

Exiting the European Union Committee

Oral evidence: The progress of the UK's negotiations on EU withdrawal, HC 372

Wednesday 14 November 2018

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Members present: Hilary Benn (Chair); Joanna Cherry; Stephen Crabb; Mr Jonathan Djanogly; Richard Graham; Peter Grant; Wera Hobhouse; Andrea Jenkyns; Stephen Kinnock; Jeremy Lefroy; Seema Malhotra; Mr Pat McFadden; Emma Reynolds; Stephen Timms; Mr John Whittingdale.

Questions 3206 - 3263

Witnesses

I: Nick Witney, Senior Policy Fellow, European Council on Foreign Relations; Georgina Wright, Research Associate, Chatham House.

II: Camino Mortera-Martinez, Senior Research Fellow, Centre for European Reform; Sir Rob Wainwright, former Executive Director, Europol.

Examination of witnesses

Witnesses: Nick Witney and Georgina Wright.

Q3206 Chair: On behalf of the Committee, I welcome our witnesses for our first panel this morning: Nick Witney, senior policy fellow at the European Council on Foreign Relations; and Georgina Wright, research associate from Chatham House. We are taking evidence on the proposed UK/EU security treaty. We have a lot of ground to cover as always with Select Committees, so succinct questions from us but succinct answers from you would be really helpful this morning.

I want to kick off to get an initial reaction from both of you. Some people argue that there appears to have been a lack of interest on the part of the UK Government and maybe on the side of the EU in security in the negotiations so far. Do you think that is the case and, if you do, why do you think it is the case?

Nick Witney: It is the case that the defence and foreign policy issues are for the second stage of negotiations. We do not expect to find anything in the withdrawal agreement about them and we will find something in the political declaration presumably that, in some way, sets the scene for what follows. There have been a lot of conversations, though. The British Government have gone out of their way to make plain their aspirations in this area. We have had the Prime Minister's speeches in Florence and Munich. We have had a substantial chunk on security in the Chequers White Paper, all of it making clear what sort of relationship we would like. We would like a security treaty on the internal aspects. For the external aspects, there is talk in the White Paper of a "tailored partnership", and the document spells out in some detail what we mean by that.

We must wait and see what sort of response we get in the political declaration, though everything I hear is that we have not really had traction with that. The Prime Minister's line that we are unconditionally committed to the security of Europe and, in particular, we expect and deserve a relationship with the European Union that is better than any other third country would have in these areas has not met an answering echo. The European view of how third countries should relate to their policymaking, foreign policy, defence and so on is essentially that you get a chair in the corridor outside the room. From time to time, they will open the door and say, "We've decided to do this or that. You could bring something to the party. Why don't you join us for this or that?" Our pitch has been that you need us more than that; we deserve better than that; we should be inside the room with you, in some sense, not for the vote and perhaps not with a voice, but we should be there shaping your thinking. Everything that I hear is that we are not going to get that.



Georgina Wright: To pick up on the EU side, it is true and fair to say that it has not triggered much response from the EU side on what they think and see for future foreign policy and defence co-operation with the UK. There are several reasons for that. The first is that member states retain the prominent role in deciding foreign policy co-operation at EU level, mostly. It is as much a phase 2 issue as it is that presumably member states will take a more active role in those discussions. Secondly, that was absolutely right about third-country precedent. They do not want to be seen, too early in the negotiations, to be granting the UK a favourable deal, given that they already have quite strong foreign policy links with the United States and Canada, so they would not want to be seen to favour one country over another.

When France and Germany met, when Macron met with Angela Merkel for the Meseberg declaration, they talked about flexible arrangements, so a possibility for member states that want to do more to do more. Those that perhaps want to take a step back can take a step back. That leaves room for the UK to perhaps take a more active role and contribute to some of these EU missions and some foreign policy decisions as well, but all of that remains to be seen. The big question is if we have enough time to find a suitable solution for both sides. Strong foreign policy co-operation is both desirable and possible. The problem is that we are not really having those discussions yet, because they have to take place at the EU level, but also at the bilateral level with member states. We will see where that leads.

Q3207 **Chair:** You mentioned the United States. Would they really mind if the UK was able to come into the room and they were not? Is the EU slightly more worried about other countries? You make the important point about precedent.

Georgina Wright: I do not think they have one country in mind but, to take the case of Norway, Norway takes an active interest in what happens in foreign policy discussions in Brussels. They are not always invited in the room. They certainly cannot have a vote on certain of the decisions that they might want to take part in later. They might not be thinking about the United States, but they are certainly thinking about other third countries and particularly their neighbours.

Q3208 **Chair:** Secondly from me, both President Macron and Chancellor Merkel have talked about a European army in the last week or so. What are we to make of this and how does this idea differ from the arrangements that have been developed through PESCO and other joint missions?

Nick Witney: It is such an unhelpful slogan and it obviously plays better in French or German than it does in English. It is aspirational and it could not be more aspirational than the way Merkel framed it. She talked about working on a vision to establish a real European army one day. We look at it and think, "What can a European army can mean other than the integration of all our forces in some command structure that is run by a supranational authority in Brussels? We are not having that". The irony is



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that neither are the French, the Germans, the Slovaks or the Portuguese. Nobody in Europe wants to see their young men and women sent into harm's way on the say-so of somebody in Brussels. We are all going to preserve the right of our Parliaments or Governments to take those decisions and, without that sort of authority, I find "European army" a rather meaningless term, except as a slogan.

There is something fundamental behind this, which is what we increasingly hear nowadays about the need for Europeans to be more capable of looking after themselves in the defence, economic and financial spheres to build the sort of collective capabilities that will make them less dependent on the US. That is a very clear aspiration of Macron and Merkel, which lies behind a lot of this casual reference to a European army.

Georgina Wright: We need to remember where the EU is right now. They are having important discussions about what the future of the EU will look like and what that means in terms of foreign policy, and clearly there has been some tension that the Franco-German renewal and these ideas have not been bearing any fruit. It was as much a signal that we are going to revisit some of these ideas, but I agree with Nick that it is aspirational and is certainly not shared by everyone in France, Germany or indeed other member states. Angela Merkel finds herself in a situation where she needs to show President Macron that she is concerned about the future of the EU and is thinking about how it can be reformed. This is just one idea among many.

Q3209 **Mr Whittingdale:** Can I probe what Mr Witney was saying a little further? You said nobody in Europe has any aspiration for a supranational command structure, and I agree a lot of it is rhetoric but, if you read a lot of the statements, there is a suggestion that they see security and defence ultimately becoming a part of the European Union in the same way that it was set up to be an economic body. Their final destination includes that. Do you not believe there are serious aspirations in that direction?

Nick Witney: To the extent that there are very serious aspirations to move towards strategic autonomy for Europe, however you might define that, or European sovereignty in the defence sphere, or to put together sufficient collective European capabilities to ensure that we can look after our own security, including against Russia, it is a high bar to aim for but very much on the mind of someone like Macron. It was understandable in the Cold War but, since the Cold War, we have continued with this view that we are lost without the Americans in defence terms. The Macron/Merkel view, and they have talked about decreasing their dependence, is that this level of dependence on the US is neither necessary nor healthy.

Georgina Wright: The US has been asking the EU to step up its game in defence for years. While EU member states recognise that they cannot resolve a global crisis without the US, they need to do more in that



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space. The rationale behind this debate is to ask, "What do we do when the United States is not there, when it is looking inwards or looking elsewhere, pivoting to Asia or to Latin America?" It is important to remember what President Juncker said a couple of months back, which is that, if the EU deepens defence co-operation, it is not going to replace NATO. It is looking at how we can add to NATO. It is important to remember where these debates have come from.

Q3210 Mr Whittingdale: Given that part of the rationale for this is the concern that America is no longer reliable, they are trying to deal with a situation in which they no longer have confidence in the participation of the most powerful military nation on the planet and the biggest spender on defence. They are then going to turn around and say, "We are also going to exclude the second biggest spender on defence, which is another member of the UN Security Council and another of the nuclear powers". Surely the arguments for including us become stronger given that America is withdrawing. Yet you say, Mr Witney, the idea of our even being in the room is not really accepted.

Nick Witney: I agree. It is a tough ask even with 28 member states of the European Union to imagine that we could, within one, two or three decades become self-sufficient in defence. To do it without the British would be tougher still. It is not wholly absurd. If you look at the financial side of things, last year, the 28 member states of the European Union, if you tot up their budgets, between them spent almost four times as much as the Russians. It is astonishing, and yet we regard the Russians as something that we cannot possibly stand up against as Europeans.

There is also, at this stage of the negotiation, an interaction between Brexit and the evolution of European defence activity. There is a degree of complacency on the European side. A lot of them think they have done rather well in the last couple of years, coincidentally since the Brexit referendum, but also because they published a European global strategy two or three years ago and we have had a flurry of defence initiatives in Europe. The Chairman alluded to some of the acronyms flying around about PESCO, CARD and now the EDF, the real money being put into the effort from the community budget.

All this has led in some quarters to a sense that the Brits always thought they were indispensable, but they have been out of the game for the last couple of years since the referendum. "We are not doing so badly, are we? Besides, what did they contribute when they were in?" We have had a rather iffy track record on the defence side in helping out the common security and defence policy, so there is a bit of unrealism on the European side.

As Georgina said, this is for the second phase of negotiations and maybe we will see them moving towards a more welcoming attitude than the one that I described as currently prevailing.

Q3211 Mr Whittingdale: It is all very well creating acronyms, agreeing to



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co-operate and having joint programmes. At the end of the day in defence, it is about whether you use it. The truth is that the people who use it are principally the Americans and us. If both of us are no longer part of that equation it leaves them looking rather weak and lacking in credibility, does it not?

Nick Witney: The French would take issue with that. They have been much more active operationally than we have in recent years, and are now, alas, looked to by Washington as their go-to European ally when it comes to undertaking active operations. The Germans have never been happy about the idea of faring forth, but are much more comfortable with the thought that European defence can be somewhat reoriented towards Russia, deterrents and so on. Plenty of other Europeans have taken part in the bombing of ISIS and so on, so they are not a totally hopeless crew.

Q3212 **Wera Hobhouse:** Given that everybody seems to agree that the European Union needs to be more self-sufficient in defence terms, but, as you said, every country will take the approach that it is not acceptable for its men to be sent to war by Brussels and that a European superstructure is not acceptable, what would be acceptable among Europeans, if you know? Where would the UK be prepared to co-operate and what would that co-operation look like? It is not a superstructure, but surely we all accept that more co-operation is necessary, so where do you think the UK would fit in?

Nick Witney: At the operational level, if we had a Trump tweet tomorrow that declared the end of NATO, the Europeans would try to replicate exactly the same model but involving the Europeans. We do not talk about a NATO army today. There is no such thing as a NATO army. There are NATO consultations that take place very frequently and closely in Brussels, there is a Supreme Allied Commander Europe, who would take control if the situation required, and there are force structures. As would be the case in the future with the EU, it is a matter of sovereign member states contributing their forces, in the circumstances, to operations that might need to be conducted. I would say the obvious thing would be a clone of current NATO arrangements, but minus the Americans.

Q3213 **Wera Hobhouse:** Can I come in on that? My impression about NATO was always that, in the end, the Americans led the whole thing and ultimately the Americans said what was going to happen. In the absence of the Americans, surely there would need to be more co-ordination or some sort of leadership role for the European Union.

Nick Witney: NATO has worked the way it does because we have the big hegemon. If you do not have him, you have the problem that the French will instinctively wonder about German leadership and the Germans will instinctively wonder about French leadership. You would need those two powers in particular, and us if we happen to be involved, to form an inner understanding and then provide more group leadership to the enterprise.



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I am not saying any of this is remotely easy or desirable. Why would it be desirable to lose the alliance and support of the greatest power on earth?

We have to accept that the Americans increasingly feel they have other fish to fry, and that President Trump has shown himself to be extraordinarily cavalier about European interests in the last couple of years, whether it is getting out of climate change, binning the IMF treaty without consulting us or trashing the agreement with Iran. One hopes that this will be a temporary aberration, but a lot of people in Europe feel they have to be prepared for something structural that is going to happen in the decades ahead.

Georgina Wright: President Trump has signalled his frustrations with NATO but, if you look practically, the US remains engaged. They have increased their troops and their presence in eastern Europe. They are taking an active role in debates in NATO, so it is not as if the US is pulling out quite just yet. The problem with Brexit is that it is taking place right at the time when the EU is thinking about what strategic autonomy means and what defence should look like. It is difficult to predict how the UK and the EU can co-operate in this field because, on the one hand, we do not really know what global Britain means or how the UK sees its future in the defence field. In the same way, we do not really know where the EU is going, but that is why it is important to have these discussions now, so we can map strategically where we can co-operate and how we can achieve it, so what we want and how we get there.

As a final note, EU civilian and military missions have been limited in scope, mostly protecting civilian and commercial ships off the coast of Somalia or training troops in the Sahel. It is not quite the same level as NATO in any way, so it is worth remembering that we are very much in inception at the moment and at the early stages of discussing what EU defence would look like.

Q3214 Stephen Crabb: It feels like a lot of the discussion this morning has been quite theoretical and hypothetical, understandably. Can I focus therefore on something that is specific and current, which is the UK/France defence relationship? Defence officials both here and in Paris have been consistent over the last couple of years, in private, about the importance they attach to the British/French military relationship. It is something that they see is only going to grow in the future, regardless of how Brexit shakes out. Would you agree with that view?

Nick Witney: Yes, the British Armed Forces and the Ministry of Defence have, for decades, taken a pretty sceptical view of what the continentals can truly offer in defence, but have always made an exception for the French, who we have always regarded as worthwhile peers to co-operate with, as indeed they are. Particularly with the prospect of Brexit coming up, I am sure the Government attach huge importance to maintaining the Lancaster House agreement, and of course that is reciprocated on the far side of the channel.



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Why would it not be? France is moving towards, by accident or design, establishing a position as the strategic crossroads of Europe. We used to like to think of ourselves as the bridge between the Americans and Europe, and now France is moving into that role. I mentioned before that they have become, in American eyes, the go-to ally for operations in the stuff they are doing in the Sahel. France will be very happy to have particular control over the military relations between the continent and Britain. It will give them leverage vis-à-vis the Germans. It will put France in a happy position, as the strategic crossroads of Europe, and it makes a lot of practical sense.

Georgina Wright: It is not just France; it is also Italy and Spain. Part of that explains their reluctance or why they have been so slow to react to this particular aspect of Brexit, because a lot of our defence co-operation operates at the bilateral level through NATO and that will not be affected in the same way. Again it feeds into this question of what EU defence is, what it can add to existing bilateral relations and where that leaves the UK. As you said, it is still quite theoretical. Sure, we are a very important actor in the defence space and that is not going to diminish, but there are questions about where the EU is heading, where the UK is heading, if we want to be working and collaborating closely, and how that would work.

Q3215 **Stephen Crabb:** To follow up, do you think there is any risk at all that, after the UK leaves the EU, there will be a divergence in defence and security priorities, or foreign policy priorities, between us and the rest of the EU? Will that put pressure on some of these bilateral relationships?

Georgina Wright: Sure, there is always a risk of divergence, but it is almost like we should be asking the question the other way: what can we do now to ensure we are having those dialogues frequently and that we are meeting with our EU counterparts, either in Brussels or in capital cities, talking about our concerns in the defence and foreign policy space? We should try as much as possible to be influencing that debate. As Nick said, that is a lot harder when you are outside the room. It is a lot harder when you are in the corridors of the Commission, but we should not be short of ambition. If we really care about defence, security and foreign policy co-operation, if global threats require global solutions, we are stronger together so we need to work together. Let us put in place those mechanisms to allow us to have those discussions now.

Q3216 **Richard Graham:** There is already an operational European corps, which is the Allied Rapid Reaction Corps, here in the UK. It is commanded by us, but the Deputy Commander is Italian. There are 24 nations. The US plays a role in that, but not a huge one, and there is also the presence in Estonia. How are both of those seen in Europe and how important a model do you think they might be for the way in which Europe, including the UK, can work together?

Nick Witney: The ARRC is one of several such structures in Europe. I was going to say they are paper organisations, but that is not fair. They are command structures. They do not have permanently assigned troops



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at their command. They are organisations that train and exercise so that they would be able to take over command of a major operation, if they were called upon to do so, but there are others.

In any situation where you are contemplating operations with lots of different contingents from different forces, it is a very good idea to work out what the top-level command structure would be beforehand and exercise it, and it is the sort of thing we are good at. That expertise is understood and respected, but balanced out by the thought that, while the Brits have so many assets to bring in defence to the sort of things that Europeans hold dear and to our collective defence, in the last couple of decades, we have been pretty reluctant to do it.

Our record on taking part in European operations is patchy at best and, in some ways, we have been positively obstructive. There have been trivial issues, such as blocking increases that others wanted in the European Defence Agency budget or standing out against the creation of a small European operational headquarters. All of this has contributed to the sense I mentioned of European complacency: that they can do it without us. There is quite a lot of angst that runs around in Europe to say, "Actually, what we would be losing? We would be losing a tremendous potential from what the Brits could offer, but they have not been engaged, so we are not necessarily going to be that much worse off".

Q3217 Richard Graham: Do you think their approach is that the UK leaving the EU is an opportunity to resolve these problems; come together in the spirit of European fraternity; create structures and a European defence force that address our particular concerns? "Then, if we need to and want to, we will invite the Brits in to come in and join us", with the assumption behind that we might be feeling a bit lonely at that stage and would be happy to be invited to participate in what would be a continental-led structure and operation.

Nick Witney: There is a bit of that. When the great flurry of new European interest in what is sometimes called defence union, in a vague sort of way, was motivated by the unexpected election of Trump, which worried people, and by further bad behaviour by Putin, there was also that element: "If the Brits think we cannot manage without them on defence, we will show them", hence this rash of initiatives.

Georgina Wright: I agree with Nick; I am sure there are some people who think like that, but others think it is as much an opportunity as it is a necessity. There is a real risk, and lots of people around the EU and Europe think this, of the UK becoming so consumed by Brexit that it becomes absent from those other discussions or projects where it can collaborate closely with its European partners. I am not saying that is the case; I am just saying that is a theory. Even before the referendum, a diplomat spoke to one of my colleagues at Chatham House about the UK's self-indulgent obsession with EU membership: "Imagine if the UK votes to leave; how long is this indulgence going to continue and can we continue to rely on the UK?" It is an opportunity for some, but a necessity



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for others. Ultimately, the EU and its member states have made clear they want strong co-operation in foreign policy and defence with the UK, and we should bear that in mind when we are thinking about how it could work.

Q3218 Richard Graham: What do you both think that we, the UK, could and should be doing to try to both reinforce our relationship with Europe on the defence side and ensure there is a serious future for us not just to participate, but to play a leading role in the issues of Europe, from which we will never be able to escape in any event?

Georgina Wright: To a certain extent, the Government have done a lot already in putting forward two partnership papers. The Prime Minister has made very clear that the UK wants a strong partnership in these fields. We could do with greater clarity on how the Government see global Britain. What is global Britain? What does it mean and what capabilities would you need to do that? You do not want to be in a situation where you are promising and committing yourself to lots of different initiatives, but actually are unable to deliver because you do not have capacity.

Then we drill into capacity and think about the Foreign Office. If we are no longer part of those discussions that take place in the European Council, presumably we would have to increase our presence and representation in our embassy in Brussels, but also in embassies across the EU. Between 2010 and 2015, the Foreign Office experienced around 25% cuts. What are we going to do? Are we going to compensate for that loss by repatriating diplomats from elsewhere, so from outside of Europe? That is not a great signal to our allies that are located elsewhere in the world. Do we increase the Foreign Office budget? Do we increase local staff? But then local staff might have a weaker link with HQ here in London.

There are lots of questions about capacity, which are as much about hard power as they are about soft power, diplomatic skills and influence. Finally, we have to think formally about how we set up regular meetings and dialogues with the EU and in member states, so our capacity and capabilities here, but also frameworks and institutions that would allow us to have those ongoing dialogues.

Q3219 Jeremy Lefroy: By size, the second largest armed force in NATO, which is not in the EU, is Turkey. I have recently been to Kosovo and seen the real influence of Turkey in the Balkans, which goes right round to Ethiopia and the Horn of Africa. We seem to be talking about Russia all the time, but actually Turkey is flexing its muscles very strongly around a large area of what is considered to be within the European Union's sphere of influence. What is your perception of the position of Turkey, which seems to be becoming more semi-detached because the European Union has pushed it out over the years? What should the UK's response to that be? What do you think the UK's response will be to it as we leave the EU, given that Turkey is increasingly a significant power in Europe, as well as further afield?



Nick Witney: We need not fear neo-Ottoman Turks charging up the Danube to the gates of Vienna, but of course they are a worry. They are in a hugely important position geostrategically and, as you say, they are a very populous and martial people. They are inevitably influential in that key part of the Middle East and we have to worry that they are yet another country that seems to be falling for the delights of autocracy. Although they remain NATO allies, they are falling out with the Americans over their determination to buy Russian ground-to-air missiles. There may be a problem then about them getting the F-35, so it is a difficult relationship.

Perhaps the single most important part of the European/Turkish relationship is the question of migration, because the deal that the Germans struck with the Turks to choke off the flow of Syrian refugees was fundamental to reducing that particular crisis within Europe to something less than boiling point. It does not make sense to carry on the pretence that they are or could ever be on track, under their current direction, towards European membership. I do not think they particularly want it, although they would resent being told that the negotiations were over. We, whether Brits or Europeans, have to do what we can to create the closest possible geopolitical discussions and relationship with them, to hopefully keep them on side.

Q3220 **Emma Reynolds:** I would like to ask you about Russia. Does the relatively new Italian Government, particularly the pro-Putin Lega Nord part of the Government, see us leaving the EU as an opportunity to recalibrate the EU's position towards Russia? Would they be successful in doing that, and would that drive a wedge between our approach in the UK and possibly the EU's approach?

Nick Witney: It would potentially. You are right; the Italians are wet on Russia. When it comes to the sanctions, the Italians are always the ones who are dragging their feet and have to be persuaded, or possibly bribed, to ensure that consensus is there. They have made plain in recent days that their overwhelming priority is to get their expansionary budget signed off by the EU. They have said in terms that other issues such as Russia are subordinate to that. There has been a quid pro quo there: "Cut us slack on our budget and we will be good boys on other things". In five or 10 years, if that Government are still there and the immediate economic row has been settled one way or another, our absence will increase the relative power within European councils of those that are soft on Russia.

Georgina Wright: That is right and it is partly because of a dependence on Russian gas. They are having discussions about this in the EU at the moment. How can we effectively engage with Russia without the Brits? What does that look like and how can we do that, if many of our member states depend so heavily on Russian gas? It is worth remembering that it is not just Italy; Hungary also has a close relationship with Russia. The European Parliament elections will be very interesting in that regard,



depending on the outcome and what parties are represented. Given the increase in influence the European Parliament has had in setting the agenda in Brussels, it will be interesting to see the outcome of that and how it reflects a change or not in EU policy towards Russia.

Q3221 Seema Malhotra: Thank you for joining us and giving evidence today. We have had a very good start to this session, and you have comprehensively outlined how the Prime Minister has set out her commitment or vision, I would say, for maintaining a future relationship on security, and that has been reciprocated. There is clearly a tension between foreign defence and security policy as a member state competence and the aspirations for doing something at a more integrated level. Lisbon allowed for the space in the middle for co-operation. I am keen to explore further with you, if I start with you, Mr Witney, what the benefits have been of the level of co-operation that we currently have and participate in, particularly your experience in setting up and then your ongoing work with the European Defence Agency. How influential has Britain been and what have the benefits been for our security and even our defence industry?

Nick Witney: There is a distinction between foreign policy and the defence side. In foreign policy, the web of interaction is so dense. There is the Foreign Ministers' meeting once a month. The Political and Security Committee ambassadors are effectively in permanent session in NATO and that is supported by the new External Action Service. That has worked tremendously well in aligning European positions, but does this lead to more than a blizzard of statements deploring this and condemning that? There have been foreign policy successes, and the Russian sanctions are precisely one of them. I would say the Iran deal was another one.

Seema Malhotra: That has been highlighted by Lord Hague and Lord Ricketts, as an example of how our involvement, influence and co-operation have led to us being influential in taking our foreign policy to allies.

Nick Witney: On the defence side, the web does not exist to the same extent. The Defence Ministers meet only two or three times a year. There is very little in Brussels to support the common defence effort. There is the small agency that I set up, which you mentioned, which has done some good work, but not as much as I would have wished. There is the small EU military staff, which has helped to launch a few peacekeeping operations, but rather small ones and not as many as I would have wished. A lot of it is about how you get out what you put in, and frankly we have not taken any of this terribly seriously.

The key point, however, is your mention of industry, and industry and technology have been very important. A lot of it has happened not through EU structures at all, particularly. Common projects like the Meteor air-to-air missile or setting up MBDA, the company that makes



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Meteor, the pan-European missile house, are things that have not depended directly on the EU at all. They have not been EU initiatives.

Q3222 **Seema Malhotra:** Have they had any relationship indirectly?

Nick Witney: They have. My worry for the future is that, once we are no longer part of the club and the discussions, there will be plenty of people in Europe, particularly on the technological and industrial side, who will be quite happy to see if they can exclude the Brits a bit. It is no accident that, in the last couple of years, we have had the French and Germans talking about producing the next-generation combat plane as a bilateral initiative. In previous times, we would have expected to be in there with them. Galileo was perhaps another example. Plenty of European industries may not be quite as good at what they do as British companies are at the moment, but are very happy to see us squeezed out and have a go themselves.

Seema Malhotra: We have suggested there could be some unintended consequences from how we move forward, in the impact on opportunities for companies within our defence industry in the UK.

Nick Witney: Yes, in the whole defence and foreign policy arena the biggest risk for us from Brexit is the damage that could be sustained by our defence and technological industries being progressively frozen out. That will happen if the great plan for the European Defence Fund takes off. There are question marks about it and whether it will actually be funded, but it is big money that the European budget is planning to throw at joint collaborative projects, which we will not have access to. In that case, we will not be part of the next major equipment collaboration.

Q3223 **Seema Malhotra:** That sounds like it could have potentially quite serious implications for British jobs, particularly in the defence industry. If I could ask Ms Wright on this matter, we currently have a level of co-operation, both in decision-making and in soft power. Those connections, that co-operation and the forums through which we do that have been of benefit to us. What implications do you see for UK security and influence in the world if we do not find a way to maintain these levels of co-operation?

Georgina Wright: Very quickly before answering that question, this is the whole problem with Brexit in general, but particularly foreign policy, security and defence. Because there are multiple actors involved and decisions take place at different levels—EU level and sometimes at the member state level—it is very difficult to pinpoint exactly what the consequences are going to be. Nick is right that, when you are thinking about defence, there is the political co-operation side of things, missions and contributions, and then the defence industry single market side of things, which is the one to watch out for in terms of the immediate consequences of Brexit.

Q3224 **Seema Malhotra:** Do you think that has been sufficiently raised by



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Ministers or the Department? Do you think that message has been communicated?

Georgina Wright: I think so. It is something that has been recognised and spoken about in speeches, but it is very much a discussion topic for phase 2. It is not something on which the EU wants to engage right now, because it is about the future relationship, not about the terms of exit and, until very recently, that is what we were still discussing.

The basic premise is that the UK, as a member of the EU or not, wants to work with its allies to address global problems. Why? Resources are dwindling and global threats require global solutions. Our EU allies are natural partners in that space. Sure, there is a risk of divergence and we might not agree on everything, and by pulling out of the EU we are losing access to some formal and informal means of influence, but there are solutions to that. It is just that we need to be thinking about them now. There are formal structures, as I mentioned, regular meetings, ministerial summits, et cetera, both at the UK/EU level, and between the UK and different member states. Informally, it would be increasing our diplomatic presence, having our militaries and navies meeting their counterparts and having those discussions. It is important to show that we are engaged, that we are leaving the EU but not leaving Europe. A lot of that is around a positive narrative and engagement.

Brexit poses three immediate problems. One is, as I mentioned before, that the UK becomes more inward-looking, because it is so consumed by Brexit and therefore misses out on being a key player in some of these discussions. The second is absence of planning. We do not really know what global Britain looks like, what our capabilities will be like and how we are going to compensate for that loss of influence. That will damage our credibility externally, not only in the EU but also further afield. It will also damage our credibility internally. Our own electorate is going to think, "Where is the UK heading and what is the plan?" Third is the failure to grapple with a changing international context. It is important, when we are thinking about UK/EU co-operation, not to forget that there are lots of other things going on in the world. That is quite helpful in highlighting where we can co-operate closely.

Q3225 **Mr Djanogly:** Going back to the potential future relationship negotiations, Mr Witney mentioned before that the UK has said that it is unconditionally committed to EU security. Do the witnesses think that foreign and defence policy should or can be divorced from other aspects of the negotiations? In that context, does the UK's foreign policy and defence clout, in practice, give it greater leverage in these wider negotiations?

Georgina Wright: I would hope so, but I do not know if it is that simple. Galileo is a prime example of that, but there are others, where you cannot neatly separate foreign policy from economic and trade discussions. Particularly when it comes to industry accessing the single market or bidding for contracts, all of that will change, so it cannot be



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neatly divorced. I would hope, as much as possible, that the security dialogue can be isolated from the trade discussions, if they turn sour. I would venture to say they will inevitably turn sour. If we think that discussions so far have been complicated, just wait until we start talking about the future trade relationship. When you have producers in Italy and manufacturers in Belgium that start talking about their interests, it is going to be very complicated, which is why we do not want to lose sight of how we still need to work together. Our relationship needs to be strong and we need to figure out how that will work. Isolate it as much as possible. Can it be done in practice? We shall see.

Nick Witney: A lot of effort was put into the early stages of the negotiations with support from think tanks like my own, if I may say, with the concept that the future commercial and economic relationship was going to be difficult. It was inevitably going to be highly transactional but we should, on both sides of the channel, try to separate out defence, foreign policy and particularly internal security issues from those transactional things, regard it as something that could be isolated and treat it as something too important to be subject to trading.

The problems on the EU side, in responding to this, have partly been, as I alluded to earlier, some people seeing advantage in the Brits not being there, but they are also because, at the end of the day, this organisation is legalistic. It is a community of law. The only way you can keep 28 cats herded is to have clear rules and treaties. There has been a genuine sense on the EU negotiating side that, unfortunately, there is no scope for carving you some wonderful privileged position, because you will be a third country and the decision you have taken is to become a third country. If you are a third country, the rules say this is how the relationship works. As I say, it does not seem to be happening terribly well on the external security side. How far this matters is moot. I see the main risk as being on the defence industry and technological side. It matters a lot more on the internal security side, but you are going to be discussing that in a minute.

Q3226 **Mr Djanogly:** Monsieur Barnier has made it quite clear that he wants to keep it quite separate. We have been talking about the future relationship, but have you thought about these questions in the more immediate short term, for the transition period? Will EU decisions that are taken during the transition period have to be complied with here? Would we want to?

Georgina Wright: It depends actually. On common foreign and security policy, it would not be immediately binding. Am I right in thinking that?

Nick Witney: I cannot see anything that would be decided in Brussels during the transition period that we would be committed to follow. After all, the whole foreign policy and defence thing remains intensely intergovernmental. It is done by collaboration between sovereign nations.

Mr Djanogly: It is not a question of taking directives.



Nick Witney: No.

Georgina Wright: No, not in the same way as trade or single market regulations. I would suggest that the UK, as much as possible, should remain engaged in those debates. You do not want a situation where we are outside the room, and we are not really engaging, but saying, "We actually want to be engaged". That kind of vacuum might damage that promise somehow. Remain engaged as much as possible. Maintain those discussions.

Q3227 **Mr Djanogly:** But we will not be at the table. This goes back to what you were saying before, which is that this increase of staffing needs to happen immediately.

Georgina Wright: I absolutely think so. Finally, France has not always been particularly helpful in security, because it has a strong bilateral relationship with the UK in that field, but other member states, such as Poland and Estonia, want to maintain strong engagement with the UK in foreign policy. I am not suggesting France does not, but it already has a strong bilateral relationship in that field. Other member states do not. It is as much about investing in Brussels as it is investing in our relationships with different member states.

Q3228 **Peter Grant:** The Government are very keen to have a co-ordinated sanctions policy with the EU after we leave. How does that work in practice? In particular, does it mean we have to follow what the EU decides without having a say in deciding it? Alternatively, what are the implications if, at some point, there is a significant divergence, either because the UK wants to impose sanctions that Europe does not or because they have imposed sanctions on one of our biggest trade customers?

Nick Witney: Again, I do not think we would be bound suddenly to turn around and sanction people we did not want to sanction because 27 other member states had decided they wanted to. Sanctions are an increasingly important tool in global policy. It is being used more and more to better and better effect. Maintaining close co-ordination with Europe is one of the strong pitches made in the Chequers White Paper. A lot of what needs to be done is on intelligence channels. Once the major decision is taken that Putin and his cronies need to be punished for this or that, the debate goes down to who exactly we are talking about here, which dodgy banks and oligarchs. Those sorts of exchanges take place on intelligence channels and we have a great deal that we can contribute to that.

Georgina Wright: The EU would probably want us in the room. During the transition period, it was clear that, for any significant decision that might affect us, we would be invited to participate in those discussions, so I would not worry too much.

Q3229 **Mr McFadden:** This is just a clarification. Mr Witney, you mentioned earlier a figure that I thought was interesting and which surprised a lot of



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the public. The EU collectively spends on defence four times what Russia spends.

Nick Witney: It is almost four times.

Mr McFadden: Was that the EU 28 including us or the EU 27 excluding us?

Nick Witney: It was the 28. This was the 2017 figure.

Q3230 **Chair:** Finally, and a one-word answer will do, looking at all the things that we have discussed this morning, do you think that after the process of leaving the European Union Britain's influence in the world will be enhanced or diminished?

Nick Witney: It will be diminished without a doubt.

Georgina Wright: It will be diminished unless we put structures in place that allow us to have regular dialogues.

Chair: That has been really useful and helpful evidence. Thank you so much for coming this morning. We will now move straight into the second session.

Examination of witnesses

Witnesses: Camino Mortera-Martinez and Sir Rob Wainwright.

Q3231 **Chair:** On behalf of the Committee, I welcome our second panel this morning: Sir Rob Wainwright, former executive director of Europol; and Camino Mortera-Martinez, senior research fellow at the Centre for European Reform. Thank you very much for giving up your valuable and important time this morning to give evidence to the Select Committee. As ever, we have a lot of ground to cover, so as succinct responses as possible would assist us. Can I start with you, Sir Rob? Given the position that the EU has taken so far on policing co-operation and access to databases, what sort of impact are we looking at on our ability to fight crime and terrorism, given the position we are in?

Sir Rob Wainwright: Good morning, Mr Chairman. For the record, I should note I am no longer the executive director.

Chair: Indeed, I should have said "former". I think I did.

Sir Rob Wainwright: I do not have a particularly strong current insight as to what is happening. The experience I have is from my former career for almost 30 years as a security practitioner, and I am very happy now to be working for Deloitte, helping Governments and business deal with security issues.



In answer to your question, it depends on the nature of any withdrawal agreement that is reached. Of course we are all waiting to see what the detail of that might be and what happens in the coming days and weeks, but what is at stake is the ability of Europe as a whole to continue to meet its collective security interests. I have seen in the last few years the escalating nature of the gravity of the threat from international crime and terrorism, one that is intrinsically shaped by its transnational nature. That has driven the police community in Europe to work in an increasingly interconnected way, which is why we have developed this extensive range of police co-operation mechanisms through the EU.

What are at stake, if you fragment that integrated, close relationship, are the collective security interests of Europe, which is the important point here. As the Government's paper in May this year said, "There would be a clear mutual loss of operational law enforcement and criminal justice capability". That is a "clear mutual loss". That is at stake if the UK no longer has the kind of access to the operational co-operation instruments, including information exchange, that it currently relies on to safeguard British interests and support its European colleagues in the same way.

Q3232 Chair: We heard from the previous witnesses that the EU is a rules-based organisation of legal order. Clearly, what has influenced the approach they have taken in the negotiation is to say, "If you are going to become a third country, there are things that member states get that third countries do not". Turning the question round, to what extent do you think the EU worries about the impact on its ability to fight crime and terrorism of not reaching what most people would regard as a satisfactory arrangement that enables the levels of co-operation and information sharing that take place at the moment to continue?

Sir Rob Wainwright: Among the practitioners, there are concerns that a security deal must and should be reached, because of the nature of the very close co-operation in the European Union that the UK is a part of. There is an understanding across Europe that the UK has helped to shape the security agenda very strongly in the last decades and contributes, apart from anything else, very valuable intelligence to that European sector. That has been translated into a consensus that I have seen and heard in the last couple of years at the political level, in most European capitals, including in London, that it is important for the collective interests of Europe that we reach a deal that sees the UK continue to play an important and close part in those security co-operation arrangements. It is a real concern and one on which there is a lot of consensus, particularly among the practitioner community.

Q3233 Joanna Cherry: Sir Rob, back in 2016, you said that, in the event of Britain leaving the European Union, it would be difficult to negotiate security pacts from outside the European Union and it would be a damage limitation exercise. Those were the words you used back in 2016. Do you still hold that view and could you explain what you mean by it?



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Sir Rob Wainwright: In the last few years, we have seen just how complicated this process is to get to the right kind of deal. What is at stake is the preservation of the very good security co-operation framework that the European Union currently enjoys. It is the most integrated and probably the most successful cross-border police mechanism of any region in the world, and the UK plays a leading part in that. What I meant by that and what I still foresee is that there are real legal, operational and perhaps political complexities to this process, for example around ensuring the UK continues to access instruments such as the European arrest warrant, the Schengen Information System and indeed Europol. There are no easy precedents, legal or otherwise, for a non-EU member state to have that. All of that depends, nonetheless, on a successful political negotiation and I made that clear at the time as well, but it is hard work to get there and I know it is something that has focused the minds of those in charge of the negotiation until now, because of the importance of what is at stake.

Q3234 **Joanna Cherry:** Back in June of this year, Michel Barnier outlined what he saw as the problems for the United Kingdom remaining part of the European arrest warrant system. He said that the European arrest warrant is linked to the ideas of free movement and based on mutual trust between member states. He highlighted that that trust is underpinned by this shared respect for fundamental rights, such as those set out in the charter, respect for the jurisdiction of the European Court of Justice and also the concept of European Union citizenship. On the deal that has been discussed overnight—none of us has seen it yet—we already know that Britain is not going to be in the Charter of Fundamental Rights. Despite the efforts of some of us, that is part of the withdrawal Bill. We know that one of Theresa May's red lines was that we would not be under the jurisdiction of the Court of Justice, and we know that there is going to be no free movement. Is it not the case that these three major aspects that Michel Barnier outlined back in the summer will all be present going forward, so it is going to be impossible for the United Kingdom to remain part of the European arrest warrant?

Sir Rob Wainwright: I do not know the answer to that because, as you said, we do not know yet what is in the draft text of the withdrawal agreement. What you just laid out and what Michel Barnier laid out are exactly the kinds of complexities that I was alluding to in 2016. It will be difficult, but what is at stake at the same time—and this might drive and motivate a political interest to find the right deal—is a level of extradition, in this case, between the UK and the rest of the EU that provides security interests to all member states including the UK on an everyday basis.

Some 10,000 people have been extradited, surrendered under those terms, from the streets of the UK to other EU member states since the warrant came into force in 2004. The current rate is 1,400 per year. Before the European arrest warrant came into force, it was just 60 per year, so it has had a meaningful impact for Britain and Britain's neighbours in Europe in bringing to bear a much better way of



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prosecuting police business in this area. That real, practical, operational need to contain the more aggressive security threats that we have today might drive the need to reach some kind of settlement. I hope so for the good of police co-operation in Europe but, until we see the agreement, it would not be wise of me to speculate.

Q3235 Joanna Cherry: Before I became an MP, I worked as a prosecutor in the sex crimes unit at the Scottish Crown Office and Procurator Fiscal Service. It is fair to say that the European arrest warrant has revolutionised that sort of investigatory work across the UK, because it is easy to extradite people from other member states and bring them quickly and inexpensively to justice in either the Scottish legal system or the rest of the UK. Equally, it is easy for other member states to bring people swiftly to justice. It is particularly useful in solving, for example, international child sex abuse rings across Europe. It is particularly useful there, is it not? The risk if the United Kingdom falls out of that process is that it becomes hugely more time consuming and vastly more expensive both to extradite people to bring them to justice here and for other countries to extradite from us. That is the position, is it not?

Sir Rob Wainwright: There is no easy alternative or backup system here. What you are alluding to is the 1957 European Convention on Extradition, which does not operate in the same way and perhaps not in as effective a way as the European arrest warrant. It is one of those areas where I know British policing has been working on reaching contingencies in the event that the UK falls out of access to the European arrest warrant but, yes, there would be a palpable difference in the ability of UK law enforcement and the criminal justice system to deal with these kinds of issues.

Q3236 Joanna Cherry: It is not just the time factor. It is also the cost of the extradition process that we need to think about, is it not?

Sir Rob Wainwright: Yes, I agree.

Q3237 Joanna Cherry: Ms Mortera-Martinez, can I ask you to give us a feel for where we are on these issues and what the key points of contention are between the UK and the European Union? To what extent do you think the points of contention are resolvable?

Camino Mortera-Martinez: I might quickly take up your points on the European arrest warrant. I disagree with Barnier's stance that the European arrest warrant is necessarily linked to the free movement of people. In my view, these are two technically distinguished areas: the single market, and security and justice. However, the answer to your question of whether the UK will be able to retain the European arrest warrant is a blunt no. There are many other considerations we can go into in this session, if you wish to afterwards. However, there are other ways in which the UK can co-operate with the European Union on extradition, one being the convention, but there are other possibilities for



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example following the Norway/Iceland agreement with the European Union.

One thing that is important to retain is that the UK will indeed not stay within the European Charter of Fundamental Rights. However, it will still remain part of the Convention on Human Rights. The European Court of Justice, as recently as September, ruled that, because the UK is committed to stay in that convention, denying extradition to the UK is impossible now and it might not be easy in the future. That is an important point to take into account.

As for where we are now, as we all know, there has been the withdrawal agreement yesterday, which unfortunately I have not seen either, so we are operating on a bit of a crystal ball reading basis at the moment. The withdrawal agreement talks about the divorce and it sets out provisions for the transitional period, when it comes to co-operation on police and criminal justice. When it comes to the future relationship, as you know better than I do, this is going to be set down in the political declaration, so we will be going to see what we will be able to do in that political declaration, and then the rest is anybody's guess.

The Government have said the main priorities are databases, EU agencies and extradition; the European Union has said things along these lines as well, and a major bone of contention in those three areas is data protection, even though the Government, in their latest response to the House of Lords report on justice and home affairs and Brexit, have signalled that they would be okay with what the European Union is proposing. The second bone of contention is jurisdiction and the European Court of Justice.

Q3238 Joanna Cherry: You are very clear—it was a blunt no—that when Britain leaves the European Union it cannot remain a part of the European arrest warrant. Am I right in understanding that you think the two big problems are not so much free movement and rights, but data protection and the jurisdiction of the Court?

Camino Mortera-Martinez: They are not for the European arrest warrant. Data protection will not be an issue for the European arrest warrant. The problem with the European arrest warrant is that it is designed as an instrument that is only open to countries that are inside the European Union, because it is underpinned by what we call mutual trust. That means that member states follow certain rules and procedures, fundamental rights and the like. If you are outside the club, that is not going to happen, and it will be impossible for any European court to have oversight of the UK's compliance with that.

Q3239 Joanna Cherry: Even though the UK has now committed to staying in the European Convention of Human Rights, the fact that we are leaving the jurisdiction of the European Court of Justice means that we cannot be part of the European arrest warrant.



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Camino Mortera-Martinez: That is one of the reasons why the UK cannot be part of the European arrest warrant, yes.

Q3240 **Joanna Cherry:** You mentioned the possibility of us having an agreement like Norway and Iceland have. Can you give us an idea of how long it took for those countries to reach an agreement with the European Union and whether the agreements have been fully implemented yet?

Camino Mortera-Martinez: It is not implemented yet. It has taken 13 years, if I am correct: eight years to finalise the technical problems associated with the agreement, and five additional years to approve the agreement in the national parliaments. Some of them, as at the last time I looked at this, which was before December, have not given their approval yet because they have additional problems, such as Italy for example, but also Iceland and Norway themselves. As I said before, it is still not in place, so we have no idea how this is going to work.

Q3241 **Stephen Timms:** Michel Barnier, in talking about a continuing relationship for the UK with justice and home affairs databases, has drawn a distinction between access on the one hand, which he said we could not have in the UK, and effective and reciprocal exchanges, on the other hand, which he says we ought to maintain. Can either of you tell us what the practical difference is between those two things?

Sir Rob Wainwright: In the case of Europol, which maintains a very large information system relating to very serious suspects in international crime and terrorism, it is the case that no non-EU member state has direct access to those systems. Although there are some 20 or so countries outside the European Union that have very close operational co-operation through the Europol channel, they rely on indirect access to that system and Europol analysts essentially identifying hits between, for example, a US or Norwegian case and those in the Europol system. Within the confines, therefore, of the current legal framework of Europol, once the UK becomes a non-EU member state, it would not have direct access to those systems. Nonetheless, providing there was some kind of co-operation agreement in the same way as Norway and the US have reached, there could still be a form of exchange of information through a similar mechanism.

Q3242 **Stephen Timms:** Do you think that is what Michel Barnier is envisaging?

Sir Rob Wainwright: I am not sure what he fully meant by that actually, so I cannot comment further.

Q3243 **Stephen Timms:** Tell us a bit more what the practical difference is between access and exchanges of the kind you are describing? What can the US not do that the UK can currently do, as we have access?

Sir Rob Wainwright: It is mainly around a slight time lag. At the moment, the United Kingdom has direct access to the information systems at Europol, as indeed it does to the Schengen Information System. That direct access is decentralised around many portals in the



United Kingdom, so that allows an officer or a border official to directly interrogate these systems and get an instantaneous answer, which in some cases might help the officer understand that the suspect or passenger before him is wanted for a crime or suspected of being involved in a criminal activity. Therefore, if you do not have that direct access, you have a time lag. It is also something that is not decentralised, therefore, so it does not give you the same utility in operational terms as you might have if you are a full EU member state.

It is worth saying as well that the UK currently exchanges far more data on an everyday basis than even the United States, and five times the volume. Working with the current arrangements that Europol has in place in an indirect way for the United Kingdom would be a great technical and logistical challenge for Europol. This is something that would need a very complicated solution, I think.

Q3244 Stephen Timms: To make sure I have understood this, if you draw a distinction between what a UK and a US border official can do at the moment, the UK border official can interrogate the database as it currently stands. In the case of the US, there can be an exchange of the data. Does that mean data originating in the Europol database can be sent across to a US database and then the US official can interrogate that? They will get the information, but depending on how long the lag is for this particular data to be exchanged.

Sir Rob Wainwright: Yes, and in the case of Europol there would be a cross-checking of suspects between centralised national databases, in known cases. There would not be a more instantaneous interrogation of those databases beyond those central points, in this case Washington DC. That obviously limits the extent to which the database can give full utility, because you are not always working on known cases. If Europol has a known connection to the United States, it will send a proactive request to check relevant US systems. Where there is no known US connection, it might not do that. What has developed in the EU is a much more integrated ecosystem of data exchange. It also allows for identifying the unknowns and, therefore, gives greater resilience to the overall system.

In the case of the Schengen Information System, the UK currently interrogates that over 1 million times a year, through border officials, police officers and other law enforcement officials. If it ceases to have access to the Schengen Information System in the future, depending on the nature of what any future withdrawal agreement says, it makes an obvious difference to the ability of border officials and police officers here to access the kind of data held by European partners.

Q3245 Stephen Timms: Obviously we are not members of Schengen. There is a distinction here between Schengen and non-Schengen databases. Does the fact we are not in Schengen limit in any way our access to the Schengen databases?



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Sir Rob Wainwright: It could do, in the sense that the Schengen Information System is also directly accessible by Schengen states that are not EU member states currently. There is a provision there. There is a precedent for non-EU member states having access to the Schengen Information System but, in those cases, they are Schengen states. The United Kingdom would be neither.

Q3246 **Stephen Timms:** My question was this: at the moment, the UK is not a member of Schengen, but we have access to the Schengen databases. Is there any restriction on our access to the Schengen databases arising from us not being in Schengen at the moment?

Sir Rob Wainwright: The UK has partial access, and that access is granted for law enforcement security interests, but not for border controls. Camino understands the technical detail.

Camino Mortera-Martinez: There is a difference between the bit of Schengen that allows for law enforcement co-operation and the bit that is about controlling the border, migration and these sorts of things. The UK was granted access to the law enforcement part of the Schengen Information System only in 2015, by the way. It only connected to SIS II in 2017 and the European Union is still reviewing how useful the contribution of the UK is to these databases.

For example, the UK tried to connect to another database, which is called the Visa Information System, which stores data of those applying for Schengen visa overstays and the like. The European Court of Justice said you cannot connect to this database because it is about border control and, even though you want to use it for law enforcement purposes—and we use it for law enforcement purposes sometimes—since you are not part of Schengen, you cannot connect to this database. The fact that the UK is not in Schengen has always been a problem for the UK to access all parts of these databases. When it leaves the European Union, it is going to be even more complex for the UK to have access to these databases.

Q3247 **Stephen Timms:** Can you explain to us the reason why the European Union does not allow access to its databases for countries that are not members? What are the worries that limit access to its databases, which will limit our access once we leave the EU?

Camino Mortera-Martinez: We can have legal problems, because the Schengen/non-Schengen scheme is very delicate. It has been built for years and it takes a lot of time to understand why a database is established. It has what we call a legal basis, which is Article X of the treaty and Article X is only applicable to Schengen countries. This is the legal problem that, as we all know, if there was the political will, could be solved.

Then you have the delicate balancing between Schengen and non-Schengen countries. If you say Switzerland can have access to the Schengen Information System because it in turn applies free movement,



you cannot say the UK also has access but does not have free movement. That would upset Switzerland, and rightly so. Then there are questions around data collection as well, because of the certainty that countries that are not in the European Union might not be fully compliant with all aspects of European Union data protection laws in what they do with this Schengen data. Are they going to send it somewhere else? What are they going to do with it? These three aspects are why the European Union does not allow non-Schengen countries to access all Schengen databases.

Q3248 Stephen Timms: Do you think it is right to say that a close relationship on security will require a data adequacy decision about UK data protection arrangements from the EU?

Camino Mortera-Martinez: Yes, but I would go even further. A proper security relationship between the UK and the European Union requires a bespoke agreement on data protection. I know that the European Union does not like those words and talks about a data adequacy decision, which the Government seem to have come around to. However, we have the precedent of the United States. The European Union has had many problems over the years with the different agreements in place with the US on the transfer of data for, for example, counterterrorist purposes. Eventually they came to the idea of having a more overarching treaty or deal covering both data transfer for commercial purposes, but also data transfer for law enforcement purposes. In this area, the UK is going to be such an important partner that we should be looking at a deeper relationship when it comes to data than a mere data adequacy decision as Switzerland or others would have.

Q3249 Stephen Timms: Are you suggesting the UK should have a data agreement analogous to the US's?

Camino Mortera-Martinez: That would be a good starting point, yes.

Q3250 Mr Whittingdale: In our last session, we talked about foreign and defence policy, where the UK is the biggest defence spender in Europe. In this session, looking at intelligence, it is generally recognised that we have possibly the best intelligence services in Europe. You will be aware that, a few weeks ago, Jeremy Fleming made the comments that UK intelligence had helped to prevent four terrorist attacks in mainland Europe. It is inconceivable, I assume, that in the future, if we were to gain intelligence of a possible attack on mainland Europe, we would not pass it across because we are not members of the European Union. That would just be madness. Equally, I assume that the same applies in reverse: that, if European intelligence agencies discovered information about a possible attack in Britain, they would tell us. Would they not?

Sir Rob Wainwright: Of course, and not least because the primary channel for doing that up until now, which will continue, is not part of the EU framework in any case. That intelligence co-operation would continue, particularly in the event of suspected terrorist activity and planned attacks.



Q3251 Mr Whittingdale: Jeremy Fleming made his remarks in the context of the Brexit negotiations. The fact that he highlighted the four examples of where we had helped prevent terrorist attacks suggested that it appeared to be a consequence of the current attitude of the European Union to Brexit that, somehow, that kind of intelligence sharing might be diminished.

Sir Rob Wainwright: You should see it in the round. There are aspects that support the broader counterterrorist fight, which are supported by the EU mechanisms. Jeremy Fleming and Andrew Parker, among others, have spoken in positive terms about the help that systems such as the Schengen Information System and Europol's databases provide, albeit on a secondary basis to what they are doing. There is something here about the ability to preserve the broader interests and credibility of counterterrorism. As part of this integrated ecosystem, you can pick up the non-obvious connections between terrorism and organised crime, for example, for which there seems to be some evidence of growing convergence. This is about making sure the UK and its European partners have maximum outreach to the greatest number of sources of information, not just the obvious ones, which are handled along intelligence lines.

Q3252 Stephen Kinnock: Thank you very much for coming today. I want to understand more about the EEA EFTA relationships that exist in this context. I know the Centre for European Reform and others have pointed out that Norway and Iceland have a multilateral extradition treaty with the EU and its procedures are very similar to the European arrest warrant, but the indications are that there is some complexity and difficulty with that treaty, which took 13 years to agree and ratify, and still has not been ratified by some member states. Can you say a little more about why that has been difficult? One would assume it would be easier to draw up terms with those countries than it would, for example, with the United States or a more distant country with a less integrated relationship with the European Union. Can you say a little more about why those difficulties occurred?

Camino Mortera-Martinez: First, perhaps some terminology: the EFTA EEA analogy does not necessarily work here. In the justice and home affairs area, I prefer to distinguish between Schengen and non-Schengen countries, taking into account that the EFTA Court does not have jurisdiction over justice and home affairs. That was an early mistake that was made in the conversation about whether the EFTA Court could have a role in this area.

When it comes to extradition arrangements with countries other than those in the European Union, we have three types. We have bilaterals, which is the case for Switzerland and the US. We have what we call mutual legal assistance treaties, which supplement these bilaterals. That is also the case for the US. Then we have multilaterals, as you rightly pointed out, such as the one between the European Union, Norway and Iceland.



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In my view, the reason that this has taken so long to negotiate is precisely the issue of court jurisdiction, because they need to find a way to have a court that adjudicates questions of criminal procedures and fundamental rights. There is no way you can get away with an extradition treaty with no court's jurisdiction whatsoever. Now, that took some time and the way the Norway/Iceland/European Union treaty solved that question was to establish some sort of a mechanism. Nobody knows what this mechanism means, how it will actually work, who will be part of it and how a mechanism, which is not a court, can decide on the questions I was referred to before, such as whether you can imprison somebody or breach somebody's presumption of innocence.

Another question that was difficult was the famous question of whether to extradite own nationals to Norway and Iceland, and that has taken a long time to negotiate because, as you very well know, the European arrest warrant abolished the constitutional ban on extraditing own nationals. Now, every single member state of the European Union is bound to extradite own nationals to other member states, under the European arrest warrant. That does not happen outside the European Union for legal and jurisdictional reasons, which we can talk about later if you want as well. The Norway/Iceland treaty had to work around those problems, and it took a long time for member states to decide whether they were going to extradite their own nationals. I have the numbers somewhere here: at the moment, something like 14 countries have said they will extradite their own nationals only under conditions to Norway and Switzerland, and seven countries have said they will not extradite their own nationals under any sort of condition. This is one question that took a long time.

Finally, there is the question of political exemptions, which was a welcome development of the European arrest warrant for countries like yours and also for mine. I am obviously Spanish. You could not oppose the fact that somebody had committed a political crime to avoid extradition. This, on the question of Ireland and the IRA, and ETA in Spain, was very important to address a terrorist who was seeking safe haven elsewhere. This is not part of the Norway/Iceland treaty either and is not likely to be part of any treaty that the UK is able to strike with the European Union. That is another question that also took a long time to resolve. Those three questions, in my view, are the reasons that this is taking such a long time to agree.

Q3253 Stephen Kinnock: They are still pending, so it has not been resolved.

Camino Mortera-Martinez: The protocols on who is going to extradite own nationals are already there. The whole thing is already there. It is just a question of whether the Italian Government or even the Norwegians are going to ratify this treaty, because they are trying to finalise some issues of deciding whether this constitutional ban will apply or whether they can have an extradition treaty without a court



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overseeing it. Those are the questions pending for some member states. I am not speaking about all of them, but some of them.

Q3254 **Stephen Kinnock:** Progress has been made, but it has been slow and complicated. I have a similar question on access to the EU justice and home affairs databases. This may be for you, Sir Rob, but it is also for Señora Mortera-Martinez. What is the relationship between—for want of a better word, let us call them EFTA EEA countries, although I know it is not relevant in this case, because it defines a trading relationship and not a security relationship—those countries as that sort of family? What is their relationship with and access to the EU JHA databases?

Sir Rob Wainwright: As Schengen states, they have access to the Schengen Information System, in the way I explained before. In the context of Europol's databases, they have the same rights as the 20 or so other countries that have signed a formal co-operation agreement with Europol, such as the United States. As I said earlier that does not give them direct access to the databases, but some rights to exchange information.

Q3255 **Stephen Kinnock:** For EEA EFTA member states that are potentially not members are Schengen, what is the protocol? Would a new protocol be required because it is intrinsically connected to Schengen membership or would new arrangements need to be made? If, for example, the United Kingdom, on leaving the European Union and after the transition period, went into EEA EFTA, would the negotiation of access to databases be an entirely separate process, because we would not be part of Schengen? That would be a separate track for the negotiation process.

Sir Rob Wainwright: In the case of Europol, it does not matter whether they are a member of EFTA, in the sense that the arrangements still call for a specific operational agreement to be concluded between Europol and a non-EU member state. There is no distinction between different types of non-EU member state, at least not in the case of Europol.

Camino Mortera-Martinez: It is important to distinguish between the Schengen databases, such as the Schengen Information System and the Visa Information System, and the non-exclusive non-Schengen databases, like for example EURODAC, also the Prüm databases that store DNA and fingerprints, ECRIS, the European Criminal Records Information System, and the famous PNR, passenger name records. These are non-Schengen databases and, by definition in my view, they are going to be easier to negotiate than the Schengen databases.

Q3256 **Chair:** Can I be clear about the agreement between the European Union, Norway and Iceland on surrender procedures? Is there any role for the ECJ in any dispute or interpretation of that?

Camino Mortera-Martinez: The case law of the ECJ needs to be taken into account.

Q3257 **Chair:** But it does not ultimately rule.



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Camino Mortera-Martinez: It does not rule. There is no direct role for the ECJ in that specific treaty.

Q3258 **Chair:** Although it has taken a very, very, very long time to put this together, it has been possible to reach agreement between two non-member states and the EU to have a kind of extradition arrangement that does not rely on the ECJ being the ultimate arbiter.

Camino Mortera-Martinez: Right, but, as I was saying before, it is not in place, so we do not know how this mechanism is going to work. In the case that a dispute arises, and we have been seeing a major number of cases on the European arrest warrant before the ECJ in these past few months, if somebody goes to a national court and says, "I cannot be extradited to the UK; how are they going to guarantee that I am going to be well treated there?", as has happened, we do not know what a Norway/Iceland agreement will do in that respect. How a joint committee of any sort made by civilians and not court professionals is going to decide on these kinds of issues is a mystery to me. I do not think that anybody I have spoken to on this has been very clear either, so I am not sure this mechanism should be taken as an example for UK negotiations on this.

Q3259 **Joanna Cherry:** The agreement with Norway and Iceland impacts on the rights of individuals who are European Union citizens and still live within European Union countries. Those European Union citizens will still be under the jurisdiction of the Court of Justice and can go to the Court of Justice, through their domestic courts, saying, "I don't want to be extradited to Norway or Iceland, because it is a breach of my rights as an EU citizen". The court will still have jurisdiction to that extent, will it not?

Camino Mortera-Martinez: I agree with you and this is part of what the Government are saying. You cannot subject one international treaty to the court of just one party. We are looking at the European Court of Justice as the court of the party of the European Union and not of the other party. My question is what will happen in a dispute about the way a provision is applied. Say a citizen goes to the ECJ, but a UK citizen goes to the UK courts, and they disagree on their interpretation of the same clause. How a joint committee is going to have the competence to decide on these questions, to me, is still a mystery.

Q3260 **Richard Graham:** A successful deal for both sides on security issues seems one that allows for as much continuity of existing relationships as possible. What for both of you are the crucial two or three things that this Committee should be looking for to determine how good the future political declaration is on security issues? Sir Rob, can we start with you?

Sir Rob Wainwright: As an operational practitioner, I am bound to say that the value that the UK and the EU get from co-operating on thousands of cross-border operational cases every year, against some of the most dangerous criminal and terrorist networks operating on our continent, must be preserved. It is the practical means by which the UK



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and its European partners can continue to plan a joint operation to track offenders, to exchange intelligence in quick time around those offenders and to put themselves in a position where, as happens very frequently, there are co-ordinated arrest operations across, in some cases, 20 countries against these dangerous networks.

That therefore means continuing to be a part of this framework of co-operation, the ecosystem that has been built especially around Europol, continuing to have free and liberal access to the information systems that underpin that and, finally, being able to continue to rely on the kind of effective extradition arrangements that we have been talking about as well. It is useful to see this through the lens of an operational practitioner. The director-general of the National Crime Agency has also recently talked in the Home Affairs Select Committee about how important it is to preserve that. Ask her and her colleagues in the Metropolitan Police and other agencies if they are happy with the arrangements. Their judgment on this is important, because they understand what it takes for very complex threats to be effectively challenged today.

Q3261 Richard Graham: In the summer, you said that you were optimistic about a deal being reached, because you felt that practitioners wanted it and there was political will for it, and it looks as if you have been proved right. How confident are you that the arrangements in the future political declaration will be able to achieve those effective benchmarks that you laid out on a framework of co-operation, access to data and fast co-ordination when needed?

Sir Rob Wainwright: This can happen. It depends, first, on whether a withdrawal agreement is finally reached and implemented, because that gives the breathing space that we need to set the framework for a robust, comprehensive future security partnership. That partnership will undoubtedly be different from what it is today. It will not be quite as effective as it is today, but it will be strong enough to give a good basis for our operational interests to be maintained.

Richard Graham: Your interpretation of the transition is that things continue exactly as they are until the end of 2020.

Sir Rob Wainwright: I doubt they will continue exactly as they are. For example, even in the transition period I am not sure the UK will continue to have full membership of the management board of Europol, for example. There might be other issues that make some difference but, in operational terms on a day-to-day basis, I would expect the arrangements largely to continue. Certainly that is what I hope for. Somehow, that could form the basis of what a future partnership might look like.

If a withdrawal agreement is not reached and we are in no-deal territory, if we have a no-deal no deal and also no deal on security, it will be quite a difficult place to be in, because it means overnight in March/April next



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year the UK ceases to have access to these databases, ceases to be a member of Europol and so on. We might have no deal broadly, but one in which there is practical security co-operation to the side. In any event, now we have the withdrawal agreement, which has understandably taken most of the political interest until now, we should continue to pay a lot of attention to getting the right security business in place for March and April next year and beyond. It is important that we do that now.

Camino Mortera-Martinez: To add to what Rob just said, there are two main things that are going to change in the transition, when it comes to how the UK co-operates with the European Union. The first one is article 168 of the withdrawal agreement as it was, and as I hope it is still. It allows countries to trigger the constitutional ban that I was talking about to extradite their own nationals, as of Brexit date, March 2019, so at least Germany but perhaps other countries are going to cease to extradite German nationals to the UK next year. That is the first thing.

Secondly, the UK will not be able to opt into any new justice and home affairs laws that will be made in Brussels. Obviously that will be an important development for the UK, because it will not have a voice on measures that can have an impact from now until the transition period is over.

Q3262 **Richard Graham:** Just to press a tiny bit on your comments on Germany and extradition, are you saying that Germany has already said that it will not extradite British citizens suspected of criminal activity from Germany to here, and vice versa, or are you making an assumption from the current legal position but, actually, there has not been any specific bilateral dialogue on that?

Camino Mortera-Martinez: As far as I understand, Germany has already said that it will not extradite German citizens to the UK. It does not have anything to do with British citizens. It is only about Germany not extraditing their own nationals, because their constitutional law does not allow them to do so, to countries that are not in the European Union, regardless of whether they might have been in the European Union in the past. I know for a fact that Germany has already said it will trigger this exemption and other countries are considering doing so as well. As far as I understand, the Commission will allow any country that wants to trigger this exemption to do so, if they do it in formal time.

Q3263 **Richard Graham:** Would that come into place during the transition or only at the end of the transition?

Camino Mortera-Martinez: This is as at March next year, so as at Brexit day, during the transition.

Chair: That completes our session. On behalf of the Committee, can I thank you once again for coming and giving such helpful and informative evidence?