



Select Committee on the European Union

Home Affairs Sub-Committee

Corrected oral evidence: Brexit: the proposed UK-EU security treaty

Tuesday 15 May 2018

11 am

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Members present: Lord Jay of Ewelme (Chairman); Baroness Browning; Baroness Janke; Baroness Massey of Darwen; Baroness Pinnock; Lord Ribeiro; Lord Ricketts; Lord Watts.

Evidence Session No. 8

Heard in Public

Questions 82 - 92

Witnesses

I: Nick Hurd MP, Minister of State, Home Office; Rob Jones, Director of Future European Policy, Home Office.

Examination of witnesses

Nick Hurd MP and Rob Jones.

Q82 The Chairman: Welcome. Thank you very much for coming to give evidence to us. We have been looking forward to this session. Would you like to begin by introducing yourself and your colleague, who, alas, does not have a nameplate?

Nick Hurd MP: I am Minister for Policing and the Fire Service. Next to me is Rob Jones, who has the very optimistic job title of Director of Future European Policy. That is a clear signal of intent to have one.

The Chairman: That is an encouraging title, if I may say so. We are very glad to have you both. Thank you very much for coming to give evidence to us.

We are looking in particular at the Government's proposal to negotiate a treaty between the UK and the EU that would provide a legal basis for continued co-operation on security. Both sides—the UK and the EU—have stressed that they would like that co-operation to continue, which is good news. I should emphasise that this Committee is looking at internal security, not foreign and defence policy.

We have seen the paper that was issued by the Government last September. Almost as if to herald your appearance before us today, a plethora of other documents have appeared in the last two or three days: the Government's paper last week on a framework for the UK-EU security relationship; a speech in Germany by the director-general of MI5; and, yesterday, a speech by Michel Barnier in Brussels, which was mostly about foreign and security policy but touched on internal security.

Before we move on to some of the more important but, in some ways, more detailed questions in our inquiry, will you tell us what is new in the Government's security paper, which we got in the last few days, say what progress has been made in the last six months and give us your reaction, if any, to Barnier's speech yesterday—as well as providing us with any other initial comments that you would like to make, of course?

Nick Hurd MP: Thank you, Lord Chairman. Rob, who is more involved with this day to day, might be able to give you a bit more texture on what might have moved on in the last few weeks and months, not least because he has been out in Brussels to have some of the conversations.

It is perhaps worth restating what has not changed, which is the premises and principles that give us some confidence about what we are proposing. We are not naive. This is unprecedented and extremely ambitious. However, we feel very strongly that we share a lot of risk—risk that is changing fast and is escalating—with our European partners and that we have a very strong collective security interest.

If the premise is, as I think it should be, that the priority for any Government or member state is the security of its citizens, our argument is that we have spent all this time and money over many years building a

toolkit of 40-odd different programmes, platforms and mechanisms that work well on the whole, partly because of the British input into them.

Why should we compromise and take risk by dismantling this toolkit or somehow feeling that we have to rebuild it in any significant way? Why take risks that we may lose capability, which would be our prognosis? Why should we not just be bold and go straight for the ambitious security treaty that the Prime Minister set out when stating very clearly that our support for European security was unconditional, rather than for alternatives, which we feel require unnecessary and potentially risky compromise?

In making that proposition, we are as confident as we can be that that mutual interest is accepted and understood by our operating partners at member state level. I know that from my own contacts with Interior Ministers; they absolutely get this argument, because they are living with the risk day to day.

It is a negotiation. No one knows better than you, Lord Chairman, about the risks along the way. Ultimately, it is a negotiation with the Commission, which has a different lens on it. Part of our challenge is to persuade it of the operating realities and to present it with the evidence that underpins the argument we are trying to make. The principle that we are trying to achieve and the premises that underpin it have not changed at all.

Rob, do you want to add anything about our recent presentation and your work?

Rob Jones: Perhaps the first thing to say is that most of the emphasis in negotiations has until quite recently been on the withdrawal of the UK and the establishment of an implementation period from March 2019. We have only just started to talk to Task Force 50 about the nature of a future relationship.

Internal security, so far, has involved little more than an hour's discussion with Task Force 50, where we presented a version of the slides that were published last week, and it presented some slides that it had published in January. We were really setting out our starting positions, with a view to further negotiations in more detail, and probably at a more technical level, over the next few months.

In those slides, we were not trying to do anything very new. The paper in September set out the Government's position and objectives in quite a lot of detail. We were trying to emphasise three main points. First, the position we are suggesting—the idea of an internal security treaty—is very much evidence-based. It is a result of significant consultation and discussion with a variety of partners, UK and European, particularly operational partners such as the police and the security and intelligence services, so our position is evidence-based.

We also think that it is legally viable. There may not be a direct precedent in the EU for the type of relationship that we are suggesting in the area of security, but there is legal precedent for the EU to have a strategic relationship in a particular area of the acquis. We are suggesting that the Commission should look beyond the JHA area for inspiration when considering the future options.

Finally, the proposal we are making is operationally desirable. You will not speak to any operational partner in the UK or overseas who suggests that there is any point in reducing the value or the intensity of our co-operation in this area—in fact, the reverse. You will have seen the speech by Andrew Parker yesterday.

The Chairman: I am sure we will come on to the answer to this question during questions and answers. Presumably, it will have to be a different kind of co-operation. You say that there should be no reduction, but if we leave and then rejoin certain organisations it will be different, will it not? Are you working on that basis?

Rob Jones: Yes, very much so. This is not our saying that we are trying to stay in the EU. We are very clear that the UK's relationship with the EU once we leave must be different. We will be a third country. What we are looking for is a new treaty—a new type of relationship. We have been keen to focus on the best way to maintain the operational capability that is so valuable now, and to maintain it in a way that is also able to respond to changes in threat and changes in technology. It needs to be a dynamic agreement, not one that just freezes what we have already. But it must be different.

The Chairman: That is very helpful as a start. Let us get on to some of the slightly more technical but extremely important questions.

Q83 **Baroness Massey of Darwen:** It is nice to hear what you are saying. That is very interesting.

I want to ask about access to databases once we have left the EU. If Denmark, an EU member state within the Schengen zone, cannot directly access Europol's databases, how can the Government expect to maintain access to them once we have left the EU?

Nick Hurd MP: I would make two points in answer to that very valid question. As Rob said, we are very alive to the fact that the relationship will change. The status of the relationship will be different. We are trying to argue not only that we should try to protect existing capabilities but that we should maintain the kind of relationship that allows us to develop these tools together going forward. One thing that is absolutely certain is that they will change, because the risk is changing. Capability and technology change as well. That is what we are trying to do.

In the context of that conversation, I was very interested in the evidence that you received from Rob Wainwright, who has done an absolutely super job at Europol. He made a point to you about the difficulty of making comparisons between different countries, because every situation

is different. In the context of Denmark, he made the point to you that that is a unique agreement around a special set of circumstances, where a member is choosing to cease to be a full member of Europol, but choosing to remain a full member of the EU. We would not automatically look to Denmark as an example, not least because our situation is different from Denmark's.

Again, this comes back to the central point about our existing weight in the system. The latest data I have seen, which I think Rob confirmed, is that we are in the top three member states that contribute intelligence every day to the different databases within Europol. In relation to serious and organised crime, we are the highest contributor of data. Denmark is in a different situation. Our proposition is, "Look, together we've made Europol work. The UK is pretty fundamental to that. Can we negotiate a new relationship that allows the UK to maintain its weight in this system and, as far as possible, to influence it?"

In relation to the issue of direct or indirect access to databases, Rob made the point to you that there would be very significant resource burdens and implications for Europol if it were asked to act in effect as a gateway for indirect access for the UK to Europol databases. It is not for me to speak for Europol and for other member states on that, but I thought that Rob quite clearly brought it to your attention as an issue they will need to think about.

The Chairman: He did. The Committee would like very much to echo your tribute to Rob Wainwright. He has done an excellent job, and we very much valued it here.

Lord Watts: May I ask a different question on the same topic? Denmark does not have access. What explanation could you give Denmark for why the UK would have a better deal than it has been able to receive? I am interested to know why you think that Denmark has been refused in the first place. Is it for technical reasons, legal reasons or financial reasons?

Nick Hurd MP: Rob may have the full detail on the Danish question. I come back to my point. We negotiate as the UK. We have a different weight inside the Europol system from Denmark, simply because we are such a major contributor and user of data. It feels to us that we are pretty integral to how that system works. It is not the same for Denmark.

Rob, are you sighted on the special circumstances of the Denmark negotiation?

Rob Jones: We think that our opt-in in the JHA area is complicated, but the Danish relationship in the area of justice and home affairs is probably even more complicated. The position they are in is pretty unique. It is the result of some recent political decisions in that country about its relationship with Europol. It is not an example that anyone is suggesting we should follow, even if we wanted to. It is certainly not something that the Commission or Europol has suggested we do.

Of course, when we are considering a future relationship between the UK and the EU, it is necessary to look at whether other relationships exist. Clearly, the relationship between Denmark and Europol needs to be taken into account, as does the Europol relationship with the likes of the US and other third countries. No one is suggesting that we have to follow a particular example. We are certainly not suggesting that. We do not think that it would achieve the outcome that both sides seem to want, which is the best way of ensuring that there is continuation of a very high level of co-operation in this very important area.

Lord Watts: You seem to suggest that Denmark has refused, because of political reasons in that country, to meet the obligations that were required by Europe. What are those conditions? Are you in a position to tell us that?

Rob Jones: I confess to not being a complete expert on Europol or on Denmark. My understanding is that the change in relationship came about because of a change in position domestically in Denmark that meant it had to change the nature of its relationship with Europol. The way in which it wanted to change it may not have been quite the way in which the European Commission wanted it to change it, so the resulting relationship is the outcome of quite a convoluted negotiation between the two sides.

I am not sure that either side would say that it is a perfect solution. Indeed, it may be that neither side thinks that it is a solution that needs to last for ever. It was a necessary fix for an immediate political problem. It works well enough for Denmark, but not so well that it is suggesting to us, "Why don't you follow us?" By the way, it is not suggesting that we have to be restricted by the relationship that it has with Europol. It is a factor, but it need not be a defining one.

Q84 **Lord Ribeiro:** Minister, you referred to the massive use of data. We heard from witnesses about the huge number of requests that UK police forces make of the EU database—they run into the millions. What assessment have the Government made of the implications of opting in to or not opting in to the proposed interoperability of the EU information systems framework?

Nick Hurd MP: I will make two points in reply to that. First, I am delighted that you have received evidence from the operators of the system, who have made very clear to you how important it is. I hope that the French and German police are saying exactly the same to their ministries and scrutiny committees, if such things exist, because that is the point. We are trying to persuade the Commission that there is an evidence base around the importance of these instruments to our collective security, so I am absolutely delighted that you have received that evidence.

Your question was about opting in to or not opting in to the proposed interoperability framework. We have until 21 May to consider whether to opt in. In principle, we are supportive of the work. It is hard to argue

with trying to prevent incorrect or fragmented data across the databases and to improve their efficiency and use by law enforcement and border guards. The objective of trying to prevent identity fraud and to reduce inconveniences to honest travellers is obviously a good one, but we have to do our job by exploring the benefits, beyond what our current access to the databases provides.

As you would expect, we are consulting the police, the NCA and other operating partners that use these tools in their day-to-day work. You have heard from some of them as well. We are required to take a decision by 21 May. I will undertake to update the Committee on our position as soon as we have one.

The Chairman: That would be very helpful.

Lord Ribeiro: Yes, it would. Apart from consulting the police, are you consulting more widely? What would be the practical implications of opting out?

Nick Hurd MP: As I said, we are consulting the police, the NCA and other operating partners. That has been a pretty extensive exercise. We look at these decisions on a case-by-case basis.

Rob, do you have anything to say on Lord Ribeiro's question about the implications of opting out?

Rob Jones: At this stage, the implications of not opting in depend an awful lot on what our future relationship with the EU in this area is likely to be. The more we continue to participate in some of the tools that this proposal will cover, the greater the implications will be for the UK. Some of them will become clearer as the detail is negotiated.

Lord Ribeiro: I misunderstood. I thought that you had to make the decision by 24 May.

Rob Jones: That is the decision to opt in.

Q85 **Lord Ribeiro:** Can you estimate the potential added value of the new EU law on mutual recognition of freezing and confiscation orders, which I believe the UK has opted in to?

Nick Hurd MP: We are talking about a draft regulation to replace two existing framework decisions. You are quite right to say that we opted in to those previous framework decisions, which is significant in demonstrating our commitment to work with European partners in this area. One of the existing framework decisions relates to mutual recognition freezing orders and one relates to confiscation orders. My understanding is that the draft regulation under discussion is the next stage of mutual recognition in the area of criminal asset recovery.

Our view is that the alternative to this regulation would be a reversion to what we would see as a less effective, more resource-intensive, slower method of mutual legal assistance, which was the position prior to

December 2014. We are doing the work, but the evidence suggests that reverting to that would discourage international co-operation.

Our initial analysis suggests that there could be substantial cost savings when executing requests for mutual recognition, as opposed to traditional mutual legal assistance requests. I see this as one of the measures among the 40-odd instruments in which we currently participate where we would like to continue co-operation, because we see clear mutual operational benefit. That is my general view on it at the moment.

Lord Ribeiro: Is it your understanding that the UK will continue to apply this law as part of the proposed security treaty?

Nick Hurd MP: That is my general understanding at this time. As I said, we are already inside the historic framework decisions. We consider them to be among the 40-odd instruments in which we currently participate that we would like to carry forward.

The Chairman: Would it be possible for us at some point to have a list of the 40-odd measures that you have mentioned?

Nick Hurd MP: Of course.

The Chairman: That would be very helpful, just for background.

Q86 **Lord Watts:** Minister, I have two questions. I will do them in two parts, so that I do not confuse you or myself. First, will the Government consider opting in to the Eurojust regulation after it has been adopted? If the UK does not wish to opt in, what arrangements will be made for the UK's relationship with Eurojust before the end of the transitional period? What impact might those arrangements have on the proposed security treaty?

Nick Hurd MP: Thank you for breaking it down.

Lord Watts: There is another one to come, I am sorry to say. That is why I broke it down. That is the first question.

Nick Hurd MP: Is it? Fine; I am confused already. Do you want me to take that one first?

Lord Watts: Yes, please.

Nick Hurd MP: I am sure that the Committee knows that Eurojust is the EU's judicial co-operation unit. It does important work facilitating co-ordination and co-operation. In 2013, the Commission put forward a proposal for a regulation on Eurojust, which aimed at a new governance model for the agency. We chose not to opt in to the Eurojust proposal at the outset of negotiations, due to some concerns that we had.

As I am sure the Committee knows, the text of the regulation is currently going through the tria~~a~~logue process, which will be very familiar to many of you as the three-way negotiation between the Council, the Parliament and the Commission. Once the text has been agreed by all three, it will

need to be adopted by the Council. We will then be required to take a post-adoption opt-in decision. That is a long way of saying that we are working through it, with a view to taking that post-adoption opt-in decision. I do not have a sense of timing on when we expect the tria~~a~~logue process to work through.

Rob Jones: The tria~~a~~logue is always a bit of a mystery for those who are not part of it. Our experience recently is that sometimes it can happen very quickly. It may well be one that happens quickly. We think that it is likely to be within the next few months.

Lord Watts: Is it fair to say that you are still considering opting in, but you are waiting to see what the final draft is before you make the final decision?

Nick Hurd MP: If the question is, "Will the Government consider opting in?", the answer is yes.

Lord Watts: Have you done any work on what the situation will be if you decide not to opt in?

Nick Hurd MP: You would expect us to look at that in the round. For us, part of the decision about whether to opt in is a consideration of the consequences of not doing so. Do you want to add anything to that, Rob?

Rob Jones: Clearly, if we did not opt in, we would still want a relationship with European partners that allowed us to support the work of Europol, which Eurojust does. It is possible for non-member states or non-participants in Eurojust to have good relationships with Eurojust and with member states without being inside Eurojust, so we are confident that we could make something work, but that is not the position we are currently expecting to be in.

Q87 **Lord Watts:** Have the Government made any assessment yet of whether they wish to opt in to the new Commission proposals on electronic evidence or the transfer of financial information? If so, do the Government want to continue to apply those laws as part of the proposed security treaty?

Nick Hurd MP: The short answer is that, as I understand it, the proposals were published on 17 April. We are not expecting the last language version to be issued until 23 May. Our current assumption is that the opt-in decision deadline is likely to be late August, so we are working on that timescale at the moment. I repeat the undertaking to keep this Committee informed of the process and of our view and decision. We look at all these things on a case-by-case basis. I am sure that the Committee has the background on the e-evidence proposals, but that is our understanding of the timing at the moment.

Lord Watts: Once again, it is a case of work in progress.

Nick Hurd MP: Exactly.

Lord Watts: You have told your officials to cancel holidays in August, because they are going to be very busy doing this.

Nick Hurd MP: What holidays would those be, my Lord?

The Chairman: May I add one point, before we move on to the Charter of Fundamental Rights? Recently there has been some Commission criticism—at least, so we have read in the newspapers—of our involvement in SIS II. It might be rather unfair to raise that without giving you any notice. Do you have anything to say to us on that, or would you like to write to us to tell us a bit about what, if any, truth there is in that criticism?

Nick Hurd MP: I am happy to accept your kind offer to put something in writing. Yes, there have been some criticisms, not just of us, but of other countries. That is fine. We accept some of those criticisms and do not accept others. That is subject to an ongoing dialogue with partners and the Commission. It is a very important platform for us. There are data that show how increasingly important it is to us. It is very important that our contribution to it is made in the right way.

There is quite a lot of underlying complexity, and there are some things we will just have to agree to disagree on. It is a reasonably healthy process of explaining our position and persuading our European partners that there is an action plan to respond to some of the criticisms that we think are justified. I can certainly put something in writing to you on it.

The Chairman: That will be very helpful.

Q88 **Lord Ribeiro:** When introducing the withdrawal Bill, the Government gave the impression that it was really a technical, cut-and-paste exercise. We would take the whole of European law over lock, stock and barrel, and then decide what we wanted and did not want to keep. One red line seemed to be the Charter of Fundamental Rights. What are the implications of leaving out the charter? What are the UK's prospects of negotiating the kind of security treaty that the Government are proposing?

Nick Hurd MP: Our view on that is pretty public, well known and there to be challenged, both inside and outside Parliament. We believe that we have a very long-standing tradition around protecting human rights. We think that the UK legal framework around that is robust and that the charter is just one element of that framework. Our belief is that most of the rights protected in the charter are also protected in UK common law and domestic legislation, as well as other international instruments—notably, the European Convention on Human Rights, but also UN and other treaties.

Our intention has always been that not incorporating the charter into UK law should not affect the substantive rights from which individuals already benefit in the UK, as the charter was never the source of those rights. The EU withdrawal Bill will preserve those rights that were already part of EU fundamental rights, long before the charter came into force,

and preserve in domestic law the case law of the CJEU as it stands on exit day.

The fundamental point is that we do not see the Charter of Fundamental Rights as being the source of rights in the UK. It simply reaffirmed rights that already existed in EU law. The EU withdrawal Bill will convert that EU law into UK law. Through the parliamentary process and outside this place—not least, in response to the view of the Commission and our European partners—we expect to have a discussion about that, but that is our position.

The Chairman: That is the position, provided that the House of Commons overturns the amendment proposed by the House of Lords.

Nick Hurd MP: Yes. Do not get drawn on that, my Lord.

Lord Ribeiro: I was just about to follow up on it.

Baroness Massey of Darwen: This may be wishful thinking on my part, but I had heard that the Government were inclined to keep the Charter of Fundamental Rights in. We will leave that for a moment.

Nick Hurd MP: These discussions will take place above my pay grade.

Baroness Massey of Darwen: I have been involved in this in the Lords in relation to children's rights. It is quite clear that, in relation to children's rights, and perhaps other rights, we cannot paste and copy this, because we do not have the rights that children deserve in our domestic legislation. There are issues on child trafficking, child abduction and, indeed, paediatric medicine, although I do not think that that is a security issue; you know more about it than I do.

We are writing to the Minister about eight issues relating to children's rights that will not be able to be transferred into our domestic law. They are not there now, and it seems that they will not be there when we have finished. I am not expecting you, as a Minister, to answer this—

Nick Hurd MP: But I am on notice.

Baroness Massey of Darwen: We are very concerned about this.

Nick Hurd MP: I am sure that others will share your concern. As I said, our position is that most of the rights that are protected in the charter are also protected in UK law, but I was very clear that that assertion is open to challenge.

Q89 **Baroness Pincock:** In the answers that you have given so far, you have emphasised the importance of continuing collaboration on security issues. The key element of that is data sharing. In a previous inquiry that this Committee undertook, we discovered how challenging it was to get data-sharing agreements between the US, the EU, et cetera. That leads us to inquire whether you expect to reach an adequacy decision on data protection with the EU before you agree a security treaty.

Nick Hurd MP: You are right. The issue of data is very complicated. What we are trying to do, not least through our domestic legislation programme, is make sure that, at the time we exit the EU, our data standards are 100% aligned with those of our European partners, because that will facilitate the bespoke UK-EU model for exchanging protected personal data that we have undertaken to negotiate with them. We hope that that will build on the existing adequacy model. The data agreement should cover data processing for both commercial and law enforcement purposes, but not data transfer between intelligence agencies, which is outside the scope of EU law.

The short answer to your question is that we hope to reach an agreement on data protection and exchange before a security treaty. Obviously, the timing of the security treaty is linked to the broader negotiation. That is quite hard to predict at this stage, but we recognise that the negotiations on the internal security treaty will need to operate in parallel to the agreements on data exchange and protection. That is the path we are on. Do you want to add anything, Rob?

Rob Jones: I want only to stress that, at the point at which we leave, we will be compliant with all relevant EU law on this subject. The Government have made it very clear that we intend to remain aligned.

It is also very clear that, from the European side, the issue of data protection is extremely important, including in this area. It is one of the crucial safeguards that are a prerequisite for the internal security treaty that we propose. We very much recognise that. You could not have an internal security treaty that included the exchange of quite sensitive data if you did not have adequate agreements and trust in the area of data protection. I do not think that that is disputed by either side.

At the same time, we are in quite a unique position. We are not the US. We are a member state and will leave fully aligned with the EU when we go. It is certainly a very important issue and, no doubt, still a challenging one. However, on the face of it, it is not one that should be insurmountable, if there is the will on both sides.

Nick Hurd MP: That is an important point to emphasise. We aim to start from a very good place as regards our alignment with our European partners. It is a completely different situation from the one in which the Americans find themselves, for example. Without being complacent or patting ourselves on the back, I think there is a recognition that the UK has been a leader on data protection standards. We are taking steps through our domestic legislation process to make sure that we continue to be up to the mark. Hopefully, that will instil confidence in our European partners.

Baroness Pinnock: Perhaps I have not understood. I think you are suggesting that, if we leave, our data protection legislation and regulations will have to mirror changes to EU data protection law and regulation.

Nick Hurd MP: Our intention is to be 100% aligned with our European partners when we leave the EU.

Baroness Pinnock: Post that time, presumably we will have to continue to work in parallel and to mirror the changes that the EU makes to continue to be aligned.

Nick Hurd MP: That is subject to negotiation with our European partners. Our attention is to start on a basis of full alignment.

The Chairman: It seems to me that what happens afterwards will be the difficult bit, because there will be pressures from the US and others to move apart. The EU will say, "You will get your adequacy decision confirmed only if you stay close". Do you foresee a tension?

Nick Hurd MP: There may well be. I am not pretending that any of this is easy. It would not be appropriate to comment on progress at this stage. What I am trying to signal very clearly is our intention to start on a basis of 100% alignment, with the highest levels of mutual confidence in our processes for exchanging and protecting data. The guidelines from the March European Council point to a shared recognition of the importance of this agenda and a determination to reach agreement on it. That is our intent.

Baroness Pinnock: I am getting curious. It seems to me that the challenge is that the whole business of internal security is absolutely based on data sharing—we have learned that through various inquiries that the Committee has undertaken. The importance of alignment, which you have emphasised, has been raised in those inquiries as well. Post the Brexit decisions, what happens if there is no continual alignment? How can we then continue to share data if we do not comply with the EU?

Nick Hurd MP: What happens then will be what is agreed in the negotiation and the agreement that we are negotiating. That is what will happen.

Baroness Pinnock: Oh, good.

Nick Hurd MP: None of us in this room knows what the outcome of that will be, but it is a negotiation. We will proceed on the basis of what is agreed in the negotiation.

The Chairman: It is an issue in which the Committee will want to continue to take an interest.

Nick Hurd MP: I am sure. Of course.

The Chairman: As Baroness Pinnock said, it is hugely important. It seems to me that it is hugely difficult and that it is uncertain what will happen afterwards. We will come back to it.

Baroness Pinnock: I will give up now.

Q90 **Baroness Janke:** Do the Government expect to conclude a security

agreement with the EU before they conclude a trade agreement?

Nick Hurd MP: The honest answer is that I do not know: it depends on the people we are negotiating with. European veterans will know the truth in the old adage that nothing is agreed until everything is agreed. We have gone out to say up front, "This is our argument for the bold, ambitious, comprehensive security treaty. These are the reasons we think that there are high levels of mutual interest in agreeing that". I set out those reasons at the top.

Without betraying any confidences, we get a strong sense from our partners at the operating level and in interior ministries that there is a strong buy-in to this. However, ultimately, we are negotiating with the Commission, which will look at this through the various lenses it has to look at it through. As Rob said earlier, the process has only just started. We will continue to press, to present the evidence and to try to persuade the Commission to focus on the operating reality and on some of the risks we have talked about, but so much of the timing depends on the Commission's approach to it.

There is a pretty straightforward route through this, and there is a complicated route through this. The honest answer is that we are not sure what path we are on or what view the Commission will take on how this sits alongside the broader negotiations. At the heart of that is our status as a third country and how quick the Commission is to recognise that, or to be seen to recognise that. The honest answer is that I do not know.

Baroness Janke: You have spoken about the mutual self-interest of wanting to conclude agreements. I have heard quite a lot of talk about this being a bargaining chip, about a beneficial trade agreement possibly being conditional on concessions in a security treaty and about the Government's use of that as a way of negotiating. In view of Andrew Parker's speech, do you agree that security is the highest priority and that the continued operation of the various joint workings must be of the utmost importance, or would you say that this might be a way of negotiating a better deal on a trade agreement?

Nick Hurd MP: Let me break that down. First, I believe strongly that national security is the priority of any Government. Therefore, it was entirely right that the Prime Minister should go out very early and make an unconditional commitment to our support for collective European security. I have not seen any public statement and have never been party to any private conversation that has linked in any way the discussion about our desire for a collective security treaty to the broader negotiations, with the trade-offs that you are talking about. Our position is that national security is the priority and that we have to sort this out; otherwise there is a risk that we will mutually lose capability, which should be unacceptable to us all. That is our position.

In Andrew Parker's speech, he was talking as a security practitioner. He said, "I hope for a comprehensive and enduring agreement that tackles

obstacles and allows the professionals to get on with the job together". I do not think he was negotiating. He was simply expressing his view as a security practitioner. I wholly endorse what he was saying.

As regards what the EU itself is saying, we take some encouragement, which may be naive, because the EU's guidelines on the framework for a future relationship, which it adopted in March, identify the importance of a partnership in the fight against crime and terrorism "in the light of the geographic proximity and shared threats faced by the Union and the UK". They specify that, "The future partnership should cover effective exchanges of information, support for operational co-operation between law enforcement authorities and judicial co-operation in criminal matters".

Notwithstanding the need to negotiate and some of the noise, it feels like there is an alignment of mutual interest and, certainly, an understanding on the EU's part of what we are trying to achieve. I have seen no evidence that it is considered to be some sort of chip or counter. I do not think that would be right.

Baroness Janke: The fact that certain people are making these speeches might indicate a fear on their part. As you say, they are professionals, and they have concerns about what is happening at the moment. Can you say that there is no fear that, because of the issues relating to some of the additional negotiations, security will not be given priority or somehow momentum may be lost on the security issue?

Nick Hurd MP: No. What is quite clear—you have heard it directly yourself—is that there is a concern about losing capability.

Baroness Janke: Very much so.

Nick Hurd MP: We share that concern. That is the argument that we are taking to the table. Of course, it is not just the UK that will lose capability. That is our whole argument. It is the argument that I make to the German or the French Interior Minister. I say, "Look, we have spent all this time building these tools that work. They depend on our mutual co-operation. Why should we take a risk?" There is a better path going forward that preserves these capabilities, but allows us to maintain the dynamic relationship Rob was talking about. We cannot forget the external environment in which this is happening. It is not going to stand still; it is going to change. We must have the flexibility to change with it. That is what we seek.

Is there an anxiety from the operating practitioners? Yes, but not just in the UK. That is the key point.

Q91 **Baroness Browning:** Good morning. To what extent, if any, will the proposed treaty cover existing security co-operation between Northern Ireland and the Republic of Ireland?

Nick Hurd MP: The simplest answer to that is that we think that the best way of maintaining the co-operation between Northern Ireland and

Ireland is through the kind of UK-EU security treaty we are talking about, which will maintain effective arrangements for the UK and all EU member states, including the Republic of Ireland.

One instrument of particular importance in relation to Ireland is the European arrest warrant. It has played a crucial role in supporting police co-operation between Northern Ireland and Ireland, which is a fundamental part of the political settlement there. It is highly relevant—it does matter—but our view is that the security treaty we are talking about is the best way of maintaining those effective arrangements.

The other point is that, as you would expect, we have worked quite closely with the devolved Administrations to work this through. Rob, do you want to add anything?

Rob Jones: I want only to reiterate that last point. We have consulted the devolved Administrations closely. They are very much part of our governance structures as we develop our policies in this area, and we listen very much to what they have to say. We also take on board what member states at interior ministry level might tell us informally. That includes Ireland. We know that the European arrest warrant is particularly important for the UK-Ireland relationship. Of course, at the same time, as with any other country, there will always be some strong bilateral co-operation, which can go ahead without there being an underlying EU framework for it.

Baroness Browning: In that context, assuming that there is a security partnership treaty, the British Government have announced in the last few days that they intend to authorise a historical review of old cases in Northern Ireland. I do not want to pre-empt what the review might throw up, but it seems to me that the timing of the announcement is significant in relation to the existing relationship between Northern Ireland and the Republic of Ireland. The result of it could be to throw up some quite complicated cases, which would affect people on both sides of the border. I wonder whether the Home Office has taken a look at how that might affect, for example, what is written into dispute resolution in the security partnership treaty.

Nick Hurd MP: I may have to write to you on that.

Baroness Browning: Could you? From a personal point of view, this came as quite a surprise to me. The Government seem almost to have changed their mind about reopening these old cases. However, they have now made that announcement. Given the timing of it in relation to what we are talking about this morning, it would be good if someone took a look at what it might mean for what needs to be in the treaty.

Nick Hurd MP: I will write to the Committee.

Lord Watts: Minister, at the border between Northern Ireland and Ireland, there will potentially be different tax rates on goods and services. Is that not a recipe for crime? How will the Government adopt a

policy that deals with that level of crime? Will it not encourage crime on the border if you can move goods one way or the other, and make a profit by doing so?

Nick Hurd MP: You are drawing me into a discussion on the future of the border. I will resist that temptation and the hypotheses that follow from it.

Baroness Pinnock: Very wise.

Nick Hurd MP: I am sure that all Governments looking at this issue will look at it through all the lenses. Those will include any increased security or policing risk as a result of whatever is agreed. Beyond that, I am not going to get drawn into your land of hypotheses.

Lord Watts: You still believe that there can be a soft border between two sovereign states, with different tax rates and different goods rates.

Nick Hurd MP: I am not going to get drawn down that line. Nice try.

The Chairman: Those of us who have been on the border recently—as I have, with members of the Lords EU Committee—are not yet convinced that there is a way of leaving the customs union and maintaining a soft border of the sort we have now. We shall look forward to the negotiations on that as they proceed.

Nick Hurd MP: Me, too.

Q92 **Lord Ricketts:** Minister, let me tempt you down another path. I have a couple of questions about the feasibility of what you are trying to do. I thought that the slides that were put out last week were very good and clear in pulling together a lot of material, but they show the level of ambition. You have talked about the 40 different measures. There is an interesting page giving the precedents. There are not really precedents for what we are trying to do at all. In some areas, such as ECRIS, there are no third-party agreements.

There is the issue of timing. I assume that this will need to be done by the end of the transition period, if we are not going to have a cliff edge in applicability and capability. You have talked about operational capability. The question is: do we judge that it is not only desirable but feasible, given all the complexities, to get this done in that time period? Therefore, are we really sure that one overarching treaty encompassing all of this is the right way to get it done?

Nick Hurd MP: That is our view. It is very nice to see you again. As Rob said, our view is that it is both operationally desirable and legally viable. I take your point that there is no groaning buffet table of precedents. However, there are strategic agreements between the EU and third countries, such as the Schengen association agreements and the European common aviation area agreement, so there are some precedents to look at.

To be honest, what we are trying to do is to lift the eyes of our European partners up off the table of precedents and the past, and to argue through mutual interest. You know as well as anyone that successful negotiations and agreements are built on common interests and identifying the mutual interest.

My personal view—I think it is a view that we hold across government—across the whole landscape of this highly complicated process of renegotiating and redefining our relationship with our European partners is that, in the security area, looking at the degree of collective risk and the common security interest, the mutual interest is as clear as it is anywhere else.

I come back to the premise that the most important thing for any national Government or member state is the security of its citizens. If you are faced with clear evidence, and your security practitioners are telling you, that by going down a different path you are taking a risk with the thing that is most important when it comes to your accountability to the public who you serve, you need a really strong argument for doing that.

As I said at the top, we are being very bold and ambitious with this, but I do not think that we are wrong in that. Ultimately, it is down to the Commission and the path it takes. There are difficulties for it; we all understand the politics of that. However, our hope and belief is that, particularly at this time, the mutual interests and the need to maintain and to build the integrity and capability of these collective security mechanisms will outweigh other considerations.

Lord Ricketts: I quite see that, if it was left to the practitioner community, that is definitely where we would get to, but you have other communities. You have the Commission and the Parliament. You have what the Commission said in its communication: that a non-member state cannot have the same rights as member states, and so on. There will be pressures of a more legalistic and formalistic kind from other parts of the community. I am interested in the fact that there seems to be no consideration of anything other than a single overarching treaty—for example, an association agreement or other partial, incremental agreements—to make sure that the most critical operational things are safeguarded by the end of the transition period. We are going for a big-bang, all-encompassing approach.

Nick Hurd MP: We are.

Lord Ricketts: We have not really considered incremental steps towards that, as I understand it.

Nick Hurd MP: We have considered alternatives and are doing the contingency planning that you would expect. Our conclusion is that this is the right proposal to put on the table. The frank reality is that, as Rob alluded to earlier, we are just starting this conversation. It would be quite wrong for me to send any signal, through this Committee or any other platform, that we are deviating from what we believe in.

We believe that this is the best course, notwithstanding all the difficulties and problems you have alluded to. In a way, our argument is, "Let's cut through all that, because this matters as much as anything. What we have built together works and is really important to each of our member states, so let's not compromise it". We are at that very early stage of the negotiations.

Lord Ricketts: With not much time.

Nick Hurd MP: With not much time.

The Chairman: Thank you very much, Minister. We are extremely grateful to you for giving evidence to us. We will send you a transcript of the public session shortly. We look forward very much to the various letters that you have promised.

Nick Hurd MP: In the proud tradition of Ministers giving evidence to Select Committees, I have created work for the officials. You will get the letters that I have promised.

The Chairman: We very much look forward to that. We offer you good wishes on what is an extraordinarily complex task ahead. We hope that the Director of Future European Policy will be extremely busy. Thank you very much.

Nick Hurd MP: Thank you all.