



Select Committee on the European Union

Home Affairs Sub-Committee

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

Wednesday 19 October 2016

10.30 am

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Members present: Baroness Prashar (The Chairman); Lord Condon; Lord Cormack; Baroness Janke; Baroness Massey of Darwen; Lord O'Neill of Clackmannan; Baroness Pinnock; and Lord Soley.

Evidence Session No. 4

Heard in Public

Questions 26 - 37

Witnesses

I: Rt Hon Brandon Lewis MP, Minister of State for Policing and the Fire Service, Home Office; Rt Hon David Jones MP, Minister of State, Department for Exiting the EU.

Examination of Witnesses

Rt Hon Brandon Lewis MP and Rt Hon David Jones MP.

Q26 **The Chairman:** Good morning, and a very warm welcome to the Committee this morning. Thank you for your time. This session is being broadcast. I think you are familiar with the rules of engagement: we will send you a transcript of what you said to be corrected if you so wish. If there is any other information that you want to send us after the evidence session, please feel free to do so. Before I get into questions, is there anything either of you would like to say by way of introduction?

Brandon Lewis MP: I am happy to say, first, good morning and thank you for making us feel very welcome. We have a very long track record of playing a leading role in Europe and globally to make sure we have good co-operation to protect our citizens and our democratic values. We have been some of the leading proponents over a long period of time of the development of a number of the security measures that are now in place across the European Union.

Obviously there is no immediate change to how we co-operate following the referendum, but we are at the point where we are planning what our new relationship will look like across our departments after we leave. The Home Secretary and I have already spoken to counterparts across Europe. We have been very encouraged, even just at the end of last week, by the view of the European Council that that is essential. It is equally keen to make sure we find a way for our shared work on security to continue.

There are questions that need to be answered and some complex issues will need to be dealt with in the months and years ahead, but that will all be subject to the period of negotiation. The Home Office is working with departments across Whitehall to make sure we have a full and clear understanding of what those pressures and complications will be. Our future relationship will be agreed in the context of the wider negotiations around our exit from the European Union. It would be wrong of us to pre-empt the outcome of those negotiations, but I want to assure the Committee that co-operation on security and law enforcement remains a top priority for us, both while we remain a member of the EU, as we are now, and in the years ahead as we leave. We will work with our partners in Europe, and, indeed, globally, to ensure we have good solutions in place to ensure we continue to promote security here at home and with our partners.

David Jones MP: Unlike that of my colleague, my department has a very short track record, having been established only in July. As you aware, the Department for Exiting the European Union has been created specifically to support the Prime Minister in connection with the forthcoming negotiations for withdrawal. As you will also be aware, the timetable has now been set by an announcement that the Article 50

procedure will commence before the end of March, which effectively starts a two-year timetable.

In connection with that work, we are seeking the opinions of a large variety of—I hate using the word—stakeholders, as well as co-ordinating work with other government departments. As Mr Lewis quite rightly says, we fully understand the importance of trying to seek as much co-operation as possible with our EU colleagues, particularly on justice and home affairs. Also, the report that I have no doubt your Committee will publish will be extremely helpful to us in helping to formulate our negotiating stance.

Q27 The Chairman: Thank you for that. That is very helpful. I will begin by asking how you are going about formulating your objectives. I can see the track record, but how are you dividing the work between the two departments? How are you formulating the objectives of the UK's negotiation in this area?

David Jones MP: Clearly, in respect of policy, the Home Office has the lead. My department's responsibility is to engage closely with the Home Office, as we do with other government departments. Also, we are quite separately seeking the opinions of other groups and individuals who may have an interest in this matter. Any representation we receive will clearly be shared with the Home Office for its views.

The Chairman: Mr Lewis, how is your department formulating its objectives in this area?

Brandon Lewis MP: As Mr Jones has said, our two departments will work closely on this. There are issues for other departments across some of this as well. We will look at all areas—particularly around law enforcement and security co-operation, which is paramount for us in the Home Office—to ensure we have a good outline of what capabilities we get through European Union measures, and therefore set our priorities through that for future co-operation arrangements with the EU. We are also looking at that more widely because we want to be a good partner to our colleagues across Europe. In the same way, we want to be a good partner with other countries—we have security and law enforcement issues that we share with countries around the world. We want to ensure that we have strong relationships with them in the same way as we want to continue having strong relations with our European colleagues. As the Prime Minister and others have said, we are leaving the European Union but we are not leaving our position as a partner to countries across Europe. We will consider the options for what the future relationship on law enforcement and security might look like. That is the work we will do in the months and years ahead.

David Jones MP: Let me also say that my department is the government department responsible for representing the United Kingdom at the General Affairs Council, where these issues frequently arise. Therefore, I will have discussions in that context with colleagues from the other 27 EU states.

The Chairman: Before I ask my colleagues to ask questions, I am interested and pleased that you are waiting to see what we say and that that will be an input into your deliberations. It would help us if you could tell us what your timetable is in relation to this. We know the timetable for triggering Article 50, but what is the timetable for the information? When do you think the report might be most effective for timing?

David Jones MP: We wish to proceed at a pretty brisk pace because the work of my department covers the entirety of government. We would like to see our negotiating position, if not totally crystallised, at least worked up to a very high level by the time Article 50 is triggered. An early report from the Committee would be very much appreciated.

Q28 **Lord Condon:** Good morning. I would like to take your views, on behalf of the Committee, on two issues: Europol and Eurojust. To start with Europol, the witnesses we have had so far, particularly from the National Crime Agency, have more or less said—in my words, not theirs—that membership of Europol is mission-critical to what they are doing and how they carry out the whole range of their work. There is a new Europol regulation, into which the UK has not yet opted. If we do not, the door closes on us in May next year for membership of Europol. Could you give us an idea of what considerations are influencing your thoughts about whether to opt in to that Europol regulation? What is your plan B if we do not opt in when we walk out the door in May next year?

David Jones MP: I think that this is one for Mr Lewis.

Brandon Lewis MP: Thank you. As we are touching on Europol, it is worth noting that I am seeing Rob Wainwright later today, who has done some fantastic work for us with Europol. We have been a lead player in this. From the law enforcement point of view, I appreciate the benefits and advantages of being part of Europol. We value the role of Europol in helping our law enforcement agencies to co-ordinate investigations. For cross-border crime it has been hugely helpful.

You are quite right, Lord Condon, that we are actively considering whether to opt in to the new Europol regulation. As tempting as it is to make an announcement one way or another here today, I am sure you will appreciate that we will inform Parliament of that decision first. We will do that relatively shortly. As part of the decision, we will consider the extent to which Europol supports the sharing and exchange of information, and its operational capabilities.

On the second part of your question, if we do not opt in to the new framework ahead of it coming into force next May, in the immediate term we would still legally be part of Europol through the 2009 Council decision. However, it is also true that the Commission could bring forward a proposal to eject the UK from Europol at any time if it was able to demonstrate that the old framework had become inoperable following the introduction of the new measure. If the other member states agree, the UK's co-operation arrangements with Europol would change at that point, which would have knock-on effects for our liaison with Europol and our

ability to access Europol data and systems for exchanging information. That is what happens potentially if we do not opt in. Parliament will decide whether we do that shortly.

Lord Condon: Earlier, you described accurately how important we are seen to be in Europe on these issues and how important Europe is to us on these issues. Could I press you a bit more on why we have not opted in so far? What are your concerns about what is inhibiting us from buying ourselves more time by opting in, so that we remain full members of Europol until the end of Brexit? What is the downside that is inhibiting us from signing up and buying ourselves two years, perhaps, to get a softer exit?

Brandon Lewis MP: Let me be clear, I am not saying that there is a downside or an upside. I am simply saying that we have not yet made that decision; we will do so shortly. Obviously, this issue has to be organised before May next year. We will notify Parliament shortly but I am not able to go any further on that at the moment.

Lord Condon: Still on Europol but moving on beyond May next year—

Lord Cormack: May I just come in at that point? The thrust of the evidence that we received last week was that it would be, to put it mildly, unfortunate if we did not opt in. You began with a mini-panegyric on Rob Wainwright, which we would all endorse. We have had him before us and we think that he is a first-class man. He is a Brit leading Europol. Would his position not become somewhat difficult if we did not opt in in May? Can you bear that in mind?

Brandon Lewis MP: We are bearing all factors in mind. Obviously paramount are the benefits for our law enforcement and security and the issues of opting in or not opting in, in terms of making the decision. I will be very clear; I am not trying to give any indication one way or another. We are simply not yet in a position to notify Parliament of that decision. We will do so very shortly.

Lord Condon: Perhaps I could, with your assistance, carry on with what happens with Europol. Either in May next year or at the end of the negotiations, we will come out of our current membership of Europol. The National Crime Agency and those currently engaged in this process hope that we will be able to negotiate a bespoke arrangement for the United Kingdom, which is different from and better than any other third-party arrangement that has been negotiated up to this point. There are the models of Denmark and several others. Is it on your radar or in your thinking that this is a laudable ambition, that we should be thinking about remaining as close to Europol as possible, with a very specific bespoke arrangement that is probably the best of any non-EU country? Is your thinking beginning to influence how you move forward on that?

Brandon Lewis MP: There are a couple of points. You mention Denmark; I spoke to the Danish Minister on Friday. We will be looking at what happens with Denmark with great interest. Denmark obviously has

a relatively unique situation. It is different from where we are because it is a full member state that has opted out, so it has that complication. At the moment, we are a full member state and a large contributor to Europol and a great proponent of it. There will come a point where we are a non-member state, so it is slightly different from Denmark, but I will not deny that we will be watching what happens with Denmark quite closely.

There are, as you rightly say, other countries that have relationships, but there is a difference. I have been very transparent about the fact that, as the Prime Minister said, it would be inappropriate for us to give a running commentary on our negotiations and what we are looking at as we go through the negotiations with the European Union. It would hamper both our work in the Home Office and the wider work that Mr Jones and the team are doing in their department and with us and others. We have to recognise that we are coming from a different starting point to other countries, which is why I think that the Prime Minister is absolutely right in the language that she used—and which you have just used, Lord Condon—around a bespoke solution, for the country more generally and potentially in this area as well. The reason I say that is that, when we look at what other countries have negotiated and done, they have done so as countries that are not members of the EU at all and have come in as a new partner—as the United States has done with Europol—whereas, as we leave, we are a known partner and a known commodity to our partners in Europol and we have a relationship with them that has been built up through our years of being full members of Europol and the EU. We have a different starting point from which to have these negotiations, which is why I think that it is right, and very possible, for us to have a bespoke solution. What will that involve? Obviously, it is too early to start giving a running commentary, but your phraseology around a bespoke solution is spot on, for those reasons.

David Jones MP: Let me add to that particular point. More widely, as Mr Lewis says, my department is indeed working on a bespoke British relationship with the European Union once withdrawal is complete. We frequently hear mention of a Swiss model or a Norwegian model; we believe that our position is unique. We are currently a full member of the EU that is withdrawing. This country has a great deal of strength in a large number of fields, not least in that of justice and home affairs. Certainly, we would look to achieve that bespoke model that suits this country ideally and which is able to contribute to the ongoing work of our colleagues in the European Union.

Lord Condon: I will ask for your comments on Eurojust. Some of the same considerations that we have discussed on Europol apply to Eurojust; in fact, they affect more agencies, including the Crown Prosecution Service and others, as well as policing. Is there anything that you could tell us about what is influencing your thinking on what happens when we come out of Eurojust and how we replicate as best we can the sort of arrangements and benefits that we have had from Eurojust?

Brandon Lewis MP: To give a good political answer, yes and no. Yes, in the sense that we are exploring all the options for Eurojust once we leave the EU, and no in that it is too early to speculate on what future arrangements might look like. I would stress a couple of things that are worth bearing in mind. First, under its future legal framework, Eurojust itself may establish and maintain co-operative arrangements and agreements. Currently, there are the examples of Norway, Switzerland and the United States, which have posted liaison magistrates to Eurojust and are not members of the EU. These kinds of arrangements can be put in place. There is also a second point, which is that there is also a lot of work in this area that goes on at a bilateral level. The UK Central Authority is in regular contact with prosecutors and other judicial authorities in the EU member states regarding requests for mutual legal assistance. These relationships have been developed over a number of years and they play quite an important part in the quick resolution of queries and fast provision of evidence. Eurojust has been important and useful and we are looking at where we move forward, but that is not the only thing going on in this area.

The Chairman: We will move on to the question of databases and data sharing.

Q29 **Baroness Pinnock:** In previous hearings, we have heard about the importance of data sharing across the EU, particularly the passenger name record directive, which, as you know, can tell us who is coming in and coming out; Prüm—I recall one of the memorable phrases of Lord Condon, when he said last year that it would “transform” policing; the second-generation Schengen; and the European Criminal Records Information System. We were told at a hearing last week how vital all those were for our national security and the safety of residents. What happens if they are no longer available to us?

Brandon Lewis MP: To be frank, I am not keen on getting into a negative hypothesis on what happens if we do not do something. The reality is that we have to work to get the right deal for the United Kingdom. I agree that access to EU data-sharing platforms and indeed, as you have outlined, agreements such as Prüm, ECRIS and others help our agencies to cut crime, improve public safety and protect vulnerable people. That is why we opted into Prüm last year. But our co-operation is global as well; it is not just about our EU partners. We use other channels to exchange information; for example, Interpol is one method through which we also share information with other countries.

We exchange criminal records. The Council of Europe conventions provide the basis for co-operation and, although other systems out there are not necessarily as efficient or as comprehensive, they are there. There are models for what we can do. Equally, as I said to Lord Condon, in terms of what happens as we leave the EU, we are not coming to this as a completely fresh partner with whom the EU countries have no background and need to build a new relationship. We are a known commodity. We work with them in many of these areas—on passenger name records I would argue that we are leading the way. It is something

that we can be working with our partners to develop and to make sure that we get the bespoke deal that is right for us and which covers these things. That is work that we have to do in the months ahead.

Baroness Pinnock: The evidence that we were given last week about Interpol was that membership of that body was nowhere near as effective as that of Europol, because Interpol has members such as Russia. You cannot in all honesty expect to share as much information when you have such members as you can with the closed Europol system.

Brandon Lewis MP: I would make two points on that. First, even in the Europol system there is obviously an issue about who owns data and any nation state's ability to have—this applies to Eurojust as well—control ultimately over its data, and what data at what point it is in the national security interest to be sharing. That is important. You are quite right that Interpol does not have the level of integration and level of data that Europol has, which is why it is important for us that, as we go forward, we assess what we believe is important for our law enforcement and national security as part of our negotiations with the EU about what our relationship with Europol will be.

We come from a position of having a very positive and long-standing relationship with those countries that gives us a good basis on which to have that negotiation. There is a big difference between us as we leave as a known commodity, working with our partners about what is right for our national interests—and indeed wider global interests, including for our partners around Europe—in our relationship with Europol, as opposed to if we were a country coming to the table with no track record. We are in a very different position and that is why I am much more positive about getting an outcome that is right for this country.

Baroness Pinnock: Thank you. I just wonder whether Mr Jones would like to comment on that.

David Jones MP: Mr Lewis has gone into the detail of these arrangements but, more widely, it is worth commenting that this country has a great deal to offer the ongoing European Union. We have great expertise in these areas and we must assume that they would want to continue co-operation on areas such as this where, frankly, there is no economic downside from the point of view of the EU and where, if anything, there is every advantage to continue with, if not exactly the same arrangements, then those that would move towards the current arrangements. I hope that they would recognise that it would not be in their interest simply to put up the shutters.

The Chairman: I understand that we bring a lot to the table and that it is mutually beneficial but have you any assessment to date of the mood music that is around. Are they positive towards us? Would they be co-operative?

David Jones MP: I understand your question to be a wide one; I am sure that Mr Lewis can go into the detail. It is worth reporting that I have

had a number of meetings now with European counterparts and, while the original reaction was one of shock and, in some cases, of certain disgruntlement, things have moved on since then. There is a recognition that the United Kingdom is leaving the European Union and a more hard-headed attitude is developing, which I think is helpful. I am not getting a sense of a dog in the manger attitude from my EU counterparts.

The Chairman: Mr Lewis, what is your experience in terms of this particular aspect of co-operation?

Brandon Lewis MP: As I said earlier, both the Home Secretary and I have been speaking to our counterparts. Indeed, just last week, we were both in Luxembourg talking to counterparts. There is a desire to work with us because, as I say—I keep coming back to this—we are trusted partners. On the Europol side, the reality is that we are a hugely valued partner; in fact, we are one of the biggest contributors of information to Europol. We have also led the way on PNR and we are acknowledged to have a highly developed system. In some of our systems we have significant expertise—for example, on fingerprints—and we have relationships for sharing knowledge on that. We have recently had experts from France, Germany and the Netherlands over here looking at what we do and visiting our criminal records office to see how we do these things. Our colleagues across Europe also benefit from the information that we provide through ECRIS and our use of biometrics information. We are very effective in how we use that and fingerprints and DNA more generally, and we know that member states value that.

As I say, we come from the very strong position of being a valued and positive partner who others want to work with. Our position on what the direction of travel will be and where that journey will take us is around making sure that we are not giving a running commentary about what we do as we go through, which is not in this country's interests, other than us being nothing other than positive about getting the right result for this country. The Prime Minister has been very clear. The Home Secretary is clear and I want to be clear today: we view the security and law enforcement issues and the protection of this country as absolutely paramount.

Lord Condon: Could you reassure us that, in your negotiations, there is an awareness that access to these databases is not a sort of luxurious bolt-on; it is integral to day-to-day policing up and down the country? For example, in London, about a fifth of—or 200,000—arrests every year are of European citizens. We are talking about access to databases that, at the moment and within Prüm, may take seconds or hours and going to a situation where it could take weeks. It would be a pretty severe, abrupt shock to day-to-day policing, not just in London but up and down the country. No EU or non-Schengen member has access to these databases, so we are talking about a very significant new bespoke arrangement if we are going to continue to have an integrated approach to these issues.

Brandon Lewis MP: I am sure you appreciate that I have been quite careful about what I say. I have to be very clear. I flew out to

Luxembourg to meet counterparts on Thursday last week. I spent Thursday morning with the National Police Chiefs Council, with pretty much every chief officer there. They were very forward in letting me know exactly how important some of these arrangements are and why they are important. I fully appreciate that and we understand that within the Home Office and more widely across government. We clearly have a Prime Minister who absolutely understands that and has been very clear from the beginning that the security of this country is a key, prime issue for us. Equally, there is a reason why non-EU member countries want to have a relationship with Europol. They see that, even at the level at which they have membership, as an important and beneficial link for them.

In terms of looking at that bespoke, correct deal for our country, we come from a very different position to anybody else who has done this before, which is why the off-the-shelf presumptions around looking at what any other country has done are a false representation, on two levels. One, as Mr Jones and I have both outlined, is that we bring an awful lot to the table in terms of our expertise and knowledge. Secondly, we should not underestimate the fact that we come to the table with a relationship that none of the others who have negotiated deals has had before and a known back record which is positive and on which we can base those negotiations. That is why we are in a good position to have those discussions.

Q30 Lord Soley: Lord Condon has said that these are very important issues for the security of the people of the United Kingdom. I know you will be aware that they cost a lot of money within the European Union itself. Have you kept an indication of what we have spent on these and how much we will have to continue to spend as we exit the European Union—in other words, the costs of it?

Brandon Lewis MP: I do not have the figures in front of me today but as we go forward we will be looking at the potential outcomes of that. Obviously, what any benefits or costs—from the cost-benefit analysis—may be will depend on exactly what kind of relationship we end up with, which I will not prejudge here this morning.

Lord Soley: If you had to reinvent some of the arrangements, it would be an expensive operation would it not?

Brandon Lewis MP: You say “reinvent”, but it depends on what we do. Nobody at the moment is talking about reinventing; we would be looking to negotiate the right relationship for us. In many of those areas, if we have an agreement as we go forward to mirror a relationship that we already have then we do not need to reinvent anything. I am not sure that there is a cost in that necessarily, but it depends exactly on how those negotiations go and what we decide we want to build a relationship on.

Lord Soley: But there are a number of options for the negotiations, are there not? If we continue to have a close involvement, that might involve

payment to the European Union or some of these organisations, because we would be, at least in part, related to it and involved in it. Alternatively, we might have to set up alternative structures, which would also be expensive. I am not quite sure, from what you are saying, how much we have assessed the costs of either working out a close relationship with the European Union on these—and maybe paying part of the costs—or setting up alternative arrangements, which would be another cost.

Brandon Lewis MP: That depends on what those alternative arrangements might be. If we have an agreement on a range of areas that means that we effectively end up mirroring or continuing the relationships in certain areas that we currently have, then there is potentially no reason for any great change in cost, because that is something we are already involved with. If we were to change things, then it depends on what they would be. There are many things that you can change in terms of how you share information that do not necessarily involve a cost. As I say, I think this would be prejudging what we may or may not do.

Lord Soley: But presumably you have people in your departments who are working out what the various cost options are.

Brandon Lewis MP: Yes. There are people working on an entire package of things that we will be working on with our colleagues across Europe to negotiate as we go ahead—and of course with the team in Mr Jones's department.

Lord Soley: Have you done any work on this, Mr Jones?

David Jones MP: The only thing that I would say is that, clearly, there will be a cost but there will be significant savings from our no longer being a net contributor to the European Union. As the negotiations develop, we will be in a position to come up with a somewhat clearer picture than at the moment. Obviously, one of the starting points is that we will no longer be a net contributor to the budget of the European Union.

Lord Soley: There is a limit to how far that money can be spread out. I am aware—as I am sure you are—that the organisations that we are talking about are very expensive, are they not?

David Jones MP: Indeed. Costs will arise, but there will also be very significant savings from our no longer being a net contributor to the EU, which will of course have to be put in the balance. At this stage, we have not got into that granularity of detail that you are asking about.

Q31 **Baroness Janke:** We have been given to understand that the formal legal arrangements within the EU are quite significant, particularly in terms of data sharing and data protection among the other 27, and that the governance of the European Court of Justice in organisations such as Europol and Eurojust is also significant. I am wondering what work you

have done to look at this. If you feel that these formal legal arrangements will have to be negotiated, what do you believe are the implications for the time for working through these?

David Jones MP: We have to go back to the starting point, which the Prime Minister has made very clear. The consequence of the referendum will be our withdrawing from the European Union. That means that laws will be made at Westminster, not Brussels, and those laws will be interpreted not by the European Court of Justice but by the British courts including, ultimately, the Supreme Court here in London. Those are the mechanisms that will prevail after our withdrawal from the EU. Therefore, any new arrangements that have to be put in place or which may be put in place after we withdraw have to be the subject of bespoke adjudication arrangements. These are matters that will have to be considered as we continue our work.

The Chairman: There is a further question on that.

Lord Cormack: It strikes me that you two gentlemen will have to exercise an enormous amount of energy and ingenuity in order to try to maintain something approaching the status quo. Clearly, I wish you every success with that. Among the things from which we have benefited are those so-called tools that our present Prime Minister was very keen on when she was Home Secretary, particularly the European arrest warrant. We also have the European investigation order, the European supervision order and the European protection order. We will cease to be a party to these when we leave the European Union. What sort of compensatory mechanisms do you envisage negotiating?

David Jones MP: You are right, Lord Cormack, that it requires a considerable amount of energy; I can attest to that. You mention the status quo, but the status quo is not what we are going to get. Self-evidently, the country has voted to leave the European Union and, therefore, what we achieve will not be the status quo. However, taking that into account, there will be certain arrangements that prevail at the moment that are advantageous to this country and which we may seek, if not precisely to duplicate, at least to come up with something similar to. This is an issue that varies from department to department. At the moment, Mr Lewis's department is carrying out an assessment of what arrangements it would like to see prevail at the end of this process. The job of my department is to work with his department to see if that is something that is attainable in the course of negotiations. I have to say in all frankness—and I do not think you will be surprised at my saying it—that we are at a relatively early stage of this process but our thinking is developing. As I said earlier, we are looking to have, if not precisely crystallised, at least a highly developed position by the time we serve our Article 50 notice.

Lord Cormack: I am sure that we would agree that in an era when organised crime is such a menacing threat to us all, particularly as it extends into cybercrime, and when it is increasingly international, it really is important that the last stage is not worse than the first. While I accept

your implied rebuke about my using the phrase “status quo”, your task, surely, is to try to get as near to an equivalent as we have at the moment so that we do not lose any of the advantages that we currently enjoy.

David Jones MP: Lord Cormack, I would not presume to issue a rebuke to you, as I am sure you are aware. But you are right: there are a large number of arrangements that are advantageous to this country at the moment. We fully recognise that. At this point, I will defer to Mr Lewis, because he can probably give a bit more detail about the issues that you are particularly concerned about.

Brandon Lewis MP: Thank you for that. Lord Cormack, you made a reference to cybercrime, which I think is a good example. You are quite right that cybercrime is global—it is not European, it is not British, it is global. Our relationships with Europol and under other European agreements and co-operation tools are important but they are not all that is going on. In terms of international crime and cybercrime, things go far wider than that; the EU tools are simply part of the wider landscape of international law enforcement and security co-operation. Again, I would argue that we should all be very proud of our British law enforcement agencies and the City of London Police’s fantastic work on fraud and cybercrime.

We co-operate through our relationships in Interpol itself, with the Five Eyes work, through our bilateral work with individual countries, and with NATO. We are looking at all those relationships and the EU tools to consider, within the wider picture, how they are used, the operational capabilities that they support and how it might be possible to use those and other means to achieve the right outcomes. Ultimately, the key thing here is to get the right outcomes for the security of our country and, in terms of some of these crimes, the global security for everybody as well. Co-operation on extradition and on mutual legal assistance are both examples of an area where there is a Council of Europe convention, which underpins the current situation that we have for our co-operation with non-EU countries. Consideration of that approach has to be part of what we look at in the wider evaluation. We want to make sure that we keep, in that area, a very effective and efficient system of extradition with EU member states, but we have a job to do to make sure we have an efficient and effective system with other countries around the world as well.

Lord Cormack: I am sure that you would agree that we have given a degree of leadership in these areas in Europe, both in individual personalities such as Mr Wainwright and in the general negotiations, where we have helped to mould a system that, while it is not perfect—nothing ever is—it is serving Europe pretty well. Our concern is that we do not wish to slip back.

With specific reference to the tool that has perhaps occasioned most comment, the European arrest warrant, you cannot give us a running commentary of course, but what is your objective? How can we safeguard

the benefits of the European arrest warrant after 2019 or 2020?

Brandon Lewis MP: You are absolutely right in the sense that the job—it comes back to your opening remarks—for me, the team in the Home Office, the Home Secretary, the Prime Minister, and Mr Jones and his team is to take on the challenge of what will be a complex set of negotiations. In the Home Office, we have a particular focus on security and law enforcement. Mr Jones and his team have the joy of matching that up with the work right across the panoply of requirements for the country from other departments as well. That falls into looking at things as we move forward. As we go through the negotiations we want to make sure that we end up with a situation that ensures the security, and confidence in that security, of this country primarily; the Prime Minister has been very clear about that.

Also, we have said all along—and the Prime Minister and Home Secretary have been very clear about this—that we see ourselves as an important partner of our friends and colleagues across Europe. We are leaving the European Union institution, but we are not turning our backs on our colleagues and friends in countries across Europe with which we have strong working relationships, both commercially and in terms of security and law enforcement. It is about looking at how we get that correct deal. Obviously the European Union will want to make sure that it has a deal that works for it. Our job is to make sure that we have the right deal for this country; I am very confident that we can do so. Matters such as the European arrest warrant and how we seek to ensure, as we go through this process, that we have the benefits of that and all the tools that Europol and others give us is what those negotiations will feed into. To go further than that would be to tempt me into a running commentary.

Lord Cormack: I wish you well and I just hope that my hopes do not exceed my expectations.

Q32 **Lord O'Neill of Clackmannan:** On the issue of the Court of Justice, we have had witnesses suggesting to us that our withdrawal from the CJEU and our ceasing to be covered by its jurisdiction may rule out certain options, such as retaining something close to full membership of Europol after Brexit. If the Government decide that they wish to remove the UK from the jurisdiction of the Court of Justice after Brexit, what constraints, if any, will that pose for the level of co-operation that we are able to sustain in this area post-Brexit?

David Jones MP: To an extent, I have answered that question already, in that the country will be withdrawing from the European Union, self-evidently. Part of that process means that the supremacy of the European Court of Justice in the United Kingdom will cease and it is our Supreme Court that will be the supreme arbiter in this jurisdiction.

Lord O'Neill of Clackmannan: You are saying that it would be the British Supreme Court? But this will be an agreement between Europe and ourselves.

David Jones MP: I was just coming to that, Lord O'Neill. Therefore, we will be entering into new bilateral arrangements—or at least we will hope to. We will be seeking to enter into new bilateral arrangements with the European Union as a whole. Bilateral arrangements between sovereign countries and with international blocs are nothing new. For example, the United States has a high degree of co-operation with the European Union on a whole range of issues, but the United States does not submit to the jurisdiction of the European Court of Justice. Therefore, as you rightly identify, the challenge will be to put in place other arrangements on a bilateral basis that will be acceptable both to the United Kingdom and the continuing European Union. We have to be absolutely clear: the country voted to leave the EU and that includes leaving the supremacy of the European Court of Justice.

Lord O'Neill of Clackmannan: The only point that I would dispute with you is that we are not like the US in so far as wanting to have an arrangement with something that we have not been a part of. We are part of something and we are leaving it. One of the consequences of departure is going to be that we will deny ourselves rights that we currently enjoy in respect of something such as Europol. I think, with respect, that the US comparison is not particularly relevant.

David Jones MP: It is relevant to the extent that the United States is a sovereign nation and, post-Brexit, we will be a sovereign nation too. Therefore, while we would wish to continue arrangements with the European Union, as I said to Lord Cormack a moment ago, we will not be precisely duplicating all the arrangements of the institutions in which we participate at the moment. Clearly, that is impossible if we are no longer subject to the supremacy of the European Court of Justice in terms of arbitration.

Lord O'Neill of Clackmannan: One partner in the agreement into which we would be entering, namely the European Union, post-exit, will still have at the head of its legal interpreting process—if, as a layman, I can call it that—the European Court of Justice, while we will have the Supreme Court. You could have probably a very elegant arm-wrestling match between the respective learned friends.

Brandon Lewis MP: This is where Mr Jones's point is absolutely right. It is worth having a look at the fact that the United States has come to an agreement and is, obviously, not part of the EU and therefore has its own supremacy and its own Supreme Court. At the same time, we are in a different position, as Mr Jones outlined. Taking your point on board, Lord O'Neill, it is absolutely correct; it is the point I made earlier on that we are different in the sense that we are leaving. That has advantages in that we are a known commodity. We have a track record in all these areas of security, law enforcement and co-operation.

We are not a new partner looking to agree a new deal; we are a trusted partner who our partners across Europe understand and are comfortable working with, as there has been an ongoing relationship. That also gives us an advantage, in that we are in a position to have a different starting

point to those negotiations. It means that it is inappropriate for us to presume one thing or another in terms of our relationship and the position or either our Supreme Court or the European Court of Justice, because the position that we are coming from is unique. This has not happened before.

The challenge that we have to rise to, both in the Home Office but more widely as a Government—as the Prime Minister has outlined—is to get the right deal for this country, which is a bespoke deal that delivers what we need while recognising that we want to work with our partners.

Lord O'Neill of Clackmannan: Would a bespoke deal along the lines of the arrangements with the United States be what you would be after, or do you want something better than that for the UK?

Brandon Lewis MP: You are tempting us there into giving a running commentary, which we will not do.

Lord O'Neill of Clackmannan: The running commentary argument is okay, but there are certain consequences that come directly as a result of Brexit.

Brandon Lewis MP: That depends on what we negotiate in the months ahead as part of how we Brexit. When people talk about what they see as a positive or negative outcome of Brexit and what impact it could have in terms of the question that you asked, they make a presumption about what we negotiate in the months ahead. I think it is too early to do that.

Q33 **Lord Condon:** Could I pursue that point? Do you accept that if we get a bespoke deal that takes us as close to the status quo as possible, it is bound to run into the challenge that we are no longer part of the CJEU? The CJEU has direct jurisdiction over Europol databases, personal information, data sharing—all of those issues. It is not a paradox but it is a fact of life. The better our relationship, the more the struggle that they will have in accepting that strong new relationship, because the CJEU has jurisdiction over all those things that we are trying to remain very close to, and we will be outside of that.

David Jones MP: Yes. Again, the use of the phrase “status quo” has got to be challenged, with respect, because we will not have the status quo.

The Chairman: But Lord Condon said “close to” the status quo.

Lord Condon: As close to the benefits, rather than the formalities.

David Jones MP: I can only reiterate the point that, post-Brexit, this country will not be subject to the supremacy of the European Court of Justice. That is absolutely clear.

Lord Condon: And we will have to live with the consequences of that, if that trumps some of our wishes to get really close to some of these agencies.

David Jones MP: Again to reiterate what Mr Lewis has said, the consequences depend on the outcome of the negotiation which, at this stage, is of course unknown to all of us.

The Chairman: I think the point being made is that if we negotiate something bespoke, and we do not have the jurisdiction of the European Court, it will limit the options. In other words, it will constrain what we can actually negotiate. The point I wish to make is that, while I think that you are right in saying we do not want a running commentary, we are trying to explore what the options, and the implications of the various options, would be. It would be very helpful to have that, rather than a running commentary.

Lord Cormack: Periodic bulletins would be very useful.

The Chairman: Precisely.

Brandon Lewis MP: That is why we come back to something Lord Condon said, but also a point Mr Jones made in the opening minutes of this meeting. We should be wary about making presumptions. The whole point of a negotiation and the fact we are coming from an entirely unique position mean that making judgments based on our experience of what has gone before is difficult to do. We have an opportunity to work out a unique and bespoke deal. That could come to a whole range of things—the months ahead will show us—which is why it is difficult and inappropriate for me and Mr Jones to go further on that.

On your point on the running commentary and looking at the options, this is where I come back to the point Mr Jones made in the opening minutes of the meeting. The work of this Committee and the report you are producing are very useful. As Ministers who are assessing the options and carrying out these negotiations—I, the Home Secretary, Mr Jones and the Prime Minister are already talking to our counterparts across Europe and elsewhere on this—we are working on that process and therefore limited in what we can say because we are in those very early stages, as has been outlined. The discussion and views about what those options and limitations—if you see them as that—might be around the negotiations are exactly the information, thoughts and opinions you might put in your report that are very useful for us to take into account in the work we are doing. I understand the point you are making, but that is where your report is useful to us as much as us sitting here is helpful for your questions today.

The Chairman: We will endeavour to be as helpful as we possibly can.

Q34 **Baroness Massey of Darwen:** I have listened to this discourse this morning. Thank you for your responses. To me, this does not sound easy. In fact, it sounds very complicated, with some very serious problems. I wonder what you think are your greatest difficulties and how you would, if necessary, prioritise them. To me, time is one, as is Europe falling away from us and our not being able to dictate what happens there. The cost is another issue that I want to know more about. Could you tell us how you

feel about your main problems here, or do you not see them as problems? "Challenges" is possibly a better word.

Brandon Lewis MP: "Challenges" is a much better word, and, to be fair, opportunities lie ahead. We have an opportunity through this to get not just a good, strong security relationship with Europe but one that informs what we do with other countries around the world as well. There are other countries that are not part of the EU. The United States has been mentioned as a good example, as are all the Five Eyes countries and others, where there are good relationships. Our experience of what we are doing as we go through this process with the EU will inform how we do those as well.

Baroness Massey of Darwen: Will they last?

Brandon Lewis MP: Yes, I think that they can, for a couple of reasons. There are countries that are not part of the EU that we have a very long history of co-operation and working with that are great, long-standing allies of ours. Again, the United States is a good example, but as are all the Five Eyes countries—Australia, Canada, et cetera. The Home Secretary has already spoken to her counterparts in many of those places on some of these issues. There is the reality that the country made a decision on 23 June. I appreciate your secondary point and Lord Soley's point around cost, but the reality is the country made a decision about leaving the European Union. Our job is to ensure we leave the European Union in such a way that gives us the best deal for the United Kingdom.

David Jones MP: I echo that, because it is a very important aspect of the whole matter. The work this Committee is doing, and the work my and Mr Lewis's departments are doing, must be set in the context of the stark fact that this country has voted to leave the European Union. All our work must be predicated on the fact that, in two to three years' time, we will be departing. One thing that I particularly would like to see, in the context not only of this Committee's work but more generally—and I am asking this of more or less everybody I speak to—is for opportunities to be identified. Lord Cormack made the absolutely correct point that crime is increasingly international these days. In the internet era, you can commit a crime in London by pressing a button in South Korea. There are challenges to policing and to law enforcement which, in many respects, are opportunities. I would be very interested to see what the Committee has to say about the opportunities we have for developing policing and law enforcement models post Brexit.

The Chairman: That is outwith our remit, but we will see what we can do.

Q35 **Lord Soley:** You both commented that you want Britain to have a good relationship with the European Union. I concur with that. Terms such as "hard" and "soft" Brexit are not helpful. We need a new relationship with the European Union. That is very important. That brings you right up to the issue of how we influence the European Union. We will no longer have a seat at the top table, so we will no longer be able to make our policy

agendas as we have in the past—directly to the top table. What thought have you given to how we influence the EU? The United States, for example, has a major programme of how it influences the European Union. We will have to work out something similar, I hope again in a positive way that is beneficial to the EU and well as the UK. What have you done along those lines?

Brandon Lewis MP: From the Home Office point of view, both the Home Secretary and the Prime Minister have been very clear about the importance of maintaining strong law-enforcement and security relations with our partners across Europe. That comes back to my earlier point, and you make a good point, Lord Soley, that we are leaving the institution of the European Union, but we are not turning our back on our colleagues and patterns across Europe and around the world. We are in a unique position. As we outlined, we are a large contributor to the EU's security and law-enforcement tools. That gives us a unique position from which to have these conversations to build the right relationship.

It comes down to the fact there will be a new relationship. We want to make sure, as we negotiate this relationship, that it works for this country and gives us a voice. Our ability and expertise in a range of areas—Europol is a good example where we have been a lead player—show that we can play a key part. We are also committed to make sure we are working with a wider range of international partners on security issues—that comes back to opportunities. As Lord Cormack said and as Mr Jones just outlined, looking at what my police forces are dealing with around the country, the growing change and challenge of dealing with what is effectively a very easily international, global crime of cybercrime and cyberfraud, means our relationships have to change and be more global.

To date there has been agreement with our approach to seek a strong, ongoing security relationship across our international partners. We want to make sure we do that. As I have said, the Home Secretary and the Prime Minister have been very clear about that. That is very much at the forefront of what we are doing as we exit the EU.

David Jones MP: More widely, because you identified an important point, it is important that we have good relations with the European Union. It is in our interest that we see a prosperous, successful European Union, too. So far as we are concerned, we remain a very important, large economy. We are an important liberal democracy. We have an important voice in the councils of the world in organisations such as the United Nations and NATO. We see our future as very much an outgoing nation whose interest will not be confined simply to the European Union, but will be global and include maintaining excellent relations with the European Union and offering what we can. In the context of justice and home affairs, we have a great deal of expertise. As Mr Lewis rightly said, we are a known quantity so far as the European Union is concerned.

Lord Soley: I understand that and I am not unsympathetic to what you have said, but because we will no longer be at the top table when we

come out of the European Union, you have either an embassy that does all the work relating to the European Union, or a collection of agreements. It will probably be a combination of both. To extend that a bit, I do not know how much thought you have given on the idea of a major embassy relationship with the European Union, which is what it will have to be, as well as individual, specific agreements that would in effect be international treaties. Additionally, I would like to know whether you have given any thought to working with other countries outside the European Union that, like us, need to influence the policy agenda but are not at the top table, whether they are countries such as Norway or Iceland, or countries further afield. There is a critical issue here of trying to influence an agenda in what, as you are indicating, we all hope will be a very powerful economic and political unit called the European Union, rather than sitting on the side-lines shouting and waving our arms when we do not like something that is happening.

David Jones MP: I hate using the expression, but I say again that I cannot be tempted into a running commentary. What you have outlined sounds very much like a bespoke solution for the United Kingdom—one of maybe a number of options. I can certainly assure the Committee that we are looking at a whole range of options to come up with a proposal that will suit the needs of the United Kingdom and equally, one would hope, of the European Union.

Lord Soley: Are we talking to other countries outside the European Union that already have the same problems we will have in influencing the agenda? Are we discussing this with them?

David Jones MP: We are talking to a wide range of interlocutors.

Q36 **Lord Soley:** Shall I move on to the Five Eyes? I think that is as far as we will get on that answer. I will come back to it at some stage in other ways. The Five Eyes—New Zealand, Australia, the United States, Canada and ourselves—have this very powerful intelligence operation that is profoundly important for keeping people in this country, and, indeed, elsewhere in the world, secure. The other four countries have tended to see us as the people who could influence the European Union, which is a bit of an extension from what I have just raised with Mr Jones. I presume we would still seek to have that influence, and that the other four members of the Five Eyes would want us to have that influence. What thought are you giving to this?

Brandon Lewis MP: You are quite right. The Five Eyes are an important relationship in and of themselves for this country. The Home Secretary has already spoken to a number of her counterparts by phone and has quite recently met the Australian Foreign Minister and the US Attorney-General as part of the ongoing conversations. I have spoken to Australian senators in the last few weeks as well. As I explained, that is another example of how we work internationally. Yes, obviously the Five Eyes have traditionally seen us as interlocutors with the EU, but the US also has its own direct contact with the EU, as you outlined. As we negotiate with the European Union, all these things will be part of our

considerations of what we do with the European Union but, as I said, to go much further than that would not only risk falling into a running commentary, but prejudge what outcome our negotiations may lead to in what we have. Our primary focus is on making sure, from a security and law-enforcement point of view, that we get the right agreement for the United Kingdom, but we are also very much aware that we work with our partners internationally and they have an interest in this, so we will be talking to them as well.

Lord Soley: I presume that we are in close and detailed talks with our four partners in the Five Eyes group?

Brandon Lewis MP: We will always have close and detailed conversations with our partners in the Five Eyes group. That comes back to the point I made earlier: this is not just about our relationship with the EU, but part of our opportunity to remember that we are a country with global and international links. Crime is global and international. It goes well beyond European borders. Some of our co-operation with the Five Eyes countries, for global crime and cybercrime in particular, will be of growing importance over anything else.

The Chairman: We have run out of time, but do you have a few minutes for a couple more questions?

David Jones MP: We are at your disposal.

Brandon Lewis MP: Yes.

Q37 **Lord Condon:** I bring you back to the very beginning of the session, trying to get an understanding of how you are processing and developing these ideas. Could you give us an idea about where the engine room for you is on this? Do you have any full-time secondments or attachments of senior police or law-enforcement agencies in your departments working on this? Or is it very much asking for views and opinions, then crunching it in your own establishments?

Brandon Lewis MP: I am quite happy to give the Committee an outline of what we are doing in the Home Office. It is probably easiest if we write that for you. We have recently brought in a slightly altered structure, so we, in effect, have a DG looking after the European side. That will become more important as we go through these negotiations so we have a clear focus on our work with EU partners. I will let Mr Jones speak from the wider point of view of his department, but the Home Office will have a team of people focused on this work, initially as we currently work as a full member of Europol and the European Union, but that will inform work on what the Home Office's interests are as we exit.

Lord Condon: Are you contemplating secondments or attachments on a short or medium-term basis?

Brandon Lewis MP: We will always be looking at whatever we think is appropriate and required to ensure we get the right outcome.

David Jones MP: I do not really want to add to that. Clearly, this is an area in which the Home Office will take a lead, but we will liaise closely with them.

Brandon Lewis MP: I am very happy to write to the Committee to give an outline on that side of things.

The Chairman: It would be very helpful if you could describe to us the arrangements you have. Lord Cormack, a very brief question?

Lord Cormack: A brief question, yes, wishing you every possible success in all your work. I quite take the point, as we all do, on running commentaries, but we have a parliamentary duty to know what is happening and a parliamentary role to comment on it. Therefore, can you assure us that you will keep this Committee informed by reasonably regular bulletins of progress so we know roughly where you are and so that, if it seems appropriate, you can come before us again and discuss these matters? We need to have a continuing dialogue.

Brandon Lewis MP: From my point of view, I am very happy to come back and talk to the Committee again in due course. The next key stage from a parliamentary point of view, which conversations today have confirmed, is the decision the Government have to make around the next stage of the opt-in for May next year on Europol. We will make a decision on that and announce it to Parliament shortly. If the Committee wants to have a conversation again after that, I am very happy to do so, but we will ensure we inform Parliament more widely on that once the decision is made.

The Chairman: We will scrutinise the decision on Europol. Mr Jones, Mr Lewis, thank you very much indeed. We are grateful for your time this morning. As I said, we will endeavour to produce our report, but we rely on a continuing dialogue with you. Thank you very much indeed for your time this morning.