HOUSE OF COMMONS

Committee on the Future Relationship with the European Union

Oral evidence: Progress of the negotiations on the UK's Future Relationship with the EU, HC 203

Tuesday 14 July 2020

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Watch the meeting

Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Antony Higginbotham; Stephen Kinnock; Nigel Mills; Nicola Richards; Mr Barry Sheerman; Matt Vickers; Dr Jamie Wallis; Dr Philippa Whitford.

Questions 559 - 609

Witnesses

I: Richard Martin, Deputy Assistant Commissioner and UK enforcement lead for Brexit and International Criminality, National Police Chiefs' Council; Professor Valsamis Mitsilegas, Professor of European Criminal Law, Queen Mary University of London; Professor Steve Peers, Professor of Law, University of Essex.

Examination of witnesses

Witnesses: Richard Martin, Professor Valsamis Mitsilegas and Professor Steve Peers.

Chair: Good morning and welcome to this meeting of the Select Committee on the Future Relationship with the European Union. I am going to begin by asking our three witnesses this morning to identify themselves for the record.

Professor Peers: Good morning. I am Professor Steve Peers. I am law professor at the University of Essex Law School and Human Rights Centre, focusing on EU law, human rights law and world trade law. I have written a number of books and articles on this specific issue of EU justice and home affairs law.

Professor Mitsilegas: Good morning to all. I am Professor Valsamis Mitsilegas. I am a professor of European criminal law and global security at Queen Mary University of London in east London.

Richard Martin: Good morning. I am Richard Martin, deputy assistant commissioner with the Metropolitan Police. I am the national police chiefs' lead for international criminality and Brexit preparation.

Q559 **Chair:** On behalf of the Committee, may I extend a very warm welcome to all three of you? We are very grateful to you for giving up your valuable time to inform the Committee's work. There is a lot to cover but I wanted to start with you, Deputy Assistant Commissioner Martin. If there were not an agreement on exchanging information in certain databases, such as SIS II, Prüm and ECRIS, what would the consequence be for our security and policing from 1 January 2021? In other words, how important is it that access to these databases continues?

Richard Martin: It is very important. It allows us to have fast-time information at our fingertips. Particularly with elements like SIS II, it allows our officers to immediately see in front of them if somebody is wanted, if there is stolen property or if somebody needs to be arrested and extradited. Because SIS II is tied into all EU members' national systems, literally as soon as my officers input somebody who might be missing on to our police national computer, it is automatically uploaded and available for all EU27 members to see.

For us, it is more about the capability. For a modern police service that needs to protect its citizens, what we need is access to information at our fingertips and for that to be fast-time. In areas like ECRIS, where we are looking to exchange criminal records, we need to see what other people's criminal records have been as well as our own people who may have been convicted overseas. For us, access to those databases is very important. If we leave with a non-negotiated outcome and we leave those systems, there are contingencies in place for all three, but they are slightly slower and not as quick or effective as the ones we currently have.

Q560 **Chair:** When you say slightly slower, how much slower is that?

Richard Martin: ECRIS, for instance, the electronic criminal records data exchange, is run by ACRO, the ACRO Criminal Records Office. They say it would probably move from a current average of six days to get criminal convictions to 60 days. That is quite a difference in timeliness.

If we lost SIS II, we would rely on the Interpol database. The Interpol database has some capability that is similar. It does not have all the capability that SIS has. Although we can upload warrants and information to it, we have to rely on our European colleagues to also be checking that system. Some of them would not. As a European country, if you have somebody missing or wanted for an offence and you know they are in Europe, your natural position would be to put them on SIS II because that is the European database. There is some information that we may not get. There is some information that may not be uploaded.

SIS is very much linked to European arrest warrants. At the moment, European countries are in part 1 of the Extradition Act. That means that those who are shown on PNC as wanted can be arrested there and then. If we leave and we do not have that capability, my officers will not always be able to arrest people who are in front of them. They have to go to a magistrates' court currently and get a warrant. As you can see, it starts to eat away at our ability to deal with things there and then.

Q561 **Chair:** That is extremely helpful. We will explore those questions in more detail a bit later on. The other issue I wanted to raise at the beginning was the question of the European Convention on Human Rights. I suppose this is an issue for Professor Mitsilegas and Professor Peers. As we know, there is a standoff between the UK and the EU on this question, with the UK saying, "We are irrevocably committed to the ECHR and we do not need to put this in a treaty," and the EU saying, "Well, that does not quite work for us." The draft text that the EU has produced says that if the UK were to move away from it, co-operation that was contingent on our continued adherence to the ECHR would be suspended. That is a sort of break clause. Is that not a satisfactory way of resolving that matter?

Professor Peers: You could equally say that the UK's proposal is a satisfactory way of dealing with it because it provides for either side to simply terminate some or all of the co-operation under the agreement, which would be a separate agreement in the UK's proposal. The EU could always provide in its own implementing decision, where it includes the agreement, that, as far as it is concerned, it will automatically terminate it if the UK denounces the ECHR or repeals the Human Rights Act, which is also in its proposal. There would still be a possibility for the EU to make it automatic on its side.

In a way, we are dealing almost with an issue of semantics—whether we put this automatic termination in the text so it is mutually agreed or whether we make it a unilateral position of the EU, so the EU sorts out the details as to exactly how the process goes that it would automatically terminate if the UK denounced the ECHR. I wonder if too much has been made of this. Given that it is not explicitly, as you say, an obligation for the UK to remain a member of the ECHR, this indirectly accomplishes that. Are we maybe making too much of this debate?

Q562 **Chair:** I must say, it does sound like a rather slim difference between the two. It would be an agreement in which each side agrees to co-operate with the other. If either side has certain conditions that have to be met to enable that co-operation to continue and those conditions no longer apply, under such an agreement, one or other can at that moment say, "Sorry, this will not work. We are stopping it." You would have thought it was pretty easy to reach an agreement on that basis, wouldn't you?

Professor Peers: Yes, and that is the basis on which the EU has reached other agreements in this field with Norway, Iceland, Canada and so on. In any event, if the UK were to denounce the ECHR or repeal the Human Rights Act, there would be litigation immediately from anyone facing

extradition to the UK. In the context of data exchange with the UK, the adequacy decisions that we had would be immediately reviewed or litigated, if they were not immediately reviewed, in a way that we have seen many times before. Both extradition and data exchange get frequently litigated either by the suspect or by privacy advocates constantly going to court and getting cases to the EU court. We would see that straightaway.

Even if the EU did not act politically, there would be a judicial movement, under national constitutional courts as well as the EU courts, ruling on whether extraditions could still be continued. That would be bound to happen. In a way, this would simply be a recognition of the judicial process that would be bound to happen.

Professor Mitsilegas: Regardless of the actual drafting in the agreement, the realities of any future withdrawal from the ECHR would have a significant adverse impact on close co-operation. It is clear that the third states with which the EU has co-operation, at least in Europe, are those that are signatories to the ECHR. From a practical perspective, leaving the legality of this aside, it would be very difficult to sustain calls for close alignment with the European arrest warrant and access to EU databases if you withdrew from this.

Q563 **Chair:** The final question I want to raise at this point, and we will explore this in a bit more detail, is the data adequacy decision. A lot of co-operation depends on this being agreed by the Commission. It is a regulatory decision of the Commission. It is not actually part of the negotiations. Since, presumably, our data arrangements currently are adequate because we have been in the EU and we are now in the transition period, why might it take so long to reach a decision that, as long as the rules stay the same as they are today, the way in which we handle data is adequate and, therefore, that decision can be granted? Do you think it is being held back as part of the negotiation process even though, technically, it is separate because it is an independent regulatory decision?

Professor Peers: There is a possibility that they are linked. This happened with Japan. At the same time as the EU concluded the trade negotiations, it concluded adequacy decisions in each direction. Japan did its own adequacy decision too. Perhaps that would never have happened if they had not had the trade agreements agreed at the same time. That may well be the scenario even if the Commission has not said that yet. It said it for the withdrawal agreement. It said, "If there is no withdrawal agreement, do not plan any adequacy decisions." It has not said that yet here but, of course, it might yet do if negotiations get difficult. That may be a possibility.

There is another factor, which is whether the UK data protection regime is fully applying the EU legislation that binds the UK at the moment. There is case law pending on that. There is a reference to the Court of Justice in the case of Privacy International where there is an advocate-

general's opinion saying, "Maybe, possibly, the UK is not fully compliant." We may get a judgment in the autumn and, in that case, the Commission has to take that into account in making its adequacy decision or not. It would be awkward if they made a decision either way and then the judgment came down a few weeks later. It is sensible for them to wait for that.

There is a judgment this week about the United States. This is obviously not the same legal position as the UK, but it might still have some impact on considering adequacy decisions because it might strike down the adequacy decision with the US or not. If it does, the Commission has to consider the implications of that, and so does the UK, I suppose. Definitely the Privacy International case will be quite relevant when we get there.

Q564 **Chair:** Yes, although cases are brought on quite a regular basis against the law relating both to the UK and to the rest of the EU. The Commission has to live with that and make adjustments in the light of court findings in the process. Professor Mitsilegas, was there anything that you wanted to say on this before we move on?

Professor Mitsilegas: Yes, I have one addition to that. Part of your question is why, since everything is okay now, it will take so long to regulate the post-Brexit relations. Currently, there is an issue of whether the UK complies with the EU data protection law in the field of mass surveillance, in particular the Regulation of Investigatory Powers Act. It is not only the current litigation on Privacy International but there was an earlier case in the Court of Justice, the Watson case, where the Court of Justice said that UK domestic law was incompatible with EU law.

This is very important in the context of the field we are discussing today on security, and on police and judicial co-operation in criminal matters, because it is very difficult for the Commission to find adequacy if there are serious concerns about mass surveillance in the Court of Justice. These are not just any cases; these are fundamental constitutional cases for the European Union.

Q565 **Dr Wallis:** Building on the theme that you just questioned the witnesses on, Chair, what are the barriers to continued co-operation on PNR, passenger name records, access to ECRIS, the European Criminal Records Information System, and Prüm? To what extent are these dependent on a data adequacy decision?

Professor Peers: There would at least have to be some kind of data adequacy assessment in the particular context of PNR/ECRIS. As for whether you split them up from everything else or whether you cover that by an overall data adequacy decision, which the Commission is considering for police and law enforcement exchange, there are different ways you could do that. At some point, there would have to be a data adequacy decision of some kind in relation to exchanging that data.

That would be a big factor. Mr Barnier has been suggesting that he is dissatisfied with some of what the UK has proposed on PNR because he thinks it is not consistent with prior case law of the Court of Justice. That is not further spelled out but that prior case law deals with a draft treaty with Canada that was okay in some respects but not others, such as not specifying exactly the purposes for which the data would be kept and possibly transferring it to other countries.

We have a template there. The EU is renegotiating with Canada. I do not think that has quite reached a conclusion but we have a template there of what the EU court has said is impossible. In a way, that creates a legal constraint on the EU side when it negotiates. I am not sure exactly what Mr Barnier is concerned about, but it would be best to have a look at the UK's text and see if there is anything that could be clarified to try to meet those concerns, if they are justified.

Professor Mitsilegas: This also begs the question whether there would be a horizontal EU-UK security treaty or whether there would be individual treaties on a case-by-case basis. It might be more straightforward to have an EU-UK PNR agreement with an attached adequacy decision rather than try to establish adequacy for the field as a whole.

Q566 **Dr Wallis:** I think Professor Peers touched on it slightly there, but is the relationship that the UK is seeking in these areas, in particular PNR and ECRIS, unprecedented?

Professor Peers: The PNR is not unprecedented. The EU has signed several PNR agreements with non-EU countries: with the US originally, where it was challenged, and that challenge failed, on disability grounds; with Canada, where the challenge unveiled some issues on human rights grounds, which the EU and Canada are trying to fix; and with a couple of others. That is not unusual at all. Those are not European countries or countries that have a special relationship with the EU in the way that the EU said nearby European countries should have. That is not unusual.

ECRIS, on the other hand, is unusual. The EU has not signed anything with non-EU countries that gives them access to ECRIS, or actually any form of criminal records enhanced exchange, except to a limited extent in the context of mutual assistance, where there is a little bit of enhancement. The fully-fledged exchange of criminal records data use has purely happened so far within the European Union framework, although the EU side is willing to negotiate on this in these negotiations. They are showing some willingness to do something with the UK there that they have not done with any other non-EU country.

Q567 **Dr Wallis:** We touched on this briefly earlier, but the UK has asked for capabilities like those delivered by SIS II. What are the main capabilities of this system that the UK is seeking to replicate? Why might any replacement not fulfil these?

Richard Martin: One of the requirements of being in SIS II is that you have to link it to your national system. That means that there is no need to double-key. There is no need to put it on a national database, then transfer it to another. You literally type it into your police national computer, as we do, and suddenly it is available, there and then, for your 27 member states, as I said before.

Looking at the ways that we use it in the UK, we checked SIS II 603 million times last year. We have approximately 2.9 million UK alerts on it, so that is everything from missing people, to stolen property, to people who are wanted for arrest. With missing people, who are particularly vulnerable in their circumstances when they go missing, we have about 180,000 people going missing in the UK every year. At any one time, there are probably about 12,000 people on the SIS II database. For us, it allows us to automatically put people on that capability so that at least, if they go abroad and we do not know they have gone abroad, we will know instantly.

For us, it is that ability that it is at your fingertips, it is live-time and it is immediate. If we lose that capability, we will revert to Interpol notices, which are slightly different. They do not have the full capability of SIS II, as I said before. We have put in place ways to try to automate it, but it will never be linked to the police national computer. We would then have to filter as to how many people we want to put on it and how far we want to circulate that across the world, because Interpol is across the world.

A lot of the notices we put on may not be looked at by partners, which is one area that causes me a little concern. If you are in the EU and you use SIS II as your main database, you would probably need another reason to think about double-keying something. In the future, if we had somebody missing or somebody wanted in the UK, first we would obviously put them on our police national database here. We would then have to do that again and replicate it to put it on to Interpol. As you can see, it has an impact. The capability we really need is that quick-time, spontaneous information at the hands of my officers.

Q568 **Dr Wallis:** Finally, Professor Peers, you have said that the EU's reported view that UK participation in SIS II is legally impossible is unconvincing. Do you mind expanding on that for us? To what extent do you think these barriers are more political than legal?

Professor Peers: It is possible that they could purely be political, but the Commission has said several times that they are legal. I assume that they are not just making it up, but they have not explained their legal rationale. It seems that they think there is no legal power to negotiate on this issue with non-EU countries unless they are Schengen-related countries like Norway, Iceland or Switzerland.

I do not see the legal basis for that in a treaty. Treaties do not regulate what happens with non-EU countries in Schengen. The normal approach to interpreting external powers of the EU is that it can have external

relations in relation to any of its internal powers. Since it set up the Schengen Information System database, it could negotiate to have non-EU countries have access to that. There are no special rules on that. The case law on the UK's opt-in and opt-out is irrelevant because we would not be covered by that any more. That protocol does not have any more relevance for the UK. There would still be data protection constraints they would have to look at, but I do not think there would be any external competence restraint.

It may be that they are thinking of some of the text of the legislation that might restrain negotiations with non-EU countries. The court is open to them to amend their legislation or international treaties, which take precedence over EU legislation anyway. They could do that fairly quickly if they wanted to, if they were willing to do it politically. If the problem is the legislation, it is a political constraint, in a way, not to want to amend the legislation, which they could go ahead and do.

Dr Wallis: Thank you to all of you for giving up your time this morning.

Q569 **Joanna Cherry:** Good morning. I want to focus on the Court of Justice of the European Union, so my questions will be directed at Professor Mitsilegas in the first instance, but I may come to others afterwards. Professor Mitsilegas, is it possible for the UK and the EU to come to an agreement on policing and law enforcement without the Court of Justice having any role in that? If so, what would that look like and what would be excluded?

Professor Mitsilegas: Thank you for your question. I will complicate life a bit with my answer, because I think this area should not be viewed as a homogeneous area. In my view, it makes a difference whether we talk about judicial co-operation in criminal matters, so extradition and mutual legal assistance, or, on the other hand, access to EU databases and close participation with EU agencies. When we talk about extradition and mutual legal assistance, we can envisage a looser involvement of the Court of Justice. We have precedents, such as the Norway and Iceland agreements with the EU, where there is an agreement to follow each other's case law, from the Court of Justice and the national constitutional courts, and to review the relations without the Court of Justice necessarily having jurisdiction in these matters.

I find it very difficult to see how this solution can be applied if the UK wants to have access to the Schengen Information System, to have access to EU databases or to be as closely related as possible to Europol and Eurojust. There, I think, it is not possible to envisage maintaining the same as we have today without the jurisdiction of the Court of Justice, because these are EU structures.

I want to make a separate point. We focus a lot on dispute resolution and we focus a lot on the Court of Justice in a binding way. In my view, we must not underestimate the indirect influence of the Court in any future relationship, whatever the wording of the agreement. I will give an

example. If there is a European arrest warrant-type request from the UK authorities to a French court, assuming that the co-operation will remain judicial, the French authorities must comply not only with French law but with EU law when they decide whether to execute the British request. They will have to comply with the Court of Justice's case law on the European arrest warrant, whether there is a dispute resolution mechanism in the EU-UK agreement or not. The EU acquis will remain relevant for future relations, whether we like it or not.

It is clear that the member states are bound by EU law in their own external actions. This will also apply in the absence of the EU-UK treaty, if there is a bilateral treaty on extradition between the UK and France, let us say. The French authorities would have to comply with EU law, including taking fully into account the case law of the Court of Justice. This has escaped the public dialogue so far because we are focusing on whether the Court of Justice will have binding jurisdiction. In reality, the indirect influence may be more important in the future.

Q570 **Joanna Cherry:** You are saying that, even if the Court of Justice has no binding jurisdiction as such, its indirect influence will still be felt in the development, for example, of the law governing European arrest warrants. In fairness, I think what Michael Gove and David Frost are concerned to exclude from any agreement is any direct role for the Court of Justice. You seem to be saying that might be easier in relation to some chapters of policing and law enforcement than others. Can you clarify where it will and will not be easier?

Professor Mitsilegas: When we talk about bilateral co-operation—extradition or mutual legal assistance, for example—it may be easier to have an agreement modelled on the Norway/Iceland agreement where there is no direct jurisdiction, but perhaps not desirable from the European Union's perspective. As I said before, there would be very strong indirect influence.

It is more difficult, in my view, wherever it concerns structures of EU law, which means access to EU databases. I cannot envisage UK access to the Schengen Information System, which in my view is extremely difficult anyway, without some direct involvement of the Court of Justice, or, similarly, access to the Europol database and so on. In these areas, wherever it is an EU structure, it is difficult to envisage maintaining very similar relations to what we have today without some direct involvement of the Court of Justice.

Q571 **Joanna Cherry:** What would that direct involvement look like?

Professor Mitsilegas: I think it would have a role in interpreting the law and in some sort of dispute resolution, if there are concerns, for example, about the UK's data protection arrangements. We have seen examples now where there have been concerns about the UK's not proper access or use of these databases in recent months. If there are complaints, I think the EU would insist that the Court of Justice has the final say on those.

Q572 **Joanna Cherry:** In that situation, you are envisaging a dispute resolution mechanism where both the United Kingdom and the EU would be bound on a question of EU law by any ruling of the Court of Justice after a reference had been made.

Professor Mitsilegas: I would envisage that. I think that is also the EU's current position overall, especially when it comes to questions of interpretation of EU law.

Q573 **Joanna Cherry:** How would you respond to Mr Gove or Mr Frost, who might say that that is unprecedented, and that the EU's justice and home affairs agreements with other third countries do not have such a direct role for the Court of Justice?

Professor Mitsilegas: I would respond by saying that the current third countries by no means have the level of closeness of co-operation that the UK is currently seeking. We are discussing the United States as a model, but its arrangements with the EU do not go near what the UK's ambitions are at the moment. I think the constitutional arrangements are related to the degree of ambition that we have for the future relations.

On the other hand, with the non-EU Schengen countries, first, I take a more sceptical view than Professor Peers about the possibility of a non-Schengen country having the same privileges as a Schengen country. In a recent judgment on an extradition request from Russia to Croatia concerning an Icelandic citizen, the Court of Justice said that Iceland has a special relationship with the European Union on the grounds that it is a full Schengen member; it is an EEA member; it applies the EU acquis in the field of asylum law; and it has signed an agreement on extradition. The Court has acknowledged the constitutionally special relationship of the Schengen area. I am not really sure that this constitutes the right precedent for the UK.

I am saying that the UK is right in seeking an ambitious relationship with the EU, but the current precedents of non-Schengen countries are not very strong in terms of effectiveness. If you want to have a looser relationship, like the United States, which has a liaison officer at Europol, an extradition agreement and a PNR agreement, of course you can do it without Court jurisdiction. If you want to have access to the EU databases, this is a completely different story.

Q574 **Joanna Cherry:** Professor Peers, can I see to what extent you agree or disagree with Professor Mitsilegas in what he has just said?

Professor Peers: The EU's position is that, first, there should not be SIS II access for the UK at all. This is not just a Court of Justice point for them; they fundamentally object to the idea. In terms of the Court of Justice, they propose that, in a way, it would only have access via arbitration. If the dispute goes to arbitration, it would have to go to the Court of Justice if there was a concept or provision of EU law that was under dispute. This part of their proposal has almost no provisions of EU law in it. You could say it has concepts of EU law in it, but it is not clear

what "concepts of EU law" means. They have copied it from the withdrawal agreement, where it may refer to things like the definition of workers who are EU citizens, but does it really apply?

Could we say there are concepts of EU law because we are taking a big chunk of the text from the European arrest warrant framework decision, another chunk from the Prüm decision and two or three other EU law legislative measures, and copying them into this treaty? Either the UK or the EU version does that. Are those concepts of the EU, which would therefore have to be sent to the Court of Justice?

Arguably, they are, so the only way you would really stop the Court of Justice is by not having the arbitration system. That is not so surprising. Arbitrations are normally used for trade treaties, but the EU has never used them before for its justice and home affairs treaties. It has always simply provided for political dispute settlement with no arbitration and an exchange of information on court ruling. In some of its treaties, the EU has gone a little further. With Schengen, they did not insist on the EU Court's jurisdiction over Norway and Iceland, but they did say, "If there is a divergence of case law, we have to discuss it, with the threat of maybe suspending the agreement." That is a great deal of political pressure to comply.

If we were to be given access to the Schengen Information System, that would be, at the very least, the precedent that the EU would follow. Of course, they are not suggesting that here; they are suggesting rather more indirect jurisdiction for the Court of Justice. Mr Barnier has said that for him, that is essential. He interprets it to mean there is jurisdiction for the Court of Justice. If that really is the EU's negotiation position, it is quite difficult to move beyond that unless the UK is willing to accept that the arbitrators asking the Court of Justice is okay: "We will actually get some clarification of what we mean by concepts of European law, to maybe narrow it down in a way the UK can live with. It might not often be the case that we get cases sent to the Court of Justice." Maybe that would be fine for the UK, but at the moment, if that is Mr Barnier's interpretation, you have a big standoff there.

Q575 **Joanna Cherry:** We have already touched on the European Convention on Human Rights. The Chair asked you some questions about that, but I shall ask a few clarificatory questions. If we look at the political declaration, Michel Barnier has referred us to paragraph 7 as underpinning article 136 in the EU's text, but if you also look at article 81 of the political declaration, which is in the chapter on law enforcement and judicial co-operation, they say that any future agreement should be underpinned by longstanding commitments to the fundamental rights of individuals, including continued adherence and giving effect to the ECHR.

I just want to clarify this. It is not just that the EU is saying that the United Kingdom must remain a signatory to the European Convention on Human Rights. There is a bit more to it than that. They are also saying that the UK must continue to give effect to the ECHR. Of course, it is the

Human Rights Act that gives effect to the ECHR across the United Kingdom. In Scotland, it is also the Scotland Act in relation to devolved matters that gives effect to the ECHR.

On this question of what the Chair described as a slim difference, it seems to me that, in his public pronouncements, in the past at least, Barnier has been quite insistent that this article 136 was quite an important aspect of the EU's positions and that, to get an agreement in relation to judicial and law enforcement matters, security, and criminal matters in particular, it is very important that the United Kingdom promises not just to remain a member of the European convention but not to abrogate its effectiveness in domestic law.

Are we really talking about a slim difference here? Is it not also important to remember that you could alter the Human Rights Act without repealing it in such a way as to limit the effectiveness of the ECHR domestically? The Conservatives were elected on a manifesto to update the Human Rights Act. It is not just a question of repeal of the Human Rights Act; it is also a concern on the EU's part that it might be changed in such a way as to mean that citizens in the UK could not take advantage of their ECHR rights.

Chair: A brief response would be helpful, because we have to move on.

Professor Peers: I would probably go back to what I said before. The EU could do anything it wanted to do unilaterally and the UK has no problem with the termination clause. The EU has agreed with other non-EU countries in this field to have a six-month termination clause to be invoked on any grounds. As I said, the EU could decide, by its own internal process, that it is going to automatically invoke it if the UK damages human rights either domestically or by denouncing the ECHR. There would be judicial cases piling up on the EU side anyway if the UK were to do that.

Q576 **Mr Sheerman:** May I start with a rather general question? It would seem to me and most of my constituents that this area of justice and home affairs is of prime importance in the transition out of most of our European co-operation. I notice that the Northern Ireland police force said in the evidence it gave us that it was terribly worried about the weakening across Europe, but in the UK in particular, of the power to combat smuggling, fraud, money laundering, drug trafficking and human trafficking.

This should be the one area that we can settle very easily. They are very big issues. Are the witnesses confident that we are getting a settlement on this particular issue? That is the cheap trick every time: one of us will say, "What is your bet on us getting a settlement?" I do not want to ask you that. I want to ask you what the likelihood is of getting a settlement on this particular issue.

Richard Martin: On those areas that you have mentioned, most people would understand that crime is global. The world is a much smaller place when it comes to crime being committed, everything from smuggling to

drugs being moved. Our ability to deal with that effectively is about the sharing of information and intelligence, and working bilaterally with overseas partners. For us, that is very, very important.

Whatever capability we negotiate at the end of this will really inform the picture of how effectively we can do that. I am not involved in the negotiations; I am more the end user, if you will, using the tools and powers I am given. Among all the international partners I have been talking to over the last 12 to 18 months, there is no let-up in their willingness to work with UK policing. There is no let-up in their ability to want to tackle international crime. For us, it will be more about the structures and the legal framework within which we can do that at the end of the negotiations. I cannot talk for the negotiations; perhaps my learned law colleagues can but, for us, information and intelligence sharing are very important.

Q577 **Mr Sheerman:** May I push you on that? As a Member of Parliament, I have very often been involved in very, very sensitive cases where we know that the perpetrator of a very serious crime is in a country where we have no extradition treaty. You say that this is not your main concern. What do you feel when we see that already Germany, Austria and Slovenia are backing out of an extradition arrangement with our country? That is pretty serious, is it not?

Richard Martin: With the loss of the European arrest warrant, and as we are in transition now, they have that ability to opt out. It does not stop us prosecuting in those countries. Looking at the future, perhaps we will be able to do that. For us, it is very important. Wherever we are, we need to prosecute people. With the Crown Prosecution Service, we are happy to take that anywhere. Of course, that extradition is only for their own nationals. If their own nationals move across the border into another country, they are fair game.

Q578 **Mr Sheerman:** May I push the two professors on this? Can they explain to me why it should be those three countries that have taken really quite a very early decision on extradition?

Professor Mitsilegas: This is specifically a decision of these countries to suspend the extraditions of their own nationals. They have not decided to suspend the mechanism altogether. One innovation of the European arrest warrant was to stop the bars that states had against extraditing their own nationals. Now, even in the transition period, member states are allowed to apply some of their constitutional requirements. These are states that do not extradite their own nationals to non-EU member states. They have aligned their practice as regards the United Kingdom.

This may be one of the losses in the future, if the current European arrest warrant system is not replicated closely. But if you ask German colleagues, they would say, "We simply follow the German constitution, which does not allow us to extradite our own nationals to any country

outside the European Union." One challenge for the future is to find a solution to questions like that.

Q579 **Mr Sheerman:** In the case of a very high-profile suspect in a very famous abduction and possible murder of a small child, where apparently the suspect is in a German prison, that would mean that under this new arrangement we may not be able to get that suspect back to the UK for trial.

Professor Mitsilegas: Yes, if they were a German national, but we go back to international extradition law. There are areas of pressure for this person to face trial in Germany.

Mr Sheerman: Does the other professor want to come in on this one?

Professor Peers: Yes, just to say that this exclusion of nationals from extradition is, in a way, bound to continue, because of those national constitutional concerns and because both the UK and EU texts on extradition provide for this nationality exception as an option. It is also built into the EU's treaty with Norway and Iceland on extradition. It is built into the Council of Europe extradition convention that you can have a nationality exception. You can still try that person in Germany or whichever country is applying the exception but, as Mr Martin says, those cross-border prosecutions tend to be quite difficult. This might be the case if it is a murder, where you would want to go ahead with it, but they tend to be quite difficult.

Q580 **Mr Sheerman:** Commissioner Martin, from what we know and the evidence given to this Committee, the one sector that is very well organised for whatever happens on 1 January is organised crime at the highest level. They know about this stuff. They know about the changes. They have enormous opportunities, we have been told, to get on with their notorious activity. Do you believe that is the case, or are the police well enough organised for something quite dramatic happening in terms of organised crime after 1 January?

Richard Martin: Criminals and politically organised crime groups are, for want of a better word, entrepreneurs of crime. They will always try to exploit a loophole or a gap. The one thing I would say about UK policing is that I think we are very well prepared for the end of transition. As we said, there are contingency plans for all the tools we may not get, if that indeed is the case. Some of them are slower. Some of them are more bureaucratic but, in the 18 months we have been doing this, it is all about trying to speed up and improve those processes.

Policing is used to a challenge. We would rather keep all the tools and, to be fair, we are not at a different level than Government on that. They have been negotiating to try to keep all the things that we think are very important. In the case that we get a non-negotiated outcome or we do not get all the things we want, policing will stand up to the mark. We will have to find improvements for some of these things and that is what we have been doing. We are as prepared as we can be for every outcome. As

you would expect with us, we prepare for the worst and hope for the best.

Q581 **Mr Sheerman:** Commissioner Martin, on that point, I have some very good senior police in my West Yorkshire force and have picked up their concern that modern policing is about access to data. If there is this real dislocation in access to the data that we have all been briefed on, that could be a very serious drag on the activity that you talked about. We have a great police force, but if they do not have the access to that Europe-wide data, that is going to be a very serious concern, isn't it?

Richard Martin: Yes, very much. I said at the beginning that data and intelligence are the things that we thrive on, which is why we have tried to speed up and have as much access as we can to the Interpol databases. We accept that if we lose access to Schengen or ECRIS, things will become slower. Yes, it becomes more difficult.

Q582 **Mr Sheerman:** "Slower" is a bit different from the Northern Ireland police saying they are seriously worried about smuggling, fraud, money laundering, drug trafficking and human trafficking. Do you share that concern?

Richard Martin: As I said before, criminals will try to exploit it but our intelligence with overseas partners is very good. We have a lot of bilateral relationships. I know PSNI, the Police Service of Northern Ireland, has concerns over the border between Northern Ireland and Southern Ireland. That is one of the areas they may have been talking to at that point. We have the National Crime Agency. We have ourselves. We have very good bilateral arrangements with people. Yes, we are always concerned about those kinds of areas, but we continue to tackle them very effectively, as you would have seen two weeks ago with the National Crime Agency and the Metropolitan Police, which cracked one of these dark webs and these very coded telephone lines. We are constantly working to do that. Of course, we have those concerns and our intelligence picture will continue to be developed as we move forward.

Mr Sheerman: Congratulations on that. From what I could see, that was a great piece of work. Thank you very much for your answers.

Richard Martin: Thank you. I will pass that back to my colleagues.

Q583 **Nigel Mills:** Can I turn back to the data adequacy decision? Am I naïve in thinking that, as we are currently applying EU data rules, a current assessment of our adequacy ought to be relatively straightforward for the EU? We have the same rules so, as we start our transition out of the EU, we should be okay at least until we change the rules. Is that just hopelessly naïve?

Professor Peers: It goes back to the question: while we are fully covered by the rules legally speaking, are we fully compliant with them? We have had the Watson judgment that Professor Mitsilegas mentioned, in which a previous MP was involved. We then have this pending Privacy International case and possibly some other cases with implications for the

UK that will be decided fairly shortly. That may be a concern for the Commission—"Well, look, if we make a decision that the UK is compliant and there is a whole load of case law, or two or three cases at least, saying there are some problems with the UK's implementation, the privacy advocates who like to litigate will start litigating."

Q584 **Nigel Mills:** How many outstanding cases are there against the other EU27 countries? Is this unique to the UK or are there dozens and dozens of these cases?

Professor Peers: In the Privacy International case, there was an advocate-general's opinion around the same time in a case involving, I think, France, Belgium and either Sweden or Estonia. There is a series of cases in the European Court of Human Rights against several other countries. I can never keep track of all of them. Even if it is one case, if it shows that there is a flaw in how the UK interprets and applies data protection law, it becomes difficult for the Commission to adopt the adequacy decision unless it has the discussions with the UK that resolve that and the UK makes a promise to change its legislation, and so on, to reflect the Court of Justice's ruling.

I can see why they would want to wait for the Privacy International judgment, because otherwise they could be making a data protection adequacy decision that is easily vulnerable to judicial challenge.

Q585 **Nigel Mills:** How do they apply the same standard? I think they have an adequacy decision for Argentina, which must have a very different set of rules and it must be very hard to know whether it is fully implementing and complying with them all the time. Is there a danger of holding the UK to an impossibly high standard? You are never, ever going to get 100% compliance with these things. If you expect that, we are just not going to get that decision in time this year.

Professor Peers: That is a common complaint that people make about the data protection case law: that it is, in a sense, naïve about what could reasonably be expected of the public or private sector, or what individuals actually expect. Although there are individuals who are very strongly concerned about privacy protection, a lot of people are not that bothered. "It is just a photo of my cat. Why would anyone be bothered by that?" It is that kind of thing.

You have those different points of view, but privacy advocates are the ones who go to court and have been fairly successful in the last five or six years in convincing the EU Court to give some fairly far-reaching rulings. That inevitably creates a legal difficulty. You can argue that everything should be interpreted differently, but the way in which the courts have built up their jurisprudence so far is a fair pro-privacy approach, which creates difficulties and inconsistencies.

It is probably true to say that no one is really paying attention to Argentina and some other countries, and that there are some flaws there.

The focus tends to be on the US and, in future, probably the UK, but that just is, for some reason, how privacy advocates choose to focus their efforts. It probably has a lot to do with the level of legal relationship with the UK. Facebook, Google and so on are based there, so a lot of the litigation is going to involve relations with that country.

Q586 **Nigel Mills:** What is the way forward to get a deal on this, this year? Presumably the best case is that the EU gives us the adequacy decision. Is the process then that, as long as we do not change the rules or change them in a way the EU is not happy with, that continues? Then the EU reassesses it every so often or can give us an infringement warning. Is that how that process happens—we clear the hurdle now and then we have to monitor it on an ongoing basis?

Professor Peers: Yes. That is the relationship with the US, for instance. For 20 years now, the Commission has been taking a light touch with the US. They wanted to avoid litigation at the World Trade Organization so agreed a previous version of the arrangement with the US, at the beginning of Facebook, before a lot of these companies even existed. This grew to encompass the huge digital trade, social network and search engine relationship we have with US companies.

A similar sort of thing could emerge, but privacy advocates have always been trying to challenge that. There has always been this other actor. The courts and data protection authorities are also involved in trying to challenge what the Commission wanted to be a fairly cosy relationship. Again, the same thing might occur specifically with the law enforcement data adequacy decision.

There are alternatives. You do not have to have a data adequacy decision. There are safeguards you can have, either in the commercial context or in a law enforcement directive. There are all sorts of other alternative routes to sharing data between the UK and EU countries. You would perhaps have to have a closer look at them. I hope the law enforcement side of things has had a closer look at them to see how that would work if we do not have a data protection adequacy decision.

It does not mean that no police data moves; it just means it is somewhat harder. As for exactly how hard, you would have to thrash that out. There will be a Court of Justice judgment this week on exactly how to deal with those alternative approaches, at least under GDPR, which is not quite the same as for policing but has some similarities. We will have a big steer in two days' time as to how easy it would be to use alternative routes.

Q587 **Nigel Mills:** Deputy Assistant Commissioner Martin, when would the police like to have a final answer on this? Is this something you can wait until midnight on New Year's Eve for, or would you need to know the answer on this by the end of October, or preferably earlier, so you can make adequate preparations for what the processes will be going forward?

Richard Martin: With most things, the sooner we know, the better, because then we can prepare. There are, as I understand it, Council of Europe conventions where we can share data on a police-to-police basis around intelligence and information. For us, it is having the framework ready to go, once we know, as soon as we can. Like any preparations, the earlier we get the notice, the easier it is for us.

Q588 **Nigel Mills:** Is there a number of weeks or months that you would like to have to prepare for when you do know what the position is?

Richard Martin: The data adequacy is one element, which is what the Government have negotiated with. There are ways that we can share information anyway on a police-to-police basis under the Council of Europe, which is not, obviously, EU. For us, there are ways. It is more complex because it is on more of a bilateral basis, but it is as soon as possible, I guess. The earlier, the better, and in the months that we have we can prepare, but it will not close us down overnight. I suppose that is the important thing.

Q589 **Nigel Mills:** As a final question, perhaps for the other panellists, is there an approach here where we can have different assessments for different areas? We could agree to apply something much closer to EU rules on law and order-related issues, so we could keep that access there, but we would be able to diverge more fully in other areas. Is this really a one-size-fits-all approach: we are either completely adequate or we are not adequate at all?

Professor Mitsilegas: I would like to make two important points on adequacy. First, we tend to look at adequacy and data protection as something very technical, but we have to bear in mind, and the UK Government have realised this in the negotiations now, that for the European Union, after the interventions of the Court of Justice, this is a constitutional issue. It is a fundamental question of constitutional benchmarks for the European Union. This is what makes it complicated currently.

Secondly, similarly to my point about the role of the Court of Justice, even if there is an adequacy assessment by the Commission of the UK, the Court of Justice has said that, for the adequacy decision to stand in the future, the Commission will need to monitor the data protection regime of the third state on an ongoing and real basis. Even if we have a very quick adequacy assessment now, the development of UK law and practice in this quarter will not escape the scrutiny of the Commission in the future. We have seen the case law regarding the United States, which is very important case law in the Court because it involves the practices of Facebook and all the big multinational companies. The Court of Justice has said that adequacy must be scrutinised on a regular basis. Even if we shortly have the conclusion of an adequacy agreement, further scrutiny will still apply.

On the question of compartmentalising, it will be interesting to see whether there will be a separate adequacy assessment for law enforcement and whether we can take law enforcement out of a more general adequacy assessment, as the current case law involves, if you like, public-private partnerships in the field of movement of data. The current case on which the Court will rule on Thursday is the transfer of Facebook data from the UK to the US, which is accessed subsequently by the NSA in the US. It is not straightforward, so I am not really sure whether we can totally isolate the field of law enforcement from other areas. On the contrary, the concerns about mass surveillance will probably apply across the board.

Q590 **Mr Bone:** Assistant Commissioner Martin, could you sum up what the benefits are to the UK and the EU from the current system of co-operation?

Richard Martin: Yes, sure. At the moment, the key EU tools that we use allow us to share information on a regular basis, both straightaway and also on long-term operations. Our membership of Europol allows us to use its analytical tools, to hold operational meetings with overseas partners in the same environment, and to have day-to-day contact with 27 member states and their law enforcement officers, which, from a business point of view, is much easier than trying to make contact with people you may not know.

We can look across patterns and use the analysis from Europol to see whether there are some of those cross-border operations that we were talking about earlier, and to identify those patterns. For a number of high-profile cases, it has been European partners coming together and noticing links that are common across a number of countries. Once you have that, with Eurojust you can then have a joint investigation team, which allows us to come together with our colleagues and use a legal framework to fast-track inquiries, whether that is arrest inquiries, surveillance or any of the other activities you would expect us to do from a policing point of view.

If we end up circulating somebody who is wanted for an offence, or somebody in Europe circulates somebody who is wanted for an offence, our use of the European arrest warrant, combined with SIS II, means that my officer, who may be in uniform, stopping a car on the streets of London, can identify somebody who may be wanted for murder in France or one of the other member states, immediately arrest them and put them through the extradition process to get them back. Conversely, as we discussed earlier, if somebody was wanted for an arrest in Germany, or somewhere like that, prior to the transition period, we could have extradited them back.

In relation to criminal records, a lot of that is electronic now and we can very quickly get European convictions back, both for our own citizens who may have been convicted overseas, and for foreign national offenders who may be here. That will influence a lot of decisions, such as bail. Bail

decisions in a magistrates court or police station may well be influenced be somebody's previous convictions. If we know what they are, that decision is sounder than if we do not and we let somebody back on to the streets who may be dangerous. In essence, it allows us to operate as one law enforcement component that happens to be spread across 28 countries.

Mr Bone: It is clearly very important. Equally, it is important to the EU to have those benefits as well. It is not one way, is it? It is both ways.

Richard Martin: Absolutely, and I should have mentioned that. It really is. As I said earlier, crime is borderless. It is very easy to commit crime from your bedroom in another country. We put a lot of information and intelligence into the Europol systems. We are a big user of ECRIS, which we talked about. We are the third-highest user of criminal records information exchange. We exchange over 4,000 criminal records a week with our European partners. The strength of a law enforcement system is that everybody can feed into it. Let us be clear: we are a big player in Europe.

Q591 **Mr Bone:** When I chaired the All-Party Parliamentary Group on Human Trafficking, I toured all over Europe and met equivalents to you in other countries. During those investigations, we came across a building in The Hague where all the senior police forces in Europe had officers, so they could wander down the corridor and say, "Look, this is what we have got. What have you got?" Does that still happen?

Richard Martin: Yes, very much. When I alluded earlier to Europol, that is The Hague. Every country has its office, a bit like mini-embassies. They literally walk down the road and pop their head in next door. On any one floor, you have nine to 10 countries. It is as easy as popping 3 feet down the corridor and talking to your French, Italian or Polish counterparts. That is what makes it very effective. As we have found everywhere in policing, and in a lot of industries, if you have a multi-agency team or people from other organisations and countries with you, just by chatting about something, that transfer of knowledge is much easier.

Q592 **Mr Bone:** Would you agree that something like that will continue, whatever the politicians decide?

Richard Martin: Yes, we would hope so. From the negotiations, I hope that will continue. It is accepted that we are a big player in that. In the worst-case scenario, if there is a non-negotiated outcome, our contingency is to come out of Europol, because we would have to physically leave the building, but to stay in The Hague while we negotiate a third-party agreement back. Those bilaterals would still go on. As you know, in Europol there are American, Australian and Canadian contingents. It is not without precedent, which is why I am probably more relaxed on that element than on a number of others.

Q593 **Mr Bone:** The other thing that was very effective in the fight against human trafficking was bilateral operations. I remember one particularly

between the UK and Romania. If no agreement is reached holistically, would it be possible for those bilateral arrangements to continue and the trafficking gangs to be broken up by those operations?

Richard Martin: Yes, it would. The positive around this is that if we lost joint investigation teams under the EU framework, that is our ability to call one if we see there is a problem. We can still be invited on to one by one of the 27 member states, if it sees a link back into the UK. Under the 1959 convention of Europe, we can still formulate a joint investigation team. There is still the ability to do those elements. I used to lead the human trafficking contingent in the Met, so I am very aware of how important that is. I think you and I touched base on this before. It is vital, but the good thing is that there is a legal basis that will still allow us to do that.

Q594 **Mr Bone:** You mentioned earlier the Council of Europe. Of course, that predates the European Union. In fact, the Council of Europe was where the human trafficking legislation started and some members of the Council of Europe are not part of the EU. There are provisions to deal with those issues outside the EU and the UK, where they affect both the EU and the UK. I assume you would still be able to fall back on those provisions, as we are now a third country.

Richard Martin: Yes, absolutely. The 1957 Convention on Extradition is still in place. We can still rely on that. It is slightly slower than the European arrest warrant and comes with some elements that have been discussed by the professors, such as countries not having to extradite their own nationals. There is still a mechanism for extradition, albeit that it is slower. There is still an element to do cross-border surveillance under a convention. The difference is that each country can interpret it in its own way as opposed to a unilateral way of understanding what that power is. But, yes, capability will not stop. As we have said, there is a contingency for pretty much every one of the EU tools that we use, some of which are just a little slower and not as effective.

Q595 **Mr Bone:** Having heard that conversation, may I ask the two professors whether the need to reach an agreement is not quite as necessary as it looks at the outset? Am I wrong on that?

Professor Peers: There is bound to be a gap, at least at first. Of course, the gap can be reduced as the UK reaches bilateral agreements with other countries. One useful thing would be to have a model extradition treaty or model treaty on exchange of national criminal records and see how many countries would sign up to those next year, the year after, or something like that. Perhaps you would try to reduce that gap from being as wide as it might be at the outset.

Yes, in the absence of the Schengen Information System and the absence of criminal records exchange agreed with all member states, you have fall-backs, but they are definitely not as efficient. For instance, if you look at criminal records, before the EU got involved there was much less of an

exchange of criminal records between member states. Once you had some arrangement, in about 2008, even before ECRIS, you suddenly had a big surge of records being exchanged, so much so that, if you go back to that time, the Home Office could not deal with it at first. It had to change its processes to deal with the amount of criminal records information we were getting.

We would hope, at least, not to lose that, but you would probably need some arrangement, either with the EU as a whole or, failing that, a bilateral agreement with member states. We can only predict how easy those would be to negotiate. We had one for years with Ireland, but that kept being litigated in the courts in Ireland and there kept being constitutional problems with it. A bilateral agreement is still subject to legal challenges. A privacy advocate could come in on any agreement on exchange of data, for instance, as well. There would definitely be some gap, but not a complete gap, and you could try to reduce it. I do not think you would ever have completely the same level of co-operation as you would have with the EU as a whole, but you could certainly keep trying to narrow that gap.

Q596 **Dr Whitford:** My questions are to Deputy Assistant Commissioner Martin, and I will then invite Professor Peers and Professor Mitsilegas at the end. Commissioner, you have explained in quite a lot of detail the loss of access to the databases, such as SIS II and ECRIS, particularly this real-time information. You mentioned earlier working on improving the contingences like Interpol. You did say that the UK is a big player, but will the other member states have enough of a reason to commit to that extra work of redesigning how Interpol works and improving how it works, when they have already done all the work to create a slick alternative?

Richard Martin: There are a number of countries that already do dual circulations. They will put it on to the Schengen Information System and then will copy it almost on to the Interpol system. Many of them circulate, although not every country. As I said earlier, it will depend on that country deciding whether it thinks that individual is going to walk outside of Europe. If they think their missing person, wanted person or wanted property will probably stay in Europe, from their intelligence systems, and not cross over anywhere else, you may find they will not put it on an Interpol system. That is the worry. It will be down to individual countries to decide how much they do that.

We have done a lot of work with overseas partners, trying to emphasise that, if we have to rely on the Interpol database as our primary means of communication, we would need that to be done by them, but that is down to them and their commitment. Some countries have created their own Brexit teams, in the same way that we have done, and some have not. It has been dependent on that country. As I said before, they all want to work with us, but of course it is whether that system can cope with it.

On the work we have done, we are trying to do what we call semi-automated. We are trying to lift some information from the police national computer on to another form, because it still has to be on another form. We are just trying to reduce the impact on forces. It will still be slower. As one of the professors said earlier, all we are trying to do is narrow that gap as much as we can.

Q597 **Dr Whitford:** I come from an NHS background; you have my sympathy. You talked earlier about the ability, if police stop someone, maybe for something quite trivial, but discover that they are on the data system, to use the arrest warrant and arrest them there and then. Is there not a big risk, when you do not have that and you have to go to a magistrate or whatever to get an arrest warrant, that they simply disappear and you do not manage to complete the arrest of that person?

Richard Martin: Yes, absolutely. I talked earlier about capability. We would like something that has the same capability that the European arrest warrant does. Norway and Iceland have been talked about. A Norway/Iceland agreement would leave those individuals in a place where my officers could arrest them at the scene. If we are unable to secure that or to change and introduce a power of arrest for Interpol red notices where people are wanted, in the worst-case scenario my officer is left in an invidious position where they stop a car or somebody who is wanted for a very serious offence, and, if there are no other grounds to arrest that person there and then, they have to run off to Westminster magistrates court, which is the only court in the land that can issue the warrant. Yes, there is a big risk that they could abscond and disappear.

Q598 **Dr Whitford:** Did the Norway/Iceland agreement not take quite a long time to pull together? Now that it is in place, do you think that the UK saying, "We will have one of those" would be easy, or because the UK is going to be in a different sphere, not in the EEA, not in Schengen, will it still be a negotiation where we will be starting from the beginning?

Richard Martin: There is a challenge. The reason I mentioned it earlier is that the power of arrest is very important: that you can do it there and then. If my memory serves me right, it took over 10 years for them to negotiate that agreement, although I am told, from the negotiations, that the EU sees that as a template that could be used, and I say "could be used". There are issues around reciprocity and proportionality in that sort of element.

The Norway/Iceland agreement works very well because they are then circulated on SIS as wanted. If we do not have SIS and we have to put them on Interpol, in essence it adds another lag or a potential area of a gap.

Q599 **Dr Whitford:** The Police Service of Northern Ireland has been concerned since the referendum, because the European arrest warrant has allowed all-Ireland policing. They have a very close relationship with the Gardaí. They describe contingencies as being slower, costlier and more

bureaucratic. Are you concerned? It is not your police force, but I am sure that you would have sympathy for their concern that they lose that ability to use the European arrest warrant almost like a domestic warrant.

Richard Martin: Yes, absolutely. As I say, I have had a lot of conversations with colleagues in PSNI and they have often mooted it. I understand how important the European arrest warrant is to them. Because of the border situation, I know it has allowed, as you say, that all-Ireland policing to take place. I absolutely understand their concerns and particularly towards that element.

Q600 **Dr Whitford:** Particularly with the security history in Ireland and the frictions that may emerge there at the moment, also related to the topic of Brexit, you have sympathy with how anxious people are and how anxious the former Chief Constable was about the situation.

Richard Martin: Yes, very much. I have spoken to senior PSNI officers, who came over before, pre-COVID, when we could meet together at HASC and places like that. I am very aware. Ireland does not have SIS, which is another challenge.

Q601 **Dr Whitford:** You and Peter have touched on bilateral agreements, and there are some in place. Do you think, regardless of what happens with the continental mainland, that the UK could strengthen a bilateral agreement with Ireland that would have the same capability and functionality that we have now for Ireland?

Richard Martin: I can see no reason why not. We have a fantastic relationship with Ireland, with both the Gardaí and PSNI. We see them as a key player and will continue to do so. Whatever we need to do bilaterally, we will do that. I have yet to detect any lack of appetite from any of our 27 member state colleagues to want to work with us in the way they do now.

Q602 **Dr Whitford:** Professor Peers talked about a gap. When you start to create something new, we are normally talking about it in customs and borders. What is the timescale to create something that is really UK to Ireland and Northern Ireland?

Richard Martin: It would depend on what we are trying to create. From an intelligence-sharing point of view, that is something we do now. We could do it bilaterally, police to police. I suppose you are talking more about powers. I guess that would be down to legislative change. Police to police, there is a lot we can do. We have very good relationships that allow us to share intelligence, and that will not stop. I would assure you that we can still do a lot of work together and share information and intelligence.

Dr Whitford: Professor Peers, I do not know if you have any comments you would want to make, particularly regarding the operational aspects and the Northern Ireland/Ireland aspects of this.

Professor Peers: If there is not a deal with the entire EU, to repeat what I said before about prioritising certain countries for a bilateral relationship, I imagine Ireland would definitely be top of the list, and maybe a dozen others, or five others. You would want to start with Ireland and focus on whether we can go back to fast-track extradition, like we had before. Can it be as similar as possible to the European arrest warrant? Are you happy with the tech that we have tabled?

You asked about the Norway/Iceland negotiations. The EU has essentially proposed the same text as Norway and Iceland, with one clause out, I think about child suspects, based on EU legislation. The UK has tabled, in return, almost exactly the same text but with three exceptions: one for trial-readiness, a human rights exception and a proportionality exception. The EU has briefed the press that it finds all those proposals from the UK quite puzzling. It does not want to see them in there. Quite a lot of people in the UK are attached to them and would like to see these sorts of exceptions. That would be the difficulty there.

Dr Whitford: These kinds of exceptions do not exist at the moment under the European arrest warrant, do they?

Professor Peers: Arguably, there is a type of proportionality principle that applies whenever you apply EU law, and this would just be a question of saying so explicitly. That would be disputed by the Commission. There is some case law on when you should or could refuse to execute the European arrest warrant on human rights grounds, in terms of detention conditions, a significant risk to the rule of law or a lack of a fair trial on an individual case. The UK text would probably go beyond that and allow for further discretion under a human rights exception.

Interestingly, on the one hand, the EU is saying it is very important we sign up to the ECHR in general, and on the other hand it is resisting a human rights exception on the European arrest warrant. The two sides are both willing to protect human rights, but in a rather different way. The UK also wants to have an agreement on unaccompanied minors and the EU does not. That is another area where there are differences in the two sides' approaches on human rights. It is not just the EU making demands and the UK resisting; to some extent, it is the other way round.

Dr Whitford: It is in this case. Professor Mitsilegas, have you any comments on this?

Professor Mitsilegas: I have one point on speed, effectiveness and prioritising cases. The key challenge for the future is to convince the current EU27 to treat UK requests with the same priority as they would treat requests from their EU counterparts. Currently, they operate within a very highly integrated, streamlined system under the European arrest warrant and, on evidence, under the European investigation order. They operate under very strict deadlines and authorities are always under pressure to comply with a request as soon as possible.

The challenge for the UK becoming a third country, which is greater if there is no agreement and you fall back to bilaterals, is that your requests will stop being prioritised in practice. Whatever is written in your bilateral agreement, the fact that overstretched national authorities in the various EU member states have to comply with their obligations under EU law really places the UK requests under strain.

Dr Whitford: Basically, because they are busy, as all police forces are, it would be difficult. We are asking them to do extra work on top of that. You are saying it will be down to their good graces whether they choose to do that.

Professor Mitsilegas: Yes. The best safeguard would be to have an UK-EU agreement that sets up tight deadlines and obligations. We need to be mindful of the practical difficulties.

Q603 **Stephen Kinnock:** I am conscious of time, so I would like to fire in a couple of quick questions on money laundering. Our entire panel will be aware of paragraph 82 of the political declaration, which explicitly commits both the EU and the UK to finding modes of co-operation on money laundering. It seems that so far the UK side has not put forward any proposals. Michel Barnier has expressed some concern about this. Professor Mitsilegas, why do you think that the UK seems to be uninterested or refusing to play ball on this important issue of money laundering?

Professor Mitsilegas: There may be two answers to that. The formal answer could be that this work can also be done in international fora. We have the Financial Action Task Force, which has been a key motor for the development of global standards in the field, and the UK is a key player in that. The EU's concern, especially given the recent silence from the UK on this, is that they really want a level playing field. The concern is that the future UK regulation may be looser in terms of offshore jurisdictions and tax havens. This is a very high priority for the EU. That is probably why you have this concern expressed on behalf of the EU negotiators.

Q604 **Stephen Kinnock:** Do you think that could be the reason that the British Government are not putting forward proposals—because part of their strategy is to turn the United Kingdom into a tax haven?

Professor Mitsilegas: I am not in the mind of the UK Government, but if I was negotiating on behalf of the UK Government, this would cross my mind.

Q605 **Stephen Kinnock:** Deputy Commissioner Martin, is the lack of proposals on money laundering from the UK side a cause of concern for you? If there is no clear co-operation agreement on money laundering, would that be a significant hindrance to your work?

Richard Martin: I am not sure at what point or when that may come in Government negotiations. From a general point of view, money laundering is important to us. We chase the money, we make it very

painful for the criminal and they do not profit from their activities. For us, it is a very important part, but I do not know at what point that may come in from a negotiation point of view. For us, it is important that we continue to push that, but it is a governmental decision and approach in the negotiations.

Q606 **Stephen Kinnock:** I guess there is a serious counterterrorism issue here as well, because money laundering is a very important element within the counterterrorism strategy.

Richard Martin: Yes, but counterterrorism has its own ability to carry out operations—legislation which is not governed by the EU. From a counterterrorism point of view, they have more influence and powers available to them.

Q607 **Stephen Kinnock:** To ask for some concluding remarks from both of you, is there anything missing in terms of legal text that you would have expected to be included on money laundering? Does what the EU has proposed as legal text on money laundering cover what is required? Do you see any reason why the UK should not sign up to that?

Professor Mitsilegas: The text, in my view, is worded in general terms and it requires further co-operation in the future. This is an ever-evolving field. New standards are produced almost on a yearly basis. The EU wants to make sure that the UK is part of the global efforts and there is a degree of alignment in the objectives.

Q608 **Stephen Kinnock:** Deputy Commissioner Martin, would you agree that some kind of dynamic alignment with this money laundering text and legal process would be helpful, both to your own services and to the European Union?

Richard Martin: Yes, absolutely. If I am honest, I concur with the professor's last comments. It is very important that we are in alignment. It is a global issue; it is global crime groups that are moving money around. If we are in alignment, it makes us much more effective from an operational point of view.

Q609 **Chair:** Thank you very much indeed. May I ask a final question? One area of disagreement between the EU and the UK in these negotiations is that the EU would like everything to be incorporated in a single agreement, and the UK is looking for a series of separate agreements in different areas. Given the issues that we have discussed at some length today, such as access to information, areas of co-operation, legal challenges and dispute resolution mechanisms, do you think it would be easier to find a way forward on these matters if there were a standalone agreement on justice and home affairs, as opposed to its being part of an overall agreement? Do you have a strong view either way?

Professor Peers: First, as long as you attach these issues to trade and fisheries, in particular, there is a risk of their going down with those other issues. If there is an inability to agree on trade or fisheries, they will be

sunk at the same time. If you split them up, as the EU has done many times with other countries, including every other non-EU country it has negotiated with, you can have an agreement here, even if you do not have an agreement somewhere else. The EU has lots of agreements with the United States in this field but no free trade agreement as such, and similarly with other countries. It had a mutual assistance agreement with Japan well before it had a free trade agreement.

That would be the great advantage of splitting them up, as the political declaration said was a possibility. You could have different rules on dispute settlement as well. That would be by far the strongest argument for splitting things up, assuming that the EU was either willing to split them up or willing to split them politically. It may not be willing to do that. If the trade and fisheries talks fail, they may simply refuse to discuss everything else. It is not quite clear if they would refuse to do that yet.

Professor Mitsilegas: I agree with this comment. It is a political choice on whether you go for one single agreement or you split them. Even if you split security, you may find that it is not as straightforward to negotiate on its own and you need to split further.

Chair: On behalf of the Committee can I thank Deputy Assistant Commissioner Martin, Professor Peers and Professor Mitsilegas for giving up your time today? It has been a really good, informative and interesting session. We are very grateful to you for your evidence, because it will help us enormously in our work.