

Home Affairs Committee

Oral evidence: [EU Policing and Security Issues](#), HC 806

Tuesday 6 December 2016

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Members present: Yvette Cooper (Chair); Mr David Burrowes; Byron Davies; Mr Ranil Jayawardena; Tim Loughton; Stuart C. McDonald; Naz Shah; Mr Chuka Umunna; Mr David Winnick.

Questions 1-77

Witnesses

[I](#): Professor Elspeth Guild, Professor of Law, Queen Mary University of London, Professor Michael Levi, Professor of Criminology, University of Cardiff, and Professor Steve Peers, Professor of EU Law and Human Rights Law, University of Essex.

[II](#): David Armond, Deputy Director General, National Crime Agency, and Richard Martin, Temporary Deputy Assistant Commissioner, National Police Chiefs' Council.

Examination of witnesses

Witnesses: Professor Elspeth Guild, Professor Michael Levi and Professor Steve Peers.

Q1 Chair: Can I welcome everybody to this afternoon's session, which is on the policing and security aspects of Brexit negotiations? I thank our panel for joining us. We want to cover questions about Europol, the European arrest warrant, data sharing and the wider negotiations process. Can I start by asking all three members of the panel briefly to tell us, first, which of the range of security issues that will be affected by Brexit you think is the most important to get a good agreement on as part of the Brexit negotiations? Secondly, what are you most worried about? It might be something you think we might not get agreement on or something for which there is so much at stake in the detail. So, first, what do you see as the most important issue; and, secondly, what are you most worried about? They may be the same thing. Professor Peers, would you like to start?

Professor Peers: Thank you for inviting me. I think the most important thing is the exchange of data on policing issues between the EU—its member states, Europol, etc.—and the UK. I am more worried about the area of criminal law co-operation, where the advantages of the legislation have not been fully identified. It might be difficult to negotiate something that has the exceptions that we might want to the European arrest warrant, for instance.

Q2 Chair: Would you elaborate on that second point?

Professor Peers: I assume that the Government will want to have some form of extradition system with the European Union that goes above and beyond the Council of Europe conventions, which we would otherwise fall back on. It would be something like the European arrest warrant, perhaps with exceptions, like Norway and Iceland have, but there might not be enough time to negotiate those exceptions, so we run the risk of falling back, rather than being able to negotiate something. The advantages of the European investigation order, which is not in force yet, might not be obvious for a few years, so we might end up falling out of that as well, rather than trying to stay part of it.

Professor Levi: For me, as someone who has done some work recently on cybercrime, etc., one thing I would probably worry about most urgently is that mutual legal assistance has become a sort of industrialised issue. The number of cases in which we want help from abroad and need to help other people abroad if we are to tackle some of these global bads that affect the UK quite strongly is growing and growing, so if we move back to a more pre-industrial phase, that will be difficult. For me, the area that Professor Peers mentioned is probably the priority above all others.

JITs—the joint investigation teams—are another significant area, which is perhaps not quite so central, but in that whole arena it is easy to



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underestimate the extent to which routine crimes from mass-marketing frauds to bigger stuff involve international co-operation. If we don't get that easily and quickly, it raises a lot of difficulties for the pursue function, as the Home Office four Ps would have it.

Q3 **Chair:** Can you give a sense of scale in the way such international cases are increasing?

Professor Levi: Well, it is understated because we are probably not as active as we should be in police investigation, but requests by the National Crime Agency took an average of about 143 days to be satisfied. If you are trying to deal with cybercrime cases, people are long gone. We make thousands of requests and the number of checks, for example, through Schengen are in the millions a year altogether. We just need to think about the scale—it was an excellent question—and try to address it. As someone who did his PhD before the invention of computers, I am well aware of the transformations that such issues make.

Professor Guild: It is a pleasure to be here. I specifically prepared in our discussions beforehand for the European agenda on security and the fight against terrorism. In particular, I looked at the consequences of what is going on in the EU in terms of delivering on that agenda, and what that would mean in the context of our no longer being a member state. So one of the things that struck me upon reading the document—on the basis that the UK would be a third country and would therefore fall into all of the issues relating to third countries—is the extent to which third countries are always at the demanding side. They are always at the requesting side. They are never fully participating and—in particular for much of the security agenda—a lot of the measures relating to policing and criminal justice are subject to the data protection directive, which the UK has opted out of. As a member state that has opted out of the directive, the UK's position would be somewhat different. But now, all the provisions from article 35 onwards that apply to the sharing of data in criminal justice and policing are subject to the directive, which is *prima facie* prohibited with third countries and only permitted upon the fulfilment of an extensive number of criteria. This includes effectively, that the third country will have in place the equivalent of the protections of the directive.

Q4 **Chair:** Your view is that we do not currently have sufficient data protection provisions in UK law to meet the kinds of requirements that the EU would want on data sharing?

Professor Guild: I think we are all right in terms of the data protection regulation and the private sector. That is all fine. The question will be: if it comes to the point at which the Commission must do an assessment, will our legislation satisfy the criteria in the directive, which has not yet been implemented in the other member states?

Chair: Thank you very much. We will turn first to Europol.

Q5 **Mr Jayawardena:** Thank you for joining us this afternoon. The permanent secretary told us in July—and confirmed it to this Committee in September—that the UK is almost the biggest contributor of



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intelligence to Europol. The UK has reportedly played a key role in shaping the agency's strategic direction and operations. In that context, what are the prospects for the UK being able to negotiate a bespoke and unique relationship with Europol when we leave the European Union?

Professor Levi: They are probably quite good at one level. The USA has done so, and Norway has already been mentioned. What you cannot get is direct access to the databases if you have a request. That slows things down, and that is relevant to my point about the industrialisation. We have mass-marketing frauds and investment frauds going on, and prosecutors out in Spain collaborating. All of that process will be slowed down. It is likely that there will be a mutual interest in being able to negotiate a deal. But things will not be so easy, and we will miss the opportunities to shape. If you think about the history of Europol and the criminal intelligence models, a lot of things there are British in origin. Anyway, that is gone. But I think that the prospects for negotiating a deal are good.

Q6 Mr Jayawardena: In that context, again—thinking through some of what you said—it is already shaped by the British model, and it is shaped by a lot of our intelligence. To that end, would it not also be true that, though some would say that there are already countries that are not part of the European Union that are part of what the director of Europol has called “a second tier”, we would not go into that second tier because of all of the intelligence we contribute, all of the ways the Europol has already been shaped, and that it would be very much a bespoke deal, not simply “take it or leave it”.

Professor Levi: Well, I think it would be a bespoke deal, yes, but I do not think we are going to get a deal in which we have direct access. I would be astonished if we had a deal in which we had direct access to Europol databases, both to put it in and to take it out.

Q7 Mr Jayawardena: Can I probe on this point and then I am happy to take further evidence? In terms of direct access, when we visited Europol—a little while ago now—they told us that the countries that were not part of the European Union had direct access to the data but only at Europol, so it was direct only to people in the member state or country that was participating. Is that what you mean when you talk about direct access?

Professor Levi: Yes, the trend has been to make data available to Border Agency and police on the street. It is all about rapid—it is not just about cybercrimes; it is about cyber-held evidence as well. If you make that a slower, centralised process, then you have to think about how to redistribute. I am not saying that problem cannot be overcome, but it will take a lot more effort.

Q8 Mr Jayawardena: Professor Guild, you have something to add?

Professor Guild: I would add that the question of the UK's role will depend on what bit of Europol one is interested in. If one is looking at the European counter-terrorism centre in Europol, then if one looks at the strategy, it is a whole series of issues around terrorism, foreign fighters,



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etc. and the emphasis is Turkey to Morocco. The UK is not a prime source of information on Turkey to Morocco, unless you talk about the new initiatives in the Gulf. Therefore, the question will be: will the information that we are providing in the context of Europol's counter-terrorism activities be valuable enough?

- Q9 **Mr Jayawardena:** Do you consider that it would acceptable for the United Kingdom to continue working with Europol and be almost the biggest contributor of intelligence—to quote the permanent secretary—and not retain some of these rights, not retain representation on the oversight and scrutiny parliamentary group, for example?

Professor Guild: I think the question will be the value of the contribution. I am looking at the counter-terrorism side of things and—from what I see in the documents of the perspective, concerns and worries—the contribution there is perhaps not so evidently enormous as it is in the cybercrime field.

- Q10 **Mr Jayawardena:** A final question, Chairman. Does it come down to money? Could it come down to money?

Professor Guild: Can we pay enough to get into anything? Well, there are a lot of things that you can't pay enough to get into and, particularly if it is sensitive information and counter-terrorism, you can't pay for it.

- Q11 **Mr Jayawardena:** Would you agree?

Professor Peers: I think money is bound to be part of any negotiation. Two points. First, Europol is quite closely connected to other EU legislation on data sharing because Europol has access to the EU's databases and uses that as part of its analyses, so it might be difficult to think about a deal on Europol access in isolation, especially if we talking about a bespoke deal with different rights than other non-EU countries.

Secondly, it comes back to the question of personal data. It is going to keep coming back to the question already raised by Elspeth—that there is going to be an assessment of how good our personal data laws are. That may be a problem in light of the Investigatory Powers Act that has just passed, because there are going to legal challenges to it here and in Strasbourg. There may be a problem in light of the judgment coming in two weeks in Tom Watson's case, David Davis's case, against the previous Act that was passed in 2014. Also, even if the Council and the Commission are fine and say our level of data protection is fine, the European Parliament might cause difficulties. They might send it to the Court of Justice, or individuals might challenge it, as they have done in the United States, for instance, through information commissioners and national courts. Those are all the obstacles. I think the data protection regime is going to be the problem rather more than the ask of having the extra access. They might well be willing to give that to us. Their problem really is going to be the data protection regime more than anything else.

Professor Levi: Yes, because that is the slippery slope argument: if they let us have a more relaxed regime, why not others? I think that would be



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a problem for them. In the CT area, we are trying to fix this at a particular point in time, but that is a flexible construct. The patterns of terror and terror information evolve over time, so I think it would probably be a mistake to take a snapshot of that. I might broadly agree with Elspeth, but I think it has evolved. One reason why we might be valued is that we have access to stuff that they do not. I think that is part of the agenda.

- Q12 **Chair:** Can I clarify something, Professor Peers? Were you saying that the court case in the name of the current Brexit Secretary, taken against the legislation put through by the current Prime Minister, could make it rather difficult and complicated—even more complicated than it already is—for us to get the best possible security arrangements as part of the Brexit deal?

Professor Peers: Yes. Of course, it was a challenge to the previous legislation. David Davis took his name off as soon as he became a Minister, but Tom Watson's name and others are still on it—there is a parallel Swedish case—and it will be decided on the 21st. It depends on what the Court of Justice says. It might set out a series of problems with the prior legislation and then you have to read across and see if those problems also exist in the Act that has just been passed. If that is the case, it could cause a problem for co-operation with the UK post-Brexit, because then it would be very hard to say that the UK has met the adequacy standards that it has to meet under the EU's data protection laws. It is very hard to negotiate them away because judgments in this area tend to be based on the EU charter—the primary law of the European Union—and whatever we might ask them in terms of access to Europol and databases, it is unrealistic to ask them to amend the charter to facilitate co-operation with the UK, which would entail a treaty amendment to that purpose. I think we have to live within the framework of what the Court of Justice says about the charter and that is—depending on what it says—bound to set some constraints. We will also have a judgment soon on the treaty on passenger name data with Canada. I assume we would want something similar to that, and we will also have to look at what the Court says to see what other constraints might apply in this area.

- Q13 **Chair:** Given all that, what is the best deal that we could get, just in terms of the Europol data access?

Professor Peers: Because we supply so much of the information, we might conceivably be able to make a reasonable case that we have additional access to additional information that other states do not get. We obviously offer more than other states do and that has a knock-on effect in terms of access to other databases as well, because of the connection with that and Europol. The downside in the UK Government's argument is the potential complaint that might be made about the Investigatory Powers Act. We will know, first of all on the 21st, and then probably in January or February with the Canada case, exactly where we stand in terms of what it would take. Maybe some kind of carve-out might be possible—if there is a problem with the rest of the Investigatory Powers Act, we will treat the information that we receive from or give to the European Union in a different way to satisfy the adequacy standards. We



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obviously have to think through that once we see the judgments of the Court of Justice.

Q14 **Mr Winnick:** Europol came into existence in 1998, did it not?

Professor Peers: That is when a convention was signed, and it came into force a bit later. There was a previous informal version of it—but essentially, yes.

Q15 **Mr Winnick:** As for combating criminality of all kinds, would one say that Europol has done excellent work? Is that the viewpoint of the police, as far as you are aware?

Professor Levi: It started off slowly.

Q16 **Mr Winnick:** Is there any reason why it started off slowly?

Professor Levi: It's partly a social mechanism. As Members of the House know, when you get to know each other better, you sometimes—not always, of course—co-operate better. That is what has happened and it has been very successful in that way. That is one of the reasons why there has been a decline in the number of national liaison officers and an increase in the amount that Europol is responsible for, subject to whatever the group after us may say. So it has gradually become accepted as a kind of funnelling point for things, and also for co-operation.

Q17 **Mr Winnick:** And what about the effectiveness of Europol in combating criminal activity?

Professor Peers: I think the House of Lords looked into it a few years ago and was a bit disappointed. But the legislation has been amended a couple of times since then, and there are more resources. More effort and focus has been placed on things like terrorism, cybercrime and child sex images. So you would have to ask that question again. Whenever I have discussed these issues with police officers, they are most interested in exchanges of criminal records and co-operation on football hooliganism. That is what they really value from the operational point of view. The last time I had a discussion was a couple of years ago. In the meantime, we have signed up to participating in the Schengen information system, and I know they were looking forward to that in terms of policing: in their cars in Kent they could immediately check on a licence plate and see if it was a stolen car. They were looking forward to that sort of thing as well. Obviously you have the police in as well and you could ask them more from the operational point of view, but that is what I have gleaned in discussions with them.

Professor Levi: They have upped their game in cybercrime and in money laundering, but you have to see this as part of a patchwork quilt of co-operation, and therefore assessing the effectiveness of one agency in isolation from the other is a bit of a mistake. There are no easy applicable measures of effectiveness except in terms of the counter-factual: what would things look like if it was not for that co-operation mechanism? I think you would say that we will miss that, if that is where you are getting to.



- Q18 Mr Winnick:** Professor Peers, you said previously, leading on to other questions put to you today, that the UK cannot stay in Europol if we leave the EU. It is a fact. But many other countries that are not in the EU, including the USA and Canada, have negotiated such arrangements that seem to work, haven't they?

Professor Peers: Well, yes. When I said that the UK cannot participate in Europe, I am sure that I went on to clarify that it could be an associate member. I was probably responding to people who did say, during the referendum campaign, that we could stay in Europol as a member. That is not correct. We can stay as an associate. We could, in a sense, re-join—hopefully without a transition—as an associate member with some form of arrangement. As you say, many other companies have done so. The question is whether we get better access than they tend to have. For the reasons I have suggested, we could try and make an argument that we ought to because we contribute so much information, with some chances of success. It might be asking too much to be directly involved in the management. I am certainly not going to have the director of Europol anymore. As to whether we have a person on the management board: I do not know of any EU agency which has non-EU countries with places on the management board. Maybe I have missed one, but that is an unusual thing to ask. So we might have some other arrangement. We would want to discuss how the money that we contribute is spent, and maybe there is some other way of getting around that. There could be an associate status on the management board with non-voting powers, so we could at least have a say without having a vote. So maybe those are the sorts of things that ought to be considered.

- Q19 Mr Winnick:** A final question from me on this aspect: are we quite clear that if Britain—the UK—leaves the EU, then there is no way in which we would be a member of Europol? We might negotiate along the lines mentioned by Professor Peers, but we are quite clear about that, are we?

Professor Peers: Again, it is unprecedented. There is nothing in the treaties to actually rule out a non-member state being a member of an EU agency. It would be ruled out for council voting, in Parliament and in the Commission. I find it incredible to think that it might happen.

Professor Levi: Could I add one thing to that? It is a slippery slope. If the UK, why not the US?

- Q20 Byron Davies:** Good afternoon. We have been discussing negotiating a new agreement with Europol, and I would like to ask you more specifically perhaps about the legislative challenges and the process hurdles. Also, could you give us a view on overcoming this within the two-year article 50 period?

Professor Levi: Clearly, Norway and Iceland are in a different position to the UK, but it took them 10 years. Each member state would, I think, have to ratify—agree—separately, so it would be a big ask to do this within the two-year period.

- Q21 Byron Davies:** Impossible?

Professor Levi: I wouldn't say it was impossible. I would say that it is very unlikely.

Q22 **Chair:** Are there some things you could do within two years and some things not?

Professor Guild: Everybody is talking about interim agreements now. Everybody is saying, "We can patch everything up with interims and then get on with negotiating the full agreement", but we haven't discussed this among ourselves so I do not know whether my colleagues agree.

Professor Peers: I can imagine that we could have interim agreement that would continue our participation in, for example, the European arrest warrant, or something else that we wanted to stay part of, but maybe with changes. You could say, "Let's stay part of it fully for now and then discuss the changes over the next couple of years", and that is why, for instance, it took Norway and Iceland so long to negotiate their participation in a form of the European arrest warrant. They wanted certain exceptions and the EU side wanted certain exceptions. Once you start talking about exceptions it lengthens the negotiation.

If you say, "We want to sign up to this menu of EU legislation. Out of the 40 or whatever measures we participate in, we'll take those 30 or 20 unchanged", it shouldn't take longer than two years to negotiate continued unchanged participation. Legally speaking, the EU does not normally submit its criminal law and policing treaties to ratification by member states. It normally takes the view that it is sufficient that the EU alone sign them, and usually that means a qualified majority vote and consent by the European Parliament. It sometimes applies treaties on an interim basis anyway, even if they do need national ratification, or pending the European Parliament's final approval. Those are all ways in which you could shorten the process.

The key question is whether we want to negotiate something complex and different from scratch, in effect, which is what Norway and Iceland were doing and what other countries like Canada have had to do, or whether we say, "Well, we are already participating in this so nothing needs to change except that maybe there are these five or 10 things we're not bothered by anymore—goodbye. Nothing needs to change as regards the 25 or 30 things in which we want to continue to participate, so we will just keep on with that". Then the only issues would, I think, be what happens to the jurisdiction of the Court of Justice and what happens if the legislation is amended. Those would be difficult questions and they have been answered in other treaties that the EU has with countries like Norway and Iceland, but provided you can find an agreement on those—they have been the hardest things to negotiate—two years is realistic.

Professor Guild: And you have the data protection directive issue.

Professor Peers: Yes, and where data protection is concerned, provided that the UK can satisfy any concerns about adequacy, which might still lead to litigation down the road or to litigation in advance—there might be



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all sorts of litigation in advance of article 50 negotiations being completed about the details of them in other areas too and you might keep having to ask the Court of Justice to fast-track a lot of rulings in order to meet that deadline—and provided that those possible obstacles are dealt with, the two-year period is conceivable.

Q23 Mr Burrowes: You said earlier that there needs to be a formal agreement. You referenced the need for official approval by the UK Parliament and the European side as well. All that within the two-year period?

Professor Peers: Yes, although of course, as I say, the Council at the EU level can approve treaties provisionally. Normally it waits until the Parliament has voted; normally that is only really relevant for countries where the treaty has to be ratified by the national Parliament so it speeds things up a lot if the EU applies it on an interim basis in the meantime. But this is a special situation, isn't it? Technically, they cannot adopt the treaties until Brexit day so it would be rather awkward to try to push everything through the European Parliament on Brexit day. They can, I suppose, discuss the draft treaty in advance of Brexit day; they can vote on it in the morning, or it could have a retroactive application, maybe, if they looked at it a few days later and the Council applies it on an interim basis in the few days, or the month or two, between Brexit day and the European Parliament voting. So there are ways around it using that power to put treaties into force on an interim basis, on the EU side. I assume that, as far as the UK Parliament is concerned, it could complete its assessment, or its decision of whether to block something, under the Constitutional Reform and Governance Act 2010 in advance of Brexit day. I do not know whether that would cause any legal or practical problem, but it ought to be possible, I imagine.

Professor Levi: I do not think the heavens would fall if there was a few days, or even weeks, difference, but there would be considerable legal complications for individual cases as result. So I do not think that the timing is as absolute a concern as one might think, but I think it would take quite a lot and I agree with Professor Guild that the data protection issue might take a while and the longer that takes, everything else then gets pushed back.

Q24 Naz Shah: You said that that should not be our main concern. In your opinion, what should be our main concern? What is the worst-case scenario?

Professor Levi: The worst-case scenario might not be so dramatic, but look at what it might lead to. Look at how the media reacts, very often, in cases where international co-operation is poor and things are held up. It might lead to that kind of attention—though the same newspapers that say that might be the ones that are most in favour of Brexit. Individual cases that take longer is not such a sharp thing that it would be obvious, but I think we would see a slowing down of investigations, some cases that involve international co-operation might not happen at all, because



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time is finite in police agencies in the UK, and therefore people would have to prioritise those cases a lot more sharply.

You would be in the same situation—not the same situation, but in the situation we are now in—if we wanted, say, cyber-co-operation in Ukraine, to give an example. We might be able to get it in very important cases, but it is the routine cases and the ones that would be quite considerable in social harm terms that would suffer. Perhaps cases of human trafficking, modern slavery, abduction, honour abductions and killings, and so on. The more dramatic the case, the more likely you are to get quick co-operation, but it is the less dramatic cases that I think would suffer most.

Professor Guild: In the context of counterterrorism, I think that the impact would not be that enormous, because when one looks at the EU counterterrorism agenda and the role of Europol, it is all around the databases, on borders, migration and so on, which we do not participate in anyway. So it is SIS II as regards people, we will have the EURODAC issue whether we are in or out of EURODAC, but we do not participate in this or any of the others. So if that is the direction that counterterrorism is moving in the EU agenda, as seems fairly clear from the document, then we are already out of the game.

Q25 **Stuart C. McDonald:** I want to talk about the European arrest warrant, if I may. When the now Prime Minister was giving evidence to this Committee back in May she said, “If we are not in the European Union we would almost certainly not have access to the European arrest warrant”. She went on to describe the difficulties Norway had had in negotiating something similar. Professor Peers, I think you mentioned that very agreement when you were talking about what the UK might be able to achieve. What is the difference between what Norway has and what we have just now?

Professor Peers: That agreement between the EU and Norway and Iceland took years to negotiate and then, for some reason, it has taken years to ratify it, so it is still not fully in force. I think the Norwegians find it a little bit frustrating because often they have people who leave Norway and they want to get them back but they do not have a fast-track route to get them back; they have the rather slower process under the Council of Europe extradition convention. We know from all the statistics that fewer people are extradited under the Council of Europe rules and it takes much longer to do so. That is the risk.

There is also a transitional risk of what happens without a proper transition for everyone who is already detained or had an arrest warrant issued on them here, or the other way around: people who we have issued an arrest warrant for. I think that is the complexity. There is certainly no example of any non-EU country having full application of the European arrest warrant. I suppose it is not absolutely ruled out. We could request it, and I think it would be easy to agree if we were willing to fully apply the European arrest warrant. The complications come, as I have said before, when you start to ask for exceptions.



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Norway and Iceland got a couple of exceptions. They were on, I think, the extradition of citizens and dual criminality, so dual criminality was not abolished for a certain list of crimes as it is for the European arrest warrant. I think for a number of member states there are constitutional problems with extraditing their own citizens outside the European Union. The courts have been willing to accept changes in terms of extradition within the European Union, but of course once a state leaves the European Union you have then got that problem again that it will be hard to get hold of Germans in Germany and so on. That is a risk.

I think the likelihood is that the European Union side at least would insist that it cannot cover the extradition of its own citizens to the UK. There is then obviously somewhat less utility to that, although there is still some utility: there will still be British people who we will want to get hold of in Germany and so on for trials for something they have allegedly done here and run away from.

We will have to think about what we want to ask for as an exception. There are people, of course, who have doubts about the way the European arrest warrant works in certain ways who might have a long list of things they want exceptions on and, the longer that list becomes, the more difficult it is to realistically contemplate a deal happening within two years.

Q26 Stuart C. McDonald: Do the other witnesses agree with that? How do you see a deal emerging in relation to arrest warrants?

Professor Guild: I broadly agree with Steve. The EAW: do we need it? How often do we use it? The big complaint over the last five years in the UK has been that everybody else has been using it against us and our police resources have been spent running around collecting up Poles and sending them back, and that our interest in actually getting the rapid extradition of people from other member states has been much more limited. That has all been turned on its head. I think you will probably have to ask your witnesses from the police forces.

Professor Levi: I am sure you will. It is important in payment card fraud, for example, and in mass-marketing frauds. There are particular kinds of areas where we really want to be able to get people back. Otherwise there is no point in the police investigating them; we might as well just rely on prevention. I think those areas where the prosecutors are active are the areas to focus on from this point of view. We might criticise the underactivity of prosecutors and police investigations in some areas of fraud, but those are the areas that will be most affected, I suspect.

Q27 Stuart C. McDonald: Professor Peers spoke about how long the Norway agreement took to finalise. Assuming that nothing is agreed on a permanent basis during the two-year period, some have commented that that brings us back to the Council of Europe convention as a fall-back position, or do we try to put in place some sort of interim agreement? How does that look? Or do we need to negotiate with all the different members of the European arrest warrant scheme? What happens before we get the permanent solution in place?



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Professor Peers: If we had a long list of things we wanted to change about the European arrest warrant, that would be difficult to negotiate within two years, but we could negotiate an interim deal, I imagine, on the European arrest warrant, which would involve our continued, almost full participation. As I say, I think there would definitely have to be an exception for extradition of your own citizens, from the other side's point of view, if it has a concern about that. Britain traditionally has not had such a concern. We have not traditionally ruled it out.

I think there would have to be that exception. If you can limit it to a small number of exceptions, maybe in return they can set us up some kind of proportionality test, so that we stop having to chase people because they have stolen a piglet or a beer can from a party—that kind of scenario. Other member states may be reluctant to agree to that, but if in return we could get some fairly simple changes and then talk about something more far-reaching, with the idea that it might take a further three, four or five years to negotiate, that would be the most realistic way forward, if our intention was to ask for a long list.

If we still want, let's say, a fast-track system that is more effective than the Council of Europe system but tried to address a lot of the concerns people have about miscarriages of justice that sometimes occur and other concerns about the operation of the warrant, it will take longer to negotiate, so let's have an interim deal on that. That is quite consistent with what Mr Barnier was saying earlier today. You could have an interim deal—that's a good idea—if Britain has an idea of what the future scenario is going to be. That would be an example of how we could have a list. They would perhaps have their list, and we could have an interim deal in place while we discussed the list of further changes we might agree to.

- Q28 **Stuart C. McDonald:** If the extradition of EU citizens is an exception, that is pretty fundamental. Does that not drive a coach and horses through the whole thing?

Professor Peers: Yes, although I know that for the UK, only a minority of the people who we hand over and surrender on the basis of the European arrest warrant are British citizens. It is 5% or 10%, or something like that, according to Government figures. If it is the same for other countries, and it is mainly British citizens we are getting back who have fled to Germany, Spain and so on, if the numbers only go down 5% or 10% as a result of that exclusion—it is unfortunate that they might be Germans who have done something allegedly quite unpleasant here. They would want to try, and we would have to go through a more complex route of asking the Germans to try them and providing the evidence and so on. But still, if it keeps its utility for the 95%—the people like Jeremy Forrest and others who it applied to—I think it is still something worth having.

- Q29 **Stuart C. McDonald:** I have one final question on a slightly different topic: access to databases and sharing information. Concerns have already been expressed about data protection. As far as I understand it, the EU is yet to grant any third country access to the European criminal records information system or other databases, including the Schengen



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information system. Those all seem to be linked to membership of the Schengen zone. How likely is it that the UK will be able to negotiate ongoing or unique access to ECRIS, SIS II or other significant EU data-sharing measures?

Professor Peers: I will answer on ECRIS first. What is interesting with ECRIS is that the Government produced figures in its paper during the referendum campaign that showed quite a lot of use by the police. As I mentioned, they were already looking forward to it just before it came into force, and they certainly have been using it since. There was a Commission paper in January that talks about very frequent use and a vast increase in the amount of criminal records being shared. I think they want to tie it to their future application system for border crossing, so British citizens might be refused to visit the European Union on the basis of a prior criminal record.

It is a useful thing to have access to, definitely. It is a big ask, because other non-EU countries have not had access to it. There was a much simpler version of criminal records exchange under the Council of Europe convention on mutual assistance, which involved far less exchange than under the EU system. It would be a big ask, but I presume that the information we provide is useful to other member states, as well as the other way around. I presume it is also part of a broader negotiation, which would include the value of information we give to other databases.

In terms of SIS II, I would add that I think the Government have reiterated its intention to join the Prüm system of information exchange. On SIS II, there is going to be a proposal tomorrow to change the rules. I do not know what it will say, but I imagine it will be to increase the amount of information collected, access to it and purposes for which it can be used, particularly in counter-terrorism. As Elspeth said, there are areas where we do not participate, but there are parts of SIS II where we do, including facilitating European arrest warrants. That includes stolen vehicles, missing people, people wanted for discussion with the police and people under surveillance, maybe for counter-terrorism activities. Again, I don't know who supplies how much information or how much it is used. I know there have been problems in practice using the counter-terrorist surveillance rules, but I imagine a big part of tomorrow's proposal is to try to make them more effective and useful.

If the UK is providing information to France and the other way around, obviously those are the sorts of things on which it is very useful to have co-operation to keep track of someone who might be planning terrorist offences in France and might be visiting Britain or the other way around. Obviously you can do that bilaterally but, to an extent, the Schengen information system helps us, giving us alerts on the people we might want to keep track of or might want to deny entry to once we leave the European Union or vice versa. It is a useful thing to have, and I think we should really try to push, even not being a Schengen country, to say, "Let's make an exception. We are an ex-EU country. That's a separate category. We have a lot to offer, and the other way around, so let's do



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something more ambitious for the UK than you've been willing to do for anyone else".

Professor Guild: The vast majority of the information in SIS II is borders and immigration related and the minority is criminal justice related. So although we have access to the criminal justice related data we do not have access to the borders etc. data in SIS II. The EUPNR is probably going to be the main way in which we try to follow foreign fighters coming back etc. and, once again, that EUPNR agreement is part of an extension of Schengen and we are not part of that. It seems that there is a consensus that if you want to get an awful lot of information about individuals, which may be useful in counter-terrorism, the place you are going to be able to acquire that is at the border and, thus, EU borders are the place where all of this happens. Would we have access to that? We do not have access to it now, so it is unlikely that we would have access to it afterwards. Then we have the rock and a hard place problem of the new directive. We would have to fulfil all the criteria about the directive in terms of access.

Professor Levi: Do you mean the data protection directive?

Professor Guild: Yes.

Professor Peers: Could I just clarify that? It is the majority of personal data in the Schengen information system that relates to borders. If you add in all the data, including stolen cars and other stolen objects—passports and so on—obviously the non-personal data about the stolen cars and passports etc. is in the criminal justice section and we do have access to that. I do not know how much practical use we have made of it in the short period in which we have had access to it, but we do have access to it.

Professor Levi: It is not just a volume thing, though. Again, it is also a question of focusing on some individual signal crimes where it might be particularly useful. I am not saying that cannot be handled in practice but, for example, we have a successful JIT, a long-running one with the Dutch over passport frauds and stuff like that. The role of technology in policing generally has increased enormously, so if we are going to think about this as a future aspect of crime control we have to put it in that framework. It may be that that could be a longer term issue and we could bracket it off, but I think that it would be a loss. It is a mistake to think purely in numbers.

Q30 **Chair:** Can I follow up on that? In order to get access to any of these databases as part of the negotiations, would you expect us to have to also have ECJ jurisdiction in those areas?

Professor Peers: Normally, the EU's treaties with third countries do not have ECJ jurisdiction for the third country. It is very unusual that they do that. Of course, the Court of Justice is involved on the EU side, it can interpret disputes about that treaty on the EU side and that is bound to have an impact on the UK, or whichever other non-member is party to the



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agreement. If we issue a European arrest warrant, or whatever version of it we have post-Brexit, if it is a treaty with the EU someone could say, "This is a breach of the treaty so don't execute that European arrest warrant" in France or Belgium or wherever. They could ask the Court of Justice and inevitably that would have an impact on us even though the British courts would not have that facility to ask the Court of Justice or be bound officially by its rulings.

The biggest question with the Court of Justice is the complexity that comes. If our agreement with the European Union takes the form of signing up to existing EU legislation, the obvious question would be whether we continue to follow the case law that relates to that EU legislation and that particularly relates to the European arrest warrant—that attracted the most cases, and there were quite a few on Schengen, double jeopardy rules and, recently, on the transfer of prisoners—and potentially in other areas too? Do we continue to follow it or not? Do we have a general clause, as you sometimes see in agreements like this, saying, "If there is a divergence in case law, we will hold a discussion," or are they going to insist on us continuing to follow the case law in that context? We could push for the precedents that already exist in other areas of saying simply hold a discussion if there is a divergence in case law, but what happens if the divergence cannot be resolved by discussion? That could be quite awkward, and threats of renegotiation or denunciation might exist, but we do have that precedent.

- Q31 **Mr Umunna:** May I just ask you about the negotiation overall? Obviously, the issues that we are talking about and taking evidence from you on—security, policing and so on—will be considered in the round in the context of the other things that we want to be able to secure as part of the agreement for our withdrawal from the European Union. I would like to get a better sense from you as to what our strongest chips are. The discussion so far has mainly focused on what we would like to get from our European partners. I want to get a sense of what our strong cards, to put it crudely, are. What are we able to put on the table that they would want?

Compared with other EU member states, where would you rank, for example, our intelligence-gathering capacity and capability? If you had a premier league of security-gathering agencies, would we be at the top of that league or would we be at the bottom? Where would you place the UK? How do we rank compared to, say, the French and others?

Professor Peers: It is very hard to judge without being in the intelligence services. If I were, I suppose I would have to kill you if I told you—if I answered your question.

Mr Umunna: You're lucky because you're not.

Professor Peers: I think the perception is that it is the very top of the premier league. It is in the champions league places, if not permanently No. 1. Whether that is a justified perception, it is hard to tell, but it is certainly the sense one gets. Not all intelligence co-operation takes place



within the EU framework, but the proportion that does is probably significant enough that that is one of our chips. With the European arrest warrant, they send us far more than we send them. This sounds a little bit like the argument over trade, which may be misleading in the context of trade, but I do not think it is misleading in the context of the European arrest warrant to describe the issue that way.

- Q32 **Mr Umunna:** To the other two professors, do you agree that we have superior intelligence-gathering capability and capacity? Would you agree that we are in the champion league places, as Professor Peers put it?

Professor Levi: There is improvement. It is not a steady-state situation. I would say that we are probably high in the premier league, rather than being like—as a Welshman, unfortunately—Swansea. I think we should differentiate between volume cases. Your argument is really about strategic assets.

Mr Umunna: Yes.

Professor Levi: If the things that we are helping the most on in relation to the European arrest warrant are things that are not that important to them, the strategic asset of that bit, as opposed to counter-terrorism intelligence, is correspondingly lower.

- Q33 **Mr Umunna:** But the context to my question is that obviously there have been some appalling terrorist incidents across the European Union. I am trying to get a sense—take intelligence, for example—of how important continued co-operation of the type we have now would be to other EU member states in terms of what they get from us given the perceived superior intelligence-gathering ability that we have and that they benefit from.

Professor Levi: I think they benefit quite a bit but so do we. In a way, to me the whole shape of terrorist information and terrorist threats is that it is not just a national issue. We can't easily predict how it is going to evolve. Relationships in counter-terrorism co-operation, as Professor Peers pointed out, are not just via EU mechanisms, but I think we would lose quite a bit. Assuming that we are still hanging out together, the soft aspects of co-operation would still continue.

- Q34 **Mr Umunna:** Let me put it another way, because we can talk about the technicalities of how the European arrest warrant and so on work, but constituents watching this will want to know. What is it in particular that they would want from us, and continue to have from us, that would be at risk of falling away after we have withdrawn from the European Union? What do they want from us that they may not otherwise get after we have left the European Union? That is across the piece. I am not just talking about intelligence; I am talking across the issues that we are talking about today.

Professor Guild: If I were to go back to the counter-terrorism issue, which is the one I particularly prepared today, I think the question about where the UK sits in terms of the EU framework depends very much on



what question anyone is asking or looking for. If you want to know something about a very specific issue in, for instance, Crimea, we are probably not going to be the people who are best placed to provide that information—you may find that our Polish colleagues have a much better idea of what is going on there.

From my reading of the documents, everyone is saying that it is Turkey to Morocco. These are not traditional venues in which we have been known to have a tremendous amount of impact recently, with one or two exceptions. There are one or two countries in the Turkey to Morocco framework with which we perhaps have privileged relationships, but they are perhaps not at the top of the list. The question mark is whether that can be obtained elsewhere.

Q35 **Chair:** Great. Thank you very much. May I ask you one very brief question? We had some evidence suggesting that other European countries were a bit fed up with the UK after all the process of the JHA negotiations. Have you picked up any of that, or have you any sense of the attitudes of other European countries towards us over the home affairs negotiations?

Professor Peers: There have been certain cases of countries being fed up when we said we wanted to negotiate from the sidelines and then spent a long time negotiating a special deal that we didn't go along with in the end. We dithered for a long time about Europol, for instance.

Also, at the lower level of police co-operation and the senior police who are overseeing the day-to-day people, there is an overwhelming sense whenever I meet them that they just want to get on with it. They don't want politicians putting constraints in their way or making arguments about the negotiations. They just want to continue the co-operation they already have on football hooliganism, for instance, which is a longstanding issue with champions league matches, the Euro cup and so on. It depends on whether that is going to get caught up in a broader political game or whether it is somehow going to be separated, to a degree, from the broader arguments, which I think will be more politically difficult, and agreed on a pragmatic, day-to-day basis.

Chair: Professor Guild, Professor Levi and Professor Peers, thank you so much for your time. We will now move on to the second panel.

Examination of witnesses

Witnesses: David Armond and Richard Martin.

Q36 **Chair:** I welcome our next set of witnesses. We want to cover similar issues—Europol, data sharing, European arrest warrants and so on. Can I start by asking you which of all the areas covered in the Brexit negotiations you see as most important to you in terms of your current operational work, and can you give us a very brief example of the kind of thing that you currently do under any of those provisions?



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David Armond: Thank you for the invitation to speak. We have been working since the day of the referendum result to produce an operational case for Government to assist with the negotiations. We are talking about what are the most important powers and tools under JHA for law enforcement—that is, for law enforcement responses not just in relation to serious organised crime, for which my agency is responsible, but volume policing and how global crime impacts communities, and also to protect the country from the terrorist threat.

For us, the key issues are, first, continued membership of Europol. I listened to the last panel. Whether it is some sort of full membership which has never been achieved before, or an operational co-operation agreement—there are a number of examples that I can talk about later—it seems to me that it is very important that we continue to be part of that process.

You have not heard much about this so far, but I know Members have visited Europol and are aware of the structure. Europol sits in two parts. There is the main Europol, which deals with the collection and dissemination of intelligence contributed by member states and a number of other functions. It conducts analysis, puts together operational activity, sponsors capacity building and the like, but perhaps the most important function is the establishment of a member state liaison bureau that sits around the outside. The UK has a 17-person liaison bureau that sits along with other member states and some operational third-party countries. That means that they can share intelligence immediately with a number of states. If our liaison officer in The Hague hears that an operation needs to be planned and run today, he can quickly get a meeting with four other member states, put together an operational plan and do things like that, which would have taken months before the bureau existed. So for us, a key issue is continued membership in some form. I am happy to develop that later.

The second key issue is continued access to SIS II. SIS II has been a game-changer since it came online in April 2015. We need to find some way to maintain access to that data. Later on, I will give some figures about how that is working so far and why it is so important not only in terms of our border security, but in relation to work that police officers conduct every day on the street because 66 million records are available to them in the street via their radios and the police national computer. It is a very important function.

The third key issue is continued access to passenger name records. I know that is a post-Lisbon tool, but it is absolutely essential in terms of the profiling that we do to protect the UK. Of course, prior to recent agreements, it was long the case that because of free movement agreements in Europe, many European nations were not prepared to share passenger name record data with us. It is much more interesting, much more detailed and much more relevant than advance passenger information, and of course it gives us names, bank account details, phone numbers, details of previous travel and who people have travelled with. All

of that material is really useful in terms of developing profiles and preventing the most dangerous people from coming to our country.

Finally—but these are not the only measures; they are my top measures—there is access to European arrest warrants, or something similar if we can no longer be members of that scheme. There was some sort of discussion about the utility of EAWs, and one of the panel referred to proportionality and low-level offences. There is now a proportionality test for EAWs that we certify. Since they have been linked to SIS II, over 2,000 offenders have been arrested in the UK, and 150 offenders wanted by the UK have been arrested in the EU. That is a 25% increase in a year. They are not individuals who are wanted for minor offences; those are serious offences. I would argue that we are not doing work for Europe; we are actually defending the citizens of the UK by arresting criminals who present a threat to society and are present in our shores. Those are the things that I would put at the top of the list.

Chair: DAC Martin?

Richard Martin: I am not sure I can add anything to what David said. If you look at policing in general, our role in society, which is about prevention of harm and prevention of crime, is on a sliding scale, and it is about being able to identify where threat, harm and risk is. In a global society, which is where I think we are now—the through flow of people and crime is very transnational in nature—knowledge really is king. It is about having access to those systems and processes. As David said, we can pick up that information and do something with it. Importantly, we can do it in a timely fashion. Everyone from the PC who might be outside here today checking your car can check the systems overseas as well as here. A few years ago, we didn't have that.

It is also about knowing the people who come through our custody systems and understanding what their criminal records might be back in their own countries. You have custody sergeants in custody cells now making decisions about whether people get bail before they go to court, all based on previous convictions. We have access to things like ECRIS, and in the last year alone—again, these are the facts and figures—we have put another 12,000 people who have convictions overseas on our police national computer system. It is really about knowledge being king, and about being able to act in a timely fashion.

Q37 **Chair:** Do you have numbers and figures on how frequently you are using those databases and the arrest warrants?

David Armond: Yes, I do. I will give you some of those numbers now, Chair, and I could write to you with a detailed breakdown of those facts.

Q38 **Chair:** Would you give us a quick headline now and write to us with the figures?

David Armond: I spoke to you about EAWs and the numbers over the last year. SIS II currently contains 66 million alerts in relation to people and objects that are of interest to law enforcement. UK law enforcement,

since April 2015, has loaded 430,000 alerts on to the system, over 270,000 of which relate to missing people. There are now 35,000 people who are wanted on EAWs around Europe and are on SIS. We have access to that material.

Last year, we sent 37,000 messages to Europol member states on SIENA—the Europol messaging system, which we have not talked about yet. That is from the UK going outwards. The messages relate primarily to UK high-priority threats like child sexual exploitation, firearms, cybercrime and organised immigration crime.

People have spoken about ECRIS. ACRO, which is the agency that primarily deals with this—it is our central authority for this—sent and received 173,000 requests last year via the EU framework, primarily through ECRIS. I have got a load of other material like that. The volumes are huge and significant.

Chair: It would be really helpful if you can send us that.

Richard Martin: To add to that, if you look at the arrests that have occurred in the UK over the last year, there have been 1.2 million arrests of people committing crime. Again, I can give you some figures in relation to that: 195,000 of those were foreign national offenders, and 56% of those were EU nationals.

Q39 **Chair:** What would you be most worried about losing, in terms of intelligence you have had about what is going to be easiest to resolve and hardest to resolve, as part of the negotiations?

David Armond: I have given you the four things I think are the most important. It is difficult to rank them. There are alternative arrangements. There are bilateral arrangements and alternative strategies that we could negotiate. We are working with the Home Office in particular to put some thinking around what the alternatives might look like, but I can say to you in all honesty, having a reasonable amount of experience in this area, that it would be sub-optimal to the arrangements we have today. It is about the speed of process that we get by using these measures which we simply do not have in our partnerships outside the EU.

Q40 **Mr Jayawardena:** Mr Armond, you have already covered the various aspects of the UK's involvement in Europol that you would like to see maintained in particular. Would your counterparts overseas also support the maintenance of those arrangements?

David Armond: Yes. Actually, it goes beyond that—an example is our contribution to the European intelligence system. We are consistently either first or second highest contributor to that dataset; it is either ourselves or the Germans who contribute the most intelligence, the most packages to that particular system. There is a platform of operational co-operation, which has the acronym of EMPACT, which is overseen by the internal security committee—the COSI—for Europe. That is 13 current priorities that have been illuminated in the organised crime threat

assessment where there is operational activity co-ordinated among member states against those key threats.

- Q41 **Mr Jayawardena:** To get a specific answer, your counterparts would support the maintenance of the existing arrangements in those areas you are highlighting and have highlighted?

David Armond: I would say yes, and the reason for that is our leadership role. We actually lead in four of those 13 initiatives and we have co-driver status in a number of others. Of activities planned for 2016, the UK was due to lead 43 of 205 operational actions and to participate in another 149 of them. Just to add to that, I will answer the question that I would like to have been asked, which is: what is the value of our intelligence to our European partners? It is extremely valuable to them. We make a big contribution in this area.

- Q42 **Mr Jayawardena:** We will certainly come on to that. You have talked about the priorities and the outcomes of us contributing and working with our European friends. To what extent do you think that the UK has contributed to the operational effectiveness of Europol?

David Armond: There was a question about this earlier on, which talked about how effective Europol is. I would argue that when it first started, for the first eight years, I will be honest that our view from a law-enforcement perspective was, "The jury is still out. This looks bureaucratic, slow, cumbersome. We are not sure whether this is going anywhere, so we are going to roll up our sleeves, get involved and co-operate fully"—you know, test it to destruction—and for that reason we decided to mount a campaign to put the director in place. That is when Rob Wainwright came forward and won the place. He has been the director for the last eight years and he has implemented strategic change to Europol. The organisation now is unrecognisable from the one that went before, and most of the systems that make Europol effective are a complete lift and shift from the UK intelligence model. We are seen as influential in driving forward the business.

- Q43 **Mr Jayawardena:** That is helpful. The way that Europol operates is now on a British model and friends overseas would like to continue working with Britain. You referenced intelligence a moment ago and one other area important to that is of course "Five Eyes", which is important to us and indirectly important to our European friends—it is information that they do not necessarily have access to. Do you think that they value that? What is the ratio of intelligence of "Five Eyes" versus EU mechanisms?

David Armond: As you know, because you have asked the question, the "Five Eyes" is our closest intelligence partnership. We can share across a range of national security activity intelligence with our "Five Eyes" partners that we do not even share with our European partners. So I can answer that question in two ways: it is sometimes a matter of some bemusement to European partners that we have such close arrangements with the Americans and other "Five Eyes" partners, but they see the value that that brings, and we bring a collection of intelligence there that is not



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necessarily generated on these shores. Similarly, our “Five Eyes” partners are quite concerned about what is happening now, because they see the UK as potentially giving them leverage within the European system, which they may lose if we are no longer members. If that were to be the case, they would seek alternative arrangements.

- Q44 **Mr Jayawardena:** Interestingly, of course, when it was proposed that the French be added as a sixth “Eye”, that was not agreed by the US. They clearly have their own considerations, but I shan’t expect you to comment on that.

On Europol’s expanding mandate—this is a question to both of you—do you believe there is sufficient operational independence for national law enforcement agencies?

Richard Martin: Sorry. In relation to?

Mr Jayawardena: Europol’s expanding mandate has led some people to say that there might not be sufficient independence operationally for domestic law enforcement agencies. Do you agree with that or disagree?

Richard Martin: I disagree. I have never heard any evidence of any issues around operational policing. Operational policing is very much down to the states that sit there and have those responsibilities. I have been involved in quite a few quite joint investigation teams in a previous role dealing with human trafficking. That has always been at the lead of the country that has most of the offenders and suspects in it. I have never seen any issues around operational independence. In fact, all I have had, if I’m honest, is pretty good co-operation without any issues around grey lines and people straying into other people’s areas. I have not picked that up.

David Armond: The reason why there was a delay in signing in to the new regulation was because of two issues. One was a suggestion originally that there might be some mandate for Europol to direct operational activity by a member state. The other was about a mandate to provide certain material to the European intelligence system. Those were two issues of concern to the Government and both have been negotiated away, so they do not exist now. I would argue that there is no interference in areas of national responsibility.

- Q45 **Tim Loughton:** From what you have said and what we have heard from earlier witnesses, Europol could effectively be hived off from the EU. The two are not inextricably linked, are they?

David Armond: It is an agency of the European Union and it is funded by the European Union, so it seems to be fairly integral to that process. It does not incorporate all of Europe, as you know. I currently sit as an executive board member for Interpol, and the Interpol European region is different from that covered by Europol. I take your point from a theoretical perspective, but the body itself is very much owned, organised, managed and paid for by the European Union.



- Q46 Tim Loughton:** In practice, it needn't be. It could be on a subscription basis. It is potentially a different membership. It is a very different beast from the economic part of the EU. If you look at the affiliation—it does not just have arrangements with the "Five Eyes"; it has associated membership right up to the iron curtain, Turkey and others—it might be strengthened if it were not part of the EU. That again is theoretically possible is it not?

David Armond: It is theoretically possible. May I just clarify a point? There are two types of agreement. There was discussion earlier about potential for a bespoke arrangement for a non-member state being part of Europol. Our early informal soundings with officials were that there are no bespoke deals to be done. That is the starting point. If you are a third country, you either have an operational third party agreement, and those are the sort of arrangements that America, Australia and Colombia have, or there is strategic arrangements, which they exist for Russia, China and Turkey, with almost no operational tactical intelligence sharing and it is around strategic planning and capacity building.

- Q47 Tim Loughton:** But that starting point is cutting off your nose to spite your face, isn't it? I think everyone—all the witnesses—agree that if the UK were not part of Europol, whatever the basis, it would be greatly weakened and its intelligence would be diminished as a result. It would be rather foolish and self-defeating if the eventual outcome were to say we are not going to have any form of close association if it involves any serious intelligence sharing. That would obviously not be beneficial to us, but it would rather less beneficial to the rest of the EU given that we have the "Five Eyes" and other relationships that we benefit from independently.

David Armond: I would characterise it slightly differently. I would not be so arrogant as to suggest that Europe really needs us. I would say that we need each other. We are so close together, the threats we share are very similar and there is considerable travel, because of globalisation, between our countries, and people are moving around Europe, so it is very important for us and for other European countries to continue to share. The people I am dealing with are law enforcement people and that is their primary objective—to protect their citizens, to make the world a safer place—and they are keen that we continue to work with them.

- Q48 Tim Loughton:** But we heard in our visit that when the various atrocities had been happening in France and Belgium, actually the Belgian police had to speak to Scotland Yard to get some of their intelligence rather than go directly through Europol. It really is inconceivable, isn't it, that if there were a terrorist cell operating in the channel in one of those Europol countries that came to light by the work of Belgian, French, German or whatever police, they would say, "We're not going to share intelligence with the British because they are no longer part of Europol"? That is a ridiculous fantasy, isn't it?

David Armond: In my professional view it is entirely inconceivable that that would happen.



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Q49 **Chair:** You said you had been advised that a bespoke model was not an option. On what basis?

David Armond: On the basis of precedent. The line I took—I did preface these comments when I gave evidence to a House of Lords Committee—was that this may be a rather naive statement, but there has never been a situation where a member state has left the European Union, so there is no precedent for this. We have been members and we should be looking for a different set of arrangements for all the other agreements. I think we should be bold about that. Many people will disagree that that is a possibility.

Q50 **Chair:** Would your preference be to continue to be members on exactly the same basis or have you been advised that that is not possible as an option?

David Armond: Again, the discussions have been with opposite numbers about the art of the possible—and informal, because the Commissioners have told officials that there are no formal discussions to be had. Of course, it is our job to work operationally, not to design the policy or the negotiating strategy, but I say our starting point should be: why can't we continue in this vein, because it is useful to all of us and very important?

Q51 **Chair:** If you were to be told that you could only have a third-party arrangement, what would you lose?

David Armond: We could keep our UK liaison bureau, which is very important to us. We would lose direct access to the European intelligence system, so although we could stay with SIENA and use their platform for communication, we would have to make requests of the system through a liaison function, which would slow things down.

We could not be members of the Europol management board, so we would not be influencing the strategic direction of Europol, which I would argue has been a force for good over the last eight years, and potentially, if we lost access to some of the tools, we could actually go down in terms of order of priority when asking for work to be done by European partners.

Q52 **Naz Shah:** Could you explain to what extent the Counter Terrorism Internet Referral Unit, hosted by the Met police, engage with Europol's new EU internet referral unit? How would you like to see that engagement continue in the future both pre and post-Brexit?

Richard Martin: I am not from counter-terrorism, but I have spoken to colleagues about this. They see the units very much as integral to each other. I think they would say that the European model is again based on the counter-terrorism model over here, that they work effectively together and that they would like to see that continuing in the future, being very much a partnership approach. To get a more detailed approach, I would probably have to get counter-terrorism's colleagues to come to talk to you.

Q53 **Naz Shah:** Is there a risk that we would lose any of this?



Richard Martin: Going back to David's point, our preference would always be to keep what we have worked so hard to get. I think you have heard already from both David—he has far more experience in this field than I do—and the previous witnesses that there was a slow start, but through strategic leadership and influence it has got to a place where we are information sharing and influencing the direction, able to get things faster and more effectively. For any of those elements, I would not want to be in a place where we kind of go backwards, if that makes sense. You want to start from the premise that we would want to retain and keep going what we had obtained and developed over the past eight years.

Q54 **Naz Shah:** I asked this of a previous panel: what is the worst-case scenario for where we are at with all these negotiations with your organisations?

Richard Martin: We are obviously not negotiating at the moment. The biggest impact I can see looking across the piece is that what could change is the speed and the ability to access some of those key points that David and I articulated right back at the beginning. There will be problems if we are getting intelligence in a slower way; if we are not able to access the intelligence systems ourselves; if our intelligence is not being used by partners over there—because of course the other side of this is that our intelligence doesn't get fed into the system as well—or if my officers are stopping cars and people but do not know who they are or cannot check whether they are wanted or vulnerable people. It is those bits. There are always ways to work around these things, because we have done them in the past, before we got to this stage, but I guess my biggest fear is that it gets slower and more clunky and is not as efficient as it is now. Sometimes, when you need fast-time intelligence and you need to do work, you need it there and then.

David Armond: Can I just add something about the internet referral unit? There is no competition here. There is a UK unit and an EU unit, with experts who have regional knowledge and contacts. That information is shared. The real value is sharing that information, but also the linguistic support that we access through the EU system.

Q55 **Naz Shah:** You talked earlier about not wanting to be arrogant in saying that we need each other. As much as my colleague suggested that yes, we would get the intel if something was imminent, if something was planned—a potential terrorist plot, for example—and we wanted the checks to be done quicker, how would you work around it?

Richard Martin: Obviously, counter-terrorism command has bilateral arrangements with a number of agencies, not just in Europe, and they have ways of accessing intelligence on a fast-time basis. From a serious and organised crime point of view, or just for volume crime itself, we would have to find pragmatic ways. If we want intelligence, we might have to go through police-to-police intelligence sharing information, which is professionals talking to each other. We might have to get hold of a mutual legal assistance treaty, which obviously slows things down. My point is

that you could still do it, but it would take a lot longer than just accessing a database there and then.

David Armond: Although we are focusing specifically on the situation in Europe, we have a global network of 170 officers around the world. We work through bilateral arrangements. We work in other multilateral institutions like Interpol. There are alternatives, but they are not as effective or speedy as the system we are currently using in the EU—that is the point. We could find a workaround, but would it be as good? I don't think so.

Q56 **Naz Shah:** Finally, does it put us at risk or increase our risks?

David Armond: We can manage the risks, but it would be sub-optimal compared with the arrangements we currently have.

Q57 **Mr Winnick:** I imagine that no one in the House itself is likely to disagree about the positive gains of Europol. I do not think it is a matter of controversy that we should obviously continue to have such information gathering on a joint basis, in so far as is possible if we leave the EU. We were told by the previous witnesses that Europol was slow coming into action—I think it was decided on at the beginning of the century, or just before, but it was pretty slow in gathering information on a joint basis. It doesn't go back years and years, or to when we joined the EU in 1973. What kind of information gathering on a joint basis occurred before Europol, as far as Britain was concerned? However informal, presumably there was some joint action. Or am I wrong?

David Armond: No, no, you are not wrong at all. I talked about bilateral arrangements around the world and about institutions like Interpol; there were other arrangements in place. What you have seen, certainly over the last 40 years, is a significant change in culture around responsibilities. The sophistication of crime now is on a different level. Globalisation, travel and the internet have changed the way we see things, so it is more important than ever that we have arrangements to share intelligence and run operations together with partners around the world. That is more important now than it has ever been, and it will grow increasingly important. Many of the crimes that we see committed today know no borders and know no boundaries. They do not have any jurisdictional boundaries. Many are committed over the internet in a third country—in a number of other countries—and most investigations of any significance that are undertaken have an international end to them. I think it is more important now and requires more sophistication to deal with the problem.

Q58 **Mr Winnick:** As I say, there is not likely to be much dissension on that. You said, Mr Armond, that if the UK leaves the EU, we are not likely to be involved as a full member. There does not seem to be much opposition to that view from previous witnesses, but can I put it to you that it would appear, if I am right, that some 14 other countries have negotiated operational partnerships with Europol, and presumably that is also working effectively?



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David Armond: That is the path we would need to take. If I could remind you what I said, Mr Winnick: we could negotiate an operational agreement that looks like the one that the Americans or the Canadians have. We could negotiate a bespoke agreement across a range of measures, as Norway has.

Q59 **Mr Winnick:** I recall what you said. I am just making the point, in the form of a question, that although it may not be as good as the present arrangement, whereby we are part of the agency and the rest of it and involved in the management, it is not the end of the world if we are no longer involved for the reasons that you have stated.

David Armond: Well, it may be the end of the world for some people. If we can negotiate away any increase in risk, we will be failing in our duty if we didn't try to do that.

Q60 **Mr Winnick:** If the arrangement were different on the basis of our leaving the EU and we had an operational contract and arrangement like some 14 other countries, how much, percentage-wise, would be lost? Could you put any sort of percentage on it?

David Armond: I would struggle. It would be a guess, to be honest. We would find a way to work around it—absolutely—but at the moment, we have worked hard to get this co-operation to an unprecedented level. The current threat from terrorists has probably led to the breaking down of a number of barriers to ensure that that co-operation is even closer. I would not like to go back to previous levels; I want to maintain and build on what we currently have.

Richard Martin: Could I add something to that? I am just thinking ahead about what we will continue to do—we have talked about it being a bit more clunky. When something happens, we will react because police forces across the world tend to catch criminals and do that kind of thing, but I would worry a bit more about things like EMPACT, where we are trying to get ahead of the game and prevent things. So we are sharing information and sharing intelligence to try and prevent crime on a thematic basis, and I worry that if we are not doing that, that might suffer.

Q61 **Chair:** For example?

Richard Martin: The 13 programmes that David talked about under EMPACT—whether that is human trafficking or child sexual exploitation—are about sharing intelligence and trying to find ways to prevent the crime happening in the first place. It is about trying to design it out as well as catching people who are doing it.

David Armond: Through that process, there has been a massive raising of awareness. Child sexual exploitation is a good example. The current example is modern slavery. There has been significant pan-European operational activity in the last month or so focusing on victims of trafficking, with a modern slavery bent. Those kinds of things would be difficult to achieve if we were not part of the group.



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- Q62 **Mr Winnick:** When it comes to terrorism, it may well be that Europol has apprehended criminals before they are able to commit acts of atrocity. Can I put it to you—both of you are very senior police officers— that in the Belgium case where the atrocities occurred and in France before that, it was stated that the culprits were known to the authorities? It does put a question mark, to some extent, not only on the internal police involved in those two countries but perhaps on Europol. Would that be unfair?

Richard Martin: I don't know enough about the detail of those cases really to be able to comment.

- Q63 **Mr Winnick:** You remember the Belgium ones.

Richard Martin: No. I remember the cases, but not the details. So, I don't know what intelligence the agencies had on those individuals. "Known to somebody" is quite a wide-ranging definition. "Known to somebody" could be as little as somebody popped on a radar once, or are "known", as in a great deal of effort. So it's really difficult to answer that; I don't know any exact details around that.

David Armond: Whenever there is an atrocity conducted—a terrorist atrocity—a review can quite often lead to the fact that there was some sort of breakdown: an intelligence failure. But I remind you that Europol is not an operational outfit; it's a platform to ensure close co-operation across Europe.

There is a review going on by the Belgian authorities around that specific attack. I don't know what the outcome of that would be, but I personally don't think you can lay any kind of failure at the door of Europol in relation to that. I think that's what the outcome will be.

- Q64 **Mr Burrowes:** Steve Ashman, the chief constable of Northumbria police, warned that Britain could become more attractive to foreign criminals after the UK leaves the European Union. Do you think he was over the top in his warning?

Richard Martin: I think Steve was talking from his chief constable heading in Northumbria. I think it all depends on the ability of the law enforcement agencies in this country to deal with individuals who are here committing crime. If I remember rightly, I think that Steve was talking about if we had a lack of ability to do surveillance, both in this country and overseas; I think he was talking about the European arrest warrant.

So I think a lot of that hinges on our ability to utilise the systems and processes we currently have, and how proactive we are in targeting criminals. Hand on heart, I don't think I could say either way. What I would say, probably, is that if we lost a lot of the tools that we've sat here trying to give learned colleagues evidence of, then I think that could impact.

Criminality is like anything else. I think criminals don't want to get caught; I think if there's somewhere they can go where they feel that they're less likely to get caught, then I think that is a possibility. But this again is where it comes back to the information sharing, the ability to know who's



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here, the ability to know who the real person is in custody, what they've done before and our ability to target them.

- Q65 **Mr Burrowes:** In terms of stricter border controls and visa requirements, how do they impact on your ability to track and remove potential terrorists and criminals from the country? And also, you mentioned the issue of trafficking. Will that lead to a different mode in relation to trafficking that could make our country more of a haven for certain traffickers from certain countries?

Richard Martin: I presume you're talking about the ability to have the common travel area and things like that, in that relation?

Mr Burrowes: Yes.

Richard Martin: I think borders is an issue for Government to decide on where they want to put that defining line. I think Governments, as well as law enforcement, balance the ability of closing down borders to how attractive your country is for investment, trade and everything else; I think that's a difficult choice, but I think that's a choice for Government, and for law enforcement then to move towards being able to do it.

I think a lot of the issues around the border are based on information sharing—the ability to know who's coming in and who's coming out, and the ability for our systems to talk to each other. The ability perhaps to swipe a passport, and that swiping of a passport not only gives you access to your police national computer but to SIS II and to other areas. So I think it's important to know who's coming in and going out—absolutely—but I think that's about what systems you can access to know about that individual as they come in.

- Q66 **Mr Burrowes:** Do you see some opportunities arising from the stricter border controls and visa requirements that may help? We've talked about the challenges, but do you see some opportunities of helping law enforcement?

Richard Martin: I think that, with visas, clearly there are pre-visit checks that you can do on individuals, like we do with people who have visas now. I think there's a lot more intelligence sharing that you might be able to do with countries if there are visa applications, because you can actually do it before they are granted a visa; I absolutely accept that. So there are pros and cons, yes.

David Armond: I know the answer you're looking for, Mr Burrowes. We have talked about the tools of access to SIS II and other such data sets. It's very important for us, so that we can continue using passenger name records and the like. It's important, so we can do profiling on people coming to this country before they arrive. Through that, we can focus the attention of border staff on those people who really are a threat to the country and clear away more quickly the vast majority of travellers and vehicles that come into the country and present no threat. That is the first thing that is important.



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There are some opportunities and some threats, I would argue, through the change in our relationship with Europe. It may prove easier to repatriate some people for certain types of crimes. I know policy makers are looking at those kinds of issues, but there are also some vulnerabilities. The common travel area looks to me to be difficult. We would have to have a very different set of arrangements with partners in the Republic of Ireland to the ones that currently exist because of the vulnerability presented by them being in Schengen and us not.

Q67 Stuart C. McDonald: Mr Armond, you have already described access to the European arrest warrant or something similar as essential. DAC Martin, would you agree with that assessment?

Richard Martin: Yes. There are a lot of advantages around the European arrest warrant. I know you have seen some of the data. There are obviously a lot more people that we are arresting for European colleagues here—I think 150 was the number for people coming. The other part of that, which I think David alluded to, is that it is not just what we are doing for Europe, but what we are doing for ourselves. There are people here who have committed crime overseas. Should they be here if they have committed crime overseas? Might that mean that they might commit crime here? I think there is a balance. I think the European arrest warrant linked to the SIS II systems, which mean we know who is here, are two valuable parts of what we do.

Q68 Stuart C. McDonald: Can you just try to give the Committee a sense of the difference it would make if we did not secure access to the European arrest warrant system or something similar? On a practical level, what would that mean for the police?

Richard Martin: If you are looking at cases where we would like to bring people back to this country if they have committed offences, some of that has been alluded to around having to go back to the 1957 European law. Of course, a lot of countries have now got rid of that legislation because they rely on the EAW. There would be some renegotiation to do that. We might find that we cannot bring people back because the countries do not sign up to that renegotiation. As you heard earlier, countries accept that, under the EAW, they allow their nationals to be taken back to a country, but they would not allow that under their own extradition powers. There is definitely a challenge there. On this side, it would be much more difficult for us to allow people to go back to the countries where they have committed offences.

Q69 Stuart C. McDonald: Mr Armond, do you have anything to add to that?

David Armond: I will build on that point. A number of countries have repealed the legislation that enabled extradition prior to this current set of arrangements. We would be faced with a position where we had to renegotiate bilateral treaties or negotiate a treaty with the EU to cover most member states, but remember that not all member states are part of the European arrest warrant arrangements. It would be complicated, and it would take more time. The idea, as is currently the case, where we can very quickly get people circulated, arrested and repatriated—if you look at



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some of the cases we have got with America, for instance, they can take years to resolve. The advantage in EAW is that the system is very swift.

- Q70 **Stuart C. McDonald:** How swift is swift in comparison with the years that an American case can take?

David Armond: If someone is prepared to surrender, I have seen people go back within 24 hours of being arrested.

- Q71 **Stuart C. McDonald:** You have answered my question on access to databases to some extent. You have described the PNR as absolutely essential and SIS II as a game-changer. Why do you say that, Mr Armond? Why are they game-changers or absolutely essential?

David Armond: As I said, there are 66 million records on SIS II, and that includes everyone who is wanted on a European arrest warrant. It includes details of stolen vehicles and stolen plant. It includes details of missing persons. It includes discrete alerts around travelling sex offenders and people who are under observation by the security services as suspected terrorists. There are a range of actions used in volume by us that give details, not only at the border, but specifically to our police officers on the street via the police national computer. That is why you are seeing such an increase in results. A cop now could stop a car on French plates with German nationals in it, do checks on the individuals in the car, find that the car has been stolen from Dieppe and find that one of the Germans is wanted. That kind of access to immediate intelligence and results was not available before.

- Q72 **Stuart C. McDonald:** You both mentioned ECRIS as well. Where does that rank in terms of the databases you would want to keep access to?

David Armond: Go on.

Richard Martin: I was going to say very high—very high. Again, I alluded to it earlier when I opened up. It is the communication system that allows us to talk to other members of the EU. This year alone, to talk stats, there were 12,000 individual crimes that were put back on to the police national computer. It is people who have convictions, which means the information goes to the officer on the street who is then checking somebody out and it means that they can actually access that. We would not have had that—it would not have come through so smoothly. So the ability to continually amend the police national computer, which of course is our shop front into the information, whether it is UK information or, indeed, from SIS II, is critical.

David Armond: Some 172,000 pieces of intelligence or information were exchanged via that system. It is not just about accessing the criminal records of people we have in custody here, or making decisions around whether we want this person to come into the country; it also includes the ability to check on people's suitability to work with children in this country, which is another very important function.

- Q73 **Stuart C. McDonald:** Thank you. We are already writing a very lengthy shopping list, as it were. Is there anything else you would want to add to



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it? You have not mentioned Prüm, for example. Is that important or not as important?

David Armond: There are two other areas we have not talked about: one is Prüm and the other is the European investigation order. The European investigation order came into force in November this year, I think, and Prüm around that time. We have run a pilot with four countries in relation to Prüm, to test the viability of exchanging biometric data at speed. The results look very promising. This is something we have been looking for for a long time and, of course, biometric data—DNA, fingerprints—are fairly essential for us in knowing whether the subject we think is a terrorist subject is actually the guy who was found in Syria. So it is fairly crucial to us and I would like to see it developed. It is not fully refined yet—it is not expected to be fully operational across the EU until 2020—but we are committed to being part of it. It would be good if we could continue to be part of that project.

The European investigation order is an interesting one, because that effectively does away with the need for mutual legal assistance on intra-European investigations and operations. It would be a much smoother system that puts time limits on the requirement for member states to comply with requests to conduct searches, surveillance or other activity. It is really an additional arm to the European arrest warrant. Again, we have to implement that in, I think, May 2017. The question will be whether we enter that process to leave it again in 18 months' time. It sounds very interesting to me. You know the difficulties we have with letters of request for mutual legal assistance. This seems to be the next step in relation to how joint investigation teams can be effective. It is something we have been planning for, but I cannot tell you how effective it is going to be, because we do not have it yet.

Q74 **Byron Davies:** I was going to ask you about the European investigation order. One of the intriguing things about it is that covers all investigative measures aimed at gathering evidence, including the more modern and sensitive types, including telephone intercepts. Of course, we do not do telephone intercepts in evidence. How will that work?

David Armond: We cannot be required to do anything that is not permitted under national law, so the sensitivities around lawful intercept are significant and we do not share product with any partners. In fact, as I know you will be aware, we cannot even talk about the fact that there is a warrant in existence, so it is dealt with entirely differently from a number of our European partners.

I do not think that there could be a position with an EIO—I will have to look at the fine detail, but I am pretty sure—where there could be a direction from a European state for the Home Secretary to sign a warrant, for instance. If we were working together on an investigation and it seemed sensible from our perspective, as part of our operational plan, to deploy intrusive surveillance, we may take the decision unilaterally to support someone else's investigation. I am not sure whether that entirely answers the question.



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Byron Davies: Kind of. I will leave it there, I think.

- Q75 **Chair:** I have a couple of final questions. On the databases, the previous panel raised concern that our chances of being able to get back into those databases will depend on the adequacy of our data protection laws, and particularly the EU's view of things like the Investigatory Powers Act. Have you been involved in those discussions? Are you aware of those concerns?

David Armond: I was not aware. It is something that has now sparked my interest. Taking the IP Act, as it now is, aside, I think that all our activity at the moment is compliant with the current data requirements, but it is something that we would need to look at. It is not something that I have heard raised before.

Richard Martin: I am exactly the same. This is the first time I have heard about it.

- Q76 **Chair:** Can I push you on something you said earlier about this just being suboptimal? Obviously it is your job to manage risk, whatever risks are thrown at you, but it would be useful for the Committee to clarify what you really mean in terms of your assessment of risk. If we did not have full access to those databases, are we just talking about a few delays and it taking a bit longer to deal with cases, or do you believe that we would not pick up some of the dangerous cases that we might be trying to deal with?

David Armond: Perhaps I was clumsy in my wording. What I was saying is that, if we cannot have the current set of arrangements, I see it as our job to make the operational case to the policy makers and, ultimately, to the Government in the negotiation strategy: "We would need an alternative so that we can continue to function in this way." If we don't get all those arrangements, I cannot in all honesty say to you that there won't be some residual risk. It is manageable, but things could be slightly slower than they currently are. That is the point I was trying to make.

- Q77 **Chair:** Now it sounds like you are basically saying, "Look, if we don't get full membership of Europol and access to the databases and the European arrest warrant, or its equivalent, things are just going to take longer." Listening to you give examples, I don't think that is what you were saying. I think you were actually saying that the risk is going to be higher, but then you say that, as law enforcement officers, it is your job to deal with that.

I want to press you on this, because it does affect how seriously we take it in this place and as part of the Brexit negotiations. If you are basically telling us, "Look, it is just going to slow everything down a lot, but don't worry—we can manage it, because that's our job," that is one thing, but it is another thing if you are telling us, "Look, based on our professional judgment, the risks will be higher if we don't get those three things." We respect your professionalism and that you will go and deal with those higher risks, but do you think that if we don't get the things you listed at the beginning, the risks in terms of policing and security will be higher for



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the UK? Yes or no.

Richard Martin: Yes.

David Armond: Yes.

Richard Martin: Part of what we talked about is about it slowing down and being clunky. To really identify threat, harm and risk in all its various phases, as it happens in this country against our citizens, we have to have a really good intelligence picture. As you know, the intelligence picture is a jigsaw put together from as many different sources as we can get. Some of those will be domestic sources, and some of them will be overseas. If we are curtailed in our ability to access intelligence systems that our overseas partners have put in place, we may risk people hurting children or committing harm because we cannot put that picture together. My response to you is yes, it increases the risk. That doesn't take away my responsibility for challenging it, but the risk is higher.

David Armond: It is part of the Rumsfeld conundrum. Before we had access to these systems, we did not have visibility and we did not know what the risk was. Now we know the art of the possible and now we know how to build the jigsaw that Richard is talking about, and I can't honestly say to you that the risk wouldn't increase if we no longer saw that material.

Chair: Thank you very much for your evidence and your time. We really appreciate it.