

Home Affairs Committee

Oral evidence: [EU policing and security issues](#), HC 806

Tuesday 7 March 2017

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Members present: Yvette Cooper (Chair); James Berry; Mr David Burrowes; Byron Davies; Mr Ranil Jayawardena; Tim Loughton; Mr David Winnick.

Questions 141-191

Witness

[I](#): Rob Wainwright, Director, Europol.

Examination of witness

Witness: Rob Wainwright.

Q141 **Chair:** Mr Wainwright, thank you for coming to the Committee and for being understanding about the timing of the evidence session today, and our having to rearrange it because of business in the House.

Rob Wainwright: It is my pleasure.

Chair: As you will be aware, we are conducting a series of evidence sessions on the implications for different aspects of security and policing of the Brexit negotiations. We would be interested to hear your thoughts on what the key issues are likely to be. Could you start by telling us what the different models and arrangements are? We know that there are other countries from outside the EU that have arrangements with Europol, and it would be helpful to understand what you see from a purely policing and security point of view as being the most significant differences.

Rob Wainwright: As of today we have what we call operational agreements with 19 non-member states including the United States, Norway, Switzerland, Australia and many in the western Balkans. Those operational agreements give considerable benefits to these third parties, but not quite the same as full members. As with full members, they have access to our communication network, SIENA. They have multiple access points, also in their home jurisdiction. As with full members, they can therefore exchange information with all other members, and indeed with Europol, and interrogate its databases. Also—as with full members—they are entitled to station liaison officers in the headquarters, who have free access to all other liaison officers. We have 213 liaison officers from 42 countries now at Europol. Non-members also have access to our analytical work.

As for the differences: they do not have direct access to our database, so they may channel information and make inquiries of our databases, but in the case of third parties, it is through a Europol unit, whereas in the case of full members, they have direct access even from the field—for example, in terminals around the United Kingdom. They have no regular members of Europol staff, so the only Americans and Norwegians that we have in the building are liaison officers. We have 17 British liaison officers but also some 49 other British officers, including me, employed directly by Europol—so there is a greater leverage and influence on a day-to-day basis on the way in which Europol works. They do not lead any of our operational projects. Subject to the unanimous agreement of all member states, third parties can join those operational projects in our different areas, but they cannot lead them. They are also not entitled to have membership of our governance instruments, in particular the Europol management board. That equates to very effective operational arrangements, but not quite the same as our full members, as you might expect.



Let me come to the special case of Denmark, of which you will be informed already because of the result of the Danish referendum. When the new Europol regulation comes into force on 1 May this year, Denmark will not be a regular member thereafter, as a result of its national referendum. To mitigate the effects of that and the impact it might have on Denmark and also on Europol's work, a political agreement has been drafted and is going through the process of being ratified by an all parties' agreement between the European Council, the European Commission and the Danish Government. This is a hybrid arrangement. It reflects the fact that Denmark is not becoming no longer a member state of the European Union, so it is in this hybrid situation. It will not have direct access to our database but it will have observer status on our management board, for example. It will continue to have liaison officers. So it is a hybrid position, somewhat between a full member and a third party.

If you will forgive me for answering the question in a very long way, I want to raise one other important point that is often overlooked. The co-operation agreements that we have with these 19 countries of course set a possible precedent for the United Kingdom to follow, as a tried and tested route. However, very importantly, all 19 were concluded under existing regulatory arrangements at Europol. Those arrangements materially change when our new regulation comes into effect on 1 May. The UK may, therefore, be the first country to seek operational co-operation with Europol under these new arrangements. So it will no longer be a tried and tested route: effectively, the UK will have to test a new procedure. Those new procedures are such that Europol will no longer have the ability to conclude co-operation agreements directly with third parties. Instead its task will be to implement those international agreements that the European Union as a whole will conclude with a third country.

There are two possibilities for those operational agreements with Europol to be concluded under our regulation. One is an international agreement of the European Union with a third party, which currently exists under article 218 of the treaties. That could include a justice and home affairs chapter, for example; or secondly, a data protection adequacy decision of the European Commission could be applied in a specific case. If either of those conditions are met, Europol could conclude an operational arrangement with that third party with the purpose of exchanging operational information, for example. Neither possibility has been used before, because the regulation is new. Indeed, in regard to the data protection adequacy decision, until now it has only ever been used in civil matters. It is just as a result of an EU directive from last year that it can now be applied in police matters from 2018 onwards—that is what creates this possibility under our new regulation.

Q142 Chair: On that point, you said that there were two ways to do it. One was through agreement with the EU Commission; the other was through a data adequacy route.

Rob Wainwright: The first one is an international agreement between the EU as a whole, not just the Commission. It is negotiated by the Commission but is between the EU and a third country. There are a



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number of those agreements already in place. The second is specifically a data protection adequacy decision for the purposes of police co-operation. In that case, it has never been used before—it has been used only on civil matters.

So this, therefore, will take the UK into a new territory. What is really critical for the UK, I think, is the question, which certainly I cannot answer today, of whether the negotiations under the article 50 procedure will result in an agreement that effectively takes the form of one of these two options, or whether one of those two options has to be negotiated and concluded separately. I cannot answer that, but it is an important issue, of course, because of the need to avoid a cliff-edge scenario at the point at which the UK leaves the European Union.

So this is an important point, and it shows that we have a history of concluding effective arrangements. We will draw on that history, I am sure, and means whereby we can hopefully conclude an agreement with the UK; but the modalities will change, and that perhaps creates a little bit more uncertainty.

Q143 Chair: Even on the tried and tested routes, how long do they tend to take?

Rob Wainwright: In the case of the 19, on average at least two or three years. In the case of Denmark, however, just a matter of months. So it depends on political expediency, I guess.

Q144 Chair: Again, just going through the key things that you described as being the differences, how significant in practice are they? If we do not have direct access to databases and have to go through a Europol process first, what in practice is the difference? Is that just somebody pressing a button two minutes later, or is it a whole process that takes a long time? What difference, in practice, does that make?

Rob Wainwright: There is a time lag, of course, because the request to search on the database comes from Washington DC to the representative in our head office. He passes it on to our unit and we find a hit and it comes back down the channel; so there is a time lag. We have improved the efficiency of the process to minimise that, of course. Beyond that, I think, also, what is denied is having multiple direct access to databases across different points of the law enforcement community in that third country. At the moment, for example, I think I am right in saying there are something like 50 different SIENA points of access around the UK law enforcement community. That potentially would change, but of course it is all subject to whether we would deal with, in this case, a bespoke agreement.

Q145 Chair: Has any analysis been done about the scale of the impact should the UK have one of those indirect access models, compared with what we have at the moment, in terms of the scale of the number of requests we make to the databases?



Rob Wainwright: No, we have not done a detailed analysis yet on that, Chair. I think it is also fair to say that we are concerned at Europol about the impact that will have on the business processes even of our own organisation, given that we will be dealing with a country that at the moment is one of the most active users of our platforms, our communication systems—so that would create an enormous burden on the organisation, of course, for us having to channel their requests on a daily basis. It is fair to say, therefore, that there would be some business imperative on the side of Europol that would also want to consider how we manage the effects of that; and that might influence, perhaps, the position that the Commission would take in the negotiations for that. I cannot predict, of course.

Q146 **Chair:** The issue about not having British officers on the management board, or not having British officers employed directly by Europol, or not being able to lead teams or lead projects or lead investigations: how significant is that?

Rob Wainwright: I think it is important. That is more significant. So we have in the EU at the moment, in the fight against serious and organised crime, 13 top priorities, and operational projects that are running in quite a substantial, complex form. The United Kingdom is leading or co-leading approximately half of those already, and in areas that are important to the UK, such as cybercrime and migrant smuggling, for example. I have been invited to join the Prime Minister's modern slavery taskforce, and from that I have been able, therefore, to give some possibility for that taskforce to reach through Europol into its wider international network. These are examples of the way in which the UK is currently leveraging quite effectively the ability to use Europol as a European-wide network to advance its priorities. Of course, I am sure I will be the last British director of Europol, and there are other senior positions in Europol currently—the head of our European Cybercrime Centre, for example—that are important positions by which the UK can exercise some leverage and influence. On the Europol management board, the UK has consistently been a leading voice and has therefore been able to chart the development of Europol in ways that many people would see as quite a British-friendly institution.

Q147 **Byron Davies:** Good afternoon, Mr Wainwright. You have talked about the UK being the most active country involved with Europol and about our 17-person liaison team that we have in Europol. I know from my own work as a police officer in eastern Europe that the British police are highly regarded in Europe. What discussions have you had with other policing bodies in EU member states and what is their view of where we are going now?

Rob Wainwright: I think the view is that the United Kingdom is a very important strategic partner in the security field. It has been, as I have said, a leading influence on the development of Europol. There is a concern, therefore, among the European police community that that British expertise and even leadership is not lost at a very important time, as you know, in the security landscape of Europe, where we have a heightened threat of terrorism, people smuggling and cybercrime. There is



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a sense that this is not a zero-sum game. In the professional community, we do not see this as a negotiation by which the spoils are divided between two parties. This is very much about the collective security interests of Europe. To that extent, maybe the NATO security concept is a useful analogy: an attack on one potentially threatens the security of others in terms of major terrorist attacks and major cybercrime attacks on national infrastructure. So there is a common requirement across the European police community that through this process we will end up in a position where Britain still makes a decisive contribution to the European security agenda.

Q148 **Byron Davies:** Through Europol.

Rob Wainwright: Through Europol, but of course in other respects as well.

Q149 **Byron Davies:** Bilaterally?

Rob Wainwright: There are important bilateral models of co-operation, as you know, some of which exist within the EU and very important ones that do not, especially in the intelligence community, and these will continue to be to a certain extent a bedrock of every country's security. There is also a recognition, however, that the growing internationalisation of crime and the growing cross-border elements that we see force a need upon the community to act together, in concert, and therefore through channels of co-operation and co-ordination such as Europol.

Q150 **Mr Winnick:** You have been involved in Europol for a considerable time. You have been the director since 2009 and before that you were in senior positions. Although each member country of the EU has a perfectly legitimate right to decide whether it wishes to remain in the EU or not—that is Britain's sovereign right, as it is with the other 27 countries—was there nevertheless a feeling of acute disappointment among your colleagues? As far as Europol and a lot of the wider issues are concerned—I will come to the European arrest warrant in a moment—was it considered to be not in the overall interest in combating criminality?

Rob Wainwright: At first the reaction was indeed to respect the outcome of the vote, but at the same time there was a sense of disappointment and a sense that they might be losing an important friend. It was quite noticeable, actually, the extent to which I saw very little evidence of any acrimony or bitterness, certainly within the community I was dealing with. There was more a sense of, "What a shame" from our European partners. Now what I get is a sense of genuine willingness to make this work, for Britain but also in the name of the collective security interests of Europe. I agree with others, including the Prime Minister, that we have to get on with it now and make it work. My job at Europol is to make it work for all 28 member states—the UK and the other 27. It is a real concern for me that we can navigate the UK's exit in a way that also protects the long-term interests of the institution that I represent.

Q151 **Mr Winnick:** I listened carefully, like my colleagues, to the replies you gave to the Chair about the UK out of the EU and its relationship with



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Europol. Whatever happens, it is unlikely—correct me if I am wrong—that it will be anywhere near the present situation once we are out of the EU, as far as Europol is concerned.

Rob Wainwright: Of course you would expect me to say what everyone says—that I can't predict the outcome of the negotiations. But I would not expect the full membership rights that are currently given to member states of Europol to be granted to any current or future non-member of Europol. I would expect the qualitative difference that exists today to continue to exist, in one way or another, in any future arrangements with non-EU member states. Of course, the Danish model shows that one size does not always fit all. There, maybe, is the rub of what might happen during the negotiations.

Q152 **Mr Winnick:** One way or another, in your view, at this stage, with article 50 being triggered, that is probably the only way one can look at what may happen.

Rob Wainwright: I think it is unlikely that a non-EU member state could have full governance powers, for example, or a share of the full governance powers, as member states do. That is unlikely, but who's to know? Even in my position, I cannot possibly predict what may or may not be on the table at the start of the negotiations and off by the end of it.

Q153 **Mr Winnick:** When the Prime Minister was Home Secretary, in evidence she gave to us she put much emphasis on European arrest warrants and how important they were. That will change, will it not? She put it rather colourfully. She said that losing access to the European arrest warrant would result in the UK becoming "a honeypot for all of Europe's criminals on the run from justice." Is that an exaggeration?

Rob Wainwright: I would certainly agree that the European arrest warrant is a very important instrument for police co-operation in Europe, and it is becoming increasingly so for the United Kingdom. The rate of extraditions from the UK in the past year has increased by 25% on the year before. It seems to be becoming more and more useful and necessary as a means by which law enforcement authorities in Britain conduct their activities.

It is also misunderstood, in the sense that Britain extradites far more than it gets back in return, as it were. That is often portrayed as an imbalance of interests. I don't see it that way. On your point about honeypots, some 2,000 or so criminals were extradited from the UK and returned—surrendered—to other member states under the terms of the European arrest warrant in 2015-16. Frankly, that is 2,000 criminals off the streets of Britain and fast-tracked out of this country back to their home countries. While not all of them are among the most serious offenders, some are very serious, including those guilty of sex offences, drug trafficking and even terrorists in some cases.

It is far better for Britain's security—public security, that is—that those 2,000 criminals a year are taken off our streets and back to their countries. If you lose that capability, although some of it could be



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mitigated by other arrangements, it is unlikely to be nearly as effective, and I think we are therefore dealing with a public security issue if Britain no longer has access to the European arrest warrant.

Q154 Mr Winnick: There can be no doubt that using the European arrest warrant has helped in extraditing criminals, whose extraditions would otherwise have taken much longer, even if they were successful in the end.

Rob Wainwright: Absolutely. One of the principal benefits of the European arrest warrant has been to reduce significantly the time it takes for criminals to be extradited.

Q155 Mr Winnick: Let me just ask you this. I have no desire to put words into your mouth; you are a public servant and decisions of a political nature are for politicians and not for you, as you would be quick to tell me. If we were outside Europol and did not make arrangements, and if we were outside the European arrest warrant mechanism, what would be the overall position as far as combatting criminality of all kinds is concerned, including terrorism?

Rob Wainwright: Well, I don't think that is going to happen, and it is important that it doesn't happen, because of the nature by which the British policing community has grown rather accustomed to using those two principal instruments, among others, as a mainstream way of doing its business.

In the past year alone there were more than 3,000 cases of cross-border investigation of crime and terrorism initiated by the UK law enforcement community through the Europol channel—an almost 20% increase on the year before. All the statistics show an increasing dependence on these instruments as a means of tackling very serious security threats to this country.

If you lose that, and lose it in such a way that you don't have time to prepare and put in place other effective measures, of course that is likely to have an adverse impact on your ability to fight crime and terrorism. But that is a hypothetical scenario that I do not expect to happen. It is clearly a worst-case scenario that is best avoided.

Q156 Mr Winnick: Again, I hesitate to put words in your mouth, but I think you have more or less said that it is essential—another phrase you used—one way or another, that out of the EU we find the means to be involved in Europol, certainly, and also the European arrest warrant.

Rob Wainwright: I agree with the Prime Minister's view that, in the face of these heightened security threats, now is the time for police co-operation in Europe to come even closer together, including for the UK to remain part of that. Therefore, security and securing Britain's best interests on police co-operation, for example, and fighting terrorism is, should and will be a top priority in the negotiations. I agree with that view and am reassured by it.

Q157 Mr Burrowes: The Policing Minister has said that the exit negotiations



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will seek to “ensure that we get something bespoke” for the UK on policing and security co-operation. David Armond of the NCA told us in December that he had been advised that there are no bespoke deals to be done on Europol membership. What are the UK’s prospects for negotiating a unique—let’s call it bespoke—relationship with Europol, given its involvement in shaping the agency, which is very much noted to date in its contribution?

Rob Wainwright: We will be moving into uncharted territory. Of course, it will be the first time a member state has left the European Union, so none of the previous models of co-operation at Europol is a perfect analogy: not the 19, and not even Denmark, for that matter. To that extent, it will be a new model of co-operation, not least because our new regulation introduces this different way by which agreements will be concluded. For all those reasons, we are dealing with a brand new set of circumstances, which may therefore end up in a different result from those we have now. It is entirely a hypothetical situation and depends, of course, on the negotiation and the overlapping interests that will affect those negotiations.

Q158 **Mr Burrowes:** Those looking in on this, whether academics, such as Steve Peers, the University of Essex, or indeed Sir Julian King, who hinted at this at the Lords EU Home Affairs Sub-Committee, say that money is bound to be part of any negotiation. Is there perhaps the potential for the UK to fill those funding gaps in relation to Europol? You could call it cash for access, or expertise for access, such is the obvious intelligence expertise, not least in counter-terrorism, that the UK has? Would you say that those will be crucial in relation to the final unique deal?

Rob Wainwright: Possibly. That has formed part of the Danish model that has been drafted and proposed. That is possible, although until now it has not been common practice for Europol to send a monthly bill to our third parties.

Q159 **Mr Burrowes:** How much was the monthly bill for the Danish?

Rob Wainwright: It is a formula that is based on a proportionate amount of the overall Europol budget based on its gross national income, compared to other countries.

Q160 **Mr Burrowes:** Finally, on the bespoke issue, could we possibly do it on a needs basis, in relation to our dependence on particular elements of Europol, and then negotiate in relation to some quid pro quo in terms of our expertise, which will be going in the event? Could there be some shared arrangement?

Rob Wainwright: We have bespoke arrangements now in that sense. In all 19 countries you see a different model of co-operation. In fact, you see a different implementation of it, so some are active in all our project areas and some are active in only a third of them, and so on. It is bespoke in the sense that for one country being fully engaged in our project on heroin trafficking is more important than the project on people smuggling, and so

on. The UK will be able to ensure that its engagement with Europol will continue to follow the priorities of Britain.

Q161 Mr Jayawardena: Mr Wainwright, I wonder if I can focus on the issue of our leaving the European Union and visit some of the comments you made in June last year. Were you scaremongering when you said that leaving the European Union meant that the UK would become “a second-tier member of our club”?

Rob Wainwright: No, because—

Mr Jayawardena: It is interesting you say that, because—

Chair: Can we hear the answer first and then come back to it?

Mr Jayawardena: It is the second half of the question—

Chair: I know, but I still want to hear Mr Wainwright’s answer as to why he was not scaremongering.

Mr Jayawardena: Was not scaremongering, allegedly.

Chair: Yes.

Rob Wainwright: Specifically, with regard to that phraseology, it was a descriptor I used to explain in simple terms the difference between the full rights as member states and those that do not have quite the same—a second-best list of rights that our non-member states have.

Q162 Mr Jayawardena: Some would say that those countries that are not part of the European Union are in what you call the “second tier.” But, as other colleagues have said today and on other occasions, surely we would not go into this second tier, because of all the intelligence we contribute—all the ways that Europol has been shaped, including by you as director. It would be very much a bespoke deal, not simply a case of take it or leave it.

Rob Wainwright: Possibly.

Q163 Mr Jayawardena: So you wouldn’t agree with the Home Secretary or the Commissioner for the Security Union, who said last week that “where there’s a will, there’s a way”? In answer to previous questions that I have asked, he said that we should all be mature enough and grown-up enough to realise that maintaining security for our citizens transcends any of these political differences.

Rob Wainwright: “Where there’s a will, there’s a way” cuts across 28 different member states that will have a different view on that, of course. To answer your question, I think it would be naive for us to expect that there will be no political calculation applied by any party to any part of this negotiation. But I agree with you in the sense that in the end, because of the prevailing interest in maintaining collective security, the grown-ups in the room will probably ensure that those interests are maintained. They can still be maintained, however, without necessarily ascribing to the UK full memberships of Europol. There are so many different possibilities.

Q164 **Mr Jayawardena:** A bespoke deal, one might say?

Rob Wainwright: A bespoke deal that is not quite the same as first tier, indeed.

Q165 **Mr Jayawardena:** But you do accept that there are more considerations, not just—

Rob Wainwright: Absolutely, I am the first person to argue for that in my discussions with EU colleagues.

Q166 **Mr Jayawardena:** One final question: the former chief of MI6, Sir Richard Dearlove, made some very interesting points in an article in *Prospect* magazine. *The Guardian* reported that you responded by saying that it was 10 years since he led what is widely regarded as one of the most professional security services in the world and that his arguments did not stand up to much scrutiny. Please tell us if that is not correct, but I wonder whether we could put a selection of those comments to scrutiny now.

Could you set out why you thought that the chief of MI6 was so wrong, first, when he stated that counter-terrorist and counter-espionage liaison are driven as much by moral considerations as political ones? You have just accepted that moral considerations must come at the front of the queue. Secondly, he commented that the importance of the European arrest warrant, which you referred to a moment ago, “has been exclusively criminal and few would notice its passing” in the UK because of the numbers you have already talked about.

Lastly, on Europol—this might be why you said what you did—when Sir Richard commented that “with 28 members of vastly varying levels of professionalism in intelligence, the convoy must accommodate the slowest and leakiest of the ships of state. The larger powers cannot put their best intelligence material into such colanders”. Is that why you criticised what he said, rather than his passion for the moral considerations to overtake the political ones?

Rob Wainwright: The view I had at the time, which I still have, is that an awful lot of progress has been made in the 12 or more years since Sir Richard was, as you say, a very effect head of MI6. For example, since then the European arrest warrant has, as I have said, transformed the business of extradition. The Schengen information system, which today contains 70 million alerts, was nothing like as effective in those days. Indeed, Europol itself is now sharing much more data. Even in the field of counter-terrorist data, there has been a tenfold increase even in the last two years. The rate of progress in all these areas is of a different scale and order to anything even five years ago, let alone beyond that.

I certainly would not agree with anyone who says that few would notice the passing of the European arrest warrant. They would, if we were not able to replace it with something that could also guarantee that 2,000 criminals could be taken, as necessary, off the streets of Britain each year.



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In all of these areas, what we see is a maturing capability of EU instruments on which the UK is becoming increasingly dependent to secure its interests in fighting crime and terrorism. It is not so mature, of course, that it is exclusive in its use by the UK. As a former member of the intelligence community, I absolutely accept the vital importance of the intelligence co-operation that is done outside the EU framework, but, again, this is not a zero-sum basis. The UK does a very good job of maximising its world-leading strength in the intelligence community while also receiving complementary capability from its access to EU and other police co-operation instruments. As a package it is formidable.

Mr Jayawardena: Thank you very much, and thank you for the reforms that you have implemented in your time as director.

Q167 **Chair:** Just to follow up on that, there is clearly intelligence co-operation that takes place between security agencies, including on counter-terrorism. When it comes to dealing with cross-border crime or trafficking, would you say that the co-operation there was led by the intelligence agencies, or by the policing and Europol arrangements?

Rob Wainwright: On counter-terrorism, I think that it is fair to say that the UK's primary interests have been leveraged through the intelligence community and that co-operation, but on fighting organised crime—as your question suggests—the balance has been more from benefits from the EU systems of co-operation, for example on the UK's bid to advance the cause of fighting modern slavery across Europe, and migrant smuggling, and cybercrime in particular.

As I said, we have a British head of our European Cybercrime Centre, a centre that is now running some 200 high-profile investigations each year, and is probably involved in all of the most important cybercrime investigations—not cyber-security necessarily—that happen in Europe today. These are yielding significant benefits for the UK and other member states. So yes, with regard to fighting serious crime, Europol and some other EU instruments have indeed had a special role in supporting the UK.

Q168 **Chair:** In terms of our overall public safety and security, you could not substitute the policing arrangements with intelligence arrangements instead?

Rob Wainwright: I have heard others say that Interpol can provide a substitute. It is not designed to provide a substitute. Europol and Interpol are 90% different, if not more so, in terms of what they do. Interpol is also an important platform for co-operation. Both organisations provide complementary strengths. Interpol would not be able to substitute for Europol's ability to do high-end analysis work in intelligence co-operation, and it does not have anything like the databases that we have. That is not an effective substitute. The only effective substitute would be a return to a network set of bilateral co-operation arrangements, where the UK would again have to build up a network of officers in Paris, Rome and Berlin, for example. In Europe that has been reduced in recent years because of the

rather more efficient way of doing business through a central portal at Europol.

Q169 **James Berry:** Mr Wainwright, thank you for coming and thank you for our trip to The Hague which we enjoyed. While we were there, we spoke to the US team there and they echoed a point made by the Chair: that they do not have the instantaneous access that full members like the UK do. From recollection they said that the access was fairly prompt, and no doubt that is because you run an efficient operation. It is not instantaneous, but it is still prompt.

Rob Wainwright: Yes it is. I stressed earlier that because we are dealing with important issues of the need to quick-fire exchange intelligence in fast-moving cases, we tried to optimise the efficiency of those arrangements as much as possible. That is true, but it remains the case that the access is not as direct and immediate.

Q170 **James Berry:** With respect to access to information systems like SIS II, ECRIS and Prüm, it seems that there are two issues in the negotiations: first, the issues of, in principle, allowing the UK to have access as a non-Schengen and non-member state to those systems, and secondly—most importantly for our discussions—the UK satisfying the European Commission that its data protection arrangements are adequate to these EU standards. The US does that at the moment. Would you agree with that?

Rob Wainwright: Yes, that will be an important consideration.

Q171 **James Berry:** In October 2015, the system by which the US satisfied the European Commission that it met European data protection standards Safe Harbour was declared invalid by the ECJ, and there was a four month gap until February 2016, when the compliance EU-US privacy shield came into force. In that four months, was there an issue with the US sending or receiving—particularly receiving—data through your systems?

Rob Wainwright: No there was not, and that is because the data protection adequacy arrangements were satisfied directly by virtue of the operational agreement that Europol concluded with the United States in 2002. It was an inbuilt mechanism to that agreement that was ring-fenced, and was therefore something on which the ECJ ruling had no material impact. It is fair to say though that the arrangements are changing in the future, and ECJ does have more jurisdiction over certain Europol matters in the future. But in answer to your question: no, it had no material effect.

Q172 **James Berry:** So were we to leave the EU, and therefore to leave our current arrangements with Europol, we would not have that kind of existing framework like the US did. We would have to satisfy the European Commission that our data protection standards were adequate in order to access your systems.

Rob Wainwright: Currently even in the case of the 19 operational agreements that we have already concluded, there is effectively a data



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protection adequacy test that is applied directly by Europol and its data protection independent adviser. The Commission simply replaces that, and becomes the means by which to test that under the new arrangements. There has always been a test and a rigorous procedure by which to meet it. That has been the principle reason for our not concluding even more of them with other countries. In the future, the test is clear under the regulation, that the Commission shall carry out a data protection adequacy assessment, either as part of a main international agreement or as a specific agreement by which Europol can then begin sharing operational data.

Q173 James Berry: So do we and other EU member states currently meet that automatically as EU member states, whereas countries outside have to satisfy adequacy?

Rob Wainwright: Effectively, yes.

Q174 James Berry: Just returning to a subject you have already mentioned—that it will be, I think, significantly to the UK's detriment to lose access to these information systems—is it also right that it is significantly to the detriment of other members of Europol, because the UK provides a large proportion of the intelligence and a large proportion of the more valuable intelligence on your systems?

Rob Wainwright: Yes, as I said, I consistently maintain this is an issue of collective security and one that is very significant in the case of Britain because of the sizeable contribution that it makes.

Q175 James Berry: Just as a law enforcement and security sector leader, and in your role as head of Europol, and putting aside all politics, ideology and practicalities, your advice to your members of Europol would presumably be not to do anything to weaken the current arrangements that we have with Europol—"we" being the UK—so far as possible.

Rob Wainwright: Yes, and that was the approach that I took in the case of Denmark as well, to ensure—in so far, of course, as legal and political considerations are applied by others—that the most effective co-operation on security, the most effective arrangements, would continue to apply.

Q176 James Berry: And the fact that that new arrangement was concluded in a matter of, I think you said, three or four months, shows that where there is a will, there is a way.

Rob Wainwright: In that case certainly, but it is a very different case to that of the United Kingdom, not least because Denmark is not leaving the EU.

James Berry: So there is certainly a will here; you just need to find a way. I am sure you are helping us.

Q177 Mr Burrowes: In terms of the position in relation to the risks, David Armond told us that it would increase the risk if the UK were curtailed in our ability to access intelligence systems that our overseas partners had put in place. Would you agree directly with his assessment?



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Rob Wainwright: Well, he is in a better position than I am to make that assessment, and he is a very experienced cop and speaking directly on behalf of the British law enforcement community, so I am in no position to disagree with his professional view.

Q178 **Mr Burrowes:** Can I just break it down into areas which you have particular oversight of? With Europol covering a vast portfolio of issues around risk—crime and security, firearms, child sexual exploitation and abuse, cybercrime, modern slavery, money laundering; those areas—do you have any sense of which areas the UK most heavily leans on in terms of its Europol arrangements, and where it might struggle to maintain the current operational efficacy if it were to lose any of that co-operation or partnership with Europol?

Rob Wainwright: Cybercrime, people smuggling, trafficking in human beings, drug trafficking.

Q179 **Mr Burrowes:** You think directly those areas—there will be a loss.

Rob Wainwright: There are many others. Those are the areas in which the UK currently, I think, exercises considerable benefit from its engagement through Europol.

Q180 **Mr Burrowes:** Right, so in terms of the new arrangements, without that same relationship, however it is defined, you think there would be an increased risk in those areas, in terms of the UK's combating those areas.

Rob Wainwright: Yes, unless of course the effects of losing that capability were mitigated by other effective measures.

Q181 **Mr Burrowes:** Just to switch that around, what increase in risk would there be for Europol, in terms of its partnership member states, if the UK were to cease the intelligence sharing and operational co-operation that it has, and if it were to leave and move away from the current relationship? What would be the risk to other partner member states and organisations?

Rob Wainwright: It would be a significant setback for Europol. We would lose one of our top three leading contributors of intelligence.

Q182 **Mr Burrowes:** Could you define it more in terms of risk and those areas of operation?

Rob Wainwright: There is a risk of losing a considerable part of our data holdings in relation to our knowledge of how organised crime and terrorism works across Europe, and, at the same time, our ability to co-ordinate effective cross-border police operations in a way that is as effective as possible across Europe. One of Europol's most important functions is to co-ordinate operations—for example, our most recent highly significant cyber operation across 30 jurisdictions at one time. The ability to harness operational capability and impact across those 30 jurisdictions simultaneously is very important in having the desired effect against the high-powered criminal organisation. If we are unable to have that capability without including the United Kingdom, the risk is that our

operations become less effective and less well informed because our intelligence is lower and less effective in its operational impact.

Q183 Chair: To follow up on the issue of direct access to Europol databases, are you aware of any examples where other third countries have wanted access and where it has added anything more than a delay to the process? In other words, they have tried to get access to something that they wanted. Had they been full members, they would have been able to get access, but because they were not full members and because they did not have the direct access, did it add anything other than a delay to the process?

Rob Wainwright: No, nothing that I can think of, apart from a delay. It is worth saying also that two of our members that are Schengen states—Norway and Switzerland—have recently raised at ministerial level a request at a political level for these arrangements to change in favour of Norway and Switzerland having direct access. That, so far, has not been acted on by the European Commission, but I make the point that they are asking for this.

There have been examples in which some of those 19 countries have sought to join some of our operational projects, and they have not succeeded in doing so because at least one of our full members did not consent to that application, whereas for all member states there is an automatic right to join any or all of the projects. So there have been some examples of where the third party has not been successful in expediting its full interests by virtue of its being a non-EU member state rather than a full member.

Q184 Chair: Do you have any examples where Britain's membership of the board or participation in any of these projects has materially changed the decision or direction that would not otherwise have happened if Britain had not been a full member?

Rob Wainwright: Yes. The board discussions are normally on a confidential basis, so I will not give you specific examples, but there are multiple occasions whereby the UK's contribution to really important corporate level decisions by the board has made a big difference. Absolutely.

Q185 Chair: On the wider issues you are facing and are concerned about across Europe at the moment—I asked the Commissioner this question at the end of the evidence session with him—what are you most concerned about? It is clearly your job to deal with whatever concerns there are and whatever problems we face. Your job is to cope with them and to manage risk, but what are the risks that most concern you?

Rob Wainwright: I am concerned about our ability in Europe on a collective basis—I make that point again—to have the best possible capability to fight what are clearly the more challenging and complex security threats that we face in all of the areas that I have described, especially in cybercrime; in terrorism, where we face across Europe the highest threat for a generation; and in people smuggling, which is a



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criminal community that has exploded in size and capability in the last two years. I could go on. In all of these areas of organised crime, cybercrime and terrorism, the threat is more challenging, defined in particular by its international cross-border nature, than at any time in the past. As a result, therefore, it follows that we have to respond to this more transnational, globalised threat, which is making use of technology, especially, to reach a broader target community in ways that bring the community even more closely together. That is the most important context within which I think we are talking about this issue—the point of security within which the article 50 negotiations should be undertaken.

Q186 Chair: How do you think Europol needs to change over the next five years?

Rob Wainwright: I think the challenge for Europol is to deal with significantly rising demands on its services, in particular the amount of data that we are having to process. We will have to adopt the most advanced technological solutions around machine-learning, for example, to deal with that. It needs to continue to build its position of trust and credibility with the community at large, especially in the field of counter-terrorism, where it has been the hardest for us to win that prize, given that this is primarily a national security issue. If we are not a serious player on terrorism, then we are not a serious European police organisation. We worked very hard to try to fix that in the last few years. I think we have made some progress, but effectively we are at a transition point. That will be a decisive part of our story for the next five years.

Q187 Chair: In terms of the planning that you are having to do for the future, presumably part of that includes different options as part of the Brexit process. Is Europol itself looking at different options, or are you leaving that to the Commission and just waiting to see what happens?

Rob Wainwright: We don't leave it to others, no. How shall I put this? We are not planning on Britain no longer being a member of Europol, in at least one form or another.

Q188 Chair: But do you have a section of Europol that is doing planning work for the different issues and options, to be able to provide advice to the Commission and so on?

Rob Wainwright: Yes, we have a very good policy team that is tracking this issue all the time and, as you say, providing advice to the Commission, among others.

Q189 Chair: How many people do you have in that policy team that are working specifically on the Brexit issues?

Rob Wainwright: There are not many that are full time on the Brexit issue, but if I were to total it up, it is a dominating issue—one of our top two or three policy issues, in our team of 20 or more.

Q190 Chair: I am conscious of the time. We have asked you a series of questions about what the different issues might be that we need to make sure are dealt with effectively as part of the Brexit negotiations. Are there



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any others that you would raise with us—anything that you think we should be aware of? You raised at the beginning the issue that this will be done under a new procedure, rather than under previous procedures. Is there anything else that you think we should be aware of in terms of the coming negotiations?

Rob Wainwright: No, I don't think so. I have followed the work of this Committee and the excellent evidence that other experts have given you. I think you have covered the ground very well—and, in particular, you have already reached the view that this is a very important part of the article 50 process as a whole. By that I mean not only Europol, but the whole set of arrangements on police co-operation is clearly a critical part to get right.

Q191 **Byron Davies:** Given the high-profile presence that the UK has had within Europol, with yourself at the helm, and the number of members of our police force and so on that we've had working there, do you think that if we do not retain a real presence, Europol will be worse for it? I am thinking that we are actually very good at the intelligence game.

Rob Wainwright: Britain has made such an important contribution to the evolution of Europol, so I think it would be weaker without active British engagement. Obviously the status of Britain's involvement will change come what may, but there is no reason why it cannot continue to exercise at least some significant influence, but from a different position. What I mean is that it certainly has the prospect of continuing to have a sizeable liaison officer community, like the Americans. With a large British and a large American liaison officer community in Europol, that is quite a strong partnership as well, but it will not have direct influence over the governance of the organisation unless a bespoke deal agrees something else.

Chair: Mr Wainwright, thank you very much for your evidence. You have always been a very helpful witness to the Committee, which, as you know, recognises and welcomes many of the changes that you have made to Europol. Clearly, the next 12 months will be significant for Europol and British policing and we hope that you will be able to give evidence to us again, as and when necessary, should we so need it as part of this process. We welcome your evidence today; thank you very much.