

Home Affairs Committee

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

Tuesday 28 February 2017

Ordered by the House of Commons to be published on 28 February 2017.

[Watch the meeting](#)

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

Questions 78-140

Witnesses

[I](#): Sir Julian King, EU Commissioner for Security Union, European Commission.

Examination of witnesses

Sir Julian King.

Q78 Chair: I welcome you, Commissioner, to the evidence session on the future security arrangements under Brexit. I thank you for coming to give evidence to us and I apologise for the delay in starting.

Could you begin by explaining to us what your role is likely to be over the next two years as the Brexit negotiations continue, how much you will be providing advice, either to the Commission or the British Government, about the security implications of the Brexit negotiations, and how you fit into what is obviously going to be a very complicated process?

Sir Julian King: Thank you very much for the invitation. I am very glad that you are taking an interest in all this. I interpret that opening question as entirely legitimately a question about what I do with myself in Brussels.

I have a day job that takes up quite a lot of the time. Since last September, when President Juncker decided to create this new role of Commissioner for Security Union, I, working with colleagues across the Commission, have been trying to pull together, in some cases organise a bit better, and push forward the work we are doing at an EU level to support the member states and the member state authorities in tackling the challenges of terrorism, cyber in all its different manifestations, and serious and organised crime. That is what I spend my time doing and I am happy to talk a little more, if you are interested, about what that means, what it has meant over the last six months and, indeed, what I envisage it might mean over the next two years.

I am not directly involved in the negotiation process. Even if I were able to reconcile what I imagine might be conflicts of interest, no one else, I think, would believe that I was able to reconcile those conflicts of interests, so I will not be directly involved in the negotiations. The negotiations are led on the EU27 side, as you know, by Michel Barnier for the Commission, working in ways that have still to be completely defined and refined under European Council guidelines and with the European Parliament. In taking those negotiations forward, he will report back from time to time to the college of commissioners. He has done that already on at least one occasion. As a member of the college of commissioners, I am there to participate in any discussion that takes place at that stage.

As he takes forward the negotiations, it is envisaged—it has not happened yet so I cannot say exactly how it will work in practice—that, on certain chunks of specific topic areas, he will draw on expertise and experience from across the Commission. It may be that, at some stage, on my portfolio responsibilities, I am asked to offer a view and advice on how to take that forward. As I say, that has not happened yet.

Q79 Chair: Would you expect to be asked for advice by the British Government as well? Or only by the Commission?



Sir Julian King: I do not work for the British Government. I took an oath of office in front of the European Court of Justice at the end of last year. The terms of that oath are very clear and precise: that you serve the European interest and that you do not take instructions from anyone else—or, indeed, any other institution. If members of HMG want to ask me about my personal opinion on how something is being interpreted, I will be happy to share that, but I will not be in a position to offer any formal advice to them.

- Q80 **Chair:** In terms of the key issue around security co-operation and what those arrangements end up being going forward, some have argued that, in the end, the most important issues are actually about intelligence sharing—co-operation between security and intelligence agencies and so on—around terror threats. They argue that those are more important than a lot of policing co-operation, and that we have a common, shared interest in that intelligence co-operation, so therefore some of the Europol and policing co-operation arrangements are less significant than the intelligence sharing things, which don't depend on EU frameworks. Do you think that is an accurate assessment, or would you say that policing co-operation is also key when it comes to counter-terror?

Sir Julian King: I would hesitate to draw some sort of hierarchy, but I think that, in combating those threats, no matter how good you are—the UK is recognised across the rest of the EU as being very good in this area—you are still better off if you are able to work with partners. That applies on core intelligence and on wider law enforcement co-operation.

As you say, there are exchanges on the core intelligence side, but they take place outside the EU framework; there is no reason why those, in their current form, should be affected by this process. There are extensive exchanges within the EU framework, which we can talk about if you would like. Those cover, notably, agencies, information systems and, obviously, the legislative framework. I think those make a significant contribution to the security to all of the EU member states. That is why I am doing this job: to support the further development and strengthening of that co-operation within the EU framework, because it delivers extra security for EU citizens.

- Q81 **Chair:** But the Home Secretary and the Brexit Secretary have said that they want to maintain the existing level security co-operation—that that would be their objective. What do you see as being the most significant elements of that security co-operation?

Sir Julian King: Outside of the intelligence co-operation, which we have just agreed carries on in a framework outwith the scope of these negotiations, the key elements for all EU member states, which, as I understand it, are echoed in HMG's appreciation of how these things work, are to have effective information exchange—much of which is situated in agencies, but some of which is run through separate data exchanges—and to have a framework for operational co-operation. Again, quite a lot of that is run through agencies, and some of it is based on the existing legislative framework.



Q82 James Berry: I wanted to ask, Sir Julian, about Denmark. Denmark is a full member of Schengen, but on 3 December they voted against adopting the opt-in on 22 legislative areas, including the new framework for Europol, which we opted in to. I understand that they have been told as a result that they cannot be a member of Europol, but they are seeking a parallel agreement to the arrangements by which other member states like us are in Europol.

I have two questions. First, how are those discussions progressing? Secondly, do you see the UK being in a different position to Denmark, on the grounds that we are not a member of Schengen? I imagine our starting position would be that we will not accept the jurisdiction of the ECJ, whereas Denmark will.

Sir Julian King: Thank you for that. Denmark and the UK are in different and distinct positions, as you say. That stems, as I am sure you know, from earlier decisions reflected in different and distinct protocols. Denmark did not have the option that existed for the UK—a decision to opt back in—which is why they had a referendum to try to create that option. The Danish people did not back the Government position, so they haven't got the equivalent opt-in option. Unless something was done, they faced ceasing to be a member of Europol when the new Europol regulation comes into force later this spring, in May.

That was unwelcome to Denmark, and, frankly, it was unwelcome to the other countries participating in Europol, because it would have created a gap. Discussions went on, and there is a framework agreement, which still needs to be endorsed, particularly by the Council and the European Parliament. The European Parliament process is under way. They have agreed a formal mandate for finalising the structure of that agreement, and they will have to have another vote in the coming months to agree the terms of Denmark's continuing engagement with Europol.

As you say, the terms are conditioned explicitly by the fact that Denmark remains a member of the EU and Schengen and accepts EU data protection legislation, ECJ jurisdiction and a role for the European data protection supervisor. The terms offered to Denmark may be of interest to other countries in due course, but they are very particular to Denmark, because Denmark is an EU member state that did not have a legal basis for being in Europol. A range of other possible relations with Europol exists for third countries, which would be the case of the United Kingdom after exit.

Q83 James Berry: So plainly it is possible to have a hybrid framework arrangement by which an EU country in the position of Denmark, or a non-EU country such as the US, can have access to Europol, and there is a continuum from a very loose arrangement to a framework arrangement like the Danish arrangement, which seems to pretty much mirror full membership. It would be for HMG to come forward with proposals somewhere on that continuum, and then some kind of framework arrangement could be put to the Council and the Parliament.



Sir Julian King: That is basically right, but it is two different models. The Danish model is rather particular, because it is an EU member state that got itself into a situation where it did not have a legislative basis for being in Europol. There are a range of third country relationships with Europol of varying degrees of thickness; you are right. Whether any of the existing models would be quite what Her Majesty's Government would want I do not know. Obviously that is a decision for HMG. I can describe those models if you are interested. None of them is quite equivalent to full membership of and participation in all aspects of Europol.

Q84 Chair: Do you mean describe the existing models, or describe any new models?

Sir Julian King: I can only describe things that exist. I can describe the existing models. It is a decision for HMG whether any of those existing models match their desires and requirements, or whether they may seek something more bespoke.

Q85 Chair: We will not ask you to describe existing models—we can obviously read about those—but if you had any possible other alternative models, we would obviously be interested to hear those.

How much would we lose if we were not on the board of Europol?

Sir Julian King: The management board does play an important role in fixing the policy of the organisation, and should have a reinforced role under the new regulation. But it is not the most operational part of Europol. It is a policy framework board, and there are key bits of Europol that are more directly of operational interest. There is an information system, there are all the focal points, and there are what are called impact working groups, which deal with more practical police cooperation.

Q86 Chair: How much would we lose if we were outside the SIS II?

Sir Julian King: SIS II is a separate information system. It is a separate set of issues from Europol. The SIS II is arguably the most important information exchange platform, and that is reflected in the increased engagement of the range of EU member states in sharing information across that platform. It is certainly the ambition of the Commission, backed largely by the Parliament and the Council, to continue to strengthen that particular information-sharing platform. You know these and you can read about them, but the UK has also stepped up the amount of information it has been sharing on this platform since 2015 when it locked into the new SIS II. It has over 160,000 alerts on that platform at the moment.

Q87 Mr Jayawardena: Sir Julian, before I move on to my substantive question, could I follow up on the point that Mr Berry made? Europol is already shaped by the British model in many ways, and indeed by a lot of our intelligence. To that end, some would say that there are already countries that are not part of the EU, that are in what the director of Europol calls a "second tier". Would it not be true that we would not have to go into that second tier because of all the intelligence that we contribute, and indeed because of all of the ways that Europol has been



HOUSE OF COMMONS

shaped by us? It would be very much possible to do a bespoke deal rather than take it or leave it. I am asking from a European perspective, of course, rather than from that of the British Government.

Sir Julian King: The factors that are obviously going to play in any such discussion are that the UK is a known and valued partner, and that in this situation you would be discussing some degree of movement away from the status quo, perhaps, as opposed to arrangements with third countries where you are trying to bring them closer. That degree of movement could be very small. There is definitely a shared interest in trying to find a way through. On this, as on various other things that I guess we might touch upon during this hearing, where there is a will there is very often a way in the end, because of the shared interest. Because everybody agrees that you should do something does not mean that it is necessarily straightforward and easy to do, and once the UK is not a member of the EU then it cannot be a full member of Europol, so there will have to be some new arrangement. The level of ambition of that arrangement will be, first and foremost, for HMG to come forward with, and then there will need to be a discussion about how that works and it will have to start from the existing Europol rules.

- Q88 **Mr Jayawardena:** But you do agree that we should all be big enough to recognise that maintaining security for our citizens transcends these temporal political differences. An example I can give—a bigger more challenging example—is that even Russia and the US managed this post-9/11, so quite apart from our exit from the EU it really ought to be possible for Britain and other members of Europol, whether we are in or out and whether they are in or out, through relationships to have a grown-up and responsive relationship to the threats we all face.

Sir Julian King: I agree that the threats remain. They will not be changed by the UK's departure. Indeed, I do not think that the threat picture for the UK will be impacted by the fact of departure. The people who are trying to do us harm, at least in the terrorist space, do not make any distinction between whether you are in or out of Schengen or in or out of the EU, so the threat picture, in that respect, is not affected. So the question is: how do you most effectively manage and mitigate that threat? At the moment, the position is that a good deal of that management and mitigation is done in various forms of partnership, including partnership with EU member states through these agencies, the information systems and the legislative framework. There will be a shared interest in finding ways of maintaining that partnership. There are precedents that you can build on. The precedents do not necessarily represent all the options for the future, but there will be some legal constraints and practical constraints, and it is likely that there will be some practical limits on what can be achieved, compared with today.

- Q89 **Mr Jayawardena:** What plans do you have for further evolution of Europol during your term in office, quite apart from Brexit?

Sir Julian King: My term of office is going to be coterminous with departure, so over the next two years we are going to work, from the



HOUSE OF COMMONS

Commission side, very hard with all the member states and the partner countries to reinforce Europol around the three main poles of activity. As I am sure you know, especially if you have had Rob Wainwright here on occasion, we have reinforced recently the bit of Europol that tackles terrorism and it is now able to operate on a 24/7 basis. We will continue to do that and to encourage the member states to support the Europol information system that plugs into that. We will continue to work on the bit of Europol called EC3, which is a hub of expertise on fighting cybercrime. It may be that we can expand a little its scope of activities in that very important area, and we will continue to reinforce the bit of Europol that is focused on tackling smuggling and trafficking, particularly human trafficking. Those are the key areas that we will work to reinforce.

There is a review of something called the policy cycle, which is basically the policy framework for the co-operation on tackling serious and organised crime. That is happening this year, and I am very keen that we reinforce the amount of attention that is given to it, that we look at practical ways of reinforcing police co-operation between member states and partner countries, and that we have a broad concept of serious and organised crime. There are some new sorts of crime, or new means of criminality, in particular in cyberspace, which we need to reinforce our efforts against, and there are some new areas of crime, such as environmental crimes, so I will be working with Europol and partners to try to strengthen our effort there.

Q90 Mr Winnick: Out of the European Union, will Britain be as safe as it is now?

Sir Julian King: As I have already said, I do not think that the threat is materially changed by that fact, because the terrorists trying to do us harm do not make that distinction. They are seeking to undermine our way of life and our institutions, and to sow dissent in our communities.

Unfortunately, I think that the UK will remain a target for Daesh and other extremist jihadist elements. Cyber is a mutating threat—it will change over the two years between now and the prospective end of the exit negotiations—but I do not think that the fact of exit will change the way that that threat manifests itself at that point on the UK.

The question then is: how do you manage and mitigate those threats? I remain of the view that no matter how good you are at this stuff, and everybody recognises that the UK and its agencies in this field are very good, you are, nevertheless, more effective if you are working with your partners.

Q91 Mr Winnick: That is what I am coming to: the threat will remain, obviously, whether or not we are in the EU. The terrorists are not going to take into consideration, presumably, what arrangements the United Kingdom has, though it may be a factor in their thinking, or whether we are co-operating with other countries that are also, like all the EU countries, obviously the target of terrorism.

What I am really getting at is, out of the EU are we less able, or likely to



HOUSE OF COMMONS

be less able, to defend ourselves than otherwise against the many threats that you rightly mention?

Sir Julian King: As of today, there are UK-sponsored alerts on SIS for some hundreds of individuals, including terrorists, whom HMG would like to see. As of today, that means that these people spark an alert anywhere across the EU and can be picked up.

As of very recently, because this month we voted on this, we got a reinforcement of the Schengen border code through the European Parliament, which means that everybody coming in and out of Schengen has not only their identity but their documents checked against the EU databases. Any of those individuals coming in and out of Schengen will trigger an alert and will be picked up.

As of today, with the European arrest warrant, if somebody is picked up somewhere in the EU they can be brought before a court in the UK, in weeks rather than months or years, if that is what we are seeking to achieve from the UK end. So those instruments exist at the moment and I think that they make a material contribution to the UK's individual security and the collective security of EU member states. The question is, how far can you go in replicating those instruments and frameworks outside the EU? That will be the subject of discussions in this area.

Q92 **Mr Winnick:** Your comments just now were also made by a certain Theresa May, whom you have no doubt heard of. When she gave evidence to us as Home Secretary, she said that losing access to the European arrest warrant would result in the UK becoming "a honey pot for all of Europe's criminals on the run from justice". She went on to say in 2014, "There are some countries that will not extradite their nationals unless it is under a European arrest warrant. I think that would have a real impact on our ability to deal with criminals." She said nothing then that you disagree with?

Sir Julian King: No. The challenge for the United Kingdom after exit is the extent to which it wants to—and then the extent to which, together, we are able to—agree a structure and a framework in the future that replicates these arrangements effectively.

Basically, for the agencies such as Europol and Eurojust, there are a range of models, and you can imagine ways in which you could develop those. For the information systems it is more complicated; there are very limited precedents. Indeed, outside of non-EU Schengen countries there are no precedents for third countries locking into those information-sharing platforms. So you would have to imagine something new and bespoke in that area.

For the legislative framework, elements of the *acquis*, such as the European arrest warrant, are core parts of the EU *acquis* at the moment. Other countries do not share them. There is an arrangement with Norway and Iceland that amounts in principle to something close to the European arrest warrant. It took a number of years to negotiate, and it has not entered into force yet.



HOUSE OF COMMONS

- Q93 **Mr Winnick:** I know you have been in your position a short time, Sir Julian, and you will make assessments accordingly over a long period, but on the basis that the United Kingdom leaves the European Union, which is the firm intention of the Government—article 50 will soon be put into operation, we have been told, some time this month—what would be the attitude, bearing in mind the qualifications that I have made, on the part of the remaining 27 countries towards the UK when it comes to matters of security?

Is their attitude likely to be, “Well, the UK has left. So be it; they can make their own arrangements” regarding the issues that I have been questioning you about? Or will the attitude be, “Regardless of the fact that the UK has left, we the 27 have a common objective with the UK of doing what we can to defeat terrorism”?

Sir Julian King: There is a shared analysis of the threat. I don’t see why that would change. There is a shared interest in fighting and combating that threat collectively, but just because something is a shared objective doesn’t mean it is easy to achieve. Discussions will be complicated and will require a good deal of effort to either build on precedents where they exist or imagine new bespoke arrangements if that is what HMG seeks.

- Q94 **Mr Winnick:** I get the impression from some press reports made by leading senior figures in EU 27 states—not all of them, by any means, but some of them—of what I would describe as a sulking attitude. “All right, the UK leaves; that’s their decision, but they shouldn’t expect the benefits which we all share, and they will suffer the consequences.” Do you find that among your colleagues?

Sir Julian King: Among colleagues, I find that they are—

Mr Winnick: Be frank!

Sir Julian King: There was a great deal of emotion in the immediate aftermath of the vote. That emotion has calmed. Among my direct colleagues, we work effectively, and we are focused on what needs to be done over the next two years.

As to what will happen at the end of the forthcoming negotiating process, I don’t know that the same balance of considerations needs to apply or will apply in each area. In security, there is a strong shared sense of the threat and the benefits of co-operation in managing and mitigating it.

Mr Winnick: No politician could answer the question better than that.

Sir Julian King: I’ll take that in the spirit in which it was intended.

Mr Winnick: It wasn’t meant as an insult, I can assure you.

- Q95 **Chair:** To follow up on the European arrest warrant, the Norway-Iceland model has taken 15 years and still has not been ratified by every member state. Can you envisage it being possible to negotiate an alternative to the European arrest warrant within two years?



HOUSE OF COMMONS

Sir Julian King: I think it is going to be a challenge. There are models. In all of these questions that we are talking about today, it will be easier to work from a model or a precedent than it will be to create something where there isn't one. That varies across different agencies, different information systems and, in fact, different elements of the acquis.

The fact that work has been done on how a non-EU member state might conceive of something that, to a degree, delivers the same effect as the European arrest warrant—even if there are two Schengen countries that have spent a long time doing it and it is not in force yet—will help shape and frame the discussion.

Q96 **Chair:** If we went for the Norway-Iceland model, that could be done within two years.

Sir Julian King: You are asking me to make predictions about a negotiation process that has not started yet, so I don't know.

Q97 **Chair:** So even that might take longer.

Sir Julian King: What I feel safe saying is that it is easier to build from things that have been discussed, thought about and conceived than it is to do something entirely from scratch. That does not mean it is not possible to do something entirely from scratch.

You will have to look, as I am sure you have, at some of the details of the Norway-Iceland model because there are some limitations on the automaticity of the extradition arrangements and there is the question of how to manage dispute settlement and the extent to which and how to take account of the ECJ jurisprudence in this area.

Q98 **Chair:** If we were to adopt a version of the Norway-Iceland model, do you think, purely from a security point of view, that would be worse than the existing European arrest warrant?

Sir Julian King: Worse?

Q99 **Chair:** Yes.

Sir Julian King: I believe and the Commission believes that the existing European arrest warrant delivers concrete benefits for all member states. In the case of the UK, as I'm sure you know, more than 8,000 people have been extradited out of the UK since the early 2000s and more than 1,000 have been extradited in to the UK. There are other figures more or less equivalent for other member states.

We think that kind of co-operation delivers real results and is quicker, more reliable and less politicised than earlier or alternative models. To the extent that that is not available, you will run the risk of some extra friction in the functioning of extraditions. Will extraditions cease? I can't believe that extraditions will cease.

Q100 **Chair:** Do you regard the Norway-Iceland model as worse from a security point of view than the EAW model?



HOUSE OF COMMONS

Sir Julian King: It is a bit more complicated; it doesn't exist. Were it to exist, I think you could anticipate that it might be a little bit more complicated to operate because you do have this question of not extraditing nationals and the provision for a political-level decision to enter into the extradition process. Those are elements that the EAW is designed to avoid and get round.

Q101 **Chair:** I can see you are uncomfortable with the suggestion that it might be worse from a security point of view.

Sir Julian King: Well, you are asking me a hypothetical about a negotiation that has not started and then what of extradition.

Q102 **Chair:** I am not asking about where the negotiations might end up; I am purely asking you about the two different models. We have a European arrest warrant model and we have a Norway-Iceland model, which, as you rightly said, is not actually in practice yet. However, is it your assessment at the moment, looking at those two models, that the Norway-Iceland model is less advantageous from a security point of view, shall we say, than the European arrest warrant model?

Sir Julian King: I could conceive of a case where you wanted to extradite someone and it was more complicated to do it under the Norway-Iceland model than under the EAW.

Q103 **Chair:** Does "more complicated" mean less advantageous from a security point of view?

Sir Julian King: If it meant there was no extradition, that could be a problem, but I find it quite difficult to conceive of partners that close getting to a point where they could not find a way to extradite. It would not be as quick or as straightforward as the EAW model.

Q104 **Chair:** I understand that you are in a very difficult position in terms of assessing where the negotiations might end up, but I think it is probably okay for you to be able to make an assessment and describe things as being better or worse from a security point of view with the existing models.

Sir Julian King: That is my assessment, the assessment that I have just shared with you.

Q105 **Mr Umunna:** Sir Julian, thanks for coming to give evidence today. I would like to start by asking you about another knight of the realm, Ivan Rogers. He said, in another part of the Palace of Westminster, that the view of the 27 is that article 50 is purely about withdrawal and exit process and that our relationship once we have left following the two-year process will be primarily dealt with at the end. You are a member of the Commission. What is your view?

Sir Julian King: First, HMG has to set out its position and its approach to these negotiations, as you know, in a letter signalling the start of this negotiating process. At that point, the Commission will form a view and will feed that view, in response to the position HMG has taken, into the



HOUSE OF COMMONS

discussions that will go on between the institutions, notably the European Council, which has to draw up guidelines—the guidelines for response from the EU27.

I can give you my view; it is no better than many other people's views, because we do not know the outcome of that discussion yet. The Commission has said, and the Commission's negotiator has said, as you know, on a number of occasions, that the first order of business is a discussion about orderly departure. His view, reflecting the position of the Commission so far, is that you need to fix the orderly departure before you can start talking about the future partnership, before you start talking about how you might get from today or the end of negotiations on article 50 to that future partnership. That is the position he set out.

Q106 Mr Umunna: I take it that the part you would agree with Sir Ivan on is that there is a sequential nature to this process, as in whether it all happens once you have agreed your divorce settlement—if we put it like that—as in when you move on from the divorce settlement to talk about the relationship after. You may not necessarily agree with him on the timescale, but in terms of the sequential nature of that process you would broadly agree with what he has said.

Sir Julian King: The Commission has clearly set out the logic of the sequential approach. How that sequential approach will unfold in practice and in time will depend on things that haven't happened yet.

Q107 Mr Umunna: That's right. The second thing I was going to ask is this: each of the 27 other member states will, of course, negotiate by reference to their own national interests, but would you agree, also, that in order for both sides in this process to get an optimum agreement there needs to be a degree of good will? Good will during this process is quite important—would you agree?

Sir Julian King: I think that would help.

Q108 Mr Umunna: You are an experienced diplomat. Do you think that negotiation by threat of what one party to the negotiation might do if they do not get what they want is likely to engender that party reaching the deal they wish to have?

Sir Julian King: As far as the security part of the negotiation is concerned, I have seen little to suggest that approaching by threats is useful, because the basis of a successful negotiation in the security domain is the shared sense and analysis of threat, and the shared sense that it is best met by working together.

Q109 Mr Umunna: So you would say that negotiation by threat would not be a productive course.

Sir Julian King: I can only comment on the security element, which I have just commented on.

Q110 Mr Umunna: Do you agree with another knight of the realm, Sir John Major? I have to say for the record that I am not obsessed with knights of



HOUSE OF COMMONS

the realm, by the way. He has said that the debate around this negotiation process has led to an expectation of a future that, to him, seems unreal and overly optimistic, by reference to what is likely to happen after we have left the European Union. Is he right or wrong?

Sir Julian King: On the security dimension, which is the only dimension I feel qualified to comment on, I think that we should not either ignore or exaggerate the obstacles we are going to face, which are the issues we are talking about today. In this area, we need to apply ourselves to find solutions.

Q111 **Mr Umunna:** Do you think that in relation to your area we are being overly optimistic and unrealistic about what we might be able to achieve? I am talking generally.

Sir Julian King: No, but I think it is important that exchanges like the one we are having today help to flush out that just because you want something, it is not necessarily straightforward and easy to achieve it.

Q112 **Mr Umunna:** That's right. Finally, Sir John described the atmosphere surrounding the negotiation that is about to start as "sour". Is that what you find, sitting in Brussels? Do you find that there is a sour atmosphere at the beginning of this process of negotiation of the UK's withdrawal from the European Union?

Given that you sit in that forum, you can probably tell us more than whether there is a sour atmosphere around the negotiation of issues pertaining to your brief. Perhaps you can give us a general sense, from when you speak to other Commissioners, officials, people in the European Parliament and so on, of whether there is a sour atmosphere at the moment.

Sir Julian King: I have not experienced a sour atmosphere. There was a good deal of emotion in the immediate aftermath of last year's vote. Some colleagues who had been very attached to the United Kingdom over time were some of the most emotionally affected by the vote—I guess that is human.

Those emotions calmed relatively quickly. I had some personal experience of that, because I had to appear in front of the European Parliament to be confirmed in this position. What I experienced during that process, which went on for some time, was that after the emotions, people pretty quickly focused on the practical things that we still needed to do together over what at that point were the next two and a half to three years.

The negotiations have not been triggered yet. The triggering and the start of those negotiations may affect the atmosphere of the discussions—we will have to see. But as we go into those negotiations, there is a continued focus on the practical stuff that we need to do together over what are now the next two and a bit years and, in a number of areas, on the importance of trying to identify a way of working together afterwards.

Q113 **Stuart C. McDonald:** Sir Julian, can I ask you about the Government's stated determination—some might say it was a fixation—to end the



HOUSE OF COMMONS

jurisdiction of the European Court of Justice over the United Kingdom? To what extent do you think that that could be an influence on, or even an obstacle to, the shared objective of access to intelligence and data? Might it make it more difficult to set up?

Sir Julian King: Again, apologies if I try to break that down in my answer. Pure intelligence exchange, as we have established, takes place in a European framework but outside the EU—outside the jurisdiction of the European Court of Justice. The agencies have third-party relationships where the third party does not submit to ECJ jurisdiction. The information systems are governed in particular by arrangements on data exchange and data adequacy. Some of that could be affected by ECJ jurisprudence but, again, you do not necessarily submit to ECJ jurisdiction just because you have a data adequacy agreement with the EU—I am thinking of the United States, which has a detailed data adequacy arrangement with the EU but does not submit to ECJ jurisdiction.

As you get into the heart of the legislative framework, which we have explored a little bit—perhaps not to the satisfaction of the Chair, but nevertheless a little bit—you get to different models of co-operation. One particular model, the Norway-Iceland model, has a dispute settlement that takes account of ECJ jurisprudence, but it is not the ECJ.

Yes, this is one of the areas that would need to be worked through, but does it stop finding ways of co-operating effectively in at least some of the things that we have been discussing? No.

Q114 **Stuart C. McDonald:** To clarify, you talk about arrangements with, for example, the United States, which obviously has some sort of access to various databases and so on, but it does not have the same type of access to members. If the United Kingdom were then to say, “Well, we can’t have any jurisdiction in the UK by the European Court of Justice”, does that stop at least the likelihood of direct access to those databases? Are we looking more at an indirect arrangement, such as the one that the United States has?

Sir Julian King: For the agencies, the real issue is “Are you a third country or not?” If you are a third country, you find a way of locking back into the agencies. For the information systems, we are imagining something new. Apart from Norway and Iceland—Schengen countries—there is no third country that has got an existing relationship with those information systems. That is something which, of necessity, will be new and bespoke, if it is what HMG ask for and if it is the product of the negotiation process or discussions over the coming period.

There will have to be some sort of understanding as part of that arrangement on how data are handled. There is no basis for personal data being shared between an EU member state or at least an EEA country and a non-EEA country, other than a data adequacy agreement. That will have to be sorted out.

On the EAW, it is the most challenging of the areas, as the Chair’s questions have served to point out.



Q115 Stuart C. McDonald: In terms of some sort of data adequacy assessment being carried out, if the UK has to go through that process, to what extent does the European Court of Justice judgment in the Data Retention and Investigatory Powers Act case suggest that there would have to be changes to UK legislation, before it would pass that assessment, especially given that we have now gone even further with the Investigatory Powers Act?

Sir Julian King: As a third country, the UK will need to go through a data adequacy process of some sort, not just for co-operation in this field, but much more widely for commercial use of data that involves personal data. Again, there is no basis for sharing personal data outside the EEA other than a data adequacy arrangement. That will have to happen.

There are different models. There is a model with the United States that people know about because it has been much discussed. There is a model that is part of the discussions that are under way at the moment with Japan, as part of the prospective EU Japan FTA. There are different ways of doing it, but you will have to find a way of convincing the EU that data transferred out of the EU will be properly protected, which means that you will have to convince them that there will be no indiscriminate mass collection of data; that it will be used in a way that respects very high standards of targeted access and use; and that there is consent, certainly in the commercial fields. Is information available to people who want to know what is being done with their data and are there arrangements for redress if people feel that their data have been misused? Those are the key elements that will need to be satisfied in any eventual data adequacy arrangement.

Q116 Stuart C. McDonald: You used the expression “no indiscriminate mass collection of data”. According to the European Court of Justice Act, that is essentially what DRIPA was. It is almost certainly how it would regard the Investigatory Powers Act. That suggests that it would be impossible for anything to pass this adequacy assessment without changes to that legislation.

Sir Julian King: That is not entirely clear, if I may say, because the European Court judgment has just produced recently a judgment on RIPA. It is now with the Commission to offer some guidance on what that judgment means in practice. It does not rule out retention of data but sets constraints on how that data can be gathered. We are going to have to offer some guidance on how that is to be interpreted. In my opinion, it cannot be our intention that that is going to make it harder to keep EU citizens safe.

Q117 Stuart C. McDonald: More generally, some commentators talk as though Brexit itself poses a risk to the ongoing existence of the European Union—certainly on its current scale. Have you undertaken any assessment about the danger that other countries might want to follow suit or seek a different, or looser, arrangement with the EU?

Sir Julian King: Not personally—not beyond what you and I read in the newspapers.



Q118 **Stuart C. McDonald:** Is the Commission responding in any way that is designed to try to build confidence in the EU and to prevent citizens in other countries taking similar action?

Sir Julian King: The Commission is going to be producing a White Paper, probably in the course of this week, which is designed as a contribution to the debate on the future of the EU 27. It is being brought out now in order to help shape and inform the discussion at the meeting in Rome that is scheduled for later next month. That will set out, I hope, convincing arguments for the benefits of working together in the EU in the future.

Q119 **Chair:** Just to follow up on the data adequacy issues, in terms of what the EU currently expects of third party countries, are those standards the same as the requirements on existing member states, or are they higher or lower in practice? I am conscious that whether we are in or out, we will clearly have to meet various standards, whether of the ECJ or the Commission.

Sir Julian King: The object of the exercise and the ideal pursued by the EU is to secure to its satisfaction that there are data protection arrangements that are broadly equivalent to those that exist within the EU. That is why such a large amount of effort, as you will recall, went into the discussions with the United States and, indeed, why the original arrangements with the United States, known as safe harbour, were challenged in the court. When that challenge was upheld there was a new discussion and the previous Administration in the United States amended its laws in some respects in order to satisfy the questions that had been raised about the level of data protection.

Q120 **Chair:** I accept that you cannot answer about what hypothetical agreements there might be in the future, but in practice, if we look at just the US agreement that was reached, did the US, because of having to negotiate from outside, end up having to sign up to more stringent data protection conditions or less stringent data protection conditions than the ones that apply to member states?

Sir Julian King: I am not trying to duck your question—what happened was that it had to change its legislation. It had to give undertakings about its practice, so it gave undertakings about not practising indiscriminate mass collection of EU citizens' personal data and introduce a new law in order to give EU citizens effective redress if they felt that their data was being misused in the US courts.

Q121 **Chair:** Would it be fair to suggest that, whether we are inside or outside the EU, we will have to meet stringent data protection conditions?

Sir Julian King: Yes.

Q122 **Mr Burrowes:** Another knight, Sir Richard Dearlove, said that Brexit would have a load of security costs, alongside two potentially important security gains: the ability to dump the European convention and the opportunity to gain greater control over immigration from the EU. The Home Secretary stated that the ECHR makes us less secure by preventing the deportation of dangerous foreign nationals. Do you agree



with both those premises?

Sir Julian King: I am rather hoping that somebody is going to find somebody who is not a knight of the realm who has an opinion on these subjects—maybe knights of the realm have too much time on their hands. I understand the points raised but they are not directly relevant to what we are talking about. As you know very well, the question of a relationship with the ECHR or not is another matter on which we will have views, but it is not directly relevant to the things we have been talking about for the past 45 minutes or so, which are about how you lock back into agencies, information systems and something like the EAW, if that is what you want to do. Control of immigration is a subject I am sure you spend a lot of time talking about and discussing. While obviously related, it is not directly relevant to what we are discussing today. What we are discussing today is how you practice controls and checks. The framework in which you practice them—your immigration or migration policy—is a separate matter. I understand what he is saying but I think the points he is making are not directly relevant to the issues we are discussing today.

Q123 Mr Burrowes: Can you give a broad assessment of the impact that the end of freedom of movement has on the security risk to the UK?

Sir Julian King: What I can say is that, because of the large number of people who have been coming in to the EU, we have, as the Commission has proposed and as the member states have backed, a series of measures to strengthen the controls at our external borders, and the information exchanges behind our external borders, so that we have a much better and more accurate picture of who is coming in. We are able to exercise controls within our shared space in order to reassure our citizens that we are trying to tackle security risks. It is important to know who is coming in and out of your space. There are no constraints at the moment, in anything we have been discussing, about the kind of controls that the UK can operate at its ports of entry. There is nothing that will change on the type of controls that the UK can operate at its points of entry after exit, except possibly that, at the moment, the UK controls people as they come in at points of entry. One of the controls, as well as identity, is to check them against various databases—national databases and the shared EU law and order databases, such as SIS. Depending on what is discussed and agreed after exit, that possibility might not exist.

Q124 Mr Burrowes: He is certainly not a knight, but Guy Verhofstadt, the European Parliament's lead on Brexit, has said recently that Islamic terror, Vladimir Putin and Donald Trump are the three main existential threats to the European Union. Do you agree with that assessment?

Sir Julian King: From where I sit the main threats we are working to counter are the terrorist threat and the cyber-threat in its various manifestations.

Q125 Mr Burrowes: He did not include Brexit, which was wise, you feel?



HOUSE OF COMMONS

Sir Julian King: Where I am sitting, the main existential threats, because they are truly existential, as we have seen repeatedly over the last two years, come from the terrorist threat and the cyber-threat.

Q126 **Mr Burrowes:** To move on to President Trump, given the potential discord between the EU fundamental rights and his policies, do you consider that there are any implications in relation to the “Five Eyes” alliance for future EU-UK intelligence sharing agreements?

Sir Julian King: As we touched upon, the exchange of intelligence takes place in a framework outside of the EU and I am not aware of any reason why that should be affected by the subjects that will be discussed in the course of the UK’s exit from the EU. On the US more generally, the US relationship with the EU on these issues is close. It has a very close relationship with Europol in particular. That relationship has delivered real security benefits. In the immediate aftermath of the attacks in Paris and in Brussels, it was through the links that Europol in particular has with various US agencies through something called the Terrorist Finance Tracking Programme that literally hundreds of leads were generated, which the French and Belgian authorities say made a significant contribution to their efforts to track down the perpetrators of those attacks. For me, that is a very concrete example of the practical benefits of that close co-operation, which is why we are going to work very hard to maintain it and develop it.

Q127 **Mr Burrowes:** Post the election of President Trump, have you seen any evidence of that changing?

Sir Julian King: I was at the Munich security conference two weekends ago and I had an opportunity to meet General Kelly, the new Secretary of Homeland Security, and he reaffirmed from his perspective the importance and mutual benefit of maintaining and developing those very close links on these issues.

Chair: We were going to ask you about a series of issues and we have slightly rejigged their order, so I am conscious that we are shifting from topic to topic. I hope you will bear with us as we come back to some of the questions that we raised earlier.

Q128 **Naz Shah:** What discussions have you had on the possible impact of Brexit on the security situation in Northern Ireland, given that it may prove necessary to establish an external security border between the UK and the Republic of Ireland?

Sir Julian King: I personally in this role since last September have had very limited discussions about that, because it has not come up yet in the context of discussions in a negotiation process that has not yet been triggered. There is an awareness in Brussels, which I think has increased over recent months, that this is a very important issue that is going to need to be addressed. At one stage—I think I said it publicly—I was a little concerned that there was a possibility that, because London, Dublin and Belfast were obviously seized of this issue and all shared an objective of



HOUSE OF COMMONS

trying to limit the impact of the border, they might generate ideas and proposals that would be difficult for Brussels to manage.

I am encouraged that, over the last few months Brussels—the institutions—has come collectively to understand how important this issue is, because they have heard it from a variety of different sources. They are now, as President Juncker and Vice-President Timmermans among others have said publicly, looking at this with an open mind and share the objective of finding a way of dealing with this issue in a way that has as little impact as possible on the lives of those around the border and who cross the border, and in a way that preserves the benefits of the Northern Ireland peace process. I am encouraged by that.

Q129 Naz Shah: Do you have any concerns at all?

Sir Julian King: Well, there is going to be a border. The border does not disappear; there are still two countries. So the question is: how do you manage that border, and to what degree can you find arrangements that limit or eliminate the friction that individuals would experience going backwards and forwards across the border? What I am encouraged by is that there is now a shared sense in Brussels, Dublin, Belfast and London of the importance of finding solutions and ways of dealing with this that limit the disruption as far as possible, both for—obviously and crucially—people but also goods and services.

Again, as we were saying on some other topics earlier on, just because people share an objective and agree on its importance does not necessarily mean that it would be easy to achieve. In this area as in others, we are going to have to apply ourselves very seriously in order to find solutions that meet those objectives.

Q130 Byron Davies: May I ask you about something that is very dear to my heart, returning to the Europol issue? We are told that the UK's intelligence agencies have good working relationships with counterparts across Europe, and supporters of the leave campaign have pointed to such informal alliances as evidence that the UK is not dependent on the EU for cross-border co-operation on counter-terrorism. It is also said that significant value is gained from the data, intelligence and co-operation that the UK accesses through its EU membership. We have been warned that it could take years to negotiate the terms of the country's future involvement in crime-fighting. The Europol director Rob Wainwright has said that international police co-operation after Brexit is absolutely essential to keep us safe, saying that security threats in Europe have grown and that it is important that UK negotiations get this right. Could I ask you two questions: first, given the UK's significance within the agency, how do you see its future status as a third country? Secondly, is Europol's relationship with its operational partners likely to strengthen further over time after Brexit?

Sir Julian King: I agree both that the exchange of intelligence, which happens very effectively outside the EU framework, is important and will continue, and that the exchanges—particularly the police and law and



enforcement exchanges that take place within the context of Europol and other agencies—further strengthen the effectiveness of our counter-terrorism effort. I see no tension between those two propositions. On the second question—what is the prospect for our future relationship with Europol?—as we were touching upon earlier, there is an element of information exchange in the Europol information system, and we will have to work out whether or not it is possible for a third country to plug into that, and if so to what extent. At the moment there is no precedent for a third country plugging directly into that information system, and indeed the arrangement envisaged for Denmark does not envisage Denmark being able to plug directly into that information system. We will need to work out how close the future UK third country engagement with the working part of Europol can and will be. There are these focal points and impact working groups where the real exchange on different counter-terrorism, serious and organised crime and cyber efforts are concentrated. You can have, by agreement, close engagement as a third country in that work. The United States, for example, is in 21 of the 29 different working groups within Europol that are the focus of practical co-operation in those areas. That can be worked through if we put our minds to it—hopefully productively—depending on what HMG sets out as its position.

Q131 Byron Davies: In your role, you must have good communication with the other countries, member states and their security services policing. What is the view of these people at the moment in terms of dealing with us post-Brexit?

Sir Julian King: The view at the moment is that, in practice, co-operation has continued and in some areas is being reinforced because the UK remains a full member of the EU, and will be until the point of exit. For example, UK engagement in some of those information system and in Europol remains much admired. That is why, at the risk of repeating myself, I am hopeful that the shared sense of threat, and the effectiveness of working together to counter it, will create a framework in which we can work our way to a solution on some of these issues. However, that is not to ignore that there are some quite difficult practical questions that are not yet resolved.

Q132 Chair: You referred a few times to issues about ECJ jurisdiction on different things. What are the key areas for which that will be an issue to be resolved, either to decide what happens in terms of future ECJ judgments, or to set up new third-party dispute resolution procedures and so on? What do you see as being the key areas in which each ECJ jurisdiction will have to be resolved?

Sir Julian King: The closer you are to questions of co-operation with the legislative framework—you have taken the example of the European arrest warrant—the more that question is posed, because the legislative framework exists under ECJ jurisdiction. There you have that problem in its most pronounced form. You have already been asking me questions about one model that is slightly out of that, and I imagine that is a possible line for development.



HOUSE OF COMMONS

When it comes to the information systems, the key question is data adequacy here, as in a number of other areas, including some key commercial areas. As we were exploring, you can have data adequacy arrangements as a third country under your own legal system, but if they are challenged within the EU, and that challenge is upheld—by the ECJ, for example—you have to adjust in the light of that challenge.

I think it is more straightforward for the agencies. There are quite developed third-country relationships, like that the United States has, where, apart from the data exchange, the rest of the co-operation—which is very effective in practice—does not really pose the same kind of ECJ questions.

Q133 Chair: If in all of these areas it takes some time to get all of these things sorted, and if the arrangements aren't agreed for the future at the point at which we reach the end of the two-year period, do you believe that we will need a transitional arrangement in place until new arrangements can be established?

Sir Julian King: What I can say on that is that, if you can find a way of avoiding gaps, obviously that is strongly preferable. That is recognised by the EU side very clearly, which is why the EU—led by the Commission—welcomed the decision by HMG to opt back in to the new Europol regulation. The first possible manifestation of this kind of gap problem would not have been in 2019 but in spring this year, if the UK had decided not to opt back in to that regulation. At that point, two years before 2019, we would be talking about how to disentangle the UK from the framework of Europol co-operation.

The fact that the UK Government chose to take that decision to opt back in, notwithstanding the direction of travel towards exit, was widely welcomed. I see no reason why that spirit of trying to find effective forms of co-operation, in order to avoid gaps opening up, should not continue in the period ahead.

Q134 James Berry: There is broad agreement that the policing and security measures that we have opted into are mutually beneficial to the UK and the EU27. Is that a view shared by the Commission?

Sir Julian King: Yes, the existing arrangements are beneficial for all EU member states. That is why we seek to reinforce them.

Q135 James Berry: The Prime Minister has made it clear that she wants to replicate, so far as possible, the current arrangements. Which would you say are the most important aspects of co-operation for the UK Government to focus on?

Sir Julian King: It is quite difficult for me to say which are the most important for the UK Government, because we are waiting to hear from the UK Government.

Q136 James Berry: From the Commission's perspective, which would be the top, in order of priorities, that you would like to see the UK remain a member of or have a replicated membership?



HOUSE OF COMMONS

Sir Julian King: Sorry, I am not trying to duck your question. It is not for me to offer advice to HMG about how they are going to fix their priorities in the process ahead. I note that, in the past, the UK has indicated that it attaches a lot of importance to Europol, to effective information exchange and to practical operational co-operation, particularly in the field of police and law enforcement. I have no quarrel with those areas that the UK has previously highlighted as important, but it is not for me to offer advice on what it is going to set out as its position for the period ahead.

Q137 **James Berry:** Your message over the weekend was that, even if there was a practical will to replicate all the co-operation we currently have in this area, the challenges of constructing a legal framework to do so should not be underestimated. That was a very fair point and well-made, but I want to ask you about two other challenges, which are those of ideology and cost. To what extent do you think ideological issues in some member states about the fact that we are not a member of the EU or do not want to accept the jurisdiction of the ECJ will take precedence over the practical issues of continued co-operation? Is there perhaps the feeling that Britain should not be able to benefit from the co-operation systems that the EU worked so hard to set up if it no longer wants to be a member or accept ECJ jurisdiction?

Sir Julian King: It is quite hard to speculate to speculate about views in other member states over the next two years, but I think that there is not just one blanket approach. I suspect that you will find that in some areas, such as security—we were talking about the sense of shared threat and the shared benefit of working together to counter that threat—will be very significant and help to shape the environment in which those practical issues need to be addressed.

Q138 **James Berry:** On cost, I am certainly on record as saying that if we want to enjoy the benefit of this co-operation and there is cost attached to it, we should be ready to pay our share of the overall cost of running all these systems of co-operation—Europol's headquarters, to give a small example. Will you be making an assessment of the cost of security and policing co-operation and how much the Commission might expect the UK to pay, if anything?

Sir Julian King: We all need to be grateful to the Dutch Government, which contribute the Europol headquarters. I haven't been asked to make such an assessment yet.

Q139 **James Berry:** But you might be?

Sir Julian King: I haven't been asked to make such an assessment to date.

Q140 **Chair:** Sir Julian, thank you very much for all your evidence on Brexit, which has been our main focus today. In terms of your assessment of the threats and issues that you have to look at, which are facing Europe at the moment, what are you most worried about?

Sir Julian King: I am worried about the twin threats that come from terrorism and cyber. I don't want to overlook the serious and organised



HOUSE OF COMMONS

crime that has been and will be with us for a very long time and damages people's lives, so we must not let that become a kind of poor cousin in this work on reinforcing our security union. But the terrorist threat is very high and doesn't show any sign of reducing. It affects all the EU, even though some countries feel that they are more in the front line than others. I was in Tallinn the other day and they reminded me that two Estonians were caught up in the attack in Nice. Because of the way that we move and live our lives, even if your country is not, so far, directly targeted by jihadist extremist terrorism, you can be caught up in this. We are doing a lot of work to try to strengthen our collective ability to resist that threat, both by closing down the space in which terrorists can act and by building up our resilience to make ourselves a harder target and deal with the consequences of attacks, if the worst happens.

We are going to need to keep taking that work forward. A key part of that work is knowing more about who is coming in and out of our shared space, as we touched upon. The efforts that have been made in the recent past, which we will need to continue to build on, to reinforce Frontex and Europol, including helping countries such as Italy and Greece, which are at the forefront of dealing with large inflows of people arriving, are very important.

There is the work that we have done to raise standards across the EU, such as the counter-terrorism directive that has just been adopted, which criminalises across the EU travel to and from conflict zones. It was the case here and in France but it was not the case everywhere. That is a question of raising standards across the EU.

We have done work to strengthen the Schengen border code, so that now there is not just an identity check but a check against these law enforcement databases for everybody coming in and out of Schengen. All of that helps us to have a much richer picture about who is coming in and out of Europe, which is very relevant, including at a time when there is a possibility of EU citizens who have gone to the conflict zone seeking to come back.

We have proposed some other measures in the same vein, which we are still working on and will take a little while to come into force. That is one of the things that I am working on for the next two years. An entry-exit system would note the entry and exit of all third-country nationals coming in and out of the EU and there will be an EU version of the American pre-clearance system, ESTA. The EU version is going to be called ETIAS. As you know, non-visa nationals from third countries will need to seek pre-clearance before they travel. That again would give us a really rich information picture about who is coming in and out of our space.

We need to continue to strengthen the information systems that we have been talking about. We are going to strengthen the SIS system. We are going to make the existing systems work better and work better together. We are going to continue to strengthen the agencies: Europol and Eurojust.



HOUSE OF COMMONS

We are going to press ahead with our work against radicalisation, which we have not really had a chance to talk about here today. We are reinforcing co-operation across the EU to counter radicalisation, both in our communities and on the internet.

We are going to continue to try to build our resilience by tackling some of the means that terrorists use to do us harm, notably firearms, explosives and funding, and also exchange best practice about how we defend our so-called soft targets. I do not like that terminology—it means public spaces, which have all too often been subject to attack. There is a rich agenda of work that we need to do for the next two years.

Chair: Thank you very much. We wish you well in that work and hope, given the importance of it, that you do not have the frustration of spending the next two years doing all of that work and not seeing Britain able to be part of it in future. Sir Julian, thank you very much for your time and evidence this afternoon. That concludes our session.