



HOUSE OF LORDS

Select Committee on the European Union

Home Affairs Sub-Committee

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

Thursday 14 June 2018

10 am

Watch the meeting

Members present: Lord Jay of Ewelme (Chairman); Baroness Janke; Lord Kirkhope of Harrogate; Baroness Massey of Darwen; Baroness Pinnock; Lord Soley; Lord Watts.

Evidence Session No. 11

Heard in Public

Questions 110 - 116

Witness

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

Examination of witness

Sir Julian King.

Q110 **The Chairman:** Welcome, Sir Julian. It is very good of you to come to give evidence today. Thank you very much for doing that. We are looking at the Government's proposal to negotiate a treaty between the UK and the EU that will provide a legal basis for continued co-operation on security. It is extremely helpful to have this chance to ask you questions about it as we draw to the end of that inquiry. We will come on to questions in a moment but, before that, would you like to make an opening statement to us?

Sir Julian King: Is that all right?

The Chairman: Absolutely fine, yes.

Sir Julian King: For just a few minutes, which will then, I hope, set the context for some of the exchange.

The Chairman: Indeed.

Sir Julian King: First, thank you for the invitation. I appreciate this opportunity. I understand that you want to talk about the future—and so do I—but perhaps I may start with a few words about where we are at the moment in our work to develop an effective security union.

The objective, as you know, is to strengthen co-operation in tackling internal security challenges—notably countering terrorism, cyber-enabled threats, serious and organised crime—recognising, as we do, clearly, that member states and member state authorities remain in the front line when it comes to keeping their and our citizens safe.

There are things that we can do collectively to help to support the United Kingdom as it tackles these threats. I will have been at this for two years come September, building on the work that was started well before my arrival, including by some here. I think we have made some important progress—partly, I hope, because we have made practical and useful suggestions and proposals—but also I am realistic enough to recognise that the threat picture itself, the nature of the threats that we face, from cyber as well as terrorism, has driven co-operation.

So we continue to reinforce our key EU security agencies, many of them very well known to you—you saw Rob Wainwright from Europol the other day—including Eurojust, FRONTEX, CEPOL, plus some newer ones such as eu-LISA, which is an agency that helps us build databases, and a proposed new EU cybersecurity agency.

We have modernised the network of EU-wide law enforcement databases—again, some are well known, such as the SIS, ECRIS, and some not directly security but security related, such as VIS Eurodac. We have proposed some new databases, an entry/exit system and a pre-clearance system such as the American ESTA system, ETIAS, and we are

implementing PNR. We are looking at ways of getting these different systems to work better together, in particular to eliminate identity fraud.

Where necessary and, I would argue, proportionate, we have reinforced the legislative and regulatory framework. We have instruments such as the EAW and the European investigation order, and we have proposed new instruments for getting access to electronic evidence held in other jurisdictions. The counterterrorism directive criminalised travel and training for terrorism across the whole of the European Union. We have cracked down on access to arms, to explosives and to funding for terrorists and criminals. We still reserve the right to look again at whether legislation and/or regulation might be needed to deal with terrorist content online—a subject that I know is under discussion here. We have proposed a legislative framework to drive up levels of cybersecurity across the European Union for our infrastructure, services and devices.

Again, we are reinforcing, including through funding, a network of arrangements to build capability and expertise across the European Union to support, for example, cross-border police co-operation, to tackle radicalisation, to better protect our public spaces, to boost aviation and rail security, to build resilience against CBRN—unfortunately, Salisbury showed that this was anything but an academic risk—and other hybrid threats. We are building public-private sector co-operation against cyber and cyber-enabled threats, and we are boosting security-related research and development. So that is the range, briefly, of co-operation that exists on security without talking about defence.

As we look to the future, I have said before, and I firmly believe, that we all—HMG and the EU 27—have a strong, shared self-interest in finding a way to maintain the closest possible continuing co-operation on security issues. After all, the threats that we face, whether from terrorism or cyber or, indeed, from serious and organised crime, are shared. Those who wish us harm very often do not distinguish between different countries. They are attacking our way of life and our shared values, and we are better able to tackle those threats when we work together. I am very clear about that.

But because an objective is clear does not necessarily mean that it will be easy or straightforward to achieve. Once the UK leaves the EU, it ceases to be a member state, with all the rights and responsibilities that that entails, and it becomes a third country outside Schengen. That is the logical consequence of Brexit and the position set out by HMG. That does not mean that there will cease to be a relationship or that co-operation is not possible, but it does mean that the UK will need to forge a new relationship—that co-operation will need to be on a new basis—and that will not just follow on automatically; it will need to be negotiated and agreed.

That new relationship will need to respect the positions of both parties—the position set out by HMG and the position of the EU 27. The EU is not being difficult for the sake of it when it points out that it is a carefully

crafted, painstakingly negotiated legal order whose members co-operate on the basis of common rules and safeguards, with dispute settlement and enforcement mechanisms and arrangements. That is the nature of the EU.

The EU has a range of relationships on security issues, including with third countries. Building a deep relationship will mean finding ways to tackle some of these complex issues around rules and safeguards—for example on data—and on dispute settlement and enforcement, which is particularly relevant in this area. If we are going to make progress, I think it is also important that both sides find ways of talking to and not past each other, and we need to find the right way to engage on some inherently difficult issues.

The European Union, perhaps because of its nature, often tends to think in terms of precedents and it can sometimes react to suggestions that you start afresh with a completely blank sheet of paper, or that everything needs to be bespoke. It is true that the arrangements which the European Union has developed with different countries on security vary, and that they can be and are tailored. But the EU often prefers to try to alter something off the peg rather than start from scratch.

Again, it is difficult to ignore the EU's legitimate desire for strategic autonomy in some aspects of security and defence. Frankly, the current challenging global geopolitical landscape is only reinforcing this. For the UK, the challenge is to find the right basis for co-operation with EU structures and programmes rather than perhaps appearing to seek—from the EU perspective—to change the nature of those structures and programmes. There are a number of hurdles that we will have to clear if we are to do this, but, for the reasons that we all know and which are at the heart of your inquiry, we need to make a joint effort to clear those hurdles. Thank you.

Q111 The Chairman: Thank you. That is an extremely helpful introduction. Perhaps I could pick up one or two points from it. You are right that we have heard evidence from a number of institutions, including from Rob Wainwright, who was an extremely distinguished director of Europol. Our conclusion is that, as you have just said, for the future we have a strong shared self-interest in continuing to have a close relationship with many of the institutions that you have described. I note that the Home Secretary said on Monday that, "there is not a single European Interior Minister who wants to reduce the level of co-operation on security that we have now".

That leads me to my question, picking up on what you have said: how important do you think it would be for the EU to continue security co-operation with the UK after Brexit? In a way, you have answered that, but do you see some tension between the importance accorded to this by the security institutions and perhaps by the Commission and Monsieur Barnier, who are leading the negotiations?

Sir Julian King: I am not sure that it is fair to make that distinction. There is an important distinction to make between economic issues on the one hand and security on the other. As we look to the future and a future partnership after Brexit, those different areas of co-operation might work in different ways. The economic relationship will be quite tough to work out and work through, because it is distributive—there are potentially winners and losers through reorganisation, relocation and other factors. On the security side, it is at the completely different end of the spectrum. It is not zero sum. Either we have a situation in which we all manage to gain through co-operation or we have one in which we are all a little worse off through absence of co-operation. That is a fundamental difference in the way we should think about aspects of the future relationship. That is why I agree that we have a shared self-interest in trying to find the right structures for maintaining the closest possible co-operation on security.

Q112 **Lord Kirkhope of Harrogate:** Good morning, Commissioner. I have a slight sense of déjà-vu about this. I remember sitting and asking you questions when you were coming into the European Parliament before your appointment. May I welcome you and ask you a question? I am interested in whether there are specific areas in internal security that are the most important, in your view, to maintain in any relationship? Perhaps I may put that in the context of the nature of a third-party agreement—we are talking about a security treaty, I know. There are two areas that I am particularly keen to protect: one is Europol and the other is PNR, which you mentioned is being implemented. Do you think that getting some enhanced third-party agreement which protects certain areas is achievable, or does this have to be more general? I look at this in one more context. You have recently been going for double your money, to put it crudely, on the Internal Security Fund—that is, for the period 2021 to 2027—when, of course, we will not be members of the European Union. In terms of having a third-party agreement and protecting the most important relationships, will that be benefited by this enormously larger security fund in the EU? Will that have some reflective connection with the third-party agreement in benefiting our joint onward relationship?

Sir Julian King: There are various questions there. My first answer, which will not surprise you, is that each of the aspects of the work that we are doing to reinforce co-operation against these shared threats is important, otherwise we would not be doing it—I hope. So it is quite difficult to set out a hierarchy of importance. They work in slightly different ways, as you know, and we need to bear that in mind as we look to the future. I spoke about various activities that we are doing to create networks of expertise and to build capability across these different areas—terrorism, cyber, and serious and organised crime. It is possible to have quite flexible relationships in that area. There is a series of different relationships with non-EU member states.

For legal instruments and programmes, it is a bit more complicated. You can have relationships with non-EU member states, but there are issues

of rules, dispute settlement and enforcement. For databases, which are important in the context that we have just been discussing, you have issues of data adequacy as well. That is another layer of complexity to work through. As for the agencies—you mentioned Europol, but there is a series of agencies—they are, as you know, open to different forms of non-member state participation subject to reaching an agreement. That agreement will have some constraints in it—certainly functional constraints and possibly financial constraints as well.

There is another category of co-operation that is highly relevant to tackling these threats that we should not forget: intergovernmental co-operation—co-operation that takes place outside the framework of the EU, notably around intelligence sharing, which I know has come up in some of your conversations. We have the counterterrorism group: Andrew Parker has been speaking about the importance of that co-operation outside the EU framework. There is no reason why it should not continue, but he has also said, it is important to note, that such co-operation is reinforced and helped by engagement in the other, wider co-operation that we are discussing today. I am not going to give you a hierarchy of choice, but some areas will be more complicated to deal with than others.

On funding, you are absolutely right: we have just announced reinforced funding in the security area. We have doubled the amount of money that will be organised through the Internal Security Fund, raising that to €2.5 billion over the next budget period. In addition, there is just over €1 billion for funding the agencies. We have already identified €2 billion in a different programme for working on cybersecurity, and there will be further funding around a range of cyber-resilience, deterrence and international co-operation programmes as well. It is possible for third countries to work with programmes—there are examples of that—but there has to be an agreement.

The Chairman: Thank you very much. That is very helpful.

Q113 **Lord Soley:** I think that everyone is signed up to getting this right; it is crucial. May I ask you about the architecture of a future arrangement? A treaty that covers these areas is the most commonly talked about option. I suspect that it will involve institutions as well. Do you see a treaty as a viable model for future co-operation to incorporate these? Are there areas of security co-operation at the moment that do not fit easily into a treaty, or indeed cannot be fitted in?

Sir Julian King: You will forgive me if I say that I want to try to describe to you as fully as possible the different range of options, recognising that there are problems as well as areas in which we have a shared interest in trying to advance together, but I am not responsible for the negotiations—as you know, that is Michel Barnier’s job, and we all seek to support him in that job—and so there may be some questions that edge you a little bit further in the direction of how the negotiations are going to play out where I have to plead the fifth because it would be awkward for me to go too far down that track.

It is true, we all know, that HMG have set out their ambition to try and negotiate a treaty in this area. It is also the case, as we have just been discussing, that for some areas of co-operation you do need an agreement. Exactly how that process will play out we will need to see. It will not just be in the hands of the Commission. The position that will be set out from the EU side might be recommended by the Commission—it might be something that Michel Barnier puts forward—but it needs to be a position endorsed by the EU 27.

Lord Soley: I appreciate the sensitivities of not getting into the negotiating area, but is there any discussion about the new institutions that might be necessary to continue co-operation? I am not asking you to go into detail if there is, but is that an option or is it not a viable option?

Sir Julian King: I have been saying for some time, for all the reasons that we are aware of, that it would be a good idea for us to get on and start discussing in more detail how to make progress in this area. Again recognising that, in my view, security works slightly differently from aspects of the future economic relationship, it is still my personal position that it would be good if we could get on quickly to talk about some of the detail. But that is where we are at the moment.

Lord Soley: Finally, could I ask you this? This Committee has looked frequently at government decisions in recent times to opt in to security aspects—we have generally been very supportive of opting in to these—but we are a little puzzled as to how that will work when we get into the transition phase and what happens afterwards. If we opt in, we have decided to be part of that; in the transition phase our position will change; and when we actually come out, the opt-in will presumably still apply. Again, there is a sensitivity about this area, but if you have got any information or advice on that, it would be helpful.

Sir Julian King: I can only point towards things that have already been said on that. As you know, in the transition period, the implementation period, if there is a withdrawal agreement, the *acquis* applies—but the United Kingdom will not be involved in decisions. I will get the sack—it is the first job I have ever done where I have known in advance the date on which I will get the sack—we will lose our MEPs and Ministers will not go to the Council. But the *acquis* applies, with some provisos which are set out in the draft withdrawal agreement, including, as I am sure you know, in this area in relation to JHA, where there are some restrictions on the opt-in in the draft withdrawal agreement. What might happen after the period of the withdrawal agreement is still to be discussed and negotiated.

One thing which is worth noting, which I am sure you have, is that Michel Barnier has said and repeated that if it is possible to reach an agreement on security and defence relationships in the future during the period covered by the withdrawal agreement, then those future arrangements could come in without waiting for the end of the withdrawal agreement. So there is a bit of flexibility in time there.

The Chairman: On that point, I might say that, in evidence to the main European Union Committee, David Davis has also made clear that, as far as he is concerned, the economic, security, foreign and defence policies can be looked at in some ways separately as negotiations progress.

Baroness Pinnock: On co-operation, Galileo is obviously a prominent example of co-operation with the UK, but it seems to be hitting the rocks—or stony ground anyway. Is this the shape of things to come, or should we be less concerned about that particular example?

Sir Julian King: I do not think I can advise you on the level of concern that you might feel, but the question of co-operation with programmes, including space programmes, is obviously part of this wider picture. It takes you a bit further into defence than the internal security issues that we have been talking about so far.

That is why I started to talk about the need to think about co-operation with structures and programmes—because it is possible to participate as a non-member state in space programmes such as Galileo. There will be a financial context, and there are rules around how that programme works. In the case of Galileo, the rules were agreed while the UK was there around the table.

As a non-member state you can participate, subject to there being an agreement. That agreement can also govern your access to the encoded, encrypted signal, which there has been a lot of coverage on. In fact, it could cover some aspects of industrial co-operation on some elements of future satellites, but it would have to be agreed. The decision will not just be a decision of the Commission; it will be a decision of the EU 27 on the terms of agreement governing any future relationship with a non-member state.

Baroness Pinnock: That is what seemed to have happened yesterday: the EU 27 seemed to be saying that they do not necessarily want UK involvement. Would that be final?

Sir Julian King: I have not seen all the terms of yesterday's decision. As I understood it, it was about the timing of the letting of some contracts. There is a possibility for participation of non-member states in programmes such as Galileo, subject to an agreement—and we have not got that agreement.

Q114 **Lord Watts:** Sir Julian, you have touched on this subject, but can you just pad it out, if you do not mind? We are interested in what the existing models are, either in the euro or elsewhere, for future UK-EU security relationships; and what are the benefits and drawbacks of those models for the EU and the UK?

Sir Julian King: You have had a lot of excellent expert evidence from different perspectives and practitioners across different parts of the field that we are covering here.

There is a range of models for co-operation between EU and non-EU member states. There is the possibility of an EEA type of relationship, which is very, very close but which comes with responsibilities and constraints. There is a range of possibilities going through options for acceding countries, candidate countries, countries with association arrangements who are in the neighbourhood and third countries. Among the third countries there is a range of existing precedents conditioned by agreements. Some of the agreements are just about so-called strategic co-operation, which means that you limit the amount of data that you are sharing. Some of those arrangements are deeper operational arrangements in which you have an understanding about exchanging personal data, which comes with safeguards.

It is also conditioned by the engagement of the third country. Rob Wainwright spoke to you about the engagement of the United States, the amount it brought to the table and how that affected the quality of co-operation in Europol. It is worth bearing that in mind. Yes, you need formal arrangements, but there is also the question of the level and quality of engagement, which with the United States, as we can see—I am happy to put it on the record here—is deep and comprehensive across the full range of issues that we are discussing.

Lord Watts: To help me a little more, from your perspective what would be the best model that Britain could adopt once it leaves Europe, and what would be the pitfalls and benefits of it?

Sir Julian King: I am not trying to duck your question, but that depends on the position that HMG choose to take. It is not for me to advise on that, because I do not work for HMG.

Lord Watts: I was trying to find out which, from your professional point of view, would be the most effective arrangements.

Sir Julian King: You can try as hard as you might, but you are taking me out of my current role.

Q115 **Baroness Massey of Darwen:** Good morning, Sir Julian. Thank you for coming. Let me have a go then. I want to talk about contingency planning. Given your previous remarks, I realise that you may not be comfortable with this, for which I apologise. What fallback options would be available to the EU, and indeed to the UK, should the EU and UK fail to reach an agreement on security? What contingency planning is the EU doing?

Sir Julian King: As has been stated publicly, the EU, on the basis of some recommendations from the Commission, is doing some contingency planning, because that is due diligence. It is not commenting on the detail of that.

I sincerely hope that, whatever else happens in the Brexit process, we are not in a situation where there is no agreement on the security issues that we are discussing today. But if that were to be the case, as I said in answer to one of the very first questions, this is not distributive. If there

is an agreement, we all stand to gain. If there is no agreement, we all stand to lose, because we will be less well-equipped to co-operate effectively against these shared threats.

How we deal with that situation will vary across the different areas of activity. I am not revealing any secrets there about contingency thinking; it is just the logic of the nature of the activity. If it is intergovernmental and bilateral, that is one thing. If it is to do with existing legal instruments, agencies, programmes and structures, at the moment co-operation in those cases is through different forms of agreement.

The Chairman: May I follow up on one point? If we reach a situation—let us hope we do not; I think we agree with you on that—in which we walk away and there is a breakdown in negotiations, would there be a real breakdown in security co-operation at that stage, or would the contingency planning done on both sides ensure that the security co-operation, which is anti-terrorism and so on and is crucial for both of us, continued?

Sir Julian King: Like you, I do not think that we should project ourselves into that scenario too easily. Andrew Parker said the other day at a conference—I was with him in Germany—that, whatever happens, co-operation that takes place outside the EU framework, including vital intelligence co-operation, will continue.

But, as I have said already, he also noted that such co-operation is within a wider framework. I am encouraged that both HMG and Monsieur Barnier and others on behalf of the EU 27 have underlined that, on security, co-operation should be unconditional. That points towards a recognition of the deep, shared self-interest in trying to find a way of continuing the closest possible co-operation in this area.

Q116 **Baroness Janke:** My question is to do with the transition period. You mentioned that quite a lot of progress had been made through the various agencies such as Europol and the progress you are making on the information systems—the SIS and so on. Do you see the UK having any part in the governance of those organisations during the transition period?

Sir Julian King: As I said, the *acquis* continues to apply, so the structures continue to apply, but if there is a withdrawal agreement as currently proposed and drafted, the UK would not be involved in decision-making. That would also apply to structures, programmes, agencies, management boards et cetera.

Baroness Janke: Some witnesses we have spoken to have talked about the difference between the formal structural relationships and the informal structural relationships, which are based on history and strong relationships built up over a period. Do you see that continuing in the informal influence?

Sir Julian King: You had quite a long exchange with Rob about this. Yes, as I said, we have a series of deep exchanges with the United States

because of shared interests, shared history and the US's engagement—what it brings—in co-operation in this area. That is not the same as having a formal role in decision-making or the management structures of the agencies. As I say, it is fairly clear in the withdrawal agreement as currently drafted that that would cease.

Lord Watts: Sir Julian, you have talked about the interim period between now and when we leave. You talked earlier about the progress that had been made in a whole batch of fields, where people are working effectively together to improve security, for example on air travel. During those two years, we will not be part of the decision-making process, but what happens if decisions are taken by the other 27 that have implications for the UK? How will the UK be able to follow or stay in that security relationship unless it adopts the same position as the 27?

Sir Julian King: If it is a position encapsulated in some form of legislation or formal decision, as drafted, the withdrawal agreement foresees the UK following the *acquis* during that period. If it is being discussed and developed less formally in one of the networks of expert exchange and capability building, of which there are many that do excellent work, there are existing exchanges today between the EU member states in those frameworks and third-country partners.

They find ways of co-operating. On aviation security, for example, there are regular exchanges between EU aviation security experts and the US, where they compare notes and look at shared threats and what they are going to do about them. The US is not bound by any decision taken about them, nor is the EU bound by any decision that the US takes in that area, but they work together very closely.

Lord Watts: What happens if the 27 decide that they are going to build a security system based on ID cards, for example? Is it your suggestion that the Government, as part of the Union, would have to accept that, even though they would not have a veto at the table of negotiation?

Sir Julian King: Just on that example, because it is important to try to be clear about this, there is no European identity card. Some member states have identity cards. Indeed, the Commission has just made some proposals for strengthening the biometric security of identity cards for member states that have them, but it is entirely a member-state decision whether you have them or not. So the example is purely hypothetical, because there will be no decision of the 27 to have a system based on identity cards.

However, there are decisions in the pipeline, and I sincerely hope that they will be taken this year—some of them might take a little longer—to build, reinforce and modernise some of the EU-wide law enforcement databases. If those are part of the *acquis*, under the withdrawal agreement they apply to the UK.

Lord Kirkhope of Harrogate: You have not mentioned much about the European Parliament, in all fairness to my former colleagues who are

continuing there certainly until next year, and the sort of relationships within the institutions, your accountability as commissioner, your work with the Parliament and the decision-making process. Many decisions will be taken between now and next March. A good example is the internal security fund, which is looking at a date of 2021 before it starts its new phase.

In your position as commissioner, you too will make many decisions between now and next March that will affect the whole of the EU for many years to come after we are no longer involved. Is this a problem? Do you find it a bit of a dilemma in the relationship with the Parliament and its decision-making process in the meantime?

Sir Julian King: You are absolutely right. I had mentioned it. I speak under the control of real experts when it comes to the European Parliament, and I have a very clear memory, I assure you, of my hearing in front of the very distinguished LIBE committee, to which I feel keenly accountable on these issues. Of course, that committee is chaired by Claude Moraes—

Lord Kirkhope of Harrogate: Indeed.

Sir Julian King: —a very distinguished British MEP. Things do not stand still, and in this area it is very important that they do not because the threat picture continues to evolve. It evolves and changes all the time. It is evolving and changing particularly fast on cyber, terrorism and serious and organised crime, and as the threat picture changes we, collectively, need to be able to adapt and change our response. So it would be highly counterproductive to try to freeze work in this area, and there is no suggestion that that will happen.

We in the Commission have tabled a series of proposals over recent months and will table further proposals in the months to come. Some of those are in the form of proposed legislation or regulation. If it is legislation, as you know well it will be done in co-decision with the Council and the European Parliament. The European Parliament will work on these issues until as late as it can early next year. There are very important decisions about databases that we want to take in this Parliament.

I do my job, answerable to the European Parliament, and the European Parliament does its job, including the British Members, in reaching a decision on those pieces of legislation, which are building blocks for the future. That is how it works, as you know very well.

The Chairman: Thank you very much for that, and thank you very much indeed for giving evidence to us. It has been extremely helpful, and we hope very much to have you back before you are sacked. We are most grateful to you.