



Select Committee on the European Union

EU Security and Justice Sub-Committee

Corrected oral evidence: Post-Brexit policing and security in Northern Ireland

Tuesday 17 November 2020

10 am

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Members present: Lord Ricketts (The Chair); Lord Anderson of Ipswich; Lord Anderson of Swansea; Lord Arbuthnot of Edrom; Lord Dholakia; Baroness Finn; Baroness Goudie; Baroness Hamwee; Lord Kirkhope of Harrogate; Lord Lexden; Lord Polak; Baroness Primarolo; Lord Rowlands.

Evidence Session No. 2

Virtual Proceeding

Questions 27 - 48

Witnesses

I: Assistant Chief Constable Mark McEwan, Lead for EU Exit, PSNI.

II: Dr Amanda Kramer, Lecturer, School of Law, Queen's University Belfast; Dr Vicky Conway, Lecturer, Dublin City University.

USE OF THE TRANSCRIPT

1. This is corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witness

Assistant Chief Constable Mark McEwan.

Q27 The Chair: Good morning and welcome to today's session of the House of Lords EU Security and Justice Sub-Committee. We have two sessions this morning. The first is with Assistant Chief Constable Mark McEwan of the Police Service of Northern Ireland. Welcome, Assistant Chief Constable. At around 11 am, we shall change direction and I will introduce our two witnesses at that point. Both these sessions are public. They are being broadcast and will be transcribed, and our witnesses will have the chance to correct any errors in the transcript before it is published.

Assistant Chief Constable, perhaps I could ask the first question, which is really for you to set the scene for us at the outset on the policing landscape on the island of Ireland. I had hoped to have a representative of the Garda as well, but they were unable to attend. It would be very helpful if you could give us your sense of what the main challenges are in the areas of terrorism, cross-border crime and criminality as a context for then talking in more detail about the various issues that arise in our relationship with the EU.

Mark McEwan: Thank you to the Committee for allowing us to give evidence this morning. The main challenges for policing, as you would expect, are very similar to elsewhere in the United Kingdom and Ireland. On vulnerability, including high-harm areas such as child sexual abuse and domestic abuse, we are seeing a drift towards those being a challenge for policing. There is also cybercrime and exploitation. On a very broad level, we are seeing an increase in those types of criminality.

More specifically on the cross-border dimension that we have in Ireland, we have 83 categorised organised crime groups operating in Northern Ireland. Sixteen of those have cross-border links and are already involved in smuggling and fuel laundering. On the cross-border dimension to that, fuel and cigarettes, for example, are out with some of the other agreements that we enjoy within the European Union and therefore they provide opportunities for organised crime groups. There are 16 groups that have a cross-border footprint. Some 22 of our organised crime groups are deemed to have links to paramilitary organisations as well. That includes paramilitary organisations that exist fundamentally to make money and to run as organised crime groups across Northern Ireland.

The policing challenges we have are very similar to those in other large metropolitan areas in Great Britain, particularly around organised criminality. There is also a rural dimension. Right across Northern Ireland we still have communities that are entrenched, so we still see challenges around the legitimacy of policing. We have a strong endeavour around a neighbourhood-style policing stance, supporting and trying to work with communities to create a safe environment. Those are the broad-brush policing challenges we have.

The Chair: Is our departure from the EU, which does not really become a reality until 1 January next year, already shifting those patterns? Are you seeing changes in the patterns of, for example, smuggling across the border, or other cross-border

activity as a result of the UK leaving the EU?

Mark McEwan: We are not really seeing that at present, but that is to be expected. We know from working with some of our partners, particularly in immigration, that there are groups that have an eye to exploring what the common travel area might mean, particularly when we look at the exploitation of people and trying to route people into Great Britain. If we have tighter security at other ports, it is evident that the common travel area may be a way to try to move people into Great Britain. We believe there are groups that are looking at that at the moment.

On the benefit or the opportunity for an organised crime group around smuggling, that will depend very much on tariff differentials. Until we see what that means in totality, we will not really know what that will look like.

Q28 Lord Lexden: Following on from the Chair's introductory questions, could I ask you about two important matters? First, could you tell us about the character or the nature of the co-operation that takes place between the police forces on both sides of the border at the moment? Secondly, how important are EU police and criminal justice mechanisms in supporting that vital co-operation?

Mark McEwan: The current levels of co-operation, as you would expect, are very good. We have a long-established relationship with An Garda Síochána and that operates at a number of levels. We have very close local arrangements: cross-border radio and daily cross-border taskings to the services on both sides of the border, which allow for day-to-day co-operation. When we consider the higher-harm areas and the organised criminality, we have a cross-border policing strategy, which includes a Joint Agency Task Force looking at those organised crime gangs and what we might be able to bring to bear on them. We generally have an annual cross-border conference, although that has been more challenging this year, as you would expect. We run a secondment programme and we have a number of strategic, tactical and operational cross-border radio strands as well to continue to develop communications.

You mentioned the justice and home affairs vehicles, and of course we do make use of European arrest warrants and the joint investigation teams. Interestingly, on the criminality side, there is a lot of sharing of intelligence and information between the two services. As with Police Scotland, we have our own international desk or capability in Northern Ireland, which we will seek to maintain, while being linked into the national arrangements within the UK. That allows us to build relationships and develop faster-flowing information and intelligence flows with our colleagues in the Garda.

The other aspect that is different for Northern Ireland and Ireland is the fact that in border areas we have cohesive communities living their daily lives on both sides of the border. It is really important that we are able to support those communities. For example, a large proportion of the information and alerts we get are from SIS II, the Schengen live-time intelligence and information-sharing system. We had 1,336 between 1 January and 25 June this year, so in a six-month period, around missing

persons. I use that to articulate the fact that this is about low-level community safety issues; it is not just about the organised crime.

For some of those communities in the border areas, there is already a perception that things will change. Obviously, at government level and between law enforcement bodies and other departments, we are doing everything we can do ensure there will be no checks or new infrastructure at the land border, but for some of those communities there are small changes—for example, the green card for insurance documents—that start to signal that things are changing. We need to do everything we can to support them and to ensure we are able to maintain the likes of that information-sharing around missing persons and other community safety things that impact on people's lives, as well as the organised crime aspects.

Lord Lexden: It is often said that co-operation today is better than it has ever been and that it is utterly transformed from the early days of the Troubles, for example. It has been absolutely totally transformed. You would probably agree that the co-operation has never been closer, more effective or more satisfactory.

Mark McEwan: Yes, absolutely. It is better than we have enjoyed for a long time.

The Chair: Could you perhaps say a word about these joint investigation teams? The chief constable spoke about this to the House of Commons Select Committee earlier in the month. Will these JITs continue under post-Brexit conditions?

Mark McEwan: We will seek ways that they can continue. Some of the joint investigations we are looking at with European partners have already been moved to the host countries that will remain within the European Union. We will probably take a secondary role in those joint investigations, but we will be able to maintain the existing ones and seek mechanisms to continue with that.

Q29 **Lord Kirkhope of Harrogate:** Thank you very much indeed for your remarks so far. I have the pleasure of being responsible for the JITs, which the Lord Chair has just referred to. You have talked about the specifics such as SIS II, the European arrest warrant and the joint investigation teams, and there are loads of others. How are these going to work in future?

You have a very interesting situation. You just mentioned that you have citizens who may well have properties that literally straddle the border; one part of their property or land may well be in the Republic and some of it may be in Northern Ireland. That has no doubt been an issue for you in recent years, but at least we have all been part of the EU. Looking ahead, on this sort of position, what mechanisms, from the European Union point of view, are still going to be most useful in the hands of your neighbours in terms of the relationship you might now have?

The question of the border is not totally settled, as we know. The issue about border controls and so on is still to be settled finally. What would be the way in which we could have less confusion and less contradiction on the border in future, which obviously is necessary from the point of view of continued security and

peace?

Mark McEwan: On the first part of your question, on things such as European arrest warrants, SIS II or ECRIS, which is the sharing of criminal records, until we see what arrangements come out of the negotiations, it is hard to say. The way we have been describing it is that, ultimately, any replacement for the existing mechanisms is likely to look a little bit like moving from wi-fi to modem. In the vast majority of cases, it will slow things down, at the very least.

Having said that, we are confident that, once we are able to move to bilateral agreements at government level and then for law enforcement organisations to work together to be the wiring of those systems, we will be able to come up with systems that will effectively replace what we have. The European arrest warrant is probably the biggest thing. If we do not retain some form of European arrest warrant or alternative, we will move back to the 1957 European Convention on Extradition, which will considerably lengthen the time it takes to extradite people, but it is still workable.

When we talk about the live-time sharing of information and criminal records, both for prosecutions and for things like vetting and safeguarding, which are really important to us, we already have alternatives for those. Again, it is about being able to work together, between the UK Government and Ireland and ourselves and the Garda, to wire that up.

Forgive me; I have forgotten the second half of your question.

Lord Kirkhope of Harrogate: I will elaborate slightly. We talk about the border. You have a unique situation here, in that you are sharing a land border with an EU state in the future. In terms of provisions, you are going to lose certain things, as you have already admitted. We know that; in other words, you are not going to have the speed of reaction to information, for instance, that you may need to deal with a fast-moving situation where we can currently have an hour-by-hour appraisal, as it were. How do you expect that to work in future? The joint investigation teams have specific functions. We all know about those, and you have mentioned them. What about joint committees or joint operating arrangements in future with your friends on the south side of the border?

Mark McEwan: We already have a Joint Agency Task Force that sits at a cross-departmental level between north and south. That allows us to develop our investigative and intelligence capacity and capabilities across the border. We are reliant on bilaterals. We are quite optimistic and ambitious about the scale of our future arrangements. We intend to develop beyond what we have, building on the work that the Joint Agency Task Force has done.

If we think about the Gartcosh model in Scotland, which pulls together all of the crime family, we would be seeking to build and develop a capability similar to that in Northern Ireland but working very closely with colleagues in the south.

Lord Rowlands: Perhaps I could ask our witness about the new national extradition

unit, which we heard about from DAC Martin of the Met. How does that relate to activities in Northern Ireland?

Mark McEwan: We have our own extradition unit, our own international unit within PSNI. We also have an embedded officer in the ICCC—the International Crime Coordination Centre—which sits under DAC Martin. Although we will retain our own stand-alone capability, we would seek to be embedded in the national arrangements as well, just for that speed of operating, good relationships and understanding of the processes, so that we can combine those efforts, but we will retain our own extradition unit here.

Lord Rowlands: Will that help in the absence of a European arrest warrant? Is it a reasonable substitute?

Mark McEwan: It will help to an extent. We will be reliant on Interpol red notices. The recent legislation that allows for power of arrest for those, albeit with a warrant, will also help. However, it is not a replacement. Without some other form of replacement legislative vehicle, we will go back to the 1957 convention. That unit will help in terms of relationships, in getting the process moving and just getting to work with our colleagues in An Garda Síochána, but we still have the extradition process to go through.

Q30 **Lord Anderson of Ipswich:** Good morning. You have already touched on contingency solutions. Could you tell us how much those fallback solutions have already taken shape and how far it is a question of waiting to see what happens in the negotiation before detailed plans are made? You have spoken a bit about European arrest warrants, so I wonder whether you might focus on data sharing when you answer that question.

Mark McEwan: At this point, we have been developing what we think the replacement vehicles may be. We are linked in with the Home Office. It is Home Office-driven work on what those replacements will be. Through the Northern Ireland Office, directly with the Home Office and bodies such as the NPCC, we are providing what we feel would be a useful and operable replacement.

However, until we know what will come out of the negotiations, it is difficult. We know what we want and we have articulated that through various groups. Either we will get the result we need through the overall negotiations or, when we are allowed to move to bilateral negotiations, we can start to look at what that might look like for us and Ireland on that particular cross-border issue. At this point we are limited in the amount we can do in order to prepare, because of the government-level negotiations still going on.

Lord Anderson of Ipswich: There must be some things you can at least predict. The SIS II database, for example, does not feature in the joint declaration as something the parties are committed to replicating or continuing to provide access to. It is great that you have thoughts and plans, but I am a bit concerned, if these negotiations come to an end only later this month, say, about whether you are

going to have time to turn those aspirations and plans into the necessary bilateral arrangements in time for the new year.

Mark McEwan: To give the Committee some reassurance, we have been working on this for some time now, as you would expect. The alternative to SIS II will be a system called I-24/7. We already have licences in place within PSNI, as do other police services across the UK, so we are assessing what licences we have currently and what we need, particularly in areas such as custody. We are ensuring that we have our back-record conversion up to date to allow that sort of internal wiring, as I have described it. Once we get the nod that we can engage in bilateral negotiations, we will have that ready to plug in. Similarly, depending on what comes out of the government-level negotiations, we will be able to wire that in as well. SIS II is a good example, and that is our replacement for that. We think that will work well.

Lord Anderson of Ipswich: We heard from Richard Martin from the Met a couple of weeks ago that there is a useful little ruse that will enable participation in Europol to continue a little way, at least, beyond 1 January, and not just on existing operations. Are there any other fixes you are aware of on the data-sharing side that might keep existing capabilities going into the new year while you do your best to negotiate bilaterally?

Mark McEwan: There are a number of other areas, such as the international conventions, that allow us to share. If we have a live-time operation with someone moving from one jurisdiction to the other, we can share that information for investigation purposes. We are confident that there will be very little change come 1 January. When we get into those longer-term high-level investigations, though, there will be an impact. It will be suboptimal unless we get a solution.

Lord Anderson of Ipswich: You were talking, for instance, about the missing person alerts you get through SIS II. Are you saying that those alerts will carry on coming after 1 January? If so, how will that be?

Mark McEwan: That is around converting to the I-24/7 system. We will be able to share information with colleagues in Ireland through that system.

Lord Anderson of Ipswich: Will that be ready to go in the new year?

Mark McEwan: Yes.

Lord Anderson of Ipswich: Chief Constable Simon Byrne came to speak to another parliamentary committee a couple of weeks ago, and he was talking about the daily information exchange between the PSNI and An Garda Síochána. He said that there was an agreement that goes back to 2012 that enables the exchange of information notwithstanding some of the wider conventions and processes that you all talk about in a broader EU exit setting. He was not asked anything more about that, and I wonder whether there is anything more you could tell us about that agreement. Is that part of the key to your contingency planning?

Mark McEwan: All of our data sharing rests on data adequacy and the ability to get that level of assurance for both the UK and Ireland for us to be able to share data, but we are confident that we will be there by 1 January.

Lord Anderson of Ipswich: To sum up, you are not predicting or expecting a major dip in capabilities caused by diminished access to information from An Garda Síochána on 1 January.

Mark McEwan: No. In summary, we expect it to be suboptimal but operable.

The Chair: I still have in my mind DAC Richard Martin telling us a few months ago that, to take ECRIS for example, you can get crime-scene records within 15 minutes at the moment, but it used to take 66 days using other vehicles. If “suboptimal” means that kind of additional delay, that is going to have an operational impact, is it not?

Mark McEwan: It is, and we have been very clear about that. We will be able to work through this. For us, there is a focus on bilateral agreements with Ireland and the rest of the UK. However, as you would expect, quite a lot of those information exchanges come from other parts of Europe. Particularly if we look at Prüm, Germany and Poland are the two highest. Even with the use of the I-24/7 system, we are reliant on European partners double-keying, entering those records and data on to two systems.

There are other ways we can pick things up, but that is in an arrest-and-custody scenario as opposed to when people are at large within the community. Many of these things are going to impact on this, but we are confident that, as time goes by and we are able to do more and more bilaterals, either at UK government level or between ourselves and other law enforcement agencies, we will be able to plug those gaps.

The Chair: The I-24/7 system is not just UK-wide; it links into EU colleagues and partners, does it?

Mark McEwan: Yes, it does.

The Chair: That is an interesting revelation for me. Thank you very much.

Q31 **Baroness Hamwee:** Good morning, Assistant Chief Constable. You just mentioned being reliant on other people double-keying. Have you had the opportunity to check with any other forces or organisations in other EU countries whether they are prepared—as in willing and able—to double-key?

Mark McEwan: It is a very pertinent point, but all of this has been progressed through the Home Office. As I have mentioned and as you will understand, it is not for us to engage in communication at this point, but, as time goes by and things open up, we will engage in those conversations where we feel it is necessary.

Baroness Hamwee: There was no criticism intended in that. I wanted to ask you about what you might call government relations. You said a few minutes ago that

you know what you want and you have articulated it through various groups. Can you say something about, first of all locally in Northern Ireland, whether your needs—they are the community's needs, obviously—are understood by Government? Secondly, could you comment on whether your particular challenges are understood in Brussels and in London?

Mark McEwan: Locally, we are involved in a lot of cross-departmental groups, as you would expect. We work very closely with Border Force, immigration and DAERA—the Department of Agriculture, Environment and Rural Affairs. With the treatment of Ireland north and south as a single unit in terms of food safety, there is a huge reliance on our relationship with DAERA to understand what this will look like.

To give you a bit of an overview, the first phase of Operation Skies, which is our operation in response to EU exit, is very much looking at the ports, the critical infrastructure for traffic and what that will mean on 31 December and 1 January. Some of what we have talked about in terms of information exchanges is critical to that. There is a focus for us on supporting our partners to get their checks and compliance regimes right but also ensuring that the infrastructure continues to operate in a good way and that, with our partners in Merseyside and Police Scotland, we are in a position to respond should we need to. We are confident around that. That is being shared right across the departments here in Northern Ireland in terms of what we need.

As we look towards the medium term, the focus of our operation starts to look at some of the stuff we have discussed here today. On organised criminality, if there are tariff differentials and there are opportunities for organised crime gangs, we are looking at how we are enforcing against those organisations in an intelligence-led way, with our colleagues in Ireland and the UK, and with Border Force, immigration and others, in places where it is appropriate and more effective for us to take that action.

That is a broad overview. We have shared that with partners in departments here. We believe we are being listened to here. A lot of that longer-term focus is about supporting those communities in border areas, which potentially will be disproportionately affected by this. I believe the Government, the local departments and the Northern Ireland Assembly have a good understanding of what we need.

In terms of the national picture, we are well embedded, as I said, in the likes of ICCA and the NPCC. We are part of all of those working groups. As with Police Scotland, we feed in our own particular needs while maintaining a stand-alone capability as well. We are as confident as we can be that our voice is being heard.

Baroness Hamwee: In Brussels, we hear an awful lot, rightly, about the importance of the Belfast agreement. One hopes it is not just lip service, but you are in a very particular position. Do you have direct contact with Brussels or, again, is that through the UK Government?

Mark McEwan: Again, at this point it is through the UK Government.

Q32 The Chair: Given that you may face a position, Assistant Chief Constable, where you have the common travel area but not a common set of data-sharing and intelligence-sharing arrangements with the EU, what impact will that have? You have covered it partly in your previous answers, but, supposing you have to cope with the common travel area without the supporting co-operation arrangements with the Gardai, what extra problems would that pose for you?

Mark McEwan: The common travel area has been in place since long before the membership arrangements of the EU, and it is critically important for us. If we think about some of the stuff we have discussed, such as the porous border and the issue of people who live their lives straddling the border, those are things that have existed for a long time. I mentioned earlier the potential for human trafficking and human exploitation, and we think that is probably the greatest challenge we will face going forward, particularly in light of, as you say, the differences in intelligence sharing, Justice and Home Affairs Measures and the security arrangements.

Again, this goes back to supporting immigration in carrying out its statutory responsibilities, working very closely with An Garda Síochána in particular around enforcement, both through the arrangements in the common travel area at ports in Ireland and in an intelligence-led way, ensuring we tackle these organised crime gangs that would seek to exploit that in terms of using Ireland and Northern Ireland as a transit route through to GB.

Q33 Lord Arbuthnot of Edrom: Your answer implies that this has always been a problem, before and after Brexit, that there is going to be no real change and that it all relies on good relationships, personal relationships, north and south of the border. Is that a fair assessment?

Mark McEwan: That is a large part of it, although I would not like to say it relies on personal relationships. None of us would like to see a law enforcement structure built on that alone, though it is very important. As we have discussed throughout the session, any of those justice and security legislative vehicles we have we will seek to replace, potentially through bilateral arrangements. This relies on co-operation, co-ordination and intelligence in terms of how we tackle organised criminality, and we believe we can still do that effectively, working with colleagues in the United Kingdom.

It is one area where we believe there is a risk that may become exacerbated following the transition period. As security is either physically tightened or the perception is that it is tightened around other ports in GB, organised crime groups may then seek to use a route through Ireland and Northern Ireland. That sort of exploitation may increase, using Northern Ireland as a transit route. As I say, we will work very closely with our partners—An Garda Síochána, Border Force, immigration and our colleagues in security at the various ports and airports.

Lord Arbuthnot of Edrom: What can you do about that risk if other areas and borders are tightened?

Mark McEwan: If we see it increasing in terms of that exploitation, it is about sharing that intelligence with each other in a very timely fashion. As I say, this is about co-ordination and co-operation and then intervention at the appropriate place. Whether that is in Ireland or Northern Ireland, it is about working together, particularly with immigration and our colleagues at the ports to intervene. For longer-term investigations, it is about going back and sharing that information, in whatever way we have to, with colleagues in Ireland, the UK or other parts of Europe.

Q34 **Lord Anderson of Swansea:** Apologies in advance if some of the ground has already been covered, because, for technical reasons, I have only just been able to join the conversation. My question is on the border. There must be enormous logistical problems at the border, given that we are told there might be more than 300 crossing points. If there is no agreement between the UK Government and the European Union on future police co-operation, what are the likely implications in operational terms on 1 January?

Mark McEwan: This is something that we have discussed, but it is a good point on the physical geography of the land border and the fact there are over 300 crossing points, as you say, many of which are in rural settings. It is something we are aware of. As I have mentioned, this is the second phase of our operation. Our natural policing stance in these areas is around community policing. We have invested in over 200 additional neighbourhood officers in these areas to support those communities, build up links and ensure we understand what is happening in that part of the jurisdiction. That funding has been provided up until the end of 2021, and we are seeking a further two years' funding for these officers.

First and foremost, our response has to be a community policing response to support our communities whose lives will be affected as they live cohesive lives on both sides of the border. As we talked about earlier, although we expect a slowing down of some of the justice arrangements if we do not get everything we desire in terms of an overall outcome from negotiations, we will then seek to engage very quickly with our colleagues in An Garda Síochána around information exchange, intelligence exchange and the ability to continue with joint investigations. With the work we have done here and the work we know is happening in An Garda Síochána—we have both been preparing for this for over two years now, albeit we are not talking directly about it at this point—we are confident we will be able to plug that gap.

Most importantly, to go back to the point about those 300 crossing points, for the Committee to visualise what the actual border looks like, it is incredibly porous, as I have said. That is a good thing in terms of people's daily lives, and we need to maintain that; we are committed to doing that. By doing that and supporting those communities, we are building trust and relationships in those areas.

Lord Anderson of Swansea: There is a mutual interest in co-operation at the border. Can you say something about the extent and nature of the co-operation? You have mentioned intelligence sharing. Does that extend to common patrols and so on at

the border?

Mark McEwan: At this stage it extends to joint daily conversations at district commander or superintendent level. There are joint taskings across the border. We have joint road safety operations and joint criminality operations, mirroring each other on both sides. We do not jointly patrol at this point, because we do not stray into each other's jurisdictions. For things like road safety and anti-social behaviour, for all the things we can, we have live deployments.

As I say, very many of these communities are cohesive communities that live on both sides of the border, so it is important that we have that level of co-operation. We also have very good radio comms along the stretch of the border, and that is something we would be seeking to invest further in. Notwithstanding the fact that we need legislative cover for it, we believe we can do that quite easily and continue with that.

Lord Anderson of Swansea: You mentioned to Lord Arbuthnot the importance of good personal relations at an operational level. Would you see any merit in a more institutionalised bilateral structure on police co-operation?

Mark McEwan: Absolutely, yes. I do not want to give the impression that this is all done in an ad hoc way. We absolutely have those structures in terms of, as I say, radio communications, joint taskings, the joint operations that run and those daily conversations between district commanders across our border areas with colleagues in An Garda Síochána. I do not mean that by way of a personal relationship. That is a structured process that is in place to ensure we have good co-operation.

On the crime side, looking at investigations into organised crime groups and all the stuff you would expect to see, we have very good relationships there as well, in addition to the intelligence sharing. We expect those to continue. If we find that some of the legislative vehicles slow down, we will have to find ways to work with that, but hopefully, as I say, either through the negotiations or through bilateral negotiations, we will be able to rectify some of that.

Lord Anderson of Swansea: Would there be advantages in having that relationship more formalised?

Mark McEwan: As I have stated, those are structures and processes that are in place. We are working towards more formal structures, such as our secondment arrangements, where we are looking at the idea of the crime campus that I talked about earlier, the multi-agency crime hub. Having embeds and direct links for information sharing with colleagues in An Garda Síochána is part of the plan for that; however, we will have to work through that. That is building on the current Joint Agency Task Force, which is a formal interdepartmental structure, at devolved Assembly level, with colleagues in both An Garda Síochána and the Irish Department of Justice. We do have formal structures. I do not want the Committee to be left

with the impression that this is all based on relationships. I mention the strength of our relationships merely as something that oils the wheels.

Q35 **Baroness Primarolo:** Good morning, Assistant Chief Constable. Thank you very much for your evidence. Earlier you mentioned I-24/7, the Interpol arrangement that would underpin, we hope, future arrangements with regards to data exchange, which is so crucial, whoever you are exchanging with. The UK does not have yet an agreement for data adequacy from the European Commission. If we do not get that data adequacy arrangement, will it make it more difficult for us to get into or stay in I-24/7, given that Interpol says that the rules are subject to a strict legal framework and data protection rules? I presume those are based on GDPR and European Union arrangements.

Mark McEwan: Yes, that is my understanding also. However, we are currently within the I-24/7 system, as I mentioned earlier. I am confident that we will be able to stay in that. Data adequacy will come up as an issue, and it will be one that will require working through. Since we are already in that system, I do not see anything that would come up that we could not work through effectively with the Interpol arrangements.

As I mentioned earlier, we are currently reviewing and expanding the number of licences we have. Although it may be something that comes up, we currently use these mechanisms with Ireland and with other parts of Interpol, so I do not see us losing that.

Q36 **Lord Anderson of Ipswich:** Still on I-24/7, first, can you give us a sense of how the range of data that the member states of the EU provide to Interpol compares with what they provide to SIS II? In other words, are you looking at a much thinner slice of data, or are you looking at something comparable?

Secondly, you spoke about I-24/7 as a contingency replacement for SIS II, but I am not sure what, if anything, Interpol or anyone else could provide that might be a substitute for Prüm, passenger name records or ECRIS.

Mark McEwan: On I-24/7, we currently use this, as I say, for some information with Ireland through Interpol. We can use it for wanted persons and missing persons. It is the live-time information that is so critical for us, both in terms of high-end criminality and those quality-of-life or community-safety issues that I outlined earlier.

On its depth and accuracy, as I said earlier, there is an issue around ensuring the double entry from SIS II, for countries that have SIS II. In I-24/7, we will be reliant on that. I cannot give a view on what exactly that will look like, but there is clearly a risk that it does not have information to the same depth or accuracy as SIS II might. That is one we will have to try to work through if we find ourselves in that situation. Where we find gaps, as I discussed earlier, we will be engaging either through national structures or directly with those countries.

In relation to wider things such as Prüm and ECRIS, we are reliant on waiting to see what comes out of the national negotiations. On ECRIS, I am hopeful, as many of my colleagues are, that we will come up with something that, if it does not retain that, will be of a similar nature, which allows us to exchange criminal records, for example. We have had that in the past in our relationships with Ireland, and we rely on that for prosecutions, vetting and safeguarding, although we are not reliant entirely on that for issues of vetting and safeguarding. We believe we will be able to build alternatives to that. There are possible bilateral opportunities if indeed we do not end up with a replacement system out of the government-level negotiations.

Lord Anderson of Ipswich: Presumably, PNR is unique. It is not easy to see how you could replace that.

Mark McEwan: No, it is not. That is one where I know the national Counter Terrorism Policing Headquarters is involved and is leading on.

Q37 **Lord Kirkhope of Harrogate:** The whole nature of the border has been one where, as you have said yourself, there has been an awful lot of good will involved in its policing, but, of course, we have had the unifying aspect of being in the EU. I am a little concerned about immigration, people trafficking and people taking advantage of any weaknesses there may be post Brexit. Does the PSNI have a particular position here? Are you planning for any difficulties regarding attempts to use the border as a means of moving people illegally, or people trafficking generally?

Mark McEwan: Yes, we do. That is the short answer. We already see this; we already know we have people who are brought in either by air or sea to Dublin, perhaps exploited there for a period of time and then moved through Northern Ireland and into Great Britain. We also know we have organised crime groups that will move across Europe, carrying out criminality as they go. Sometimes we see them coming in via air or sea into Ireland, up through Northern Ireland and into Great Britain.

As I talked about earlier, there is a risk that this could increase as security tightens around other ports or there is a perception that security is tightening at other ports in Great Britain. Again, this works through our Joint Agency Task Force at interdepartmental level and with colleagues in An Garda Síochána and the Department of Justice in Ireland. We view this very much as expanding on that and building those operations that we already use to target modern slavery, for example, working with colleagues in immigration. We will deal with it by putting more energy, resource and prioritisation into that part of it.

Q38 **Baroness Hamwee:** You mentioned investing in communications, I think; you certainly mentioned investment. We ought to give you the opportunity to say something here. One can never have enough resources, but I wondered whether there was anything you wanted to say about the need for further resources to meet whatever is or is not coming down the track.

Mark McEwan: Thank you very much for the opportunity, Lady Hamwee. We have invested in over 200 neighbourhood officers along the border areas. That is around

further building our relationships and our ability to respond to community needs and support those communities. We have also invested in our C3 Intelligence side, looking at ports and particularly some of the issues I have just been describing. We need continued investment in that. We have the funding up until the end of this financial year, and then we are looking beyond that to the next two financial years to fund those additional officers.

Beyond that, we have an ambition, as I have mentioned, to build on the Joint Agency Task Force and build a crime centre, similar to the Gartcosh model in Scotland. That would be working with the likes of immigration and putting more energy into being more responsive and agile in dealing with the organised crime gangs that will seek to exploit the common travel area for human trafficking, as well as any other organised crime group that may seek to exploit, for example, tariff differentials on the smuggling side. Within that, we would seek to have a very strong relationship with our colleagues in An Garda Síochána.

Baroness Hamwee: In terms of future funding, I know the issue beyond the end of the financial year is a problem for everyone, but are you at least hearing sympathetic noises about this? I am giving you the opportunity, through us, to say anything you feel needs to be said.

Mark McEwan: Yes, we are. There is definitely a strong level of understanding about the challenges we face. We know those are challenges that will be faced right across the UK, but, as has quite rightly been said here, because of the land border issue, they will be exacerbated in this part of the country.

In addition to the investment in officers in those border communities, we are also seeking to invest in new ways to support those communities around things such as safeguarding. With some of the premises we have that we no longer feel we need to utilise, we might think about how we can use those to strengthen those communities. These are communities that are already feeling slightly disengaged, because it is impacting on their daily lives. They have that perception, and they are heavily involved in the agri-food sector as well. There are clearly real concerns around that for us in Northern Ireland. That is where our focus is.

The Chair: Thank you very much indeed, Assistant Chief Constable. You have answered a whole range of questions. You have really helped us understand the issues that you are facing. On behalf of the whole Committee, we pay tribute to the magnificent work the PSNI does every day to keep the people of Northern Ireland safe. You will have many challenges over the coming months and years. It is great to hear that you have plans and that you are preparing and looking ahead to how to maintain that ease of communication across the border and to deal with all of the things that are coming up. Many thanks for your time; it is much appreciated.

Examination of witnesses

Dr Amanda Kramer and Dr Vicky Conway.

Q39 The Chair: I am going to move seamlessly on to our second session this morning, which is with two people who I know have kindly been listening to that exchange. Therefore, we can talk on the basis that we have all heard what the assistant chief constable said. We are joined by Dr Amanda Kramer, from the School of Law in Queen's University Belfast, and Dr Vicky Conway, from the School of Law and Government in Dublin City University. Good morning, both of you. Thank you very much indeed for your patience in waiting through that first session.

We can perhaps talk about the same issues but without having to repeat the more operational points that the assistant chief constable has given us. We will do rather the same sort of process, asking questions Member by Member and then hopefully there will be time at the end in case people have burning supplementary points that they want to follow up on.

Having heard the assistant chief constable, can you give us your impressions of how Brexit is affecting and will affect the overall landscape of policing on the island of Ireland, with the threat of cross-border criminality exploiting Brexit and the risk of paramilitary activity increasing if there is tension? Could you give opening thoughts, having heard the view from the police world?

Dr Amanda Kramer: Thank you very much for having me. I would reflect many similar sentiments to those shared by the assistant chief constable. It is difficult to say what the impact of Brexit has been so far in terms of crime, but we have seen some increases in terms of paramilitary activity. Whether or not that is linked to Brexit is hard to say. As I have said elsewhere in some of the research I have completed, we have spoken with members of dissident republican groups and they have said that Brexit has been manna from heaven in terms of recruitment to those groups and that it has been a real gift in getting people to join the cause. We have a bit of insight, at least, into how Brexit may be having an impact, not necessarily right now but potentially into the future.

It is difficult to say what the impact on policing will be. There will likely be impacts in terms of co-operation, particularly around the ability of the police force to share information or to receive information from EU countries, depending on the outcome of the data adequacy decision. There will be potentially many new opportunities for crime, depending on what the trade arrangements look like. The border is very porous and organised crime groups have been doing this for a long time, so any opportunities that arise will be exploited. Not having that umbrella of tools available, potentially, from the EU could have some significant impacts, which I am happy to discuss further later on.

The Chair: We will have plenty of opportunity to unpack all of that.

Dr Vicky Conway: I agreed that it is too early at this point to disaggregate whether there has been an impact to date. Covid has probably stifled a lot of that. Certainly, I can say from the Gardai perspective that a vast amount of human resources had to be diverted to the front line. Detections and so on may have been impacted by that. The risks of increased criminality are real, whether that is in relation to the whole

national question and the border itself; increased smuggling, where advantage is taken of the situation; human trafficking; or the negative impact on police capabilities to investigate crime giving an opportunity in and of itself. If we have slower detection rates, that can create opportunities in and of itself.

Rather than rehashing some of what has been said, I would like to add a few additional points that have not been mentioned. There is a very important factor here: An Garda Síochána is not just the police service but is also the national security agency. Unlike the UK, we do not have a separate body for that. That complicates matters quite significantly, particularly in the Northern Ireland context and in the policing of the island.

I also would not be as optimistic as the assistant chief constable when it comes to the data-sharing issues. Not only am I an associate professor in DCU, but I have served twice as a member of the national oversight body for the Guards, the policing authority, and I was a member of the Commission on the Future of Policing. I have to say that I have never heard of I-24/7 in the Gardai context before; I am not aware that they use it. We can go into this in detail, but if they do, I have serious questions about the capacity for a quick switchover in January. Those are some points that I thought I would throw on to the table from the southern perspective.

The Chair: Thank you. It is really vital that we have the perspective from the Republic as well.

Q40 Baroness Finn: You have touched on where I was going, and the assistant chief constable addressed it too. My question concerns what you would regard as the most important of the EU law enforcement and criminal justice mechanisms. What is the likelihood of any agreement being reached between the UK and the EU to replace them? You have touched on some of the alternatives.

Dr Vicky Conway: It is a really important point. There seems to be clarity that the European arrest warrant cannot continue, that an agreement will not be reached in relation to that and that, in all likelihood, we will revert to extradition. There are two really important points to make in relation to that. First, extradition is a political decision rather than a judicial decision. Again, in the Irish context, I foresee the potential for that to be very problematic. These are real risks that have to be prepared for. I can foresee cases where it is difficult for politicians to make those decisions.

Secondly, on a broader level, I have concerns about that process not being subjected to the same human rights standards that the European arrest warrant is. The scale of case law that has emerged in relation to the European arrest warrant is vast. This is not just me being concerned about what happens in Ireland. Both countries have to be concerned about the treatment of persons in custody in another member state. I have concern about the European arrest warrant. It is really unfortunate that Ireland has just, in September, got access to SIS. It starts on 4 January and goes live in March. At a time when we could be increasing the sharing of information so vastly, that will not be the case.

The developments for Ireland to get on board with SIS have taken years, in terms of legal agreements, development of the ICT and the training involved. Some 3,000 guards have been trained to date in the use of SIS. For I-24/7 to come on stream, one would imagine that is also going to take a significant length of time. I may be unaware of certain developments within An Garda Síochána, but I would be surprised if the policing authority has not been informed of them. I very much doubt that that can be in train in January.

I also have concerns about the continuance of applicability of human rights directives and any deviation in standards that might emerge, which, in addition to data adequacy, may cause concern for states and for Ireland. For instance, I would point to a case that fell last year. Some Members may be aware of the murder of a prison officer, David Black, in Belfast in 2012. The prosecution for that case fell because the evidence entirely rested on statements that were made in a confession to the guards. The Belfast court was not satisfied that the standards were good enough and did not admit them into evidence, so the prosecution fell. Those human rights standards issues are very real for both jurisdictions.

Dr Amanda Kramer: I agree with everything that Vicky raised. With the European arrest warrant, there are some really key issues to be raised here. It brings up new grounds for exemption that did not exist with the European arrest warrant. In addition to the concerns that Vicky raised, there are exemptions for political offences that would need to be understood. There are also nationality exemptions that could become an issue, particularly in the context of the UK and Ireland. Those problems were eliminated with the creation of the European arrest warrant, so those would need to be considered as well.

There is a relatively high likelihood of an arrangement being in place at some point in the future. I would not be optimistic that this would come into place by the time that Brexit takes place, because there are agreements that exist to base future agreements on; for example, the agreement with Iceland and Norway. It would be quicker than the extremely long period it took to negotiate for Iceland and Norway, but there are still significant issues that would need to be resolved. That could take quite a bit of time.

Europol is an important one that maybe does not get enough consideration. One of the things that came out in the research that I conducted with Dr Dickson and Dr Poes was that Europol has been really important in detecting trends and longer-term patterns in crime. With the UK being removed from the databases and being outside that system, not being able to look at the bank of data and try to engage in those longer-term crime predictions, that could have a really significant impact, because that is what allows for the detection of cross-border crime trends. Having piecemeal information being delivered or having to make specific requests to particular countries for information just does not provide the same amount of data as is currently available.

Another key issue in the occupational capacity for police will be the speed at which they can obtain information. Europol's systems are very fast, so police can get information very quickly. As was emphasised in the previous session, speed is essential for effective policing. If we are now going to be relying on a request-based system, not being part of the Europol information systems, the speed would be a real issue as well.

More broadly, around Eurojust and around joint investigation teams, this could potentially pose a real problem. The UK can still potentially be part of some of the investigation teams, but it would not be able to initiate them; it would probably have to be invited. That is what the arrangements will look like. An agreement will be likely, but again this is not the same level of co-operation as is in place currently, which will have an impact: slowing things down and not giving the same access to the same level of data as there was before.

Q41 Lord Rowlands: If there is no deal at the end of the year, the Government seem to be placing great faith in what they call "tried and tested" contingencies such as the Council of Europe conventions on extradition and mutual legal assistance. What is your assessment of these? Will they work in the context of the island of Ireland?

Dr Amanda Kramer: In relation to extradition, they will work and they will provide a legal basis for being able to continue extradition between the UK and Ireland, or between Northern Ireland and the Republic of Ireland. There are a lot of concerns, some of which Vicky and I have raised already. The key one is around the potential politicisation of extradition. Extradition under the 1957 convention has been referred to multiple times as being a toxic process. Not having extradition take place through judicial channels poses real issues, especially when we consider the context that tensions might flare up again, depending on what the Brexit outcome looks like, and that cross-border crime might increase.

We might see that the police will be engaging or trying to engage in higher level of extradition but will not have the tools that were really important to allowing that to happen quickly. Extradition under the convention is very costly; the estimates are that it is as much as four times more costly and three times slower to engage in extradition under the convention. It also does not contain the strict deadlines that the European arrest warrant has, which has ramifications for victims, witnesses and people who are subjected to these warrants. They could in theory be sitting in this limbo of justice for a very long time, with the executing authorities not executing the arrest warrant.

There are those other issues around nationality refusals and political exemptions. The really key one that Vicky raised is around human rights protections. There is no basis to refuse based on human rights concerns, so this is an issue more generally. If there are concerns that someone's human rights may be violated in the detention conditions, for example, there are no built-in grounds for refusal based on that. That has come out of CJEU case law in relation to the European arrest warrant. There are really significant issues that need to be dealt with. I will leave the mutual assistance point, which Vicky may want to pick up.

Dr Vicky Conway: Ireland has progressed this point around extradition and there are provisions in the omnibus Bill to reactivate the extradition provisions, because those actually had lapsed or been repealed in the wake of the European arrest warrant. It will be a decision of the Minister for Foreign Affairs instead of a judge. I cannot emphasise enough that we have to consider the fact that in the coming years there is a highly real possibility of Ireland being asked to extradite political prisoners to the north. What tensions could that create? I am spending my lockdown in Donegal at the moment, and just driving around you see signs complaining about the treatment of prisoners in certain prisons in Northern Ireland. On the ground, these are still very live issues that people really get concerned about. Those could become quite significant moments, were people to be upset at political decision-making processes, particularly if those human rights are not being protected or guaranteed in the same way.

My assessment is that the extradition procedure will be a much lesser arrangement than the EAW. It could see requests denied for political rather than legal reasons, or having political consequences, as well as being a system that does not have the same human rights protections. Protests around this are entirely foreseeable. A slower process and a more costly process is not just a slower process; we have to think about what can happen in the meantime, the ways in which that affects criminality and how people may act in the interim.

Lord Rowlands: Do you share the UK Government's view that, if they could get the same kind of agreement that Norway and Iceland have with the European Union, this would be a reasonable alternative to the EAW?

Dr Amanda Kramer: It is possible. All the negotiating documents that have been put forward by the EU seem to suggest that it is willing to come to an agreement that largely reflects what is currently in place with Iceland and Norway. There are some issues that will need to be resolved there; for example, around oversight. The UK has said that it will not be subjected to the CJEU, so some type of new oversight body will have to be developed or agreed to enable that type of co-operation.

There also will not be the same level of extradition co-operation with other member states of the EU, because some countries have nationality bars built into their constitutions. For example, Germany, Austria and Slovenia would not be able to extradite their own citizens because their constitutions prohibit them from doing that. That is still the case even within the agreement with Iceland and Norway. That agreement also has issues around political exemptions, but it has lots of benefits. There are timelines built in and it goes through judicial processes. There is potential that there could be built-in human rights protections with an agreement based on the Iceland and Norway agreement.

It is possible. I would just be concerned that there are still these issues that need to be addressed. It will not be as effective, generally, as the European arrest warrant, and it is going to take time to not only come to an agreement but to develop some of the systems that would need to be developed in order for this to be effective.

Q42 Lord Polak: You have both been watching very closely over the past few years the negotiations and the talks. To what extent do you think the EU and the EU negotiators have sufficiently understood and engaged with the challenges of policing in Northern Ireland? Do you think the EU is willing to make compromises to help avoid the impact of no deal in the context of policing and security? What might those compromises be?

Dr Vicky Conway: As a caveat, I am a policing academic rather than an EU academic. The EU has placed Northern Ireland and the issues around that quite centrally in all of the negotiations and has shown great understanding of that. At the end of the day, there are legal requirements around GDPR and human rights that simply cannot be supplanted.

There was a great conversation earlier about the informality that exists between An Garda Síochána and the PSNI, and this is true. The Garda Commissioner and one of the assistant chief constables are from the PSNI. I sit on the policing authority and three out of eight members are based in Northern Ireland. Co-operation and mutual understanding, which are key, are exceptionally high at the moment. That is all well and good, but friends cannot break the law and share data that is not allowed to be shared. If there is not a legal basis for this, they cannot permit the breaching of human rights. There are certain degrees of compromise and Amanda may have more comments on that, but these are red-line issues that the EU simply cannot override.

Dr Amanda Kramer: I agree. The EU has gone to great lengths to demonstrate its understanding of the complex situation in Northern Ireland and the specific challenges around policing. Evidence of that is really in the centrality within its narratives of the Good Friday agreement and the emphasis that it has placed on upholding the provisions within the Good Friday agreement. That is reflected in many aspects of the positions that it has taken in the negotiations, all the way from the beginning, with proposals around the backstop, to the Northern Ireland protocol, to issues around policing and security. There has been an effort to focus on the peace process and respecting the Good Friday agreement.

The EU has made a number of compromises so far. One of them is in relation to its stated willingness to provide the highest levels of co-operation possible, on par even with what some of the third-country Schengen members have agreed with the EU—countries that are given more by signing up to Schengen. The EU is still willing, potentially, to agree arrangements that look similar to what those countries have; for example, with the extradition arrangements.

It has also shown some compromises on oversight—being willing to not require oversight of the CJEU—and thinking about developing new mechanisms for oversight while still allowing the negotiations and agreements to take place around that. I would also view not requiring the UK to remain part of the Charter of Fundamental Rights as a compromise.

I agree with what was stated around data protection and human rights. There are some areas that the EU cannot compromise on because they are fundamental areas of law. Building in these protections with the ECHR and what has been termed as the guillotine clause, the EU has stated that in the envisaged partnership, if the UK were to denounce the ECHR, whatever policing and justice arrangements had been put in place would be automatically terminated or suspended. That reflects respect for the Good Friday agreement and the unique situation in Northern Ireland. It also demonstrates commitment to the use of protections for human rights and its lack of ability to derogate from those.

On the GDPR, if there are not adequate data protection arrangements in place in the UK or if it is potentially sharing with third countries that do not have adequate protection, the EU and EU member states are bound not to share information.

Q43 Lord Dholakia: My question is very much a follow-up to what Lord Polak has just asked. If the UK and EU cannot reach an agreement on policing and security issues, to what extent will the Irish Government be free to negotiate bilateral deals with the UK on policing and security? Dr Conway, do you think that the EU will support the Irish Government in their task?

Dr Vicky Conway: Even more than the EU, Ireland is desperately keen to ensure the smoothest transition possible. It is acutely aware of the impact on criminal justice and policing in the event of no deal and so on. We can see over the years the efforts that have gone into developing police co-operation. We talk a lot about the EU mechanisms, but on things such as secondments, cross-border organised crime risk assessments being done on an annual basis, and annual conferences, huge effort has gone in. That is not just at a policing level. There is a lot of ministerial involvement in those. As I say, there is an added burden on Ireland because An Garda Síochána is the national security agency. It is dealing with that as well.

Again, Ireland is bound by the GDPR and human rights. It is entirely subject to those and cannot negotiate outside of those. Amanda has outlined in great detail ways in which the EU has tried to develop compromises. I have no doubt that the EU will be supportive of any efforts around bilateral agreements and trying to develop those, but they will take time because they will be very sensitive documents. A lot of this is dependent on a data adequacy agreement, and, if that is not forthcoming, having to develop that at an Irish level. I simply do not know how much work has gone into developing that at this point, or whether that has actually commenced. We are very close to the deadline.

Yes, Ireland will do everything it can. It is probably a really good thing that our current Minister for Justice, Minister Helen McEntee, has been very involved at a European level in Brexit over the last number of years. She has an exceptional understanding of Brexit but also has really strong relationships at the EU level, which will be a huge benefit in this space, but those constraints are very real and place limits.

Dr Amanda Kramer: I agree with everything that Vicky has said. The only thing I would add is that the EU does not have exclusive competence over justice and security. This is a shared competence. From a legal standpoint, there is an ability there for Ireland and the UK to engage in bilateral co-operation once these broader negotiations have concluded.

Q44 The Chair: I was going to tease out the issue of competence and whether you thought that the EU would be looking to try to exercise exclusive competence in any of these areas. Could I also ask you to help enlighten us on this elusive 2012 agreement on data sharing between the UK and Ireland? PSNI representatives have mentioned it a few times now to parliamentary committees. Is that in any sense a qualification of what Dr Conway says: that data adequacy is an absolute underpinning? Can this 2012 agreement in any sense allow bilateral data sharing to continue if there is a problem on data adequacy?

Dr Vicky Conway: That is entirely superseded by GDPR and the current legal system in relation to that. Anything from 2012 would be subject to that and it cannot override any of those requirements. In the work I have done, I have not encountered that 2012 agreement, but I would have difficulty understanding how it could become a useful fall-back in this situation.

Dr Amanda Kramer: There seemed to be some understanding previously that issues of national security, for example, would be exempt from the protections that are guaranteed in GDPR, but recent CJEU case law has very much clarified that they will not be. There have been two cases in relation to this. The first was the Schrems II judgment, which related to the transfer of personal data to an economic operator. It was stated within that case that even data that could be processed for purposes of public security, defence or state security would still be subjected to GDPR protections. There was a follow-up case that affirmed that EU law safeguards apply, even in cases that involve national security considerations.

I agree that it would not be possible, even if those pre-existing arrangements are in place. Data protection concerns would be more important in those circumstances and, from a legal standpoint, that information would not be able to be shared if there was no data adequacy agreement in place.

Q45 Baroness Primarolo: I am somewhat perplexed about the data adequacy decision and the types of information that will have been provided for over various hearings. Therefore, I am not exactly clear what the consequences are of not having a data adequacy decision for the UK. You mentioned the GDPR and I understand that. I wondered whether you could unpack it slightly for us and explain what is able to happen now with data sharing and, going forward, what the potential is if we get the GDPR. What would we lose in the here and now that is actually being used, if we do not get that adequacy agreement?

Dr Amanda Kramer: At the moment, the UK's legislation domestically is implementing all of the protections of the GDPR at the same level as EU member states'. This enables them to be part of an environment of mutual trust, and it is

expected that information that is shared will be subjected to all the protections that are contained within the GDPR and that people's personal data will not be shared or misused. This allows, for example, for the police to be able to share very sensitive information, such as criminal records or, potentially, information that we would find in the Prüm database as well, around DNA or very sensitive elements of personal information.

With the UK being outside the EU, if it does not get the data adequacy, it is no longer considered to be a trusted partner for handling data, particularly the type of data that would be being processed or shared to engage in policing or issues around national security. With a data adequacy arrangement, this opens up opportunities for the continuation of the ability to share that kind of data. Although it will largely not take place through the databases that currently exist, there can be requests made, from the UK to a member state or from a member state to the UK, for specific information around a criminal case, for example. Without that in place, the information legally cannot be shared in relation to EU citizens or residents in member states.

Dr Vicky Conway: If you are thinking about this specifically in the context of Ireland and Northern Ireland, it is interesting because they have not really been utilising the databases because Ireland has not been on stream. Ireland is only entering SIS early next year. It is online with Prüm with only a handful of states to date. What has been happening on the island of Ireland are these more informal, bilateral situations. That is why the scale of communication that people are talking about is really key. At a local level, commanders are speaking to each other, but there are also very high-level interactions on an ongoing basis. The Joint Agency Task Force has biannual meetings, full meetings at a top level, and organisations such as the National Crime Agency, the Criminal Assets Bureau in Ireland and Revenue & Customs are involved with those as well.

If there is no data adequacy agreement there is no legal basis for those interactions and sharing information. Even at that very local level, these phone calls that we hear about or these local meetings will be deeply restrained in what they can communicate. Without a data adequacy agreement, if we think that through in terms of investigations, what you then have is both sides having to do independent investigations into a crime, not really knowing what the other side knows and not being able to support each other. That is in the worst-case scenario of no data adequacy agreement, even on a bilateral level.

It is difficult to imagine that those will be the most effective investigations possible if they do not know what the others know, with that cross-border dimension in Ireland. We know this. The border is 300 miles long and has 300 crossing points, some of which are possible to man. If we go back to the 1970s and 1980s, these orders to seal the borders were nigh on impossible to enforce. People moving in the wake of criminality across the border is very commonplace. We know that is a real issue. In the worst-case scenario, where there is no data agreement, it will absolutely stunt the ability of the police services of this island to effectively

investigate crime, to bring people to justice and to satisfy victims, all of which are things that we would want to see.

Baroness Primarolo: That was a very clear answer. The informal arrangements would fall away without data protection. The legal requirements would kick in for protection of personal data. The exchanges will not happen because we do not have the adequacy. The last route that we have been exploring is bilateral arrangements. I presume there will be severe limits on even bilateral arrangements, on the basis that you have to get over the first hurdle—to be a trusted country—to receive personal data in the first place. It is like *Catch-22*. I do not really see how there is a way through this. Am I missing something?

Dr Vicky Conway: No, and it is more than just personal data; it is also national security data. That is really important to keep in this conversation, because the Guards are the national security agency. Have I mentioned that? The transference of national security data is high risk as well.

On the other hand, both states are desperately keen for these arrangements to be in place. They will do what they can to achieve data adequacy on both sides. The UK also has to be satisfied with what Ireland is doing. Those negotiations, even at the bilateral level, will be important. We have seen in the last week that the leading Irish NGO, the Irish Council for Civil Liberties, has called for data adequacy to be denied. There is contestation about this domestically, so it is not easy, but there will have to be bilateral agreements.

Baroness Primarolo: How could the Republic of Ireland step outside of EU requirements for data protection to do a bilateral agreement with the UK if the European Union does not give the UK, going forward—not in the here and now but from 2021 onwards—a data adequacy agreement? Are they not constrained even on the bilateral?

Dr Amanda Kramer: Yes, they will be constrained in what they can share. I do not know all the specifics of this. This was the area of expertise of Dr Dickson, my colleague who did this research with me. If you have any specific questions, I am very happy to follow up and provide information on those. It will constrain the type of information that can be shared even with bilateral agreements.

The Chair: Yes, we would be interested to continue. For example, we have talked a lot about falling back on the 1957 Convention on Extradition. That would be constrained, presumably, if the UK did not have a data adequacy agreement. All these mechanisms depend, to quite a large degree, on that. We have to be looking at the worst-case scenario to assume there would be nothing at all in place. Anything more that you or colleague could comment on that would be very interesting to us.

Dr Vicky Conway: With the extradition, I would have thought the human rights considerations were more of an issue than the data protection.

Q46 **Baroness Goudie:** Good morning. Thank you very much indeed for all your clear answers. Following on from those, if there is no agreement between the United Kingdom and the EU on future police co-operation, what does the future look like for peace and security on the island of Ireland from 1 January?

Dr Amanda Kramer: Potentially, it is quite different. It very much depends on what the outcome of the negotiations looks like more generally. If there is no deal just on policing and security co-operation, immediate access to the European arrest warrant would end. The UK would generally not have the same level of access to Europol. There would be concerns there as well around data sharing. Regardless of the situation, the UK will be removed from some of the data-sharing instruments that are currently in place, such as SIS II, ECRIS, the Europol Information System and SIENA. That will not necessarily look that different, but there may not be alternatives that have been negotiated and agreed, so there would be a major gap there in relation to what could take place with data sharing.

More broadly, there would be real issues around delays and uncertainty in what the police are able to do, what they are able to share with each other and what intelligence can be shared. All of this could have a real impact on the ability of justice to be delivered for real people who have been victims of crime and for people who are missing, as was emphasised in the previous session as well.

Depending on the outcomes of the negotiations, there could be increased risks in terms of smuggling and cross-border crime. If any infrastructure is placed on the border, we would expect that to have a negative impact on the peace situation as well. There has been a significant amount of research done on this that suggests this would become a flashpoint in relation to the peace process. If there is no agreement, there are potentially a real range of issues that could crop up in relation to justice and security co-operation.

Dr Vicky Conway: I would agree with all of that. It is potentially an alarming situation and it is important to be aware of that. That is obviously a worst-case scenario.

There is one additional concern that I would add to what Dr Kramer has said. The Good Friday agreement, the peace process and all of the work over the last number of decades on the island have contributed greatly to enhanced standards in policing and, significantly, to enhanced oversight of policing. For instance, commitments under the Good Friday agreement were a primary driver for the establishment of an independent complaints mechanism against the police in the Republic of Ireland. In the Commission on the Future of Policing, we see this. There is a lot of motivation to ensure that we fulfil our Good Friday agreement commitments to at least match developments in Northern Ireland. I would also have concerns about oversight, transparency and accountability in the policing space, which could potentially be weakened if there was any diminishment of commitment to the spirit and the specifics of the Good Friday agreement.

It is incredibly important that all of the legislatures involved in this space are really thinking about this from that worst-case scenario of how bad it could be, in order to ensure that everything is done to prevent that situation arising. I do not see that enough work has been done at this point to ensure a smooth transition in January. We have to accept there will potentially be problems in 2021 and work as quickly as possible to remedy and overcome those to minimise the impact on the justice system.

Q47 Lord Anderson of Ipswich: I have one question for each of you. Dr Conway, on data sharing, I would like a few more specifics on how far we are looking at a loss of existing capability and how far at a loss of future opportunity. You said that An Garda Síochána still does not use SIS II, though this is imminent, and that it uses Prüm only in relation to a handful of states. On Prüm, can you confirm whether Prüm-type data, such as DNA profiles of convicted criminals, is currently made available to the UK, either under Prüm or bilaterally? As for passenger name records, are they currently transferred between Ireland and the UK, and are they useful? As to ECRIS, I assume it is up and running in both countries, but tell me if that is wrong.

Dr Kramer, you made the point that this is not an area of exclusive competence. I am wondering whether that will permit Ireland and the UK to replicate the advantages of joint investigation teams outside the EU framework, in particular by allowing the UK to initiate such joint investigations. Would that fall foul of the position on data adequacy?

Dr Vicky Conway: Ireland has had cross-border policing strategies in place, which have enabled, even before involvement in Prüm or SIS, the transfer of data such as fingerprints, investigative data and so on. That has been arranged, but those would lack legal underpinning in the absence of a data adequacy agreement. If there is a data adequacy agreement, obviously they then have a legal underpinning and they can continue. That is a best-case scenario.

Lord Anderson of Ipswich: Are Prüm and ECRIS up and running between Ireland and the UK currently?

Dr Vicky Conway: Prüm came on stream on 2019 with only two or three member states. I am not actually sure which member states those were. You would have to ask An Garda Síochána in relation to that. That is not public data, as far as I know. Ireland is not involved in ECRIS as it stands.

Lord Anderson of Ipswich: What about PNR?

Dr Vicky Conway: Yes.

Lord Anderson of Ipswich: As between Ireland and the UK, that is operating. Do you have a sense as to whether that is useful?

Dr Vicky Conway: It has been, absolutely. Where you have a land border, that takes on particular significance.

Dr Amanda Kramer: In relation to the area of exclusive competence, I suppose the good news with that is that, with the caveat of having a data adequacy agreement in place, it provides a significant level of opportunity for the UK and Ireland, or for Northern Ireland and the Republic of Ireland, to pursue bilateral arrangements that largely reflect what currently takes place at the EU level. The issues there will come in putting in place the technological capacity for doing that and having the funding to put in place enough people to be able to adequately enter data into this new system that would be developed between the two.

There are lots of opportunities there - where systems can be developed, information sharing and extradition can take place. The issue will come down to capacity, funding and time, because these things will probably take a long time not only to develop but to implement effectively. A bit of a silver lining, if there is one, is that bilateral co-operation can take place. If there is no data adequacy arrangement, that throws a spanner into the works and will have an impact on, as said before, the level of information sharing that can take place, particularly around sensitive information, which is what the police would often be sharing with the police service in the other place.

Q48 Lord Kirkhope of Harrogate: I have very much enjoyed hearing your evidence to us this morning. I wanted to touch on this issue of the common travel area. As we know, this predates our membership of the EU. Ireland and the UK joined at exactly the same time, so there were no disparities at all. The common travel area is widely used, for travel and for the rights to work and live, effectively almost merging our citizens together in a way that is very good. It has been very good for the peace process and all the rest.

We now have a situation where we are not together any more. That closeness between Ireland and the UK is so important. Can you give me your comments on the common travel area? Like I said, it came into effect before we both were members of the European Union, or even indeed the EEC. Now we are in different categories, are there some gaps and some problems that we need to look at in relation to the CTA?

Dr Vicky Conway: Yes, it is absolutely a concern. If I could first follow up very quickly on the last point, there is a slight difference between the UK and Ireland in terms of resourcing of policing, in that there is a very positive funding of policing at the moment. In Ireland, there is a government commitment to increase the police organisation by 800 persons per annum. There is significant funding towards ICT as well, so there is a very positive context that enables a lot of that.

On the CTA, it is exceptionally important. As I say, I am in Donegal. If I want to travel to see family in Dublin or Cork, I have to cross the border a number of times. That freedom of movement is really essential to life on the island, particularly given that those living in the north have a right to citizenship in the south as well. That is key to that.

There are concerns. Even in the last number of years, certain organisations, such as the Committee on the Administration of Justice, have raised concerns about checks that are already being conducted on individuals moving on the island. Both the PSNI and An Garda Síochána have conducted them. I have been on buses where the Gardai have boarded and asked to see identification of individuals. How that is managed going forward is a real concern. We hope some degree of agreement has been reached on the border and the land-sea border issue, but if that was to change in any way, shape or form, there could be very real consequences to that.

Lord Kirkhope of Harrogate: Not only does this cover the things that I mentioned, but it covers full eligibility to welfare benefits and health services, and it includes the Channel Islands, our extra territories and so on. I see a lot of confusion and a lot of opportunism for people in this. I am not sure if this can be left as it is. Surely, that is a sustaining agreement and one that is going to be very difficult to handle.

Dr Vicky Conway: We have seen certain problems already arising this year. Even if you look at Covid and the rates, there are two different regulatory approaches to Covid. Where we see the highest rates in Ireland, Donegal has had twice the national average daily rates for the last 14 days. There is an issue of people travelling across the border, often to take advantage of differences in currency, taxation or retail prices. That is an ongoing, everyday issue.

Dr Amanda Kramer: I agree that this is probably an issue that has not had enough attention, in the context of policing and security but also more broadly in relation to what that co-operation looks like across a whole host of different areas, including health, welfare and education. There are a whole host of areas in which co-operation takes place on a daily basis and is really important. This is a very small island and, in order to provide effective services, often they need to be done on a whole-island basis.

It raises particular challenges, as you have pointed out. This is the first time that there will be divergence between the UK and Ireland in relation to their position within the EU. Although the common travel area predated membership of the EU, it still means that, because Ireland is continuing to be a member, this raises a host of issues. Ireland will continue to be subjected to EU law. That puts restrictions in place on what this co-operation can look like, as we have highlighted a lot throughout this, in relation to policing and security co-operation. There are extra challenges that the common travel area poses. It is also extremely important, both from a peace perspective and from a quality-of-life perspective, that the openness of the border is maintained, and that people can continue to live cross-border lives.

The Chair: Thank you very much indeed, on behalf of the whole Committee, to both witnesses, Dr Kramer and Dr Conway, for a really fascinating session. You have shed a lot of light, certainly for me, on the importance of the gains made over recent years and decades in justice and security on the island, how fragile some of those are, how crucial data adequacy is across the whole range of issues that we have been talking about, and how much work both Governments are going to have to do

to keep things going in the right direction in the future. Thank you for your patience as well in listening into the first session. As I said at the beginning, we will make sure you see a transcript to correct, if you wish to, before we publish it. On behalf of the Committee, I say thank you once more and I close this meeting.