



HOUSE OF COMMONS

Home Affairs Committee

Oral evidence: [EU policing and security co-operation](#), HC 1356

Tuesday 3 July 2018

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Members present: Yvette Cooper (Chair); Tim Loughton; Stuart C. McDonald; Alex Norris.

Questions 1–99

Witnesses

I: Sir Rob Wainwright, former Director of Europol and Senior Cyber Partner at Deloitte.

II: Claude Moraes MEP, Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and Member of the European Parliament's Brexit Steering Group; and Camino Mortera-Martinez, Research Fellow and Brussels Representative, Centre for European Reform.



Examination of witness

Sir Rob Wainwright

Q1 **Chair:** Welcome to the Home Affairs Select Committee's evidence session on Brexit, policing and security co-operation. Welcome, Sir Rob Wainwright. We should congratulate you on your knighthood since we last saw you and also give you our thanks for all of the work that you have done over very many years at Europol and the service that you have given to keep our country and other European countries safe.

Can I begin, Sir Robert, by just asking you what your reflections are and what your assessment is of the prospects for policing and security co-operation post-Brexit, given the state of the negotiations and the debate?

Sir Rob Wainwright: Thank you, Chair, and thank you, dear members, for welcoming me. Thank you for the kind words about my knighthood. I am still getting used to seeing my name in this way before me, but I suppose it is one of the nicer problems to have in life.

Let me explain that I left Europol two months ago, after a nine-year period. It is important that I say that, because today I speak on behalf of my experience, not just working at Europol for much of the last decade, but across the UK intelligence and policing community over almost three decades, so I am not here of course representing Europol today. I am now a partner with Deloitte and I am very aware and conscious of Deloitte's constructive position towards supporting Government and industries in Britain and across Europe in this area, but I speak largely of course based on my experiences. It is important I say that.

My outlook on the prospects of a deal is that I am still quite positive about it, primarily because I see a common appetite, certainly among the practitioner community—supported, I think, by political will on all sides—of the importance to get this right. If there is one thing I learned from my time at Europol, it was that the nature and gravity of the security threats that we face in Europe today are becoming more complex, more dangerous and they are defined by their transnational nature. The way in which we have suffered these terrible terrorist atrocities across Europe, large-scale cyber-security incidents such as WannaCry, which hit the NHS last year, they are conditioned by globalisation, the ability of criminals and terrorists to abuse modern technology and to move themselves and their illicit commodities across borders in a very enterprising way.

Even so-called everyday crimes like house burglaries and car thefts are being carried out now by criminals who are travelling freely across borders in Europe. Serious crime today and terrorism today is without doubt a transnational problem and requires that kind of response, of course. That is precisely why the UK, as much as any other member state of the European Union, has invested so much effort over the last three decades in constructing the closest possible, most cohesive and effective cross-border police co-operation arrangements in Europe. It is therefore



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axiomatic to say that in the face of these threats that are continuing to grow and evolve in that way that any dislocation in that effort, any break-up of that would lead of course to a decrease in the overall effectiveness of all of us to keep all of our citizens safe here in the UK, but across Europe as well. I think therefore that is a well-understood point.

My observation of the political reading is that on security, perhaps more on trade, there is an understanding that we have to get this right, that literally people's lives depend on it. That is what I hear from the speeches and public comments from the British Prime Minister and the President of the European Commission, among others. That said—and this is my last point before I invite further questions—this is a complex business and of course you will have noticed that Brexit is not an easy path to follow. In this space there is a very complicated set of political, legal and even operational issues to overcome.

Navigating those is not proving to be easy. I never expected it to be easy and we still have further difficulties to get through, but at least we start, I think, from the perspective of wanting to get the right security deal in place. I cannot imagine that there will be no security deal at the end of this process. Frankly, that is unthinkable. I still expect that the community will achieve something that will be of constructive help to the British law enforcement authorities and its very close partners across the channel.

Q2 Chair: Given the statements that both the UK Government and the EU Commission have made, at the moment it looks like they are quite a long way apart. Do you think that is a fair assessment or do you think that they are closer than it would appear?

Sir Rob Wainwright: I think the sentiment is probably closer than it would appear; at least it is how you might read it in the press. But it is true that some of the public positions indicate a divergence of views. I do not think we should be so surprised: again, a complex process, the fact that we have so many moving parts and sets of interests, not just between the European Commission and the British Government, but of course among the other 27 member states as well. It is a position in which, quite naturally on both sides, the policies and the interests evolve across this very complicated terrain. I think the position of the EU27 may still evolve further, of course.

The position set out by the European Commission and the EU27 to a certain extent is understandable. The EU is built on a framework of shared rules, shared procedures, shared values and it is quite natural to have the inclination in the European Commission to want to enforce those rules and shared values on a consistent basis. I think it is quite a reasonable position for it to take. That said, we are in unique circumstances here, not least because we have not had an EU member state leave before, but also because in this space of security, the UK, in terms of the contribution it has and continues to make to European security, is of a different order to any other non-EU member state.



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To give the specific example of Europol and the UK's engagement with that agency, five times as much intelligence is shared through the Europol channel as any other non-EU member state that has a co-operation agreement with Europol, five times as much as the United States, more than that with Norway, Switzerland and many others. The impact of the UK leaving is considerable if it is not managed because of the contribution that the UK makes to the broader European security.

Q3 Chair: When you talked about the work that is underway, is that at operational level between police forces, between agencies, or is that about the policing voices being heard, either in the Commission or in the UK Government?

Sir Rob Wainwright: I think it is all of that. Certainly what I saw during my time in the last two years was a pretty consistent view among senior practitioners in the UK and right across Europe that this was important and that there is still, notwithstanding the vote of the UK to leave the EU, a very high level of respect for the UK's law enforcement intelligence community and a very high level of recognition that it continues to make a very important contribution.

As security practitioners every day at Europol, prosecuting tens of thousands of cases a year, every last one of them a demonstrable indication of the cross-border trend in crime and terrorism, it is self-evident that keeping that community as closely connected as possible is in the interests of all of us. We see evidence of that every day, so it is not even a consideration, by the practitioners at least, that we would not want that to continue. The operational and practitioner expectation and demand, if you like, on all sides is pretty clear and uniform, I would say.

Q4 Chair: But are you confident that the politicians or those involved in the negotiations are hearing those operational and practitioner voices?

Sir Rob Wainwright: Yes, I think so. Certainly here in the UK, I have no doubt about that.

Q5 Chair: And at EU level?

Sir Rob Wainwright: Yes as well, I think. Of course I cannot speak on behalf of all of the EU27. Certainly the European Commission and those that are close to leading the negotiations are closely listening to the views of Europol, I have no doubt about that. Here also the Home Office, among others, including the Prime Minister, are making sure that they understand how important this is.

Q6 Stuart C. McDonald: You have spoken already a little bit about the UK contribution and involvement in Europol in particular. Is it beyond the bounds of possibility to negotiate a future relationship that is pretty much on the same terms as currently exist or do you think that is asking too much or expecting too much?



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Sir Rob Wainwright: The context of that is clearly political in nature and I must be clear that I should not really comment on that.

Chair: I think you might be allowed to now.

Tim Loughton: Yes, you are now. You are free.

Sir Rob Wainwright: Yes. I do not want to be that person that sort of comes out of Government and immediately starts shouting the odds. I am not sure that is professional or constructive either.

Stuart C. McDonald: Your professional opinion on whether or not such a relationship is possible.

Sir Rob Wainwright: I have a clear professional opinion that it is in the collective security interests of Europe as a whole and our citizens that we maintain the best possible co-operation. Having maximum co-operation is in our interests. To what extent it is feasible to achieve that depends on the political will among the EU27 as well as here in London to navigate these complexities. What I mean by that is that there is no legal precedent for a non-EU member state to have access to the European Arrest Warrant; there is no legal precedent or indeed current legal framework at Europol for non-EU member states to have direct access to Europol's database. These are more than just political issues, they require some kind of change to legal framework and indeed the whole precedent until now. That is entirely possible, but only subject to political will being established. That is something that I do not have a direct view on.

Q7 **Stuart C. McDonald:** If I take a slightly different benchmark then, which is the relationship that Denmark has with Europol, how does that differentiate itself from the relationship we have? What are the differences in those relationships and would something along the lines of what Denmark has be in the ballpark. What would be the problem with that?

Sir Rob Wainwright: They are more different than most people realise. The scale of the UK's contribution and engagement with Europol is of a different order to that of Denmark, not surprisingly, given the relative size of the law enforcement community and the countries. There is seven times as much information exchanged by the UK through Europol compared to Denmark, 10 times as many cross-border cases every year, give or take. On the other side, Denmark remains an EU member state; the UK will not be that. Denmark is a very special case of the 20 or so co-operation agreements that Europol has negotiated over the last five to 10 years. Denmark's position is on its own, as something fitting a very specific need and case at the time. Some of the modalities of those arrangements, could they be applied in albeit a different legal and political framework? I guess so, and my assumption is that both sides will be looking at that, but let's not assume that it can be a cut and paste exercise.



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Q8 **Stuart C. McDonald:** Are there any of the other 20 or so co-operation agreements that you would particularly flag up as being something that we should look at? Is it just because of the circumstances and the contribution that the UK makes to Europol that this is going to be a very unique and specific agreement that the UK will reach?

Sir Rob Wainwright: Denmark aside, there is more or less a template agreement that has been established for the other 20 or so, with some variations each time, but on a minor scale. It is a fairly standardised way of how Europol co-operated with so-called third countries. That said, that legal framework on which all these agreements were concluded has now changed since Europol's legal framework changed last May and there are some slightly new innovations and modalities to the new framework. That has not yet been implemented and tested in practice, because we have not yet had the first case of that, I think, so we are in a new environment anyway.

If you were to look at others, I think the case of the United States is quite interesting, how the US law enforcement authorities have made that legal framework work to their advantage. It took some doing to convince them of the value of Europol. The first five years I was in charge, I was getting strong feedback, then suddenly the penny dropped and they saw the value of seeing Europol as this great centre point of a very large interconnected community of over 1,000 agencies in Europe. In the last three years they have very much invested a lot more and they have made it work very well in terms of information exchange and even being involved—if not de facto leading—very major international operations.

Q9 **Stuart C. McDonald:** If we do not succeed in securing something along the lines of where we are now or close to it and say we fall back to the template type of deal or to Denmark, what are the specific operational issues that the UK would then have to address and overcome?

Sir Rob Wainwright: There are some strategic issues. You did not ask that question, but there will be a loss of strategic influence. On the operational side, most evidently the UK will lose its direct access to Europol's information systems and so there will be maybe a time lag, a loss of direct currency, I suppose the loss of the ability that the UK currently has across 50 or so different points in the UK of having a distributed direct access to the UK systems. All of it would have to be funnelled through a central point in London and then on to a Europol platform, which is a body of Europol analysts at Europol. That obviously introduces a level of more complexity and inefficiency compared to what the UK has now.

Q10 **Stuart C. McDonald:** When Guy Verhofstadt was here recently, I think he said specifically that he was not an expert in this field and we needed to speak to other people about it, but he did try to suggest that it should not really make much difference in terms of time lags and so on. Is that the case? How significant would these time lags be? How would it affect



enquiries and operations?

Sir Rob Wainwright: In very practical terms, what it means is that for the US or Norway or for Colombia, they rely on the fact that due to their need to quickly interrogate the central databases of Europol, they must approach a centralised processing unit at Europol, staffed with Europol officials. They have a highly demanding workload, because our information exchange levels have increased by almost 10 times over the last decade. Rather than directly interrogating the database, to go through another unit clearly adds some time lag to the process.

We have made it work—I am still speaking in the “we”—Europol has made it work by investing in smart technology and in some more resources. My concern for Europol is that the case of the United Kingdom, we are not just adding another Colombia or Norway, we are adding this enormous information exchange partner that could overwhelm the current system and resources that Europol has to cope with that. It is quite a challenge, an operational and technical challenge, for Europol, let alone the United Kingdom.

Q11 **Stuart C. McDonald:** Europol presumably—you would hope—would have to have lots of extra resources in that processing unit just to cope with the information that the UK would be requesting from them.

Sir Rob Wainwright: Yes. The mechanism that was identified for Denmark was that a team of four or five Danish-speaking seconded experts would be attached to that Europol processing unit to do all of Denmark’s work, more or less.

Q12 **Stuart C. McDonald:** Even putting aside the question then of the system being overwhelmed, if Denmark asked for a bit of information now, how much longer does it take for that to go back to Denmark compared to the UK? Are we talking hours? Are we talking days?

Sir Rob Wainwright: No, we are not talking days, maybe not even hours. It is a fairly slick system, providing Europol can deal with the workload involved. That is the concern that I would have. As always, with institutions like Europol or national agencies like the National Crime Agency here, where they have a mandate to be the host of a centralised database, the real risk that those agencies have is that they miss something in the daily processing, something that later proves to be extremely important to stopping a serious crime.

Where you have these increasing levels of information exchange, that is the real risk, that you have to continue to ensure that you have built in a level of resilience to your management of those information systems and when you upscale the level of interrogation on that database by so much, as would be the case with the UK, then it would require quite a considerable re-engineering, I would have thought, in advance on the side of Europol.

Q13 **Stuart C. McDonald:** Moving back then to strategic issues, you



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mentioned in passing that the US almost was a de facto leader in some projects and so on. Would you anticipate the UK possibly having a similar role after Brexit?

Sir Rob Wainwright: In formal terms not. That is why I used deliberately the word “de facto”, but yes, the voice and influence of say the FBI on some of the major cyber operations that we ran is such that it plays a very leading role. I would expect the same—or the opportunity, at least—from the UK at practitioner level because of the UK’s high standing, which is not going to change and has not changed until now. What is really interesting though is the prospect of course of the UK and the US together being very close partners inside the Europol house, indeed alongside the other members of the Five Eyes community as well.

Q14 **Stuart C. McDonald:** Would it be a disadvantage to other member states that the UK would no longer be in a formal leadership role and its influence was now de facto or do you think it would not make that much of a difference?

Sir Rob Wainwright: Yes, I think the loss of British leadership, which seems likely in whatever final form we have at Europol, is not good for either side. I think Europol and indeed the whole system and community of EU police co-operation has benefited from the UK being one of the top three, which had the greatest influence on building it. If you take that away, then obviously you are losing some of your strength in leadership, some of your strength in diversity of different ideas and backgrounds.

Q15 **Stuart C. McDonald:** Finally, in the withdrawal agreement, there seems to be a little bit of uncertainty about precisely what the UK’s status at Europol will be during the transition agreement. Is that causing any practical implications just now, as far as you are aware, and uncertainty about what happens?

Sir Rob Wainwright: As of when I left office just over two months ago, no, with the expectation that under the transition period it would be a sort of standstill arrangement, according to now, but then my opinion might be out of date.

Q16 **Stuart C. McDonald:** Including the UK being on the board of Europol?

Sir Rob Wainwright: In operational terms, I understand possibly yes, but maybe not in some of the governance dimensions relating to membership of the management board, for example. But my views might not be current.

Q17 **Chair:** But in operational terms, it is possible then to still maintain some leadership role in operational terms?

Sir Rob Wainwright: It is not possible, I think, subject to whatever agreement is found here, but if we were to look at the template of the other 20 agreements that Europol concluded, none of them have a formal opportunity to lead any of the projects at Europol. That would apply to the UK if that template was applied.



Q18 **Chair:** If the UK ended up effectively with exactly the same model as the US, how much of a dilution of security co-operation would that be in practice and what in practice would that mean?

Sir Rob Wainwright: As I said, Chair, I think the biggest practical impact is having direct access to the databases. Losing the leadership of certain projects: currently the UK leads common EU projects at Europol in the field of combating cocaine trafficking, major fraud, modern slavery and one or two other areas, so losing strategic influence to direct those projects, but in turn of course it might have an adverse operational effect in terms of prioritisation of which cases to follow, which aspects of modern slavery that the common effort should be focused on, for example. That is not to be underestimated in what kind of impact that that might have.

Q19 **Chair:** What does that mean? If we have a particular concern, the Met has a concern about a particular kind of drug smuggling going on or a particular model of modern slavery trafficking, we would not be able to go to Europol and say, "We want to set up a project" and take a lead on it? Is that the kind of thing you mean or—

Sir Rob Wainwright: You can still go with those ideas. I think you would have your hands on fewer levers to then realise that preference, that priority. That said, I think the reputation of the UK at a practitioner level will carry a long way through that still. It is difficult to judge exactly what impact it would have. My sense is not a huge impact, but one that is likely to lead to some kind of change, I think.

Q20 **Alex Norris:** Good afternoon, Sir Rob. Just to pick up something you said at the outset around the future relationship, the phrase you used was you couldn't imagine and that it was unthinkable around not getting to a place that was sensible and bore some sort of resemblance to where we are today. Do you think that is because that is the trajectory we are currently on or is it because the consequences of not getting to that position are unthinkable?

Sir Rob Wainwright: It is more the latter and it is more my hope, I guess, that we reach that, but also based on what I have heard from some of the political statements on all sides, and especially the view among the senior practitioner community.

Q21 **Alex Norris:** A couple of weeks ago Michel Barnier said that the UK would not have access to EU-only or Schengen-only databases after Brexit. What will this mean for us?

Sir Rob Wainwright: It means that at the moment, one can answer that question by looking through the lens of what the UK currently receives, the value it receives from having access to those databases. I mentioned one, the Europol Information System, but providing there is some kind of agreement at least to the level of a US-type model, then it will have indirect access, where providing the construct is constructive, can provide the UK with more or less the same capability. For the rest, then if it does



no longer have any access at all to the Schengen Information System, then that I think has a detrimental effect to the ability of the UK certainly to continue to maintain an effective border security operation, for example.

The same one could say for certain information systems like the Prüm Treaty in terms of the way that that has increased the efficiency by which member states can exchange data relating to the NA databases and others, for example. In each area of the top five or 10 databases that form the most important part of the police co-operation framework at the moment, then the UK, like other member state, obviously derives specific and sometimes rather important operational value from all of them.

Q22 Alex Norris: What would that mean for the other EU27? Presumably the same reciprocal detriment.

Sir Rob Wainwright: Yes, of course. In the case of the Schengen Information System, the ability of all member states to very quickly—through an EU-wide system, a mega-information system in the police domain—circulate information and so-called alerts about suspects, criminal or terrorist, for example, obviously has a direct operational benefit to all member states. The analogy might be that a serious criminal, maybe a sex offender from one member state, would be registered on the Schengen Information System in case, unknown to those authorities in Germany or France, he were to travel around Europe, then were he to arrive at Dover Docks, then the fact that he is on the Schengen Information System would allow our border officials here to identify him as that suspected offender. If those officials do not have access to that common database on which the other authorities have placed his name, then it is pretty obvious what possible detrimental effect that might have on the ability of that border official to make the right decision about letting him in the country.

Q23 Alex Norris: Do you know if either the UK Government or the EU27 are working up contingencies for that scenario?

Sir Rob Wainwright: I do not have a detailed view of that, but I understand that there are indeed contingency plans across the range of different possible outcomes that are being worked on among the EU28, including the UK.

Q24 Alex Norris: With regard to access to databases, Guy Verhofstadt told this Committee that the databases would be replaced by reciprocal exchange of information, but that the European Parliament wants a system that is as smooth as it is today. Does that sound practical?

Sir Rob Wainwright: I am not sure what Mr Verhofstadt meant by “reciprocal arrangements”. It depends on what is envisaged by that. The whole point of having systems work in the way that they do today is that it is a common platform in which it operates. That comment implies it would be some kind of bilateral arrangement or a series of bilateral arrangements, whereas the strength of the system is that it works in a



multilateral way and all points of the compass—all points of the law enforcement network in Europe—are connected to a platform. It is difficult to recreate that in a series of bilateral forms, which would lose the level of efficiency and operational integrity. However, I am not sure—to be fair to Mr Verhofstadt—exactly what he meant.

Q25 Alex Norris: If we park the reciprocal exchange to one side and focus on a system that is as smooth as it is today, without being in that same multilateral system, is there a bilateral process that could have that same functionality to be as smooth as we currently have?

Sir Rob Wainwright: No, I do not think so, otherwise perhaps we would have chosen that as the preferred model of doing police co-operation in Europe in the first place. Indeed, the consistent trend from member states in the use of common platforms, such as those at Europol, over the last 10 years has been to gradually rely much less on these bilateral instruments and invest much more in these common instruments. Again, that is the nature of the threat we are facing, demanding an ever more coherent joined-up response. The name of the game certainly has been around common platforms working on a multilateral basis.

Q26 Alex Norris: Finally, with regards to SIS II: Norway, Iceland, Switzerland and Lichtenstein have access without accepting the jurisdiction of the ECJ that, as you know, is a hot-button issue. If the UK met the same data protection standards, could it have similar access?

Sir Rob Wainwright: They are all, of course, Schengen states and the UK would not be so, again a different category and therefore not a perfect model for what the UK would be. The question of whether or not you can lift those arrangements and apply it in the UK again depends on the political will to do it. It is possible, I suppose.

Q27 Alex Norris: It is technically possible, but requires political will?

Sir Rob Wainwright: Technically possible, I guess so. However, it requires, of course, political agreement to do so.

Q28 Chair: Both Guy Verhofstadt and Michel Barnier were very insistent about us not having direct access to the databases. In the circumstances of the case study you referred to of somebody arriving at Dover, if you do not have direct access to the databases, is there any way in which that border official is going to know this is somebody who may need to be stopped?

Sir Rob Wainwright: If the suspect was travelling from Germany, for example, it would require the German authorities to alert the UK authorities of the fact this offender might travel to this country. There are of course many channels of communication open to the police authorities in that case, including bilateral ones, such as the use of Interpol, for example, and others. However, on a systematic basis—with the volume of cross-border movements of so many offenders across so many criminal areas in Europe—the only way we have been able to do it on an efficient



and consistent basis is to create a common platform like the Schengen Information System. In that case the German authorities only have to log into one system one time and then all 28 see it, rather than 28 bilateral communications, which is obviously the strength of the system. Going back to that scenario, if the German authorities had specific information that offender was likely to travel to the UK and was of a certain serious criminal nature, then almost certainly they would bilaterally inform the UK.

The problem really is with the unknown unknowns. Maybe they do not even know he is going to travel outside Germany at all, let alone to which country, and yet he still unexpectedly pops up at Dover. There is therefore less resilience in the system, which is the point, to capture those unknown eventualities. That is something that would concern the UK authorities.

Q29 Chair: If we lost direct access to those databases, assuming we had not yet come up with some replacement that might fill that gap, what is the scale of the loss of information and the sense of scale of the impact on criminal operations?

Sir Rob Wainwright: I forget the numbers, but we are in the tens of millions of alerts that are circulating today in the Schengen Information System relating to suspects, stolen vehicles and other criminal commodities perhaps. The Schengen Information System is the largest security database in Europe. The Europol Information System, which is a more targeted database of the most serious criminal and terrorist offenders, in itself exchanged around 1 million messages in 2017 among the 28 member states, not relating to 1 million suspects, but 1 million messages. For the first time in Europol's lifetime, the agency surpassed the million mark for an annual poll. That is a lot of information that has been exchanged, and in that case, at the top end of serious crime as it affects citizens across the EU.

Q30 Chair: I am interested in what that means in tangible terms because data shifting around between places sounds very abstract. In practical terms, what does that loss of information sharing add up to?

Sir Rob Wainwright: In the scenario I gave earlier, the border official does not know the individual is a suspect in another country for a serious offence, which is a very important piece of information that he or she would like to know in order to make the right decision about whether or not to admit that person to the United Kingdom. In terms of the investigation of very serious crime offences, the UK authorities, like others, derive significant value from the ability to see the connected parts of their investigation in other parts of Europe. If the Metropolitan Police are working on an investigation of a cocaine-smuggling ring in London and in the Europol database—which is quite typical of how it works—intelligence indicates that same gang is connected to criminal activity in Toulouse or Berlin, it is very important to the investigator here in London



to know that. It opens up new avenues of investigation and allows him to prosecute his interest in that case to a much greater extent.

Q31 **Chair:** Does it make it harder to stop criminals?

Sir Rob Wainwright: Yes. Much of our business in fighting the most serious forms of crime and terrorism is very much dependent upon our ability to have the right intelligence. Our strategies in the United Kingdom and most other parts of Europe today are very much intelligence-led in their character. In the UK they are built on the proven success we have had in using that strategy to counter terrorism for many decades. It is now also the main benchmark for the way in which serious crime is investigated in the UK. It depends absolutely on the ability of agencies like the National Crime Agency and the Metropolitan Police to have access to the best intelligence available about criminal activity in the United Kingdom. That intelligence comes from a range of different sources and certainly not only those sources that are in the UK.

Q32 **Chair:** When I hear you say that and then reflect on what I hear the Commission say on what the gap appears to be between the UK Government and the Commission, I feel quite worried. You do not look worried. Maybe that is your operational demeanour, but should we be worried?

Sir Rob Wainwright: We should all be certain that this is important. We have to get the right deal here. Maybe I am less worried than you because when I left Europol I was assured by how the system was working towards this kind of deal. However, like you, I am no fortune-teller so I do not know what the outcome will be. Like you, and all of you, I understand this is a complex business and there are many different scenarios. We should be worried if we reach a point of no deal or effectively no deal on security because that will certainly have an adverse effect on our collective ability in Europe to fight crime and terrorism.

Q33 **Chair:** You say you may be less worried because you have seen the work towards getting a deal. At the moment, given again what Michel Barnier and Guy Verhofstadt have said, it looks like a deal that excludes direct access to the databases. Whether that is because of what the UK said about the Charter on Fundamental Rights, whether that is because of ECJ or whether that is because of the EU Commission digging in, putting aside the politics of who is saying what, at the moment it still looks like a deal without direct access. What can you say to reassure me that this deal could still end up with direct access to the databases?

Sir Rob Wainwright: In the case of Europol it is still possible, of course, and still perhaps likely even in the minds of the Commission that there is an expectation the UK will still have a co-operation agreement, albeit on a so-called US kind of mode with no direct access, but still indirect access. Providing, as I said, the construct of the resource engagement is right, then that more or less provides what the UK has today.



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In the other cases—the Schengen Information System, access to the European Arrest Warrant and others—the legal and other terrain is more challenging. It is difficult to see what they would be replaced by if we go from a position of current direct access to zero. That is challenging for the UK and also for the EU27.

Q34 Chair: On the Europol side, if both sides are prepared to put the resources in—obviously those are resources that could otherwise be used elsewhere and there is an opportunity cost—then you could deliver something similar. However, for the SIS and others we still have some pretty big questions. Fair summary?

Sir Rob Wainwright: Yes, I think that is a fair summary, Chair.

Q35 Tim Loughton: Sir Rob, in the example you just gave about a German coming over to the UK—a drug smuggler or whatever it might be—what is the possible interest of Germany not, regardless of Interpol, wanting to share any intelligence they have with us or vice versa, if it was a Britain citizen going to Hamburg in similar circumstances?

Sir Rob Wainwright: Of choosing not to share?

Tim Loughton: Not proactively wanting to share that information with somebody who was a near neighbour with a shared interest in combating crime, but who happened not to be part of the same organisation anymore that has facilitated it in the past.

Sir Rob Wainwright: In that scenario I cannot believe it would be in Germany's interest to do that, of course. We are dealing in the realms of unintended consequences of a change to the system. As I said, I think if Germany—or indeed any other member state—had specific intelligence that a serious offender was travelling to the UK then, Brexit or no Brexit, the UK authorities would still be alerted. The problem, as I said, is resilience in the system when you are dealing with thousands of offenders from multiple sources travelling on a pretty much consistent basis. The Germans also have few resources to manage all of this, so you have to rely on the fact that you have a very modern and very efficient globalised system to deal with this. Our lesson has been that constructing ad hoc piecemeal solutions to the way in which we prosecute crime and terrorism has been largely ineffective.

Q36 Tim Loughton: Taking it on a more strategic level—and you have been exceedingly and annoyingly diplomatic in avoiding what might be construed as political opinions—you have been at Europol for a long time. You have been absolutely responsible for building it into a hugely respected and very successful organisation. You know how it works and what makes it work. Stripping away the political considerations of what changes may happen as a result of Brexit in the future, what possible upside is there for any remaining member of Europol not to want to achieve as identical as possible set-up as there is now, facilitated by the fact we happen to be within the EU and therefore, unless we opt out, can be a member of Europol? What is the upside in not wanting to continue



that?

Sir Rob Wainwright: There is no operational interest for any member of Europol to have the UK less well engaged with Europol than it is today. There is no operational interest.

Q37 **Tim Loughton:** Good. Mr Verhofstadt, in front of this Committee a week ago, said, "We want the relationship to be as seamless and as identical as it is now" but when challenged as to what that actually looks like had to fudge because clearly he does not understand how Europol and intelligence exchange absolutely works. It is purely political considerations that are obstructing an agreement that would allow the UK to continue to have as close a relationship on the exchange of information and co-operation among Europol nations as it does now, isn't that right?

Sir Rob Wainwright: There are—

Tim Loughton: It is not a political answer to say, "Yes, it is right".

Sir Rob Wainwright: Clearly politics play a very important role in that, but do not forget there are also very important legal considerations. It is not the legal norm for a non-EU member state to have that kind of access.

Q38 **Tim Loughton:** So what?

Sir Rob Wainwright: Quite, a novel solution has to be found. That is possible, of course, with the right kind of political will. The point is there is genuine complexity here in operational, legal and political terms, as there are right across trade and other parts of Brexit. There is genuine complexity that is difficult to navigate, particularly when you are dealing with a set of interests across 28 moving parts. It is not as simple as someone saying, "Yes, we can" or, "No, we cannot do it".

Q39 **Tim Loughton:** That is a cop-out, isn't it? You have used the phrase that you are not a fortune-teller in terms of what is going to happen. You have used the phrase repeatedly that it is a complex business. You have said there is no legal precedent for a country outside of the EU having access to the databases or the European Arrest Warrant. That is the whole point, this is unprecedented. Why does that mean we cannot create something new, for which there is no precedent, which just happens to be close to the existing structures, other than political sensitivities? What are the operational sensitivities that would mitigate against that being achieved?

Sir Rob Wainwright: I understand your question and I agree with you, there is no operational interest not to do that. The driver behind it is political. I happen to agree with the position set out by the British Government that a comprehensive security deal is what we should have. What I am observing and recognising is simply that it is not just of course the UK's view. Although I do use the word "complexity" rather a lot, it is a reflection of how the terrain looks today. However, in operational terms, the framework that has been set out by the British Government is



closer to what is in the operational interests, I think, of EU28 than something that is much less than that.

Q40 **Tim Loughton:** If you were still running Europol and if the politicians agreed that post-Brexit the UK position, but for all intents and purposes operationally it allowed us and the other 27 nations to carry on virtually unchanged from what went before—the only difference is we would not be a member of the EU, but would still be some form of member of Europol, associate or whatever you want to call it—what would stop that operationally?

Sir Rob Wainwright: Nothing.

Q41 **Tim Loughton:** Absolutely nothing, so it is entirely a political decision?

Sir Rob Wainwright: The political will would create the necessary legal framework for it to happen, as indeed we saw with the Denmark case. The Denmark model is, in itself, a novel solution and was made possible by political will. Therefore, yes, political will could create the legal condition by which the UK's continued engagement with Europol is possible.

Q42 **Tim Loughton:** Operationally we could carry on just the same as before, except the names on the door might have to be altered. Strategically it might be—although again, from what you are saying, it may not be compulsory—that we are not at the top table in terms of the board managing how it operates. However, in terms of its day-to-day operation and the exchange and co-operation we have, there is no reason why that should change?

Sir Rob Wainwright: No, that is clearly one of the plausible scenarios.

Tim Loughton: So it is a “yes”.

Sir Rob Wainwright: The UK cannot continue to be any form of member—associate, full or otherwise—of Europol unless there is a legal co-operation agreement signed. That is one thing. It cannot have access to Schengen information and the European Arrest Warrant—

Tim Loughton: Unless.

Sir Rob Wainwright: —unless and unless and unless. That legal framework can only be made through political will and a political-led framework of work—that includes data adequacy assessments, for example—that will be necessary to allow that legal framework to provide the operational co-operation that is required.

Q43 **Tim Loughton:** That is very helpful. Can I turn to the European Arrest Warrant, which is what I am supposed to be asking you about anyway? Do you believe Denmark is a less safe country because it is not a member of Europol?



Sir Rob Wainwright: It is difficult to judge. The form that Europol and Denmark have concluded for it to continue to co-operate delivers on Denmark's security arrangements, on balance.

Q44 **Tim Loughton:** In your time of running Europol, were you aware that Denmark, on the face of it, was more vulnerable? Was there statistical evidence to show that they appear to be more susceptible to extramural crime because they were not part of Europol?

Sir Rob Wainwright: No, but that is because a model was found for them to continue to be part of Europol, albeit in a different way.

Q45 **Tim Loughton:** That was as close to being a member of Europol as not?

Sir Rob Wainwright: Yes.

Q46 **Tim Loughton:** Achieving what the UK effectively needs to achieve if we are to carry on seamlessly?

Sir Rob Wainwright: In that unique circumstance, which only applies to Denmark.

Q47 **Tim Loughton:** What about the European Arrest Warrant? Michel Barnier has raised some concerns about the UK's relationship with the European Arrest Warrant. Obviously there are these hybrid models—which I think have taken at least 12 years to negotiate—with Iceland, Norway and Denmark as well in terms of respecting the national legal aspects of what is within the law or not. Where do you think the European Arrest Warrant could go with regard to the UK in the future?

Sir Rob Wainwright: We are in the same position, Mr Loughton, in terms that it depends on the political will. It seems to be a binary choice, either the UK continues to be a member and have access to the European Arrest Warrant system or it does not; unless there is a third way or some kind of novel solution in which it has indirect access and I am not sure what that would be. For the moment the UK, like other member states, relies on the European Arrest Warrant quite significantly as a means of quickly identifying and fast-tracking out of the UK some serious offenders and bringing British offenders back to justice in thousands of cases a year. Without that, I am not sure what other system is available. The Convention of Europe from four or five decades ago is something that is still on the statute book, I understand, but largely not used and certainly not by the EU27.

Q48 **Tim Loughton:** Michel Barnier has specifically linked the Arrest Warrant to free movement of people. Is he right?

Sir Rob Wainwright: I do not know what he means by that. I should not speculate; I am not sure what he meant by that.

Q49 **Tim Loughton:** We could still be part of the European Arrest Warrant if the legal agreements, which have to be done unilaterally outside of the EU, could be constructed. If we wanted to remain part of the European



Arrest Warrant in its current form, we could. What are the obstacles of not going to the European Court, for example?

Sir Rob Wainwright: No, we can do anything if the law allows it. I do not mean to give a flippant answer, but that is the point. At the moment it is not possible for a non-EU member state to have access to the EAW so we need to change the law. We are only going to change the law if it is decided it is in our collective security interest to do so and there is a political will to do so.

Q50 **Tim Loughton:** Could you see a time where, completely regardless of what the UK's position is, a non-European country became part of the European Arrest Warrant?

Sir Rob Wainwright: We have, as you mentioned, the case of the Schengen states—Switzerland, Norway and Iceland—that have been going through a process for over a decade of acceding to the European Arrest Warrant. I guess that will eventually happen. They of course are Schengen states and that may be what Mr Barnier was referring to because they are part of the freedom of movement area, the Schengen area. Outside of that, it depends so much on the conditions of that third country in terms of the adequacy arrangements, for example.

Q51 **Tim Loughton:** What adequacy, sorry?

Sir Rob Wainwright: The European Arrest Warrant is built on the principle of mutual recognition of each other's legal system and indeed the values that underpin that, including having a certain minimum level of data protection safeguards, for example.

Q52 **Tim Loughton:** If New Zealand said, "We would like to become part of the European Arrest Warrant system" would that work?

Sir Rob Wainwright: If the law allows it, yes.

Q53 **Tim Loughton:** From an operational point of view, what would—

Sir Rob Wainwright: From an operational point of view, the European Arrest Warrant functions in an efficient and fairly simple way, in the sense that you have a process that relies on national authorities checking validity according to the statute of the European Arrest Warrant as to whether or not it is acceptable. After that, the arrangement for surrendering—as it is known in the legislation—is a fairly straightforward operational task that could be extended to other countries. It is just that the current construct of that legal arrangement is very EU-based, of course, and based also around the idea of the jurisdiction of the court.

Q54 **Chair:** The Norway and Iceland model seems to have taken forever to negotiate and still does not seem to be in practice. Obviously if you went back to the Convention, that would also take a substantial amount of time to update, modernise and so on. If the UK was left in that position of needing to go down one of those two routes—and the European Arrest Warrant is currently only available to us during the two-year transition up



until 2020—what happens in 2020?

Sir Rob Wainwright: Then we are in the area of trying to recreate a different kind of scenario. I think it would be difficult to revive the Convention of Europe because other member states are no longer using it. They are using what they regard to be a much more efficient system instead, which is the European Arrest Warrant. The UK would then perhaps have to seek a series of bilateral legal agreements with the countries that it would expect to have the most need for extradition arrangements with.

Q55 **Chair:** That sounds complicated and like it is going to take a long time.

Sir Rob Wainwright: Yes, of course. As I said, there are no easy alternatives to the loss of access to the European Arrest Warrant, which is quite important to UK policing.

Q56 **Chair:** I am definitely worried now about the European Arrest Warrant. Are you worried about the European Arrest Warrant?

Sir Rob Wainwright: I am less of an expert because Europol is not attached to the framework by which the European Arrest Warrant operates, so I have less of an experience and professional view on that. However, I do understand how much importance detectives in the UK and Europe attach to having that instrument available to them. I have also seen how it has transformed the business of catching crooks around Europe and bringing them to justice in super-quick time in comparison. It has become a mainstay of how policing works cross-border in Europe. It is a mainstay instrument. If you take that away, then of course there will be an adverse impact on our overall security arrangements.

Q57 **Chair:** Are you aware of stressed police officers or others madly lobbying—whether it be member state Governments, the Commission or the UK Government—to contingency plan or to ask for an extension of the European Arrest Warrant or to be ready to make the argument for extending it? At the moment, in terms of what we are hearing, it feels like everybody is saying this is important. There seems to be a huge gap in terms of what is going to be delivered in two years' time. What we do not hear are voices from policing or from anywhere else standing up and saying, "We are really worried. Something must be done. Are you sorting it? Get it sorted out".

Sir Rob Wainwright: No, I think those voices are being expressed. David Armond, the departing Deputy Director General of the National Crime Agency, made that very point—if it was not to this Committee, then it was to a similar one—about the importance of the European Arrest Warrant and Europol. There have been others who have made that point and even more who are saying that within Whitehall and also in Brussels. I do not have a concern that the views of the practitioner community are not being expressed. I certainly was expressing it pretty openly.

Q58 **Chair:** Are they being heard and listened to?



Sir Rob Wainwright: That is a different question and is something that people like me cannot control, unless we can improve the way in which we communicate that message, of course.

Q59 **Chair:** Maybe you also need to be tempted to say it to us as well so we can say it to them.

Sir Rob Wainwright: Yes.

Q60 **Chair:** Maybe we need more police and expert practitioners to be saying things publicly so pressure can be put more widely on all of those involved in the negotiations.

Sir Rob Wainwright: Yes. As you know from your day job as well though, the policing community in every country is very much part of the establishment. In most countries national police chiefs are under direct ministerial command and are not in the habit of speaking out in sensitive political areas. It is not what they do and is not what they are expected to do. It is slightly different in the UK, where we have the famous independence of the Chief Constable, but in most countries it does not happen that way. We have our place and we are meant to stay in that place.

Q61 **Chair:** I understand that. However, that might be part of what is worrying me. Those voices may be being expressed within the system. However, we may reach a point where suddenly we hit a crisis and those voices were not sufficiently loudly heard, there were not enough people on the outside hearing those voices or were aware of how serious it was becoming and therefore not enough pressure. Everybody is rowing about customs and the Northern Irish border; we know a lot of attention is being put on those issues. However, we do not see that a lot of attention is being given to policing and security co-operation. Maybe there needs to be some outside voices, because maybe people on the outside need to know how serious it is.

Sir Rob Wainwright: Despite the fact that I have been annoyingly diplomatic today, I am very pleased you have given me the opportunity again to talk about this. Despite the language and the way in which I have conveyed it, I think I am pretty clear on how important it is and have consistently been. However, you are right, I very much have been a minority in my community, but I have a different position of course, with slightly more freedom to express it than I have done in the past. You are right, there perhaps is less attention on this than there should be.

Q62 **Chair:** Yes, and we might be running out of time.

Sir Rob Wainwright: Yes, possibly.

Q63 **Chair:** Finally, you said to have no deal feels unthinkable. We assume that is the case as well and have said so in our report. However, were it to reach that point—were there to be sufficient legal disputes on other aspects of co-operation, the withdrawal agreement and so on—where



there was no deal in place, what would that mean in terms of law enforcement?

Sir Rob Wainwright: I do not think it would fall off the cliff in the sense that will be one of the contingencies UK law enforcement and the Home Office, for example, will be thinking about right now. We would survive as a country, of course. However, without a doubt we suddenly lose access to instruments of very direct and practical operational value to the UK on an everyday basis. That would be quite serious for the ability of our national police authorities to keep us safe.

Chair: Sir Rob Wainwright, thank you so much for giving us your time.

Sir Rob Wainwright: Thank you.

Examination of witnesses

Claude Moraes and Camino Mortera-Martinez

Q64 **Chair:** We welcome our second panel and ask you to introduce yourselves.

Camino Mortera-Martinez: Thank you. I am Camino Mortera-Martinez. I am a research fellow and Brussels representative for the Centre for European Reform, a think-tank just across the corner here in London.

Claude Moraes: I am Claude Moraes. I am Chair of the European Parliament's Civil Liberties, Justice and Home Affairs Committee.

Q65 **Chair:** Thank you for giving evidence to us this afternoon. I will start with the opening question. What is your sense of the prospects for policing and security co-operation post-Brexit at the moment, given your understanding of the current state of negotiations?

Claude Moraes: I am glad I heard the last set of evidence. Maybe I can calibrate things a little higher to give you something to at least chew on and maybe to answer Mr Loughton's question a bit better. Time is an issue now. We have had the Barnier speech. We should not patronise anyone, this is a Commission position and comes from the Council guidelines. How much it changes we simply do not know, but there was rigidity there. I want to make it very clear, I am a London MEP. To me the idea there is no bespoke element or some kind of arrangement where you have a country in an area of proximity to where there are terrorist threats, where there is disproportionate crime—by the way, there is the fourth pillar as well, money laundering and all the rest of it, which has not been mentioned much—and all of that happening, that there is not a close and dynamic relationship with this massive country in proximity, with all of its assets, is unthinkable. In the end that will happen. It will



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happen probably bilaterally with an extra element and no doubt we can both explain what that might be. That is where we will probably end up.

Where we are now though is more interesting. You put your finger on it, Chair, because you said everything else is getting a lot of attention, but this is not getting enough. Where it is not getting attention is in the area where people will just assume this is about the issue of the UK being a third country and the differentiation argument, that we cannot benefit more as a third country than we would as an EU country on everything from the European Arrest Warrant databases and so on. People assume it is just that. However, because there has not been enough debate in this area—notwithstanding the excellent reports from and debates in this Committee—more widely, people underestimate the sheer weight of legal and other constitutional issues flying around the European Union.

If I may, Chair, in my introduction try to give a sense of how the European Parliament and people in the European Union see this. They do not just see it as an issue of differentiation. Mr Loughton gave the question of what would happen if New Zealand was in the European Arrest Warrant. First of all, it is unthinkable, as they would have to be in the ECJ, the Charter of Fundamental Rights and there is also the proximity issue. However, for an EU country like Slovenia or Germany to exist in the European Arrest Warrant with a third country, which is what we will be, will require constitutional changes to those countries. Slovenia would have to have a referendum. There are quite dramatic moments. You are not just talking about differentiation, you are talking about quite big legal and constitutional issues and this is all the way down the line. The biggest one is on the databases, which no doubt we will talk about later.

There should be far more concern about it. Some of it is solvable and some of it is not and you would have to go to bilateral arrangements. However, the bespoke element will come through if more attention is paid by both sides to what the realistic solutions could be. No one wants to be in a position where you have obvious alerts that have to be made. By the way, the Parliament is a co-decider on this legislation. We do not just look at it. We co-decide all the legislation in this area and we are involved in all the international agreements. That is another issue because many of those have been struck down, which again would involve the United Kingdom, if it was involved in these international agreements. That is another hazard we would face, again not widely known because people do not discuss this enough.

Where we are is that we need to get our act together on both sides. There is a little bit of rigidity there in what Michel Barnier said, but he is expressing the Council and Commission position. Now that we know it, we need to have some urgency in deciding what we do. What are we going to do about flexibility in the ECJ? The Charter is gone. What are we going to do about the other arguments on Schengen and bespoke agreements? The time for philosophical discussions is over and the time



for focusing on what the alternatives are, so we keep people safe and we deal with terrorist problems, has definitely come. We are in the summer. We have until 2020 to get it all finished, but that is the transition period, when we have to do a lot of hard work. Anyone who can see how long it takes on the alternatives on the European Arrest Warrant will understand why you need to start fairly quickly.

Camino Mortera-Martinez: A disclaimer: I am a pessimist by nature. However, paradoxically I am more optimistic than I used to be, which is because of Michel Barnier's speech in Vienna a couple of weeks ago. I was there and witnessed it first-hand; it was quite impressive. Barnier's speech was timed in order to wake up people about this issue. Let us imagine—perhaps this is very naive on my side—we will have some sort of British position that is realistic enough on trade to move on this part of the negotiation. Then we will have to deal with the difficult bits of the data dossier. That is not, as we were hearing before, just a question of political rigidity, but is a huge question of legal amendments, looking at how to tweak treaties and things that are not easily changeable.

As long as the British Government does not realise they need to take a very strong position on the ECJ and also on the question of data protection and the Charter of Fundamental Rights, we will not be able to move on from the Commission's rather harsh initial negotiating position. As I was saying, I am more optimistic because I think that thanks to Barnier being quite strong, and sometimes perhaps a little bit too much, it has sent a message—possibly one of the reasons why we are here today—that we need to start working on this and thinking about the British Government's red lines.

Q66 **Chair:** On the British Government's red lines, there was a slight pinking of the red line on the ECJ in the Prime Minister's speech, although there was still a lack of clarity about what that finally will mean. What do you see as being the significant changes to the UK Government's red lines that would be needed and why do they need to change?

Camino Mortera-Martinez: First of all, to me there are three main red lines that are problematic in this area. Let us go from the easiest to the more complicated. The Charter of Fundamental Rights—which I know is being discussed at the moment in Parliament and it looks like it is not going to be accepted, unfortunately—is going to make it quite complicated for the UK to earn this mutual trust on which the area of freedom, security and justice—the way EU jargon used to call this whole homeland first, police and security co-operation field—is based. Mutual trust is built not only on harmonising and approximating laws, as we say in Brussels, but also on having things like the European Charter of Fundamental Rights.

We heard the other day something very interesting. For example, when it comes to the Good Friday Agreement—I am not an expert on Ireland and I will not pretend to be—one of the presumptions was that we have similar standards of fundamental rights between the UK and Ireland. If



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the UK was going to leave the European Charter then the standards would be different. I am not saying the UK will not have very high fundamental standards, obviously we all know it will, but they will not be exactly the same. That is going to be the first problem and is one of the red lines that is going to complicate the negotiation.

Q67 **Chair:** To interrupt you for a second, is that a symbolic issue about trust building or are there specific legal aspects to the Charter that are significant?

Camino Mortera-Martinez: There are specific aspects. The obvious one is the right to privacy, which is Article 8. That is a question that perhaps we can address when it comes to the adequacy legislation because there are other pieces of legislation that the UK is implementing that do follow up what the Charter says.

For example, if we think about criminal proceedings, we all know that common law and civil law are different and we all know that they follow different principles. The European Union has put together a number of directives that we call the criminal proceeding package—for example, on the right to be presumed innocent, the right to have a lawyer, the right to translation and all these sorts of things—that the UK has not adopted because it considers it already has these standards. It has an opt-out from the Home Office, so it has the right to do so, but they are principles that are contained in the Charter of Fundamental Rights. These are the nitty-gritty details that are going to make it more complicated for the UK to claim, “We have the same laws and we have the same proceedings, so you have to trust that if you send a criminal to London they will be treated equally to if they were in Paris” whatever you might think about that.

Chair: I interrupted you on the other red lines.

Camino Mortera-Martinez: The second one would be data protection. The Government have clearly stated the UK will follow European Union data protection laws. That is quite simple, because the UK as a country has implemented the General Data Protection Regulation. However, there is the question of the national security exception. That is what is going to make the whole thing more complicated and is one of the reasons why the databases question is not only a political question. Obviously nobody wants to lose operational co-operation, but you cannot transfer data of European Union citizens—whether they are criminals or not—to a country without having specific European Union data protection safeguards in place, including the right to examine national security measures and laws like the UK’s Snooper’s Charter, so to speak.

The third red line is the European Court of Justice. You asked me to be specific. To give you an example, the European Court of Justice cannot issue European Arrest Warrants and cannot decide to send a Bulgarian to Spain. What it does is to review the obligation with the European Arrest Warrant. If you want to have any sort of relationship with the European



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Union as a bloc on extradition, you are going to have to meet some sort of oversight from the courts. Whether it is the European Court of Justice or whether it is something new that you come up with that does not undermine the integrity of European Union law is a different question. However, you will need to have a panel of judges because we are talking about fundamental rights and proceedings on whether to lock up somebody. You cannot simply ask a Government, you need a court. To me, those are the three red lines that are complicating this negotiation. If we move a little bit forward with them, this negotiation would be easier.

Claude Moraes: I would emphasise that everyone knows about the ECJ red line and everyone knows about the PM's speech in Munich. I would try to add—for added value from me coming here—that the databases and adequacy agreement is a red line. It is a red line, because again, contrary to the issue of the UK being a third country and not getting more, it is because the European Union is now modernising data protection law. It is the only continent that is doing it. We are part of it because we have just implemented GDPR. We have done it, so we are one level. However, the problem is that in doing so—and then having access not just to SIS II, but ECRIS, ETIAS and EURODAC and the Europol Information System, as you were asking Rob Wainwright—we have a problem with our own data protection implementation and law.

From the Investigatory Powers Bill or the immigration exemption in the GDPR, which no doubt you have looked at, all of these things mean it is inevitable that we have to have an adequacy agreement to continually show that we are equivalent and on the same lines as the EU for all of these databases. The riddle within the riddle is that all of these databases are not equivalent. ECRIS is going to be harder. EURODAC is going to be harder because some involvement in immigration is key. For ECRIS, there are also national criminal issues in member states. SIS II is the big one. Here the red line is that there is no acceptance—I can say this certainly from the Parliament that legislated it—that there can be anything other than a very stringent adequacy agreement. Therefore I would say the UK and the EU27 need to get on with it because otherwise we are going to have a cliff-edge situation.

On ECJ, it is not so clear what the flexibility the PM was talking about is. The European Arrest Warrant, Europol and SIS II—the big things—are dependent on the ECJ, as the Charter is gone. To be fair to the UK, Mr Barnier mentioned freedom of movement as why we cannot have the European Arrest Warrant. I would not have put that in the speech and I do not know why he did. We are not in Schengen and there could be an arrangement that is not to do with that. For ECJ and the Charter, that is obvious. Because the EU27 have had no further information on what the flexibility is on the ECJ, how is it going to be possible, with all the other difficulties, to say the UK could have the EAW? Then we end up, as you discussed earlier, with options that are inferior. We are going to end up with Norway and Iceland plus or something, which has lots of holes in it. Remember we are talking about crime and terrorism, we are not talking



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about trade. Therefore that is a very tricky position to be in. I would add that red line and emphasise how strongly we should consider it.

Chair: We should turn to the databases issue.

Q68 **Alex Norris:** With regards to negotiating access to SIS II after the transition period, what red line would the Government have to give in on to get that? I know we have covered red lines, but I want to be clear on each aspect.

Claude Moraes: I have tried to explain this. For SIS II, in his speech, Mr Barnier is very clear what the Commission's position is. We have explained that it quite rigid and so on. He has made it very clear that there is no immediate access for the UK to the SIS II database. That is quite serious. It is the biggest database. I have had practical experience of seeing it work and it is a huge loss. I do not think we are in a situation where even with an adequacy agreement you are going to get automatic access to SIS II. It is going to be a very difficult situation, but it is possible.

Q69 **Alex Norris:** What does it require, other than political will? Sorry to interrupt you. Other than the political will to do it on both sides, is there anything else that prevents it?

Claude Moraes: Simply third country status. You have so many issues with data going to a third country on how that data will be used. If I could give you one example, I am not suggesting these difficulties because I am happy about them, I am very angry about them, because I would like seamless access to it. One issue I can say from the Parliament is that we continually test very rigorously—not reported in the UK, of course—exactly what is happening with the UK's participation in the databases. That latest report came out a couple of weeks ago. There were some headlines, but nobody bothered with it.

However, it was very serious because it said the UK, first of all, is taking out more than it is contributing to the databases so that cliché was out. The most important thing about it were all the problems with the UK's participation in it. These similar reports come from the Parliament and from the institutions because they want to keep the integrity of the Schengen databases. They need to be taken quite seriously because they add to the issues of how you could end up with SIS II being a seamless situation after you are a third country.

I hope there can be a bespoke arrangement because the alternatives—the Norwegian-Swiss model, for example, where they have access to SIS II—happen because they are non-EU Schengen member states and I do not think that would be an offer for us. I understand you are saying what it would take. There are so many legal problems there. These legal problems are not put there by the EU. They are data protection standards issues. The European Parliament, for example, struck down more than one international agreement. These things are not bulletproof and that is the legacy of many of these agreements. Why? The issue is privacy and



bulk transfer of data. To get a bespoke agreement requires real focus on what those issues are and then whether there is any bespoke possibility for the UK. You can see how difficult it will be on SIS II.

Camino Mortera-Martinez: In order to retain direct access to any Schengen database there is a very clear option, which is to join Schengen. Obviously that is not going to happen. Beyond the question of privacy—some of the questions that Claude was mentioning are solvable through adequacy legislation—I understand your question is why we cannot get direct access if we do have adequacy legislation. Some of the problems are not that easily solvable because they are linked to the fact that having direct access to a Schengen database needs a Schengen agreement framework, which implies having a rolling obligation to adopt laws that might amend some of these databases, legislation and requirements that the UK will not be doing because obviously it is not going to become a Schengen country.

If you add to that the complex setting of the Schengen and non-Schengen differentiation for the European Union, it is very difficult to convince, for example, the Swiss. I know the Swiss would be happy to have the UK on board. However, they also have referendums pretty much every week and it must be quite difficult for a politician to go back home and say, “The UK has access to the Schengen Information System, but they do not have to give up border controls”. You have to add here a layer that you possibly do not have on the trade negotiations, which is that they are trying to not to offend the Schengen members as well.

Claude Moraes: That is an important point because there are non-EU Schengen members who would look at Britain and say, “You are not in Schengen, taking all the negatives of Schengen of free movement and so on, but you are getting one of the best, if not the best, databases in the world”. That is a very big issue.

Q70 **Alex Norris:** You both referred to data adequacy as a potential non-political hurdle, as it were. Presumably at this moment in time Britain is in a data-adequate status and day zero Britain would be data adequate. What sort of things will then change over time? What sort of things will the Commission look at to suddenly say, “No, we do not think Britain is data adequate at all, we do not want to be in an arrangement with them anymore”?

Claude Moraes: I mentioned some of them. It will be our own domestic legislation. First of all, implementation of GDPR, implementation of the so-called police directive, would be examined. Already there are some obvious divergences. It is not because we are bad; we are allowed to do what we want. As a sovereign country, we can do what we like. The issue is that we are now going to be co-operating with the EU27 and that makes it problematic. Even what we think are small things, like the immigration exemption or other implementations of GDPR, will be examined and will start to be a problem. To add some value, that is taken extremely seriously by the EU across the political spectrum.



The other things required to be data adequate are the Investigatory Powers Act, surveillance and bulk data. Bulk data has been a big issue for the European Union. It has been the subject of two ECJ cases recently with a lot of involvement from the Parliament, which is a fact. The adequacy agreement itself will not be easy to do. Of course with political will there is an understanding the UK is taking a different and more stringent path on its surveillance and other laws. The issue would be to try to get the best outcome, which is what an adequacy process is. That is exactly what will happen. If I give you an example, there are adequacy processes going on now between the EU and the United States Privacy Shield. It has to work in the end—although it is extremely difficult because the US has lower data privacy standards than the EU—because trade needs to go on and, similarly, we need to keep people safe. I would be hopefully optimistic you would get an adequacy agreement.

Camino Mortera-Martinez: The European Commission would have to review this adequacy legislation possibly yearly or bi-yearly. The European Union and Mr Moraes's own institution have not been very keen on the UK's data protection standards. As you know, the ECJ annulled parts of the Snooper's Charter, the Investigatory Powers Act. It also declared void the Data Retention Directive, which was a UK initiative, and looked at what the UK was doing with its own data retention laws.

One thing that I think is going to be massively important for both the European Parliament and the ECJ is with whom the UK shares the data of European Union citizens. Given the state of relationships between the EU and the US at the moment, possibly the UK's Five Eyes alliance is not going to be of much help in this respect. The European Commission and the European Union in general will want to look at what your security services are doing with the data, who they are sharing it with, how much time they are keeping it for and what the rights of the citizens are. That is not only about implementing the General Data Protection Regulation, which seems to be what the British Government have been saying to the European partners, but is also about, as I was saying before, what we call the national security exception, so national security legislation.

Q71 **Alex Norris:** Finally from me, as the clock ticks on, at a EU27 level are practical conversations being had about what life would be like after having Britain as part of the database arrangements and how practical that would be in the future?

Claude Moraes: I am on the Brexit Steering Group and so on. First of all, they are getting through this negotiation and establishing—as the Chair keeps mentioning—what on earth is happening on the one hand with red lines from the UK and on the other hand possible perceptions of rigidity from the EU27. This is a good conceptualisation because time is ticking. Camino made the right point about Barnier pitching it in a certain way to get people moving, which is probably a good interpretation of what he did. If that is the case, then we probably should. This would require an even sharper examination of the alternatives. As you asked



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Rob Wainwright, of course it is an inferior situation to have to have liaison officers.

I was involved in the Denmark agreement and it was fought very hard. Denmark is in the EU, but that referendum and what happened in it was taken very badly. Why? Not because anyone dislikes Denmark. You praised Europol, but the Parliament is the accountability structure for Europol. We just did new rules for it. It takes years to get to that position, with lots of British officials and others involved in doing it. It is completely ignored, as usual, but it is very important to keep the structure. That is what is being protected, even when you saw Denmark doing what it did. That is why they did not get many of the things they wanted, but I think in the end they made it work.

There are many things you can do. First of all is to get over what the Chair has mentioned. Once you get over that, then there are many issues. For example, when you look at the European Arrest Warrant, we do most of our business with Poland, for example. If we go to a bespoke arrangement, we are the United Kingdom, we are in the area of proximity and we can make something like this work. Why? Because it is the best extradition treaty anywhere in the world by miles. It should be able to work because it is delivering prosecutions in the nastiest cases. It did not work at the beginning. The Parliament and Council reformed it. Now it is a crown jewel, along with Europol. It can work but we need to get through this phony situation with the ECJ and just say what it is. What alternative would we pick? Time is running out. I do see both sides. There needs to be a little bit of give and take.

Q72 **Stuart C. McDonald:** In terms of give and take—there has been a lot of talk of rigidity so far—what scope is there for flexibility in the Commission’s position? It seems very tightly boxed in to an extent by EU constitutional law, essentially. Where do you think there might be those flexibilities that were just mentioned?

Camino Mortera-Martinez: As I said before, I think that Barnier’s pitch marks an opening negotiating position in the same way that I think the UK has its hands tied at the moment because it needs to agree on a position as well and is currently doing so in the Parliament. The degree of flexibility, in my opinion, is going to grow as time goes by. I do not think the European Union could be flexible in allowing a non-Schengen country to have exactly the same rights as a Schengen non-European Union country with fewer obligations, so they will not move on that.

I do not think they will move on the question of judicial oversight. However, I am sure if somebody came up with a convenient Nobel Prize idea for judicial oversight in this area, which will not undermine the integrity of European law and will not be a court that could potentially contradict what the ECJ has to say in this area—I think that is impossible—they could potentially move a little bit from this fixed European Court of Justice idea. I think they are already moving. If you



read European Commission slides, they are actually talking about judicial oversight and not only about the European Court of Justice.

On data protection, my personal opinion is that there is scope to find a bespoke data protection agreement of some sort. We have been experiencing a lot of problems with the United States in the past and we are trying to make it so their agreements verge on what we have with other countries. However, I also think we do not need to panic too much about this. When the famous French case came to the ECJ it basically brought down adequacy legislation that allowed the US to exchange data with the European Union. Everybody panicked and said, "Oh my God, Facebook is going to shut down and we are going to no longer have access to Amazon" and these sorts of things and this did not happen. When there is a will, there is a way. Even if we do have adequacy legislation that is a little bit strict on that framework there is still a way to exchange data in a way that operationally makes sense for the UK. I am sure bilateral deals will be also in the works if that happens.

Claude Moraes: This from-scratch court is something that is emerging and is being discussed because people want a solution. People do not want to see something bad happening in this area.

The other thing is that reciprocity has been talked a lot. If you get to a bilateral situation on all of these—Europol, European Arrest Warrant and the databases—you could get something more bespoke where you have reciprocity. There is an understanding that the UK has disproportionate assets—GCHQ and the whole thing—and that is not ignored or misunderstood. It is how you deal with it within the legal structure. An international court and other ideas have been discussed, but we want people to move faster on the discussion.

Q73 **Stuart C. McDonald:** Turning to Europol in particular, basically Mr Barnier is saying, "Cannot be a member, cannot be on the board" and so on. Have you spoken with the new director or staff there? Is that a view that is shared by them? I am guessing—we have already spoken about the operational level of things—they would all be keen to see as close a relationship as possible. If you were to ask the new Director of Europol and the senior staff there, would they want the UK to carry on as a member?

Claude Moraes: We helped to appoint the new director—I know the European Parliament is seen in a particular way in this place—and she is accountable to us. The first female Director of Europol is excellent and is from a country that understands all this, Belgium. From the discussion I have had with her, and the discussion you have had with Rob Wainwright, it is obviously right that as senior police officers they have a certain way of communicating issues and concerns.

However, I think the main issue for them with the databases is that you have to remember Europol is only an intelligence agency. There is no enforcement or hot pursuit, it is only intelligence and is only a database.



For that reason the infrastructure is important. You have everything bouncing around immediately and do not have to have people—for example, with the German example—giving information. I have no doubt individual member states will alert the UK to threats, not just in extremist cases, but frequently. The issue is when you have nothing happening, you identify something routinely and have the constant movements with the SIS database. That is the problem the new Director of Europol will have and these are the wider concerns. So-called foreign fighters and other issues like this are of concern to the new director, there is no question of that. Of course everyone, as Rob Wainwright said, would like an agreement of some sort that is a win-win situation otherwise it is only criminals and potential terrorists that are going to win.

Q74 **Stuart C. McDonald:** Given all that, what are the prospects of a bespoke agreement that allows a very close form of associate membership, perhaps even a seat on the management board? Is any of that realistic at all, given what you have said?

Claude Moraes: It has to be tested. Because of the Denmark situation, the barriers are well-known. Denmark is in the EU. Can we get something better than Denmark? That will be very tough institutionally for more than liaison officers or that kind of situation. The key thing is to test it. It was very rigid in Mr Barnier's speech, but that is the Commission position and we have to test that. How could you test it? The UK has disproportionate needs, disproportionate assets, area of proximity, the history with Europol and all of that needs to be brought out in this final stage. Nothing is impossible. That should be the aim. In your report you said you want a better relationship with Europol and that is where we should pitch it. You should not be pessimistic. We know what the barriers are. That is basically what we should do.

Q75 **Stuart C. McDonald:** Are there the same legal and constitutional constraints in what can be achieved, or is it slightly easier to come to some sort of closer relationship with Europol as opposed to say the European Arrest Warrant? For example, if you are talking about databases, do you not still have the exact same problems in terms of data adequacy and so on?

Claude Moraes: That is a thing about an overarching security treaty, there are so many legal bases and so many different issues in each area. On the Europol idea, if there was the political will you could potentially get a better agreement. I should not say this—I will be killed when I get back to the Parliament—but say, for example, you opened up the Danish agreement, which I spent months of my life on, then it is possible. Anything is possible. Why do I say that? We are dealing with the security of people and these kinds of issues. I should say nothing is impossible because we have until 2020 as well, the transition period.

The de facto situation is that we have a number of barriers, starting with Denmark itself, a country that is in the EU and whose politicians felt they had made a mistake in having a referendum. I have to be careful what I



say about referendums. They came, cap in hand, across the political spectrum to the European institutions and asked for a deal. You can understand the situation if Britain got a better deal than them, when it is a third country. However, it is Europol and it is intelligence about potential terrorists for all 28 countries.

Sorry to go on too long on this, but I am trying to hold out some optimism on why the Chair should not give up and have a breakdown every time she keeps having to mention that nothing is happening on this issue. You are pitching it right in your previous report. We should keep pushing, knowing what the barriers are. That is the difference, to be more realistic about what the barriers are now and then say, "We know this. What is the next step?"

Camino Mortera-Martinez: On the question of Europol, I have been trying to advance this idea that the UK could have a seat on the management board for questions that do not require unanimity, for example, to set up Europol's investigative priorities. This has been not popular at all in Brussels and Michel Barnier himself says that the UK having a seat on the managing boards is not an option. I think that we unfortunately will not be seeing that.

However, on the rest, they have been quite open to the UK not only having liaison officers, but also participating in Europol's project analysis and other things. Possibly the UK could aspire to a relationship like the one the US has with Europol, in which they have liaison officers for six different agencies and they have very strong co-operation with Europol and also with the Europol liaison officer in Washington; also Europol overseeing the Terrorist Finance Tracking Programme between the US and the European Union. I think there is scope for very close co-operation between the UK and Europol.

Q76 **Stuart C. McDonald:** Is there no prospect of direct access to the Europol databases? We heard in Sir Rob Wainwright's evidence that in actual fact that would be quite a strain operationally for Europol to have to process all these requests as an intermediary and it would be operationally easier if they were able to just provide direct access to the UK.

Claude Moraes: It is liaison officers that would do that. You have a whole set of liaison officers. You even have Canadian officers in there if you go to Europol headquarters. They are there from Canada, from America, and they sit there and they do that work. Operationally that is what happens. You would have British liaison officers there processing the information.

Q77 **Stuart C. McDonald:** It is not as good because the example—

Claude Moraes: Of course it is not. We are leaving the European Union. Of course it is not as good. Sorry to mention the obvious, but that is the point. We are now talking about how we get a better situation.



What Camino mentioned about what has been rejected is that the European Union negotiating position is that they do not want Europol being shaped either by Denmark or by the United Kingdom and that is what the management board means: shaping of the future of Europol.

Stuart C. McDonald: Thank you very much. You will need to excuse me, I am afraid. I have to head off for a debate, but thank you.

Q78 **Tim Loughton:** Mr Moraes, you are a member of the Brexit Steering Group on the European Parliament. What does it do?

Claude Moraes: I am one of the chairs. Because our business is so frequent in the Brexit Steering Group, there are a set of chairs who are added on to the Brexit Steering Group, so we are not the permanent ones. I am not a permanent member of the Brexit Steering Group. I am there to deal with, for example, things like citizens' rights, the rights of UK citizens in the EU and issues like this. When they come up, I attend.

Tim Loughton: That is what you do, but what does the Committee do?

Claude Moraes: The Brexit Steering Group will advise the European Parliament on its final vote, which is a yes/no vote, on the deal.

Q79 **Tim Loughton:** When did the Committee last have Sir Robert Wainwright in front of it?

Claude Moraes: The Committee meets almost every week, almost every second week. The last meeting on this issue was two weeks ago. The Committee members constantly meet Rob Wainwright. The accountability structure for Rob Wainwright is the Committee on Civil Liberties, Justice and Home Affairs. The Europol rules are made by us. We have just renewed the rules. We make the appointment of the director. Yes, I speak to Rob quite frequently, and obviously I speak to the new director frequently. I think what you are getting is do they get—

Tim Loughton: I am not getting at anything. I am just asking for factual information.

Claude Moraes: Do they get enough operational information about what is actually happening on the ground? From people like Rob Wainwright, possibly. I do not know if that is what you are getting at, but that would be a good question. The answer is yes, they do.

Q80 **Tim Loughton:** You will produce a report that will say, "These are our concerns about whatever agreement we come to over Europol" or what is the end product?

Claude Moraes: I have brought the slides here, but I will not bore you with them. It was at the 18th Barnier speech, two weeks ago, the Brexit Steering Group met. The Commission negotiators came at our request. They gave the latest on the EU27 position on the security treaty. I was able to then cross-examine it from my Committee, for example, and so did everyone else, even if it was not in their area. They gave a report, for example, on the UK's participation in databases. Some of these Camino



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quite rightly has written are not public yet, so that is the kind of information we get: how does the UK access databases? What does it do with them? Does it copy them? Does it not copy them? We get every element of that given to us. We get a good picture of exactly where we are and we get the Commission's negotiating position, which comes from a mandate from the Council.

Q81 Tim Loughton: When Guy Verhofstadt said that he wants a system that is as smooth as it is today, what do you think he meant?

Claude Moraes: I cannot speak for Guy Verhofstadt. Guy Verhofstadt is Guy Verhofstadt.

Q82 Tim Loughton: You were advising him and he must get his advice from you and others, so you must have surely some idea of what he is thinking to make a statement like that.

Claude Moraes: Yes, you have met Guy Verhofstadt. He gets some advice. What I think he meant—I do not know exactly what he meant—is that if we go to a different situation, so some sort of alternative, he probably would not want to countenance that. It is very much worse than what we have today because of the subject matter. For example, if we are going to one of the two or three options if we do not have SIS II—and obviously Camino has written about them—then hopefully they can be as smooth as possible because we are the United Kingdom. Maybe he is even holding out hope for some bespoke element.

Q83 Tim Loughton: Do you think Guy Verhofstadt and Michel Barnier are completely in tune with what the Brexit Steering Committee of the Parliament is thinking and advising?

Claude Moraes: Absolutely.

Q84 Tim Loughton: You do, so you should be able to know what he meant by that statement.

Claude Moraes: Yes. We are all politicians, so the exact assessment of what Guy Verhofstadt said is probably not within my capacity. I do not think it is within anyone's capacity around this table because I have known him for—

Q85 Tim Loughton: Why not?

Claude Moraes: Because it is Guy Verhofstadt and he says very charismatic and interesting things.

Q86 Tim Loughton: I just challenge you as to who is in charge of this process. Who is advising? What was really clear to us last week, when we asked Guy Verhofstadt to drill down into the detail of what that statement meant in practice, was that he clearly did not have a clue as to how Europol actually worked. It was very clear.

Claude Moraes: That would be very unfair. Guy Verhofstadt is the former Prime Minister of Belgium, a country that uses Europol's services



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quite well. The new director is Belgian. I really do not think that is the case. He does know about security arrangements; he does know about Europol. Maybe he gave an off answer.

Q87 Tim Loughton: I do not think that is an excuse because, interestingly, the last time this Committee visited Europol, one statement that came out in discussions was when we had the last terrorist atrocities in Belgium, the first institution, the Belgian police, rang up to get information as to what was going on. It was not Belgian intelligence services. It was not Europol. It was Scotland Yard. There is a huge disconnect here between the people responsible for negotiating our future relationship between the UK and in this case Europol, the advice that apparently they are being given. You say you constantly meet people who clearly know what they are talking about, like Sir Rob Wainwright, as you have listened and heard.

Claude Moraes: We do not meet them. It is an accountability structure. Europol reports to the Parliament.

Tim Loughton: You have just said you “constantly meet” Sir Rob Wainwright.

Claude Moraes: Yes, officially. Until he resigned, of course.

Tim Loughton: The Committee officially constantly meets Rob Wainwright and takes evidence from him, which is what my original question was.

Claude Moraes: Yes. It is an accountability structure. He has to report to the Committee.

Q88 Tim Loughton: Why doesn't Guy Verhofstadt know how it works? He does not.

Claude Moraes: There are two things. There is the Justice and Home Affairs Committee of the Parliament, which is the accountability structure for the Director of Europol, and there is the Brexit Steering Group. The Brexit Steering Group does not routinely interview every single operational head. If it did, it would not have time to do anything because it is comprised of chairs and other people who are doing what I just said, which is having the accountability structure with the Director of Europol.

On the point about Guy Verhofstadt, I think you are extrapolating a lot from what he said. The issue is—

Tim Loughton: We had to because he did not make it clear.

Claude Moraes: I think it was a more positive statement, which is he hopes we are going to get something decent out of what is going to be a very difficult negotiating situation. I hope that too. If there is some bespoke element in this, that would be a good thing and it is good that he is at least moving in that direction and did not come and say—

Q89 Tim Loughton: I think that is you extrapolating now, but let us go on to



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another thing. You said earlier that according to a report—which I do not know if it was your Committee or another part of the European Parliament that produced it—the UK is taking more than it is putting in to Europol. That was a statement you made just now. What does that mean?

Claude Moraes: Yes. There are a set of scrutiny reports that are made by the Parliament, but also the Commission, on the working of the Schengen databases. This is a good thing because these are extremely expensive, complex arrangements. The latest one, which was presented by Carlos Coelho—a Member of the European Parliament, who is a rapporteur, he is not British, he is Portuguese, just to be precise—at least the headlines of that were that on SIS II, Britain was taking more out than it was giving in, but also there were some other structural problems with the operation of that in relation to the UK, and I am hoping that will be public at some time and I am encouraging it to be public.

Q90 **Tim Loughton:** What is the point you are trying to make? What is the problem with it?

Claude Moraes: The point I was trying to make was that there are layers of difficulties that have nothing to do with Britain being a third country and therefore having less. There are many issues going on with the databases, with our access to the databases—legal, we mentioned the Article 3 agreement, and technical, I mentioned the scrutiny audits—which will make negotiating seamless access to SIS II more difficult. Why do I say that? If you have a scrutiny report that says, “We do not provide added value”, for example, just objectively, then that is not going to help. That is not going to be an additional negotiating plus for us. I mention it because I think it is not known how many layers of difficulty there are in getting what would be a good thing, which is good access to SIS II.

Q91 **Tim Loughton:** I am just getting a bit bored of hearing about “layers of difficulty” and “complexity”.

Claude Moraes: You might be bored, but that is what is happening.

Q92 **Tim Loughton:** As we heard earlier from somebody whose job it has been for many, many years to run Europol, that is politics. In terms of operational stuff, the way it has been running has been working well and the way it can continue working as it is now, there is nothing to stop that, other than, “It is all a bit difficult, it is all complex” because of political things.

I want to get to the bottom of why you think there is a problem. You made that statement, the UK taking out more than it is putting in. To me, that suggests that the UK is engaged in Europol more than any other country. That means we are too—

Claude Moraes: There are two things. You are putting words in my mouth.



Tim Loughton: Hold on. I will give you the opportunity to refute that or not. The fact that the UK is engaging very extensively with Europol and absolutely putting in an awful lot of intelligence from our side, which would be a real problem if that were missed, suggests to me that it is taking Europol seriously and using Europol for the reason that it was designed. It is not just doing it because we need to get intelligence about Joe Bloggs who is about to commit a robbery in York or whatever it is. It is because there is a shared interest in us doing it. We are taking Europol far more seriously. If that means we are taking up more in terms of data, that is good for the whole of Europol. That is not just good for the UK, surely, or have I misinterpreted the way that Europol works?

Claude Moraes: You are misinterpreting quite a lot. So that I can remember your question, the first part of it, Rob Wainwright: I was here listening to his evidence very carefully. He said that there were also legal difficulties, he said it more than once and he said it very respectfully and as a senior MI5 police officer would say it. He said it. I think that is just wrong, what you have said. He said that there were legal difficulties as well as many other difficulties in doing this. You are completely wrong on what he said.

It is difficult to remember your question because it went on for so long, but the second thing—

Tim Loughton: Shall I repeat it?

Claude Moraes: Please don't. The second thing was on the databases and I need to correct you on this. I did not make a statement about putting in more than we take out.

Tim Loughton: Yes, you did. I have your quotation.

Claude Moraes: Can I finish my point? That would be helpful. I said I was reporting on the scrutiny report by a member of the European Parliament—we have a number of scrutiny reports—on activities of member states in databases. In this case, the UK is not in Schengen and it opts into SIS II, so there are regular reports done on that. Some of these are not public, which is why I am saying today what that said. The reason I said it was not to criticise the UK's involvement but to show that in this case, and I repeat it again—I think it is a very simple point to make and easy to understand—on this situation, Britain does not have any great advantage in the negotiation. That is what I am saying, that that makes life more difficult. I know you are bored with the barriers, but there are many of these barriers.

Going back to Guy Verhofstadt, at least he was saying there may be a positive way through this, and I think that too, but we have to get over this and start thinking about what the alternatives are, rather than going on about trying to pick political points about the scrutiny report.

Q93 **Tim Loughton:** Can I have an answer to my question? I want to know what you meant and why it is a problem for the statement you made that



was published in this report, whether it was you that said that or it is just you reporting what the report said, that the UK was taking out more than it puts in. What is wrong with that?

Claude Moraes: Anyone who understands this area generally thinks that we contribute more to the databases that we take out. That is the general assumption.

Tim Loughton: What does that mean?

Claude Moraes: That we put more information into the database than we take out.

Q94 **Tim Loughton:** Why is that a good thing or a bad thing? It is what you do with the information, not how much you provide as opposed to how much you extract.

Claude Moraes: I am not saying it is a good thing or a bad thing.

Q95 **Tim Loughton:** It is how you process it.

Claude Moraes: Some people use that as a way of explaining our disproportionate advantages in the system. That is all I am saying and I think it is—

Tim Loughton: That has not come up today. That has not been a statement today, has it?

Q96 **Chair:** I am very conscious that we may be about to lose our quorum and I just need to ask a final question about timescale before we finish. What do you think is going to be the timescale? What are the points by which we need agreement on particular issues for us not to end up with things unravelling in operational terms later on?

Claude Moraes: 2020 is when it has to be completed, after the transition period. Everything we are hearing is that we need to get to some kind of understanding on some of the key areas by the autumn, and that is just weeks—

Q97 **Chair:** If we end up having to negotiate alternatives to the European Arrest Warrant, for example, which could take considerably longer, at what point do we need clarity about the fact that, “No, it is all right, we can go with the European arrest warrant” or, “No, we are going to have to start from scratch and start to build something up”?

Camino Mortera-Martinez: We will not have the European Arrest Warrants, that is for sure, and you only have to look at the withdrawal agreements, to look at Article 168 talking about this. The European Arrest Warrant as it is would cease to exist on the day of Brexit because member states could be allowed to deny extradition of their own nationals and probably Germany is the first that is going to implement that. What will need to be agreed in the coming two years is a way of transition after the transition, so to speak, because in my opinion there is



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very little possibility of having a comprehensive extradition agreement in place in the time that we have.

Just for the sake of clarity, the media and commentators in London say a lot that there are only six weeks going because Brussels shuts down in the summer. Whereas that is true, there is a team still there, so there is still hope that we will have a deal in the autumn. Let's not give up trying to negotiate all the way through August as well.

Claude Moraes: From the last Brexit Steering Group meeting, which I have hastened to mention, they want some clarity about the autumn, which is why this is so urgent. Then of course there is plenty of time on building the alternatives, for example, to the European Arrest Warrant if we are not going to be in it. Norway has the model plus or whatever it is going to be. We would have time to do that. Of course that is—

Q98 **Chair:** Do you think there will be time even before 2020?

Claude Moraes: I guess 2020 is, as you have also said in your report, a cliff-edge because that is the end of the transition period. You would want to have some contingencies in place on issues like extradition, on issues like the databases. Certainly there the Brexit Steering Group and others would be pushing very hard to make contingencies easier because we are dealing with very serious issues of, as you said earlier, life and death, so it is not a question of allowing that to just come to be a negative situation, but that is the timetable.

Q99 **Chair:** My final question is basically, if I should not yet be really worried, at what point should I become very worried?

Claude Moraes: I would not put it as worry. I would say that what is best—and your Committee is doing this, by the way, and your report did it—is that this Committee is asking the right questions. What I would like is for what this Committee is doing to be listened to a bit more widely. People take for granted the security area because they think, because of the nature of it, it will just work. What is misunderstood is that there are so many different, as Rob Wainwright said, legal problems. It sounds dry, "Why can't you just get over them?" When you consider that many countries—I gave the example of the European Arrest Warrant—may have to change their constitutions to then extradite people to the UK, there are so many dramatically different issues within that. Data is another one. For that reason, if what you are doing is at least listened to a bit more, then we can start moving a bit faster. That would be great.

Chair: Thank you very much, both of you. That concludes our evidence session. We appreciate your time. We are very grateful.