



Select Committee on the European Union

Security and Justice Sub-Committee

Corrected oral evidence: Progress of UK-EU future relationship negotiations

Tuesday 16 June 2020

10 am

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

Evidence Session No. 1

Heard in Public

Questions 1 – 22

Witnesses

I: The Rt Hon James Brokenshire MP, Minister of State for Security, Home Office; Lizzy Gummer, Head of International Criminality Unit, Europe and International Group, Home Office; Chris Jones, Director, Europe Directorate, 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

James Brokenshire MP, Lizzy Gummer and Chris Jones.

Q1 The Chair: Welcome to the first public evidence session of the Security and Justice Sub-Committee of the Lords EU Select Committee. We are delighted to have as our first witness James Brokenshire, Minister for Security in the Home Office. Welcome, Minister. You are accompanied by Lizzy Gummer, head of the International Criminality Unit at the Europe and International Group, and by Chris Jones, director of the Europe Directorate.

The meeting is being broadcast, as you know, and there will be a transcript. Each member of the Committee will be given the floor in turn to ask their questions. At the end, if there is time, we will have a period of supplementary questions to follow up issues that have not been covered.

Minister, our evidence session covers an aspect of the negotiations over our future relationship with the EU that has not had as much coverage in the press as the trade issues or fisheries but which is just as important because it concerns the safety and security of citizens across the UK and the EU.

Could I start by asking you broadly how confident you are that the broad outlines of an agreement on security and criminal justice co-operation can be achieved? In doing that, perhaps you can give us as much of an update as you can on the discussions between the Prime Minister and the Presidents of the Commission and the European Council yesterday.

James Brokenshire MP: Lord Ricketts and the Committee, thank you very much for the invitation to be your first witness to this new sub-committee. I welcome the chance to be able to give evidence to you this morning.

At the outset, I underline that the safety and security of our citizens is the Government's top priority. With that in mind, we continue to discuss with the EU future arrangements on law enforcement and criminal justice co-operation. To date, the negotiations have focused on clarifying our respective positions and explaining how these texts are the legal outworking of our principles and policies. The UK and the EU have, as you rightly pointed out, now agreed an intensified timetable for negotiation, and we look forward to making progress throughout July. While our future arrangements with the EU remain under discussion, it is right that we continue to drive preparedness as well. I am sure that we will come on to that during this session. I would say that our planning is mature on that side.

In terms of where the negotiations are, the Prime Minister met with the Presidents of the European institutions yesterday and we have an intensified round now in place. We should be optimistic about what can be achieved. We remain absolutely committed to seeking a balanced and reciprocal agreement with our European partners and allies for all the good reasons you outlined in your opening. Therefore, we should be optimistic as to what can be achieved.

The Chair: Could you be a bit more precise, if you can, about where we have got to

in these negotiations on security co-operation? Certainly to me, exactly what is going on has been a bit opaque. Are there areas that have now been agreed and can be put aside? If so, what are the crunch points, the sticking points, that we need to try to sort out in quite a short time between now and whenever the end of negotiations is?

James Brokenshire MP: I know that the European Union Select Committee took evidence from David Frost and the Chancellor of the Duchy of Lancaster very recently on the progress of negotiations, and they got into some of the detail of this.

On the specific issue of law enforcement and criminal justice, there is good convergence in what the UK and the EU are seeking to negotiate on operational capabilities. There is good understanding between the different parties on those issues.

The differences lie primarily in the so-called horizontal issues: the European Convention on Human Rights, dispute resolution, the role—or not, as we would say—of the European Court of Justice. It is these issues on which there is clear, outstanding difference and on which, therefore, I am sure discussions will continue. But we remain committed, as I say, to achieving a positive outcome. I think the intensified process through July will really focus this down and help drive momentum around this. We remain optimistic.

Q2 Lord Arbuthnot of Edrom: I do not want to sound negative, but if the negotiations of a broad security agreement were to fail, are you prepared to negotiate individual agreements on distinct areas of law enforcement collaboration?

James Brokenshire MP: We remain absolutely committed to seeking a balanced and reciprocal agreement. We should be optimistic. This should not, in my view, be beyond us to achieve. We are proposing, as you know, a single agreement on law enforcement and judicial co-operation. The EU is proposing as an alternative a single overarching agreement bringing everything together. We have been clear that the agreement should equip operational partners.

I do not want to prejudge. Obviously, there are alternatives and well-rehearsed plans if there is no agreement. Again, I am sure that during this session we can expose further details that are well rehearsed and have been well prepared. Bilateral contact between us and individual member states may be part of that, but we are very firmly focused on an agreement between all our EU partners. Therefore, that resolutely remains where our attention lies.

Lord Arbuthnot of Edrom: Good. If a broad outline of an agreement were not to be sealed by the end of July, would the UK walk away from the negotiation of these things? What would be the consequences of doing that?

James Brokenshire MP: We intend to work incredibly hard to reach an agreement. Obviously, the intensified process that was agreed at the high-level group helps, as

the Presidents and the Prime Minister said yesterday, to provide that level of intensification to drive the process forward. I see it in those terms.

I welcome the agreement that is in place and we will enter it in good faith. That is why we agreed the intensified process throughout July to assist in that. But if no further agreement is reached on law enforcement and criminal justice, as we have said before, there will be some mutual loss of capability for the UK and EU member states. I believe we can find a way through this with good will and with the intent that was on show yesterday. However, we have well-developed and well-rehearsed plans in place. I believe that we will continue to be a global leader on security and one of the safest countries in the world.

Q3 Lord Dholakia: Welcome, Minister. The EU's draft agreement includes a conditionality clause, but the UK does not include this particular clause. Why would the EU 27 co-operate with the UK across the wide spectrum of security-related matters if they cannot be sure that the rights of their citizens falling within the scope of the agreement will be respected?

James Brokenshire MP: I would slightly challenge the premise of that question. There is significant overlap in our objectives. We want to continue to protect human rights and ensure that our co-operation in this area is underpinned by high standards on human rights and data protection. That is incredibly important for me and for the UK, I believe, as it remains to the EU.

Our approach to these issues is based on precedent—the third-country agreements. In contrast, the EU is in effect seeking control over the UK's domestic implementation of the European Convention on Human Rights. We believe and see that point as clearly unacceptable. We have made clear, and it is included in one of our recitals in the UK legal text that we published, that it is appropriate for either party to be able to suspend or terminate co-operation under all or any part of the agreement, including where one party has concerns about the other party's level of human rights protection.

You will note that there is also a termination and suspension provision in our legal text to facilitate that. I believe that that would provide both parties with the necessary protections in this area in a way that respects each party's sovereign and autonomous legal order. That is the key point at issue here. Equally, there is a lot of overlap in our clear interests.

Lord Dholakia: Minister, may I take you to my supplementary question? What specific assurances can the UK offer the EU 27 to bridge the gap on rights and conditionality?

James Brokenshire MP: I would certainly point to the specific provisions of the agreement we have published, the draft negotiating document and the suspension and termination provisions I referred to in that. Beyond that, our human rights framework offers comprehensive, well-established and effective protections within a clear constitutional and legal system. We have been clear on this time and again:

we are committed to the European Convention on Human Rights. I am sure that you will have heard what the Chancellor of the Duchy of Lancaster said on this: that we have no intention of resiling, revoking or retreating from the ECHR. Our commitment to the ECHR is absolute. We do not need an agreement to underpin that. How we give effect to our long-standing human rights protection is a matter for us as a sovereign, autonomous country, just as it is for the EU and its member states. It is that approach that we are seeking to take.

The Chair: Thank you very much, Minister. Everyone is being very snappy so far. Baroness Hamwee has some important questions.

Q4 Baroness Hamwee: Good morning, Minister. I hope I will not be snappy in the other sense of the word.

James Brokenshire MP: I know that you will not be.

Baroness Hamwee: I do not know. I have the suspension and termination provisions of the negotiating document in front of me. I had not quite appreciated their significance until preparing for this meeting. My first question is: what do you envisage being grounds for the UK invoking the provision?

James Brokenshire MP: You will have heard during my evidence thus far that the approach we are taking in these negotiations is grounded in precedent on other third-country agreements. For example, the Schengen association agreements and the Prüm agreements all contain a no-fault termination provision under which either party can terminate the agreement on notice. It is intended to be open in that way, but as I have already indicated, I point back to the text in our recitals at the start: if a party has concerns about the level of protection of human rights, fundamental freedoms, democracy or the rule of law, obviously that could be a provision where this is operable. But it is not intended to be an exhaustive list.

In line with those precedents of EU third-country agreements, the agreement need not specify the reason for invoking any suspension or termination mechanism. As I say, we are seeking to base this on precedent and what we have seen before in third-party agreements, but in terms of drawing this out in the recital, page 2 of our draft negotiating agreement obviously specifically refers to any concerns either party may have over issues of human rights, fundamental freedoms, democracy or the rule of law.

Baroness Hamwee: The recitals do not have legal effect, obviously, although they are context. Three months' notice seems to be a very difficult provision to be on the receiving end of. This is a reciprocal arrangement, so just as much as it would allow us to give notice to the EU, it could give notice to us. Given the significance of the security and criminal justice arrangements that we just talked about, to be on the receiving end of three months' notice that all that will stop seems quite devastating.

James Brokenshire MP: In any agreement there is likely to be context to the use of such a clause. Indeed, on dispute resolution, as we make clear in our proposal, a political means to achieve that is again based on precedent. This is likely to have

had some detailed discussion, debate and consideration of the use of such a provision in the agreement. Therefore, the time period itself, once it is triggered, should be well understood, and equally, I am sure, would frame the context of discussions between the parties on any concerns and disputes that might arise, hence the reason for the dispute mechanisms that are also built into the agreement.

I would not say that it is in any way exceptional to have a termination provision of this kind, and it is precisely the details of arrangements that I am sure will be subject to continued discussion as part of the intensive phase we are now entering into.

Baroness Hamwee: It is not my place in the meeting to make comments, and I take what you say about it being unlikely that the EU will do a North Korea and launch a missile without talking to us first, but do you have any comments about whether three months is a rational period, given the importance of the issues?

James Brokenshire MP: We believe that the three-month period is a reasonable period of time for formal disengagement, but as I said, the context to this is that it will not have suddenly appeared. Consideration and discussion will have taken place before any formal mechanism that could be harnessed under the agreement. I am quite sure that this and other details will be subject to further discussion between the parties.

Q5 **Baroness Hamwee:** Thank you. I had better not take more time on that issue. You have talked about human rights and put all these responses in the context of our values and commitments as a country, and said that we have no intention of resiling from our human rights obligations, which obviously is good to hear. However, we keep hearing that we are not going to commit to the current system, and sovereignty seems to be the issue here. Am I right in thinking that this is really a political issue?

James Brokenshire MP: I know that you asked David Frost some questions around this when he appeared before the parent Committee. He sought to explain our approach. The role that we take on human rights is long-standing and should not be questioned in that way.

It comes back to the nature of the supervision. I know that the Chancellor of the Duchy of Lancaster has explored this before: that is, the EU in essence determining whether or not our own legislation is sufficient to give effect to the rights of citizens to ensure that their position under the ECHR is safeguarded. It is that sense of sovereignty; it is about precedent as well. In the third-country agreements, this has been resolved with other countries without the necessity of this quite unusual exceptional clause in relation to the ECHR.

As I say, we have sought to address and respond to concerns by virtue of the termination provisions that obviously we have just been debating and discussing. Therefore, I believe that there should be a way through this.

Baroness Hamwee: Do you as a Government have any plans, even if they are only

on the horizon, to make changes to our own legislation and domestic procedures?

James Brokenshire MP: As I say, our overriding commitments to the ECHR are long-standing and we have no plans to resile from them. We will always consider and keep under review ways in which we can enhance and improve domestic legislation. One can point to the ways in which that has been developed domestically over a number of years, but that should not in some way question our long-standing, determined commitment to the convention itself.

That is the distinction here: we are absolutely committed to that overarching context and perspective, but how we then apply that in domestic law should be for sovereign states, in the same way that it would not be appropriate for us to say to another EU member state, “Actually, in order to comply on a reciprocal basis, we should have some supervision over the way in which you do that”. There is that sense of precedent and, yes, sovereignty between individual states.

Baroness Hamwee: Can I ask one more question, Chair?

The Chair: Just a quick one.

Baroness Hamwee: I should not warn the witness that it is my last question, should I?

James Brokenshire MP: I will give some latitude, I am sure.

Baroness Hamwee: Of course, there has been development over the years with case law, but we have had the Human Rights Act in place since 1998. You will be aware, Minister, that a lot of concern has bubbled up from time to time—it is certainly doing so at the moment—about any intentions to amend or repeal the Human Rights Act. In light of the assurances that you have just given us, it would be very good if you could give us an assurance that that is not the case.

James Brokenshire MP: The Human Rights Act, like all legislation, can be updated and modernised. We saw that in the creation of it when Tony Blair was Prime Minister. We see that improvement and evolution with all legislation, but the statements that I and others have made about not revoking, resiling or retreating from the ECHR absolutely remain. How legislation evolves over time, clearly that is a matter for us as a sovereign state and, I am quite sure, for scrutiny, debate and analysis in both Houses of Parliament.

The Chair: Minister, just before I hand the floor to Lord Anderson of Ipswich, can you think of any example of where the EU has signed an international agreement with a third country without some reference to the ECHR? Surely it is an entirely normal part of the EU’s international framework with other countries.

James Brokenshire MP: There are ways in which this can be agreed. You highlight precedent. There is no precedent for a third country to make a legally-binding commitment to the ECHR or to agree to EU surveillance of domestic implementation of their international human rights obligations in return for law

enforcement and criminal justice co-operation with the EU. The EU would not allow the UK courts to have oversight of its implementation of human rights protections and nor would we. That is the point at issue here. As I say, the recitals in our own text underline that sense of the protection of human rights, fundamental freedoms, democracy and the rule of law. Allied with the termination provisions contained within the agreement, they respond to any issues or concerns and respect our own legal order and our position as an autonomous country.

The Chair: Thank you. We have given that a slightly longer period; it is a very important area of questioning.

Q6 Lord Anderson of Ipswich: Good morning, Minister. Can we stay with human rights and focus on what the EU is asking for? The EU said in its negotiating text of March that co-operation on law enforcement and judicial co-operation in criminal matters depends on two things: first, continued adherence to the ECHR; and, secondly, the UK giving continued effect to the ECHR under its domestic law.

For the last 20 years or so, we have given effect to the ECHR by the Human Rights Act, but there are other ways of providing a domestic remedy for breaches by public authorities of the ECHR. Is the EU really insisting on the Human Rights Act, or is it simply asking, as its own text might suggest, that we give effect to the ECHR, as indeed the ECHR itself requires?

James Brokenshire MP: Thank you very much for that question, Lord Anderson. I appreciate the focus on this—for understandable reasons, given its horizontal nature and the focus on issues of difference. You will have heard what I said in response to previous questions on this: that we see the approach taken by the EU through the texts that you have referenced as seeking to interpose some means of supervision of how we apply our domestic legislation. I would argue that that is exceptional, that it is not subject to precedent, and that there are appropriate ways in which it can be dealt with.

Equally, there is a sense of that broad commitment we both see in this space of human rights. We take the upholding of human rights as a cornerstone of who we are as a country. I remain optimistic that there is similarity and congruence in our understanding and the positions that we take in upholding that; at issue are the specifics as to how this is approached in this text. We remain determined and committed to find a way through that respects our sovereign legal order.

Lord Anderson of Ipswich: I wonder whether we are not erecting a bit of a straw man here, looking at what the EU is actually requesting. Michael Gove, when he gave evidence to the Commons Committee on the Future Relationship with the European Union back in May, said: “To say that one particular legislative mechanism is pristine, perfect and cannot be changed ... is an infringement of sovereignty”. David Frost told the Lords EU Select Committee: “How we implement our international commitments is a matter for us”.

Surely he was right about that. The EU is not insisting that the Human Rights Act is pristine and perfect and cannot be changed. It is saying simply that we have to give

effect to the European Convention on Human Rights, as every country in Europe except Belarus has found a way of doing. It really does not go any further than that, does it?

James Brokenshire MP: I take a different analysis on this, perhaps, from the one that you read. I think we have made clear that the UK remains committed to the ECHR—we are bound by the ECHR and we do not require an additional binding international legal commitment to do that. That is one of the fundamental points I come back to: this has not proved an obstacle to co-operation between the EU and third countries in this area before and I do not think it need do so now.

The provisions which the EU is seeking to include that type of wording with the UK are unprecedented, I argue, and therefore I still believe, that there is a means to address this, recognising and respecting the precedents I have referenced already. Indeed, we will not resile from the underlying commitment we have as a country to the European Convention on Human Rights.

The Chair: We move on to the area of data protection, on which Baroness Primarolo will take up the questioning.

Q7 Baroness Primarolo: The Court of Justice of the European Union has found the UK's gathering of data for police purposes unlawful. The Home Office has recently made unlawful copies of EU data and has not complied with ECRIS rules of disclosure. In the light of that, what was the basis for David Frost's recent reassurance that there is no doubt that we will be data-adequate at the point of exit because we are operating the same rules as the EU 27?

James Brokenshire MP: There are perhaps a few things that I can try to unpack from that question. First and primarily, no other third country seeking adequacy from the EU has undergone an assessment from a position of such close alignment, as David Frost noted. There is no doubt, in our view, that we will be data-adequate at the point of exit, because we are operating the same rules at that point.

To respond to the specific context you referenced, the bulk gathering that you raised links to the ECJ Privacy International case. My understanding is that that judgment has not yet been given, and our position remains that national security, which is one of the points at issue there, is the sole responsibility of member states in accordance to Article 4.2 of the treaty. We have written to the court to clarify what we see as errors of fact in the Advocate-General's opinion. We obviously await the final judgment in relation to that.

On the specifics of SIS II, the European Commission undertook an evaluation of our SIS II implementation in November 2017. The procedures are ongoing, but that is part of a normal process of review that would be undertaken in relation to any member state: there are improvements that are made. Just to correct you in relation to ECRIS, we notified in July 2019 that this was an issue, and set it out. But as I say, there are a number of examples of other EU member states that have had reports or have been asked for improvements over their SIS II implementation. It is

quite technical and very focused on some of those issues, and the UK is not the only member state to report technical issues with ECRIS—this is part and parcel of its operation.

Baroness Primarolo: Thank you, Minister. I want to come back to that comparison between third countries and EU member states. Before I do, you touched on the point with the Committee, as David Frost did, that we are the first country to undergo the data adequacy provision and the law enforcement directive. Would you help the Committee by explaining to us what stage of the European Union process the UK has reached? What do the Government plan to do if adequacy is not awarded?

James Brokenshire MP: The UK has set out in detail in explanatory materials how the UK has incorporated the GDPR and the law enforcement directive into UK law. We obviously have ongoing discussions with the Commission and we will continue to provide explanatory material to the Commission to inform its assessment of the United Kingdom. We see this as technical and confirmatory of the reality that the UK is operating the same regulatory framework as the EU. We believe that it should be self-evidently in the interests of both sides that adequacy decisions are in place by the end of the year.

However, to respond to the second part of your question, we will take sensible steps to prepare for a situation where that decision may not be in place. There are alternative legal mechanisms available to continue to transfer legal data, and we will continue to expect high data protection standards of EU member states as well. Our respective laws provide more than one way of ensuring that those standards are met. That is the alternative that might need to be pursued, but ultimately we should be positive about getting that data adequacy assessment: discussions continue and we will continue to support that.

Baroness Primarolo: Indeed. We all remain hopeful that we will get the data adequacy sorted, but I must press you on this, because you referred to it at the beginning as well. What alternatives—you referred to them as “well-rehearsed and well-prepared”—would the UK have in place if our optimism on getting an agreement is thwarted?

James Brokenshire MP: On the alternative mechanisms that I referenced, there are ways in which this can be done in the context of law enforcement. First, when the safeguards are provided in a legally binding instrument; or, secondly, when the controller has assessed all the circumstances and concluded that the organisation they are transferring the data to has appropriate safeguards in place—so they are bilateral assessments in that way. There are separate appropriate safeguards under the GDPR, including such ways as binding corporate rules and standard contractual clauses. What I would point to is that there are other means by which data can be provided.

As for the broader aspects of the non-negotiated position, which is obviously what we want to avoid, in broad terms there are three elements you can look to:

maximising our use of Interpol; using Council of Europe conventions rather than EU instruments, for example in relation to mutual legal assistance; and using bilateral channels, as well as other multilateral mechanisms outside EU structures, including for counterterrorism co-operation. All these different elements are, as I say, well-rehearsed, in as much as they are self-standing and well understood, but obviously we believe that it is in the interests of both parties to reach an agreement here, and that is what we are firmly committed to.

Q8 Baroness Primarolo: Indeed. Thank you, Minister. Perhaps you could prepare a note for the Committee to make it clear how we would be protected should an agreement not be reached.

I have a final question. You said a number of times that, as a third country, we want to maintain our sovereignty with regard to how we implement our laws, although we are keen, and see it as imperative, to maintain data exchange. However, from the EU's point of view, the 27 members are operating within the same rules. Perhaps you can explain to us why the EU might agree to a position, for example, where the Court of Justice of the European Union might tell France, for example, that it is breaching EU law on bulk collection of data and it has to make some arrangements on that, but it is fine for the UK to do it because the UK has its own arrangements, which will be okay. How is that—what we want to do and what it needs to do for the 27 member states—fairly balanced?

James Brokenshire MP: There are other third-country agreements that relate to the sharing of data, such as Prüm, passenger name records or SIS II. I have explained the point on the European Convention on Human Rights in particular, but we can obviously explore the exceptional requirements in relation to the Court of Justice of the European Union which the EU is seeking to insert.

There are dispute resolution mechanisms in place for all agreements that do not propose a mechanism with an arbitration panel and a role for the Court of Justice of the European Union. I believe there can be a way through this, because there are other agreements that have been agreed by the EU that in no way unsettle or question the EU's legal order. Therefore, I believe we should be confident that a way through can be found.

Baroness Primarolo: Are you are saying that there are third-country agreements that give exactly the same access and data exchange that we currently have within the European Union and that therefore there should be no problem with respect to a third-country agreement, or are you saying that we can get a third-country agreement but it will not give us the same access? Both cannot be true, surely.

James Brokenshire MP: We can look at each of the individual mechanisms that I would pursue. If we look at Prüm, for example, there are agreements with Norway, Iceland, Liechtenstein and Switzerland which have access to Prüm. These precedents include a political dispute resolution mechanism and no jurisdiction in those third countries for the Court of Justice of the European Union.

You will have seen that we have set out in our broad approach and reflected in the draft agreement the desire for mechanisms equivalent to those sharing mechanisms that we have previously had as a member of the EU. Clearly we are a third country. On a number of these data-sharing capabilities, there are third-country agreements that have been put in place to be able to facilitate that without those third countries having the mechanism for the Court of Justice of the European Union to interpose in the way proposed by the agreement proposed by the EU. That is where we get into the issues of sovereignty that I have debated previously, and that is the point that I am seeking to make here.

The Chair: Thank you, Minister. We were going to go to Lord Kirkhope next, but now that Lord Anderson has come back in, having dropped out before he could complete his line of questioning—

James Brokenshire MP: Oh dear.

The Chair: —I wonder whether, with Lord Kirkhope's agreement, we could perhaps just pop back to David Anderson for him to complete his line of questioning. That will then prepare the way for Lord Kirkhope.

Q9 Lord Anderson of Ipswich: Thank you very much. Apologies for a power cut that stopped me prematurely.

Minister, you described our commitment to the ECHR as absolute, and I certainly welcome that, yet it is considered vital, apparently, not to enshrine that commitment, which we made in a treaty of the Council of Europe, in another treaty with the European Union. The theoretical freedom to denounce something to which we have an absolute commitment seems to me to be of pretty limited value, yet the price of that freedom is a real risk that we will lose the very effective extradition co-operation and data-sharing arrangements that we currently have with Europe. Is it worth it?

James Brokenshire MP: As I say, I do not see it in those terms. Given precedent, there are mechanisms and means that reflect individual legal orders to provide assurance to both parties. The thing is that we are a member in good standing of the European Convention on Human Rights, and there is no necessity to reassure or to have some further EU supervision—as we would see it—of that, between sovereign member states.

That issue of sovereignty is important. We are an independent state in our right, our own sovereign country, and we are able to conduct our own laws in that way without the supervision of the European Court or requiring an additional provision. The EU has resolved these issues in the past without the necessity of what I would argue is an exceptional provision that it has sought to interpose in the text that has been published. Equally, given what I have said, I believe that it is not beyond us to find a mechanism, a way through, to resolve this issue, which is important for both of us.

Lord Anderson of Ipswich: So you would accept, would you, that an absolutist

notion of sovereignty at all costs will have to cede in the end to a sensible notion of sovereignty that allows it to be combined with the co-operation that, let us face it, helps keep us all safe?

James Brokenshire MP: We are not retreating or resiling in any way from our commitments under the European Convention on Human Rights. The point is how you address that between sovereign countries in terms of the nature of the supervision that is being proposed by the European Union through its text. Clearly this will be a matter of further intense negotiation and discussion as we look to the renewed process through July. I believe that there are ways in which this can be addressed appropriately, looking to other third-country agreements without the need for the specific text that has been proposed by the EU, and, equally, given our shared commitment to upholding those fundamental issues of human rights, the rule of law and, indeed, our commitment to and participation in the European Convention on Human Rights.

The Chair: Lord Kirkhope, thank you for your patience. The floor is yours.

Q10 Lord Kirkhope of Harrogate: What you said a moment ago about sovereignty is of course relevant, because, while acknowledging that we are outside the EU, we also automatically have to acknowledge on every issue a third-nation status. It is that which concerns me, and I will come on to it on a second question.

My first question is to do with criminal issues and data exchanges. We were very fortunate in Britain to have Rob Wainwright as the director of Europol for some years. In fact, Europol was designed very much around British police methods, operations and restrictions on activity, data and so on. All that was done, and we were very proud of our contribution and of Rob's work.

In the context of criminal co-operation, where obviously we need to protect our citizens, as you said before, and I agree it is a priority of all politicians in this country to do so, how will the standards be protected in the context of criminal co-operation, and, at the end of the day, who will be the determinant of whether those standards are being followed in the interchange of data between Europe and us and Europe? Seeing that you have turned your back on any European component in the standards, where are we going to be controlling those standards and making sure that data flows?

James Brokenshire MP: At the outset, I too certainly recognise the important leadership role that Rob Wainwright played as the head of Europol and remember going out to see him at Europol on a number of occasions to discuss issues of co-operation and ways in which the UK was working with other EU member states. We have made a significant contribution to Europol.

You will know that we are seeking a third-country agreement to maintain a relationship with the EU. We are obviously not seeking membership, as we are a third country, but the type of relationship we propose is in line with third-country precedents, going beyond that only where it is in our mutual interests to do so. That

is the fundamental point that I make at the outset in relation to Europol and wanting to continue to participate and have a continuing role with the organisation.

On how standards are addressed in such agreements, third-party agreements have been reached with other countries in relation to Europol. Europol has a number of agreements with third countries, including the US, New Zealand and Japan. By their nature, all those agreements are slightly different. Ultimately, the reciprocal standards that both sides would equally want to see in these sensitive areas would be governed by the terms of the agreement. That is what I point back to—how that would be maintained and the mechanisms for dispute resolution contained within it.

Lord Kirkhope of Harrogate: Well, yes, but we acknowledge that all those agreements with other third countries to exchange criminal data and information had limits, compared with the comprehensive nature of full membership. Therefore, there have to be compromises here somewhere, do there not?

I come on to a wider point. As you are probably aware, I spent a considerable number of years as one of the rapporteurs; indeed, the only rapporteur on PNR. I was also involved in all the measures on data exchange that we are looking at partly today, such as ECRIS, SIS II, PNR, the data protection regulations, et cetera.

When we did Protocol 36—that sounds like a James Bond film but is in fact a time when we opted out of all these measures but then decided to opt in to virtually all of them again, because they were obviously good for our country—I regarded that as a spider’s web. I have always considered all these measures to be part of a spider’s web. It is almost impossible not to be part of all the measures together—or the requirements and criteria in those measures—if you are to have a comprehensive security policy that is good for us.

I was not at the EU Select Committee evidence session, but it worries me that David Frost said, “we cannot accept the conditions which the EU imposes ... and so on”. Incidentally, the word “imposes” worries me a bit, because I do not think the EU is imposing anything new. These things are well established and accepted. Indeed, we ourselves demanded a particular position and demanded that third countries should not have the benefits of full members; it was Britain that demanded most of those things.

Anyway, David Frost gave a list of these things and said, “we cannot accept the conditions ... and so on”. I do not know what he meant by “and so on”. Did he mean in perpetuity? What did he mean? Restrictions are very important to our future relationship. I mentioned before that the British were part of the whole process of getting these things all agreed. It therefore worries me that we want to produce a new kind of British approach to these things. We want to negotiate with the European Union in areas where I am not convinced the European Union has the power to negotiate.

James Brokenshire MP: We are no longer an EU member state but a third country, so the relationship naturally alters and changes—but that should not stop us wishing to have a deep and broad relationship with our European partners on issues of justice and security, as I have said. I remember working with Lord Kirkhope in relation to some of these matters. It is in our mutual interests to have the relationship. In our approach to the negotiations on each of the different measures, we have articulated that and set that out.

I suggest that, even though we are not a member state, the proposals set out in our agreement underline that broad landscape and approach but, equally, recognise sovereignty issues and the fact that we are no longer an EU member state and draw on precedents where the EU has reached agreements with third countries on a number of these issues, including Europol. That is what I point to in that enduring, ongoing relationship, which is in our mutual interests.

Lord Kirkhope of Harrogate: You are paying tribute to your own negotiating skills, no doubt. For instance, our EU PNR took us eight and a half or nine years. The PNR agreement with the United States, which was a third country to the EU, took almost as long. We will now have an agreement in place in a matter of weeks or months, so I pay tribute in advance if you can pull that off.

You will be pleased to hear that this is my final point: are you really happy with the deal we are going to pull off, bearing in mind that we are a third country and the restrictions on the exchange with third countries that have to be in place, whether the EU likes it or not? Will we not in some ways be deficient in our security cover, compared with what we have right now?

James Brokenshire MP: There is a different relationship, but we seek to provide equivalent arrangements to those already in place. We are not an EU member state, and therefore by its nature that relationship is different. I remain positive and optimistic as to what can be agreed in this space, recognising the mutual benefit for both parties and the contribution the UK makes to EU security by the information we provide and the relationships we have.

There are very strong relationships from law enforcement agency to law enforcement agency and security agency to security agency. I am quite sure that will continue. In approaching these negotiations, the EU has of course said that certain things are and are not possible. None the less, our absolute focus on providing safety and security for our citizens is at the heart of the approach we take. I remain optimistic as to what can be agreed through this intensified process in the weeks ahead.

Q11 The Chair: Minister, I want to probe a little on the EU databases, which we have discussed a bit with the Chancellor of the Duchy of Lancaster. Starting with the Schengen Information System II—SIS II—Michael Gove told us that we share more information with the EU than it shares with us. That is an argument we are familiar with from the Home Affairs Sub-Committee over the years.

He added that it is not an essential tool in maintaining national security, yet we have heard pretty compelling evidence—for example, from the Met police, including the figure that it consulted it 603 million times in a year—that it has embedded itself into UK law enforcement operations. I wonder what the alternatives to it are. How can we replace, certainly in a matter of months, a system the police consult millions of times a year and still reassure citizens that we are keeping them safe?

James Brokenshire MP: There are a few points to make. Obviously we have sought an equivalent arrangement to the sharing of real-time data provided by SIS II. The Commission has set out its view that it is not legally possible for a non-Schengen third country to co-operate through SIS II, but our offer firmly remains.

It is notable that the alternative proposal set out by the EU, the so-called Swedish initiative, which does not deliver on a capability similar to SIS II, is itself a Schengen-building measure. It is therefore unclear why, in principle, there is a legal barrier.

We maintain our approach to the EU in this regard. We have been clear throughout that, absent access to SIS II, the UK would revert to using Interpol channels to exchange information with EU member states, as well as relying on bilateral exchanges. Interpol is a tried and tested mechanism, and obviously it was the primary means by which the UK exchanged warning alerts with EU member states as recently as 2015.

It is worth bearing in mind that we joined SIS II, as I remember clearly, back in 2015. There were clearly alternative mechanisms in place prior to that time. Indeed, Ireland is still not a member of SIS II. That is why I underline that while of course we still maintain our offer very firmly in this regard, there are other means by which to respond to this.

The Chair: Presumably one of the penalties of these “other means” would be less real-time access? When you are talking about alerts on the movement of criminals or fugitives from justice, time is probably of the essence. Can we have any reassurance that we can match the real-time nature of SIS II in whatever we put in its place?

James Brokenshire MP: Obviously they are not like-for-like equivalents. I did make that point. We have been working hard with our law enforcement partners to circulate warnings. We have uploaded approximately 130,000 Interpol circulations previously received by the UK, and those have gone on to the police national computer. New data that is shared by Interpol is routinely uploaded to the police national computer. We are putting steps in place to respond.

There is the question of maintaining an alternative provision, as David Frost set out in his evidence to the Committee. We still remain very firmly open. We see mutual benefit in this arrangement and hope that the EU will reflect on some of the legal issues. Ultimately, however, that is a matter for the EU and its own legal order. We

will seek to provide alternative means to facilitate data exchange, but we recognise that there are differences.

As I said, if there were no deal, we have accepted that there would be a mutual reduction in capability on both sides overall. Equally, I believe that there remains good intent and good focus to reach an agreement.

The Chair: Thank you. Before coming to Lord Polak's question on extradition, I want to ask one question on the Prüm database. This is the crime scene database of fingerprints, DNA and so on, as you know very well.

You announced very recently a change of UK approach, whereby we are now willing to exchange data on those suspected of crimes, as well as those convicted of crimes, using the Prüm database. In your letter, you make clear the important public-safety benefits of this, and therefore of the Prüm system as a whole.

We were told by a previous witness last year that it used to take four months to exchange crime scene data with other partners, and with Prüm it takes 15 minutes. Clearly, this is another area where there is enormous public-safety value in the EU instrument. You have demonstrated that with the decision to expand our use of Prüm for the remaining months of the transition period. What prospects are there that we can reproduce something equivalent to Prüm in the post-transition period?

James Brokenshire MP: I should firstly respond to the point you rightly make about the approach we have taken in relation to suspects' data. When we were granted approval by the EU to connect to the DNA part of the Prüm database, it was on the condition that we would review the policy to exclude suspects' data and report back to the EU. Obviously the UK had been out of step with other EU member states in this regard.

Having examined the issue, as you rightly point out, and based on the experience of 11 months, in which around 12,000 initial hits were identified from searches of historical data held on the UK's national database, we have decided that it is appropriate for us to be able to share suspects' data. I should say that that is accompanied by a number of safeguards, including our own Protection of Freedoms Act and the fact that suspects' DNA data make up around 2% of the overall information that is there. Again, the nature of Prüm data being shared is on an anonymised basis, on a hit/no hit basis, and then there is a more detailed follow-up behind all that. I underline that we have strict regulation. Obviously we have only recently joined the Prüm data exchanges; previous arrangements have existed.

I would perhaps challenge you on the time differences. I know that there have been changes in Interpol's mechanisms for sharing data, so there are some alternatives. None the less, in the negotiations we have said clearly that we wish to maintain equivalent, or similar, capabilities to those currently delivered under the Prüm system. Therefore, this remains part of our negotiations. There is a shared benefit to that, but equally there are alternatives.

Q12 Lord Polak: Thank you, Chair, and good morning, Minister.

James Brokenshire MP: Good morning.

Lord Polak: The EU's surrender agreement with Norway and Iceland took some 14 years to negotiate, even though those countries were members of the EEA and part of the Schengen area. I am not a lawyer, but I do understand the necessity to get things right and do not underestimate the difficulties. But you do have to question what went on for 14 years, and what would happen in business, with its lawyers and advisers, if it took 14 years to make an agreement. I hope that we can do such a deal within six months. Do you think that is realistic?

James Brokenshire MP: Thank you, Lord Polak. I remain optimistic on this. It is founded on an established precedent of Norway and Iceland. Both of our legal texts contain provisions for fast-track extradition based on the EU's surrender arrangements with Norway and Iceland. We are both committed to reaching an agreement. The intensification of the timetable during July will, I think, assist with that.

Perhaps I can give some context to the Norway and Iceland provisions. Actually, the agreement was completed in 2006, and so did not take that long to negotiate.

The other context is the EU countries with most need for relations with Norway and Iceland to put their own arrangements in place as part of the Nordic arrest warrant. Therefore, no member states were pushing for quick ratification.

The situation that we are in is very different. Both the UK and the EU are intent on reaching an agreement that can be in force by the end of 2020. The accompanying dynamics and circumstances are very, very different from those of Norway and Iceland, but I hope I can reassure you that, having spent time with lawyers, we believe that the precedents are there—indeed, the broad legal text is there—to be able to support the intensification of the negotiations to reach agreement.

Lord Polak: Thank you. Where there is a will, there is a way, and at least from our position it sounds as though there is a will to do this.

The Chair: Thank you, Lord Polak. You have a question later on Northern Ireland. Lord Rowlands will continue the questioning on extradition.

Q13 Lord Rowlands: Minister, in recent evidence, Mr Frost referred to the additional safeguards we would be seeking if we were going to have an arrest warrant arrangement with the European Union. He referred to the proportionality test and trial readiness. What response have we had to those additional safeguards that we are seeking from the European Union? Do we feel that they would be an obstacle or an acceptable way to proceed?

James Brokenshire MP: It is important that we are seeking to enshrine these safeguards. As you rightly point out, these are issues of proportionality, the ability for a judge in the UK to dismiss a warrant from an EU member state on that basis,

and, if there has not yet been a decision, to charge and try the wanted person where extradition would not be compliant with a requested person's human rights.

We believe that these should be negotiable, and we are very clear that we would like to see them; that is why they are reflected in the additional grounds for refusal in the UK text. I do not see that as complicating the negotiations; they are concepts that are well understood in other parts of extradition law. Therefore, we remain positive that we can secure agreement with the fast-track arrangements that we have discussed, and, reflecting on the Norway and Iceland experiences, those additional safeguards would be very welcome.

Lord Rowlands: May I come back to this Iceland and Norway agreement? It came into force on 19 November 2019. What experience has there been between Norway and Iceland and the European Union on fast-tracking warrants?

James Brokenshire MP: As I say, the arrangements are now in place. As I indicated in response to a previous question, there had not been the drive for implementation because of the Nordic arrest warrant that had previously operated, but, from what I understand, the arrangements are operating well and provide for an arrest-warrant type of approach. There are different ways, which I am sure we can explore, such as Parts 1 and 2 of our own extradition Act, with a more Part 1 type of arrangement being in place to facilitate speedy returns.

That demonstrates what can be achieved, and the fact that both the EU and the UK are drawing upon that in both our respective texts undermines the utility and operability of that type of approach, and why that remains the nature of the discussions that we have been having with them.

Lord Rowlands: Yes, because at least we know that the European arrest warrant was quite successful. Figures are hard to get, but I understand that in 2017, for example, the United Kingdom solved 278 requests. Subsequently, 201 arrests were made. That would have been impossible under the old system before the European arrest warrant. You repeatedly said that you could go back to certain arrangements; I hope to goodness that you are not thinking of going back to a pre-European arrest arrangement, because that was hopeless, was it not?

James Brokenshire MP: I very much hope that we can conclude an arrangement similar to the surrender agreement that has been agreed with Norway and Iceland. That is very firmly our approach. Indeed, it is notable that the EU itself has reflected that in its approach. Frankly, it is in everyone's interest that we reach an agreement that equips operational partners on both sides. That is the point: it is mutual. We have capabilities on both sides that help to protect citizens and bring criminals to justice.

So I hope and remain positive that we will reach agreement. If that were not to be possible, obviously we can revert to preceding arrangements while noting that we firmly want an agreement that reflects the Norway and Iceland arrangements.

Lord Rowlands: I hope you will agree that we want to avoid going back to the old system, which allowed criminal havens—those characters who lived on the Costa del Sol and felt immune from any form of proceedings. You are not suggesting that we might have to go back to that, are you?

James Brokenshire MP: I am hopeful and positive about seeking, in the negotiations and intensification that lies ahead, a fast-track means of extradition. That is the approach that we are taking, recognising the benefits of that.

Obviously, there are arrangements that can be moved back to. As I say, our firm intention is to reach an agreement, but we have also been clear that using the European Convention on Extradition will not maintain the same capability as a negotiated outcome, and it is why our attention is focused on reaching agreement that is reflective of precedent and the fact that that has been agreed with Norway and Iceland.

As I say, we should be optimistic about what can be agreed in the intensification that lies ahead.

Lord Rowlands: During our hearings, the police have given us quite a lot of evidence and have been very supportive of a speedy arrest warrant system. When, for example, DAC Martin gave evidence, he linked this whole issue with the database issue, and I do hope that the database issue will not prevent a fast arrest warrant system occurring.

James Brokenshire MP: We discussed SIS II, the second-generation Schengen Information System, by which European arrest warrants are now circulated, but we operated a system before 2015 that did not rely on that. Equally, the Republic of Ireland does not operate SIS II at the moment. They are different, and we remain of the view that there is a mutual interest in providing capability similar to SIS II, as I have already said, and we remain open to that.

With extradition, a fast-track arrangement of the kind I described will not be dependent on the outcome of that decision. European arrest warrants were circulated directly to the UK before 2015, so prior to us joining SIS II. It is important to recognise that there is this separation and that the adoption of a fast-track arrangement for extradition is not dependent on our membership of that database, albeit that we firmly want to, and it is in our mutual interests, to provide capabilities similar to those maintained by the second-generation Schengen Information System.

The Chair: The next question is from Lord Anderson of Swansea, who is on the telephone.

Q14 Lord Anderson of Swansea: Good morning, Minister. You proposed on extradition the parties' adherence to the additional safeguards and human rights standards. So you proposed extra on that. How do you propose that those are policed and enforced, and by whom—by what authority?

James Brokenshire MP: The provisions on human rights and additional safeguards on proportionality and trial readiness in the UK draft operate as grounds to refuse extradition. In practice, that means that the agreement will endorse the practice whereby the person in the UK who is wanted by an EU country would be able to raise these issues in a UK court in their extradition proceedings.

In other words, a UK judge would determine, for example, whether extradition presented a risk of human rights violations, and order or bar extradition accordingly. Therefore, in the ordinary way we would look to the extradition arrangements being challenged and checked by our own courts.

Lord Anderson of Swansea: Your negotiating text of May this year states that a requested person will have a right to be assisted by legal counsel. Would there be legal aid for this?

James Brokenshire MP: We do not intend to change the pre-existing arrangements for extradition.

Lord Anderson of Swansea: Is there currently legal aid?

James Brokenshire MP: All I would say is that there is no change to the settlements, and legal aid would continue to operate in the ordinary course. Obviously, it is for the UK courts to determine this, and this provides proportionality and the issues that we have highlighted in our text, ultimately it would be for an individual to raise those as part of the extradition provisions. We would apply those by way of our domestic law, and other member states would apply them by way of their domestic law.

The Chair: I think we have lost Lord Anderson of Swansea. Let us carry on and we will encourage Lord Anderson to come back in our extra time, if he wants to carry on. Thank you, Baroness Goudie, for your patience. I turn to you now on the subject of Northern Ireland.

Q15 Baroness Goudie: Good morning, Minister. Compared with the questions and answers that we have heard so far, my question is slightly different and concerns Northern Ireland.

What assessment have you undertaken to identify the possible consequences of failure to reach an agreement on security with the EU 27 for the stability of Northern Ireland, and what consequences have you prepared to deal with the very specific context of Northern Ireland? I have another point or two that I would like to go on to in a moment.

James Brokenshire MP: As you would imagine, as a former Northern Ireland Secretary it is something that I take very seriously. We are committed to preserving north-south co-operation across the full range of frameworks of co-operation, including policing and justice. It is important to underline the existing arrangements that are in place.

There are incredibly close links between the PSNI and Garda Síochána, the Irish guards. We do not expect those to change at the end of the transition period regardless of the scenario. In the event of a non-negotiated outcome, which we are determined to seek to avoid through our negotiations, the UK would transition from co-operation with EU member states to alternative non-EU arrangements. As I have indicated, that is on the basis of Interpol/Council of Europe conventions through bilateral channels.

The relationship exists; we take incredibly seriously the very good working arrangements that take place at a number of levels across the island of Ireland and the commitment to north-south co-operation—anchored, obviously, in the Belfast/Good Friday agreement. I can certainly assure you that the Government have been intensely focused on fulfilling our commitments under the Belfast/Good Friday agreement in providing that sense of stability in Northern Ireland.

Baroness Goudie: What specific conversations have you had with the Government of the Republic of Ireland on policing co-operation after 1 January 2021?

James Brokenshire MP: We regularly engage with the Irish Government at all levels. This includes continued engagement with the Irish Department of Justice and Equality. The Home Office Permanent Secretary spoke to the secretary-general of that department on 29 May, which is very recent. As a close and important neighbour, we are fully committed to preserving that north-south co-operation across the full range of frameworks, including policing and justice.

That is what I would stress. There are regular discussions at operational level, at senior official level and at the political level on a number of different issues, given the structures that are there and the importance we attach to what is a unique relationship with our friends in the Republic of Ireland.

The Chair: Lord Polak also has a question about Northern Ireland.

Q16 Lord Polak: To what extent can replacement security arrangements for Northern Ireland be pursued via the Northern Ireland protocol that was agreed last year?

James Brokenshire MP: No specific provisions for UK-EU security arrangements are contained within the Northern Ireland protocol, beyond Article 11, which provides for ongoing north-south security co-operation of the kind that I have already described. The Home Office has been working with counterparts across government and in Northern Ireland to ensure that security considerations are embedded in all Northern Ireland protocol planning and implementation.

This has included work to ensure that arrangements under the protocol are not exploited by criminals and do not undermine the operation of the Belfast/Good Friday agreement. That is the absolute rock in the structures and systems and the well-established approach that we have under that agreement, anchoring the incredibly close relationship and, as I have already described, the way in which that is already embedded at a number of different levels. Of course, we will continue to reflect on what more can be done in this space.

It is worth highlighting the shared arrangements we have through the common travel area—how we operate it and how it provides a level of contact and close working to focus on these issues of security. The Republic of Ireland is obviously a key partner in providing assurance on the security approach we take to the envelope of the common travel area.

Q17 The Chair: Minister, we have come to the end of our first round; if you like, we are at full-time in the match. If you are willing, we might move on to extra time to allow Members to ask questions they think need developing further or have not been touched on, or would like to clarify with you. I have a little list here. I will abuse the Chair's role and ask you the first, which is more general.

We have heard today about the nature of the UK's ask of the EU across this range of security instruments; effectively, we want an equivalent position to that which perhaps Schengen countries and EEA countries such as Norway and Iceland have but which no other country has. Yet in the rest of the negotiation on free trade, we are asking for a Canada-style agreement or even an Australia-style agreement. We are certainly not asking for a Canada-style or Australia-style agreement in the security area.

I am not sure that has always come out clearly in the Government's communication; we are asking for a very special, close and unique relationship in security and justice. Would you like to comment on the coherence of an approach that is seeking such a special and unique relationship on security and justice instruments?

James Brokenshire MP: We are seeking to act in the UK's national interest, which is reflective of what might be considered as much the mutual interest of the EU in relation to a number of security measures. I think we have shown leadership for years on developing approaches to organised crime and counterterrorism and therefore have a strong relationship with a number of EU partners and, indeed, more broadly.

Therefore, it is with that shared intent that we have approached the negotiations on looking for third-country status in a number of ways and drawing on precedent. We are also looking to go beyond that in a number of aspects, but at the same time it reflects the relationship we have. I remain, as you have detected, optimistic as to what the negotiations in the coming weeks may bring because of that sense of shared endeavour; we believe that the structures that we set out in our published approach support our national interest and those broader interests for EU security.

I suppose I would frame it in those ways. We look to the intensification that is now set out following the high-level meeting yesterday. I hope that the new momentum which that brings across all the different baskets of the negotiations we are seeking to achieve will provide that comprehensive agreement. I believe that should not be beyond us.

The Chair: Okay. We all hope, I am sure, that we can get there in the time available.

Q18 Lord Anderson of Ipswich: As Independent Reviewer of Terrorism Legislation, I used

to visit Dover and see the use that counterterrorism police at the port were able to make of handheld devices that could tell them by access to the SIS II database whether a person coming off a ferry was on a watchlist in another country. This enabled such persons, if identified, to be stopped and questioned before they could simply melt away.

Obviously, Interpol cannot help with that, and it rather sounds as though the legalistic approach that is being taken to SIS II means that we will not have real-time access to data under that. I know you would like that to continue, and I hope that all operationally minded people who want to keep us safe on both sides of the North Sea and the channel share that opinion.

It has been very good to hear your optimism this morning, but my question is very specific: does that optimism extend to the point where you could say, hand on heart, that there is a realistic prospect of this specific capability being retained in the future agreement with the EU?

James Brokenshire MP: I pay tribute to you for all your work as independent reviewer. I remember the discussions that we had when I was Security Minister last time and very much appreciate the important contribution that you made in that role.

You rightly highlight the offer that we have made and continue to make around SIS II. The EU has said that there are legal issues which it believes stand in the way of that. We still maintain our offer, and it is important that I say that, but it is then a question of the way in which Interpol connections, which have context for addressing some issues, as well as bilateral relationships and counterterrorism arrangements that remain in place on bilateral and multilateral mechanisms have application, and a question, therefore, of the way in which we would continue to operate in that way.

You will equally well recall that we became members of SIS II only comparatively recently. As I have indicated during this session, if we were to have a non-negotiated outcome, for example, which we clearly do not wish, in those circumstances there would be mutual loss of capability on both sides. I approach this with a desire to reach agreement and to be able to see that we use the position well.

Equally, in terms of falling back on pre-existing arrangements from prior to 2015 and other mechanisms and bilateral arrangements that continue to operate between law enforcement and security departments, there are no like-for-like replacements. At the same time, I absolutely believe that the UK will remain one of the safest places in the world. National security, combating terrorism and dealing with the new challenges of increased organised crime and hostile state activity are very much at the forefront of our resolute attention and focus and will remain so.

The Chair: Thank you. As a former National Security Adviser, I can only say, “Hear, hear”, to that ambition.

- Q19 Lord Kirkhope of Harrogate:** I think you mentioned half way through your replies the importance of real-time information. When we were doing PNR, the one thing that really made it effective as opposed to ineffective was that we can get information through PNR almost instantaneously, because we have in place all the necessary safeguards that allow the information to flow in that way. Without the real-time effect of PNR, it would be much less effective—in fact, hardly effective at all in some cases.

Can I take it from you that one of our aims, in relation not only to PNR but to a number of other data exchange provisions, must be to keep that speed of reaction, that important element of immediate data exchange from the systems we deploy at that time? That is so important. Is it a priority for the Government?

James Brokenshire MP: On PNR, perhaps it may be of interest to you that I think the first EU Council of Ministers meeting that I attended, probably back in 2010, was to argue and make the case for intra-EU PNR. I recall the debates and discussion and the utility that we made out to our then EU partners of the importance of the ability to share passenger name records data.

We seek in the arrangements that we wish to put in place the timely sharing of information and data. You can see that interposed in the approach we have set out in our negotiations with the EU. We seek appropriate PNR arrangements, as well as the ability to share other datasets. The point you make underlines the mutual benefit of the data we share not just to the UK but to the EU. Ultimately, there are alternative arrangements that we can fall back on—indeed, bilateral arrangements, should they be necessary, for the ability to exchange. The ability to do so in a timely fashion is something we would firmly have in mind in that regard.

- Q20 Baroness Primarolo:** The European Union's view is that continuing data adequacy is a precondition of any kind of law enforcement co-operation. It further qualifies its position with regard to negotiation by stating that any future arrangements for criminal policing co-operation with the UK must take account of the fact that a third country *cannot* enjoy the same rights and benefits as a member state.

Given these clear boundaries, as a Minister responsible for this area can you clearly explain to the Committee what rights and benefits we will not have, even if we have a data adequacy agreement with the European Union when we leave at the end of the year?

James Brokenshire MP: Obviously we have discussed the issue of conditionality, which we see as exceptional. We believe there are appropriate ways to deal with this and why it has not been sought before in similar agreements.

As you rightly point out, we are a third country and therefore not a member state. I suppose I would point to the fact that the EU has reached agreement on Prüm, SIS II, passenger name records, extradition and other items. As I say, we are seeking equivalent arrangements, again pointing back to agreements that have been reached with third countries. We have said that we do not wish to be a member of Europol—we have discussed that previously—but none the less we want a close

relationship with Europol. Yes, it is a different kind of relationship, but one that still allows us to share information, contribute, and work with EU partners.

Obviously I cannot prejudge the outcome of the negotiations. We have set out our approach through the previous document we provided—and, indeed, through the legal text itself—which we believe is consistent with being a third country. It clearly hinges on the negotiation to come, but I still sense that that means being positive about what can be achieved.

That sets out of our intent. Equally, that is grounded in precedent and third-country agreements that have been reached. In a number of ways, we wish to go beyond them, but those third-country agreements provide access and data-sharing in a way that is consistent with a sovereign state—that is the underlying principle that we have—without the need for the Court of Justice of the European Union to interpose in the way that is suggested.

The EU is looking for an overarching macro-agreement for everything. We believe that it is more appropriate to have separate agreements. That remains a point of difference. None the less, we think that there should be a way through based on those precedents with third countries.

Q21 **Baroness Hamwee:** David Anderson's description of what happens at the border made me remember something of what used to happen. I wonder whether I can—I am not sure how to put this as a question—strengthen your determination to get this right by reminding myself of the concerns about discrimination against people arriving at the border whose ethnicity and background raised questions at border control about why they were coming and their intentions.

Thinking about what David Anderson has described, it is really important that we get this right in order to avoid the sensitive, and frankly sometimes very offensive, actions that there have been.

James Brokenshire MP: Perhaps I can direct you to the code of practice that was published last week, I think, for the operation of the Schedule 7 powers, which may be what you point to, on the ability to stop and question. There is a separate Schedule 3 power, which is also being brought into effect.

That code of practice sets out a number of really important safeguards on timeliness, access to legal advice and a range of other matters, so perhaps I can direct you to that code of practice, which I hope will give you assurances about the way these powers are carefully used and the safeguards that are very firmly provided around them to provide the sort of reassurance that you seek.

Those codes will be subject to the affirmative resolution process, so I am quite sure that there will be a further opportunity to debate and discuss these issues in that context as we look for the approval of those codes and the reaffirmed safeguards.

Baroness Hamwee: Safeguards are great, but it is even better not to have to look at the safeguards because you have the mechanisms to do the job in a way that avoids

anybody having to go down that route.

James Brokenshire MP: Our border, policing and security agencies act, and are incredibly carefully to act, within the provision, the law and the guidance. These issues are incredibly important and sensitive. We provide a lot of transparency data in relation to the use of a number of techniques and powers. I seek to give assurances about the rigour, process and approach taken by our agencies in the use of these very powerful, but also incredibly important, powers to safeguard our national security and to have that very firmly in mind when they are used.

Q22 The Chair: Minister, we are coming to the end of a very comprehensive session. Looking back at the questions, I think that because Lord Anderson of Swansea dropped out before he was able to complete his questioning you were not asked about one aspect. It was about how the additional safeguards and human rights standards on extradition that we are proposing could be policed and overseen, and specifically how an individual could raise a rights issue in the UK courts, particularly given that our proposed Article Final 8 denies direct effect in the UK court. How would an individual go about protecting their rights in those circumstances?

James Brokenshire MP: I think I responded to that when I said that it would be part of the usual consideration of extradition requests and could be raised in that regard. In other words, an individual can already challenge and ask the courts to consider human rights issues, and equally that would be applied there.

As I have indicated, in each EU member state, the decision on specific safeguards applying to UK warrants would take place in accordance with that member state's domestic judicial arrangements. So it would be through the member state's law—indeed, our own law—that we would have them, and therefore they would be grounded within extradition hearings and the ability of the individual to raise it in that context.

The Chair: Lord Anderson of Ipswich, do you want to follow up on that point before we let the Minister go?

Lord Anderson of Ipswich: No, I think I have heard what I need. Thank you.

The Chair: Minister, thank you very much indeed. I also thank your officials for being with us through that long session. We will send you a transcript, as I said at the beginning, for any corrections that you would like to make. If there were any points that you want to follow up in writing with us as a result of this past hour and three-quarters, we would be very grateful to have that as well.

On behalf of the whole Committee I can say that you were indeed the first witness for the new sub-committee, and you have got us off to a very good start and given us a very comprehensive run around a lot of complex and important issues. We thank you very much indeed. On that note, I draw the meeting to close.

James Brokenshire MP: Thank you, Lord Ricketts. I wish you and the Committee well.