



Select Committee on the European Union

Security and Justice Sub-Committee

Corrected oral evidence: Post-Brexit UK-EU security co-operation

Tuesday 26 January 2021

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 Goudie; Baroness Hamwee; Lord Kirkhope of Harrogate; Lord Polak; Baroness Primarolo; Lord Rowlands.

Evidence Session No. 3

Heard in Public

Questions 21 – 37

Witnesses

I: Vice-Admiral Sir Charles Montgomery KBE ADC, Former Director-General, UK Border Force; Steve Rodhouse, Director-General (Operations), National Crime Agency; Assistant Chief Constable Peter Ayling, National Police Chiefs' Council.

USE OF THE TRANSCRIPT

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

Examination of Witnesses

Sir Charles Montgomery, Steve Rodhouse and Peter Ayling.

Q21 The Chair: Good morning and welcome to the EU Security and Justice Committee of the House of Lords. We are continuing today our inquiry into post-Brexit law enforcement co-operation. I am delighted to say we are joined today by three witnesses who have current or former experience at very senior levels in the law enforcement community. Vice-Admiral Sir Charles Montgomery was director-general of the UK Border Force until 2017, Steve Rodhouse is director-general for operations at the National Crime Agency, and Assistant Chief Constable Peter Ayling is the National Police Chiefs' Council lead for Brexit and international criminality.

This is a public meeting. It is being broadcast and transcribed. We will make sure witnesses are sent a copy of the transcript for any correction before publication. I should recognise at the outset that, Sir Charles, you do not have current operational experience, as the other two witnesses do, but we very much value your perspective on the basis of your long experience leading the Border Force. Feel free to come in whenever you would like to.

The aim of our inquiry is to assess how the terms of the trade and co-operation agreement with the EU will affect law enforcement co-operation. Clearly, this deal is better than no deal, but we are very interested to analyse its strengths and its weaknesses, and where there are gaps in capability that will need to be filled in the months and years ahead.

We have a range of questions from members probing those issues but, to get us started, I wonder whether each of you could give me a brief overall assessment of the deal and its main strengths and weaknesses as it strikes you now. Perhaps I could start with Mr Rodhouse, since you are longest in the role.

Steve Rodhouse: Good morning, everybody. Thank you for the opportunity to speak with you this morning. The role of the National Crime Agency is to lead the UK's fight to cut serious and organised crime, which is inherently a transnational venture. When I look at the work of the National Crime Agency, pretty much every investigation or piece of work we undertake involves people, money, data or some sort of criminal commodity moving across international boundaries, so it is crucial to our work that we can mobilise operational activity abroad and share data with our European partners.

This deal does that. We think it is a good deal in terms of being able to maintain the tools and tactics that we have enjoyed while members of the EU. It largely replicates the tools and powers that we had. I am sure we will go on to talk in more detail about areas such as extradition, the role of Europol, passenger name records and mutual legal assistance, but in reality most of the pre-existing capabilities and tools will exist, now that we are at the end of the transition period.

I am sure we will go on to talk about the Schengen Information System II, which we no longer have access to. There has been much conversation about that. I have

been very clear in all my conversations on this topic that the NCA—and, I suspect, although I do not want to speak for Peter, the NPCC—would have wanted to retain the capability of the Schengen Information System. The EU was clear that there was no legal basis for that to happen, so we do not have that and we will be working now on alternative mechanisms, predominantly the Interpol I-24/7 system, to share data.

We have looked at this and, in our assessment, there is no significant loss of capability, but there are some risks. I am sure we will go into more detail, but, as we have said before, we are reliant on the UK and, probably more significantly, EU member states making use of that system, both to circulate data that would be useful to us in the UK in protecting the public, and to make our data alerts available on the front line to their law enforcement officers, in the same way Schengen Information System data was.

That is the detail. Broad brush, we think this represents a good deal on security, and we are grateful for the efforts that have gone into securing many of the capabilities that keep us safe.

Peter Ayling: It is important not to go over all the same points that Steve has been through, but I would make a few supplementary ones. Our assessment is also that this is a good deal, but the key issue for us is that we are 25 days in and we need to work with our counterparts in EU member states to operationalise the new agreement. The legal framework is in place for us to exchange information, and many of the tools that are important for us in carrying out our law enforcement duties have been retained. But we have an ongoing need to co-operate and to finesse domestic legislation, as well as our policies and processes, to ensure that they work effectively. We can reasonably expect that there will be a need for us to work together in that regard.

We have been preparing for this for some time. My predecessor will have spoken at length about our preparations over 18 months. You will know that we have created the International Crime Coordination Centre. That was designed to build capability across UK policing both in training and in providing clear policy and guidance. In December, the new National Extradition Unit came online. We are really well placed and well prepared for a negotiated deal. There is much to be very positive about.

I would make the same observation that, while it was always a strong preference that we retain access to the Schengen Information System, we are told that it was not legally possible. Therefore, the contingency that has been put in place is to rely on a system of Interpol notices, and we have high levels of confidence that it is already being used effectively both domestically and across European law enforcement. It is important to remember that there remains a shared benefit in us being able to protect those who are vulnerable and to carry out interventions on those who might cause harm.

We have high levels of confidence, 25 days in, that that shared endeavour exists, but it would be naive to think that, over the coming weeks and months, there will not be a need for us to adapt to a new legal framework.

Q22 The Chair: You make a key point that I am sure Members will want to come back to: there are clearly some very important agreements in this text, but a lot will depend on how they are operationalised and how they translate into day-to-day practical and effective co-operation between police forces. Sir Charles, from your perspective, how does this deal look?

Sir Charles Montgomery: I do not know what the deal is. I am not an insider. All I can rely on is what I read in the newspapers. If you do not mind, it is probably better that I do not comment on the deal, lest I say something ill informed. I take an enormous amount of confidence not from what I read in the media but from what Peter and Steve have said, from their perspectives in the NPCC and the NCA. I found that very heartening.

Co-operation with the European Union when I was in Border Force relied on systems, organisational links and personal relationships. It is important that we do not get overly focused on the systems at the expense of the other two, which will also be very important to sustain well.

On systems, we talked a bit about the Schengen Information System. You will no doubt have done some analysis of the flows of people and goods across the UK border, and been struck by the sheer volume of stuff that comes in from the European Union, both people and goods. It is a massive load on those at the border to do their very utmost to safeguard security.

That volume of people requires, as I saw, increasingly agile and responsive information systems if we are to effectively strip the illegal out from the perfectly normal and legal, which is about 99% of what comes across the border. I was there at the time, so I remember well how much, at both the political and the operational level, we put into getting hold of the Schengen Information System. We already had ECRIS, but Prüm was to follow. We put a huge amount of effort into that precisely for that reason, and the Schengen Information System was core to our ability to strip out the illegal from the legal at the border.

We have not talked about Prüm or ECRIS. I am not sure what the status of those will be in the post-Brexit agreement. Whatever replaces the Schengen Information System will weaken border security unless it retains the agility, responsiveness and comprehensiveness of data that comes across the border. While I take the NCA and the NPCC's assurances very seriously, I personally want to hear more about the ability to sustain that agility and responsiveness through the systems.

The Chair: We will come to each of those issues in more detail over the next hour or so. The first one we will turn to is extradition.

Q23 Lord Rowlands: Over the last few months, we have been receiving quite considerable evidence about serious concerns resulting from the decision to opt out

of the European arrest warrant. If I may roughly summarise them, there was the possibility, first, that the process would become politicised and become an executive rather than a judicial decision; and, secondly, that we would go back to the old, clumsy and slow way of trying to enforce warrants, which frequently led to individuals evading justice for considerable periods.

The Government's response was that they were going to seek a Norway-Iceland arrangement. Am I right in thinking, from my reading of the agreement, that both these serious concerns have been addressed and, indeed, that the agreement itself goes beyond the agreement that exists between Norway and Iceland? I would be grateful for the observations of our witnesses.

Steve Rodhouse: The ability to remove people from the country and, indeed, return people to the UK who need to face justice is very important. We were heavily engaged in making the operational case for what was required. You are right: the deal includes an arrangement that is based on the Norway-Iceland agreement. We are reassured by the fact that the new arrangements retain the majority of the features from the European arrest warrant system. Importantly for us, there is an immediate power of arrest. We were most concerned about coming across individuals in a range of circumstances and not being able to take the action to secure them. It also includes mandated time limits for the surrender of individuals to countries.

Peter's point is absolutely right: we need to see how these systems work in practice. It is very early days. We are informally calling the replacement for the EAW the TACA warrant. We have not received or issued any of those warrants yet, so we need to see how that system plays out, but it has the component features we need.

Like everything, I want to be balanced on this. There are areas that are not quite the same as an EAW. One of them, of course, is that EU member states have the option to declare a nationality bar and effectively not extradite their own nationals. We do not yet know which countries will make that formal declaration. I anticipate that there will be some, but it would not be appropriate to go into which those countries are likely to be. None has made an official declaration as yet.

That is not a complete bar to proceedings. There are potential arrangements for an alternative path to justice, whereby either someone could face trial in the UK and then be returned to their country to complete their sentence or, in some cases, it would be possible to transfer proceedings to another country. But it would be wrong not to draw that out as a feature of the new system. I hope that is helpful.

Lord Rowlands: Would you confirm that what has been maintained is that it is a judicial process rather than an executive decision?

Steve Rodhouse: Yes, in the same way as the EAW.

Lord Rowlands: That is very important.

Peter Ayling: Our view is much the same. The arrangement is a streamlined version of the Norway-Iceland arrangement. It allows for direct transmission with limited grounds for refusal and a time-limited process. Those were the key aspects for us to ensure the workability of it. We are looking at this closely, with the extradition unit, to ensure its effectiveness. The perfect storm of being 25 days in, as EU member states consider their own approach to a new agreement, and the Covid restrictions means that it is very difficult to draw any meaningful comparisons, but all the components are there to say that we have an effective means to remove people from the country and to proceed upon extradition requirements.

Lord Rowlands: That is very reassuring. Thank you.

Q24 Lord Arbuthnot of Edrom: We are 25 days in now. The relationship between the European arrest warrant and the Schengen Information System II was flagged up by the National Police Chiefs' Council as being very important. What does the replacement of extradition arrangements mean for UK law enforcement? Can you give an estimate of how many new cases would have been started in a typical week under the European arrest warrant, and how many new cases per week have started since 1 January?

Peter Ayling: I will cover off a few general points. In relation to SIS II, we have always said that our preference would be to retain it, and that a fallback to Interpol notices and diffusions was likely to be a slower and clunkier process. That is how it has previously been described. What is important is the visibility of notices and the ability for us to act upon that information. We are confident that the new arrangement puts that in place. It does depend on the Interpol notices being in place, but at this stage we are confident in the use of that system.

By way of example, rather than giving specifics, over 8,000 notices have been entered into SIS II. This pertains not just to extradition; this is in total. That compares to just over a couple of hundred a few years ago. There is much greater use of the Interpol system to transfer that information, and that is reciprocal. We are seeing that on both sides of the border. Steve might well have more stats; I would not like to comment.

We have a system that is workable. There is work ongoing to design concepts that might improve that visibility and access in the future. That is work that we are closely engaged with the Home Office on under the International Law Enforcement Alert Platform—ILEAP. It is very early stages and it is difficult to comment, but that would be about increasing the functionality of the Interpol system of notices to make it more readily accessible for UK policing. There is work in place that would hope to optimise that arrangement.

On the last aspect about what throughput we would expect, I do not have any specific comparisons to draw now. I can say with a high level of confidence that activity since 1 January is below what we would have seen in a comparable period last year, but I will come back to two important elements. First, we are 25 days in. Many EU member states have not yet adapted their own processes and frameworks

to take account of this arrangement. There is a key period in February where those will be formally put in place. Secondly, Covid restrictions mean that there is a lot less movement and activity, so it is very difficult to carry out a meaningful comparison.

The issue you raise is important. Working with the NCA and the ICC, you can expect that we will have very close regard to this. In the coming months, I hope that we will be able to extrapolate the information and then draw a meaningful comparison to determine effectiveness and where we might need to finesse the approach further.

The Chair: I remember that one of our previous witnesses said that the Interpol system is not connected to the police national computer. I am a complete layman in these terms, but is that what you are really addressing? Connectivity and visibility need to be improved so that the system works more quickly across different databases.

Peter Ayling: Yes, that is correct. We have a workaround at the moment where Interpol notices will appear as a marker on PNC and can then be accessed via that route, but it is about the ability to draw those together to make the information more readily available. It currently relies on a manual process, which we have confidence in but which requires additional labour to ensure dual circulation.

Sir Charles Montgomery: From a border perspective—again, my experience goes back three years—it is about the connectivity between the Schengen Information System and the Warnings Index. The Warnings Index is key to controls at the border. SIS II to the Warnings Index was pretty well seamless. Interpol to the Warnings Index was a manual process. We were working to make a more automated process, but it was slower and clunkier. It is important to keep an eye not simply on the linkage between Interpol and the police national computer, but on how that information is translated to the Warnings Index.

I come back to this point about agility and responsiveness. Of course, you were ambassador in Paris at the time of the terrorist attacks, and we remember well the speed with which we had to intervene at the border and put systems in place then. SIS II enabled that. Interpol, at the time, would not have done.

Q25 **Baroness Goudie:** Good morning, gentlemen. Following on from my two colleagues, we have heard a lot about the renewed commitment to the I-24/7 database as a replacement for SIS II. Is the Interpol database likely to be a satisfactory substitute? Further, all these programmes and databases are only as good as the person inputting. What guarantees do we have about how good the inputting will be? What is the timeframe for that, regardless of the Covid situation, considering the likelihood of terrorism and other things that we hope will not happen?

Steve Rodhouse: The issue of the comparison and functionality between SIS II and I-24/7 has occupied a lot of our thought. At its simplest, SIS II is a system that allows operational officers, when undergoing checks in a range of circumstances through

the police national computer, if they are in the UK, to check through, unwittingly in some instances, alerts on SIS II as well. It gives them that access to information in operational scenarios on the street.

The challenge for us is to make sure that officers, using the gateway through the PNC, still have access to the data that is available to us, albeit that it will be via the I-24/7 Interpol system. The route for making that jump between I-24/7 and front-line officers is typically through the UK's International Crime Bureau, which we operate here at the NCA. When I-24/7 or Interpol notice alerts arrive in the UK, we now have a process to put them on the police national computer in a very short time. We are talking a number of hours, not a number of days.

To Sir Charles's point about the Warnings Index, a similar process is in place. I will write to you if this is not correct, but I believe it to be a 24-hour upload. There is a degree of delay there, but it is still quite swift. We are quite confident in that process. It is right to say that we have recruited staff within the NCA to undertake that.

That is the process. In terms of the scale of the data available to us, we have looked into this. We, in the UK, lost access to 40,000 alerts on people who are wanted across Europe, where generally there will be an arrest warrant in place for them. Through the Interpol I-24/7 system, we now have access, in round numbers, to 40,000 Interpol alerts. We think there is a very significant overlap, so we do not believe there is a significant loss of data or capability in that respect between the two systems. That is important.

From a UK perspective, as Peter has said, we made sure that the data available on SIS II relating to UK alerts was drawn out and replicated on I-24/7. At last count, 8,410 alerts were dual circulated and so are now available on Interpol. We also undertook a process of asking EU member states to recirculate European arrest warrants in the form of Interpol notices. I do not have data, other than to say that we are seeing an increase in Interpol notices from EU member states.

We are confident at the moment that there is no significant gap in either timeliness or data in that respect, but there are caveats. We need EU member states to continue to do that. Rather than just circulate via SIS II, we want them to take out Interpol notices as well. Clearly, they will make a judgment as to whether that is the right thing to do in the particular case.

Equally, one of the benefits of SIS II, certainly in the UK and I am led to believe in Europe, is that this data is available to front-line officers undertaking checks. I do not believe that is commonly the case in every EU member state. We want EU partners to put systems in place so that their officers have on-the-street access to data that the UK has put into the system.

There are caveats there, but I would not want to overstate the capability gap because of this change. Interpol is a system that we use with the rest of the world.

We are well practised in doing that, and we have systems and skilled people right across law enforcement who are very used to this.

Peter and his team in the NPCC have set up the International Crime Coordination Centre. That was in part designed to make sure that our law enforcement people understood these changes and were well practised and able to put them in place. They have a network of people across the country, ensuring that our operational officers know how to use these alternative systems.

The Chair: It is extremely useful to our report to have that level of detail and specificity, to illustrate for us the issues you are grappling with.

Peter Ayling: To reiterate the importance of what Steve mentioned, over the last 18 months the ICCC has had an important role in building that capability and the understanding that, where previously, if somebody went missing and there was a risk of international travel, it would be automatically populated on to SIS II, there now has to be a conscious decision to circulate that in a different way. We are confident, with the notices that have gone on and the metrics that Steve has alluded to, that this has now been embedded across UK policing and is being reciprocated for EU member states. It is something for us to continue to monitor going forward.

Q26 Lord Kirkhope of Harrogate: Can I just look at Europol with you? We move from a situation where we were effectively running Europol, had the leadership of Europol and used Europol very extensively. As a third country, the rules are quite clear that we now cannot be part of the decision-making at the highest level on the board, but we will be able to have liaison officers in place. It is very similar to the situation, as I understand it, with the United States, which also has persons present in the headquarters, aware of what is going on.

I am really interested in the practical side of this. Have we already committed the necessary personnel, in the right categories, to get best advantage out of our new relationship with Europol? You have already spoken about Interpol and the ability we may have in future to utilise those arrangements, but I want to know whether Europol will be as useful to us in future as it has been in the past, and where we will be operating to benefit from it.

Steve Rodhouse: The relationship with Europol is very, very important. It has been so and will continue to be so. A large number of the serious and organised crime threats we face, if not all, feature people, data, money or commodities travelling through Europe to the UK. It is really important for us to engage at scale in a multilateral venture such as Europol.

You are right to draw out the strategic and the tactical when it comes to our future relationship with Europol. On a practical level, very little will change in our relationship with Europol. We will still have the UK liaison bureau. We have not withdrawn people from there. We continue to have the right people in place. We have very strong relationships and we are seen as an active participant there. Peter is right to flag that we are 25 days in, but we have seen no deterioration in the

volume, speed, quantity or quality of the intelligence we share through Europol. We continue to be able to do that. That is a really strong picture for us.

You are right to say that we have had a leading role in the management of Europol in the past, and that will look slightly different. We are not able to be part of the Europol management board in the future. That might reduce our influence over which particular threats Europol places its focus on. I like to believe that the size, history and quality of our people there, and frankly the interest of all European partners to work with the UK, will mean our voice is still heard, although perhaps in slightly less formal settings.

We are and will remain a very strong participant within Europol, because there is mutual benefit in that. I am confident about the future. The NCA—we host the bureau over there—will continue to invest high-quality people and share information in the way we are able to. There is no barrier to that. We will work hard with Europol, because it is our interest and in Europe's interest to continue to do so.

Peter Ayling: I cannot add very much more to the comprehensive response that Steve has given. For UK policing, I do not anticipate the arrangement will result in any diminution of our activity and efforts for law enforcement across borders.

Lord Kirkhope of Harrogate: Can I go back to Mr Rodhouse on the relationship between Europol and Eurojust? We were signed up not only to Europol but to the relationship with Eurojust. I am guessing that we will not be in that direct relationship any longer. I assume that that is the case, but perhaps you could clarify that.

Steve Rodhouse: I probably cannot clarify it in as much detail as you would like, if I am honest. It would be for the Crown Prosecution Service and the Home Office to talk about Eurojust. I understand, from work we continue to do in the agency, that our engagement with Eurojust remains strong, and I believe we still have a presence there undertaking the work. I am not well placed to talk about the legislative basis on which we do that, I am afraid.

Lord Kirkhope of Harrogate: It is just that Europol is the basis upon which Eurojust works. There is direct reference between the two. Presumably, therefore, that line will not be open to us any more, even if we find an alternative approach.

Steve Rodhouse: As I say, I am probably not best placed to talk about that. I am sorry. I do not wish to be difficult, but I would not want to mislead you either.

Q27 Lord Anderson of Ipswich: You have suggested that the replacement for SIS II will be reliance on Interpol notices and diffusions, and you have spoken about attempts to make Interpol data more accessible to UK policing. The agreement with the EU also includes Title IV, which provides for co-operation on operational information to the extent that this is not provided for in other titles of the treaty. It does not cover Prüm, PNR, ECRIS and so on, but there is specific reference in that article to information on wanted and missing persons and objects, which seems to have a SIS

II sort of flavour. How useful do you believe UK law enforcement will find the provisions in Title IV for co-operation on operational information? Can you give us practical examples of when they might be used?

Peter Ayling: As you rightly say, Title IV puts in place a legal framework for the exchange of information. When we refer to the likely loss of SIS II, it is both the actual exchange of and access to that information, and the legal means to do so. This is a really important provision, which still enables us to exchange information and intelligence with European law enforcement agencies, many of whose domestic law arrangements are such that there needs to be a prescribed mechanism, means or framework to do so. It is important that it gives the means to do so quickly and without recourse to other judicial channels. Most commonly, we would manage that through Europol and through the foreign law enforcement community. It is something we have frequently made good use of and will continue to do so.

There is already a host of practical examples since 1 January. In looking at the work of going through this transition, I am aware of one where information was passed to us through Romania regarding a vulnerable female who is subject to domestic abuse. We were able to receive and use that information to put safeguarding arrangements in place, which ultimately resulted in an offender being arrested in the UK. There are a number of examples of continued effective use of police-to-police information for the purpose of safeguarding and to ensure that we can continue to focus on disrupting and intervening with those who would cause harm.

Steve Rodhouse: In the National Crime Agency, we are in a slightly different legislative position, inasmuch as we would rely largely on the Crime and Courts Act to share information bilaterally with EU member states. Our assessment is that we would not rely heavily on Title IV in any case, but I do not disagree with anything that Peter has said there.

Lord Anderson of Ipswich: Steve, could I ask for a little more detail on a previous answer you gave in relation to SIS II, Europol and how far it is an effective substitute? You said that we lost data on 30,000 persons on whom alerts were out, but we now have 40,000 Interpol alerts and you believe there is a very high overlap. Does that mean we have recovered, through Interpol, most of the data that we lost on those 30,000 persons?

Then you said that you had asked EU member states to recirculate arrest warrants as Interpol notices and that we are seeing an increase. Does that mean that all member states are currently recirculating all arrest warrants? If not, what is the shortfall?

Steve Rodhouse: I may have misspoken or not been clear. The number of alerts we lost and the number of wanted alerts on I-24/7 is around 40,000 in both cases. It is not that one was 30,000 and one was 40,000. There is an almost direct comparison between the two numbers. I apologise if that was not clear.

In terms of encouraging EU member states to take out Interpol notices for cases where they have not previously done so, I do not have numbers to hand, I am afraid. I just know that we have seen a spike in Interpol notices in recent weeks. A couple of countries have done this, Belgium and Italy in particular. In our messaging, we have been very clear with all our international liaison officers for some time about the importance of this. There seems to be a very strong overlap and no big loss in our access to alerts data.

Lord Anderson of Ipswich: Martin Hewitt, as chair of the NPCC, came to Parliament in November, as we are reminded in the *Financial Times* today, and said that the loss of SIS II would have a major operational impact. The consensus between both of you today is that we are not looking at a significant loss of capability. What has changed between November and now that has made the position apparently rosier than it seemed then?

Peter Ayling: Apologies, my broadband dropped out. I think that was referred to me, as there was a reference to Mr Hewitt. The question was what changed from the original position.

Lord Anderson of Ipswich: In November, he wrote a letter to the Home Affairs Select Committee referring to the loss of SIS II as a significant loss of capability. Today, we are hearing that there has not been a significant loss of capability. I just wondered what has changed between November and now.

Peter Ayling: At the beginning, I said there was a strong preference to retain access to SIS II. The reality is that it is a significant loss of capability in terms of access to data, which is automated and integrated within our systems. Nevertheless, there are contingencies in place. In November, it was difficult to foresee how they would be used by EU member states, as it relies on a level of co-operation, and what the mechanisms would be to allow for exchange of that information, which is an important additional element that was provided for in SIS II.

We have in the deal a legal framework that enables the exchange of that information. That is a really, really important aspect. That means that we have visibility and can act upon European arrest warrants. As we have previously discussed, it enables police-to-police information to be transferred. We are currently seeing, through the use of Interpol notices and diffusions, a good take-up across UK policing and EU member states, which gives us a high level of confidence that our contingency position is well in place.

It would not be for me to speak for Martin Hewitt, but we would still say that that arrangement falls a long way short of the benefits provided by SIS II. However, it is sufficient, in that it enables us to discharge our responsibilities effectively, and it delivers a mechanism whereby we can co-operate. Over the coming weeks, months and no doubt years, there will be opportunities for us to enhance that further and rebuild the capability that might have been lost through SIS.

Lord Anderson of Ipswich: Charles mentioned the aftermath of the terrorist attacks

in Paris as an occasion when real-time access was vital. Is that the sort of situation in which we might see an operational impact, were we all to be so unfortunate as to see those events repeated?

Peter Ayling: It is fair to say, although I do not profess to be an expert, that additional safeguards exist within the CT network, which would enable immediate transfer of information where there was a compelling need to do so. I cannot talk from a particularly informed position, I am afraid. I would be happy to write to the Committee and provide clarity on that issue, but I know that specific arrangements exist for CT, which can be accessed through our CT network.

The Chair: Thank you. We would appreciate that.

Q28 Lord Anderson of Swansea: Can I go back to extradition and the possible differences between Europol and Interpol? Europol is a group of countries that rely largely on the rule of law, whereas Interpol is a different sort of animal, with many countries that do not. There have been a number of examples of abuse of the Interpol Red Notice system, particularly by Russia. I think of Bill Browder's book *Red Notice*. Have there been examples of abuse in Europol? How significant is the abuse of the Interpol system by countries such as Russia?

Steve Rodhouse: Effectively, what we are talking about here is the use of the I-24/7 system to circulate the existence of an Interpol notice. The deal does not change the various safeguards in place to make sure that there is a judicial and legal basis, and some veracity to the allegation that is being made. It does not change the fact that the UK's national bureau for Interpol, which is hosted by the National Crime Agency in Warrington, will continue to ensure that there are safeguards in place before Interpol notices are taken out.

It is difficult to put a number on the proportion of cases where there are concerns, but it is very small. I am not able in this meeting or probably at this classification to talk about those, but suffice it to say that there will remain safeguards in place so the Interpol notice system is not abused.

Q29 Lord Anderson of Swansea: Thank you very much. That is reassuring. Can I now turn to my question, which is under the broad heading of co-operation on operational information? Part 5 of Title IV reads as follows. "In urgent cases, the providing competent authority shall respond to a request, or provide information spontaneously, as soon as possible". May I have your views on this provision?

Steve Rodhouse: As I said earlier, from the NCA's perspective, we do not anticipate relying on Title IV in any case, because there are alternative powers under the Crime and Courts Act for bilateral sharing of information. It seems to me, from a layperson's perspective, quite tricky to say "as soon as possible" and put particular safeguards around that, because there will be a variety of factors in play. From the perspective of the National Crime Agency, we will always endeavour to share important information as quickly as possible. I do not see that this undermines Title IV. The operational reality is such that you will always try to share important

information, subject to safeguards on information sharing, as swiftly as possible so that it can be used to best effect.

Peter Ayling: I would make much the same provision. I would not say that there was anything undermining in that description or that particularly enhances it. I referred earlier to the need for a common understanding and shared endeavour to protect those who are vulnerable and to prosecute those who are criminal, and this just gives a hint of the need for there to continue to be good will on both sides. There is nothing in there that offers us opportunity or gives me cause for concern.

Lord Anderson of Swansea: Is it fair to summarise that this is just good practice and it does not add anything to the provisions?

Peter Ayling: Yes, that would be fair. It represents that there is a common mutual benefit in us being able to co-operate in that way and to do so in the quickest possible timeframe where there is an urgent need. As I say, there is every indication that will continue to be the case.

Lord Anderson of Swansea: Therefore, it is otiose.

The Chair: You are not getting a reaction to that, Lord Anderson. Charles, is there anything you would like to add to the conversation on these issues?

Sir Charles Montgomery: No, not on that, but thank you for coming back to me. To be clear, my point about the terrorist attacks when we were both in post, you in Paris and me in Border Force, was that it was an instance where rapid exchange of information was important. There are separate systems that connect counterterrorism organisations around Europe, and the intelligence agency concerned has the ability to upload directly to the Warnings Index. It was a point about rapid exchange of information rather than about that particular incident. I could quote any number of other instances of both security and criminality where rapid and agile exchange of information was important. That was the first point.

The second point, which we have only just touched on, was related to that. I just want to highlight the importance to border policing of advance passenger information and passenger name records. It is the flipside of the data-matching coin. Those became very comprehensive, agile and responsive too. I hope that they continue to be. It was important when I was in post, because responsive changes to the Warnings Index had to be matched by rapid exchange of information on who was travelling to and from the United Kingdom. PNR and API were of almost equal importance to anything on SIS II.

The Chair: I do not know whether Lord Kirkhope, who is the author of a lot of the legislation on PNR, has any particular point to raise on that.

Q30 Lord Kirkhope of Harrogate: On PNR, for which I have the dubious honour of being responsible, we are getting mixed messages about the question of accessing information. In a way, depending on how you read the agreements the Government have achieved, either it will continue to be real time, which is the critical element of

it—I mean real time, rather than 24 hours or as a result of pieces of paper passing around—or it will be as soon as possible.

I wonder whether anyone has any comments on this whole issue and whether they interpret the agreement as still maintaining what essentially is the real-time, instant exchange of information, which is the key to the success of PNR.

Sir Charles Montgomery: I cannot comment on what is in the current agreements. That is beyond my expertise, I am afraid. I really have nothing more to say about the importance of PNR and its immediacy. PNR and API are exchanged at various points, including in advance of the travel. They enable you to take pre-emptive rather than entirely reactive action. I have nothing to add about the new arrangements.

Steve Rodhouse: Our reading and understanding of this is that we will continue to be able to exchange passenger name records. Indeed, I am briefed that it builds upon previous capabilities inasmuch as there will be more frequent pushes of data by the airlines. We certainly do not anticipate a reduction in that very, very important capability. I completely understand and agree with Sir Charles about its importance. I understand that Border Force will have to make some technical changes to the system, but the most important thing is that it will not have a negative impact on the capabilities. I am briefed to be confident on this.

The Chair: I am glad you are.

Q31 **Baroness Primarolo:** Good morning. Perhaps we could build on the answers you gave on PNR just now about access to data. The TCA provides access to data for DNA, fingerprints, vehicle information, PNR and operational information, as well as Europol, Eurojust and criminal records. This is all real-time information.

Like Lord Kirkhope, I am not exactly clear. We are being told, not just today but over different inquiries, two different answers. One is that our operational or, as Sir Charles calls it, comprehensive responsiveness and agility, is maintained but in a different way, and then on the other side we are being told that we will get it but probably not quite as quickly. These databases are crucial for real-time information. Could you outline how we are faring in our access to these crucially important real-time databases? Is it protected?

Steve Rodhouse: The short answer is yes. I would be very clear if I did not think that was the case. You are absolutely right to highlight the importance of real-time information, or information as quickly as is reasonable, and the breadth of that information.

DNA and fingerprints are catered for by the Prüm system of exchange, which I was involved in pushing forward from a law enforcement perspective because I see the benefit of it. This deal continues our access to the Prüm system. It makes the UK safer, because it will allow us to make more links between people and crime scenes that we would not otherwise have seen. We have said just how many people travel, so it is phenomenally important. Going forward, we have a continuation of what we are already building. I am confident that there is no reduction in capability. It is the same.

It is the same when we come to the exchange of criminal records. I cannot overstate the importance of understanding the criminal history of somebody when courts are making decisions or investigators are understanding their background. It is phenomenally important. I was very vocal in highlighting the importance of maintaining access to the ECRIS capability of international convictions data. This deal gives us a continuation of that access.

ACRO is the body leads on this. They are the experts, but my understanding is that we do not expect any reduction in the timescales by which we share and obtain data from the EU. The average time is six days. We understand that that is not likely to change. Of course, as Peter has said, we are 25 days in so we will see. We will retain that capability. I understand that there will be a change of name, but in reality we will still have access to that information. It is the same with passenger name records, which is a really important capability. We are not expecting any reduction. Indeed, in PNR, I am told there will be more frequent technical pushes of data from airlines, which can only improve the speed and accuracy of the data.

That is all positive. We were very clear before the deal was struck that if we did not get that it would be very difficult for the UK. I am pleased with what we have seen. We are still investing to ensure that we can make the best use of that information.

Going back to the material we get through the Interpol route, and the speed with which we can place it on the data systems and radios of our officers out on the street, we are investing in robotic process automation to make sure that that is done very quickly and efficiently. We are really pleased with the way that is going. It allows us to effectively and efficiently make sure that data is available in the UK within a small number of hours. It is not real time, but it is swift. There are reasons to be positive here.

Baroness Primarolo: This question of real-time access and maintaining the access we had is really important. Do you share that confidence that basically nothing has changed?

Peter Ayling: I do. There were three key areas that we discussed. One is Prüm, regarding the exchange of information related to DNA and fingerprints. There is little material difference in how we will use the system access and its benefit for UK policing. PNR data has been talked about; again, my reading is that there is little practical change in how we can access and use that information. In fact, there may be future opportunities with a slight readjustment of the thresholds to extend the use, particularly in matters of safeguarding.

We just touched on ECRIS and access to criminal records information from abroad. Steve is right: the technical architecture has remained, so pretty much the same functionality is now referred to as 'UKCRIS', although the timescales prescribed for that have slightly changed. I have seen that referred to as real time, but the arrangement was always that the exchange would take place expeditiously, and in any case within 10 days. I understand that it has now been changed to 20 days but, as Steve rightly says, all the indications we currently have are that there is no drop

in that co-operation, and the timescales are pretty much the same as they were before 1 January. On these areas, I am confident that the deal is an effective one, and optimistic that the functionality we previously had, which was so important to our law enforcement efforts, continues under the new deal.

Baroness Primarolo: Sorry to labour this point, but I want to be absolutely clear. In terms of access to those crucial databases and the exchange of information, your assessment is that UK law enforcement has not lost anything significant when comparing the TCA arrangements with the arrangements when we were still in transition before the TCA. Would that be right, as long as we get access to data?

Peter Ayling: No, not quite. In terms of SIS II, we have to recognise that there is a drop in capability. I do not want to labour that point; we have talked about it. In terms of the other systems—exchange of criminal records and PNR—yes, we are very confident that the functionality that existed previously is available under the new arrangements.

Q32 **Baroness Hamwee:** Peter's bandwidth is showing as low, but I will not read across from that to the content of the answers as to whether the bandwidth of the systems is reducing.

I was going to ask about ECRIS, or 'UKCRIS' now, to pursue the points that have already been explored, particularly as Steve was saying that one cannot overstate the importance of this. The agreement says "as soon as possible" for the sharing of information, and in any event within 20 days, which in normal speak is one month. Criminals do not stop over the weekend, and I do not suppose you do either. Can you share where the assurances about the average time being unlikely to change come from? I think it was Steve who said that.

Steve Rodhouse: That assessment is made by ACRO, a body that works and leads on ECRIS and data exchange. As Peter has said, it is largely based on the fact that the infrastructure, the people involved and the technical architecture will not change. That is the basis of this. It is right to say that it is early days and we will see, but the information I have is that, since the end of the transition period, there has been no slowing of information reported through this mechanism. The UK has not lost anything; it has not become slower.

Yes, six days is the average turnaround time for that data. It is not live, because there is a degree of inconsistency. There are different offences in different countries that need to be aligned and interpreted. That is the reason for this. ACRO will continue to work tirelessly to speed that up, so that information can be received. We have never been able to do a check on an overseas national on the street and understand then and there what their conviction history was in another country. That has never been the case.

What ACRO and ECRIS give us is a timely way, certainly in terms of European countries, to access data that allows good decision-making on protecting the public, whether that be about pursuing investigations and understanding someone's history and previous modus operandi, or allowing courts to make decisions on bail

or suitable sentencing. That is really where this information is very, very important. I am delighted that in essence we have maintained the same capability.

Baroness Hamwee: Do you think this may change over time? We will not be in there in the same way and we will just be a third country when systems change. Of course, with the way data is dealt with, technology changes pretty rapidly. Are there potential weaknesses ahead in that?

Steve Rodhouse: I would only be speculating if I was to answer that in detail, and I would not want to mislead anyone. The technical leads are in ACRO and they will know about the technical infrastructure that you refer to. I would just make the point that this is a two-way exchange of data, so it is in the interests of the rest of the participants in the current ECRIS system to be able to access UK data.

Baroness Hamwee: I get that. Peter, it is a different system, but you talked about a manual process to connect Interpol and the police national computer, and then Steve talked about investing in robotic systems. I do not know if we are talking about the same things. Steve is nodding. Do you have any comments on the questions I have just been asking about the future?

Peter Ayling: I have no concerns about the future as it pertains to ECRIS, which is now being termed 'UKCRIS'. It is difficult to look too far ahead, but all the indications are that the system is resilient. It will continue to mirror what was previously in place. We were one of the most significant contributors to the database. That is where there is the mutual benefit in reciprocal arrangements for us and other EU member states. I am confident in that regard.

In terms of the future of automation, the use of robotics and Interpol notices, yes, we are talking about the same thing. This is in the very early stages. It is conceptual, but the ability for us to exchange information bilaterally represents an opportunity to do something differently about the input and accessibility of data and how we might exploit technology in the future. It is at such an early stage that I could not comment on timescales or viability. Those opportunities are being looked at, so that we can optimise a process that currently requires a level of additional, manual input and dual circulation.

Baroness Hamwee: This all sounds very resource intensive. I entirely take the point about it being two-way, but we are dealing not only with the EU but with the whole world. I have not had a sense—this is our fault, because we have been focusing on relations with the EU—of whether we have to change anything, and particularly learn anything, in working with other third-country states. Is anybody able to give me a sense of how all this fits in with global relations?

Steve Rodhouse: You are right; we cannot focus just on Europe. Organised crime is a transnational, worldwide enterprise. Our relationships and involvements with Interpol as the global policing organisation are phenomenally strong. We have a number of senior UK individuals leading aspects of that organisation. We continue to build our capabilities together. The world is wider than Europol, but Europol is

really important for the reasons I outlined earlier. A lot of the UK's threats come through Europe.

It is right that we continue to participate strongly in Europol. It is right that we look at other multinational organisations in which we can build relationships and capability, and strengthen states where there are threats emanating. It is right that we continue to build and enhance our relationships with Interpol. The UK is well placed. Steve Kavanagh is the executive director of police services, effectively leading the operational aspect of Interpol. Steve is a former UK chief constable, a senior law enforcement official, and it is great that the UK has that degree of insight and influence in an important organisation such as Interpol.

Baroness Hamwee: Interpol is the really important one rather than the equivalence of the other systems that we have been talking about. That is what I take from your answer, because the Chair probably wants us to keep going.

The Chair: I did not want to cut off an interesting line of questioning. Sir Charles, can I ask you a layman's question about the immediacy of systems? ECRIS is typically six days under current conditions, although the agreement says that it might be as long as 20 days under the new one. When somebody presents in front of a Border Force officer, presumably the system which the officer relies on for instant data is, or has been, SIS II. Is that right? ECRIS is not relevant to a Border Force officer if there is that kind of delay. The primary system in your time was SIS II, was it?

Sir Charles Montgomery: No, the primary system was the Warnings Index, but that itself is a distillation of data from other sources, including the police national computer and the watchlists of MI5, other intelligence agencies and HMRC. The Warnings Index is a composite of all those sources of data, which enables officers on the front line to take a comprehensive view of the various risks, or none, that an individual poses when they come across the border.

The point about SIS II was its connectivity to the Warnings Index, which Interpol certainly lacked, although I know we are working on it. Of the systems we have talked about today and which have a particular European Union focus, the one that was most important to that element of Border Force operations was the Schengen Information System, SIS II. That was the most important one for Border Force. It was not ECRIS or Prüm. All those were systems that helped other law enforcement agencies. If we touched Prüm or ECRIS, it was only at arm's length from those other primary law enforcement bodies.

The Chair: That is very helpful for understanding how the systems work together.

Q33 Lord Polak: I preface my remarks by suggesting that this has been an extremely refreshing and encouraging session. None of us is a practitioner; our job is to scrutinise and ask questions. I have jotted a few comments down on a piece of paper here during this discussion: "Confident about the future; little material difference; retain our capabilities; no reductions in capabilities; on a practical level,

little will change with Europol". I will go away from here thinking that things are not as bad as people had suggested and that we are blessed with professionals and practitioners, such as the people we are speaking to today, who are determined and are keeping us safe.

Having said that, my question is this. What is the fallback position if the Commission does not grant the UK a data adequacy decision?

Steve Rodhouse: There are ongoing negotiations over the data adequacy agreement with EU member states, but that is separate from the trade and co-operation agreement that we have been talking about here. I do not want to prejudge those discussions, and nor do I have any insight, but it is right to say that under some bridging mechanisms we can currently exchange data with EU member states without the need for any appropriate safeguards, and we will continue to do that.

The challenge we will have is that, if adequacy is not agreed, we will be reliant on the EU member states applying the appropriate safeguard provision, effectively a subsection, that they will permit data transfers to the UK. I am pleased with what you have drawn from this session, and I agree with that assessment. I reflect on the fact that, if we had not had this agreement, the situation would be rather difficult, because the exchange of data is so important. We would be dependent on EU member states applying appropriate safeguards.

From an NCA perspective, we will continue to facilitate information sharing, because we will share documentation with EU member states to show the levels of guidance and give reassurance to EU partners that we have appropriate safeguards in place. We continue to offer those assurances and briefings through our international network of international liaison offices. We have developed appropriate safeguard assessments to show how we meet those standards, and we will continue to work alongside EU member states to give them the confidence to share that data. That is the position as we see it, but I would not want to prejudge the full data adequacy agreement, because that is the right thing for the UK to pursue. We will be reliant on EU member states effectively agreeing our appropriate safeguard provisions.

Peter Ayling: I will briefly add to that. Apologies, I keep getting a warning sign about my bandwidth.

The Chair: I think we temporarily have a connection problem to the assistant chief constable.

Lord Polak: I hope, and I am sure, that our report will reflect the positive views we have heard today. On a practical and professional level, things are not as bad as some people, not necessarily around this Committee, but others, have suggested before. I am very encouraged.

Q34 **The Chair:** Thank you very much indeed. We have had a very full exchange but, if you can spare us another five minutes, a couple of colleagues wanted to come back with supplementary questions. I am going to set a bad example by asking one

myself.

Do the arrangements on mutual legal assistance have any particular importance for the law enforcement community? That is another part of the trade and co-operation agreement. Do they affect law enforcement co-operation one way or the other? Are they seen as an improvement or an extension of what we have, or perhaps a weakening of what we have?

Steve Rodhouse: In reality, they are an extension of what we had. That is important because, as I have alluded to, so many of my investigations involve the exchange of information and often evidence from inquiries overseas. The risk was that we would revert to previous powers under mutual legal assistance, and there were no timescales there. It was possible that a UK request for information would have taken significantly longer. Under the European information provisions, there were timescales. Effectively, what we have now replicates that, so there is a continuation there, which is good news and important.

Q35 Lord Arbuthnot of Edrom: This question arises out of what Sir Charles said about Interpol not having access to the Warnings Index. You may not wish to answer this, but I wonder whether that has anything to do with countries that are not naturally allied to the UK having access to information. For example, one would not want to share material from MI5 with Russia. Is that the thinking behind it?

Sir Charles Montgomery: No. To be clear, my point about Interpol was that it did not directly interface with the Warnings Index, which meant that the information through Interpol had to be manually translated into the Warnings Index. That is what takes the time. It is therefore a less responsive system, with different data sets than SIS II. That is an aside, but it was a manual process. My point was no more profound than that. As I left Border Force, we were seeking to address that so there could be a better automatic translation between Interpol and the Warnings Index, but I cannot say whether that has been enacted. It does not sound as though it has.

Lord Arbuthnot of Edrom: As Lord Rowlands was suggesting, the access to information in Interpol from countries such as Russia must be an inhibition.

Sir Charles Montgomery: I may be misunderstanding the point, but all we would do is load what was required of us from Interpol alerts on to the Warnings Index. It would have been for Russia to load what it wanted to load.

Q36 Baroness Primarolo: Thank you very much. It has been a very informative and helpful evidence session. On the data adequacy loop, Steve, you have been very positive about maintaining our access through all the databases. The data adequacy has still to be decided. We have up to six months where we are running under the same rules, but as a third country the hurdle is higher to get that adequacy. Could you confirm that, if for any reason we did not have data adequacy or were required to bring in additional arrangements, you are still confident that we would maintain access to all these databases, or do the two move together?

Steve Rodhouse: I suspect that is a complex area of technical expertise and law, and I am not entirely sure I can give you a very detailed answer. I do not wish to

prevaricate at all. It would lead us to require EU member states to agree that we have appropriate safeguards in place. That is really all I can say. I would not want to judge or predict how likely that is, and whether that would automatically lead to an inability to use the tools we have spoken about so positively. Perhaps it might be more appropriate if I wrote to the Committee in slightly fuller and more expert terms.

Baroness Primarolo: That would be fine. It is under the Commission's competency that this is dealt with. It does not go to member states; it is a technical issue. It would be very helpful if you could perhaps give us a fuller answer on the interaction between the separate decisions and the overarching impact of data adequacy on that.

Q37 Lord Anderson of Swansea: On the question of the exchange of criminal records, I was thinking on putting myself in the position of a judge or magistrate, with a foreign national before me who has just been arrested. I ask, "What are his criminal antecedents?" The possibility of exchange has now been extended up to 20 days. Would that make it possible for someone to be put in custody, or released, when he should not have been, for bail?

Steve Rodhouse: I am not anticipating any change to current situations. Overseas conviction data has never really been available for those sorts of decisions in the custody suite. I understand that they are sometimes used by courts, so any significant delay in obtaining that information may on occasions mean that the court does not have it available to take account of, but I could not say any more than that, I am afraid.

Lord Anderson of Swansea: There is a danger of injustice if the relevant information is not available in respect of bail, where a person is brought immediately before a judge or a magistrate.

Steve Rodhouse: Yes, but that material has never been available, so we are not seeing a change in that position.

The Chair: Gentlemen, thank you very much indeed. On behalf of all of us, we have found that a really interesting session to get behind the words on the page and understand their operational implications. As Lord Polak says, a number of the points that have been made are more encouraging than we had perhaps understood by simply reading the words on the page. That is extremely useful to our inquiry. On a number of points, you have kindly said that you might write to us with a bit of further detail, which we would also welcome, because we want to get our report as full, detailed and accurate as possible. On behalf of the whole Committee, I thank all three of you very warmly for your time this morning and for what you have contribute to our inquiry.