HOUSE OF LORDS

Select Committee on the European Union

Security and Justice Sub-Committee

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

Tuesday 16 February 2021

10 am

Watch the meeting

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 Lexden; Lord Polak; Baroness Primarolo; Lord Rowlands.

Evidence Session No. 4 | Virtual Proceeding | Questions 38 - 49

Witnesses

I: Kevin Foster MP, Parliamentary Under-Secretary of State (Minister for Future Borders and Immigration), Home Office; Chris Jones, Europe Director, Home Office.

USE OF THE TRANSCRIPT

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

Examination of Witnesses

Kevin Foster MP and Chris Jones.

Q38 **The Chair:** Welcome to the EU Security and Justice Committee. This is a public evidence session with Kevin Foster, the Parliamentary Under-Secretary of State at the Home Office. He is accompanied by Chris Jones, the Europe Director at the Home Office. This session is being televised and recorded. We will make sure our witnesses have a copy of the transcript to correct before it is published.

Minister, a very warm welcome. Thank you for joining us. This is the last evidence session in a short inquiry we have been doing into post-Brexit law enforcement co-operation, which is part of a series of reports on different aspects of the trade and co-operation agreement by other Lords EU committees.

Minister, we know that not all these issues are in your normal portfolio. We have in the past taken evidence from the Security Minister, James Brokenshire, and we send him our very warmest wishes for a speedy recovery. We are very grateful to you for stepping in to enable us to complete our inquiry by setting out the Government's position. We are also grateful for the help we have received from Home Office officials as part of our inquiry.

Minister, I will kick off by asking you a more general question. We are now six weeks into the operation of the trade and co-operation agreement; it is now fully in force. We have heard from other witnesses that a lot will depend on how it all works out in practice. Could you tell us briefly what the Government's main priorities now are, as we move into operationalising these various agreements? How long will it be before we can know definitively how effective they are going to be in operating?

Kevin Foster: It is a pleasure to join you. The Government's priorities, first and foremost, are to make sure that the provisions around law enforcement and criminal justice more generally are working. We see, for example, that passenger name record data is still flowing to the UK from EU airlines. We are still exchanging a significant amount of criminal records data. Of course, we are also looking to make sure of our fallback Interpol provisions, as we could not negotiate continuing access to the SIS II system, which I know you have discussed on a number of occasions.

It is probably too early to start making detailed assessments. As you touched on, we are about six weeks in. We will need to look, over the coming months, at more detailed assessments. For example, there are some things on the surrender agreements that are replacing the arrest warrant. Many of the ones that are outstanding are carry-overs from the European arrest warrant system; they not ones that have been issued under the new system.

We are seeing things. We believe it is working well so far, since 1 January, but I hope the Committee will understand why at this stage it would be inappropriate to try to produce a more detailed assessment until we can get really solid management information coming out.

The Chair: We will unpack those issues one by one as we go through this. Presumably, it is going to take several months before you are in a position to know whether the various arrangements on data protection and other things are working effectively for you.

Kevin Foster: Early indications are good. As I said, passenger name record data is still being shared; we are still seeing the sharing of information. More detailed information—really getting into that type of verified management information—will be a couple of months away. So far the signs from us and our partners are that the arrangements are working well. We also, of course, have to lay over things such as the impact of the pandemic on travel and other areas. For example, travel into the UK is massively down, not for any reasons to do with this agreement or Brexit but to do with the very strong restrictions on travel that there are relating to public health.

Q39 **Lord Anderson of Swansea:** Minister, thank you for stepping in at short notice. I hope you can resolve an apparent contradiction. In negotiations, the Government's golden thread has been the restoration of sovereignty in relation to borders, taxes and laws. The Government have repeatedly said that it would be unacceptable for the agreement to address our domestic arrangements—for example, concerning the European Convention on Human Rights—yet the agreement includes a suspension clause relating to what are called "systemic deficiencies" within the parties' respective jurisdictions regarding protections for fundamental rights. How can we reconcile sovereignty and the suspension clauses in the agreement? Surely this involves interference in our domestic arrangements.

Kevin Foster: The point the Government would make is that the UK has always been a country that strongly upholds the traditions of human rights and advocates them around the world. We have also always had strong protections around data protection, which predate EU obligations. I know parliamentarians at this meeting today would not wish to see those diluted.

We do not think that making commitments that we would fundamentally behave reasonably or honour some of the commitments we have made would particularly infringe our abilities. If we did that, we would not sign up to virtually any international agreement. We believe it is right that the provisions of this agreement give an ability, which is on our side as well. For example, if we felt that data we had supplied was being used in a completely unacceptable way, we would be able to suspend the operation of the agreement. As I say, so far there are absolutely no indications that is what the European Union plans to do. We remain sovereign. We remain able to make our own choices. Inevitably, in any bilateral agreement, we will look to have an understanding that each side will behave in a reasonable manner in the execution of their operations under it.

Lord Anderson of Swansea: Minister, of course I concede that we have a pretty good record in respect of the European convention. Nevertheless, this clause does give the Union the opportunity to interfere in our domestic arrangements.

Kevin Foster: By the same token, things such as the provision around serious and systemic deficiencies in terms of data protection actually works the other way around as well. We could indicate that we were not satisfied with how the Union was using data, in the same way as in other instances where we have bilateral and international agreements. It is not just the European Union that we share law enforcement data with. We have very close working with, for example, our Five Eyes partners. Again, similarly, we would all expect the others to behave in a reasonable and expected manner with the data that is shared between us and in the overall standards we apply in any other extradition agreement.

Lord Anderson of Swansea: You would argue that in fact there is no infringement of our sovereignty.

Kevin Foster: I would not believe that this infringes our sovereignty. This just gives an appropriate reassurance to both sides, including to the United Kingdom, that, where we are sharing data—where we are sharing information about people—it will be used in an appropriate way. If there are serious and systemic problems—let us be clear: that is a pretty high bar—with what we have shared, it would give us the right to withdraw from the agreement. That is certainly not something that we are likely to be engaging in. The UK Government's assessment at the moment is that the European Union is not looking to do that either.

Q40 **Lord Lexden:** Minister, Part 3 of the agreement with which we are concerned includes its own separate nine months' notice termination clause, whereas elsewhere the agreement provides for a 12 months' notice clause. Why did the Government want or at least agree to this separate shorter exit period for law enforcement? Perhaps you could tell us, too, what circumstances the Government envisage in which this exit clause might be invoked.

Kevin Foster: First, I would not want to get into speculating about the exact terms. We could be here all day and it would not be a particularly productive exercise. Generally we have had a constructive relationship with the Union on law enforcement and criminal justice for a long period of time, as we have done bilaterally with many European nations. I would not want to get into speculating on all the different circumstances. Some of the circumstances in which we might consider invoking that type of clause would be quite extreme.

On the period around it, there are differences in some things in terms of month. A lot relates to how practical it would be to disconnect systems and identify other options to exchange the most critical information. At the moment, I do not foresee that is something we would be looking to do. Again, it would not be particularly productive to speculate on all these different types of circumstances, given that we are talking about partner nations that we are close allies of and have worked well with for a long period of time.

Lord Lexden: The suspicion naturally arises that the shorter period means that the Government think there might well be a greater likelihood of difficulty where Part 3 is concerned than elsewhere.

Kevin Foster: For ourselves, so far we have a constructive relationship. I do not want to get into speculating on particular grounds or future scenarios, many of which would probably be unproductive given that we are talking about safe and democratic countries with a firm rule of law in place, in terms of other partners that are members of the European Union.

We felt that the balance was there. On each side there would potentially be an assurance in having an ability to cancel with due notice if there were serious concerns about the operation. Of course, that period of notice would give an opportunity to resolve those serious concerns if necessary. As I say, from our own perspective we believe the notice periods in there are appropriate. They strike the balance between certainty in terms of operation and allowing each side the reassurance that if the good faith we would expect in delivering these agreements is not met, we would have an opportunity to withdraw if necessary. I do not particularly want to get into speculating on the exact circumstances, given, as I say, the countries we are talking about are safe, democratic and law-abiding.

Q41 **Baroness Goudie:** Good morning, Minister. When we come to Prüm and look at the new rules and Title II, we will be subject to various evaluation reports and a pilot run by the Union later this year, as per Article LAW.PRUM.18. How confident are you that the Government will meet these tests, particularly given the Minister for Crime and Policing's confirmation this week that the Home Office lost the fingerprints and DNA records of 15,000 individuals?

Kevin Foster: It is worth saying that we are operating on a new and unique legal basis, but the way in which we operate biometric exchanges has not changed since the UK passed the evaluation exercises prior to connection. We recognise that the pre-connection evaluation, including a pilot run by a participating state, will be required for vehicle registration data exchange. This is a new capability—something that is being added.

On fingerprints and DNA, as you have touched on, it is enshrined in the agreement that there will be one-off re-evaluations, but these will take into account the outcome of the UK's previous successful pre-connection evaluations. Therefore, we are confident that our operating processes are still fully in line with the Prüm requirements, given our experience of passing the previous evaluations. If any matters arise on a technical level during the evaluation that cannot be resolved between the evaluating team and the UK specialists, we would look to refer the matter to the specialised committee.

Given our experience, we are confident we will pass, and we are also confident on the preconnection evaluation. That is where we believe there can be real confidence in this assessment and for the Committee looking forward.

Baroness Goudie: You have not answered the question on the loss of the records. We will leave that for a moment. Title II is also accompanied by a lengthy annex of implementing measures. To what extent is the United Kingdom obliged to follow the EU legislation and amendments to these measures?

Kevin Foster: Chris might want to talk in a little more detail around some of the annexes to the agreement, on how they affect our daily operation and the need to follow them.

***Chris Jones*:** The annex sets out the standards we need to comply with. In the longer term, it is possible that those standards may evolve. The UK would then have a choice as to whether or not to move its standards to meet the requirements under the Prüm system. There is no compulsory requirement for us to align with the EU Prüm system. The annex itself is static, but in the long term we would expect to see some technical developments and for the standards for encryption to evolve. We would expect to make sure that our standards are high, as they are now. Indeed, I would expect the EU to do the same. The technology, of course, will not stay static in the long term, but the agreement is not a dynamically aligned agreement.

The Chair: To pursue that one more time, as you say, surely life shows that all these instruments evolve. Technology evolves; regulation and implementing legislation evolve. Although it is not dynamic alignment, presumably we would always have a choice about whether we match or stay aligned in some way with changing EU regulations and maintain connection to the Prüm system, or we do not and we therefore presumably would not have access to the Prüm system. Is that how things will present themselves in practice?

***Chris Jones*:** The standards are there today; we are meeting those standards today. In the longer term, as I say, particular types of security measures may be required for the co-operation between the UK and the EU. This is not about how the UK itself manages that data. This is about the standards for the technical co-operation between the UK and the EU member states. If those technical standards need to be enhanced because technology moves on, that is something we would look at with the EU. We are not bound to follow those technical standards in the UK; that would be a choice we would have.

Kevin Foster: Presumably, we could look to exceed them. We could be looking to push the technical standard up ourselves; it is not just the Union.

The Chair: Can you give us any reassurance over the reports of the loss of DNA and fingerprint data for 15,000 individuals?

Kevin Foster: Chris may want to come in on some of the detail. At the moment we are exchanging data on Prüm in a very similar way to how we did before the transition period. The principle of maintaining the connection is still there and we would not expect that to be affected.

***Chris Jones*:** The PNC issue is unrelated to the trade and co-operation agreement. We are confident that co-operation under Prüm can continue today as it has previously. There is a separate and important strand of work in the Home Office to address the PNR issue, which is something I am not responsible for. We are confident that the UK can continue to meet its commitments under the Prüm agreement.

The Chair: That is a very good transition to passenger name recognition and Lord Kirkhope, who knows an enormous amount about this subject.

Q42 **Lord Kirkhope of Harrogate:** Good morning, Minister. I feel particularly strongly about PNR, seeing as I was responsible for it in the first place. I am encouraged by some of the remarks you have made this morning but also by the Government's statement that we will continue to receive the information and records we actually need from the airlines.

As you know, this is a moving feast, not only in the UK but in Europe and indeed in the arrangements of the EU for PNR with other entities. I am referring particularly, first, to the European Court of Justice's opinion on the EU's PNR agreement with Canada. As a result of that, the UK, in its negotiations, decided that the decision of the court would have to be taken into account. As a result of that, the Government have what is called special circumstances. The retention of the PNR data that we will have is subject to the additional safeguards for an interim period, and the standards we will now follow will be policed by an independent administrative body.

First of all, can I ask you what those special circumstances are? Is it just the Canadian decision of the ECJ that is the special circumstance, or is it something else? If the standards are going to be policed by an independent administrative body, what will that body be? Will it be a joint body with other decisions, or will it be a specific body for this purpose?

Kevin Foster: As Lord Kirkhope rightly points to, the agreement requires an independent administrative body to assess annually the approach taken to the need to retain PNR data about passengers who have left the UK. The National Border Targeting Centre's independent compliance governance team, a functionally independent part of the UK's passenger information unit, not involved in the operational use of PNR data, has been designated by the Home Secretary as the independent body to undertake this work.

It would not be right to speculate on any potential future legal challenges, as would not be worth speculating in other areas. We would be here all day and we would not necessarily get much further down the path.

It is that body that is now responsible for approving requests to use retained EU PNR data during a passenger's stay and after their departure, and for assessing whether the additional safeguards required by the agreement are applied effectively during the interim period as technical changes are made to our PNR system. We are confident that it is a legally robust system. Any use of PNR data remains subject to the provisions of domestic legislation in the form of the Data Protection Act 2018.

How this is used will be an ongoing process that is subject to a full annual evaluation. We will be making sure we are compliant and engaging with the Commission; there is a good partnership with the Commission. We are conscious of the European Court of Justice's rulings. Again, we recognise how that has affected

some of the other partnerships the EU has signed, hence, as we have touched on, some of the provisions in this. I will bring Chris in on some of the details of how this operates in terms of that particular element of the system.

***Chris Jones*:** The phrase "special circumstances" reflects the position the UK is in. Formerly, as a member state, we were co-operating under the PNR directive. As a third country, the EU is now required to treat us as a third country and therefore the CJEU opinion in respect of the EU-Canada agreement applies to the UK in this respect. At the moment, our technical systems are not set up in a way that can fully comply with the requirements in the agreement.

The special circumstances allow us a period of three years to enable us to bring our border systems fully in line with those new requirements. In the interim period, there are these additional specific data protection safeguards in the agreement that will apply.

Lord Kirkhope of Harrogate: That answers my question. The special circumstances are simply a way of identifying the fact that we are a third country and therefore the arrangements in place have to reflect the third-country status. That clears that one up. How long will the interim period the Minister referred to just a moment ago be?

Kevin Foster: The interim period is three years, is it not? I see Chris nodding.

Lord Kirkhope of Harrogate: Can I just follow on from that again? We talked about a moving feast. PNR is not going to stand still. The EU will no doubt be negotiating a number of other agreements with other countries. The United States one is in place, although disputed in some ways. The Canada one is in place, but obviously the ECJ has decreed on that.

Regardless of how we want to be related to the EU's legislative or legal systems, we are going to see changes taking place in the EU when reviews happen and considerations are made. In the running of PNR, things are going to come to light. How are we going to deal with the legislative amendments that are going to take place in the EU, as they undoubtedly will? I know we are very keen to make sure we do not reflect or follow precisely EU things, but can I just get this quite right? In order for PNR to work, it has to work in a way that has unanimity, common approaches, common technical things and so on. How are we going to monitor and deal with any EU legislative amendments that might take place as we go on?

Kevin Foster: First, if you are talking about the Union having conversations and making agreements with third nations, particularly those of the scale of places like the United States, we would expect that it would be more of a discussion between two partners as to how that would work rather than simply the Union telling the United States what it feels the legislation should be. That is clearly not going to be a very successful arrangement.

As for ourselves, similar to Prüm and other areas, we would have a choice about whether to follow the EU standards. Of course, we could well be wanting the Union to move to a different or common standard ourselves. As an aside, look at all of the discussions currently going on around things such as public health information-sharing. A year ago, that would not have been something we would have thought particularly relevant in international aviation. Now, of course, it is becoming a critical part of how international aviation is going to be functioning for most of the rest of this year.

I certainly absolutely accept the point that the standards we wish to share and the basis we wish to share them on will change. Of course, the technology and the technical side of what we wish to share will change as well. My understanding, again, is that it would be for us to consider what we wish to do if the Union wished to make different standards or to use information in different ways, if they were signing up to agreements with third parties that may see our information shared further on. Again, we would have to consider carefully which partners internationally we would be happy for that to happen with. If the Union were to decide to make an agreement to share information with some countries in the world, I suspect we would not be as happy that it was deciding to do that.

Certainly, my understanding is that we would not be obliged. Of course, as partners, we would wish to have a constructive conversation about how this system works and evolves in the mutual interest of all involved. I will bring Chris in on some of the more technical areas and how we would look to resolve those.

***Chris Jones*:** In the first instance, it is for the EU itself to decide how it wants to regulate passenger name record information. It is certainly possible that forthcoming CJEU judgments will apply to the EU, not to the EU and third countries. It may be that results in some changes within the EU. That does not change the legal agreement between the UK and the EU in respect of us being able to access EU-based airlines' PNR data.

We will need to see what happens with EU developments. If there are issues we need to discuss, the specialised committee, under this agreement, is the appropriate place to consider that. As the Minister said, this agreement leaves the UK free to enter into PNR agreements with other third countries. That is something we would intend to do.

Lord Kirkhope of Harrogate: I have one final point on this. I am certainly encouraged by what you are saying. It is quite clear, therefore, that the UK will defend its arrangements on PNR even if they are legally challenged. I am assuming that. Because of what the Minister has just said about changes that might be to the benefit of everybody—he talked about public health information and so on—I am assuming, therefore, that the relationship with the EU is intended to be a good one, as I hope it is, and that there is a vehicle for that interchange of practice between both the UK and the EU on this subject.

Kevin Foster: Yes, certainly. From us there is a wish to work constructively as an international partner in securing aviation security. It is in our own interest to receive some of this information, as it is for the European Union to receive ours. We would look to continue to work in a constructive way and, yes, we would defend these arrangements against potential legal challenge as well. I hope Lord Kirkhope will understand why I would not want to get into speculating on what may result in a legal challenge to these arrangements, but certainly we would look to defend them. Similarly, we would expect the European Commission and others to want to look to defend them as well, given that this is a mutually beneficial arrangement and agreement.

We remain open to conversations about how we can bring more international partners into arrangements, either bilaterally with us or through ourselves, the European Union and third parties co-operating, providing that they meet our usual standards, as people would expect, and the caveats people would expect us to put down around ensuring that the partners we are dealing with are those who respect the rule of law and have good standards on data protection and how the data will be used in their domestic setting.

The Chair: We will come back to some more detailed questions on data later on. We now have a series of questions on surrender.

Q43 **Lord Anderson of Ipswich:** Good morning, Minister. May I start by welcoming the surrender arrangements that the Government have negotiated under Title VII? Whatever we thought of the European arrest warrant, we can all agree that the new arrangements are infinitely preferable to the problems we would have been looking at under no deal.

There are three exceptions or opt-outs built into Title VII. I would like to ask you, in respect of each of those areas, whether the UK relies on the available exceptions and whether we are aware of any EU member states that are relying or propose to rely on them. This is fairly technical stuff, so I will take the three in turn. I will give you or Chris Jones, if you prefer, a chance to answer each question before going on to the next.

The first area is double criminality. Surrender is subject to the condition that the acts for which the arrest warrant is issued constitute an offence under the law of the executing state, but any state is free, under Article 79(4), not to apply the condition of double criminality in relation to a fairly long list of offences, which would obviously widen the range of cases in which surrender is possible. Will we be exercising that option, or have we exercised it? Do you know of any other member states that will be exercising that option? If so, which are they?

Kevin Foster: I will bring Chris in in a moment. Our general position is that we would not look to extradite someone from this jurisdiction for a matter that is not an offence in this jurisdiction, for very obvious reasons. There are various nuanced offences across EU member states where that would apply, where there are things

that are not matters of criminality here in the UK. I will bring Chris in to cover some of the areas and some of the others we have seen.

***Chris Jones*:** The UK intends to apply the principle of dual criminality, as the Minister has said. That is an important principle for us on judicial co-operation; it is important that we respect it.

In relation to the list of offences, in general terms those offences will pass the dual-criminality test anyway, I would expect, for the UK and EU member states. Simply because the UK or a member state has not exercised the ability to waive dual criminality in respect of those offences does not mean that extradition cannot take place between the UK and EU member states in respect of those offences.

That is the position for the UK. We are still waiting for notifications from the EU. We expect to get those by the end of the month. We will have to wait to see how many member states, if any, decide to exercise the ability to waive dual criminality in respect of that list of offences included in the agreement.

Lord Anderson of Ipswich: Will there be a way of letting the Committee know as soon as you know which, if any, states are on that list?

***Chris Jones*:** Subject to the Minister's agreement, I am sure we can provide the Committee with the notifications once they are formally transmitted to the UK. As I say, I would expect us to have a complete set by the beginning of March.

Kevin Foster: I am very happy to write to you formally and place a copy of my letter in the Lords Library as well for more general reference.

Lord Anderson of Ipswich: That is excellent. A quick decision—that is what we like. Can I go on to the second area, political offences? In principle, the fact an offence is political is not a reason for refuting the execution of an arrest warrant, but Article 82 allows either the UK or an EU member state to apply a political offence exception, save in relation to terrorism. Will we be applying a political offence exception? Again, are you aware of any other member state that is minded to do so? If so, which?

Kevin Foster: Traditionally, an important part of our extradition process has certainly always been that we will not remove people from this jurisdiction if we are satisfied it is a political charge that has been brought. In the context of the 27 EU member states, that is not usually an issue, given the very strong independence of their criminal justice systems and the quality of the jurisprudence they have. It is more likely to be an issue elsewhere. I will not get into listing the names, but I am sure we can all think of countries where we may not have confidence that every extradition request would necessarily comply with our own standards and where those requests may well be politically motivated.

That is from the policy point of view. Where we are satisfied that something is politically motivated, we would not look to remove someone from this jurisdiction. I

will bring Chris in on some of the details of how that would operate in the context of this agreement.

***Chris Jones*:** As has rightly been pointed out, there is an exception for terrorism. Otherwise, we would have the ability under this agreement to refuse to extradite where the courts considered it to be a political offence. That is a position the UK is taking under this agreement.

Lord Anderson of Ipswich: The third and final—you will be glad to hear—area is the nationality exception. We know there are some EU countries, including Germany and Slovenia, which, save in the context of the European arrest warrant, will not extradite their own nationals. Article 83 gives any state the power not to surrender its own nationals or to do so under specified conditions. I assume we will not be using that power ourselves, but please confirm. Can you tell us which EU states are minded to apply the nationality exception and, in each case, whether they will refuse to surrender their nationals altogether or whether they are imposing conditions on that surrender? If so, what are those conditions? I appreciate that you may not know finally until the end of the month, but national practices are pretty well established in this area. It may be that you have a pretty good idea.

Kevin Foster: We do not intend to apply a bar on extraditing our nationals other than, for example, the cases I have just cited, where it would not be an offence within the jurisdiction of the United Kingdom or where we were satisfied there was a political motivation. That would apply to anyone, not just a UK national, who is here.

On the countries concerned, Germany, Austria and Slovenia refused to extradite their nationals during the transition period due to constitutional bars. We would probably expect them to maintain that position. Other member states have until 28 February to notify that they will refuse to extradite their nationals or do so only under certain conditions. Again, once that period has expired, I am more than happy to write to the Committee, and place a copy of the letter in the Lords Library, setting out where we have received those notifications.

We are satisfied that we have looked to secure a path to justice. Certainly, the nations concerned are co-operative partners. Countries such as Germany do not want to see people escaping justice for serious crimes due to this constitutional bar. There could, for example, be arrangements for surrender for trial, but the sentence is completed in their own country or they are prosecuted within their own country. This applies only to their own nationals. For others who are in their custody, these constitutional bars do not apply.

***Chris Jones*:** The Minister has covered it very well. I will just add one further point. This agreement goes beyond what was in the surrender agreements between Norway and Iceland and the EU. It puts an onus on the member state to refer the case to its own prosecuting authorities and provides for conditional surrender to enable a country to expedite its own nationals to the UK to stand trial and then be

returned to that country to serve their sentence. There are additional provisions above and beyond what you see in the EU precedents in this area.

Lord Anderson of Ipswich: Thank you for those very clear answers. We will look forward to hearing more at the end of the month.

The Chair: Yes, any more details you can give us by early March would obviously be very helpful in making sure our report is as up to date and complete as possible.

Q44 **Lord Polak:** Good morning, Minister. I take the point you made at the start, which was that it is early days to judge success or otherwise. Quite interestingly, during our short inquiry a contrasting tone from witnesses has manifested itself. Academics have generally been "glass half-empty" but, thankfully, the operational practitioners are "glass half-full". We should all be proud of the practical and operational response we have seen so far. That was described particularly well to our Committee by Assistant Chief Constable Peter Ayling. It seems that things, on a practical and operational level, are going reasonably well. Of course, we are here to try to pick out problems for you to then deal with.

During the inquiry, we have also heard that the loss of real-time data on SIS II has been significant and will have an impact on the replacement extradition arrangements in Title VII going forward. The I-24/7 system has been put forward as the contingency plan. What are the Government doing to encourage the EU 27 to engage with this system and make it work? Where will that be done most? What encouragement can we give? How are we encouraging the EU to play their part?

Kevin Foster: As you said, it is encouraging to read the evidence that was given to the Committee on 26 January from some of the operational partners around how the new systems are working. To be clear, the UK Government were prepared to negotiate a position on SIS II, but the European Commission was clear that legally it could not do that. If it believes it does not have the legal powers to agree it, there is not really much in the way of a discussion you can then continue to have.

On the new system, Interpol connects its membership via the secure communication system called I-24/7, which you just referred to. It is a way of accessing database systems in real time. We have been engaging with member states to encourage them to put appropriate information on to this system and to use it as a system we can share with. It is a system we used up to 2015, before the advent of SIS II, for the sharing of this information, as we do with many other countries.

Noble Lords will recall the Bill that went through recently on extradition and provisional arrest. Because of the improvements in data-sharing between us and trusted international partners such as Canada, Australia, New Zealand and the United States, police officers on the front line in the UK know if someone is wanted for a serious crime in some of those partner countries, and we have now changed the law to make it possible to detain someone immediately if we happen to encounter them here in the United Kingdom.

It is a fairly effective system; it allows people to be detained for serious offences, not just those suspected of being committed in the European Union but in some of our key international partners. Perhaps I can turn to Chris to talk about how we are doing that from an operational point of view. You have hit the nail on the head: it really comes down to the operational partners talking to each other, building confidence and knowing that this is a system we can use. We are very happy to make sure that European partners have the information that will help keep their citizens safe by us using it as a sharing portal with them.

***Chris Jones*:** There are around 100 million lost or stolen documents now on the Interpol database, which we have access to. As the Minister has said, we now use the Interpol red notice and diffusion systems for wanted persons for extradition.

Our broad assessment—again, this is quite difficult to quantify—is that the number of Interpol red notices and diffusions we are seeing since the end of the transition period is broadly similar to the number of wanted alerts we would have seen under SIS II. We have confidence that the UK and EU member states are using the Interpol red notice system for extradition in the same way as they did prior to the UK connecting to SIS II in 2015.

Above and beyond that, the UK has access overall to around 150,000 Interpol person circulations. Clearly, if you compare the stats with the SIS II system, a lot of the data on the SIS II system was not available to the UK anyway, because it was only for Schengen countries. It was immigration data. Some of that data was in relation to EU missing persons, where there was no prospect of those individuals coming to the UK.

The numbers are different with Interpol, but particularly in relation to extradition we are confident that the Interpol system is available to front-line police officers and to the border. Indeed, when an Interpol circulation is received by the NCA, it can be put on those front-line systems in a matter of hours. I believe that is the evidence the Committee has had before on this issue.

The Chair: One of the concerns some of us had was that we would need EU partners to, as it were, double-key data into SIS II and I-24/7. Minister, I think I hear from you and Chris Jones that they are doing that. I hope we would be confident that they will continue to do that, because presumably it involves some duplication for EU member states above and beyond what they were doing before.

Kevin Foster: Yes. As I say, our position was that we were happy to try to negotiate continuing to use SIS II. There was an absolute block put on that. To be fair to the Commission, it said it did not believe it had the legal vires to negotiate it with a third party.

There is a general advantage to information being placed on the Interpol systems. It is not just us who access those; some of our core international partners—safe, democratic countries such as Canada, Australia and New Zealand—access those. Again, there are good information-sharing arrangements between stable and safe

democracies with a good rule of law. We would always encourage EU member states to take advantage of that ability.

Lord Rowlands: I wonder, Minister, whether I can pursue a few more details about the European arrest warrant situation. Of course, there are quite a large number of arrest warrants being carried over. How many arrest warrants have been issued by the UK and the EU 27 under the new arrangements? Which EU countries and states have engaged in the new process?

Kevin Foster: It is probably very early days to make a firm overall assessment, given the numbers on the system that are carry-overs from the European arrest warrant process. Effectively, any EAW that was outstanding becomes a new warrant, so to speak, under the new system on 1 January. If we tried to do figures now, we would perhaps get into some things that are flagrantly carry-overs rather than necessarily new warrants going out and being issued. To be absolutely clear, any EAWs issued before the end of the transition period are valid for arrest in the UK immediately. No one should think the transfer gives them a way out of liability.

It will take a little time to get a firm picture of exactly how many are being issued. It is in the hands of individual prosecutors and the courts of EU member states. Similarly, Covid is having an impact on this process as well. I will bring Chris in on the operational details about where we are at the moment in these early days.

***Chris Jones*:** I do not have that much to add. We have seen arrests in EU member states under this new agreement, but, as the Minister says, the bulk of the warrants are former European arrest warrants that carry over as opposed to new warrants that have been issued in the last few weeks. It really is very early days yet to make a firm assessment. As the Minister said, these decisions are very much in the hands of individual prosecutors and individual courts in EU member states, as indeed they are on the UK side.

Lord Rowlands: I am trying to get a feel for whether the new arrangements have the confidence of some of the European Union states. For example, how do the volumes compare with this time last year?

Kevin Foster: Again, it would be difficult to do a direct comparison. It is a bit like with other things at the border and everything, given what is going on at the moment in a Covid situation versus what may have been going on in a non-Covid situation. Crime has been affected, as has everything else, particularly with the pattern of people moving around a lot less at the moment. People are less likely to be engaging in offences or, for example, border monitoring is much tougher. It is much harder to leave a country to try to evade justice than it may have been a year or two ago.

At the moment we feel the system is working reasonably well. As we say, arrests are being made under warrants that are outstanding in member states and here in the United Kingdom. It will probably be a couple more months before we can really start getting into patterns and ensuring there is not a Covid anomaly or an anomaly

around transport and travel, simply because, if people generally cannot travel, criminals are finding it much harder to travel to try to escape justice. Given the questioning and the other stuff, you stand out much more in a small group getting on a plane.

Lord Rowlands: A large number historically have been Polish applications. There was this unprecedented Dutch court ruling on a Polish European arrest warrant last week which was rejected on the grounds that there could not be a fair trial because judicial independence has been undermined there. Would, for example, Westminster Magistrates' Court be able to take that sort of issue into account?

Kevin Foster: I would not want to start straying into the territory of what the judiciary decides is an appropriate thing to take into account when judging a warrant. This still is a judicial process rather than a political one in the way the European arrest warrant was. Again, we have touched on some of the issues that a court can take into account in deciding whether a warrant is valid. Is it an offence in the United Kingdom? Is it a political charge that has been put forward? Again, there are elements that a court could certainly take into account. I would not want to get into a debate about exactly what they may or may not do in the realms of judicial independence.

Lord Rowlands: This was a judicial decision by a Dutch court. As I understand it, it is almost unprecedented that this sort of arrest warrant should be rejected on these grounds. Is it now possible or probable that such a case will be made to Westminster magistrates?

Kevin Foster: Any case can be made to a magistrate; what the judge may make of the case is the core point. Certainly, a judge will be able to consider a range of factors: UK human rights obligations; whether something is an offence here in the United Kingdom; whether it is a political charge—if there has been an implication of independence being compromised and therefore something not being a sound warrant based on the principles of justice we would expect here. There is a separation between me, as a Home Office Minister, and our prosecuting authorities. It is right that separation exists.

I would not want to get too drawn into the details of the specific Dutch case. I have not had the chance to read the judgment from the judge there, but certainly our courts would be able to deal with any warrant if they felt it was politically motivated or if they felt the basic standards of jurisprudence had not been applied.

Generally, though, the European Union itself of course has fairly high standards in this area that it expects its members to follow, because those are the foundations of the co-operation it has. We have confidence, generally, in the independence and the ability of criminal justice systems across the European Union to work in a fair and impartial manner.

Lord Rowlands: With respect, both the European Commission and, as I understand it, the UK Government have raised very serious questions over the judicial

independence of both Poland and Hungary.

Kevin Foster: I do not want to get drawn off into things, but, again, the European Union has high standards and hence we have these co-operation agreements between us. Judges are of course free to look at the facts of each individual case to satisfy themselves that the request for extradition is appropriate under our law and under the standards and rights that people have in this country and that we apply. If they were concerned about a warrant, they would almost certainly have the ability to give the appropriate judgment. Again, that would rightly be for a judge to assess independently of any view I might give as a Home Office Minister.

Lord Rowlands: Finally, how do the Government intend to encourage the EU 27 to prioritise warrants issued under these new arrangements? Are we taking a proactive approach to trying to encourage full engagement in the new process?

Kevin Foster: Absolutely, yes. We are engaging with European Governments around this process and our wish to ensure that those who are due to answer for potential offences or who have a case to answer here in the United Kingdom are returned, and similarly the other way around, of course; we do not want the UK to become a place where a European criminal believes they can flee in order to avoid justice. I am very clear that I have every confidence in, for example, Germany's criminal justice system. If you have a case to answer in Germany, you should go there and answer it before a court. We are certainly very clear that we are willing and ready, as a co-operative partner, to look at ensuring that people answer any case that is duly levied against them by independent police and prosecutors.

We encourage that not just via the Home Office in terms of direct engagement with interior ministries but via the FCDO as well, which is very keen to make very clear to European member states that we remain a ready and willing partner in ensuring that criminals cannot use borders to escape justice.

Lord Rowlands: I find that reassuring. Thank you.

Q45 **Lord Arbuthnot of Edrom:** This is all very reassuring. If I may say so, you are giving no impression at all that this is outside your normal area of expertise.

The agreement expressly states that nothing in it will be construed as conferring rights or imposing obligations on purpose. Can you talk us through, please, the purpose of including in Title VII clauses on proportionality and rights? I am sure there is a purpose, but what is it?

Kevin Foster: If we are proposing to remove someone from the UK and take them to another part of the European Union, we would expect to do that on a proportionate basis; we would not do it if it was disproportionate to do so. Our behaviour should be similar to how we would expect modern law-abiding countries to operate their criminal justice systems. That is the overarching principle that is there, and that is a shared objective between us and the European Union. Why would it not be? It is exactly the same objective we have when we share information with long-time

allies such as Canada, Australia and New Zealand in this space. I will bring in Chris briefly to talk about some of the specifics of how we see that operating.

***Chris Jones*:** This proportionality principle in the surrender part of the agreement is not in the European arrest warrant legal text and was not in the agreements between Norway and Iceland and the EU. It reflects the law in the UK and the practice of our courts and prosecutors in taking into account the importance of, first of all, making sure that people are not extradited for trivial offences—there is a proportionality test applied there—and also to avoid situations where an individual might be requested for extradition where the trial is simply not ready in an EU member state, which might result in an individual having very long periods of pre-trial detention when the trial is not prepared in advance.

This agreement enables the courts to take those factors into account. They should be taken into account by the issuing member state, but the executing state and the executing court are able to look at those factors in determining whether or not to execute the request.

Lord Arbuthnot of Edrom: It does not allow a person a right; it gives the court the power to take something into account. Is that correct?

***Chris Jones*:** Yes, that is correct.

Kevin Foster: That is my understanding.

Q46 **The Chair:** Minister, could we move on to the exchange of criminal records and the EU's ECRIS system? We understood from previous evidence that the UK has done well to retain efficient rapid access to the information on the ECRIS database not in exactly the same way but using the same infrastructure. We also understand that that arrangement will not cover criminal records on third-country nationals. I wonder whether that represents a reduction in the capability that UK law enforcement had as an EU member state. If so, how can we make up that gap?

Kevin Foster: My understanding at the moment is that ECRIS is working as a mechanism in almost exactly the same way as it did before the end of the transition period. We receive data on average after about six days from when our request is made. As I say, it seems to be working fairly well as it goes on. To touch on the third-country nationals point, I will bring Chris in to cover that specific point. Overall, it is working in a very similar way. It is welcome that we got that agreement.

The Chair: That is very good news, of course, because it is so important for law enforcement. We would be very interested to hear about third-country nationals, please.

***Chris Jones*:** The scope of the trade and co-operation agreement is the same scope as the ECRIS framework decision when the UK was a member state. ECRIS is used as a technical system to be able to test criminal records of EU member states' nationalities. If you have a French national and you go to "France" under the ECRIS

system, the ECRIS system, as it is currently constituted, does not include third-country national criminal records as a technical infrastructure. Of course, we would still be able to make requests for criminal records data in relation to third-country nationals, but the ECRIS framework, as currently constituted, does not cover that. The EU itself is looking at a third-country nationals' system in the medium term, but that is not what ECRIS does today.

The Chair: If we wanted criminal records data on a third-country national in an EU member state, how would we go about getting it? Would it be by bilateral approaches?

***Chris Jones*:** Yes. The technical system is designed for EU member states and nationals to test against, but we could make bilateral requests for third-country national criminal records data. The framework is essentially very similar, if not to a large extent identical, to the framework that we operated as an EU member state under ECRIS. The technical capability is the same technical capability that we had as an EU member state.

The Chair: We return to the data adequacy issue with Baroness Primarolo.

Q47 **Baroness Primarolo:** Good morning, Minister. I wanted to ask a few questions around data adequacy. There is speculation in the media that data adequacy will be granted to the UK by the end of the week. I wondered whether you might be able to add anything to inform the Committee, or whether you could explain to us, if that data adequacy agreement is not forthcoming, what the impact will be on the law enforcement arrangements in Part 3.

Kevin Foster: It is always interesting to read in the papers what may or may not be happening. I did find it interesting, in preparation for this Committee, to read the article being referred to, which speculates that there may be a draft decision. As you will appreciate, the Government will wait until we have heard a formal decision from the European Commission on data adequacy.

The engagement so far has been very positive and constructive. This has been very much dealt with as a technical matter. This has not been caught up in some of the other debates that may have been going on around negotiations. We are confident that we will receive a positive decision; we are hopeful of receiving it fairly soon. Certainly, if we receive it in the time before your report is due, I will add that to my list of things to put in my growing letter to the Committee after this, certainly to keep you advised. I suspect you might be able to read it in the media as well once the decision has actually been made, not just when people are thinking of making decisions.

We are confident, but let us say it does not go that way. Part 3 of the TCA, which deals with law enforcement co-operation, is not innately bound up with whether we get an adequacy decision. There is still an ability to operate those provisions without that determination having been made. Although we do not expect it to be a refusal, we could still operate the provisions without it, given that there are a

number of mechanisms for doing so; for example, with appropriate safeguards. I will briefly bring Chris in about what that would mean in practice. As I say, we are confident and hopeful that we can get to a place, given the unique position we start from of having been a member state.

***Chris Jones*:** As the Minister said, the agreement itself, in respect of law enforcement and criminal justice, is not dependent upon the existence of an adequacy decision. The wider agreement has the so-called bridging provision, which applies the whole of the trade and co-operation agreement, to cover personal data for any purpose that may be exchanged under the agreements. That covers both the GDPR adequacy decision and a law enforcement directive adequacy decision. That is a bridging mechanism. It is four months initially, with an ability to extend to six months.

In respect of law enforcement and criminal justice specifically, the agreement provides some high-level data protection principles up front, in the section dealing with law enforcement. Those principles are drawn from conventions such as the Council of Europe convention 108. Those principles are key underpinnings for data protection for law enforcement and criminal justice co-operation. They are supplemented in the individual capabilities covered by the agreements, with specific data protection rules. Whether that is on Prüm, for DNA and fingerprint exchange, PNR or some of the other areas, there are specific data protection provisions.

The agreement itself has strong data protection provisions within it. In parallel, as the Minister has said, the UK is of course seeking and hopes to secure an adequacy decision, both under the GDPR and the law enforcement directive. An adequacy decision under the law enforcement directive would be the first one the EU has made. There are no other third countries that currently have a law enforcement adequacy decision. So, that would be an important step. That is relevant for providing confidence in co-operation between the UK and the EU, but it is not a legal prerequisite of co-operation under this agreement.

Baroness Primarolo: I am grateful for the Minister offering a letter, because it would be very relevant should a decision be made. It would also be very helpful to our inquiry if that letter covered what the review period will be—will it be four years?—how vigilant it will be and how that operation will continue on data adequacy. I am grateful to Chris for the additional points he has added.

There is this tricky phrase, if I can paraphrase it: the data adequacy decision is not irrelevant but it is separate. It is trying to understand the interaction with Part 3. From what you have said, every effort has been made to insulate Part 3 of the TCA from the risks that are inherent in the GDPR and the data adequacy process. That clearly raises the question, Minister, of why the agreement includes a provision linking suspension of Part 3 to the withdrawal of the data adequacy decision. That is in Article LAW.OTHER.137. We cannot have it both ways. It is trying to work out how it is linked and how it will be taken forward. Could you explain that to us?

Kevin Foster: I will bring Chris in on the operational side, but it would be, for example, if an assessment concluded we were some distance from the standards that would be expected to be applied, but that is certainly not the impression we are getting of where the Commission is at the moment. Again, it is in both sides' interests to protect the provisions under Part 3, given they keep European citizens and our citizens safe, in terms of this information-sharing. That would be my overall understanding of why. Similarly, it could be the other way around if we discovered our information and intelligence was being used in a wholly inappropriate way. That is my overall understanding.

Chris Jones**:** That is correct. The agreement provides an ability to suspend co-operation where there are serious and systemic concerns about data protection. That was something we covered at the beginning of this session. That is the test that needs to be applied by either side. The UK may have concerns about serious and systemic data protection breaches by the EU, or vice versa. That is the legal test under this agreement that needs to be applied.

It may be that, if those concerns exist, that has also led to an adequacy decision on either side, because the UK currently considers the EU to be adequate on a transitional basis. Either side may consider, in the event that there are serious and systemic data protection concerns, that it wants to withdraw adequacy. The adequacy process and decision is a separate process and decision from the ability to suspend co-operation under this agreement, where the legal test is solely that there are serious and systemic data protection concerns.

Baroness Primarolo: I am talking about going forward, not just in the here and now, because this needs to stay in place for Part 3 to operate. Where there was a legal challenge in the Court of Justice of the European Union to the award of data adequacy to the UK, or where there is a withdrawal of the adequacy by the Commission because of a serious and systemic deficiency within the UK, what does that mean? The court's judgment and the ongoing adequacy process can fundamentally affect, it would appear, the operation of Part 3 of the agreement. Is that not the case?

Kevin Foster: Clearly, if we were found to have serious and systemic deficiencies in our data-handling, that would obviously have implications for the handling of and exchange of information with the United Kingdom, in the same way as if we found there were serious and systemic deficiencies in the European Union or within individual member states around handling. Although we might be sharing agreements on a Europe-wide basis, quite a lot of this comes down to how individual member states execute this particular area, given that most criminal justice is a nation-state matter, not a European matter, particularly in terms of criminal offences and investigation authorities.

If we got to the stage where our data-handling was found to have serious deficiencies, first, I suspect that would raise some quite immense questions about our own criminal justice system. Secondly, it would probably be an issue that had

been raised a time before. As I say, one reason this is quite effective is that it allows concerns to be raised via an adequacy process without the whole system being suspended or removed, unless, as touched on, there are serious and systemic problems. This is not one breach.

I do not want to get into speculating about what future legal challenges there could be from which party in the ECJ, as we could be here all day, but it is quite a high bar to suspend, for obvious reasons. This provision keeps European and UK citizens safe by sharing information. There should be a high bar before we would consider suspending it one way, or the European Union would consider suspending it the other. Again, that would be if there were serious and systemic breaches. I can certainly imagine Members of this Committee would be very quickly holding the Government to account if we were having serious and systemic problems with keeping data safe in our criminal justice system.

Baroness Primarolo: Indeed, Minister. Finally, going forward, assuming a data adequacy decision is forthcoming, as you hope, and there are periodic reviews by the Commission to make sure we are still in line with them in future years, does that mean that the UK will continue to follow the same data protection standards as the EU might develop in the future, in order to protect Part 3 of the TCA?

Kevin Foster: As we have touched on before, we are not obliged to replicate European law. The UK has had a long history of good data protection standards in domestic law as well as adopting European standards. We would expect it to be a continuing process. For example, as law and systems change and as technology evolves, we may well look to increase our own domestic standards, and therefore need to have an engagement with the European Union about its law-making process, ensuring that our standards are mutually compatible.

There would need to be a constructive discussion. Given the type of information we are talking about, there will always need to be a very high standard of protection around it, both on the legal side and in the technical operation of this information, given that in many cases we will be talking about ongoing investigations, crimes and people who are wanted; we generally do not want that information to enter the public domain because it would undermine the whole objective. There will need to be an ongoing engagement from both sides as we look to change our standards and change the law, as we have done in the past in the UK.

Baroness Primarolo: Thank you very much, Minister. I look forward to a positive judgment from the Commission, and I look forward to your detailed letter to the Committee so that we can adequately reflect the correct position with regard to data, going forward.

The Chair: It is a vital area, of course, for law enforcement, as well as other parts of the TCA. The last section—thank you for your patience, Minister—looks more towards the future, and then one or two Members had a couple of extra-time questions if you had a few more minutes beyond that.

Q48 **Lord Dholakia:** Good morning, Minister. The wider agreement includes references to supplementing agreements. What plans, if any, do the Government have to supplement Part 3 on law enforcement with the EU 27?

Kevin Foster: I presume you mean by the ability to add additional bases for co-operation. We are always open to discussions with friendly neighbouring states about how we can work together. I touched earlier on how we routinely share information with key allies such as Canada, Australia and New Zealand, where, via Interpol, we can now make arrests on the basis of serious crimes here in the UK without having to get specific extradition warrants, having encountered them. We are certainly open to more discussions about where we can look to co-operate, particularly as we see crime changing very much as a result of the pandemic. This provides us a legal basis for further co-operation between ourselves and the EU if it is in our mutual interest to do so.

Chris, I will bring you in on this point if there are any particular technical areas. That is the overarching principle of why it is there. A lot of this will be about individual member states and police forces being able to talk to each other.

***Chris Jones*:** In the first instance, we would still have to conclude some detailed technical working arrangements between the UK, Europol and Eurojust. That is the live negotiation that we are hoping to conclude shortly.

Going forward, we will want to look closely at how this agreement is working in practice. It may be that with particular member states we want to supplement the agreement with MoUs or things to sort out particular issues that may arise bilaterally. We are open to that.

As the Minister said, in our longer-term discussions with the EU, we are open to other ways to strengthen the co-operation between the UK and the EU. There is a specific provision in the agreement that enables data exchange bilaterally between the UK and EU member states for law enforcement purposes. That also includes the ability to exchange spontaneously alert data in respect of wanted persons, missing persons, et cetera. That is an area where we will be hoping to enhance co-operation bilaterally between the UK and EU member states in the medium term.

Q49 **Baroness Hamwee:** Good morning, Minister. We were talking about the future. As Lord Polak said, we have heard different views about how successful the agreement is going to be operationally. Your glass has different amounts of water in it, depending whether you are an academic or somebody on the front line, and that level goes up and down depending on which newspaper you are reading. More formally than through the press, what plans do the Government have to report to Parliament on their assessment of the operational effectiveness?

Kevin Foster: There are many ways that Parliament itself will look to hold the Government to account, as it should. Home Office Ministers will regularly be available for questions at Select Committees. We are in the early days as to how exactly we will have formal assessment of this on a regular basis, but it is certainly something we will consider as part of our plans for the future. We are certainly very

interested in what thoughts the Committee may have as to an appropriate engagement with Parliament. Clearly, there are some elements of this work that we do not want to give running commentaries on; for example, extradition arrangements that people are particularly interested in, or anything we may be talking to the European Union about trying to deal with. But by the same token, there is a very legitimate interest.

We would welcome the thoughts of the Committee, and Parliament more generally, about how it would wish us to engage. Certainly, we would see our reporting and updating as similar to how we did this in the past when we were part of these systems, and as a wider part of reporting on the effectiveness of the relationship we have agreed.

Baroness Hamwee: Speaking for myself—we have not discussed this as a Committee at all—I am wondering whether the Home Office might want to be proactive, rather than the usual arrangements that we are all accustomed to. Having some sort of timetable for the first report would help everybody—I do not want to say "both sides", because we all have the same interest in knowing that everything works—have the confidence that we are keeping our eyes on the ball in the way that all of us should.

Kevin Foster: I am very tempted to commit Minister Brokenshire to spend a lot of time doing things over the next year that I know he will be very grateful to me for. I would not want to say something off the top of my head about what might be an appropriate process for us to have, aside from all the usual processes of being—rightly—held to account by Parliament. We need to know the position with things such as adequacy and other areas. We have a good process where we can report back generally, as I have touched on, with things such as the warrants at the moment. It would be hard to give exact figures as to how it is working, given we are in early days, most are still carry-overs from European arrest warrants and we are in the time of Covid as well. I am tempted to say that next year some new changes to business visas could make it look we have had a huge success in travel, but that was because we had such restrictions today.

The procedures we would look at probably will be about how that then links into wider reporting to Parliament around the TCA overall. I am conscious there are some different considerations, but certainly we will be happy to look at things. I do not want to give something straight off the top of my head today as to exactly how we will do it, but once we have some good, solid management information coming out of the new process, and once we are perhaps in slightly in more normal times as opposed to where we are currently, it will be a good time to reflect on our process.

As you say, we want this to be co-operative and a positive agreement for both sides. As I touched on earlier, I do not want someone who is wanted for a serious crime, which we would recognise as a serious crime in this country, evading justice that they should be facing in a friendly European state because they have managed to run here. We all want to make sure and scrutinise that that is the case.

Baroness Hamwee: I did not expect you to commit the Government to anything off the top of your head, but I wanted to put the thought into your head about the desirability of having a proactive—I hate that word, actually—arrangement rather than leaving it to parliamentarians through committees or on the Floor of the House.

Kevin Foster: Once the Lords have been through its review of committees and the structure it wants to have, we can certainly then start an appropriate engagement about what the committees are and what the appropriate feeding points would be to make sure that we support and benefit you. It is also the other way round, as you have touched on: we will benefit from the thoughts of parliamentarians and your experience as well, particularly given some of the people on this call and their experience in this area over many years.

Baroness Hamwee: Indeed. Can I come back to SIS II and I-24/7, which we were discussing a few minutes ago? You were reassuring about how this will work in practice. It strikes me that there must be some quite big challenges and need for investment in technology for all of this, to make sure that data is readily available, both for the police and at the border, which obviously you will be particularly interested in. Can you talk about that? I have no idea what the scale of this might be and whether it will impinge on other spending by the Home Office.

Kevin Foster: There is quite a major transformation programme going on around borders, as we look towards things such as e-visas and electronic travel authorities, and even potentially looking towards things such as contactless travel systems when people arrive here in the UK.

On the border side of things, there is quite a large investment going on that will produce some very positive customer service improvements and remove the rather clunky. “If you have this passport, go to the left, to a machine; if you have this passport, go to the right”. All those sorts of things that we currently have at the airport are actually hugely resource-intensive; the most expensive element of that is the skilled and trained Border Force officer sat at the border. Investment in IT and better computer systems is not necessarily a cost. It can also release resource for much better use, certainly in terms of a security objective, than stamping people’s passports.

On Interpol and particularly the data-sharing arrangement, we are intending to invest in the upgrade to its systems under its I-CORE programme. That is already planned for and is something that we want to see happen. That gives benefits not just in this UK-EU context but more generally in our relationships with other friendly states on law enforcement matters. There are plans to invest in that.

We are domestically investing in a better real-time connection to Interpol. It might be useful to bring Chris in at this point, on some of the ways in which that will operate, where we are looking to improve things.

***Chris Jones*:** First of all, we have the technology in place today to enable the NCA to receive Interpol notices and diffusions and to put them on front-line police systems. That operates today, but in the longer term we are looking to develop a technical platform to enable co-operation between the UK and friendly third countries, so not just those in the EU but other third countries, potentially, to be able to exchange alert data in a real-time way, similar to the capability we had under SIS II. That is a longer-term programme.

In the short term, the focus is on trying to enhance that real-time connectivity to Interpol. That is something we are taking forward this year. We are hoping to get that in a good place by the end of the year.

Baroness Hamwee: You have answered my question about when—thank you for that. As of now and next week, what is the difference in the length of time for operational partners to get the information that they need? It was real-time information. Where have we lost it and when will it be reinserted? I am sure you want it to be well before the end of the year, unless you are talking about the end of the financial year.

***Chris Jones*:** Today we are in a position where, for the receipt of Interpol notices and diffusions, we are able to get those on to front-line policing systems within a matter of hours. That is operationally quick. It is not real-time but it is not far off real-time. We are looking, with Interpol, to see whether we can make that a more real-time system. That is something we are looking to do by the end of this calendar year.

In the longer term, we also want to look at that real-time alert exchange capability with third countries, whether it's EU member states or other third countries. That is a longer-term programme; we are in the early stages of that at the moment. The timescales are not real-time in the way that they were under SIS II, but once we receive an Interpol notice or diffusion, it is a matter of hours for the NCA to be able to get that to our front-line policing systems.

Lord Anderson of Ipswich: When Peter Ayling of the NPCC gave evidence to us on 26 January, he said about SIS II, "The reality is that it is a significant loss of capability in terms of access to data". You have talked us through the fact we used to get it in real time on police hand-held devices. There are ways of mitigating that. By way of mitigation, Mr Ayling mentioned an international law enforcement alert platform, which he said was in its very early stages but which aimed to make Interpol notices more accessible to UK policing. I am a "glass half-full" person, but I have found that attitude pretty severely tested in the past where new police data systems are concerned. I noticed that Mr Jones spoke ominously of the long term. Were you talking about I-LEAP—if that is what it is called? Can you give us an idea of the size of constructing this platform? Is it something within our capabilities on our own, or are we dependent on co-operation from Interpol? When is it scheduled for completion? Is it linked to the process we heard about from Steve Rodhouse at the NCA, which he said already enabled Interpol notices to be put on the PNC within a matter of hours? Is it going to do anything, not just for the police, but to connect

Interpol notices more effectively to the Border Force warnings index?

Kevin Foster: Certainly, we have seen the impact on front-line policing of Interpol notices and sharing of data. We actually ended up changing the law last year around provisional arrests, because front-line police officers now have that information in the palm of their hand about who is wanted internationally by partners whose criminal justice systems we respect. I will bring Chris in to speak on the more detailed elements of what the I-LEAP programme is looking to do.

Chris Jones**:** The technical platform I was talking about is I-LEAP, the law enforcement alerts platform. We are co-operating with Interpol. That work is under way to enable that connection to happen later this year, initially on a pilot basis, and then we will look to roll it out fully.

On other countries, whether they are European or other friendly third countries, that is something where it takes two to tango. We would want to find countries that are willing to engage with us in that, because they will obviously need to make technical adjustments on their side as well as the work that we would have to do. That is the work that we intend to do over the coming months.

The technical development of that system is at an early stage at the moment. In terms of a legal base for co-operation with EU member states, we do have a legal base in the trade and co-operation agreement in respect of the operational co-operation provisions I talked about earlier, which enables the bilateral exchange of law enforcement data, including for alert purposes. The legal base is there in the trade and co-operation agreement, but the technical capability would need co-operation bilaterally with individual member states. That is something we are keen to explore.

Lord Anderson of Ipswich: Just to be clear, we need the co-operation of other states not just to get them to input the data but to help us access it in real time. You were speaking about things happening this year. What was it that you were speaking about in the long term? I assume that would go beyond the scope of this year. Finally, could you say a word about Border Force? Is I-LEAP also intended to assist Border Force?

Chris Jones**:** This year the focus is on Interpol. We hope to start discussions bilaterally with countries that are interested in having this shared technical platform later this year as well, but obviously it will take some time to put in place the technical capabilities on both sides to enable that real-time exchange of alert data under the I-LEAP programme. That is something that is not for this year. It is something we would look to do in the longer term; by "the longer term" I mean over the next two or three years, not 10 years' time. It will be a longer-term piece of work than the immediate priority for us, which is to get the platform up and running with Interpol in the course of this year.

Lord Anderson of Ipswich: What about Border Force?

***Chris Jones*:** Sorry, yes. We would want to connect the alerts to Border Force as well as front-line policing systems.

The Chair: Minister and Chris, you have been very patient. Going back to our discussion on Prüm and PNR, as we discussed, if EU legislation evolves, we would have a choice as to whether we wanted to do something similar or diverge. If we did diverge that could have an impact in terms of access to the streams of information from those databases. What forum would we use to discuss that issue with the EU before coming to a decision? It could have quite far-reaching implications for our security if we did diverge and we lost access to Prüm or PNR. What role would you see for Parliament, giving Parliament an opportunity to have a say before a decision of that magnitude was taken?

Kevin Foster: Let us assume in this scenario that the European Union is considering changing its legislation in a way that then means a forthcoming evaluation will either fail or be failed. First, we would look to see whether we could resolve it at a technical level. That would be the first resort, if it was more about how the system operated rather than the fundamental principles. If we could not, the second part would be to go to the specialised committee. Ultimately, there would need to be a decision, for which Ministers would be accountable to Parliament, around the decision. There are so many options in this space. Would that mean a fundamental change in UK primary law or would that be a technical change that could be done via a very minor SI that is of no huge consequence? There are a range of options.

On how we would engage with Parliament, the European Commission will probably make its decision and assessment around adequacy public. The Government would then have to make very clear what their decision was about whether we kept this thing. I cannot see a scenario in which we would be able to do that without coming and making a Statement in Parliament. If not, I am almost certain Mr Speaker would make sure that I had every opportunity at the Dispatch Box to explain the Government's position in numerous UQs.

Again, it would depend on the nature and the scale of it. In most instances we would try to resolve things via the specialised committee. There would then have to be, ultimately, a government decision held to account by Parliament as to whether the change being suggested was so fundamental that we could not deal with it via a negotiated outcome or adequacy. Fundamentally, we have always had good standards of operating this system. There have not been issues there. I suspect it would probably relate to the European Union having a legal challenge that it was needing to resolve. I am loath to get into speculating on all the different scenarios there could be. There would then be gradations of how we would act. Certainly, if it was looking like we would lose access, I cannot see how a parliamentary process, at least with the Government accounting for their decision, could in any way be avoided, given the powers Parliament has.

The Chair: Thank you very much indeed, Minister. We have covered an awful lot of ground and taken up a lot of your time. Was there anything else that you wanted to

tell us before we close this meeting?

Kevin Foster: No. Thank you for a very useful session. We very much look forward to reading your report.

The Chair: Thank you very much, and thank you to Chris. We look forward to receiving a letter with whatever further information you have on the various points we have discussed, by as early in March as possible so that we can wrap up our report, which will come out before the end of March. That is the end of this session.