

Select Committee on the European Union

Home Affairs Sub-Committee

Corrected oral evidence: Brexit: Future UK-EU Security and Policing Co-operation

Wednesday 12 October 2016

11.40 am

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

Evidence Session No. 3

Heard in Public

Questions 19 - 25

Witnesses

I: Lord Timothy Kirkhope of Harrogate, former MEP for Yorkshire and the Humber; Bill Hughes QPM CBE, former Director General, Serious Organised Crime Agency.

Examination of Witnesses

I: Lord Timothy Kirkhope of Harrogate; Bill Hughes.

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

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

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

First, I refer back to Protocol 36 of 2014, which you mentioned, and the time when we opted out of all the justice and home affairs provisions. In many cases, that was exactly the right thing to do, because many of them were outdated or redundant. But within those measures there were a considerable number that were enormously important to our security. Therefore, I was particularly happy when we opted back in to the main measures that we needed to retain—the 35 measures that you referred to. While we were in that particular process, it was quite clear that the measures we opted back in to could not be compartmentalised. Yes, they were measures that stood, in a way, on their own, but they were absolutely part of a very complex network of arrangements, agreements, understandings and controls that went through the entire area. I referred to it at the time as a spider's web. You will forgive me if I just say that a spider's web is a very difficult thing to handle, but it is somewhat better if you are the spider than if you are potentially the fly.

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

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

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

Looking ahead, because we are part of so many of the components, in order to operate outside of these arrangements we would need to co-operate bilaterally with each individual nation. I do not think that it is very easy for us to look at a bulk purchase, as it were, because in the same way that this country has always been determined to keep ultimate control over its home affairs, its policing and its intelligence agencies, so too are other countries, many of whom have copied our rules and systems. I am very proud of that fact. Many have taken our standards for themselves but now maintain their independence in relation to them. They are prepared to co-operate to have a system that works with confidence, but that has to be under a structure of some kind. Currently, that is the EU and, ultimately, as we know, the either much-loved or much-derided European Court of Justice. So the alternative is to have no relationship with the databases or agencies at all. We would cut ourselves off from information which, currently, can be obtained through these new developments with the click of a button.

Just to end my opening remarks, the priority, as far as I am concerned anyway, is that we really have to make sure that, one way or another, the UK and the British people are protected and provided with an equal

level of security to the previous arrangements that we have entered into over many years in the European Union. I believe that that is the big challenge for our Ministers in the discussions that are now going to take place.

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

The Chairman: That would be very helpful.

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

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

Although I retired six years ago, part of my background is that I have been working as a strategic adviser with RAND. We did two reviews into Europe; one was on the effects of the Lisbon treaty on Europol and its operational effectiveness and the second was on how member states deal with serious organised crime. We wanted to pool some of that together and look at the various methodologies and how they could be improved.

The crux of that second review is that intelligence and information is the key. We are part of the SIENA arrangement, which is—I refer to my notes—the Secure Information Exchange Network Application, by which information flows between the member states. The last time I looked at that, the UK was using 40% of that capacity to use that information and flow it around. It is a major system for keeping law enforcement on both the continent and the UK up to date about what is happening and about who is coming into the country, and that then supports the Schengen information system. Again, it was a major coup for the UK to achieve that because, not having signed up to the Schengen acquis, there was a lot of bad feeling, with people asking why we should then have access to the SIS because it was only for those in the Schengen acquis.

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

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

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

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

A lot of the things that we have discussed in the European Parliament—legislative Acts and so on—have been matters where Europol has

competence in relation to both its core activities and the information exchanges. Information is the key point in all this—getting information quickly and dealing with it quickly, and in a way that is not confused or delayed to the advantage of criminals and terrorists.

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

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

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

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

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

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

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

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

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

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

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

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

still continues to have controls on organisations such as Europol that are very difficult to shift.

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

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

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

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

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

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

Lord Kirkhope of Harrogate: Yes, we will have to deal with the question of the competence of the ECJ. We will have to anyway. Although they are not the same things at all, if you take a look at the Supreme Court in the United States, it has competence, but a lot of people think it is the ultimate court of the United States. It is, but it is restricted to interpretation of the American constitution. People often forget that. Similarly, a lot of people in this country think the ECJ is a European court

that will deliberate on every single case ultimately above our own Supreme Court, which is nonsensical. It is limited in what it can interpret and decide upon based on the European treaties. That is it, but of course it also has a right relating to European agencies and organisations because of that.

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

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

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

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

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

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

Baroness Browning: Yes, it is a naughty question.

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

discretion and common sense on this matter and will look at the evidence, including the evidence that might come from your deliberations, before we finally close the door on that.

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

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

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

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

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

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

Co-operation partners—I can give chapter and verse here—can be connected to SIENA, which is the Europol secure network. It is not automatic but requires the conclusion of an additional bilateral agreement, so there will be some negotiation to do that. They can submit data and conduct searches through the Europol information system and ECRIS, when that comes into effect—but they have to ask Europol to do so on their behalf. So it is a bit of an arm's-length approach. The whole point around operational co-operation partners—and I think that the point was made earlier by my colleague here—is that if you are not in the EU, you cannot be part of Europol as such, because you are subject to everything that the strategic operational co-operation partners do, subject to oversight from the management board and the European Parliament. So there will be negotiations and agreements to sign there, to make sure. I am sure that it would be seen as sensible from the EU

side—although I cannot speak for them—but they know how much information the UK contributes and how valuable that is. To go down a route of bloody-mindedness, if you will pardon the expression, would be in no one's best interests in that situation. So I hope that some sense will prevail.

Lord Kirkhope of Harrogate: I agree with that but if having access to the databases is a major part of the Brexit negotiations, we have to look beyond the UK's bilateral relationship with the EU and look at the scope and nature of third-country agreements that are in place or are being attempted to being put in place. A number of other countries are asking for access to these databases now, particularly with the world security situation as it is. So it is a question of leveraging the collective influence of the non-EU third countries to co-operate, such as the United States and Canada, to make sure that we have equivalent levels of data protection and redress in the use of data. One of the big things that we have been pursuing in Europe is to improve the protection of citizens' information through data protection regulations and so on.

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

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

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

Stockholm to Berlin and from Berlin to London. So keeping a tab on people who are of concern to us is vital, and was always vital, and is part of the proposals—and all the airlines are signed up, and are obliged to their own country's participation in the agreement, to those same standards. Incidentally, it saves the airlines money to have the same standards for all those areas.

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

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

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

Lord Kirkhope of Harrogate: This takes me back to the spider's web. There are loads of things that we would like improved and changed. One issue is the whole point of proportionality and necessity, which seems to apply not only to areas of law enforcement and the need to obtain information about people and use it but to a whole lot of other areas as well. You can always improve things that are there, but if you start to dismantle even some of the more minor things, you run the risk of affecting others which are actually more important. The way in which our relationships have been developed seem to be more important—the question of western democracies and the United States co-operation with

the EU on security. That has been quite difficult because of the incompatibility of our approaches. I would very much like to see, if you like, a change of thinking, so that there is more understanding of other people's positions. The United States is a good example, because it has its own redress for citizens, and it has extended that to European citizens, too, if their information is abused when it is used by their authorities, and so on. It has been quite difficult, because a lot of European views attack the United States and say that they are not up to our standards and that therefore we cannot share information with them or make arrangements. That is a lack of understanding of their own approach, so I would like to see an improvement in the way the EU co-operates with third countries. We do not always treat people as well as we should.

There should also be equivalence on things like fundamental rights. I know that some of us jump up in horror when we hear terms such as "fundamental rights", but our understanding of that is that they are the basis of everything we do in the field of justice, home affairs and intelligence. There is not a common understanding even across Europe, I am afraid to say. The European countries need to work very hard on that.

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

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

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

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

Lord Cormack: We are all sombre.

Lord Kirkhope of Harrogate: I suppose that I am getting a bit nervous

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

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

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

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

The other problem is this. President Juncker of the Commission has made it clear on more than one occasion that there are to be no pre-negotiations on our future position before Article 50 has been served. I am quite concerned about that. He is entitled to say it if he wishes and, of course—a view pointed out in your paper—even once Article 50 has been deployed, if we feel that the terms coming our way are unacceptable we can back up, as it were, from that situation. That is an important point which I think is lost on most people: as things stand now, it would be for the Executive here to make that decision in part of the negotiations. Transparency of democracy, accountability and redress are very important in these justice and home affairs matters, but in overall negotiations we should try to make sure that it does not get in the way of getting the right outcome.

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

Lord Kirkhope of Harrogate: The Prime Minister has gone on the record in the past few days to make it clear that whatever is negotiated will be subject to scrutiny and debate in the House of Commons. The only question mark was over voting, as I understand it. They are not looking

for a further vote in relation to the actual leaving of the EU, which they claim has been decided as a result of the referendum; that has been put in place and people have their views. I think this is going to be quite an interesting area. I do not want to waste your time with this now, but my own view is that parliamentary debate has taken place and parliamentary decisions have been made in relation to a great number of the things that we have taken part in in Europe over the years. It is a matter for Parliament itself to decide what it wishes to do. That is not to answer you particularly, but it is the way I think it has to go.

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

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

Lord Soley: I understand that. This Committee and indeed others of this type have been profoundly important on this issue, but it is a different matter when we are trying to deal with all the past legislation of the EU, looking to put some into UK law and drop other bits out. It is going to be an incredibly complex issue.

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

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

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

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

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

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

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

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

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

Lord Kirkhope of Harrogate: In other areas of law, of course, we are allowed to put in our contracts and agreements which particular law will apply. That is not going to work here, I am afraid. I once had a Nigerian case that was dependent upon interpretation through French law, which was decided in London. It was not a situation that I would ever want to get back into again. However, at least when we enter into agreements of that kind we can make the choice as to what law applies, the law of England and Wales or the law of the EU. I suspect that we have to go down that kind of route here, otherwise—simply talking of UK court legal supremacy in anything that we may remain signed into, opt in to in future or indeed negotiate in future—we can say what we like about our legal supremacy but the EU courts will simply rule the agreement invalid as far as the other players are concerned. That is undoubtedly another area where we need to be really on the ball. I talked at the beginning, not flippantly but just as an aside, about other kinds of agreements being subject to different laws and legal systems. I am afraid it is a possibility that we may well end up with a cumbersome and tricky area like that.

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

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

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

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

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