of Parliament that would become an international treaty with the European Union in which we were able to maintain a lot of the structures you described—I am thinking of the example of The Hague again—would that be a way forward given that this is all part of the negotiating process?

Stephen Rodhouse: In theory it might be, but I am wary about being too definitive because it would very much depend on the terms of such legislation and agreement. I am also almost reverting to Dave's comments earlier. Our role is to advise on the operational aspects of this and how they could be achieved. I imagine they could be achieved through a number of routes but I am by no means expert enough to comment on what they might be. It comes down to the detail on this.

David Armond: I personally believe that it would be a mixture of both. For instance, as you are well aware, many countries that are part of the European arrest warrant have repealed legislation that allows them to have an extradition arrangement with another member state. That exists in the form of the EAW. If we cannot be a member of the EAW, we do not have extradition arrangements with Europe, so we need an alternative. It would seem to be optimal—second-order optimal—to have a treaty with the EU as opposed to going around and negotiating with 27 member states. That seems obvious. In those areas where there is not consensus for some other tools, we might be able to negotiate with a group or a single country to

maintain that relationship for that particular tool if we cannot get it with the whole of Europe. So it will be both of the things you suggested.

Lord Soley: Would bespoke arrangements of that type be better than the Norway/Iceland option?

David Armond: I think it would. Of course, if we get a bespoke arrangement—a treaty on a set of measures, not on all of them but on some that our European partners see as important—obviously that brings in the EEA countries as well, because they have the relationship with Europe, they access the intelligence and some of the assistance through the EU. That could work.

Lord Soley: The underlying problem with all these approaches is that if you are out of it, you will not be at the top table, because you cannot take part in the decisions that are overseen by the Council of Ministers, and you cannot be any part of that. You can come in only after that phase and do that work together, whether it is by agreement, legislation or whatever. Is that right?

David Armond: When I talk about influence and the top table it is about the top table from an operational perspective, not a ministerial perspective. I stand by what I have said; I think we have been both helpful and influential in the development of the tools that currently exist under these measures. Although it is not always easy to negotiate a position where what we are suggesting as a way forward is agreed by all, there are a number of countries within the EU that show real leadership in this area and the UK is one of them. We may lose some of that influence.

Lord Cormack: Taking up that last point, it is clear that under the leadership of you and your colleagues, the UK has made an incredibly important contribution, and Europol will be the poorer for our absence. Therefore should we not be urging Ministers—I say "we" but I appreciate that this applies to you—to do everything they possibly can to preserve an interdependence which is protective of us all? Should that be the thrust of one of our recommendations to Parliament and to Ministers?

David Armond: It would be enormously helpful to our efforts if this committee could do just that. Thank you very much.

Q57 **Lord Condon:** Following on from that, you have described how influential the UK has been operationally, both historically and currently, in setting the agenda and implementing many of these operational arrangements. Will that legacy carry our influence forward outside the EU or do you feel that the influential role will no longer be viable outside the EU? Are there any sort of compensating mechanisms that will keep our influence centre stage? Do the Americans offer any sort of model? How do you feel about that?

David Armond: I am not sure that I am going to answer the question, but I will try. Obviously, we have a very strong Five Eyes relationship in the law enforcement community. As with other Five Eyes arrangements, we probably share intelligence and do work with the Five Eyes that we cannot achieve with any other country, including EU members—or a significant

number of EU members. What I am hearing from Five Eyes partners is some concern that the European Union without the UK will mean that they have to change the nature of their relationship with the EU from a law enforcement perspective because we will lose leverage. They are worried about that, mainly because if they want things done and do not have a bilateral arrangement, they can do it through us. That applies equally to the Australians and the Canadians. I think there is some nervousness about what this might mean for global security. But certainly I guess that the Americans will continue to be influential in Europe. When we are deployed around the world outside Europe, where there are Five Eyes countries present or with interests we work very closely in a strong bilateral or group arrangement. But I think as regards our work together in Europe against joint threats, they will continue the partnership with us but also look for alternative stronger arrangements to ensure that they still have strong co-operation with member states.

The Chairman: Mr Armand, as you know, we are undertaking this inquiry so that we can spell out what the operational implications are. Can you give us some indication of the timing because, obviously, it is a bit uncertain? It would be helpful to have an indication of when we should publish the report to have the optimal influence.

David Armond: I am not sure whether I am qualified to advise on that. I just repeat what we set out as urgent when we started this session—if you like, the alligators nearest the boat—including, certainly, our continuing membership of Europol. A decision backed by Cabinet to sign the new regulation to allow us to continue our membership while Article 50 works out and we work out an alternative set of arrangements seems to me the biggest priority because, as I said, if we do not sign it effectively this year, the likelihood is that we will be out on 1 May, so that is quite a worry to us. Then we need some decisions on whether Prüm, continued membership of SISII and some sort of arrangement around EAWs are important to us. Those are the next set of priorities. I think that we can negotiate on those from a stronger perspective if we are still members of Europol. It is not a case of it being a decision for the Europeans: if the Home Secretary or the Prime Minister decides to sign this, we are in—we qualify because we are still members of the EU until we are not.

Lord Cormack: We need to report before Christmas.

The Chairman: That is what we were intending to do anyway. Thank you very much indeed. This has been a very helpful session and we are very grateful to you. After you have reflected on this session, if there is anything you feel you want to submit to us, please feel free to send us written evidence if you so wish.

David Armond: Thank you Lord Chairman. I have a very critical team behind me who will be telling me what we did not say. If I find that is the case, I will write to the committee jointly with Steve.

David Armond, Deputy Director-General, National Crime Agency and Stephen Rodhouse, Deputy Assistant Commissioner, Metropolitan Police Service – Oral Evidence (QQ 11-18)

Transcript to be found under Stephen Rodhouse, Deputy Assistant Commissioner, Metropolitan Police Service

Northumbria Centre for Evidence and Criminal Studies – Written Evidence (FSP0002)

Executive Summary

1. Forensic biometric sharing within the EU (Prüm) is a specialist form of cooperation. Nevertheless research into this activity and the context in which it occurs places some of the implications of Brexit into sharp relief:

a) Brexit (in any form) will not result in a major reduction in the need for effective criminal justice and security cooperation. The UK will still receive millions of foreign citizens a year and a very small proportion of them will be serious criminals who present major threats. The challenge is to identify this small group within the generally law-abiding and tax-paying crowd.
b) The effectiveness, continued extension and form of such cooperation will also have a major impact on the safety and rights of UK citizens abroad, whether they are in the diaspora or simply travelling for work or holidays.
c) The value of individual criminal justice and security cooperation agreements (however good) will only be realised fully within a comprehensive framework (e.g. with access to the European Arrest Warrant (EAW)) that is underpinned institutionally (e.g. by Europol and Eurojust) and subject to parliamentary and legal scrutiny.
d) UK global economic and political status was significantly reduced on 23rd June and a badly handled Brexit will further diminish this country's influence. There will be little or no scope for UK bespoke arrangements for police and judicial cooperation or scientific standardisation.
e) The resilience of both UK science and technology, and our criminal justice system – including responses to transnational cybercrime - are likely to be weakened significantly if British forensic scientists are no longer influential within EU collaborative scientific research, professional working groups and standardisation decisions.

Opting-out of the EU arrangements, such as Prüm, the European Criminal Records Information System (ECRIS) and EAW, to which the UK belongs only after recent Protocol 36 reviews by criminal justice professionals, government and Parliament would be inexplicable and may prove to be reckless.

Introduction

2. NCECJS is a multi-disciplinary research centre, bringing together academics and postgraduate students from a range of disciplines with members of the judiciary, lawyers, police officers and forensic scientists. We are mainly based in North East England, but NCECJS has an extensive network of national and international members.[19] We work closely with public bodies and office holders, including the English and Irish Law Commissions, and the Forensic Science Regulator. NCECJS has recently been awarded international joint research council funding for research into the probative and human rights implications of

[19] https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/research/northumbria-centre-for-evidence-criminal-justice-studies/

cybercrime investigations. This follows earlier research about the international sharing of forensic bioinformation.[20]

3. This evidence summarises research published in recent publications (both academic journal articles and a contribution to The Chief Scientific Adviser's Annual Report for 2015). Copies of these publications are accessible to the Committee's Secretariat.

4. The views expressed in this memorandum are solely those of the authors and do not indicate agreement or acceptance by either our employer or research funders.

The context of police and judicial cooperation

5. Our research has largely focused on European police and judicial co-operation involving the sharing of forensic biometric data (DNA and fingerprints). This is because the EU/EEA and Switzerland is the only area of the world where (a) extensive and efficient multi-national and high volume casework cooperation exists and (b) takes place in a manner that is relatively accountable through judicial, regulatory (Data Protection) and parliamentary supervision. Such cooperation is not only of immediate value. Its development provides important lessons for the challenges posed by other forms of crime, especially fast evolving transnational cybercrimes, where the English law of evidence must adapt itself to managing and sharing evidence that may rely on expert testimony about actions in other jurisdictions.

6. The reasons why such cooperation makes a critical contribution to crime prevention and bringing offenders to justice will not change with Brexit.

7. The numbers will fluctuate and the accuracy of estimates will vary, but some 8% of the UK resident population are foreign nationals (some 4% nationals of other EU states) and there is a British diaspora equivalent to about 10% of its resident population. These figures, however, are dwarfed by total annual movements in and out of this country equivalent to approximately four times its resident population. Brexit *per se* is most unlikely to make any difference to the global vulnerability of UK citizens at home and abroad to serious or organised crime (including terrorist offences). In the judgement of a senior National Crime Agency official 'acting alone to counter crime has become unworkable'.[21] Opting-out of the EU arrangements to which the UK now belongs only after detailed Protocol 36 reviews by criminal justice professionals, government and Parliament would seem both inexplicable and, given the views expressed by the relevant ministers in the Cameron Government, in particular the then Home Secretary, may prove to be reckless.

8. Freedom of movement within the EU has not affected UK English crime trends. Analyses of pre-2014 offender data have shown that EU nationals accounted for approximately 1% of detected offending in England, but subsequent publicly

[20] For project details, disclaimers and funding, see T. J. Wilson, 'Criminal Justice and Global Public Goods: The Prüm Forensic Biometric Cooperation Model', *The Journal of Criminal Law,* 2016, 80 (5) 326.

[21] P. Merrill, 'The Changing Nature of Crime', in M. Peplow (ed.), *Annual Report of the Government Chief Scientific Adviser 2015: Forensic Science and Beyond: Authenticity, Provenance and Assurance: Evidence and Case Studies* 56.

reported crime figures (recorded crime and the British Crime Survey) continue to show a downward trend in traditional crime.[22] With the exponential growth of transnational cybercrime[23] and the probably irremediable physical vulnerability of UK borders (as demonstrated by the Home Affairs Committee[24]), more extensive migration restrictions following Brexit would be unlikely to measurably improve crime (including terrorist offences) prevention. The key to responding to global threats will continue to be effective information sharing with other countries. Where this works, the existing arrangements need to be consolidated and, subject to maintaining accountability, extended to other countries.

9. The same considerations apply to bringing to justice transnational offenders for crimes on British soil. The most significant differences between a crime committed by EU citizens such as Zalkans[25] or Dlugosz,[26] however, and the Russian citizens named in the Litvinenko Inquiry is that a UK investigation can currently benefit from a duty on EU member state to assist our police or judicial inquiries and the extradition of suspects cannot be blocked by a 'wall of protection'.[27] This is not only a potential problem in respect of authoritarian states that cannot effectively be held accountable to their citizens and flout modern conceptions of the rule of law. Prior to its adoption of the European Arrest Warrant a Polish suspect could not be extradited (technically rendered) from Poland. Under the Polish Constitution this remains the only lawful extradition process for its citizens.[28]

The purpose and options for international forensic biometric data sharing

10. The purposes of forensic biometric cooperation are twofold:

a) identifying known individuals, monitoring the movement of unknown individuals between crime scenes and identifying collaborative criminal networks[29]; and
b) enabling judicial and police records to be joined-up between jurisdictions.

These are important elements of an increasingly comprehensive and cost effective system that provides for seamless policing and judicial cooperation, significantly reducing the ability of transnational offenders to take advantage of jurisdictional boundaries.

11. Published research has concentrated on forensic data exchanges leading to suspect identification and, in the absence of identification, the transnational crime trails of unknown individuals (both forms of 'sub-source attribution').

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[22] D. Johnson 'E.U. migrant criminal activity: Exploring spatial diversity and volume of criminal activity attributed to inter EU migrants in England', *Applied Geography* 2014 50 55; for data inadequacies (both national and EU levels) see also Ludwig, A. & Johnson, D. (2016) Migration and crime: a spatial analysis in a borderless Europe, *European Journal of Policing Studies*. 4 (1).
[23] A Blyth and M Johnson, 'Cyber Forensics' in M. Peplow, above n.3 at 74-79.
[24] HC 2016–17, 24 paras 27-33.
[25] For this murder and the importance attached by the Coroner to police cooperation see S Swinford 'Alice Gross: Coroner demands checks on foreign suspects after finding teenager was 'unlawfully killed' by Latvian builder', *The Daily Telegraph*, 4th July 2016.
[26] *R v.Dlugosz, Pickering and Pontius* [2013] EWCA Crim 2 [31] – [38].
[27] HC 2015-16 695 para. 9.179.
[28] The authors are grateful to Dr K. Andrejuk, IFiS, Polish Academy of Sciences for briefing about this.
[29] Wilson, 'The Global Perspective' in M. Peplow, above n.3 84-85.

Access to criminals' back-stories – if the records exist in an efficiently searchable form - can sometimes only be unlocked through sharing standardised biometric data between jurisdictions. Bail, the admissibility of evidence of bad character and sentencing decisions require knowledge of criminal careers. This is not only a question of criminological efficiency, or even public safety. Where prior convictions may influence pre-trial detention, the verdict and punishment, the law cannot be administered equitably if prosecuting agencies and courts can access records relating to their fellow citizens, but not those of foreign residents or visitors.

12. As the Metropolitan Police explained in connection with their arrest of Zalkans five years before the murder of Alice Gross, it was not possible to carry out checks on all foreign nationals because some EU nations did not have a criminal record database.[30] This is being remedied under ECRIS which requires all member states to create such databases and share the information they contain about EU citizens. The Commission is supporting implementation financially and is also seeking to expand the system to include third country nationals convicted in the EU. ECRIS may also facilitate safeguarding. Subject to what is permitted under national law, conviction information may be exchanged for screening prior to work with children. A key issue in the Bichard Report (2004) into the failures behind the Soham murders was 'the wealth of information held but not exploited by police forces for the prevention and detection of crime'. ECRIS and Prüm participation extends some of the approaches recommended in that report to take account of the increasingly large-scale and global mobility in the UK described in paragraph 7 of this memorandum. [31]

13. The juxtaposition in this evidence of Prüm and ECRIS demonstrates how EU arrangements are part of a holistic response to some of the worst negative spillovers from globalisation. The comparative success of the EU in creating and implementing such arrangements is clear from comparisons with both Interpol's forensic biometric data sharing systems (hardly used in comparison with Prüm) and, as a similarly complex personal data screening system, the UK e-borders project.[32] The success of Prüm stems from a number of reasons, but key factors include:

a) An international legal framework that respects national political and legal autonomy over the regulation and use of sensitive personal data in a manner that can be effectively superivised by national courts. Also the governance of the system's operation – through the participation of national data regulatory bodies or officials - remains at a national level.
b) A legal obligation to create (the Zalkans issue) national criminal justice databases that operate in a technologically standardised manner, with Commission and other institutional resources to suport implementation.
c) How Prüm operates within a comprehensive framework for legal cooperation (eg the EAW to ensure rendition subject to ECHR compliance after identification) and, in marked contrast to Interpol, parliamentary and judicial scrutiny nationally and internationally.

[30] See S. Swinford, n.7.
[31] The Bichard Inquiry Report, HC 2003-04 653 para 130.
[32] For statistical data comparisons with Interpol systems and e-borders and the analysis of Prüm in terms of project delivery see: Wilson, n.2 at 317-321.

d) The collaborative problem solving during implementation by EU insititution officials (especially Europol and Eurojust) and their colleagues from the two lead scientific and technical national agencies (Dutch forensic scientists and German data system experts) together with participating national police officers, lawyers, prosecutors and magistrates.

14. The selected technical solution of dispersed databases – ie controlled interconnectivity between national databases - and not a centralised data system on the Interpol model may be less significant than the other factors. EU institutions have also successfully introduced high volume centralised systems for border control purposes. All of these contain and make use of forensic biometric data and are accessible to member states for criminal justice or security purposes. There is a significant distinguishing factor, however, all EU centralised systems, with the exception of the Schengen Information System, hold data exclusively about third country nationals, though potentially, post-Brexit, also UK citizens.

15. Such policing and judicial cooperation is highly consistent with the development of UK law and policy on extradition and extra-territorial jurisdiction from the nineteenth century onwards. In contrast to many other jurisdictions (some still today), British citizens were not allowed to hide behind its borders to evade justice for serious crimes committed abroad. One rationale for this approach was stated in the Scott Baker Review:

> … extradition operates on the basis of mutual benefit and obligations. Given the ease of movement of people throughout the world, the United Kingdom needs the help of the international community to fight serious crime within its borders, just as much as other states need the assistance of the United Kingdom to deal with crime affecting their interests.[33]

Arguably, however, such cooperation is not simply a matter of mutual advantage. The deontological and retributive (legal, moral and social) significance of the criminal law gives rise to an obligation to assist the detection of crimes committed by British citizens abroad and efforts to bring them to account. Continued involvement with such police and judicial arrangements post-Brexit would, therefore be wholly consistent with this long-established tradition.

16. Much greater political problems could arise in respect of security screening systems. After Brexit the price of a summer holiday in Spain for a British citizen might include the retention of personal information on a centralised EU data system. That data could be used by a policeman or border guard anywhere in the EU, without the accuracy and use of the data being subject to any UK national governance or justiciability in our courts.

Risks and costs of forensic biometric cooperation

17. Because sensitive personal data is exchanged through Prüm the principal legal question is whether this arrangement is proportionate and strikes a fair balance between the competing public and private interests. Arguably the Prüm legislation of 2008 evades this issue. It is a simple but highly effective framework that sets the data protection and technical or scientific baselines for participation.

[33] *A Review of the United Kingdom's Extradition Arrangements,* Home Office, London: 2011), 10.

Anonymous DNA and fingerprint data – shared and selected via automated data - processing will only be linked to a named person following human scrutiny and approval if such sharing of information is permitted under the national laws of the state holding that data. The EU legislation emphasis on the primacy of national law is not original in this respect. It is similar, for instance, to the rules under the Rome Statute of the International Criminal Court (ICC) (1998) for information sharing between the tribunal and signatory states, including the UK.

18. The cost of sharing national DNA data internationally is low.Various risks occur because of technological obsolesence or disparities between national biochemical systems as DNA databases become larger and are interconnected via Prüm. Changes to resolve these problems have also improved purely national investigations. The new internationally standardised upgrades of DNA biochemistry have also increased what could be detected from degraded and incomplete DNA. The key issue, however, was that this progress needed to proceed globally in the same direction to make cross-country compatibility more reliable and less expensive. The Commission reduced the risks of future technological obsolesence and spread the costs of biochemistry modernisation for EU member states by funding in partnership with US bio-science companies considerable convergence between the European forensic DNA biochemistry with that of the USA and China. The UK, as a major partner and innovator in this process, however, benefited considerably from what became global convergence (development through in effect a tightly synchronised tri-continental process) towards this country's core biochemical standards.[34] This will assist UK criminal justice cooperation activity outside Europe and with the identification of bodies following a natural disaster or mass murder.

19. Brexit poses two problems that need to be addressed in this respect. It is inconceivable that UK forensic science will influence or even keep up with global practice to the same extent if it has to rely solely on a shrinking UK forensic science base. Citing concerns expresed by the Science and Technology Committee, the leading Metropolitan Police forensic scientist recently commented:

> … [the] situation has reached a low point in the last five years, with a small and fragmented research base in forensic science that does not allow for the effective development and implementation of large-scale innovation and the application of new science.[35]

Similarly, British influence over international work to assist lawyers and judges to better assess the reliability of scientific expert evidence (this is very much work in progress as the appreciation /interpretation of reliability varies between disciplines[36]) risks being lost if UK scientists can no longer work on criminal investigations in other EU countries, within EU collaborative projects and have a major regional influence over international standardisation. This risk applies

[34] Wilson, n. 2 at 315-318 and also n.11 at 86-87.
[35] G. Pugh, 'Forensic Science in Practice' in M. Peplow above, n.3 at 28.
[36] S. Carr, E. Piasecki, G. Tully and T. J. Wilson, 'Opening the Scientific Expert's Black Box: 'Critical Trust' as a Reformative Principle in Criminal Evidence', *The Journal of Criminal Law* 2016, 80 (5) 364-386.

generally to scientific evidence, including the recent and fast growing area of cybercrime.

Professor Steve Peers, Professor of Law, University of Essex, Tony Bunyan, Director, Statewatch, Dr Paul Swallow, Senior Lecturer, School of Law, Criminal Justice and Computing, Canterbury Christ-Church University and Helen Malcolm QC, The Bar Council – Or

Professor Steve Peers, Professor of Law, University of Essex, Tony Bunyan, Director, Statewatch, Dr Paul Swallow, Senior Lecturer, School of Law, Criminal Justice and Computing, Canterbury Christ-Church University and Helen Malcolm QC, The Bar Council – Oral Evidence (QQ1-10)

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